

#375-12 (OAL Decision: Not yet available online)

BETH ANN CLAYTON, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY : DECISION
 OF ELIZABETH, UNION COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner appealed the decision of the respondent Board to terminate her employment as a teacher through a reduction in force (RIF) at the end of the 2010-2011 school year. Petitioner was continuously employed by the Board from October 2005 through June 2011. Petitioner contended that after her termination, the Board continued to employ other teachers with less seniority than petitioner, in violation of her tenure and seniority rights. Petitioner sought reinstatement and back pay retroactive to the date of her termination.

The ALJ found that: petitioner failed to appear for a hearing in this matter on July 30, 2012, despite having received appropriate notice; and attorney for the petitioner appeared at the hearing and confirmed on record her ongoing inability to reach her client via telephone, and via certified and regular mail. Accordingly, the ALJ concluded that petitioner had abandoned this matter and ordered the case returned to the Department for appropriate disposition.

Subsequent to the issuance of the Initial Decision, the petitioner filed exceptions in accordance with *N.J.A.C. 1:1-18.4*. In the exceptions, counsel for the petitioner explained that Ms. Clayton failed to appear on July 30, 2012 because she had moved and never received notice of the hearing date. Accordingly, the Commissioner returned the matter to the OAL for reinstatement of petitioner's appeal.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

September 17, 2012

OAL DKT. NO. EDU 14386-11
AGENCY DKT. NO. 324-11/11

BETH ANN CLAYTON, :
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 PETITIONER, :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner filed exceptions to the Initial Decision in accordance with the provisions of *N.J.A.C.* 1:1-18.4. Respondent requested and was granted an extension of time within which to file reply exceptions. These were received in accordance with the extended timelines.

In exceptions, counsel for petitioner provided the following explanation for petitioner’s failure to appear at the July 30, 2012 hearing in this matter: “Ms. Clayton apparently failed to receive notice of the hearing as she had moved. Although she had moved, she did usually receive the mail sent to her at her former address. However, she did not receive the mail sent by her counsel or by the Court.” Attached to counsel’s exceptions is a Certification – executed by Beth Ann Clayton – attesting to the truth of these representations and further indicating that she still wishes to pursue her claim against the Board of Education of the City of Elizabeth.

Respondent's reply exceptions charge that petitioner's exceptions fail to offer any legitimate, credible reason for her failure to appear at the hearing and urge the Commissioner to adopt the Administrative Law Judge's decision dismissing her petition of appeal.

Upon review, the Commissioner concludes that interests of justice and fair play dictate that petitioner's explanation for her failure to appear – supported by her certification – be accepted and petitioner be given an opportunity to have her claim against the Board litigated.

Accordingly, in light of the above, this matter is being returned to the OAL for reinstatement of Ms. Clayton's petition of appeal.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: September 17, 2012

Date of Mailing: September 18, 2012

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).