

C #92-00
SB #43-00

ELIGIO CASTRO, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF ATLANTIC CITY, ATLANTIC :
COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, March 15, 2000

For the Petitioner-Appellant, Eligio Castro, pro se

For the Respondent-Respondent, Michael C. Epps, Esq.

On March 15, 2000, the Commissioner of Education rendered a decision in which he rejected a claim by Eligio Castro (hereinafter "appellant"), a non-tenured teacher, that the Atlantic City Board had improperly failed to renew his employment. The Commissioner stressed that a district board had virtually unlimited discretion in hiring or renewing non-tenured employees.

On July 2, 2000, the appellant filed a notice of appeal with the State Board of Education from the Commissioner's March 15 determination. By letter dated July 31, 2000, the Director of the State Board Appeals Office acknowledged receipt of that notice. By letter dated August 11, 2000, the Director advised the appellant that review of his notice indicated that it had been filed beyond the thirty-day statutory time limitation of N.J.S.A. 18A:6-28, and that, as a result, this matter had been referred to the Legal Committee of the State Board for consideration of the effect of his failure to file his notice of

appeal in a timely manner. The appellant was informed that he could submit an affidavit setting forth any relevant circumstances with respect to the timeliness of his appeal by August 28, 2000. The appellant was also provided with a copy of the regulations governing appeals to the State Board.

The appellant did not file an affidavit or otherwise provide an explanation for his late filing. Nor did he respond in any way to the Director's letters.

Pursuant to N.J.S.A. 18A:6-28, appeals to the State Board must be taken "within 30 days after the decision appealed from is filed." The State Board may not grant extensions to enlarge the time specified for appeal. N.J.A.C. 6A:4-1.5(a). In contrast to the period for filing petitions to the Commissioner of Education, see N.J.A.C. 6A:3-1.3(d); N.J.A.C. 6A:3-1.16, the time limit within which an appeal must be taken to the State Board is statutory, and, given the jurisdictional nature of the statutory time limit, the State Board lacks the authority to extend it. Mount Pleasant-Blythedale Union Free School District v. New Jersey Department of Education, Docket #A-2180-89T1 (App. Div. 1990), slip op. at 5. The Appellate Division has "consistently concluded" that appeals must be timely filed and that "neither an agency nor our court on appeal may expand a mandatory statutory time limitation." In the Matter of the Special Election of the Northern Burlington County Regional School District, Docket #A-1743-95T5 (App. Div. 1996), slip op. at 3, citing Scudato v. Mascot Sav. & Loan Ass'n, 50 N.J. Super. 264 (App. Div. 1958).

In Yorke v. Board of Education of the Township of Piscataway, decided by the State Board of Education, July 6, 1988, aff'd, Docket #A-5912-87T1 (App. Div. 1989), the Court upheld the dismissal of an appeal by the State Board where it found that the notice of appeal had been filed one day late by the appellant's counsel, who alleged that

he had misread or misunderstood the applicable regulations. The Court added that even if the statute could be construed to permit enlargement of the time for filing an appeal, the appellant therein had failed to establish good cause. See also In the Matter of the Grant of the Charter School Application of the International Charter School of Trenton, etc., Docket #A-004932-97T1 (App. Div. 1998) (the Court, upon reconsideration, upheld the State Board's dismissal of an appeal filed one day late).

In the instant case, the Commissioner's decision was rendered on March 15, 2000 and mailed to the appellant on that date. Accordingly, pursuant to N.J.A.C. 6A:4-1.4, the decision appealed from was deemed filed on March 18, 2000, three days after it was mailed. Therefore, as mandated by N.J.S.A. 18A:6-28, see N.J.A.C. 6A:4-1.3(a); N.J.A.C. 6A:4-1.4(a), as computed under N.J.A.C. 6A:4-1.4(c), the appellant was required to file his notice of appeal to the State Board on or before April 17, 2000. As previously indicated, the appellant's notice of appeal was not filed until July 2, 2½ months after the statutory deadline.

Even if N.J.S.A. 18A:6-28 can be construed to provide us with the authority to enlarge the time limit for filing an appeal, we find no substantive basis to warrant doing so in this instance.

Accordingly, we dismiss the appeal in this matter for failure to file notice thereof within the statutory time limit as computed under the applicable regulations.

October 4, 2000

Date of mailing _____