

#286-11 (OAL Decision: Not yet available online)

JENNIFER DeKENIPP, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

TOWNSHIP OF WALL, :

MONMOUTH COUNTY, :

RESPONDENT. :

SYNOPSIS

In July 2010, petitioner – employed at that time as a tenured teacher in the district – filed an appeal of the respondent Board’s rescission of a previously granted discretionary extension of maternity/child care leave for the 2010-2011 school year. On August 6, 2010, respondent sent petitioner a letter requesting that she notify the Board of whether she intended to return to the district in September or resign her position. Emergent relief was denied in this matter on August 10, 2010 and on the same day, petitioner submitted a letter of resignation. Subsequently, in the course of this matter, petitioner claimed that her resignation was under duress or stressful circumstances, and therefore should be rescinded. Respondent Board sought to have petitioner’s appeal dismissed because she voluntarily resigned her position.

The ALJ found, *inter alia*, that: petitioner’s resignation was not made under duress, but rather was a reasoned decision made in order to spend more time with her child and, therefore, the resignation was binding; petitioner relinquished any rights she had as a teaching staff member upon resignation, thereby rendering the instant proceedings moot; the petitioner did not have a vested right to the extended maternity leave once it was granted, as the board retained the right to reconsider this exercise of discretionary power; and petitioner has not demonstrated that the Board’s discretionary exercise of power was arbitrary, capricious or unreasonable. Accordingly, the ALJ dismissed the appeal.

The Commissioner concurred with the ALJ that petitioner lost her standing to prosecute the instant appeal when she resigned from the Board’s employ on August 10, 2010, and found petitioner’s arguments regarding invalidation of the resignation unpersuasive. Accordingly, the Commissioner concluded that: there is no basis for rescinding petitioner’s resignation; petitioner consequently has no standing to prosecute the instant appeal; and it is therefore not necessary to consider the merits of petitioner’s arguments challenging the validity of respondent’s rescission of its discretionary grant of extended child care leave. The petition was therefore dismissed

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.

July 15, 2011

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Petitioner instituted this appeal challenging respondent’s rescission of a child care leave extension that had initially been granted to her. A second and overriding issue was created when petitioner resigned from her employment in respondent’s district. After review of the record, Initial Decision of the Office of Administrative Law (OAL), petitioner’s exceptions and respondent’s replies thereto, the Commissioner concurs with the Administrative Law Judge (ALJ) that the appeal must be dismissed.

At the outset, the Commissioner concurs with the ALJ that petitioner lost her standing to prosecute the instant action when she resigned from employment with respondent on August 10, 2010. Petitioner’s arguments urging invalidation of the resignation are unpersuasive.

Petitioner urges in her exceptions that her resignation should be deemed invalid because she resigned under duress caused by the threat of tenure charges. The ALJ, however, did not find this aspect of petitioner’s testimony to be credible. (Initial Decision at 6-7) Consequently, in conducting his independent review of the record, the Commissioner took into account the established principle that he may not reject credibility findings unless they are

arbitrary, capricious, unreasonable or not supported by the record, *see, N.J.S.A. 52:14B-10C; N.J.A.C. 1:1-18.6(c); D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 N.J. Super. 269, 273 (App. Div. 2004). The Commissioner concludes from his review that there is no basis to disturb the ALJ's finding that petitioner's resignation flowed not from fear of tenure charges, but from a strong preference for remaining at home with her young children for an extra year.

More specifically, the record reveals that petitioner was notified of the rescission of her extended child-care leave on May 11, 2010, three and one-half months before the date on which she was expected to report for duty. Because she wished to spend an additional year with her children, she instituted the present appeal and did not make the alternate arrangements that would have been necessary for her to return to work.

On August 6, 2010, respondent wrote to petitioner, reminding her that: 1) her extended leave had been rescinded; 2) she had been sent a contract for the 2010-11 school year, which was supposed to have been returned by July 15, 2010; 3) respondent needed a response from her in order to prepare for staffing needs; 4) her continued failure to respond could be interpreted as an abandonment of position or as insubordination; and 5) failure to respond within five business days could lead to tenure charges. (Petitioner's Exhibit P-50) It is this letter that petitioner characterizes as the threat which caused her to resign under duress.

The Commissioner declines to accept this characterization. Respondent had determined that it was in the best interest of its district not to grant extended child care leave, had so notified petitioner in mid-May 2010, and had tendered to petitioner a contract to teach during the 2010-2011 school year, which contract was supposed to have been executed and returned by mid-July. Over three months after notifying petitioner of the rescission of extended leave, and

shortly before the commencement of the 2010-11 school year, respondent had not received a signed contract from petitioner and did not know whether she would report for work. As a practical matter, it was reasonable for respondent to send petitioner the August 6, 2010 letter urging her to reveal her intentions and putting her on notice of the consequences that continued inaction might engender.

When – on August 10, 2010 – petitioner’s emergent application for an order allowing her leave during the pendency of this litigation was denied, it was incumbent upon her to decide whether to return to work. Since respondent was not willing to approve extended leave, a decision not to return to work meant either resignation or defiance of respondent’s action to rescind the leave time. Notwithstanding the harshness of the respondent’s action, it must be assumed that petitioner understood that failure to report to work – in lieu of resignation – would likely lead to discipline. Thus, the Commissioner would characterize respondent’s August 6, 2010 letter as an iteration of the realities of the situation, rather than a threat.

Petitioner’s alternate argument for rescission of her resignation is that it is necessitated by the holding in *Evaul v. Camden Board of Education*, 35 N.J. 244 (1961). However, the record supports the ALJ’s determination that the circumstances of petitioner’s resignation were distinguishable from the resignation that the New Jersey Supreme Court annulled in *Evaul*.

In that case the Court determined that emotionally charged events and unusual timing led to the impulsive tendering and precipitous acceptance of Evaul’s resignation:

[W]e think that the peculiar circumstances of this case require the reinstatement of the appellant on equitable principles. It was an extraordinary concatenation of events which resulted in a loss to appellant of her tenure, seniority and pension rights acquired during twenty-five years of service. First, there were the disturbing incidents of March 13, 1959, which led to the submission of her

resignation. The unpleasant and emotional meeting with her department head was shortly followed by the unanticipated and tempestuous confrontation in the Principal's office. It is reasonable to suppose that the anxiety and distress engendered by these incidents reached a climax when her subsequent efforts to confer with the Principal and the President of the School Board were frustrated. It is clear to us that the submission of her resignation was an impetuous act prompted by her understandably distraught condition. The emotionally-charged words she used in her note of resignation bear this out. Second, linked to the above chain of events, was the fortuitous circumstance that a special meeting of the school board had, unknown to her, previously been scheduled for a few hours after she wrote her resignation. But for that happenstance, her attempted rescission, on March 15, 1959, would have been effective.

In contrast, the record below supports the ALJ's conclusion that petitioner's resignation was the result of a considered weighing of options and priorities – in consultation with her husband – and in the wake of the denial of her emergent application for child care leave during the pendency of this litigation.

The Commissioner therefore concludes that there is no basis for rescinding petitioner's resignation from employment in petitioner's school district. Petitioner consequently has no standing to prosecute the instant appeal. In light of petitioner's lack of standing, the merits of petitioner's arguments challenging the validity of respondent's rescission of its original grant to petitioner of extended child care leave need not be reached.

The petition is accordingly hereby dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 15, 2011

Date of Mailing: July 18, 2011

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)