

CHRISTINE GILLESPIE, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, ESSEX :
COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning teacher alleged the District failed to pay her full salary without loss of sick time for work-related injury, pursuant to *N.J.S.A.* 18A:30-2.1, notwithstanding a workers' compensation order declaring this time compensable.

The ALJ found that the petition was untimely filed. Petitioner filed her petition September 2001 seeking the return of sick days from September 2000 to November 2000, well beyond the 90 days of receipt of notice of the District's action. Thus, the ALJ concluded that petitioner's appeal was substantially out of time under the 90-day rule.

The Commissioner adopted the findings and determination in the Initial Decision as his own. The Commissioner did note that petitioner's efforts to resolve the claim through negotiation with the District were irrelevant and did not negate the fact of receipt of adequate notice nor did they toll the running of the time limits for filing the petition. The petition was dismissed as untimely filed.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner filed exceptions on March 21, 2003. Even assuming, however, that the exceptions were timely filed in accordance with *N.J.A.C.* 1:1-18.4, which they were not,¹ petitioner may not make submissions to the record on her own behalf, having already elected to be represented by counsel, *N.J.A.C.* 1:1-5.1. All submissions in this matter must be accomplished by and through such legal counsel, absent notification to the Bureau of Controversies and Disputes that petitioner is no longer represented by an attorney. Therefore, petitioner's exceptions were not considered by the Commissioner in rendering his decision.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the Administrative Law Judge (ALJ) that the within petition is untimely, pursuant to *N.J.A.C.* 6A:3-1.3(d), since there can be no question on this record that petitioner was, in October of 2000, alerted "to the existence of facts that might equate in law

¹ The Initial Decision was mailed to the parties on March 7, 2003 and the exceptions were filed on March 21, 2003, *via facsimile*, outside the 13-day period prescribed by regulation.

with a cause of action and was sufficient to enable her to pursue a claim, thereby triggering the ninety-day filing period of *N.J.A.C.* [6A:3-1.3(d)],” *Susan Beshaw v. Board of Education of the Borough of Oakland, Bergen County*, State Board decision February 4, 1998, slip. op. at 4, *aff’d* Appellate Division March 23, 1999, A-3985-97T5. Furthermore, as stated by the New Jersey Supreme Court in *Kaprow, supra*, attempts to resolve a claim through negotiation with the local board of education are irrelevant. Such efforts do not negate the fact of receipt of adequate notice nor do they toll the running of the time limits for filing a petition of appeal. Neither does the Commissioner find cause to relax the 90-day rule in this matter.

Accordingly, the Petition of Appeal is dismissed.²

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: April 14, 2003

Date of Mailing: April 16, 2003

² Since this matter is dismissed on procedural grounds, the Commissioner does not reach to the ALJ’s discussion on the merits of petitioner’s claims.

³ This decision 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.*