

RICHARD CHAMBERS, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

CITY OF PLEASANTVILLE, ATLANTIC

COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning music teacher alleged the Board wrongfully suspended him. The Board contended petitioner was ineligible for service within the meaning of *N.J.S.A. 18A:16-4* and, thus, excluded him from his teaching duties, declined to grant him sick leave with compensation.

In light of 1994 psychiatric report and petitioner’s refusal to submit to a reexamination, the ALJ determined that the Board had sufficient evidence of deviation from normal mental health such that its determination that petitioner was “ineligible for further service” was not arbitrary, capricious or unreasonable. ALJ saw no basis in law and/or in fact to compel the Board to pay petitioner during his period of ineligibility. Petition was dismissed.

Commissioner adopted findings and determination in initial decision as his own.

JUNE 18, 1998

OAL DKT. NO. EDU 8498-97
AGENCY DKT. NO. 299-8/97

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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 and the Board’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.¹

In his exceptions, petitioner asserts that the ALJ erred in concluding that he was ineligible for further service, within the meaning of *N.J.S.A.* 18A:16-4. Citing *Kochman v. Keansburg Bd. of Education.*, 124 *N.J. Super.* 203, 211-212 (Ch. Div. 1973), petitioner argues that such ineligibility, must follow “****a formal finding that [he] exhibits ‘harmful, significant deviation from normal mental health affecting [his] ability to teach, discipline or associate with children of the age [of the children subject to his] control in the school district.’” (Petitioner’s Exceptions at p. 1) Petitioner reasons that there has never been such an assessment, and he

¹ On May 22, 1998, petitioner filed additional exceptions. Even assuming the exceptions were timely filed in accordance with *N.J.A.C.* 1:1-18.4, which they were not, petitioner may not make submissions to the record on his own behalf, having already elected to be represented by counsel, *N.J.A.C.* 1:1-5.1. All submissions in this matter should be accomplished by and through such legal counsel, absent notification to the Bureau of Controversies and

cannot, therefore, be declared ineligible to teach. Petitioner further contends that there are no facts which support the ALJ's finding that he is disabled within the meaning of *N.J.S.A. 18A:16-2*. (*Id.* at p. 2) Here again, petitioner asserts that there must be a formal psychiatric finding as a predicate to his suspension.

Petitioner next argues that the ALJ erred in finding that he, rather than the Board, carries the burden of proof in this matter, insisting that the Board must show that he is not able to teach. (*Id.* at p. 3) Finally, petitioner avers that, contrary to the ALJ's conclusion, his Petition of Appeal adequately raised a challenge to the Board's finding of ineligibility. (*Id.* at p. 4)

In reply, the Board maintains that the ALJ properly found that petitioner was ineligible for service in accordance with the appropriate legal standards, and correctly recognized the psychiatric evaluation performed by Dr. Kumar. (Board's Reply at p. 2) Moreover, the Board argues that there is a reasonable factual basis for the ALJ's conclusion, given Dr. Kumar's report, and contends that "****Dr. Kumar's opinion, which was not challenged, is consistent with the *Kochman* and *Gish* standards as the ALJ determined.****" (*Id.* at p. 3) Thus, the Board concludes that petitioner is not eligible to teach, and it is not obligated to pay him during his period of ineligibility. (*Id.*)

Further, the Board argues that, contrary to petitioner's assertion, the ALJ made no determination that petitioner was required to submit a psychiatrist's opinion that he is of normal mental health and eligible to teach. Rather, the ALJ found that the Board correctly determined that it had good cause for requiring petitioner to submit to Dr. Kumar's 1994 examination and, more recently, to submit to a reexamination. "The fact that [petitioner] refused, without reason,

Disputes that petitioner is no longer represented by an attorney. Therefore, the exceptions filed on May 22, 1998 were not considered by the Commissioner in rendering his decision.

to submit to the latest scheduled examination demonstrates that the Board can not return him to service in light of his deviation from normal mental health.” (*Id.* at p. 4)

Finally, the Board concurs with the ALJ’s view that the within Petition of Appeal did not challenge the Board’s determination that he was ineligible for employment, but merely claims that petitioner should be paid during his ineligibility. (*Id.* at p. 5)

Upon careful and independent review of the record in this matter, the Commissioner finds petitioner’s exceptions to be without merit, and he concurs with the findings of fact and conclusions of law rendered by the ALJ. Assuming, *arguendo*, that the within Petition of Appeal properly challenged the Board’s determination of ineligibility, the Commissioner, like the ALJ, finds the assessment rendered by Dr. Kumar to be a significant and appropriate basis for such finding, pursuant to *N.J.S.A.* 18A:16-4. Further, the Commissioner concurs with the ALJ that petitioner has not demonstrated that he is entitled to be paid during his period of ineligibility.

Accordingly, the initial decision of the ALJ dismissing the within Petition of Appeal is adopted for the reasons expressed therein.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JUNE 18, 1998

² This decision, as the Commissioner’s final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.