

#47-13 (OAL Decision: Not yet available online)

RICHARD GIANTISCO, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 DELAWARE VALLEY REGIONAL :
 HIGH SCHOOL DISTRICT, :
 HUNTERDON COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner – a tenured teaching staff member employed by the respondent Board since 1991 – asserted that the Board had improperly reduced his annual base salary for the 2010-2011 school year, making it lower than the annual base salary he received during the 2007-2008 and 2008-2009 school years. The within petition was filed on June 1, 2011. The Board contended that petitioner’s salary is appropriate for his current position, and 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 executed an employment contract for the 2010-2011 school year on or about June 15, 2010, and filed his petition of appeal – disputing the salary he was paid under the June 15, 2010 contract – on June 1, 2011; petitioner conceded that his appeal was filed more than 90 days after he signed the employment contract, but contended that his salary is a statutory right that is not subject to filing limitations; the 90-day limitations rule may only be relaxed in situations where a substantial constitutional issue is presented or where a matter of significant public interest is involved, beyond that of concern only to the parties; and petitioner’s claim does not meet the criteria for relaxation of the rule. The ALJ concluded that the 90-day rule established by *N.J.A.C. 6A:3-1.3* applies in this case; accordingly, the petition should be dismissed as untimely.

Upon comprehensive consideration, the Commissioner 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.

<p>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.</p>

February 5, 2013

OAL DKT. NO. EDU 7181-11
AGENCY DKT. NO. 141-6/11

RICHARD GIANTISCO, :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions – filed on January 18, 2013, in response to an Initial Decision mailed to the parties on December 31, 2012 – were untimely pursuant to *N.J.A.C.* 1:1-18.4 and, therefore, were not considered herein.

Upon comprehensive consideration, the Commissioner concurs with the ALJ that summary decision is appropriately granted to the Board as the instant petition of appeal was filed well outside the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(i) and the record provides no reason whatsoever for relaxation of this rule.

Accordingly, the recommended decision of the OAL is adopted for the reasons clearly presented therein and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2013

Date of Mailing: February 5, 2013

* 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).