

LOGAN ALEXANDER AND THE HORACE :
MANN INSURANCE COMPANY, :
 :
 PETITIONERS, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF TRENTON, MERCER COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioners sought reimbursement from the respondent Board for costs and fees incurred in the defense of a civil lawsuit – settled with no admissions of any wrongdoing – which alleged that petitioner Logan Alexander engaged in wrongful conduct against minor student K.O. while he was employed as a security guard by the Board. Pursuant to the New Jersey Supreme Court’s decision in *L.A. v. Board of Education of the City of Trenton*, 221 N.J. 192 (2015), the matter was remanded for an evidentiary hearing in the Office of Administrative Law to resolve the issue of whether Alexander committed the acts alleged by K.O., and whether he was acting within the scope of his employment duties when the acts at issue occurred. Petitioner Alexander contended that he was not guilty of improper actions involving K.O. and, therefore, the respondent must indemnify him against the costs incurred in his defense.

The ALJ found, *inter alia*, that: the statute applicable to the present case is *N.J.S.A. 18A:16-6*, entitled “Indemnity of Officers and Employees Against Civil Actions and Proceedings,” which makes clear that indemnification shall only be provided when the act or omission at issue arose out of the performance of the employee’s job duties; witnesses from the Department of Children and Families Institutional Abuse Investigation Unit (DCF) testified that, based on interviews and police reports, DCF substantiated sexual abuse charges against Alexander which involved three minors – one of whom was K.O.; the testimony of K.O. regarding the incident in which she was pulled into the faculty lounge by Alexander was credible; and inappropriate touching of students clearly falls outside the scope of a school security guard’s duties. The ALJ concluded that petitioner Alexander was not acting within the scope of his duties when he touched K.O. inappropriately; accordingly, the petitioners did not meet the burden required to support indemnification under *N.J.S.A. 18A:16-6*. The ALJ dismissed the petition with prejudice.

Upon independent review of the record and the Initial Decision of the OAL, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision as the final decision in this matter. 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 6498-15
(EDU 10410-11 ON REMAND)
AGENCY DKT. NO. 225-8/11

LOGAN ALEXANDER AND THE HORACE :
MANN INSURANCE COMPANY, :
 :
 PETITIONERS, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF TRENTON, MERCER COUNTY, :
 :
 RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Petitioners, Logan Alexander and the Horace Mann Insurance Company, and the Trenton Board of Education's (Board) reply thereto. The petitioners are seeking reimbursement for costs and fees expended in the defense and settlement of a civil lawsuit alleging that petitioner Logan Alexander engaged in wrongful conduct against minor child, K.O., while employed as a security guard by the Board.¹ A school employee's entitlement to reimbursement for his legal fees and costs in connection with the defense of a civil matter is specifically controlled by *N.J.S.A. 18A:16-6* which provides in pertinent part:

Whenever any civil or administrative action or other legal proceeding has been or shall be brought against any person holding any...employment under the jurisdiction of any board of education...for any act or omission arising out of and in the course of the performance of the duties of such...employment...the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom.

¹ At the time that he was working as a security guard for the Board, Mr. Alexander was charged with sexually assaulting two students, N.F. and K.O. Mr. Alexander pled guilty to one count of second-degree endangering the welfare of a minor (N.F.) in exchange for dismissal of all other charges, including the charges involving K.O. which arose out of the same allegations contained in the civil suit.

“The plain language of the statute requires that the underlying civil action be related to conduct falling within the employment duties of the school board employee.” *L.A. and The Horace Mann Insurance Company v. Board of Educ. of the City of Trenton, Mercer County*, 221 N.J. 192, 202 (2015). Here, the civil case against Mr. Alexander was settled without admission or adjudication of the alleged facts; therefore, a hearing was necessary to determine if Mr. Alexander committed the acts alleged by K.O. and was consequently acting outside the scope of his employment duties.² Following a hearing at the OAL, the Administrative Law Judge (ALJ) found that Mr. Alexander acted outside the scope of his duties as a school security guard when he inappropriately touched K.O. in a sexual manner. Therefore, the petitioners have not met the burden required to support indemnification under *N.J.S.A. 18A:16-6*.

In their exceptions, the petitioners maintain that the ALJ’s credibility determinations should be rejected by the Commissioner because they are not consistent with the record. The petitioners suggest that the ALJ incorrectly found that a hearsay statement by another student, A.C., bolstered the credibility of K.O. because the record indicates that A.C.’s recitation of the events in question were in stark contrast to that of K.O. Additionally, the petitioners argue that the ALJ overlooked crucial details of the alleged event, namely the presence of a custodian in the faculty room at the time in question. Finally, the petitioners stress that the ALJ never found Mr. Alexander to be incredible. Therefore, the Initial Decision should be rejected and the petitioners should be awarded the stipulated costs and fees of \$74,249.14, plus interest.

In reply, the Board contends that the Initial Decision was proper and that the Commissioner should find that the petitioners are not entitled to attorney fees and costs pursuant

² This matter was originally decided on summary decision, but was later remanded by the Supreme Court to the OAL for an evidentiary hearing. *L.A., supra* at 206.

to *N.J.S.A.* 18A:16-6. The Board cites to the standard that the agency head must apply when evaluating the ALJ's fact finding and credibility determinations, and emphasizes that the ALJ – who has the benefit of hearing and seeing witnesses – is generally in a better position to assess the credibility and veracity of the witnesses. The Board maintains that beyond a few minor ambiguities, the statement made by A.C. during the investigation aligns with K.O.'s account of the incident. More significantly, K.O.'s testimony of what transpired during the incident was consistent with her prior accounts provided throughout the case. Based upon her observation of K.O.'s testimony, the ALJ properly found that K.O. testified credibly. Accordingly, the ALJ found as a matter of fact that Mr. Alexander touched K.O. inappropriately – thereby precluding indemnification, as the conduct was outside the scope of Mr. Alexander's duties.

Upon a comprehensive review of the record in this matter, the Commissioner agrees with the ALJ's determination that Mr. Alexander acted outside the scope of his duties as a school security guard when he inappropriately touched K.O., and, as a result, the petitioners were not entitled to indemnification under *N.J.S.A.* 18A:16-6. The Commissioner also finds no basis in the record to reject either the ALJ's recitations of testimony or her determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.
[*N.J.S.A.* 52:14B-10(c)]

In this case, all of the facts related to K.O.'s allegations against Mr. Alexander were in dispute because Mr. Alexander completely denied any wrongdoing. Therefore, witness

testimony and ultimate credibility is the only means available to make a determination as to the veracity of the charges. Based on her overall assessment of the alleged victim witness, the ALJ found “K.O.’s testimony concerning the difficulties she experienced [as a result of the incident] for a considerable length of time was credible. Her acknowledgement that the amount of time the incident lasted was brief, coupled with her remark that it nonetheless felt like a long time, also was credible, as was her complaint that she felt the therapy made her feel like she was being forced to relive the incident to her detriment.” (Initial Decision at 7) Despite the petitioners’ suggestion that K.O. provided inconsistent accounts of the incident, a review of the record – including the transcript from the hearing on May 18, 2016 – reveals that K.O. never wavered on the fact that Mr. Alexander inappropriately touched her legs and her chest in the faculty room. Therefore, the Commissioner finds the ALJ’s fact-finding analysis and conclusions as to the truth of K.O.’s allegations against Mr. Alexander to be fully supported by the record.³ Mr. Alexander’s unacceptable conduct toward K.O. was not within the course and scope of his employment duties; thus, the petitioners are not entitled to indemnification for the legal fees incurred during his civil case.

Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 19, 2016

Date of Mailing: December 20, 2016

³ The Institutional Abuse Unit of the Department of Children and Families investigated K.O.’s allegations against Mr. Alexander around the time of the incident and issued a finding of substantiated sexual abuse.

⁴ 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*).