

IN THE MATTER OF THE TENURE :
HEARING OF ARLENE HARDER , : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF WASHINGTON : DECISION
TOWNSHIP, GLOUCESTER COUNTY. :
_____:

SYNOPSIS

Board certified tenure charges of unbecoming conduct, specifically abandonment of employment, incapacity and other just cause against respondent secretary.

Respondent chose not to contest the tenure charges. The ALJ sustained the charge of unbecoming conduct, specifically abandonment of employment, and dismissed without prejudice the incapacity and other just cause charges, finding that incapacity cannot be determined without expert medical testimony.

The Commissioner adopted as his own the recommendation of the ALJ which sustained the charges of unbecoming conduct relating to abandonment of position but reversed that portion of the ALJ's decision which dismissed without prejudice the charges of unbecoming conduct relating to incapacity and other just cause, finding that those charges were deemed admitted by respondent as a result of her withdrawal of opposition to the charges set forth by the Board. Respondent was removed from her tenured position as secretary.

July 30, 1999

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_____ :

The record and initial decision issued by the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon examination of the record in this matter, the Commissioner notes that the document entitled “Withdraw of Opposition Certification of Arlene Harder” submitted by respondent expressly states that she “will not contest the tenure charges” notwithstanding her prior position to the contrary, and that, by reference to her attorney’s letter of March 31, 1999, she “will no longer contest the termination of her employment.” Given that this document was filed prior to the commencement of hearings and resulted, at respondent’s behest, in the conclusion of proceedings at the Office of Administrative Law, respondent has by her certification, in effect, withdrawn her answer filed on December 17, 1998, wherein she contested the charges of unbecoming conduct, specifically abandonment of employment, incapacity and other just cause, certified by the Board. Accordingly, pursuant to *N.J.A.C. 6:24-1.4(e)*, the Commissioner finds and determines that each count of the tenure charges set forth by the Board shall be deemed admitted by respondent, and the Commissioner shall issue his final determination by way of summary decision.

Thus, upon careful consideration of the record and initial decision, the Commissioner adopts as his own the recommendation of the Administrative Law Judge (ALJ) which sustains the charges of unbecoming conduct relating to abandonment of position. However, the Commissioner reverses that portion of the ALJ's recommended decision which dismisses without prejudice the charges of unbecoming conduct relating to incapacity and other just cause, finding instead that those charges are deemed admitted by respondent as a result of her withdrawal of opposition to the charges set forth by the Board. The Commissioner having determined that the instant charges were, if true, sufficient to warrant respondent's dismissal, and the charges having been deemed admitted, the Commissioner concurs with the recommended order of the ALJ dismissing respondent from her tenured employment.¹

Accordingly, respondent is hereby removed from her tenured position as secretary in the Washington Township School District.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

July 30, 1999

¹ The Commissioner emphasizes that the final decision in this matter does not in any way signify that the Commissioner concurs with or accepts respondent's assertion, in the above-referenced certification withdrawing opposition to the tenure charges, that she is suffering from major depression which was initiated by the harassment of the Board Secretary.

² 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.