

VALERIE MATTES, :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF WASHINGTON,
 GLOUCESTER COUNTY, :
 RESPONDENT. :

SYNOPSIS

Petitioner – formerly employed by the respondent Board from 1996 to 2015 – filed a petition of appeal on February 1, 2017, claiming entitlement to payment for unused sick time under the terms of her employment contract with the Board (petitioner had previously filed a breach of contract action in Superior Court, which was dismissed for lack of jurisdiction in August 2016). Petitioner submitted an application for a deferred retirement with the New Jersey Division of Pensions and Benefits in 2013, with a deferred retirement date of March 1, 2018. Subsequently, petitioner resigned from the Board’s school district in June 2015 and requested that the Board pay her for accrued sick time under her employment contract, which included a provision that states: “[u]pon retirement from the Washington Township School District, 30 days of unused sick days will be reimbursed, at a rate of \$500.00 per day.” The Board filed a motion to dismiss, contending that the appeal was filed beyond the 90-day time limitation set forth in *N.J.A.C. 6A:3-1.3(i)*.

The ALJ found, *inter alia*, that: the petitioner’s appeal was filed approximately 341 days from the date she was notified of the Board’s denial of sick time payout; the date of filing was well beyond 90 days from the date petitioner received notice of the Board’s final action regarding her request for payment for accrued sick leave; relaxation of the 90-day rule is not warranted under the circumstances; the fact that petitioner’s action was transferred from Superior Court to the Commissioner is no defense, as the 90-day period clearly refers to the period after the respondent Board’s initial denial of payment – not the period after the Superior Court dismissed the action; and petitioner may be entitled to collect sick leave payment under the terms of her employment contract upon the date of her deferred retirement. The ALJ concluded that the petition must be dismissed as out of time pursuant to *N.J.A.C. 6A:3-1.3(i)*.

Upon review, the Commissioner concurred with the ALJ’s determination that the petition was time barred under *N.J.A.C. 6A:3-1.3(i)*, as it was clearly filed significantly beyond 90 days after the Board’s July 17, 2015 decision denying the sick leave payout. In so finding, the Commissioner noted that the petition was actually filed 565 days after the Board’s letter informing petitioner that her request for sick leave payment was denied, rather than the 341 days stated in the Initial Decision. Additionally, the Commissioner found that any disputes arising between the parties that might be triggered by the petitioner’s deferred retirement date are not yet ripe for review. Accordingly, the Initial Decision was adopted as modified herein, and the petition 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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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Washington Township Board of Education (Board).¹

This matter involves a claim by the petitioner, Valerie Mattes, that she is entitled to payment for unused sick time under the terms of her employment contract with the Board. In 2013, the petitioner submitted an application with the New Jersey Division of Pensions and Benefits for a deferred retirement, and currently has a deferred retirement date of March 1, 2018. The petitioner resigned from the Washington Township School District in June 2015, and requested that the Board pay her for accrued sick time under her employment contract. The employment contract with the Board contains a provision that states, “[u]pon retirement from the Washington Township School District, 30 days of unused sick days will be reimbursed, at a rate of \$500.00 per day.” By letter dated July 17, 2015, the Board denied the petitioner’s request for the payout of her accrued sick time.

¹ On July 14, 2017, the Office of Controversies and Disputes received a copy of the petitioner’s reply exceptions – dated July 7, 2017 – which were addressed to Christopher Myers, Director, Division of Appeals and Regulatory Affairs, and appear to have been sent to the Civil Service Commission. The reply exceptions were not timely filed with the Commissioner of Education, and therefore were not considered.

On March 29, 2016 the petitioner filed a complaint in New Jersey Superior Court challenging the Board's July 17, 2015 decision; the complaint was dismissed by Order dated August 26, 2016 for lack of jurisdiction. After reconsideration was also denied by the Superior Court on November 10, 2016, the plaintiff filed the current petition of appeal on February 1, 2017. The Administrative Law Judge (ALJ) found that the petition of appeal was untimely under *N.J.A.C. 6A:3-1.3(i)* because it was not filed within 90 days from the Board's July 17, 2015 decision. The ALJ also found that relaxation of the 90-day rule is not warranted in this matter.

Upon review, the Commissioner concurs with the ALJ's determination – for the reasons stated in the Initial Decision – that the petition of appeal was time barred under *N.J.A.C. 6A:3-1.3(i)*. The Commissioner likewise concurs that petitioner has failed to set forth any compelling reason to relax the timely filing requirement. As was stated in the Initial Decision, the fact that an action is transferred to the Commissioner from Superior Court is not a defense against the 90-day rule.² Despite the fact that the Commissioner is in accord with the ALJ's finding that the petition of appeal is untimely under *N.J.A.C. 6A:3-1.3(i)*, the Commissioner notes that the petition was filed 565 days after the Board's letter dated July 17, 2015, not 341 days – as is stated in the Initial Decision.³

In its exceptions, the Board does not argue that the petition was erroneously dismissed as untimely, but instead contends that the ALJ improperly found that the petitioner may be entitled to payment for her accrued sick time on March 1, 2018 – the date of her deferred retirement. Significantly, the ALJ did not find that the petitioner is entitled to her accumulated sick time upon her retirement on March 1, 2018, but rather stated that any right to payment for unused sick time cannot be enforced until March 1, 2018. The current petition of appeal

² The petitioner's Superior Court complaint was filed 256 days after the Board's denial of her sick time payout.

³ The Board's submissions to the OAL and the Commissioner also erroneously state that the petition was filed 341 days after the petitioner received notice that the Board denied her request for her sick leave payout.

challenging the Board's decision dated July 17, 2015 was clearly untimely filed under *N.J.A.C. 6A:3-1.3(i)*. Any disputes that may arise between the parties that are triggered by the petitioner's deferred retirement date of March 1, 2018 are not yet ripe for the review.

Accordingly, the Initial Decision is adopted as modified decision in this matter and the petition of appeal is dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: September 12, 2017

Date of Mailing: September 12, 2017

⁴ 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*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 2729-17

AGENCY DKT. NO. 21-2/17

VALERIE J. MATTES,

Petitioner,

v.

TOWNSHIP OF WASHINGTON BOARD

OF EDUCATION, GLOUCESTER COUNTY,

Respondent.

John Branigan, IV, Esq., for petitioner (Oxford Cohen, LLC, attorneys)

Stephen M. Bacigalupo, Esq., for respondent (Schwartz, Simon, Edelstein and Celso, LLC, attorneys)

Record Closed: May 5, 2017

Decided: June 19, 2017

BEFORE **LISA JAMES-BEAVERS, ALJ:**

PROCEDURAL HISTORY

On March 29, 2016, petitioner, Valerie J. Mattes, filed a breach of contract action in New Jersey Superior Court, Special Civil Part against respondent, the Washington Township Board of Education, claiming that she is entitled to payment for unused sick

time under the terms of her employment contract with the district. On July 15, 2016, respondent filed a motion for summary judgment, arguing that petitioner is not entitled to collect the accumulated sick leave and that, in any event, jurisdiction should be deferred to the Commissioner of Education. Petitioner filed a cross-motion for summary judgment on August 5, 2016, arguing that respondent was obligated to pay petitioner under the terms of the contract and that the Superior Court had proper jurisdiction over the matter. On August 26, 2016, the Honorable John H. Pursel dismissed petitioner's complaint without prejudice and ordered that the matter be transferred to the Commissioner of Education. Petitioner filed a motion for reconsideration on September 2, 2016. The motion was denied on November 10, 2016.

On January 20, 2017, petitioner filed a petition of appeal with the Commissioner. On February 21, 2017, respondent filed a motion to dismiss in lieu of answer. The matter was transferred to the Office of Administrative Law (OAL) as a contested case on February 24, 2017. On March 3, 2017, petitioner filed an opposition to respondent's motion to dismiss. I heard oral argument on May 5, 2017 and closed the record.

FACTS

Petitioner was first employed by respondent as a Technology Coordinator/Teacher in Charge from 1996 to 2008. Respondent's Opposition Brief, ¶2. Thereafter, petitioner was employed as the Board's Principal/Director of Special Services from 2008 until her separation from the school district in June 2015. Ibid. In February 2013, petitioner, a member of the TPAF, submitted an application for deferred retirement benefits to the Division of Pensions and Benefits, with a deferred retirement date of March 1, 2018. Id. at ¶3.

Petitioner thereafter entered into an employment contract with respondent for the 2014-2015 school year. Id. at ¶5. The contract included a provision addressing sick leave, which read:

The Principal/Child Study Team Director shall be allowed twelve (12) days sick leave per year for the term of this

Contract. Unused sick leave days shall be cumulative in accordance with the provisions of Title 18A. Upon retirement from the Washington Township School District, 30 days of unused sick time will be reimbursed, at a rate of \$500.00 per day. Reimbursement for sick days shall be consistent with the law in effect at the time this Contract is signed. Such payment shall not exceed \$15,000.00
[Respondent's Exh. A, pp. 2-3.]

By correspondence dated May 26, 2015, petitioner wrote to Superintendent Keith Neuhs, stating, "This letter is my official notification to you that I am retiring from Washington Township School District, effective date to be June 30, 2015." Petitioner's Exh. B. On June 8, 2015, respondent accepted petitioner's resignation. Respondent's Exh. B.

On June 12, 2015, petitioner entered into an administrator's employment contract with the Five Town Community School District in Camden, Maine. Respondent's Opposition Brief, ¶¶8-9.

On July 8, 2015, Superintendent Neuhs informed petitioner via text message that her unused sick time payout would not be released. Respondent's Exh. C. On July 10, 2015, petitioner contacted Superintendent Neuhs and requested that she receive formal written notification of respondent's decision. Ibid.

On July 17, 2015, Superintendent Neuhs responded to petitioner, advising her of the following:

[C]onsider this letter official notification that the Washington Township School District does not feel that you have met the contractual eligibility for retirement and you are not eligible for payment of sick time. It is the position of the district that you have not met the parameters for retirement and that you decided to resign from the district in order to accept an educational position in Maine. Therefore, after careful review and consultation with Board Counsel, the District will not provide you with payment for sick time.
[Respondent's Exh. D.]

LEGAL ANALYSIS

I. Motion to Dismiss Standard.

After an individual files a petition of appeal with the Department of Education, initiating a contested case pursuant to N.J.A.C. 6A:3-1.3, the respondent is required to serve an answer upon the petitioner within twenty days after receipt of the petition. N.J.A.C. 6A:3-1.5(a). In lieu of an answer, the respondent may file a motion to dismiss the petition. N.J.A.C. 6A:3-1.5(g).

Should a motion to dismiss be filed in lieu of an answer, the Commissioner may, prior to the transmittal of the pleadings to the OAL, “dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner’s factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.” N.J.A.C. 6A:3-1.10. “[W]here the Commissioner does not determine to dismiss the matter pursuant to N.J.A.C. 6A:3-1.10, the Commissioner may . . . transmit the matter for hearing before the OAL . . . [, which] shall be conducted in accordance with the rules of the OAL.” N.J.A.C. 6A:3-1.11.

Here, respondent argues that the instant petition of appeal must be dismissed with prejudice because it was filed beyond the 90-day time limitation set forth in N.J.A.C. 6A:3-1.3(i). Respondent’s Brief, p. 4. Additionally, respondent argues that the petition must be dismissed because petitioner is not entitled to collect accumulated sick leave payment under the terms of her contract and State law. Id. at 10. Petitioner argues that she timely filed her petition with the Commissioner, noting that the petition was filed within 90 days after receiving a final order from Superior Court. Petitioner’s Opposition Brief, pp. 3-5. Further, petitioner contends that respondent has breached the terms of her employment contract by withholding payment for unused sick time. Id. at 8.

As set forth in greater detail below, the petition must be dismissed as untimely because petitioner failed to file her petition with the Commissioner until approximately 341 days after being notified of respondent’s denial of sick time payout. Relaxation of

the 90-day rule is not warranted under the circumstances, and the fact that the action was transferred to the Commissioner from Superior Court is no defense.

Additionally, the case must be dismissed because petitioner is not yet entitled to collect sick leave payment under the terms of her contract and State law. Rather, petitioner must wait until the date of her deferred retirement, March 1, 2018, before she can assert her right to this payment.

II. Petitioner violated the 90-day rule.

N.J.A.C. 6A:3-1.3(i) provides that a “petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education” This limitations period stabilizes the relationship between teachers and the administration and gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after 90 days. Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993).

The Commissioner may, in his or her discretion, relax the 90-day limitation period “in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.” N.J.A.C. 6A:3-1.16. However, the 90-day rule has generally been strictly enforced in the absence of a compelling reason, such as where a substantial constitutional issue is presented, where judicial review is sought of an informal administrative determination, or where a matter of significant public interest is involved. Portee v. Newark Bd. of Educ., 94 N.J.A.R.2d (EDU) 381, 384. Typically, a petitioner’s personal hardships during the 90-day period do not justify a waiver of the rule, except perhaps in cases of genuine incapacity. See Unangst v. Bd. of Educ. of Fredon, EDU 9828-98, Initial Decision (March 13, 2003), adopted, Comm’r (May 1, 2003), <<https://njlaw.rutgers.edu/collections/oal/final/edu9828-98.pdf>> (denying relaxation of 90-day rule to teacher in a severely abusive domestic relationship, noting that “[e]motional distress alone, without a showing of circumstances amounting to genuine incapacity, is not enough to toll the time limit for bringing an appeal to the Commissioner”); Bland-Carter v. State-Operated Sch. Dist. of Newark, EDU 1505-00,

Initial Decision (June 15, 2000), adopted, Comm'r (September 14, 2000), <<https://njlaw.rutgers.edu/collections/oal/final/edu1505-00.pdf>> (denying relaxation of 90-day rule where petitioner's father was hospitalized and died during the relevant 90-days, noting that petitioner returned to work during the period and thus must have been able to function).

Further, the fact that an action is transferred to the Commissioner from Superior Court is no defense to the 90-day rule. See *Semprevivo v. Pinelands Reg'l Bd. of Educ.*, EDU 06386-09, Initial Decision (December 8, 2009), <<https://njlaw.rutgers.edu/collections/oal/html/initial/edu06386-09.html>>, adopted, Comm'r (January 15, 2010). In *Semprevivo*, a former student sought damages for tortious misconduct against his high school's athletic director after an incident of alleged verbal abuse. Approximately two years after the incident, the student filed an action in Superior Court, but the school board successfully argued that the matter should be transferred to the Commissioner. The school board then asserted that the petition was barred by the 90-day rule. The student argued that by seeking a transfer, the board had waived its defense of the 90-day time frame. The student also argued that he did not sleep on his rights, as he had filed a Tort Claim Notice within 90 days of the incident.

The ALJ concluded that the petition was untimely, as the petition was not filed within 90 days of the incident and none of the recognized grounds for waiving the jurisdictional bar had been established. While the student had filed a Tort Claim Notice within 90 days, that notice did not serve as a sufficient signal to the board that it might be faced with a more immediate challenge in front of the Commissioner. The ALJ also addressed the student's argument that the board's request of a transfer should be deemed a waiver of the 90-day rule defense, explaining that

. . . while the Commissioner may determine that there exists a legitimate reason to exercise jurisdiction in a case that otherwise would be dismissed as untimely filed, a party cannot create jurisdiction where none exists and thus it is at best doubtful that a party can waive the 90-day rule and thrust upon the Commissioner the responsibility for deciding an untimely case. That the Board saw fit to raise the Commissioner's primary jurisdiction to the Superior Court and thereby seek transfer is not a reason to conclude that it

cannot raise here the untimeliness of the filing. More importantly, here the Superior Court action was not filed until nearly two years after the date when the allegedly improper action by the Board and its employee occurred. [Semprevivo, supra.]

Here, petitioner's action is untimely because she failed to file her petition with the Commissioner until approximately 341 days after being notified of respondent's denial of sick time payout. Petitioner argues that she filed her petition with the Commissioner within 90 days after receiving a final order from Superior Court. Petitioner's Opposition Brief, p. 5. However, N.J.A.C. 6A:3-1.3(i) provides that such an action must be filed within 90 days of "a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing." Thus, the 90 days clearly refers to the period after the respondent board's initial denial of payment, not the period after the Superior Court dismissed the action. To interpret this otherwise would contravene the public policy behind the 90-day rule.

Relaxation of the 90-day rule is inappropriate under the circumstances. Petitioner argues that there is a compelling reason to relax the rule because she was moving from New Jersey to Maine during the relevant period, thus making it difficult to retain counsel. Petitioner's Opposition Brief, p. 7. However, as previously mentioned, the 90-day rule is strictly enforced in the absence of a compelling reason, such as where a substantial constitutional issue is presented, where judicial review is sought of an informal administrative determination, or where a matter of significant public interest is involved. None of those circumstances are present here. Additionally, although relocating to a different state may induce stress, there is no evidence that petitioner suffered from a genuine incapacity during this time.

Further, the fact that the action was transferred to the Commissioner from Superior Court is no defense to the 90-day rule. Like in Semprevivo, petitioner's action was transferred to the Commissioner after the respondent board raised jurisdictional issues in Superior Court. The ALJ in Semprevivo concluded that the board's request for a transfer to the Commissioner did not constitute a waiver of the 90-day rule. In dismissing the action, the ALJ also found it significant that the student did not file in

Superior Court until approximately two years after the incident. Notably, here, petitioner failed to file in Superior Court until approximately 258 days after the denial of payment. Thus, even petitioner's initial Superior Court complaint was filed well beyond the 90-day period. Petitioner's claim must be dismissed as untimely.

III. Petitioner is not currently entitled to collect sick leave payment under the terms of her employment contract and State law; however, she may be entitled to this payment upon the date of her deferred retirement.

Under State law,

[a]ll persons holding any office, position, or employment in all local school districts . . . who are steadily employed by the board of education or who are protected by tenure in their office, position, or employment under the provisions of this or any other law . . . shall be allowed sick leave with full pay for a minimum of 10 school days in any school year.

[N.J.S.A. 18A:30-2.]

"If any such person requires in any school year less than the specified number of days of sick leave with pay allowed, all days of such minimum sick leave not utilized that year shall be accumulative to be used for additional sick leave as needed in subsequent years." N.J.S.A. 18A:30-3. Sick leave accrued by an employee in one district may transfer with her to another New Jersey district. N.J.S.A. 18A:30-3.2.

State law also places limitations on a school board's ability to pay former employees for unused sick leave. Both N.J.S.A. 18A:30-3.5, which applies to certain high-level officers, and N.J.S.A. 18A:30-3.6, which applies to individuals employed after May 21, 2010, restrict payment for accumulated sick leave to \$15,000. Additionally, both statutes provide that "[s]upplemental compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement." N.J.S.A. 18A:30-3.5; N.J.S.A. 18A:30-3.6. Thus, under State law, compensation for unused sick time is typically payable on the date of an individual's retirement from the TPAF or other retirement system.

Petitioner's contract with respondent explicitly references State law, noting "Unused sick leave days shall be accumulated in accordance with the provisions of Title 18A . . . Reimbursement for sick days shall be consistent with the law in effect at the time this Contract is signed." Respondent's Exh. A, p. 2-3. Notably, petitioner does not directly fall under the categories of employees described in either N.J.S.A. 18A:30-3.5 or N.J.S.A. 18A:30-3.6, as she is not a high-level officer, and her employment began before 2010.

However, these statutory provisions indicate that an individual is typically not entitled to be paid for unused sick time until her date of retirement from a State-administered or locally-administered retirement system. Here, it is undisputed that petitioner's deferred retirement date is March 1, 2018. Therefore, any right she has to payment for unused sick time cannot be enforced until then. If petitioner does not receive payment for unused sick leave upon her official retirement date, as recorded by the TPAF, she should be permitted to again file a petition with the Commissioner to enforce the terms of her contract.

Respondent argues that petitioner is not entitled to payment because she did not "actually retire." Respondent's Brief, p. 13. Respondent bases this conclusion on the fact that petitioner is currently working for a school district in Maine. Ibid. However, the plain language of the employment contract indicates that petitioner is entitled to the payment "[u]pon retirement from the Washington Township School District." Respondent's Exh. A. As previously stated, this will officially occur on March 1, 2018. The fact that petitioner has accepted employment in another state is irrelevant to whether she has "retired" from respondent's district or for TPAF purposes. And, unless respondent intends to follow petitioner around the country for the rest of her life, entitlement to payment cannot be based on when petitioner permanently ends her professional career in all geographic locations.

CONCLUSION

The current petition must be dismissed as untimely because petitioner failed to file with the Commissioner until approximately 341 days after being notified of

respondent's denial of sick time payout. Relaxation of the 90-day rule is not warranted under the circumstances, and the fact that the action was transferred to the Commissioner from Superior Court is no defense.

ORDER

Based on the foregoing, I hereby **ORDER** the petitioner **DISMISSED**.

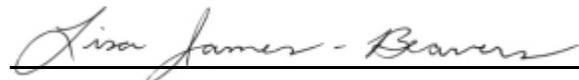
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

June 19, 2017

DATE



LISA JAMES-BEAVERS, ALJ

Date Received at Agency:

Date Mailed to Parties:

cmo