

JOANNE BRUNO-SCHWARTZ,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE SOUTH	:	DECISION
HUNTERDON REGIONAL HIGH SCHOOL	:	
DISTRICT, HUNTERDON COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner, tenured teaching staff member, alleged the Board failed to pay her full salary without loss of sick time for injury sustained in the course of employment, pursuant to *N.J.S.A.* 18A:30-2.1. Petitioner’s credit card was stolen by two students who remained in her class. Petitioner wanted them removed from her classroom but the Board refused. Thus, on doctor’s order, petitioner was absent for the remainder of the school year.

Citing numerous cases, the ALJ determined that the proper forum for resolution of whether a work-related accident is the cause of an injury is the Division of Workers’ Compensation except for limited instances such as when the Division of Workers’ Compensation has no jurisdiction or when there is a settlement of the workers’ compensation case. Petitioner herein did not file a workers’ compensation claim. The ALJ noted that school law cases have supported the position that the determination of the work-relatedness of an injury pursuant to *N.J.S.A.* 18A:30-2.1 should be made in a workers’ compensation case. (*Forgash*) The award to be made under the school law statute is supposed to follow the workers’ compensation determination. The ALJ granted the Board’s motion for summary decision and dismissed the matter.

The Commissioner concurred with the ALJ’s determination for the reasons clearly stated therein. The petition was dismissed.

October 7, 2002

OAL DKT. NO. EDU 4198-01
AGENCY DKT. NO. 147-5/01

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto were timely filed pursuant to *N.J.A.C.* 1:1-18.4.

Petitioner’s exceptions rely on her brief submitted to the Administrative Law Judge (ALJ) below, citing *Hern, supra*; *Theodore, supra*; and, most specifically, the State Board’s decision in *Sheridan, supra*, for the proposition that she is entitled to pursue her benefits pursuant to *N.J.A.C.* 18A:30-2.1 even though she elected not to file a workers’ compensation claim. In reply, the Board, similarly, relies on its submissions made below and further points out that each of petitioner’s arguments were addressed, considered and rejected by the ALJ in her Initial Decision and should, likewise, be rejected by the Commissioner.

Upon his full and independent review of the record, the Commissioner concurs with the ALJ that summary decision is appropriately granted to the Board in this matter. In so

determining, the Commissioner fully agrees with the ALJ's legal analysis of *Hern* and *Sheridan*¹, and her determination that these cases are inapposite to the situation existing here. He also agrees with the ALJ's conclusion, based on applicable case law, "that the proper forum for the resolution of whether a work-related accident is the cause of an injury is the Division of Workers' Compensation except for limited cases such as when the Division of Workers' Compensation has no jurisdiction [because of a petitioner's failure to satisfy the minimum seven-day waiting period (*Hern*)] or when there is a settlement of the workers' compensation case." [*Sheridan; Marino*] (Initial Decision, at 9)

At issue here is petitioner's allegation that her illness/injury and resulting disability were caused by a work-related accident/illness. The Commissioner finds that this matter does not present circumstances, as evidenced in *Hern* or *Sheridan* and *Marino*, which would create an exception to the legal requirement that the Commissioner should refrain from exercising jurisdiction in matters claiming benefits pursuant to *N.J.S.A.* 18A:30-2.1 due to an injury/illness arising out of and in the course of employment until the Division of Workers' Compensation makes a determination of a work-related injury/illness pursuant to *N.J.S.A.* 34:15-1.1 *et seq.* See *Veneret, supra*. As the within petitioner has voluntarily chosen not to file a workers' compensation claim, her claim under the school law sick leave statute, *N.J.S.A.* 18A:30-2.1, must be dismissed. The correctness of this outcome is further evidenced in *Forgash v. Lower Camden County School*, 208 *N.J. Super.* 461 (App. Div. 1985) wherein the Court stated:

[A]s the express function of *N.J.S.A.* 18A:30-2.1 is to complement workers' compensation benefits for a strictly limited time period, a proceeding pursuant to that statute may not be utilized to supplant the function of the compensation court. By its terms, this statute contemplates a prior determination of a compensable injury by the

¹ It is noted that this decision is erroneously referred to as "Sherman" on pages 9 & 10 of the Initial Decision.

compensation court before consideration by the commissioner of the eligibility of the injured employee for the additional benefits provided by the statute. (208 *N.J. Super.* at 466, 467)

Accordingly, the Initial Decision of the OAL is affirmed for the reasons clearly stated therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: October 7, 2002

Date of Mailing: October 7, 2002

² This decision, as the Commissioner's final determination 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.* 6A:4-1.1 *et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.