

New Jersey Commissioner of Education
Final Decision

Lisa Healy,

Petitioner,

v.

Board of Education of the Township of
Hardyston, Sussex County,

Respondent.

Synopsis

Petitioner requested that the Hardyston Board of Education (Board) recognize her tenured status and place her at step five (5) on the salary guide. Petitioner had been employed by the Board as a teacher from September 1994 until April 1999, becoming tenured on or about September 1, 1998. Beginning in April 1999, petitioner was granted several leaves of absence for pregnancy, child-care, and medical reasons. She failed to return to work following the expiration of her child-care leave at the end of the 2000-2001 school year, having filed an application for Social Security Disability Insurance benefits in October 2000. Beginning in the 2015-2016 school year, petitioner became re-employed by the Board as a substitute teacher on an intermittent basis, and in February 2018, petitioner was re-employed as a full-time teacher. She filed the within petition on November 20, 2018. The respondent Board filed a motion to dismiss.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner was hired by the Board as a non-tenured teacher at Step 1 of the school district's salary guide on February 13, 2018, but petitioner did not file her appeal disputing the salary step and non-tenured status until December 14, 2018 – well beyond the ninety-day window for filing a petition of appeal; petitioner's contention that she never submitted a letter of resignation and therefore remained an active employee from 1999 until her return to full-time employment in 2015 is without merit, as is her argument that *N.J.S.A.* 18A:6-10 applies in this case. The ALJ concluded that the within appeal must be dismissed as untimely. Accordingly, the Board's motion for summary decision was granted.

Upon review, the Commissioner concurred with the ALJ that the petition of appeal was time-barred under *N.J.A.C.* 6A:3-1.3(i). Accordingly, in a decision dated July 22, 2019, the Commissioner adopted the Initial Decision as the final decision, and dismissed the petition. Subsequently, petitioner filed a motion to re-open the case based on counsel for petitioner's certification that his office did not receive the Initial Decision, and thus had no opportunity to file exceptions. Following the submission of petitioner's exceptions and the Board's reply thereto, the Commissioner comprehensively reviewed the new filings and the record. Finding petitioner's exceptions to be unpersuasive, the Commissioner again concurred with the ALJ that the petition of appeal was time-barred under *N.J.A.C.* 6A:3-1.3(i). Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition was dismissed.

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.

New Jersey Commissioner of Education
Final Decision

Lisa Healy,

Petitioner,

v.

Board of Education of the Township of
Hardyston, Sussex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed by the petitioner, Lisa Healy, and the Hardyston Board of Education's reply thereto.¹ In this case, the petitioner is seeking to have the Board recognize her tenured status and place her on Step Five, rather than Step One, of the salary guide. The Administrative Law Judge (ALJ) granted summary decision in favor of the Board, finding that the petition of appeal was untimely filed under *N.J.A.C.* 6A:3-1.3(i). The ALJ also reached the merits of the case and determined that the petitioner resigned from her position as a tenured teacher in 1999 based on her own conduct and admissions, and that she was not an active tenured employee at the time of her recent re-hire by the District in February 2018.

In her exceptions, the petitioner contends that the ALJ erroneously granted summary decision in favor of the Board. With respect to the 90-day rule, the petitioner argues

¹ After receipt of the Commissioner's decision dated July 22, 2019, the petitioner filed a motion to re-open this case based upon the fact that counsel for the petitioner certified that his office did not receive the Initial Decision and thus did not have the opportunity to file exceptions. By Order dated August 6, 2019, the Commissioner re-opened this matter to enable the petitioner to file exceptions to the Initial Decision.

that the ALJ applied an improper trigger date for the limitations period. The petitioner maintains that she did not receive notice that she was placed on Step One of the salary guide until she received her first pay check in September of the 2018-2019 school year. The petition of appeal was filed on November 20, 2018, well within the requisite 90-day period. The Initial Decision is clearly erroneous as evidenced by the fact that the ALJ stated that the petitioner did not file her appeal until December 14, 2018, which was the date that the Board filed its answer. Further, while it is true that she was hired by the Board at Step One of the salary guide on February 13, 2018, petitioner contends that was hired in a substitute position. It was not until September of the 2018-2019 school year, when she began teaching on a permanent basis, that petitioner first learned that she was not being given credit for her prior years of teaching experience, and she timely filed her petition on November 20, 2018. Therefore, the petition of appeal should not be dismissed as untimely.

The petitioner also takes exception to the ALJ's determination that she resigned from the District in April 1999. Petitioner asserts that she never resigned from her employment with the District nor did the District ever file tenure charges against her, so she remained an employee throughout her leave and must be returned to the appropriate step on the salary guide. The petitioner argued that the case law relied upon by the Board in its submissions at the OAL was not analogous to the circumstances in the case at bar. The petitioner emphasizes that she never submitted a formal letter of resignation. The petitioner also reiterated the arguments advanced below contending that she had no choice but to select "resign" on her application to withdraw her pension funds because the only two options available on the form were "resign" or "dismiss." Therefore, the decision of the ALJ must be reversed on both counts and the petitioner should be found to be a tenured employee of the Board, thereby affording her the rights of the Tenure Act.

In reply, the Board asserts that for the reasons articulated in the Initial Decision as well as the Board's submissions, the Initial Decision should be adopted as the final decision in this matter. Although the ALJ did incorrectly state that the filing date of the petition was December 14, 2018, which was the date the Board filed its answer, this minor error does not change the fact that the petition is time-barred. The petitioner was appointed to a permanent position created by the retirement of a staff member on February 13, 2018, and she was placed at Step One of the salary guide as a non-tenured employee. Contrary to the petitioner's claim, she was not hired as a substitute at that time, but was appointed as a full-time, permanent employee assigned to fill a vacancy created by a retirement. The petitioner was aware of her salary and tenure status upon her appointment, as she accepted her placement and its concurrent compensation and began receiving paychecks at the Step One level of the salary guide through the end of the 2017-2018 school year. Thus, as the ALJ correctly found, the petitioner's claim accrued on the date of the Board's action on February 13, 2018; therefore, the petition must have been filed within 90 days of the date, or by May 14, 2018. Yet the petition was not filed until November 20, 2018. As such, the ALJ's determination that the petition of appeal was filed out of time is fully supported by the law and the record in this case.

Should the merits of this case be reached, the Board maintains that the ALJ correctly found that the petitioner effectively resigned from her employment with the District. The petitioner withdrew her pension payments and indicated on her withdraw form that she withdrew the funds because of her "resignation due to illness." Moreover, the petitioner failed to contact the District for at least 16 years after the date on which her initial leave expired. During the intervening years, petitioner was in fact employed as a substitute teacher by at least two different school districts – including the respondent's district – at the same time. Beginning in the 2015-2016 school year the petitioner served as a substitute with the Hardyston Township

Schools until she was appointed to a permanent position with the district in February of 2018. Accordingly, petitioner was clearly not an active employee at the time she was rehired by the Board to a permanent teaching position on February 13, 2018.

Upon a comprehensive review of the record, the Commissioner concurs with the ALJ's determination – for the reason outlined in the Initial Decision – that the petition of appeal was time-barred under *N.J.A.C.* 6A:3-1.3(i). In so doing, the Commissioner notes that the Initial Decision did incorrectly state that the filing date of the petition was December 14, 2018; as the actual filing date was November 20, 2018.

Under *N.J.A.C.* 6A:3-1.3(i), a petition must be filed “no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party or agency, which is the subject of the requested contested case hearing.” Guidance as to what constitutes notice sufficient to trigger the running of this regulatory provision was provided by the Supreme Court in *Kaprow v. Board of Education of Berkeley Tp.*, 131 *N.J.* 572 (1993). The “notice of a final order, ruling or other action” of the Board contemplated by the rule has been defined as notice “sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate.” *Kaprow* at 587.

In this case, the petitioner had notice of her salary and non-tenured status upon her appointment in February 2018 as a full-time, permanent employee assigned to fill a vacancy created by the retirement of a staff member. Further, the petitioner accepted her placement and began receiving paychecks at the Step One level of the salary guide through the end of the 2017-2018 school year. The petitioner's claim accrued on the date of the Board's action on February 13, 2018, but her petition was not filed until November 20, 2018 – well beyond the 90-day window for the filing of a petition of appeal pursuant to *N.J.A.C.* 6A:3-1.3(i). The

Commissioner finds the exceptions submitted by the petitioner to be unpersuasive as they largely replicate the arguments advanced at the OAL, which were fully considered and appropriately addressed by the ALJ in the Initial Decision.

Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed.²

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: September 26, 2019

Date of Mailing: September 30, 2019

² Since the petition of appeal was appropriately dismissed as untimely, it is not necessary to render a decision on the remaining legal issues decided by the ALJ in the Initial Decision; however, the Commissioner is in accord with the ALJ's determination – for the reasons set forth in the Initial Decision – that the petitioner effectively resigned from her tenured employment with the District through her own actions and admissions.

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 00208-19

AGENCY DKT. NO. 279-11/18

LISA HEALY,

Petitioner,

v.

BOARD OF EDUCATION OF THE

TOWNSHIP OF HARDYSTON,

SUSSEX COUNTY,

Respondent.

Jesse Humphries, Esq., for petitioner (Oxfeld Cohen, attorneys)

Joseph Roselle, Esq., for respondent (Schenck Price Smith & King, attorneys)

Record Closed: May 22, 2019

Decided: June 13, 2019

BEFORE **JUDE-ANTHONY TISCORNIA, ALJ:**

STATEMENT OF THE CASE

Petitioner, Lisa Healy (Healy) requests that Hardyston Board of Education (District) recognize her tenured status and place her at step five (5) on the salary guide. Healy was employed as a teacher at the District from September 1994, until April 1998.

Healy became re-employed by the District as a substitute teacher on an intermittent basis beginning in the 2015-2016 school year and as a full-time teacher in February of 2018.

PROCEDURAL HISTORY

Petitioner filed the instant petition with the New Jersey Commissioner of Education, which was received on November 20, 2018, by the Department of Controversies and Disputes (Department).

Respondent Hardyston Board of Education filed an answer and affirmative defenses with the Department which was received on December 17, 2018.

The matter was transmitted as a contested case on December 18, 2018, to the Office of Administrative Law (OAL) where it was received on December 20, 2018.

Respondent filed a Motion to Dismiss with the undersigned on May 20, 2019. Petitioner's response to respondent's motion and cross-motion was filed on May 22, 2019. The parties did not request oral argument. The written submissions are sufficient to dispose of the matter.

STATEMENT OF FACTS

The following facts are undisputed, and I **FIND** them to be the **FACTS** of the case:

1. Healy began employment in the Hardyston School District in September of 1994, teaching second grade at the Hardyston Elementary School.
2. Pursuant to the provisions of N.J.S.A. 18A:28-5 et seq., Healy became tenured in the District on or about September 1, 1998.
3. On or about January 22, 1999, Healy wrote to Dr. Anne Wilkins, then-District Superintendent, requesting a leave of absence due to pregnancy.

4. Healy's request for a leave was granted. Healy left the District on April 19, 1999, when the District went on spring vacation.
5. On or about May 12, 1999, Healy was diagnosed with Hodgkin's Lymphoma and immediately began treatment.
6. Via letter dated July 21, 1999, Healy informed then-Superintendent Wilkins that she wished to extend her Family Leave until October 26, 1999, and requested that she be placed on maternity leave thereafter through June 30, 2000.
7. Via an undated letter, but which was received in the District's offices on February 16, 2000, Healy requested an extension of her child care leave for the 2000-2001 school year.
8. The Board granted Healy's request, informing her of same via letter dated March 28, 2000.
9. At the time of her leave from the District, Healy was on Step 5 of the salary guide.
10. Healy did not return to work upon the expiration of her child-care leave at the end of the 2000-2001 school year.
11. Healy was later diagnosed with additional medical problems, including, but not necessarily limited to, radiation pneumonitis, hypothyroidism, hyperthyroidism, and cardio-vascular disease.
12. On October 25, 2000, Healy filed an application for Social Security Disability Insurance benefits. In a decision dated September 26, 2001, (Federal) Administrative Law Judge Dennis O'Leary granted Healy's Social Security Disability application retroactive to May 14, 1999.

13. As Healy did not have sufficient years in the Teacher's Pension and Annuity Fund (TPAF), she could not apply for a Disability Pension from the Division of Pensions and Benefits.
14. On May 18, 2001, Healy did apply for a withdrawal of her TPAF pension funds from the Division of Pensions and Benefits. On her application, she indicated that she terminated her employment in the Hardyston School District in April of 1999, resigning due to illness.
15. Healy did not submit a letter of resignation to the Hardyston School District. There is no such letter contained in Healy's District personnel file.
16. The Board did not file tenure charges against Healy for abandonment of her position.
17. In the spring of 2015, Healy was sufficiently recovered to be able to substitute teach. Healy was informed by the Board of Education that they approved her as a substitute teacher at its August 11, 2015, meeting. Healy thereafter served as a substitute teacher on an intermittent basis beginning in the 2015-2016 school year.
18. On or about March 7, 2017, the Vernon Township School District sent notice to the Hardyston School District, informing the Board that Vernon wished to hire Healy as a substitute teacher and asked that Hardyston verify Healy's employment.
19. On March 16, 2017, Healy was appointed by the Vernon Township Board of Education as a substitute teacher, effective March 17, 2017.
20. In or about January of 2018, the Hardyston Board of Education advertised for a permanent elementary teaching position in order to fill a mid-year vacancy

- created when the previous teacher retired. Healy applied for that position and was interviewed by Michael Ryder, Chief School Administrator.
21. After the interview, Mr. Ryder recommended that Healy be appointed to the permanent position.
22. At the Board's February 13, 2018, meeting, a motion was passed to hire Healy for a full-time teaching position at Step 1 of the Masters salary schedule as set forth in the collective negotiations agreement between the Board and the Hardyston Township Education Association.
23. Healy did not object at the time to her placement on the salary guide and thanked Mr. Ryder for the opportunity.
24. On May 8, 2018, the Board of Education approved a motion to renew Ms. Healy's contract for the full 2018-2019 school year as a non-tenured certified staff member.
25. Healy is currently on Step 2 of the Masters salary guide.
26. Healy now seeks credit on the salary guide for her previous five years' experience in the District.

LEGAL DISCUSSION

In the case at bar, both sides seek relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." The regulation mirrors R. 4:46-2(c), which provides that "[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." I **FIND** there is no issue of material

fact in dispute with regard to the foregoing matter and I **CONCLUDE** the matter is ripe for Summary Decision.

I. THE APPEAL WAS NOT FILED TIMELY AND IS BARRED

N.J.A.C. 6A:3-1.3(i) states in pertinent part:

The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

Healy disputes the District's hiring her as a non-tenured teacher at Step 1 of the pay scale and not taking into account her prior years of service. Healy was hired as a non-tenured teacher at Step 1 of the salary guide via unanimous District Board approval on February 13, 2018. The forgoing petition appealing the District Board's action was filed on December 14, 2018; approximately ten months after Healy's hire at Step 1. Thus, I **FIND** the foregoing petition of appeal was filed more than ninety days after the alleged adverse action and I **CONCLDE** that the foregoing petition of appeal is out of time and therefore barred by N.J.A.C. 6A:3-1.3(i).

II. PETITIONER RESIGNED FROM HER INITIAL EMPLOYMENT WITH THE DISTRICT

In the case at bar, it is undisputed that Healy went out on planned maternity leave beginning April 19, 1999, and did not return to work for the 1999-2000 and 2000-2001 school years. It is further undisputed that Healy applied for a withdrawal of her TPAF funds from the Division of Pensions and Benefits on May 18, 2001, indicating on her withdrawal application that she had resigned from her employment at Hardyston in April of 1999 due to illness. Healy now argues that since she never submitted a formal letter of resignation, that she remained an active employee from 1999 up until her return to full time employment with the District in 2015. I disagree.

Petitioner sites Capodilupo v Board of Education of West Orange Township, Essex County, 218 N.J. Super. 510, 515 (App. Div. 1987), which states that “the tenure act should be liberally construed to achieve its beneficent ends.” Ibid. (quoting Spiewak v. Bd. of Educ. of Rutherford, 90 N.J. 63, 74 (1982)). Notwithstanding this general directive to liberally interpret the tenure act, Healy fails to cite any precedent that would explain how an individual, who has had no communication with a district for such an extended period of time, could possibly remain an “active employee” of that district, especially where the individual applied for Social Security Disability Benefits and withdrew her pension payments. Further, Healy indicated on her TPAF withdrawal form that her reason for withdrawing the pension payments was “resignation due to illness.” Based on the foregoing, I **FIND** that Healy resigned from her position as a tenured teacher in 1999 based on her own conduct and admissions. I **CONCLUDE** that Healy was not an active tenured employee at the time of her recent re-hire by the District (February 13, 2015).

III. N.J.S.A. 18A:6-10 DOES NOT APPLY

Healy further argues that since she was never formally dismissed by the District during her sixteen-year absence, that she, then, remained an active employee during that period of time. Healy cites N.J.S.A. 18A: 6-10, which states that no person shall be dismissed or reduced in compensation without formal written charges being brought against her. Since Healy was never served with written tenure charges by the District as required by N.J.S.A. 18A: 6-10, she claims she was never formally dismissed by the District. Thus, she argues, she remained an active employee of the District during her absence. As I have already found that Healy resigned from her teaching position in 1999, I **CONCLUDE** the above-referenced statute does not apply to the case at bar as Healy was not an active tenured employee during her extended absence.

ORDER

It is hereby **ORDERED** that petitioner’s Motion for Summary Decision be **DISMISSED**. It is further **ORDERED** that respondent Hardyston Board of Education’s

Motion for Summary Decision be **GRANTED**; it is further **ORDERED** that the foregoing petition of appeal is hereby **DISMISSED** and the Respondent's decision to hire Lisa Healy as non-tenured at Step 1 of the pay scale be **UPHELD**.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 13, 2019
DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency: _____
6/13/19

Date Mailed to Parties: _____

id