

EDU #146-02  
C #365-02  
SB # 47-02

IN THE MATTER OF THE TENURE HEARING :  
OF GEORGE ZOFCHAK, SCHOOL DISTRICT :  
OF THE CITY OF TRENTON, MERCER :  
COUNTY. :

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STATE BOARD OF EDUCATION  
DECISION

Decided by the Commissioner of Education, October 15, 2002

For the Respondent-Appellant, Bergman & Barrett (Michael T. Barrett,  
Esq., of Counsel)

For the Petitioner-Respondent, Sumners George (Thomas W. Sumners,  
Jr., Esq., of Counsel)

On October 15, 2002, the Commissioner of Education dismissed the appellant from his tenured employment on the basis of tenure charges alleging unbecoming conduct. On November 12, 2002, the appellant filed a notice of appeal to the State Board of Education.

On November 21, 2002, the Director of the State Board Appeals Office ("Director") notified counsel for the appellant that the notice was deficient in that he had failed to attach a copy of the Administrative Law Judge's Initial Decision, as required by N.J.A.C. 6A:4-1.7(c). He was given until December 2, 2002 to correct that deficiency. Counsel for the appellant has still failed to file a copy of that decision.

On December 4, 2002, counsel for the appellant filed a brief in support of the appeal, as required by N.J.A.C. 6A:4-1.11(a). On December 6, 2002, the Director notified counsel for the appellant that the brief was deficient in that he had only filed an original and not 17 copies, as required by N.J.A.C. 6A:4-1.10(b). Counsel for the appellant was also advised that the submission was deficient in that he had failed to attach 17 copies of the Commissioner's decision packet, as required by N.J.A.C. 6A:4-1.14(a). He was given until December 16 to correct these deficiencies. However, he did not file the required copies or otherwise respond to that notice.

By letter dated January 2, 2003, the Director again notified counsel for the appellant that he had not filed the required copies and informed him that this matter was being referred to the Legal Committee of the State Board for consideration of the effect of his failure to correct the deficiencies.

Counsel for the appellant has still failed to file the required copies of his brief and the Commissioner's decision packet, two months after the first notice informing him of these deficiencies. Nor has he otherwise responded to those notices or offered any explanation for such failure.

Although we are reticent to dismiss an appeal on procedural deficiency grounds, the defects in the appellant's filing make it impossible for us to properly review this matter. Since the State Board, which consists of 13 members, acts in a quasi-judicial capacity to determine appeals, our rules require parties to file sufficient copies of all briefs and other submissions for distribution to the members of the Board for review. N.J.A.C. 6A:4-1.10(b). Thus, these deficiencies cannot be overlooked. Nor under these circumstances do we find any basis for relaxation of the rules.

We note in that regard that it has never been necessary for us to dismiss an appeal as the result of an attorney's failure to file the required copies of a brief and appendix. We reiterate in that regard that counsel for the appellant was notified of this defect on two separate occasions and given the opportunity to remedy the situation. Unfortunately, he has not done so. As the Appellate Division observed in Abel v. Elizabeth Bd. of Works, 63 N.J. Super. 500, 509 (App. Div. 1960):

The rules relating to briefs and appendices on appeal have as their prime purpose the orderly and considered presentation of the matter on appeal so that the court may have before it such parts of the record and such legal authorities as will be of help in arriving at a proper determination.

Consequently, we are left with no choice but to dismiss the appeal in this matter for failure to correct procedural deficiencies. See, e.g., In re Zakhari, 330 N.J. Super. 493 (App. Div. 2000); Paszamant v. Board of Education of the Borough of Highland Park, decided by the State Board of Education, April 1, 1992, aff'd, Docket #A-4812-91-3 (App. Div. 1993); Cherry Hill Dodge Inc. v. Chrysler Credit Corp., 194 N.J. Super. 282 (App. Div. 1984).

John A. Griffith and Thelma Napoleon-Smith abstained.

February 5, 2003

Date of mailing \_\_\_\_\_