

#93-15

RON RODA, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 NEW JERSEY STATE BOARD : DECISION
 OF EXAMINERS, :
 :
 RESPONDENT. :
 :

SYNOPSIS

Petitioner filed a *pro se* challenge of respondent's determination to deny his application for teacher certification. Emergent relief was denied following a hearing on July 28, 2014, and the matter was subsequently returned to the OAL for a hearing on the merits. A telephone prehearing conference was scheduled for February 3, 2015, at which petitioner failed to appear. The matter was then returned to the Department of Education for disposition.

Upon review, the Commissioner found that: the record reflects that petitioner did not appear at the scheduled hearing, but did submit his explanation for his non-appearance in writing on February 5, 2015, *i.e.*, that he had been unavailable due to his work schedule; accordingly, if the ALJ – upon review of petitioner's explanation for his non-appearance – concluded that petitioner lacks good cause for his failure to appear and declined to reschedule the matter, an initial decision explaining the basis for that conclusion is required under *N.J.A.C.* 1:1-14.4(c). For this reason, the Commissioner determined that the matter must be remanded to the OAL pursuant to *N.J.A.C.* 1:1-18.7(a), for further action in accordance with *N.J.A.C.* 1:1-14.4(c).

<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>

March 16, 2015

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This matter was returned to the Department for disposition due to petitioner's failure to appear at a February 3, 2015 telephone prehearing conference. Pursuant to *N.J.A.C. 1:1-18.7(a)*, the Commissioner remands the matter to the Office of Administrative Law (OAL) for further action in accordance with *N.J.A.C. 1:1-14.4(c)*, for the reasons stated herein.

Within the time period specified in the Notice of Return-Failure to Appear issued by the Office of Administrative Law on February 10, 2015, petitioner sent the Department a letter regarding his failure to appear and referenced therein a fax sent to Administrative Law Judge (ALJ) Ascione's chambers that "gave reason" for same. Upon careful review of the record, it is apparent that petitioner called the ALJ's chambers on February 4, 2015 (one day after the scheduled telephone prehearing conference) regarding his failure to appear and explained that he had been working. A staff member then informed petitioner that he should submit his explanation in writing. In response, petitioner indicated that he couldn't fax a letter to chambers on that date because he was working, but that he would do so the following day. The record contains a fax from petitioner – received on February 5, 2015 – indicating he was unavailable due to his work schedule.

N.J.A.C. 1:1-14.4 governs the actions to be taken upon a party's failure to appear at any OAL proceeding. When a party fails to appear, the ALJ shall hold the matter for one day before taking any action. *N.J.A.C. 1:1-14.4(a)*. If the ALJ receives an explanation from the non-appearing party within one day and concludes that the party lacked good cause for failing to appear, "the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter" and order sanctions at his discretion. *N.J.A.C. 1:1-14.4(c)(2)*.

Here, the record reflects that petitioner was properly notified of the telephone prehearing conference scheduled for February 3, 2015, but failed to appear. The next day, petitioner contacted the ALJ's chambers by telephone to provide an explanation and was directed to submit his reasons in writing; he complied with that request. If – upon review of the explanation provided – the ALJ concluded petitioner lacked good cause for his failure to appear and declined to reschedule the matter, then an initial decision explaining the basis for that conclusion is required under *N.J.A.C. 1:1-14.4(c)(2)*. Because an initial decision was not issued here, a remand is warranted.

Consequently, this matter is remanded to the Office of Administrative Law for further action in accordance with *N.J.A.C. 1:1-14.4(c)*.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: March 16, 2015

Date of Mailing: March 16, 2015