

#407-12 (OAL Decision: Not yet available online)

BHANUMATI DESAI, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 STATE-OPERATED SCHOOL DISTRICT : DECISION
 OF THE CITY OF PATERSON, :
 PASSAIC COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner, a retired teacher formerly employed by the respondent school district, sought restoration of sick leave relative to a fall she sustained on January 30, 2004 while in the course of her employment, pursuant to *N.J.S.A. 18A:30-2.1*. Petitioner alleges that the fall resulted in neck problems in addition to the back, ankle, and knee injuries initially diagnosed at the time of her work-related accident. The matter was placed on the inactive list pending settlement of a related worker's compensation case. On January 6, 2010, petitioner reached a settlement with the school district regarding her worker's compensation claim. Petitioner then sought restoration of 77.5 sick days used in relation to her neck issues.

The ALJ found that: the petitioner did not waive her sick-leave claim in the worker's compensation settlement; accordingly, the Commissioner retains jurisdiction to determine whether the district should reimburse her sick time; to prevail in her claim, however, petitioner must establish – by a preponderance of medical evidence – a link between her work injury and the neck problems she experienced; according to the medical records, petitioner did not complain at the time of the fall that her neck sustained injury; petitioner failed to establish that her neck injury was work-related because the credible medical evidence was not able to conclude – because of the lapse of time between petitioner's fall and her subsequent diagnosis of neck injury – that petitioner's neck pain was caused by the fall on January 30, 2004. Accordingly, the ALJ concluded that petitioner is not entitled to reimbursement of sick time.

The Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter.

<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>

October 12, 2012

OAL DKT. NO. EDU 7168-04
AGENCY DKT. NO. 149-4/04

BHANUMATI DESAI, :
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 PETITIONER, :
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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 – submitted in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

Exceptions of the petitioner recast and reiterate her arguments advanced before the Administrative Law Judge (ALJ) below, again maintaining that her continued absence after April 18, 2004 was directly attributable to the injuries she sustained at school on January 30, 2004 – thus entitling her to benefits pursuant to *N.J.S.A.* 18A: 30-2.1 – and she, therefore, urges the Commissioner to overturn the Initial Decision. As all of petitioner’s proffered arguments in this regard were fully considered and addressed in the ALJ’s decision, they will not be revisited here.

Upon review and full consideration, the Commissioner initially concurs with the ALJ that petitioner’s settlement of her two workers’ compensation claims without any findings on the underlying merits does not bar her from litigating a sick-leave injury claim, pursuant to *N.J.S.A.* 18A:30-2.1, before the Commissioner as petitioner did not knowingly and intelligently

waive her rights to pursue this school law claim when she accepted settlement of her workers' compensation claims. See *Patsy N. Marino v. Willingboro Township Board of Education, Burlington Co.*, Commissioner's Decision No. 111-99, decided by the April 13, 1999, *rev'd.* State Board of Education, March 1, 2000; *Darienne T. Franks v. Board of Education of the City of East Orange, Essex County*, Commissioner's Decision No. 318-01, decided September 20, 2001.

Notwithstanding this, however, under such circumstances, to prevail on her instant sick-leave injury claim, petitioner must demonstrate – by a preponderance of the competent and credible medical evidence – a causal link between her injuries and her work duties. See *Laffey v. City of Jersey City*, 289 N.J. Super. 292 (App. Div. 1996). For the reasons clearly presented on pages 8-10 of the Initial Decision, the Commissioner is in full agreement with the ALJ that petitioner has failed to sustain her burden of establishing – by demonstrable objective medical evidence – a causal connection between her neck pain and any accident arising out of or in the course of her employment so as to entitle her to sick-leave benefits under N.J.S.A. 18A:30-2.1 for the period April 19, 2004 through January 1, 2005.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 12, 2012

Date of Mailing: October 15, 2012

* 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).