

#360-14 (OAL Decision: Not yet available online)

NAOMI WEISS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY OF : DECISION
 NEW BRUNSWICK, MIDDLESEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner contended that the Board improperly docked her sick leave bank and placed her on unpaid leave following a work-related injury, in contravention of *N.J.S.A. 18:30-2.1*. Petitioner was employed by the Board as a speech therapist when she was injured on March 1, 2013. The injury was determined to be work-related and compensable under the laws governing Workers' Compensation. Petitioner received temporary disability benefits from the date of the accident until September 2013, and the Board paid any differential between her benefits and her full salary during that time, without docking her sick leave bank. Following an August 2013 medical opinion that petitioner was capable of resuming her duties, her workers' compensation benefits were terminated. Petitioner, however, contended that she is still disabled, and remained out of work on paid sick leave. The Board docked her sick leave bank until it was exhausted, and then began to dock petitioner's pay. A formal application to restore workers' compensation benefits was filed in January 2014 and remains pending before the Division of Workers' Compensation (Division). The Board contended that the instant petition was filed prematurely, and should be dismissed.

The ALJ found, *inter alia*, that: it is uncontroverted that petitioner's original injury was work-related and compensable, and there was no issue that she was disabled until October 1, 2013, or that her injuries were compensable until that date; however, the extent and duration of petitioner's disability remains in contention before the Division; a February 11, 2014 order that accompanied petitioner's filing was an interim order and not intended to offer finality on the question of her continued disability; proceedings at the Division continue to date; the applicable regulations specify that the Commissioner is without jurisdiction until the Division has made its final determination in this matter. Accordingly, the ALJ concluded that the petition was filed prematurely and should be dismissed without prejudice.

The Commissioner concurred with the ALJ that the matter was filed prematurely. Accordingly, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, and dismissed the petition without prejudice.

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 4, 2014

OAL DKT. NO. EDU 3576-14
AGENCY DKT. NO. 41-2/14

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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 and respondent’s reply thereto – filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

On exception, petitioner essentially replicates the arguments she advanced in submissions before the Administrative Law Judge (ALJ) below. As it is determined that these arguments were fully considered and addressed in the Initial Decision, they will not be revisited here.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons clearly stated in her opinion – that the petition was filed prematurely and should be dismissed without prejudice. Petitioner may refile the petition in the event that the Division of Workers’ Compensation validates her claims regarding the duration of her compensable injury and there continues to be a disagreement respecting her rights pursuant to *N.J.S.A.* 18A:30-2.1.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter, and the instant petition of appeal is hereby dismissed without prejudice.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 4, 2014

Date of Mailing: September 4, 2014

¹ 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*)