

EDU #3767-98
C # 344-00
SB # 68-00

LUCY SHERIDAN, :
 :
 PETITIONER/APPELLANT, : STATE BOARD OF EDUCATION
 :
 V. : DECISION
 :
 STATE OPERATED SCHOOL DISTRICT :
 OF THE CITY OF PATERSON, :
 PASSAIC COUNTY, :
 :
 RESPONDENT/RESPONDENT. :

Decided by the Commissioner of Education, October 16, 2000

For the Petitioner/Appellant, Oxfeld, Cohen, LLC (Sanford R. Oxfeld, Esq., of Counsel)

For the Respondent/Respondent, Nirenberg & Varano (Howard M. Nirenberg, Esq., of Counsel)

In August 1991, Lucy Sheridan (hereinafter "petitioner"), a school nurse in Paterson, filed a claim for benefits with the Division of Workers' Compensation as the result of a medical condition which allegedly had arisen from an incident which occurred at school in January 1991. As a result of such condition, the petitioner was unable to work from April until September 1991. In November 1997, the parties agreed to settle the petitioner's workers' compensation claim for \$10,000 pursuant to N.J.S.A. 34:15-20.¹ The petitioner thereafter made a request to the State-operated District of the

¹ N.J.S.A. 34:15-20 provides, in pertinent part, that a settlement of a workers' compensation claim "shall have the force and effect of a dismissal of the claim petition and shall be final and conclusive upon the

City of Paterson (hereinafter “State-operated District”) to have the 55 sick leave days used between April and September 1991 restored to her accumulated sick leave. On February 17, 1998, after such request was denied, the petitioner filed a petition with the Commissioner of Education seeking sick leave benefits under N.J.S.A. 18A:30-2.1 from the State-operated District.²

On August 30, 2000, an Administrative Law Judge (“ALJ”) recommended dismissing the petition, concluding that the settlement of the petitioner’s workers’ compensation claim “evidenced an unambiguous waiver of any rights petitioner may have had under N.J.S.A. 18A:30-2.1.” Initial Decision, slip op. at 7. The ALJ observed that “[a]t no time during the workers’ compensation hearing, or at the time of the Section 20 settlement, did petitioner indicate that she was not waiving any entitlement she may have to sick leave benefits under N.J.S.A. 18A:30-2.1. In fact, she indicated that the amount of her settlement was compensation for the sick leave days for which she believed she had been charged.” Id. at 6-7. The ALJ distinguished this case from Marino v. Willingboro Township Board of Education, decided by the State Board of

employee and the employee's dependents, and shall be a complete surrender of any right to compensation or other benefits arising out of such claim under the statute.”

² N.J.S.A. 18A:30-2.1 provides, in pertinent part:

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 or wages paid or payable to the employee pursuant to this section shall be reduced by the amount of any workmen's compensation award made for temporary disability.

Education, March 1, 2000, by pointing out that “[u]nlike in *Marino*, where the petitioner stated that he was not waving any entitlement he might have to sick leave benefits under N.J.S.A. 18A:30-2.1, petitioner has made no such reservations expressly agreeing instead, to waive ‘all [her] rights arising out of this/these claim(s)’ under the Section 20 Settlement.” Id. at 7.

On October 16, 2000, the Commissioner adopted the ALJ’s recommended findings and conclusions, agreeing that “petitioner knowingly relinquished any claim she may have had pursuant to N.J.S.A. 18A:30-2.1 when she accepted her ‘Section 20’ settlement before the Division of Workers’ Compensation.” Commissioner’s Decision, slip op. at 9. The Commissioner therefore dismissed the petition.

The petitioner filed the instant appeal to the State Board, arguing that she had not waived her right to pursue a claim for sick leave benefits under N.J.S.A. 18A:30-2.1 when she settled her workers’ compensation claim.

After a careful review of the record, we reverse the decision of the Commissioner. Under the particular circumstances presented herein, we conclude that the petitioner’s settlement of her workers’ compensation claim did not include a waiver of any rights she may have under N.J.S.A. 18A:30-2.1, and, consequently, did not preclude her from pursuing a claim for benefits under that statute.

As we observed in *Marino*, supra, slip op. at 6:

...the parties to a workers’ compensation case are free to agree in settling such a claim that the claimant is thereby waiving his statutory right to benefits under N.J.S.A. 18A:30-2.1. In order to be valid, such a waiver must be “the intentional relinquishment of a known right.” West Jersey Title & Guar. Co. v. Industrial Trust Co., 27 N.J. 144, 152 (1958).

There is no indication in the instant matter that the petitioner, in settling her workers' compensation claim, knowingly relinquished any rights she might have to sick leave benefits under N.J.S.A. 18A:30-2.1. In West Jersey Title & Guar. Co., supra at 153, the Court stressed that “[w]aiver’ presupposes a full knowledge of the right and an intentional surrender.” In this case, there is nothing in the record that would suggest that the petitioner had any knowledge of her rights under N.J.S.A. 18A:30-2.1 of the education laws when she agreed to settle her claim for benefits under the Workers’ Compensation Act.

This case differs in that regard from Coleman v. Fiore Bros., Inc., 113 N.J. 594 (1989), which was relied upon by the ALJ. In Coleman, four homeowners who had entered into home improvement contracts sought protection from the Passaic Legal Aid Society to avoid losing their homes through foreclosure of their installment loans. The relief sought by the complainants included statutory attorney’s fees. The complainants ultimately settled their claims, agreeing in a written settlement that “all claims for damages—actual, punitive and statutory, of the Complaint, and Counterclaim are hereby settled....” Although the settlement agreement made no reference to the statutory legal fees sought by the complainants, the Court concluded that, under the circumstances, such claims were encompassed within the settlement and stipulation of dismissal. In so doing, the Court observed that the complainants had made no attempt to expressly reserve their claim for attorney’s fees and that the stipulation of dismissal contained no reference to any such exclusion.

Unlike the scenario in Coleman, the petitioner in the instant matter had not yet filed a claim for sick leave benefits under N.J.S.A. 18A:30-2.1 when she settled her

workers' compensation claim.³ We emphasize in that regard that a claim under N.J.S.A. 18A:30-2.1 would not properly have been before the Division of Workers' Compensation. While the question of whether an injury arose "out of and in the course of" employment within the meaning of N.J.S.A. 18A:30-2.1 is controlled by the standards established under the Workers' Compensation Act, the ultimate determination of a claim for sick leave benefits under N.J.S.A. 18A:30-2.1 lies within the jurisdiction of the Commissioner of Education since it arises under the school laws. Theodore v. Dover Bd. of Ed., 183 N.J. Super. 407, 412-13 (App. Div. 1982).

Nor, under these circumstances, is it of any moment that the petitioner did not expressly reserve her claim to sick leave benefits under N.J.S.A. 18A:30-2.1 when she settled her workers' compensation case, as had the petitioner in Marino. We recognize that an intention to waive need not be manifested expressly but may be spelled out from a state of facts exhibiting full knowledge of the circumstances producing a right and continuing indifference to exercise of that right. Merchants Indem. Corp. v. Eggleston, 68 N.J. Super. 235, 254 (App. Div. 1961), aff'd, 37 N.J. 114 (1962). However, under the particular circumstances presented by this case, there is no basis for us to conclude that the petitioner intentionally relinquished a known right. As previously stated, there is

³ We note that the petitioner's claim for workers' compensation benefits was filed prior to our decision in Verneret v. Board of Education of the City of Elizabeth, 95 N.J.A.R.2d (EDU) 134, in which the State Board cleared up the confusion surrounding the filing requirements for petitions under N.J.S.A. 18A:30-2.1. In Verneret, we held that a petition seeking benefits under N.J.S.A. 18A:30-2.1 was required to be filed with the Commissioner of Education within 90 days of the district board's action which had the effect of denying such benefits. We directed that the decision be applied on a prospective basis only. Thus, under the circumstances, we would not have applied Verneret to determine the timeliness of the instant petition.

In addition, we note that "[t]o the extent this matter might be considered untimely...the District failed to raise this claim, and the parties did not specifically brief this issue." Commissioner's Decision, slip op. at 9, n.1. The Commissioner therefore reached the merits of the matter. The State-operated District has not raised the timeliness issue on appeal and, in any event, did not file a cross-appeal from the Commissioner's decision.

no indication in the record that the petitioner was even aware that she might have any rights under N.J.S.A. 18A:30-2.1 at the time she agreed to settle her workers' compensation claim, and she had not yet filed such a claim with the Commissioner of Education.⁴

We find, in addition, that the express language of N.J.S.A. 34:15-20 supports this result. That statute provides that a settlement of a workers' compensation claim "shall be a complete surrender of any right to compensation or other benefits arising out of such claim under the statute." (Emphasis added.) In the absence of any evidence that the petitioner had knowingly relinquished her rights under N.J.S.A. 18A:30-2.1, the settlement in this instance acted as a surrender only of those rights she might have had under the workers' compensation laws.

Consequently, we conclude that the petitioner's settlement of her workers' compensation case did not preclude her from pursuing a claim for sick leave benefits under N.J.S.A. 18A:30-2.1. In so doing, we reject the State-operated District's contention that the petitioner is collaterally estopped from seeking relief under the education laws. The issue of whether the petitioner was entitled to sick leave benefits under N.J.S.A. 18A:30-2.1 was not before the Division of Workers' Compensation. Nor was such issue or the awarding of relief under that statute within the jurisdiction of that body. Moreover, relief awarded pursuant to N.J.S.A. 18A:30-2.1 is in addition to any benefits received under the Workers' Compensation Act,⁵ and we reiterate that the

⁴ We note in that regard that the petitioner's claim for benefits under N.J.S.A. 18A:30-2.1 in Marino was filed subsequent to our decision in Verneret, supra, and was pending before the Commissioner of Education at the time that he settled his workers' compensation claim.

⁵ Pursuant to N.J.S.A. 18A:30-2.1, any amounts awarded to the petitioner by the Commissioner would be reduced by the amount of workers' compensation benefits received by the petitioner as a result of her settlement.

parties to a workers' compensation case are free to agree in settling such a claim that the claimant is thereby waiving his or her statutory right to benefits under N.J.S.A. 18A:30-2.1. Marino, supra, slip op. at 6.

We therefore reverse the decision of the Commissioner to dismiss the petition and remand this matter to him for such further proceedings as are necessary to determine the petitioner's claim for sick leave benefits under N.J.S.A. 18A:30-2.1.⁶

June 6, 2001

Date of mailing _____

⁶ Since a decision on remand would require such proceedings as are necessary to permit the Commissioner to determine whether the petitioner's injuries arose out of and in the course of her employment, we do not address the State-operated District's contention that her injuries did not arise out of her employment. Inasmuch as the Division of Workers' Compensation did not make such a determination in this instance, the Commissioner may properly exercise his jurisdiction to resolve this issue as part of the proceedings on remand. Marino, supra, slip op. at 5.