

New Jersey Commissioner of Education

Final Decision

Robert Strauss,

Petitioner,

v.

Board of Education of the Borough of
Metuchen, Middlesex County,

Respondent.

Synopsis

Petitioner, a teacher in the Metuchen school district, challenged the respondent Board’s decision denying his request to use accumulated sick leave to remain absent from school because his purported high-risk status for the COVID-19 virus does not constitute a “personal disability” under the relevant sick leave statute, *N.J.S.A. 18A:30-1*. Petitioner argued that he has underlying medical conditions which put him at high risk for contracting the COVID-19 virus and developing serious complications, severe illness, and/or death, and provided a note from his doctor stating that it was essential that petitioner be granted a leave of absence or sick leave to avoid significant risks to his health. The parties filed opposing motions for summary decision, which were denied. The petitioner, with the consent of the Board, later requested that the case be decided on the papers.

The ALJ found, *inter alia*, that: Petitioner is a tenured teacher serving Metuchen students at all grade levels; beginning September 16, 2020, Metuchen schools returned in-person programming following a period of remote instruction during the Covid-19 pandemic; petitioner was previously diagnosed and had been treated for several autoimmune conditions which he contends put him at significant risk of contracting Covid-19 and developing serious complications, severe illness, and/or death; petitioner claims that if he were placed in the school setting, he would be at increased risk, even if strict six-foot social distancing, reduced class sizes, and mask wearing could be monitored and enforced; the key question here is whether petitioner’s elevated risk of contracting the COVID-19 virus renders him personally disabled under *N.J.S.A. 18A:30-1*; the medical documents submitted in support of petitioner’s request for sick leave do not establish that he has a personal disability; there is no proof nor does the petitioner contend that he is unable to work because of his existing medical conditions; rather, he contends that he *may* be unable to work *if* he contracts the COVID-19 virus; and the risk of an illness is not the equivalent of having an illness. The ALJ concluded that the petitioner is not rendered personally disabled and is not entitled to sick leave under *N.J.S.A. 18A:30-1*. Accordingly, the petition was denied.

The Commissioner adopted the Initial Decision of the OAL in this matter. In so doing, the Commissioner noted, *inter alia*, that petitioner’s health conditions did not prevent him from performing his job duties prior to the pandemic; further, the risk of developing Covid-19, as a matter of law, is insufficient to entitle petitioner to use sick leave under *N.J.S.A. 18A:30-1*. Petitioner’s appeal 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.

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OAL Dkt. No. 00254-21
Agency Dkt. No. 246-12/20

New Jersey Commissioner of Education
Final Decision

Robert Strauss,

Petitioner,

v.

Board of Education of the Borough of
Metuchen, Middlesex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4* have been reviewed and considered.¹

Petitioner, who is a tenured teacher, has been diagnosed with several autoimmune conditions and contends that if he were placed in a school setting to teach, the Metuchen Board of Education (Board) would put him at substantial risk of contracting the COVID-19 virus and developing serious complications, severe illness, and/or death. With the support of a note from his doctor, he requested to use accumulated sick leave to be absent from school.² The Board denied his request, instead placing him on unpaid administrative leave, and petitioner

¹ The Board did not file a reply to petitioner's exceptions.

² Petitioner had previously applied for a remote work accommodation under the Americans with Disabilities Act, which the Board denied, and for childcare leave under the Families First and Coronavirus Response Act, which the Board granted. He applied for sick leave when his childcare leave was exhausted.

appealed. The Administrative Law Judge concluded that petitioner's medical documentation did not establish that he has a personal disability and that he is therefore not entitled to use sick leave.

In his exceptions, petitioner argues that his serious medical conditions constitute a disability during the COVID-19 pandemic. Petitioner points to his doctor's recommendation that petitioner avoid exposure to the COVID-19 virus and refrain from in-person instruction. Petitioner disagrees with the ALJ that allowing sick leave in his circumstances would result in an overly expansive interpretation of the sick leave statute. Finally, petitioner argues that if there were any doubt as to the doctor's report or recommendation, additional fact-finding should have occurred before denying his petition.

Upon review, the Commissioner concurs with the ALJ that petitioner is not entitled to use sick leave. *N.J.S.A. 18A:30-1* defines sick leave as an absence "because of personal disability due to illness or injury."³ This language demonstrates that being diagnosed with an illness or injury is not sufficient; the illness or injury must cause a personal disability. Case law regarding sick leave also supports the conclusion that sick leave is for circumstances in which the employee is unable to work. *See Castellano v. Linden Bd. of Educ.*, 79 N.J. 407, 412 (1979) ("A woman giving birth to a child becomes physically disabled and *unable to attend to her teaching duties* for that reason." (emphasis added)); *Castellano v. Linden Bd. of Educ.*, 158 N.J. Super.350, 362 (App. Div. 1978), *aff'd*, 79 N.J. 407 (1979) ("Sick leave benefits are intended to alleviate economic losses resulting from *inability to work* because of disability." (emphasis added)); *In re Hackensack Bd. of Educ.*, 184 N.J. Super. 311, 319 (App. Div. 1982) (rejecting "the use of

³ Petitioner does not contend that he meets the other possible definitions for sick leave contained in the statute.

accumulated statutorily required sick leave to deprive a school of the services of a teacher *who is simply not sick or disabled.*" (emphasis added)).

Having a medical condition does not necessarily render a teacher unable to work. Petitioner's medical documentation does not indicate that any of his medical conditions prevent him from appearing at work and performing his duties.⁴ Petitioner has the same medical conditions that he had while appearing for work in person before the pandemic, and there is no indication in petitioner's medical documentation that his conditions changed in nature or severity. The only change is the risk presented by COVID-19. While the Commissioner acknowledges the unprecedented circumstances of the pandemic and the concerns it continues to cause for many individuals, there is no legal basis in *N.J.S.A. 18A:30-1* to allow for the use of sick leave by an individual without a personal disability. Moreover, while there is a public interest in allowing a teacher who is actually sick to use paid sick leave, "use of sick leave by a teacher not sick will deprive the school and students of [his] services. Surely there is a strong public interest in a teacher's performing the service for which [he] is paid." *Id.* at 381-19.

Additionally, the Commissioner finds that it was appropriate for the ALJ to decide this matter on the papers. While petitioner now argues that additional fact-finding should have been conducted, he requested during the course of the proceedings that the case be tried on the papers, representing to the ALJ that because the parties had stipulated to the contents of his medical report and certification, live testimony from his physician was no longer necessary.

⁴ The Commissioner notes that these conditions could, in and of themselves, impact an individual's duty to perform the functions of their job and could therefore rise to the level of a personal disability that would entitle the individual to use sick leave. However, petitioner made no such argument here, nor did his medical documentation provide any support for such a contention.

Furthermore, this case does not present a situation where a medical expert, being unfamiliar with legal requirements, simply failed to include a “magic word” in his certification. The medical certification contains no suggestion that petitioner’s conditions prevent him from performing the duties of his job. The certification instead recommends that petitioner not teach in person because of the risk presented by COVID-19. But that risk, as a matter of law, is insufficient to entitle petitioner to use sick leave.

Accordingly, the Initial Decision is adopted as the final decision in this matter. Petitioner’s request to use sick leave under *N.J.S.A.* 18A:30-1 is denied, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁵


ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 14, 2022
Date of Mailing: December 14, 2022

⁵ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 00254-21

AGENCY NO. 246-12/20

ROBERT STRAUSS,

Petitioner,

v.

**BOROUGH OF METUCHEN BOARD
OF EDUCATION, MIDDLESEX COUNTY,**

Respondent.

Richard A. Friedman, Esq., for petitioner (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, PC, attorneys)

Ashley E. Malandre, Esq., for respondent (Methfessel & Werbel, PC, attorneys)

Record Closed: August 10, 2022

Decided: September 26, 2022

BEFORE **KIM C. BELIN, ALJ:**

STATEMENT OF THE CASE

Petitioner, Robert Strauss, challenges respondent Borough of Metuchen Board of Education's (respondent or Board) decision denying the use of his accumulated unused sick leave because his purported high-risk status for the COVID-19 virus does not

constitute a “personal disability” under the relevant sick leave statute (N.J.S.A. 18A:30-1).

PROCEDURAL HISTORY

On December 8, 2020, petitioner filed a Petition of Appeal challenging respondent’s determination that petitioner was not entitled to sick leave with pay because petitioner had underlying medical conditions which purportedly made him high risk of contracting the COVID-19 virus and of developing serious complications, severe illness, and/or death. The Department of Education (DOE) transmitted this matter as a contested case to the Office of Administrative Law (OAL) where it was filed on January 5, 2021. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On December 28, 2020, respondent filed a motion to dismiss in lieu of an answer. N.J.A.C. 6A:3-1.5(g). On June 25, 2021, the undersigned denied the motion. On July 2, 2021, the Board requested an interlocutory appeal with the Commissioner of Education (Commissioner) which was denied on July 16, 2021. On September 9, 2021, the petitioner and respondent filed motions for summary decision. The respondent submitted a letter brief in opposition to the petitioner’s motion for summary decision on September 28, 2021, and a reply letter brief on October 11, 2021. Petitioner submitted his letter brief in opposition to the respondent’s motion for summary decision on September 29, 2021, and reply letter brief on October 11, 2021. On November 26, 2021, the undersigned denied both motions. A hearing was scheduled for May 25, 2022, however, the parties requested and were granted an adjournment. In a letter dated May 31, 2022, petitioner, with the consent of the respondent, requested that the case be tried on the papers and requested a briefing schedule.

In accordance with the briefing schedule, the petitioner filed his brief on July 11, 2022. The respondent elected to rely upon the briefs submitted in support of the respondent’s motion for summary decision. The record closed on August 10, 2022.

FACTUAL DISCUSSION AND FINDINGS

The parties stipulated to the following facts and I, therefore **FIND**:

1. Petitioner, Robert Strauss, is a tenured teacher employed by the Metuchen School District. (See, Petitioner of Appeal, Exh. A., ¶1.)
2. The respondent serves students in grade pre-kindergarten through high school.
3. For the 2020-2021 school year, the respondent operated with in-person programming. Specifically, all teachers were in-school since September 16, 2020. (See, Certification of Dr. Vincent Caputo, Exh. B, ¶5.)
4. Petitioner was previously diagnosed with and is treated for the autoimmune conditions of IgA Auto-immune deficiency, celiac disease, and hypothyroidism. (Exh. A, ¶2.)
5. As a result of these medical conditions, petitioner contends that he is at substantial risk of contracting the COVID-19 virus and of developing serious complications, severe illness, and/or death. (Exh. A, ¶3.)
6. Petitioner further claims that if he were placed in a school setting, he would be at an increased and significant risk of contracting and experiencing serious complications, severe illness, and/or death. This is the case even if strict six-foot social distancing, reduced class sizes, and mask wearing could be monitored and enforced. (Exh. A, ¶4.)
7. On or around November 6, 2020, petitioner received a letter from Shalini Sirisena, MS, PA-C and William Rossy, MD stating, in part, that his “severe underlying conditions, as well as the fact that he has multiple disease processes and not merely one, will result in a great likelihood of having a severe course of COVID-19 and significant life-threatening complication, if he were to

be exposed to this complex virus.” (See, Letter from Shalini Sirisena, MS, PA-C and William Rossy, MD., Exh. C.)

8. Accordingly, his treating physicians stated: “Due to these reasons, it is essential that he be granted a leave of absence/sick leave to avoid a significant and severe risk to his health.” (Id.)
9. Subsequently, petitioner applied for a remote work accommodation under the Americans with Disabilities Act, (ADA) 42 U.S.C. §12101 et seq., which was denied after a meeting was held between him and the respondent. (Exh. A, ¶5.)
10. Thereafter, petitioner applied for childcare leave under the Families First and Coronavirus Response Act (FFCRA), 116 P.L. 127, 2020 Enacted H.R. 6201, 116 Enacted H.R. 6201, 134 Stat. 178, which was granted. (Exh. A, ¶6.)
11. Upon exhaustion of the childcare leave, petitioner requested leave with use of his accrued sick days, which was denied. (Id.)
12. Board policy 3212 provides, in pertinent part, the following regarding sick leave:

In accordance with N.J.S.A. 18A:30-1, sick leave is defined to mean the absence from work because of a personal disability due to injury or illness or because the staff member has been excluded from school by the school medical authorities on account of contagious disease or of being quarantined for such a disease in the staff member's immediate household. (Exh. D.)
13. As of December 2, 2020, petitioner was placed on an unpaid leave of absence. (Exh. A, ¶8.)
14. On December 8, 2020, petitioner filed a Petition of Appeal against the Board.

LEGAL ANALYSIS AND CONCLUSIONS

In accordance with N.J.S.A. 18A:30-2, petitioner is entitled to a minimum of ten paid sick days annually. The statute at the heart of this controversy, N.J.S.A. 18A:30-1 provides:

Sick leave is hereby defined to mean the absence from his or her post of duty, of any person because of personal disability due to illness or injury, or because he or she has been excluded from school by the school district's medical authorities on account of a contagious disease or of being quarantined for such a disease in his or her immediate household.

The key question here is whether petitioner's elevated risk of contracting the COVID-19 virus renders him personally disabled under this statute. The petitioner maintains that he suffers from a personal disability due to illness because of his high-risk status and susceptibility to severe illness and/or death if exposed to COVID-19, and thus he is entitled to use his accrued sick leave from December 2, 2020, through June 15, 2021. The petitioner does not assert entitlement to sick leave because he was excluded from school by the school district's medical authorities on account of a contagious disease or because he was quarantined. Accordingly, those factors are not at issue and will be not included in this legal analysis.

To establish personal disability, the petitioner relies upon his doctor's notes and asserts that they should be given deference. The note from Shalini Sirisena, MS, PA-C, dated November 6, 2020, explains the petitioner's medical conditions, the dates of petitioner's last office visits and recommends that the petitioner is granted sick leave or other leave of absence "to avoid significant and severe risk to his health." This note does not say that the petitioner's medical conditions render the petitioner disabled and unable to work. The note speaks to an increased *risk of illness* not to the existence of a present disability. (Petitioner's Exh. C.) In accordance with this note, the petitioner was granted a leave of absence under the FFCRA.

In a certification, dated August 31, 2021, Dr. Rossy similarly states that the petitioner suffers from three illnesses and is immunocompromised and “likely to get severely ill from COVID-19.” (Petitioner’s Exh. E.) Dr. Rossy recommends that the petitioner “refrain from performing in-person instruction at the start of the 2020-2021 school year. Exposure to others in the classroom setting placed [the petitioner] at an increased and substantial risk of suffering severe illness and/or death from COVID-19.” Id. Dr. Rossy also states that fear of contracting COVID-19 is not why the petitioner was unable to report to work but that “[h]e faced a certain risk of contracting COVID-19 and having significant health repercussions.” Id. Dr. Rossy’s focus is on the *risk* of contracting COVID-19 and its potential impact.

While Dr. Rossy’s certification provides greater detail into the petitioner’s IgA autoimmune deficiency, Dr. Rossy does not state that the petitioner is unable to work because of his existing illnesses. Rather, Dr. Rossy’s certification says that the petitioner has a weakened immune system, and therefore is susceptible to getting the COVID-19 virus if exposed and may experience life-threatening conditions. He also recommends a sick leave which was granted as stated above. Dr. Rossy’s certification was signed eight months after the note from Shalini Sirisena, and yet, Dr. Rossy is silent on whether the petitioner is currently disabled. Accordingly, I **CONCLUDE** that these medical documents do not establish that the petitioner has a personal disability.

Petitioner relies upon Laning v. Bd. of Ed. of Twp. of Deerfield, 2014, N.J. AGEN LEXIS 819, for the claim that his doctor’s certification entitles him to a presumption of disability. Laning addressed whether a school employee was legitimately disabled justifying her request for extended sick leave before she retired. The board of education requested verification of the specific nature of her disability. The physician’s note did not specify the nature of Laning’s disability but merely stated that she would be out of work until further notice. Id. at *3. The Administrative Law Judge denied the cross-motions for summary decision and cited to the decision in Hynes v. Board of Education, 190 N.J. Super. 36 (App. Div. 1983) to address the verification of sick time issue. In Hynes, the petitioner was a teacher who applied for sick leave for four weeks before and after the birth of her child. The board of education denied her request on the basis that she failed to provide sufficient evidence of her disability. The State Board of Education (State

Board) determined that the doctor's certification establishing the expected due date and actual birth date created a presumptive period of disability. The State Board stated that the statute did not specify what the physician's certificate had to contain. The petitioner herein highlights this sentence to support his presumption of disability claim. The statute upon which the State Board relied is N.J.S.A. 18A:30-4 which provides:

In case of sick leave claimed, a board of education may require a physician's certificate to be filed with the secretary of the board of education in order to obtain sick leave.

However, the physician's certification in Hynes (citation omitted) had specific information about the expected and actual birth date of the child. Indeed, it was undisputed that the petitioner was pregnant. In Laning, the petitioner had an illness, but the specific nature of the illness was not disclosed to the employer. Here, there is no expectant due date, end date, or any identified current condition given by either Dr. Rossy or Shalini Sirisena to create a presumptive period of disability. There is only the *risk* of an illness. Thus, I **CONCLUDE** the Hynes and Laning cases are inapposite to the present controversy.

N.J.S.A. 18A:30-1 and 18A:30-4 when read together logically lead to a conclusion that to qualify for sick leave under N.J.S.A. 18A:30-1, the employee must be absent due to a personal disability which can be established by a physician's certification although the certification need not contain any special language. In the case at hand, there is no proof nor does the petitioner contend that he is unable to work because of his existing medical conditions. He contends that he *may* be unable to work *if* he contracts the COVID-19 virus. Moreover, Dr. Rossy's certification, and the November 6, 2020, note are silent on whether the petitioner currently has a disability that prevents him from working. There is no language to address this issue. The medical note and certification only speak of the risk of illness.

Petitioner also relies upon Ellen M. Brockmann v. Totowa Bd. of Ed., 1995 N.J. AGEN LEXIS 1317, 95 N.J.A.R.2d (EDU) 502, July 18, 1995, as support for granting sick leave for his circumstances. Ms. Brockmann was permitted to use her accumulated sick leave because she had a pre-existing medical condition and suffered a medical episode in school which triggered a series of severe complications preventing her from working.

Her physician certified that she would be disabled through June 1995. Id. at *4. These facts are at odds with the present controversy. The petitioner herein has not suffered a medical episode at school that has rendered him unable to work and his physician has not stated that the petitioner is disabled. While the undersigned is not insensitive to the petitioner's desire to use his accumulated sick days to avoid contracting a potentially fatal disease, N.J.S.A. 18A:30-1 does not support the use of this leave for a disability that does not yet exist.

The COVID-19 virus is not the only potentially fatal contagious disease facing the immunocompromised population. The Center for Disease Control reports, for example, that an estimated 36,000 people die annually from influenza.¹ If the petitioner's logic is followed to its natural conclusion, any employee with a compromised autoimmune system would be entitled to paid sick leave by submitting a physician's certification that says the employee may potentially become gravely ill by exposure to a contagious disease, including the flu. This would include people suffering from AIDs or HIV, leukemia, or taking medication such as chemotherapy or radiation or medication that suppresses the immune system. Such an expansive interpretation of N.J.S.A. 18A:30-1 would open the floodgate of claims for paid sick leave due to potential disability because of exposure to any contagious disease. A risk of an illness is not the equivalent of having an illness.

N.J.S.A. 18A:30-7 permits a board of education to grant a leave of absence or sick leave "over and above the minimum sick leave" at its discretion. However, the respondent has chosen not to do so. Accordingly, for the reasons outlined above, I **CONCLUDE** the petitioner is not rendered personally disabled and thus is not entitled to sick leave under N.J.S.A. 18A:30-1.

ORDER

Based upon the foregoing, I hereby **ORDER** that the petitioner's petition seeking sick leave under N.J.S.A. 18A:30-1 is **DENIED**.

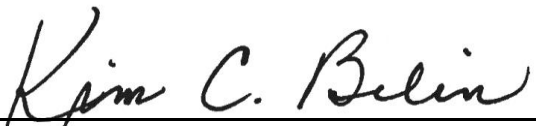
¹ <https://usafacts.org/articles/how-many-people-die-flu/>.

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, PO 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.

September 26, 2022
DATE


KIM C. BELIN, ALJ

KCB/am

APPENDIX

WITNESSES

For petitioners

None

For respondent

None

EXHIBITS

For petitioner

- Letter Brief with Joint Stipulation of Facts and exhibits A through E

For respondent

- Motion for Summary Decision with certification and exhibits, dated September 9, 2021
- Response Letter Brief in opposition to the respondent's Motion for Summary Decision, dated September 28, 2021
- Reply Letter Brief in further support of the respondent's Motion for Summary Decision, dated October 11, 2021