

STEPHEN NEELEY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF FRANKLIN, SOMERSET COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner is an Earth Science teacher hired by the Board following a 25 year career that included nearly four years of active military service and six years in which he operated his own company, training people to work on hazardous waste sites. He contends that respondent failed to consider his prior military service upon hiring, thereby improperly placing him on the salary guide. The respondent Board took the position that petitioner was awarded military credit.

The ALJ found that: the collective bargaining agreement in effect at the time petitioner was hired provided for credit for prior service of up to five years for non-teaching experience directly related to the assigned teaching position and up to four years credit for active military service with honorable discharge; documents admitted into evidence bear notations indicating “five years’ related experience” and “five years private exp. (related)”; the petitioner’s testimony was credible and supported by the evidence; and, based upon all of the evidence, the five years of experience credited to the petitioner at the time of his hiring did not include military service. Accordingly, the ALJ concluded that petitioner should be awarded the military service credit, commencing from July 20, 2006, the date his petition was filed.

Upon careful and independent review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter for the reasons clearly stated therein, and directed the Board to adjust petitioner’s salary guide placement to reflect his military service credit.

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.

January 5, 2009

STEPHEN NEELEY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF FRANKLIN, SOMERSET COUNTY, :
 :
 RESPONDENT. :
 _____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions were filed in accordance with the prescriptions of *N.J.A.C. 1:1-18.4*. Petitioner did not file reply exceptions.

Exceptions of the Board essentially replicate its post-hearing brief offered below. In that the Commissioner finds that the arguments advanced therein were fully considered and addressed by the Administrative Law Judge (ALJ) in her Initial Decision, these will not be revisited here.

Upon her full review – and according the requisite deference to the credibility assessments of the ALJ¹ – the Commissioner agrees with her determination that petitioner was not given the military service credit to which he was entitled for purposes of placement on the salary guide at the time of his hiring by the Board.

¹ The applicable standard of review in this regard is clear and unequivocal – the Commissioner “may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.” (*N.J.S.A. 52:14B-10(c)*)

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons clearly stated therein. The Board is hereby directed to adjust petitioner's salary guide placement to reflect his military service credit, as of July 20, 2006.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 5, 2009

Date of Mailing: January 6, 2009

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.