

SANDRA SCHMIDTKE,	:	
	:	
PETITIONER,	:	
V.	:	
	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF WOODBRIDGE,	:	DECISION
MIDDLESEX COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioner challenged the determination of the Board to charge her accumulated sick leave when she was absent from work because of what petitioner termed a work-related occurrence pursuant to *N.J.S.A. 18A:30-2.1*. Respondent denied that petitioner's absence was work-related.

At the OAL, respondent moved for summary decision based on the fact that petitioner failed to file a Workers' Compensation claim, arguing that such failure mandated dismissal of her petition. The ALJ concluded that the Division of Workers' Compensation is the proper forum to determine whether a work-related accident is the cause of an injury, except in limited circumstances, such as when Workers' Compensation lacks jurisdiction over a case. Because petitioner failed to file such a claim and the case did not fit within the limited exceptions to the requirement to seek a determination by Workers' Compensation, the ALJ dismissed the petition for lack of jurisdiction.

The Commissioner affirmed the ALJ, holding that, because the petition sought a determination whether petitioner's injury arose out of and in the course of her employment pursuant to *N.J.S.A. 18A:30-2.1*, she was required to file a Workers' Compensation claim, and that she did not fall within the limited exceptions to filing with Worker' Compensation.

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto were timely filed pursuant to *N.J.A.C.* 1:1-18.4.

Petitioner’s exceptions aver that the Administrative Law Judge (ALJ) erred in finding that the Commissioner does not have jurisdiction, pursuant to *N.J.S.A.* 18A:30-2.1, to hear the instant matter. Initially, she restates her argument that the matter should not have been considered by way of a Motion for Summary Decision because a dispute of material fact exists which defeats the summary decision motion; *i.e.*, the Board’s Answer to the Petition of Appeal alleges it lacked sufficient information regarding the events set forth in the petition. As such, petitioner contends that she should be allowed to go forward at plenary hearing to demonstrate that she wished to return to work prior to the superintendent’s telephone call on August 12, 1998, and reiterates that the reason for not returning to work sooner was a result of her case “falling through the cracks” with the Board’s insurance carrier. Of this, petitioner states:

Petitioner should be allowed to go forward at a hearing to demonstrate that she should not be charged for sick leave days since it was respondent who reported the matter to the insurance carrier, it was the insurance carrier who assigned the case manager and it was the case manager who did not notify petitioner that she was “cleared” to work, despite her repeated efforts. (Petitioner’s Exceptions at 2)

Next, petitioner reiterates her position that *Russo, supra; Marino, supra; and Hern, supra*, establish that the awarding of days pursuant to *N.J.S.A. 18A:30-2.1* is not necessarily contingent upon a determination of a Workers' Compensation judge, and urges that the present matter is one of the situations noted in *Russo* and *Marino* which is not conditioned upon the presentation of a Workers' Compensation claim; namely, that if the insurance carrier is at fault for her being on sick leave longer than necessary, then she should be permitted to make her claim for the return of sick days pursuant to *N.J.S.A. 18A:30-2.1*. In closing, petitioner "requests that the Commissioner reject the Initial Decision and remand the matter to the Administrative Law Judge for a plenary hearing as to whether or not petitioner is entitled to a return of her sick days *pursuant to N.J.S.A. 18A:30-2.1*." (emphasis supplied) (Petitioner's Exceptions at 4)

The Board's reply exceptions aver that the entire thrust of petitioner's claim is whether or not an accident/incident occurred arising out of and in the course of her employment which bespeaks a Workers' Compensation claim; consequently, exclusive jurisdiction is vested with the Division of Workers' Compensation (DWC) pursuant to *N.J.S.A. 34:15-49*, not the Commissioner. Further, the Board urges rejection of petitioner's reliance on the dicta set forth in *Russo, supra*, Slip Opinion at 6, footnote, which states that "****awards under *N.J.S.A. 18A:30-2.1* are not *necessarily* conditioned upon presentation of a Workers' Compensation claim, as, for example, when the duration of an absence is insufficiently long to be eligible for such presentation. [*citing Hern, supra*]." The Board argues that the language in *Hern*, which petitioner quotes, relates to circumstances wherein a person does not satisfy the seven-day waiting period required by Workers' Compensation statute. The Board likewise urges rejection of petitioner's assertion that the Appellate Division in *Hern* concluded the Commissioner has original and primary jurisdiction to decide sick leave issues pursuant to *N.J.S.A. 18A:30-2.1*.

The Board argues that, while there is no dispute that the Commissioner has jurisdiction under this statute, the Workers' Compensation statute, *N.J.S.A. 34:15-1 et seq.*, pursuant to the New Jersey Supreme Court's decision in *Kristiansen, supra*, vests exclusive jurisdiction to determine work-related injuries in the Workers' Compensation court.

Upon review of the record in this matter, the Commissioner fully agrees with the ALJ's legal conclusions that there are no factual disputes as to the *threshold* issue raised by respondent, *i.e.*, whether the matter should be dismissed, regardless of any claim by petitioner with respect to the role of the insurance carrier in determining the *length* of her absence, since a Workers' Compensation claim was not filed. Both the petition and exceptions request a determination of whether petitioner's injury arose out of and in the course of her employment pursuant to *N.J.S.A. 18A:30-2.1*, which is within the authority of Workers' Compensation. Further, the Commissioner is in full agreement with the ALJ's legal analysis of the *Russo, Hern, and Marino* matters as set forth in the Initial Decision and the conclusion that "the proper forum for the resolution of whether a work-related accident is the cause of an injury is the Division of Workers' Compensation *except for limited cases such as when the Division of Workers' Compensation has no jurisdiction or when there is a settlement of the workers' compensation case.*" (emphasis supplied) (Initial Decision at 6). The legal principle set forth in *Russo*, which was relied upon by the ALJ in this matter, bears repeating herein. Not only is the principle applicable to the instant matter, but the factual circumstances in both cases are similar in that the petitioners in each case voluntarily chose not to pursue a claim for work-related injury with the DWC.¹ In *Russo, supra*, the ALJ held that:

Both the statutory provisions and the decision in *Verneret* envision that a petitioner seeking an award pursuant to *N.J.S.A. 18A:30-2.1* will in fact present a Workers' Compensation claim and prosecute

¹ The petitioner in *Russo* filed a claim but subsequently failed to prosecute it, while, in the instant matter, petitioner simply chose not to file a claim with DWC, notwithstanding that the matter, upon transmittal to the OAL, was put on the inactive list until such claim was determined by DWC.

same. Petitioner cannot be awarded any damages under 18A:30-2.1 until the compensation claim has been determined because under the statute the Board is entitled to a reduction for the Workers' Compensation award made for temporary disability and because under *Vernet* [sic] the question of whether the injury arose out of and in the course of his employment is to be determined by a proceeding in the Division of Workers' Compensation. As petitioner has voluntarily chosen not to pursue his Workers' Compensation claim, his claim under the school law sick leave statute will be dismissed with prejudice. (*Russo* Initial Decision at 3)

Notwithstanding petitioner's arguments to the contrary, the Commissioner finds and determines that the instant matter does not present circumstances, such as were found in the *Hern* and *Marino* cases, which would create an exception to the legal requirement that the Commissioner refrain from exercising jurisdiction in matters alleging entitlement/damages under *N.J.S.A.* 18A:30-2.1 due to an injury/illness arising out of and in the course of employment until the DWC makes a determination of a work-related injury/illness pursuant to *N.J.S.A.* 34:15-1.1 *et seq.* See *Verneret, supra*, and *Rotella-Suarez v. Bd. of Ed. of the Town of West New York*, decided by the State Board December 3, 1997.

Accordingly, for the reasons well-stated in the Initial Decision, the Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: November 8, 2000

Date of Mailing: November 8, 2000

² This decision, as the Commissioner's final determination, 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.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.