

#120-12 (OAL Decision: Not yet available online)

MINDY MARANON, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF FREEHOLD, :
 MONMOUTH COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – formerly a non-tenured employee in respondent’s school district – challenged the Board’s decision to terminate her employment. The Board contends that the petition was not timely filed pursuant to *N.J.A.C.* 6A:1.3(i). Petitioner initially filed her complaint in New Jersey Superior Court on January 27, 2011. The Superior Court judge subsequently determined that the matter was properly within the primary jurisdiction of the Commissioner of Education, and – on August 3, 2011 – ordered that the parties “ensure that an order of transfer, pleadings, and other papers are forwarded to the Commissioner in accordance with §6A:3-1-3(f) of the New Jersey Administrative Code.” The within petition was not filed with the Commissioner until December 14, 2011. The Board filed a motion to dismiss the petition as untimely.

The ALJ found, *inter alia*, that: petitioner’s original complaint in Superior Court raised a Title 18 claim – ie: that petitioner’s “wrongful discharge” was arbitrary and capricious – and thereby put the Board on notice regarding petitioner’s challenge within the 90-day window for filing a petition pursuant to *N.J.A.C.* 6A:1.3(i); however, the judge’s ruling in Superior Court determined that the matter was properly within the Commissioner’s primary jurisdiction, and directed the parties to assure that the order of transfer was forwarded to the Commissioner; it was not until 133 days after the judge’s order that the within petition was filed; although Court Rule R. 1:13-4 – which provides that an action transferred to the proper court or administrative agency for jurisdictional reasons will then proceed as if it had been originally commenced in that court or agency – could have saved petitioner from her failure to file properly with the agency, the unique facts of this matter militate against such an outcome since there is no evidence that petitioner’s ability to file promptly was at all impeded by any reason that might justify the delay. The ALJ concluded that petitioner’s appeal was not timely filed with the Commissioner within 90 days of the date when her Superior Court complaint was dismissed on jurisdictional grounds. Accordingly, the ALJ granted the Board’s motion to dismiss.

Upon careful and independent review, the Commissioner concurred with the ALJ that the petition must be dismissed as untimely. Accordingly, the initial decision of the OAL was adopted as the final decision in this matter, and 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>

March 29, 2012

OAL DKT. NO. EDU 790-12
AGENCY DKT. NO. 366-12/11

MINDY MARANON, :
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 PETITIONER, :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions – received on March 12, 2012 in response to an Initial Decision mailed to the parties on February 23, 2012 – were untimely pursuant to *N.J.A.C. 1:1-18.4* and, therefore, were not considered here.

Upon comprehensive consideration, the Commissioner concurs with the Administrative Law Judge that the Board's motion to dismiss is appropriately granted, as the instant petition of appeal before the Commissioner – for the reasons comprehensively presented in the Initial Decision – is clearly untimely.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 29, 2012

Date of Mailing: March 30, 2012

* 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)*.