

IN THE MATTER OF THE TENURE :
HEARING OF MICHELE BATTLE, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY : DECISION
OF EAST ORANGE, ESSEX COUNTY. :

SYNOPSIS

Petitioning school district certified a tenure charge against respondent – a tenured secretary – alleging chronic absenteeism and persistent tardiness over the course of the past ten school years, and filed a motion for summary decision dismissing respondent from her tenured position. Respondent admits that she was repeatedly warned about her absences and punctuality commencing after the 1997-98 school year, but asserts that many of the absences were for excused medical reasons and covered by her paid time off; she further asserts that she was only late by a few minutes most of the time, and that her absences did not have a detrimental impact on the operations of the district.

The ALJ found that: respondent's certification in opposition to the Board's motion for summary decision does not create a genuine issue of material fact; over the course of nine years, respondent never challenged the Board's determination that she was excessively absent and tardy, and never objected to the discipline imposed upon her; respondent received nine separate written warnings to improve her punctuality and attendance since 1998, has been on probation since 1999, and has not received a salary increment due to her poor attendance record since that same year. The ALJ concluded that respondent's absences and tardiness are chronic and persistent, and constitute just cause warranting dismissal from her tenured position. The ALJ recommended the granting of respondent's motion for summary decision, and dismissal of the respondent.

The Commissioner concurred with the ALJ that the record is more than sufficient to establish chronic absenteeism and persistent tardiness. Accordingly, she adopted the Initial Decision of the OAL, sustaining the tenure charge of chronic absenteeism and dismissing the respondent from tenured employment as of the filing date of this decision.

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.

OAL DKT. NO. EDU 5655-07
AGENCY DKT. NO. 123-5/07

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by respondent in accordance with *N.J.A.C. 1:1-18.4* and the reply of the East Orange Board of Education (Board).

On exception, respondent contends that the Administrative Law Judge (ALJ) erred in deciding this matter on a summary basis, and in making findings of fact notwithstanding insufficient proof in the record. (Respondent's Exceptions at 1-4) In reply, the Board contends that the ALJ properly found respondent to have raised no issues of material fact sufficient to defeat its motion for summary judgment, and correctly ruled in favor of the Board based on the record presented. (Board's Reply at 1-4) In support of these contentions, the parties substantially renew and reiterate arguments previously raised at the OAL, which the Commissioner does not repeat here because they are adequately addressed in the Initial Decision.

Upon review, the Commissioner concurs with the ALJ that the record of this matter is more than sufficient to establish chronic absenteeism and persistent tardiness on respondent's part, notwithstanding any excuses she may have had for individual instances of

absence or lateness and her contention that the Board's representations as to the number and dates of occurrence may not be precisely correct.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter. The Board's charge of chronic absenteeism is sustained, and respondent is dismissed from tenured employment as of the filing date of this decision.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: September 20, 2007

Date of Mailing: September 20, 2007

* 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.*