

VICTORIA RAMIREZ, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF JERSEY CITY,
HUDSON COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – formerly employed by the district as a non-tenured World Languages teacher – appealed the Board’s decision not to renew her employment contract. Petitioner claimed, *inter alia*, that the Board’s nonrenewal determination was made in retaliation for a workers’ compensation claim against the district, relating to an injury sustained in the course of her work. Respondent denied petitioner’s allegations, asserting the right of a school district to release non-tenured employees at will, barring a violation of the law or the constitutional rights of the employee.

The ALJ found that: the evidence as a whole did not support petitioner’s contention that she was discriminated against as a result of her injury; the testimony of respondent’s assistant principal regarding the district’s attempts to make feasible accommodations for the petitioner following her injury was credible, while the testimony of petitioner lacked credibility; the district acted properly with respect to petitioner’s request for an accommodation for her injuries; and the negative evaluations of petitioner’s work performance were not issued in retaliation for the workers’ compensation claim. The ALJ concluded that petitioner had not met the burden of establishing that respondent’s elimination of her non-tenured position was arbitrary, capricious, or unreasonable, and affirmed the action of the district in not renewing her contract.

Upon a thorough and independent review of the record, the Deputy Commissioner concurred with the ALJ that the respondent Board properly exercised its right to non-renew petitioner’s employment, and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

<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>

July 2, 2010

OAL DKT. NO. EDU 9952-08
AGENCY DKT. NO. 238-8/08

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The record of this matter – including the transcripts from seven days of hearings in the Office of Administrative Law (OAL) – and the Initial Decision of the OAL have been reviewed by the Deputy Commissioner to whom this case has been delegated pursuant to *N.J.S.A. 18A:4-33*.¹ The Deputy Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner failed to show that respondent’s decision not to renew her employment was improper.

As the ALJ explained, “a non-tenured teacher has no viable appeal from being released from a teaching position unless the release constitutes a violation of law or constitutional provision. The issue has been settled since the decision in *Dore v. Bedminster Twp. Bd. of Ed.*, 185 *N.J. Super.* (App. Div. 1982).” The laws which petitioner relied upon to

¹ No exceptions were filed by either party.

challenge her non-renewal were those that bar discrimination based upon disability.² More specifically, petitioner alleged that in not renewing her employment, respondent was motivated by 1) the workers' compensation claim that she filed in consequence of a March 22, 2007 injury to her knee, 2) an injury-related absence from September 2007 to January 2008, and 3) her January 2008 request for accommodations upon her return to work.³

After considering the testimony presented by the nine witnesses during the OAL hearing, and the numerous exhibits, the ALJ found that the evidence as a whole did not support petitioner's contention that she was discriminated against as a result of her injury. First, the ALJ found that Assistant Principal Robert Brower, whose responsibility it was in January 2008 to identify feasible accommodations for petitioner, was a credible witness. She accepted his testimony that 1) he offered petitioner the opportunity to work in a building with an elevator, 2) upon her refusal he changed petitioner's schedule – as reflected on page 2 of P-11 – to significantly reduce the amount of stair-climbing that was required of her, and 3) he explained to her that she could not be set up in the school library – with her classes brought to her – because the library was needed for other purposes.

Second, the ALJ did not regard petitioner's testimony as credible. She found no basis in the record to accept petitioner's contention that her 2007-2008 negative evaluations from Supervisor Mercedita Dacanay, Principal Jeanette Ayala and Assistant Principal Brower were "lies and fabrications." Rather, the ALJ found that several of petitioner's evaluations prior to 2007 had contained notations that various teaching categories needed improvement, thus supporting the possibility that petitioner's performance could have been ultimately assessed as

² It would appear that petitioner also filed a complaint with the New Jersey Division on Civil Rights on or about October 10, 2008, but the case was closed prior to the hearing in this matter.

³ Petitioner also implied in her petition and in her OAL testimony that the negative evaluations that she received during 2007 and 2008 were also driven by her workers compensation claim, medical leave and requests for accommodations flowing from the March 2007 injury.

unsatisfactory. The Deputy Commissioner's perusal of the exhibits revealed that many of the evaluations themselves contain specific descriptions of incidents that support negative assessments.

Further, the ALJ recognized that the record revealed that the first of petitioner's negative evaluations in the 2007-2008 school year occurred before petitioner's injury on March 22, 2007. The Deputy Commissioner notes, in particular, that Supervisor Dacanay's February 23, 2007 evaluation assigned unsatisfactory grades in several categories. When asked why that evaluation of petitioner was much worse than the prior two, Dacanay testified that she saw – and recorded on the evaluation – performance that had regressed. 5T139⁴ Her detailed evaluation notes described a lack of classroom management, difficulty in communicating lessons clearly and providing appropriate feedback, and an absence of proper assessments and recordings of student progress. Dacanay's notes depict petitioner's classroom as unruly and out of control. (Petitioner's Exhibit 1-K)

Nonetheless – as the ALJ observed – despite petitioner's admission that Dacanay's negative evaluation preceded her injury, leave of absence and request for accommodations, she did not abandon her claim that the negative evaluations by respondent's representatives and the non-renewal were driven by her knee injury. This rigidity was a recurring theme in petitioner's testimony.

The Deputy Commissioner agrees with the ALJ that Petitioner's other witnesses were not useful. Frank Conti and Marcia Hernandez offered no helpful material facts and, as the ALJ found, Noritza Andino's "testimony was riddled with comments reflecting a personal bias against the principal of School No. 23" – where petitioner taught. By way of example, Andino attributed negative connotations to facially neutral facts and statements by that principal.

⁴ 5T designates the OAL hearing transcript for November 9, 2009.

In summary, petitioner failed to provide evidence sufficient to support her claim that her non-renewal had an improper basis. Nor has the Deputy Commissioner found anything in the record that would suggest that the ALJ's credibility determinations were arbitrary, capricious, or unreasonable based on the available facts. Absent such a finding, the Deputy Commissioner may not disturb those determinations. *D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School district*, 366 N.J. Super. 269, 273 (App. Div. 2004) and *N.J.S.A. 52:14B-10c*.

In light of the foregoing, the Deputy Commissioner adopts the Initial Decision of the OAL and dismisses the petition.

IT IS SO ORDERED.⁵

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: July 2, 2010

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⁵ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.