

ASKIAA NASH, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, :
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner was employed by the respondent Board under yearly contracts as an educational media specialist from 1993 until 2001, when he was terminated following a criminal indictment. A jury trial resulted in a verdict against him on May 16, 2002, and petitioner was subsequently incarcerated until his conviction was reversed by the New Jersey Supreme Court in a decision dated January 22, 2013. The petitioner filed the within appeal of his 2001 termination in May 2013, claiming that he is a tenured employee and therefore entitled to reinstatement and back pay to the date of his wrongful termination. The Board contended that petitioner was not employed under tenure and that the appeal was not timely filed pursuant to the requirements of *N.J.A.C. 6A:3-1.3(1)*. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; the record shows that petitioner was first employed under emergency certification as an educational media specialist for the 1993-1994 school year, and was thereafter rehired annually for the same position through the 2000-2001 school year; for each of these years, his emergency certificate was renewed for a one-year period; although petitioner was issued a Certificate of Eligibility as an elementary school teacher in 1993, and contends that he is eligible for standard certification in that title, he never served in any position under that endorsement; he held emergency certification as an educational media specialist (an endorsement on the educational services certificate) throughout his employment with the school district; petitioner filed this challenge to the propriety of his 2001 termination in May 2013, nearly twelve years later; petitioner unequivocally learned that his employment was terminated on June 22, 2001, and should have filed his appeal within 90 days thereafter; petitioner's argument that his challenge to his termination did not become ripe until the reversal of his criminal conviction is without merit; and petitioner was not serving under tenure at the time his employment was terminated. Accordingly, the ALJ concluded that the petition must be dismissed as untimely pursuant to *N.J.A.C. 6A:3-1.3(1)*.

Upon comprehensive consideration, the Assistant Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-34* – concurred with the ALJ that summary decision is appropriately granted to the Board as the petition was filed well outside the 90-day limitation period set forth in *N.J.A.C. 6A:3-1.3(i)* for the filing of an appeal and the record provides no reason whatsoever for relaxation of this rule. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter and the petition was dismissed.

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.

OAL DKT. NO. EDU 8449-13
AGENCY DKT. NO. 92-5/13

ASKIAA NASH, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, :
ESSEX COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner¹ concurs with the Administrative Law Judge's (ALJ) determination that the petition of appeal was time barred under *N.J.A.C. 6A:3-1.3(i)*.² Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed.

IT IS SO ORDERED.³

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: November 25, 2013

Date of Mailing: November 26, 2013

¹ This matter has been delegated to the undersigned Assistant Commissioner, pursuant to *N.J.S.A. 18A:4-34*.

² As the ALJ stated in the Initial Decision, it was not necessary to reach a determination on the substance of the appeal because the petition was untimely filed. The Commissioner, however, is in accord with the ALJ's finding – for the reasons articulated in the Initial Decision – that the petitioner did not acquire tenure with the district.

³ 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*).