

207-03

CAROL UNANGST,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF FREDON, SUSSEX	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
	:	

SYNOPSIS

Petitioner, former tenured part-time art teacher, sought to rescind her resignation, claiming she resigned under duress. Petitioner contended she was the victim of battered woman’s syndrome and that, as a result, incapable of rational decision-making. The Board alleged the petition was untimely filed.

The ALJ noted that it was undisputed that the petition was not filed within 90 days of the acceptance of petitioner’s resignation and that petitioner was a victim of domestic abuse. The ALJ determined, however, that there was sufficient evidence to demonstrate that petitioner possessed the mental capacity to make meaningful decisions, seek professional help and receive legal advice. Yet, she waited until it was too late to challenge the resignation. A showing of emotional stress alone, without the showing of circumstances amounting to genuine incapacity, was not enough to toll the time limit for appeal. The petition was dismissed.

The Commissioner concurred with the ALJ that the petition was untimely filed. Citing *LeMee* and *Pacio*, the Commissioner did not find that the factual circumstances herein constituted grounds for relaxation of the 90-day rule.

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.

May 1, 2003

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The record of this matter and the Initial Decision¹ of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.²

Upon careful and independent review of the record in this matter, the Commissioner fully concurs with the Administrative Law Judge (ALJ) that the within petition is time-barred and that relaxation of the 90-day timeline set forth in *N.J.A.C.* 6A:3-1.3(d) is not warranted under the circumstances of this case. In so concluding, the Commissioner emphasizes his concurrence that petitioner possessed sufficient mental capacity to appreciate the meaning of her resignation and to understand her right of appeal as demonstrated by her capacity to make meaningful decisions during the period of her emotional distress, such as: 1) leaving her boyfriend and obtaining a protective order, 2) seeking professional help, and 3) obtaining legal advice from more than one source. Although it is

¹Only two witness names appear on the List of Witnesses in the Initial Decision, petitioner's and a victim's advocate, Martha S. Doerr, on petitioner's behalf.

² Respondent filed a letter stating that it would not be filing any formal exceptions, but requesting that the motion package filed by the Board on May 17, 2000, including the Certification by Frank J. Fehn, the then Superintendent, be included as part of the record. (Board's Letter of April 4, 2003) The Commissioner notes that the Board's motion papers of May 17, 2000, including Mr. Fehn's certification, were included in the record certified to the Commissioner by the OAL. Moreover, although failing to identify the particular facts it disputes, the Board also stated that "the Board does not fully agree with the findings of fact, however, we do understand that this Decision was based upon hearing the Petitioner's evidence only and at the conclusion of the same, our Motion to Dismiss has been granted." (*Ibid.*)

evident that petitioner was under emotional distress at the time of her resignation, a showing of emotional stress alone, without the showing of circumstances amounting to genuine incapacity, is not enough to toll the time limit for appeal.

Moreover, the 90-day filing requirement has been strictly construed by the Commissioner, the State Board of Education and the courts and, while the rule gives the Commissioner broad discretion, relaxation is reserved for limited situations wherein a compelling reason can be demonstrated for expanding the limitation period, such as the presence of a substantial constitutional or other issue of fundamental public interest beyond that of concern only to the parties. *LeMee, supra; Pacio, supra*. In that the Commissioner does not find that the factual circumstances presented herein constitute such grounds for relaxation of the 90-day rule, and in that no constitutional issues are involved in this matter, nor does it present issues of significant public interest beyond the parties, I determine, as did the Commissioner in *LeMee, supra*, that the greater public interest herein lies with the enforcement of the 90-day rule.

Accordingly, the Initial Decision of the ALJ granting the Board's motion to dismiss is adopted for the reasons expressed therein and the petition is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: May 1, 2003

Date of Mailing: May 1, 2003

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.*