

EDU #4233-95
C # 342-96
SB # 57-96

ANGELA ROTELLA-SUAREZ, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE TOWN : DECISION
OF WEST NEW YORK, HUDSON
COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, August 5, 1996

For the Petitioner-Appellant, Balk, Oxfeld, Mandell & Cohen (Sanford R. Oxfeld, Esq., of Counsel)

For the Respondent-Respondent, Allan C. Roth, Esq.

In April 1995, Angela Rotella-Suarez (hereinafter "petitioner"), a teaching staff member, filed a petition with the Commissioner of Education alleging that the Board of Education of the Town of West New York (hereinafter "Board") had failed to provide her with sick leave benefits under N.J.S.A. 18A:30-2.1 for a medical condition which she claimed was caused by a new heating, ventilation and air conditioning system at the school to which she had been assigned.¹ Petitioner claimed that her symptoms

¹ N.J.S.A. 18A:30-2.1, "Payment of sick leave for service connected disability," provides, in pertinent part:

included breathing difficulties, headaches, nausea, laryngitis, dizziness, difficulty swallowing, sinus pains and a dry rash, and that she was unable to report to work as a result of such condition. Petitioner subsequently filed an amended petition in which she also alleged that her condition constituted a handicap under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and that the Board had failed to provide her with a reasonable accommodation by transferring her to another school.

On September 29, 1995, an Administrative Law Judge ("ALJ") issued an order granting the Board's motion for a medical examination of petitioner. The ALJ directed petitioner to appear for an independent examination by a physician selected by the Board within 30 days of his order. The Board thereafter arranged for petitioner to be examined by Dr. Joan Leonard-Hudgins on October 26, 1995. Petitioner, however, did not appear for that examination, indicating in a letter to her attorney dated October 20 that she had previously been examined by Dr. Leonard-Hudgins as part of her workers' compensation claim and that she had been unwilling to submit to a pulmonary test. Petitioner expressed concern about the safety of such a procedure.

As a result of petitioner's failure to appear for the medical examination, the Board filed a motion for sanctions, seeking dismissal of the petition or, in the alternative, an order suppressing petitioner's claims and excluding evidence of her

A. Whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in N.J.S. 18A:30-2 and 18A:30-3. Salary or wage payments provided in this section shall be made for absence during the waiting period and during the period the employee received or was eligible to receive a temporary disability benefit under chapter 15 of Title 34, Labor and Workmen's Compensation, of the Revised Statutes. Any amount of salary

alleged medical condition. On March 18, 1996, a second ALJ assigned to the case after the first judge recused himself denied the Board's request to dismiss the petition, stating that she was not persuaded that the petitioner had demonstrated a willful, deliberate disregard of discovery orders. However, the ALJ did issue an order directing petitioner to appear for a medical examination with Dr. Leonard-Hudgins or another physician selected by the Board by April 22, 1996. The ALJ indicated that the petition would be dismissed with prejudice if petitioner failed to comply with that order.

Petitioner thereafter submitted an affidavit in which she related that she had appeared at Dr. Leonard-Hudgins' office on April 8 for an examination as scheduled by the Board, but that she had been unwilling to submit to the pulmonary test or to be exposed to the "unnecessary radiation" of a chest x-ray. She indicated that her avoidance of such procedures was at the recommendation of her chiropractor. She also questioned the necessity for such "intrusive" procedures when she had not been exposed to the conditions which allegedly had caused her medical problems for over a year. As a result of petitioner's refusal to submit to medical tests, the Board filed a motion to dismiss the petition.

On June 19, 1996, the ALJ recommended granting the Board's motion, finding that petitioner had evidenced a willful, deliberate disregard of the discovery orders. The ALJ indicated that a physical examination was a reasonable means of discovery in light of the nature of petitioner's claims, and that a pulmonary test and chest x-ray were also reasonable procedures. She observed that the discovery sought by the Board would facilitate the disposition of this matter.

or wages paid or payable to the employee pursuant to this section shall be reduced by

On August 5, 1996, the Commissioner adopted the findings and conclusions of the ALJ and dismissed the petition.

Petitioner filed the instant appeal to the State Board.

After a careful review of the record, we dismiss the appeal for the reasons stated herein.

The threshold question under N.J.S.A. 18A:30-2.1 is whether a claimant's injury arose "out of and in the course of his employment." As we explained in Verneret v. Board of Education of the City of Elizabeth, decided by the State Board of Education, 95 N.J.A.R.2d (EDU) 134, 134-35, that question:

...is controlled by the standards established under the Workers' Compensation Act. See Theodore v. Dover Bd. of Ed., 183 N.J. Super. 407 (App. Div. 1982). In those instances where entitlement to relief under N.J.S.A. 18A:30-2.1 is dependent upon whether the injury arose out of and in the course of employment within the meaning of N.J.S.A. 34:15-7 of that Act, the State Board has held that the Commissioner of Education should refrain from exercising his jurisdiction pending a determination of that issue by the Division of Workers' Compensation. Amos v. Board of Education of the Borough of Red Bank, decided by the State Board of Education, February 3, 1988; Tomkins v. Board of Education of the Township of Hamilton, decided by the State Board of Education, December 2, 1987. See City of Hackensack v. Winner, 82 N.J. 1 (1980); Forgash v. Lower Camden County School, 208 N.J. Super. 461 (App. Div. 1985).

Thus, although the Commissioner has jurisdiction over all disputes arising under the school laws, the exercise of his jurisdiction over claims arising under N.J.S.A. 18A:30-2.1 should be deferred pending a determination by the Division of Workers' Compensation of whether the claimant's injury was work-related. In this case, there is

the amount of any workmen's compensation award made for temporary disability.

nothing in the record to confirm that the Division of Workers' Compensation has rendered such a determination.

The record indicates that petitioner had requested the ALJ to place her claim for benefits under N.J.S.A. 18A:30-2.1 in abeyance pending a determination by the Division of Workers' Compensation. As related by the counsel for the West New York Board in a letter dated December 4, 1995 to the Office of Administrative Law, the ALJ had indicated in a telephone conference on September 20, 1995 that the case would be placed on inactive status pending the outcome of petitioner's workers' compensation claim but that he would grant the Board's motion to compel petitioner to submit to a medical examination. That order was subsequently issued by the ALJ on September 29, 1995. In its answer brief, the Board states that petitioner's workers' compensation claim was denied "[b]ased upon her refusal to attend the medical examination." Answer brief, at 2.

While we would be hesitant to dismiss the appeal on the basis of this statement alone,² petitioner does not dispute the Board's contention or offer any indication that the Division of Workers' Compensation rendered a determination that her injury was work-related. Under these circumstances, the appropriate course for this agency is to refrain from exercising its jurisdiction over petitioner's claim, including any discovery matters, and to dismiss the instant appeal.

Our determination is not altered by the fact that petitioner also raised a claim under the New Jersey Law Against Discrimination. The Commissioner has "jurisdiction to hear and determine...all controversies and disputes arising under the school laws...."

N.J.S.A. 18A:6-9. "Where the controversy does not arise under the school laws, it is outside the Commissioner's jurisdiction even though it may pertain to school personnel." Board of Ed., E. Brunswick Tp. v. Township Council, E. Brunswick, 48 N.J. 94, 102 (1966). Thus, petitioner's Law Against Discrimination claim, which does not arise under the school laws, does not alone provide this agency with jurisdiction over this matter.

We therefore dismiss the appeal in this matter for the reasons stated herein.

December 3, 1997

Date of mailing _____

² We note that the Board has provided no corroboration for its assertion that petitioner's workers' compensation claim was denied.