

#357-06

IN THE MATTER OF THE TENURE :
HEARING OF DONNA MOSLEY, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : DECISION
CITY OF TRENTON, MERCER COUNTY. :

SYNOPSIS

The Board certified tenure charges against Donna Mosley, a tenured senior secretary in the Trenton School District, alleging conduct unbecoming an employee in violation of a prior “Last Chance” Settlement Agreement approved by the Commissioner in January 2006. Respondent was directed via both certified and regular mail to file an Answer to the tenure charges against her, but failed to do so. Because no reply was received in response to the Board’s charges, each count of the charges against respondent is deemed to be admitted. *N.J.A.C. 6A:5-3(c)*.

The Commissioner reviewed the tenure charges certified against the respondent, and the statement of evidence in support of those charges. Deeming such charges to be admitted, and noting that respondent has chosen not to deny allegations against her, the Commissioner finds that the Board has demonstrated that respondent is guilty of unbecoming conduct, warranting dismissal from her tenured position. Summary judgment is granted to the District, and Donna Mosley is dismissed from her tenured secretarial position as of the date of this order.

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.

October 17, 2006

AGENCY DKT NO. 295-8/06

IN THE MATTER OF THE TENURE :
HEARING OF DONNA MOSLEY, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : DECISION
CITY OF TRENTON, MERCER COUNTY. :

For the Board, Thomas W. Sumners, Jr., Esq. (Law Offices Sumners George)

Donna Mosley, *Pro Se*

This matter was opened before the Commissioner of Education on August 31, 2006, through the certification of tenure charges against Donna Mosley, a senior secretary with the Board of Education of the City of Trenton, alleging conduct unbecoming an employee in violation of a prior "Last Chance" Settlement Agreement approved by the Commissioner of Education.

By notice dated August 31, 2006, the Commissioner directed respondent, via both certified and regular mail, the certified copy having been returned as unclaimed, to file an Answer to the tenure charges against her. The communication from the Bureau of Controversies and Disputes, sent regular mail and presumed received, clearly provided respondent notice that, pursuant to *N.J.A.C.* 6A:3-5.3 and 6A:3-5.4, an individual against whom tenure charges are certified *shall have 15 days from the date such charges are filed with the Commissioner* to file a written response to the charges, and that failure to answer within the prescribed period, where no extension has been applied for and granted, will result in the charges being deemed admitted by the charged employee. Because no reply has been received from respondent, or any attorney on her behalf, in

response to the District's charges, each count of the charges against respondent is deemed to be admitted. *N.J.A.C. 6A:5-3(c)*.

The Commissioner has reviewed the tenure charges certified against respondent by the Board and the statement of evidence in support of those charges, specifically:

1. During the 2005-2006 school year, Petitioner and Respondent entered into a settlement agreement ("Agreement") regarding the action captioned "**In the Matter of the Tenure Hearing of Donna Mosley, School District of the City of Trenton, Mercer County,**" OAL Docket No. EDU 6093-04; Agency Docket No. 228-6/04, which was approved by the Commissioner of Education on January 11, 2006.
2. The Tenure Charges filed by the Board in the aforementioned matter were withdrawn by the Board pursuant to the Agreement between Petitioner and Respondent.
3. The Agreement provided that Respondent agree to comply with a Health Improvement Program ("HIP"). The Respondent also agreed that to retain her position she must be able to perform her duties, "including but not limited to maintaining sobriety and having a satisfactory record of attendance." The Board agreed to reinstate Respondent upon the condition that she successfully comply with a [HIP].
4. Pursuant to the Agreement, Respondent agreed that she will acquiesce to random blood testing upon evidence or suspicion of any return to substance abuse, and acknowledged that her employment will be terminated if the result is positive or if she failed to take a test.
5. Following her return to work on November 7, 2005, Respondent violated the Agreement by not maintaining her sobriety and failing to have a satisfactory record of attendance.
6. Since Respondent's return to work, she has missed a total of 105 days, in direct violation of maintaining satisfactory attendance as per the Agreement.
7. Respondent was tardy for work fourteen (14) times from November 7, 2005 through January 13, 2006 in direct violation of her maintaining satisfactory attendance as per the Agreement.

8. On January 20, 2006, Respondent failed to notify the school and or the attendance office of her absence. This is considered not only a violation of the Trenton Board of Education Policy 4251, but also a direct violation of the Commissioner of Education approved Settlement Agreement's "satisfactory record of attendance" provision.

9. Respondent has not returned to work since February 15, 2006, in direct violation of maintaining satisfactory attendance as per the Agreement.

10. On June 8, 2006, (Carolyn Gibson, Assistant Superintendent Human Resources, Trenton Board of Education) held a meeting with Respondent and her union representative, ***, discussing Respondent's job abandonment and to schedule a test for possible substance abuse. Respondent then indicated that the test was not necessary and further admitted, with her union representative present, that she was using drugs again, in direct violation of the Commissioner of Education approved Settlement Agreement's "maintaining sobriety" provision. (Statement of Tenure Charges certified to the Commissioner August 31, 2006, Carolyn Gibson, Assistant Superintendent Human Resources, Trenton Board of Education)

Deeming the within charges to be admitted, and noting that respondent has chosen not to deny the allegations against her, the Commissioner finds that the Board has demonstrated that respondent is guilty of unbecoming conduct, warranting dismissal from her tenured position.

IT IS ORDERED THIS 17th day of October 2006 that summary decision shall be granted to the district, and Donna Mosley shall be dismissed from her tenured position as a senior secretary in the Board's employ as of the date of this order.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 17, 2006
Date of Mailing: October 17, 2006

*This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*