

209-05 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu08568-02_1.html)

IN THE MATTER OF THE TENURE :
HEARING OF JEANNE COOK, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP : DECISION
OF OLD BRIDGE, MIDDLESEX :
COUNTY. :

SYNOPSIS

On November 15, 2002, the Board certified tenure charges of excessive absenteeism, tardiness, insubordination, and unbecoming conduct against respondent special education teacher. Respondent denied the charges and alleged the Board failed to provide her with a reasonable accommodation for a disability as required by the New Jersey Law Against Discrimination (LAD), *N.J.S.A. 10:5-1 et seq.* Respondent had filed a related LAD claim in Superior Court prior to the Board's certification of tenure charges in the instant case.

Subsequent to the transmittal of this matter to the OAL, a request to stay the case for the outcome of the civil suit brought by respondent against the Board was denied; a ruling was issued granting summary decision to respondent for back pay and pay for the duration of this action; and the Board's motion for summary decision on the four tenure charges was denied as to the issues of insubordination, tardiness and conduct unbecoming. The ALJ, however, found the matter to be ripe for disposition by summary decision on the issue of excessive absenteeism, and concluded that the conduct of the respondent amounted to chronic and excessive absenteeism, resulting in an adverse effect on the school children of the District. The ALJ granted the Board's motion for summary decision that the respondent was chronically and excessively absent, and ordered her removed from her position as a teacher in Old Bridge School District. Subsequently, the order of the Superior Court, based on the jury verdict in the related LAD matter, directed respondent's reinstatement; ordered the parties to engage in the interactive process to provide respondent with a reasonable accommodation for her disability; dismissed the tenure charges; and barred the aforementioned findings of the ALJ based on the principles of *res judicata* and *collateral estoppel*.

The Commissioner considered this matter in light of the Superior Court's Decision and Orders, and initially pointed out that it is well established by case law that the dismissal of tenure charges falls within the exclusive jurisdiction of the Commissioner. Accordingly, upon exhaustive review of the record, the Initial Decision, the parties' exceptions and additional submissions, and the Superior Court's determinations in the related LAD matter, the Commissioner found that there is no basis on which to conclude that respondent is guilty of chronic and excessive absenteeism or that tenure proceedings on the other charges in this matter may continue in light of the court's determination that the Board failed to accommodate respondent's handicap and that the tenure charges herein were filed in retaliation for the filing of respondent's LAD claim in Superior Court. The Commissioner therefore denied the Board's motion for summary decision and dismissed the tenure charges.

<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>

June 9, 2005

OAL DKT. NO. EDU 8568-02
AGENCY DKT. NO. 374-11/02

IN THE MATTER OF THE TENURE :
HEARING OF JEANNE COOK, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP: DECISION
OF OLD BRIDGE, MIDDLESEX :
COUNTY. :

Respondent's exceptions and the Old Bridge Township Board of Education's (Board) reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4. In her exceptions, respondent reported that a related New Jersey Law Against Discrimination (LAD) claim in Superior Court had been decided in her favor by a jury on or about December 20, 2004 and that she had filed a motion seeking an order requiring the Board to return her to the work place and to provide a reasonable accommodation for her handicap. (Respondent's Exceptions at 3)

Subsequently, by letter of February 24, 2005, respondent forwarded the Decision and Order of Judge Edward J. Ryan of the Superior Court, Law Division, Civil Part, dated February 18, 2005, wherein, based upon the jury verdict, the Board was found to be in violation of the LAD because it had failed to provide respondent with a reasonable accommodation for her handicap and the tenure charges filed by the Board herein were found to be retaliatory in nature. As a result, Judge Ryan ordered, *inter alia*, that: 1) respondent was to be reinstated with salary and step increases corresponding to those she would have received absent the Board's LAD violations; 2) the parties were to engage in a full interactive process in order to provide

respondent a reasonable accommodation upon her reinstatement; and 3) the tenure charges were to be dismissed.

By letter of March 1, 2005, the Director of the Bureau of Controversies requested that the parties submit letter briefs or memoranda of law addressing what effect, if any, the February 18 Superior Court decision had on the unadjudicated tenure charges against respondent. Both the Board's Letter Brief and respondent's Memorandum of Law were filed on March 14, 2005 and respondent filed a reply brief on March 21, 2005. In the interim, under cover letter, dated March 15, 2005, respondent submitted Judge Ryan's March 11, 2005 Order for Reinstatement and Additional Equitable Relief, in which he directed respondent's reinstatement, ordered the parties to engage in the interactive process to provide respondent with a reasonable accommodation for her disability, dismissed the tenure charges and concluded that the Administrative Law Judge's decision was barred by the principles of *res judicata* and *collateral estoppel*.

In considering this matter in light of the Superior Court's Decision and Orders, the Commissioner initially points out that the dismissal of tenure charges falls within the exclusive jurisdiction of the Commissioner. As set forth by the State Board in *In re Cardonick*, decided by the Commissioner April 7, 1982, *aff'd* State Board April 6, 1983, 1990 *S.L.D.* 842, 849:

What constitutes grounds for a tenure dismissal is a question of fact and within the exclusive jurisdiction of the Commissioner of Education, who has the duty to conduct the hearing and render a decision. *In the Matter of the Tenure Hearing of David Fulcomer*, 93 *N.J. Super.* 404, 412 (App. Div. 1967).

The Commissioner's exclusive authority to decide these cases necessarily entails the determination of any and all matters pertinent thereto in order to make a complete disposition of the case.

Accordingly, the Commission has conducted an exhaustive review of the record, the Initial Decision, the parties' exceptions and additional submissions and the court's determinations in the related LAD matter. Upon such review, the Commissioner finds that there is no basis on which he may conclude that respondent is guilty of chronic and excessive absenteeism or that tenure proceedings on the other charges in this matter may continue in light of the court's determination that the Board failed to accommodate respondent's handicap and that the tenure charges herein were filed in retaliation for the filing of respondent's LAD claim in Superior Court.

Given this conclusion, the Commissioner has determined to deny the Board's motion for summary decision and dismiss the tenure charges in this matter.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 9, 2005

Date of Mailing: June 10, 2005

* This decision, as the Commissioner's final determination, 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.*