

DORIT SNOW,	:	
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PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF BRICK, OCEAN COUNTY,	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

Petitioner challenged her removal as a School Occupational Therapist by the respondent Board for failure to maintain her Occupational Therapist license. Petitioner contended that she was entitled to, but did not receive, a tenure hearing prior to her removal. The Board asserted that it acted reasonably when it terminated petitioner because her license had lapsed. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; in September 2015, petitioner began to have medical issues that caused her to miss work; during this period of time, on September 30, 2015, petitioner’s Occupational Therapist license lapsed; petitioner’s license was not restored until January 20, 2016; the Board became aware that petitioner’s license had expired, and voted at its meeting on January 14, 2016 to terminate her employment, effective the same day; petitioner was informed of this decision on January 15, 2016; pursuant to *N.J.S.A. 18A:28-14* and *N.J.A.C. 6A:9B-14.11(b)*, the lapse in petitioner’s licensing required that she be terminated from her position; and petitioner’s arguments that her medical problems should excuse her failure to maintain her license and that she should be entitled to a tenure hearing are without merit. The ALJ concluded that petitioner’s Occupational Therapist license lapsed on September 30, 2015 and was not restored until January 20, 2016; and the Board had no choice but to remove petitioner upon learning that she no longer possessed a valid license for the position she held. Accordingly, the ALJ granted the Board’s motion for summary decision and denied petitioner’s cross motion.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL 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 05902-16
AGENCY DKT. NO. 98-3/16

DORIT SNOW,	:	
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BOARD OF EDUCATION OF THE	:	
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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 petitioner and the Board’s reply thereto.¹

In her exceptions, petitioner argues that the Administrative Law Judge (ALJ) failed to consider the circumstances surrounding her health in rendering the Initial Decision. Petitioner contends that the ALJ inappropriately relies upon *Shane Hunsicker v. Board of Education of the High Point Regional High School*, Commissioner Decision No. 59-15, affirmed 2016 *N.J. Super. Unpub.* LEXIS 1147 (App. Div. 2016), because the facts of that matter are distinguishable from the instant matter. Petitioner was incapacitated during a “bona fide medical leave” when her license lapsed; she immediately informed the Board of her lapsed license; she did not assist students while her license was expired; and she renewed her license prior to her return to work date. On the other hand, in *Hunsicker*, the Commissioner noted that “petitioner had let his license lapse over a year before the tragic event, and had continued to work without a license for five years.” *Id.* at 3. Although *N.J.S.A. 18A:28-14* allows boards to terminate a

¹ A response to a reply is not contemplated by *N.J.A.C. 1:1-18.4*. Accordingly, the response filed by petitioner will not be considered by the Commissioner.

teaching staff member without filing tenure charges for failing to hold an appropriate certificate, petitioner maintains that the ALJ failed to consider the circumstances involving petitioner's lapsed license, particularly that she did not assist students during that time. Petitioner urges the Commissioner to reject the Initial Decision and reinstate petitioner as an Occupational Therapist.

The Board argues in reply that it acted reasonably in terminating petitioner based on the loss of her license.² The Board maintains that petitioner became ineligible for employment when she allowed the required credentials and licensing for her position to expire. Further, the Board contends that the ALJ properly relied on *Hunsicker, supra*, because the facts are analogous to this matter. The athletic trainer license for the petitioner in *Hunsicker* had expired; similarly here, petitioner's required occupational therapist license expired. Although petitioner argues that her medical circumstances should have impacted the Board's decision, the Board points out that the Commissioner found in *Hunsicker* that a teaching staff member must be removed for failure to maintain a required license, regardless of tenure status or personal circumstances.³ As such, the Board asks the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner agrees with the ALJ – for the reasons thoroughly expressed therein – that petitioner was appropriately terminated because her Occupational Therapist license lapsed on September 30, 2015 and was restored on January 20, 2016. The Commissioner does not find petitioner's exceptions to be persuasive. Petitioner was required to

² The Board also alleges in its reply that petitioner was validly terminated based on the abandonment of her work. The Commissioner notes that the Board would have been required to file tenure charges in order to pursue termination based on the abandonment of her position. *N.J.S.A.* 18A:6-10; *N.J.S.A.* 18A:28-5.

³ Additionally, the Board contends in its reply that petitioner stopped working without prior leave or notice and that she did not indicate when she was returning to work. The Board further suggests that petitioner “did not have medical problems; she was in the midst of a divorce and could not deal with same.” (Reply Exceptions at 4) The facts as set forth in the Initial Decision indicate that petitioner suffered from “severe medical issues that caused her to miss work.” (Initial Decision at 2) The ALJ also noted that “Petitioner continued her treatment successfully in Israel and was able to contact respondent, with a disputed degree of success, in order to keep them apprised of her medical status.” *Ibid.* The Commissioner notes that the Board did not file exceptions to challenge the ALJ's factual findings and cannot instead do so by way of its reply.

have a “currently valid license issued by the New Jersey Occupational Therapy Advisory Council.” *N.J.A.C.* 6A:9B-14.11(b). It is undisputed that her license lapsed on September 30, 2015 and was restored on January 20, 2016. The Board had the authority to terminate petitioner for failure to hold a valid certification, pursuant to *N.J.S.A.* 18A:28-14, regardless of whether she was assisting students during the period of her lapsed license. Further, it is mandatory for districts to remove individuals who do not have required licenses, as “the employing school district *shall* remove from the position any teaching staff member who fails to maintain the mandated license, certificate or authorization . . .” *N.J.A.C.* 6A:9B-5.1(c) (emphasis added). The regulation “provides no exemption for tenured individuals or hardship.” *Hunsicker*, 2016 *N.J. Super. Unpub.* LEXIS 1147 (App. Div. 2016). As such, the Board did not act in an arbitrary, capricious, or unreasonable manner in terminating petitioner for failing to hold a current required Occupational Therapist license, since it is mandatory for districts to remove individuals who have not maintained their licenses.

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

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: October 12, 2017

Date of Mailing: October 12, 2017

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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 05902-16

AGENCY DKT. NO. 98-3/16

DORIT SNOW,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF BRICK, OCEAN COUNTY,**

Respondent.

Kathleen Naprstek Cerisano, Esq. for petitioner, (Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys)

Sebastian Ferrantell, Esq. for respondent, (Montenegro, Thompson,
Montenegro, & Genz, attorneys)

Record Closed: June 16, 2017

Decided: July 14, 2017

BEFORE **DEAN J. BUONO**, ALJ:

PROCEDURAL HISTORY

Petitioner, Dorit Snow (Snow or petitioner), challenges her removal as a School Occupational Therapist by respondent, Board of Education of the Township of Brick, Ocean County (Board or respondent) for failure to maintain her Occupational Therapist license. Petitioner contends that she was entitled to, but did not receive, a tenure

hearing prior to her removal. The procedural history and facts of this case represent the facts at issue for these cross-motions for summary decision.

FACTUAL DISCUSSION

The parties each separately argue that there are no contested issues of material fact and thus summary decision is appropriate for their respective positions. While partially true, many facts that are not in dispute derive from the core issue. Having reviewed the briefs in support of the motion for summary decision and opposition briefs and cross-motion, the few facts that are in contention concern issues that are not core to the issue of whether or not Snow maintained her occupational therapist license. As such, I **FIND as FACTS:**

Petitioner began her employment with respondent in 2007 and subsequently acquired tenure as an Occupational Therapist. However, in September 2015, petitioner began to have severe medical issues that caused her to miss work. Petitioner's parents, who are from Israel, were unable to remain in the United States to care for her and subsequently took her to Israel for medical treatment and support. Petitioner continued her treatment successfully in Israel and was able to contact respondent, with a disputed degree of success, in order to keep them apprised of her medical status.

It is undisputed, however, that petitioner's Occupational Therapist license lapsed on September 30, 2015. Respondent became aware that petitioner's license had expired and, at its' meeting on January 14, 2016, voted to terminate petitioner's employment based on the lapsed license, effective January 14, 2016. On January 15, 2016, petitioner was informed of the decision to remove her from the position. Petitioner's Occupational Therapist license was restored on January 20, 2016.

FINDINGS OF FACT

Petitioner cannot contest the fact that her Occupational Therapist license lapsed on September 30, 2015 and was restored on January 20, 2016. Respondent became aware that petitioner's license had expired and at its meeting on January 14, 2016,

voted to terminate petitioner's employment based on the lapsed license, effective January 14, 2016. On January 15, 2016, petitioner was informed of the decision to remove her from the position. Accordingly, I **FIND**, by a preponderance of credible evidence, that petitioner's Occupational Therapist license lapsed on September 30, 2015 and was restored on January 20, 2016.

The issue presented by the respondent in their cross-motion for summary decision is whether a school board may remove a tenured teaching staff member from her position, without a tenure hearing, if she fails to maintain the required licensure for that position. Respondent further argues that Snow's conduct acted as a "voluntary or constructive quit." However, petitioner argues that she was "tenured" and in constant contact with the Board and thereby removal was not appropriate. I disagree in part with respondent.

LEGAL ARGUMENT AND CONCLUSION

Pursuant to N.J.A.C. 1:1-12.5(b), a summary decision "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection, therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The 'judge's function is not . . . to weigh the evidence and determine the truth of the matter but

to determine whether there is a genuine issue for trial’.

[Brill, supra, 142 N.J. at 540 (citations omitted).]

The purpose of the Tenure Act, N.J.S.A. 18A:28-1 to -18, is “to aid in the establishment of a competent and efficient school system by affording teaching staff members ‘a measure of security in the ranks they hold after years of service.’” Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522, 528-29 (App. Div. 1999) (quoting Viemeister v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App.Div.1949)). Thus, generally, under the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10 to -18.1, “[n]o person shall be dismissed or reduced in compensation ... if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public-school system of the state ... except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing[.]” N.J.S.A. 18A:6-10(a).

However, tenure protection has certain limits. Importantly, N.J.S.A. 18A:28-5 provides that:

[t]he services of all teaching staff members ... and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect ... shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment [for the statutorily prescribed amount of time].

[N.J.S.A. 18A:28-5(a) (emphasis added).]

Furthermore, under N.J.S.A. 18A:28-14, “[the] services of any teaching staff member who is not the holder of an appropriate certificate, in full force and effect, issued by the state board of examiners under rules and regulations prescribed by the state board of education may be terminated without charge or trial[.]” Ibid. (emphasis

added). And, under N.J.A.C. 6A:9B-5.1, “any person employed as a teaching staff member by a district board of education shall hold a valid and appropriate certificate,” “the certificate holder shall obtain any license, certificate, or authorization required by State or Federal law, a licensing board, or N.J.A.C. 6A:9B-4.1 and 4.2 for the individual to serve in a position,” and an “employing school district shall remove from the position any teaching staff member who fails to maintain [a] mandated license, certificate, or authorization.” N.J.A.C. 6A:9B-5.1(a), (b), and (c) (emphasis added).

In Hunsicker v. Bd. of Educ. of the High Point Reg'l High Sch., EDU 17519-13, Initial Decision (Dec. 22, 2014), adopted, Comm’r (Feb. 12, 2015) <<http://www.nj.gov/education/legal/commissioner/2015/feb/59-15.pdf>>, affirmed, 2016 N.J. Super. Unpub. LEXIS 1147 (App. Div. May 18, 2016), for example, the Commissioner of Education held that, in accordance with N.J.A.C. 6A:9B-5.1, a school board properly removed a tenured athletic trainer without a tenure hearing because his required athletic trainer license had expired.⁵ And, while the Commissioner noted that a personal tragedy may have played a role in petitioner’s failure to renew his license, the Commissioner stated that he did not have any discretion to circumvent the requirements of N.J.A.C. 6A:9B-5.1.

As the Commissioner explained, “[t]he tenure statutes allow teaching staff members to remain employed pending hearings about their fitness to teach, administer or provide special education services under certificates issued by the New Jersey Board of Examiners,” but “there is no statutory authority which allows a local Board of Education or the Commissioner of Education to retain an individual whose work [like an athletic trainer’s] is also governed by the Board of Medical Examiners, and who has failed to conform to that Board’s practice requirements.” In affirming the Commissioner, the Appellate Division noted that, “[f]or employment as a school athletic trainer, the law clearly required appellant to have a valid athletic trainer license and a valid educational services certificate and school athletic trainer endorsement. N.J.S.A. 18A:26-2-2.4; N.J.A.C. 6A:9-5.1(a)-(b),” and held that “[a]ppellant’s lack of an athletic trainer license effectively rendered his educational services certificate and endorsement invalid, thus

⁵ N.J.A.C. 6A:9-5.1 was recodified after the events in Hunsicker to N.J.A.C. 6A:9B-5.1.

making him ineligible for employment as a school athletic trainer, ineligible for tenure protections, and subject to mandatory removal. N.J.S.A. 18A:26-2; N.J.S.A. 18A:26-2.4; N.J.S.A. 18A:28-5(a); N.J.A.C. 6A:9-5.1(a) and (c).”

Here, like in Hunsicker, respondent had no choice but to remove petitioner upon learning that her Occupational Therapist license expired. Petitioner was not entitled to a hearing prior to her dismissal because school occupational therapists “...are required to hold a valid occupational therapist license issued by the New Jersey Occupational Therapy Advisory Council....” N.J.A.C. 6A:9B-14.11(b), Petitioner’s license lapsed, and N.J.S.A. 18A:28-14 and N.J.A.C. 6A:9B-5.1(c) require that she be terminated from her position. While petitioner argues that her medical problems should excuse her failure to maintain her license and that she should be entitled to a tenure hearing, the Commissioner clearly stated in Hunsicker that a teaching staff member who fails to maintain a required license must be removed, regardless of tenure status or personal circumstances. This conclusion is unaltered by the fact that petitioner’s license was reinstated shortly after respondent terminated her.

I **CONCLUDE** that petitioner’s Occupational Therapist license lapsed on September 30, 2015 and was restored on January 20, 2016. Having reviewed the parties’ submissions in support of, and opposition to, the within motion, I **CONCLUDE** that no issue of material fact exists on the issue of licensure and petitioner’s appeal should be **DISMISSED**.

ORDER

It is therefore hereby **ORDERED** that the respondent’s motion for summary decision be and hereby is **GRANTED**. It is further **ORDERED** that the petitioner’s motion for summary decision be and hereby is **DENIED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



July 14, 2017
DATE

DEAN J. BUONO, ALJ

Date Received at Agency:

July 14, 2017

Date Mailed to Parties:

July 14, 2017

/vj