

EDU #8580-98  
C # 111-99  
SB # 25-99

PATSY N. MARINO, :  
 :  
 PETITIONER-APPELLANT, :  
 :  
 V. : STATE BOARD OF EDUCATION  
 :  
 WILLINGBORO TOWNSHIP BOARD :  
 OF EDUCATION, BURLINGTON : DECISION  
 COUNTY, :  
 :  
 RESPONDENT-RESPONDENT. :

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Decision on motion by the Commissioner of Education, April 13, 1999

For the Petitioner-Appellant, Baron & Riefberg (Barbara E. Riefberg, Esq.,  
of Counsel)

For the Respondent-Respondent, Carroll, Weiss & Josephson (James F.  
Schwerin, Esq., of Counsel)

In January 1997, Patsy N. Marino, Jr. (hereinafter "petitioner") filed a petition of appeal with the Commissioner of Education seeking sick leave benefits under N.J.S.A. 18A:30-2.1 from the Board of Education of the Township of Willingboro (hereinafter "Board") for the period from September 1 through November 11, 1996.<sup>1</sup> The case was

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<sup>1</sup> N.J.S.A. 18A:30-2.1 provides, in pertinent part:

a. Whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in N.J.S. 18A:30-2 and 18A:30-3. Salary or wage payments provided in this section shall be made for absence during the waiting period and during the period the employee received or was eligible to receive a

placed in abeyance while the petitioner pursued his remedies under the Workers' Compensation Act. The petitioner and the Board ultimately agreed to settle petitioner's workers' compensation claim for \$6,500 pursuant to N.J.S.A. 34:15-20.<sup>2</sup> During the proceedings for approval of the proposed settlement in the Division of Workers' Compensation, counsel for the petitioner clearly indicated that, in settling the workers' compensation claim, the petitioner was not waiving any entitlement he might have to sick leave benefits under N.J.S.A. 18A:30-2.1.

The Board thereafter filed a motion for summary decision with the administrative law judge ("ALJ") assigned to hear petitioner's sick leave claim, contending that the petitioner, by agreeing to settle his workers' compensation claim, had waived any entitlement he might have had to additional relief under N.J.S.A. 18A:30-2.1. In the alternative, the Board argued that, as a result of the settlement, the Commissioner lacked jurisdiction to hear the petitioner's school law claim.

On March 9, 1999, the ALJ rejected the Board's arguments, finding that it had interpreted N.J.S.A. 34:15-20 of the Workers' Compensation Act too broadly. The ALJ concluded that:

...[A] settlement under that section does not, without more, dispose of claims arising under separate enactments. Primary jurisdiction to hear compensation matters rests with the Division of Workers' Compensation and the

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temporary disability benefit under chapter 15 of Title 34, Labor and Workmen's Compensation, of the Revised Statutes. Any amount of salary or wages paid or payable to the employee pursuant to this section shall be reduced by the amount of any workmen's compensation award made for temporary disability.

<sup>2</sup> N.J.S.A. 34:15-20 provides, in pertinent part, that a settlement of a workers' compensation claim "shall have the force and effect of a dismissal of the claim petition and shall be final and conclusive upon the employee and the employee's dependents, and shall be a complete surrender of any right to compensation or other benefits arising out of such claim under the statute."

Commissioner should defer, as he has done. Nevertheless, the proceedings before the Compensation Court clearly reveal that the question of sick leave was reserved for hearing before the Commissioner. [Schwerin cert. Exh. A.] The Board cannot accede to such an arrangement and then argue here that the claim should have been handled there.

The instant matter could have been resolved before a Judge of Compensation and that might have been the preferred course, see, Basile v. Board of Education of Roselle Park, 97 N.J.A.R.2d (EDU) 429. However, the Commissioner retains jurisdiction over disputes arising out of N.J.S.A. 18A:30-2.1, see, Verneret v. Elizabeth City Board of Educ., 95 N.J.A.R.2d (EDU) 134, and where the parties reserve the issue, it would be improper to close off this forum.

Initial Decision, slip op. at 2.

On April 13, 1999, an Assistant Commissioner, acting on a request for interlocutory review filed by the Board, reversed the ALJ's decision and granted summary decision to the Board.<sup>3</sup> The Assistant Commissioner found that the petitioner, by settling his workers' compensation claim, had "knowingly and willingly chose[n] to forego an opportunity for a full trial to determine the causal relationship of his accident to his claim that he suffered a work related injury and, therefore, whether such injury did, indeed, 'arise out of and in the course of his employment,' in that forum." Assistant Commissioner's Decision, slip op. at 7. The Assistant Commissioner observed that, although it was conceded that petitioner's accident had occurred in the course of his employment, his entitlement to relief under N.J.S.A. 18A:30-2.1 was dependent upon determination of whether such accident was the cause of his injury and that the Division

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<sup>3</sup> N.J.S.A. 18A:4-33 authorizes the Commissioner to "designate an assistant commissioner as deputy commissioner with full power to act in his place and stead during any absence or inability of the commissioner and at such other times as the commissioner may designate." Such authority expressly includes assignment by the Commissioner of the "hearing and determination of controversies and disputes which may arise under the school laws...." N.J.S.A. 18A:4-34.

of Workers' Compensation, not the Commissioner of Education, was the forum with the expertise to decide that issue.

Stressing that the question of whether an injury arose out of and in the course of employment within the meaning of that statute was controlled by the standards established under the Workers' Compensation Act, the Assistant Commissioner pointed out that consideration of petitioner's appeal would require the Commissioner to construe and apply statutory provisions outside the scope of his jurisdiction. He concluded that the appropriate course would be to refrain from exercising jurisdiction over the petitioner's claim and to dismiss the petition.

The petitioner filed the instant appeal to the State Board.

After a careful review of the record, we reverse the decision of the Assistant Commissioner and remand this matter for such proceedings as are necessary to determine petitioner's claim. Like the ALJ, we conclude that settlement of the petitioner's workers' compensation claim did not preclude him from continuing to pursue his claim for sick leave benefits under N.J.S.A. 18A:30-2.1.

It is true, as pointed out by the Assistant Commissioner, that a determination with regard to whether an injury arose "out of and in the course of" employment within the meaning of N.J.S.A. 18A:30-2.1 is controlled by the standards established under the Workers' Compensation Act. It is also true that in those instances in which entitlement to relief under N.J.S.A. 18A:30-2.1 is dependent upon whether the injury arose out of and in the course of employment within the meaning of N.J.S.A. 34:15-7 of the Worker's Compensation Act, the Commissioner should refrain from exercising his jurisdiction pending a determination of that issue by the Division of Workers' Compensation.

Verneret, supra. However, the Commissioner does not lack the jurisdiction to make such a determination himself. Indeed, the Appellate Division has held that, under appropriate circumstances, the Commissioner has “original exclusive jurisdiction” to decide a claim for benefits under N.J.S.A. 18A:30-2.1 despite the need to determine in the first instance whether the claim arose out of and in the course of the staff member’s employment. Hern v. Board of Education of the City of Union City, Docket #A-339-91T3 (App. Div. 1992).

In Hern, a teacher who had not filed a claim for workers’ compensation benefits filed a petition with the Commissioner of Education seeking sick leave benefits under N.J.S.A. 18A:30-2.1. The State Board affirmed the Commissioner’s determination to dismiss the petition, agreeing that the Commissioner did not have jurisdiction to render such a decision without a prior determination by the Division of Workers’ Compensation with regard to whether the illness or injury was work-related. The Appellate Division reversed. The Court, observing that a claim for workers’ compensation benefits would have been dismissed in this instance for failure to satisfy the seven-day waiting period required by the Workers’ Compensation Act, could “perceive no valid reason to require petitioner to engage in a futile gesture or to manufacture an unfounded workers’ compensation claim.” Hern, supra, slip op. at 4. Under such circumstances, the court concluded that the Commissioner of Education had “original exclusive jurisdiction” to decide the teacher’s request for benefits under N.J.S.A. 18A:30-2.1, including a determination as to whether the claim arose out of and in the course of his employment.

We stress, in addition, that “[t]he settlement of litigation ranks high in our public policy.” Nolan v. Lee Ho, 120 N.J. 465 (1990), quoting Jannarone v. W.T. Co., 65 N.J.

Super. 472, 476 (App.Div.), certif. den. 35 N.J. 61 (1961). In precluding litigants who settle their claims for benefits under the Workers' Compensation Act from pursuing a statutory claim to benefits under the education laws, the Assistant Commissioner's decision would have the effect of discouraging such settlements, contrary to public policy.

Thus, although the Commissioner properly refrained from exercising his jurisdiction over the petitioner's claim for sick leave benefits under N.J.S.A. 18A:30-2.1 while his workers' compensation claim was still pending, we agree with the ALJ that, under the particular circumstances presented herein, the settlement of that claim did not bar the petitioner from continuing to pursue his claim for additional benefits under N.J.S.A. 18A:30-2.1. We note in that regard that the parties to a workers' compensation case are free to agree in settling such a claim that the claimant is thereby waiving his statutory right to benefits under N.J.S.A. 18A:30-2.1. In order to be valid, such a waiver must be "the intentional relinquishment of a known right." West Jersey Title & Guar. Co. v. Industrial Trust Co., 27 N.J. 144, 152 (1958). In the case now before us, there is no indication that the petitioner, in settling his workers' compensation claim, made a knowing relinquishment of his statutory right to sick leave benefits under N.J.S.A. 18A:30-2.1. To the contrary, the petitioner expressly reserved his claim to such benefits. See supra, at 2.

Accordingly, we reverse the Assistant Commissioner's decision to dismiss the petition and remand this matter to the Commissioner for such further proceedings as are necessary to determine the petitioner's claim for benefits under that statute.<sup>4</sup>

Attorney exceptions are noted.

March 1, 2000

Date of mailing \_\_\_\_\_

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<sup>4</sup> Pursuant to N.J.S.A. 18A:30-2.1, any amounts awarded to the petitioner by the Commissioner would be reduced by the amount of the workers' compensation benefits received by the petitioner as a result of his settlement.