

DIANNE GIARDINA, :  
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 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 TOWNSHIP OF PEQUANNOCK, :  
 MORRIS COUNTY, :  
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 RESPONDENT. :  
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SYNOPSIS

Petitioner challenged the non-renewal of her employment for the 2003-2004 school year by the Pequannock Township Board of Education, claiming violation of petitioner's tenure rights. Petitioner alleged that she had gained tenure in the position of Secretary and/or Office Aide pursuant to *N.J.S.A. 18A:17-2*. The Board controverted petitioner's claim to tenure, and the matter was transmitted to the OAL as a contested case. Prior to the hearing, the Board filed a motion for summary decision. Subsequently, petitioner also filed a motion for summary judgment.

The ALJ found that there were no material facts in dispute, and that the matter was ripe for summary disposition. The ALJ identified the critical debate between the parties to be the issue of whether or not the governing statute permits the petitioner to count or "tack" the time she was employed as an Office Aide to her service time as Secretary for the purpose of determining that she accrued a tenure status. Based upon a review of the certifications submitted by both parties, the exhibits attached to these certifications, the stipulated facts set forth in a supplemental submission, and the oral argument on cross motions, the ALJ found that: 1) petitioner's position as an Office Aide was tenure eligible pursuant to *N.J.S.A. 18A:17-2*, but petitioner did not accrue tenure in either the Office Aide position or the position of Secretary since her service time does not satisfy the precise conditions of the statute; 2) petitioner may not combine the time she was employed in the position of Office Aide with the time she was employed as a Secretary for purposes of accruing tenure in the position of Secretary; and 3) petitioner may not tack the time she was employed as Secretary to the time she was employed as Office Aide for the purpose of accruing tenure in a clerical position. Accordingly, the ALJ granted the Board's motion for summary judgment; denied the petitioner's motion for summary judgment; and dismissed the instant petition with prejudice.

Upon a thorough and independent review of the record in this matter, including the parties' exception arguments, the Commissioner concurs with the findings and conclusions in the Initial Decision. Accordingly, the Initial Decision, granting summary decision to the Board, is adopted for the reasons expressed therein.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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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 Pequannock Township Board of Education’s (Board) reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in reaching his determination.

In her exceptions, petitioner reiterates the arguments expressed before the Administrative Law Judge (ALJ) in support of her contention that she accrued tenure in the position of secretary or, in the alternative, in the position of a clerical employee. In setting forth her position, petitioner relies on numerous cases including, *inter alia*: *Carlson, supra*; *Carnathan, supra*; *Euell, supra*; and *Sitek, supra*, wherein certificated teaching staff members achieved tenure under similar circumstances, pursuant to *N.J.S.A.* 18A:28-5 and *N.J.S.A.* 18A:28-6, which were considered and rejected by the ALJ as not applicable to the question of whether petitioner herein attained tenure under *N.J.S.A.* 18A:17-2.

Upon a thorough and independent review of the record in this matter, including the parties’ exception arguments, the Commissioner concurs with the findings and conclusions in the Initial Decision wherein the ALJ determined that petitioner’s position as an office aide is

tenure eligible, pursuant to *N.J.S.A.* 18A:17-2, but that petitioner did not accrue tenure in either the position of secretary or a clerical position since her service time does not satisfy the precise conditions of the statute. The Commissioner also emphasizes in reaching this conclusion his concurrence that petitioner may not combine the time she was employed in the position of office aide to the time she was employed as a ten-month secretary for purposes of accruing tenure in the position of secretary, nor may she tack the time she was employed as a ten-month secretary to the time she was employed as an office aide for the purpose of accruing tenure in a clerical position.

Accordingly, the Initial Decision, granting summary decision to the Board, is adopted for the reasons expressed therein.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: April 4, 2005

Date of Mailing: April 6, 2005

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\* This decision 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*