

PATSY N. MARINO, JR.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION ON MOTION
TOWNSHIP OF WILLINGBORO,	:	
BURLINGTON COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Board contended that petitioning physical education teacher, who had a petition for benefits under *N.J.S.A.* 18A:30-2.1 before the Commissioner which had been held in abeyance pending his pursuit of remedies under the Workers’ Compensation Act, had by virtue of his settlement of the Workers’ Compensation matter (Section 20 settlement – *N.J.S.A.* 34:15-20), waived his right to any claim for benefits under that provision or, alternatively, that the Commissioner lacked jurisdiction to hear such appeal.

ALJ in a letter decision denied Board’s application for summary decision, finding that a settlement under *N.J.S.A.* 34:15-20 does not, without more, dispose of claims arising under separate enactments. ALJ further concluded that the proceedings before the Compensation Court clearly revealed that the question of sick leave was specifically reserved by petitioner, and such reservation was not objected to by the Board. Board filed for interlocutory review of such determination.

Assistant Commissioner reversed the order of the ALJ and granted summary decision to the Board, concluding that under the circumstances herein, the Commissioner should refrain from exercising jurisdiction over petitioner’s claim for benefits. Assistant Commissioner determined that although it was conceded that petitioner’s accident occurred in the course of his employment, his entitlement to relief pursuant to *N.J.S.A.* 18A:30-2.1 was dependent upon resolution of the contested issue as to whether such accident was the “cause” of his injury. The Division of Workers’ Compensation, not the Commissioner of Education, is the forum with the expertise to decide this issue. (*Hackensack; Hinfey*) Having chosen to forego such determination in the forum recognized as possessing “expertise” in this area, petitioner could not be allowed to come before the Commissioner seeking a more favorable outcome. Assistant Commissioner dismissed the Petition of Appeal.

April 13, 1999

OAL DKT. NO. EDU 8580-98
AGENCY DKT. NO. 19-1/97

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For Petitioner: Barbara E. Riefberg, Esq., (Baron & Riefberg)

For the Board: James F. Schwerin, Esq., (Carroll, Weiss & Josephson)

This interim matter comes before the Commissioner by way of a motion for interlocutory review of the appended letter of the Administrative Law Judge (ALJ), denying the Board's application for summary decision which was based on its contention that, by virtue of his entering into a Section 20 settlement on his workers' compensation claim, petitioner waived adjudication of his appeal, pursuant to *N.J.S.A.* 18A:30-2.1, before the Commissioner or, alternatively, the Commissioner lacks jurisdiction to hear such appeal. Pursuant to *N.J.S.A.* 18A:4-34, the hearing of the matter has been delegated to the Assistant Commissioner.

In support of its motion here the Board argues that petitioner, who has a petition for benefits under *N.J.S.A.* 18A:30-2.1 before the Commissioner which has been held in abeyance pending his pursuit of remedies under the Workers' Compensation Act, has, by virtue of his settlement of the Workers' Compensation matter, waived his right to any claim for benefits

under this provision. Specifically, it posits that the parties agreed to settle the workers' compensation claim pursuant to *N.J.S.A. 34:15-20* ("Section 20"), which specifies

In case of a dispute over or failure to agree upon a claim for compensation between employer and employee...when it shall appear that the issue or issues involve the question of...causal relationship...and the petitioner and respondent are desirous of entering into a lump-sum settlement of the controversy, a judge of compensation may...enter an order approving settlement. Such settlement...**shall be a complete surrender of any right to compensation or other benefits arising out of such claim under the statute...**(emphasis in text) (Board's Letter in Support of Interlocutory Review at p. 2)

Notwithstanding the clear language of this statutory provision, the Board advances, the ALJ erroneously found that counsel for petitioner's statement on the record before the Workers' Compensation judge that he reserved his client's claim for benefits under *N.J.S.A. 18A:30-2.1*, along with the Board's failure to object to such an arrangement, effectively precluded a waiver of this claim. (*Id.* at pp. 2-3) The Board cites the Commissioner's decision in *Sweet v. Board of Education of Jackson*, 96 *N.J.A.R. 2d* (EDU) 471, for the proposition that benefits sought pursuant to *N.J.S.A. 18A:30-2.1* necessarily arise out of a workers' compensation claim and it, therefore, contends the Section 20 settlement, on its face, bars petitioner from seeking compensation under this education provision. (Board's Letter in Support of Interlocutory Review at p. 4)

Irrespective of the waiver issue, the Board argues that the within ALJ fully ignored a similarly pressing question here, that of the Commissioner's jurisdiction to adjudicate a claim for benefits under *N.J.S.A. 18A:30-2.1*, when there has been no workers' compensation decision establishing petitioner's right to benefits under that Act. In this regard, it advances that the Commissioner has historically declined jurisdiction over petitions under such circumstances.¹

¹It notes that limited exceptions to this general rule exist "where the time lost from work is too short to be cognizable under the Act, or where no petition is filed with the Division for that reason. See *Dorfman v. Board of Education of Neptune*, 97 *N.J.A.R. 2d* (EDU) 512, 517, citing to *Hern v. Board of Education of Union City*, App.

In support of this contention, it cites *Basile v. Board of Education of Roselle Park*, 97 *N.J.A.R.* 2d (EDU) 429, 431 wherein the ALJ, relying on the precedent established by *Forgash v. Lower Camden County School*, 208 *N.J. Super.* 461 (App. Div. 1985) that “*N.J.S.A.* 18A:30-2.1 contemplates a prior determination of a compensable injury by the compensation court before consideration by the commissioner of the eligibility for the additional benefits provided by statute,” (*Id.* at 467) concluded

...since the compensation court is the only court with the expertise to determine whether an injury is work related under the workers’ compensation statutes, a proceeding pursuant to *N.J.S.A.* 18A:30-2.1 regarding sick leave may not be used to supersede the function of the compensation court. *Id.* at 431-32***.
(Board’s Letter in Support of Interlocutory Review at p. 6)

Consequently, the Board contends that, although a petition of appeal to the Commissioner seeking benefits pursuant to *N.J.S.A.* 18A:30-2.1 should be filed prior to resolution of the compensability issue by Workers’ Compensation, it cannot be adjudicated by the Commissioner unless and until a determination on this issue has been made by that Division. (*Id.*) In this matter, the Board argues, even though petitioner had an opportunity to obtain the necessary ruling, he failed to do so. (*Id.*) The Board further charges that the ALJ’s decision incorrectly states that it admitted compensability. To the contrary, the Board argues, this very issue was extensively addressed in its brief before the ALJ wherein it argued “that while the accident may have occurred during the course of employment, it was the Board’s contention that the injury complained of was pre-existing” and, therefore, a legitimate dispute existed as to whether this particular accident was the *cause* of petitioner’s injury. (*Id.*) Moreover, it advances, the record amply demonstrates that the Compensation Judge, while accepting the parties’ settlement

Div. Dkt. No. A-339-91T3 (unpublished, October 23, 1992) [,]” which, it asserts, is inapplicable in the instant matter. (Board’s Letter in Support of Interlocutory Review at p. 3)

agreement, clearly recognized that no decision was being made with respect to compensability when he stated

This matter comes before the Court for an application for an order Approving Settlement for Dismissal under Section 20 of the Act, it being represented to the court if this matter were tried to conclusion that serious issues would arise regarding petitioner's entitlement to an award; more specifically, substantial issues regarding liability as well as causal relationship...T11:21-12:4. (*Id.* at pp. 6-7)

It further argues that whether or not the Board objected to petitioner's attempt to reserve his education action at the workers' compensation hearing, which the within ALJ viewed as significant in his decision, is of no moment here as "subject matter jurisdiction cannot be conferred by agreement of the parties." (Board's Letter in Support of Interlocutory Review at p. 3)

The Board, therefore, urges that the Commissioner grant its request for interlocutory review here "especially in light of the hearing involving medical causation issues that will be necessary should it not be granted, as well as the significant jurisdictional issue which [it] believe[s] has been avoided in [the ALJ's] letter opinion." (Board's Letter in Support of Interlocutory Review at p. 2)

In opposition to the Board's within motion, petitioner argues that the ALJ's decision was in all ways correct and should not be reviewed on an interlocutory basis by the Commissioner.^{2, 3} Petitioner asserts that, contrary to the contention of the Board, a reasoned

²Petitioner's opposition papers initially assert that the Board's request for interlocutory review is untimely filed, having been submitted outside the time specified by *N.J.A.C.* 1:1-14.10(b) and urges such request should, therefore, be rejected. By letter dated March 31, 1999, from Assistant Commissioner Douglas B. Groff, the Commissioner's delegate pursuant to *N.J.S.A.* 18A:4-34, the parties were advised that the Commissioner would consider the request for interlocutory review, notwithstanding that the Board's request was filed beyond the 5-day regulatory timeframe as, pursuant to *N.J.A.C.* 1:1-14.10(h), he found that the reason for the submission's untimeliness was caused by honest mistake, accident, or a cause compatible with due diligence. This letter additionally directed the Board to submit its Brief in Support of Summary Decision which was referenced in its submission here but not included in the record.

reading of *N.J.S.A.* 34:15-20 confirms that the only rights he relinquished by entering into a Section 20 settlement were those which arose under the workers' compensation statutes, and such settlement does not operate to automatically surrender his entitlements under other statutory provisions. He additionally maintains that the record in this matter confirms that his reservation of his rights pursuant to *N.J.S.A.* 18A:30-2.1, "was clearly placed upon the record, in open Court, in front of the Workers' Compensation Judge." (Petitioner's Letter in Opposition to Interlocutory Review, at p. 1) Also, of particular import, petitioner avows, is the fact that in its Answer to the workers' compensation petition, and during the course of the settlement proceedings in that forum, the Board specifically "admitted that the accident arose out of and in the course of Petitioner's employment." (*Id.* at pp. 1-2) As such, he proffers, compensability here is undisputed by the parties and the expertise of a Workers' Compensation Judge to make such determination is unnecessary. Petitioner contends that to allow the Board to now challenge the very issue it previously conceded is "grossly unfair" and it should be "collaterally estopped" from doing so. (*Id.* at p. 2)

Finally, petitioner advances that interlocutory review in this case is unwarranted as, subsequent to the adjudication of the limited issue remaining here, the Board will have an opportunity to file exceptions to any initial decision of the ALJ if it disagrees with his recommendations. (*Id.*)

Upon review and consideration of the record in this matter,⁴ the Assistant Commissioner reverses the order of the ALJ and grants summary decision to the Board as he concludes that, under the circumstances existing here, he should refrain from exercising

³Petitioner's Letter in Opposition to Interlocutory Relief included a copy of his Brief in Opposition to Notice of Motion for Summary Decision, dated February 4, 1999, which had been submitted to the ALJ below and which he incorporated herein by reference.

⁴It is noted that the record includes a transcript of the settlement proceedings conducted before the Workers' Compensation Judge on August 10, 1998, and future indications of "T" in the text of this decision reference portions of this document.

jurisdiction over petitioner's claim for benefits pursuant to *N.J.S.A.* 18A:30-2.1, and dismiss his Petition of Appeal.

Initially, it is observed, *N.J.S.A.* 18A:30-2.1 provides:

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 of the accumulated sick leave provided in sections *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 temporary disability benefit under chapter 15 of Title 34, Labor and Workmens' 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 workmens' compensation award made for temporary disability.

It is evident that, pursuant to this provision, the Commissioner is empowered to direct the payment of benefits to petitioners who have experienced personal injury caused by an accident arising out of and in the course of their employment. It is equally clear, as a result of decisions of the Court and the State Board, that where petitioner has also made a claim under the Workers' Compensation Act, and the facts existing in the matter indicate that there is a question or dispute as to whether an injury "arose out of and in the course of employment," such a determination of causal connection is controlled by the standards established under the Workers' Compensation Act, (see *Theodore v. Dover Bd. of Ed.*, 183 *N.J. Super.* 407 (App. Div. 1982), and the Commissioner should defer exercising his jurisdiction pending a determination of that issue by the Division of Workers' Compensation. (*Amos v. Board of Education of the Borough of Red Bank*, decided by the State Board, February 3, 1988; *Tompkins v. Board of Education of the Township of Hamilton*, decided by the State Board, December 2, 1987, see *City of Hackensack v. Winner*, 82 *N.J.* 1 (1980); *Forgash v. Lower Camden County School*, 208 *N.J. Super.* 461 (App.

Div. 1985). As recognized by the Court in *Basile v. Borough of Roselle Park*, 97 N.J.A.R. 2d (EDU) 429, 432, citing *Forgash*

[T]he Commissioner *** may not utilize the sick leave benefits statute to supplant the function of the compensation court. *Forgash*, 208 N.J. Super. at 467. Here, pursuant to N.J.S.A. 34:15-49, the Division of Workers' Compensation has exclusive original jurisdiction over this matter as it involves a work related injury. The express function of N.J.S.A. 18A:30-2.1 is to complement workers' compensation benefits by allowing the injured party to continue to receive his or her salary and not lose sick leave time due to compensable work related injuries. *Ibid.* at 466. By its terms, N.J.S.A. 18A:30-2.1 contemplates a prior decision by the compensation court before the additional sick leave benefits can be awarded. *Ibid.* Thus, the Commissioner ***cannot exercise jurisdiction in this case until the compensation court has rendered a final determination. To do otherwise would result in the ***Commissioner supplanting the function of the compensation court.

In the instant matter, the record reflects that petitioner, by entering into a Section 20 settlement of his workers' compensation claim, knowingly and willingly chose 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. (T-6, L. 6-12; T-8, L. 1-8) The record further reflects the following discourse with respect to the nature and purpose of such a settlement

THE COURT: [T]his matter is before me for what is known as an Order Approving Settlement with Dismissal under Section 20. There's nothing mysterious about the word Section 20. Section 20 is just a number in the Statute that permits this type -- or provides for this type of a settlement when there are substantial issues as to whether or not, if this matter went to trial, you would be in a position to prove your case. And instead of taking the chance you may not prevail, you're asking the Court to approve of a settlement in the amount of \$6,500.

Do you understand that?

THE WITNESS: Yes, I do. (T-9, L. 16-25; T-10, L. 1-4)

The Assistant Commissioner finds and determines the circumstances here establish that, although it is conceded that petitioner's accident occurred in the course of his employment, his entitlement to relief pursuant to *N.J.S.A. 18A:30-2.1* is dependent upon resolution of the contested issue as to whether such accident was the "cause" of his injury. The Division of Workers' Compensation, not the Commissioner of Education, is the forum with the expertise to decide this issue. See *Hackensack v. Winner, supra; Hinfey v. Matawan Regional Board of Education, 77 N.J. 514 (1978)*. Having chosen to forego such determination in the forum recognized as possessing "expertise" in this area, petitioner cannot be allowed to come before the Commissioner, essentially forum shopping, seeking to find a jurisdiction which may, by virtue of its lack of expertise in such matters, reach a conclusion on this issue which provides him a more favorable outcome. Additionally, as the question of 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 (*Theodore, supra*), consideration of petitioner's appeal here would require the Commissioner to construe and apply statutory provisions outside of the scope of his jurisdiction.

The Assistant Commissioner does not find this outcome to be altered by petitioner's claim that "compensability" was admitted by the Board. As determined by the New Jersey Supreme Court in *Kristiansen v. Morgan, 153 N.J. 298 (1998)*

***The Act provides that "[t]he Division of Workers' Compensation shall have the exclusive original jurisdiction of all claims for workers' compensation benefits." *N.J.S.A. 34:15-49*. **Regardless of whether the employer admits or denies the compensability of an accident, the Division is the forum best suited to decide whether the accident falls within the coverage formula of the Act.** The Legislature recognized that the Division, through the Judges of Compensation, is highly qualified to decide disputed factual and legal contentions related to whether an accident is compensable. (emphasis added) (153 N.J. at 313)

Moreover, the within record amply demonstrates that, notwithstanding the nomenclature utilized by the Board in its so-called admissions, “compensability,” within the intendment of the Workers’ Compensation statutes, is clearly at issue herein. Under these circumstances, the appropriate course for the Commissioner of Education is to refrain from exercising his jurisdiction over petitioner’s claim and to dismiss the instant Petition of Appeal. (See *Angela Rotella-Suarez v. Board of Education of the Town of West New York*, decided by the State Board December 3, 1997.)⁵

Accordingly, the recommended order of the OAL is reversed. Summary decision is hereby granted to the Board and the instant Petition of Appeal is dismissed.⁶

IT IS SO ORDERED.

ASSISTANT COMMISSIONER OF EDUCATION

April 13, 1999

⁵The Assistant Commissioner’s determination herein does not reach to the question of whether petitioner’s settlement of his workers’ compensation matter, pursuant to *N.J.S.A. 34:15-20*, forecloses his claims in other forums, as such a determination, of necessity, requires an interpretation and application of this Workers’ Compensation statute, which is clearly outside the jurisdictional purview of the Commissioner of Education and is not necessary to the resolution of this matter.

⁶ This decision, as the Commissioner’s final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.