

ANTHONY ALFERI, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF : DECISION

THE TOWNSHIP OF OLD

BRIDGE, MIDDLESEX COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner, teaching staff member who retired in 1995, sought restoration of sick days following work-related injury. Board contended petition was filed untimely.

ALJ determined that the petition was filed untimely as petitioner did not file within 90 days after the workers' compensation judgment. Summary judgment was granted to the Board; petition was dismissed.

Commissioner adopted findings and determination in the initial decision as his own while noting that since the State Board decision in *Verneret*, wherein a petitioner claiming benefits under *N.J.S.A. 18A:30-2.1* must file a petition with the Commissioner of Education within 90 days of the Board's action which has the effect of denying such benefits to petitioner, specifically directed that this decision concerning timing of claims be applied *on a prospective basis only*, the controlling legal authority applicable herein was that which existed prior to *Verneret*. Commissioner found that, given the prior law which required a petition be filed after a determination from the Division of Workers' Compensation, petition herein was untimely as petitioner did not file until more than 4-1/2 months beyond the entry of petitioner's workers' compensation Order for Judgment. Petition was dismissed as untimely.

SEPTEMBER 18, 1997

ANTHONY ALFERI, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF : DECISION
 THE TOWNSHIP OF OLD :
 BRIDGE, MIDDLESEX COUNTY, :
 :
 RESPONDENT. :
 :
 _____ :

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of petitioner and those of the Board were timely filed pursuant to *N.J.A.C.* 1:1-18.4.

The parties' exceptions present no substantive additional arguments over and above those advanced before the Administrative Law Judge (ALJ) in the Board's motion for summary decision and petitioner's submission in opposition to such motion and, therefore, will not be presented herein.

Upon an independent review of the record in this matter, the Commissioner is in accord with the ALJ's conclusion that the 90-day period within which petitioner should have filed the instant Petition of Appeal began to run on April 4, 1996, the date of his workers' compensation judgment, and lapsed on July 5, 1996, rendering the instant petition, filed on November 21, 1996, untimely and requiring its dismissal. Despite his concurrence with this ultimate conclusion of the ALJ, the Commissioner finds that further explication with respect to the reasoning surrounding this finding is necessary.

Initially, the Commissioner observes it is clear that, with the advent of the State Board's decision in *Verneret v. Board of Education of the City of Elizabeth, Union County*, 95 N.J.A.R. 2d (EDU) 134 (decided January 4, 1995), "****any petitioner claiming benefits under N.J.S.A. 18A:30-2.1 must file a petition with the Commissioner of Education within 90 days of the district board's action which has the effect of denying such benefits to petitioner." (*Verneret* at 135) Although it is undisputed that at the time the within petitioner filed his workers' compensation claim on December 11, 1991, he was fully aware that the Board had charged his accumulated sick leave to make his salary payments during the period of his mid-October 1991 through November 27, 1991 absence, the Commissioner is in agreement with petitioner's contention and the ALJ's conclusion implicitly intimated, although not specifically stated in the initial decision, that the mandatory timelines established by *Verneret* are not dispositive in this matter. Rather, he notes that the State Board, in its 1995 decision in *Verneret*, recognizing that its holding represented a departure from previously understood interpretations of the timing of claims vis-à-vis the 90-day rule contained in N.J.A.C. 6:24-1.2(c) in this area, specifically directed that this decision be applied *on a prospective basis only*. (See *Verneret* at 135.) As such, the controlling legal authority applicable herein is that which existed prior to *Verneret*, established by *Steven B. Hern v. Board of Education of the City of Union City, Hudson County* (letter decision of May 8, 1991, affirmed by the State Board on August 7, 1991); *Joseph R. Mulford v. Board of Education of the Township of Hillside, Union County* (letter decision of May 29, 1990); *Angelo Bracoloni v. Board of Education of the Princeton Regional School District, Mercer County*, 1990 S.L.D. 447, and the precedents on which they rely, including *Forgash v. Lower Camden County School*, 208 N.J. Super. 461 (App. Div. 1985), which were understood prior to *Verneret* to stand for the proposition that a determination from the Division of Workers' Compensation, establishing a nexus between a petitioner's injury and his employment, is an absolute prerequisite

before any claim arising from *N.J.S.A.* 18A:30-2.1 may be filed with the Commissioner and requiring that any filing before the Commissioner prior to this determination be rejected as “premature.”

Given the law as it existed prior to *Verneret* and in light of the specific facts existing in this matter, the Commissioner finds petitioner’s contention that the 90-day limitation period specified by *N.J.A.C.* 6:24-1.2(c) began to run on August 14, 1996, the date on which he had a conversation with an employee of the Board, is untenable. Rather, he concurs with the ALJ that the running of this period began upon the entry of petitioner’s workers’ compensation Order for Judgment on April 4, 1996, and expired on July 5, 1996. Petitioner did not, however, file his petition until November 21, 1996, more than 4-1/2 months after the limitations period had expired, and, as such, his appeal is time barred. Moreover, it is noted that petitioner has presented no argument whatsoever to explain or justify his failure to file during the applicable period, nor do the facts before the Commissioner present any exceptional circumstances that would warrant relaxation of the 90-day filing requirement pursuant to *N.J.A.C.* 6:24-1.15.

Accordingly, for the reasons expressed therein and expanded upon above, the Commissioner adopts the initial decision of the OAL finding the instant Petition of Appeal untimely, and orders that this petition be dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 18, 1997