

VIRGINIA BUSH, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE WARREN : DECISION
 COUNTY VOCATIONAL SCHOOL DISTRICT,
 WARREN COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – a tenured secretary formerly employed by the Board – sought back pay and emoluments following a 2009 Commissioner decision which found that her tenure rights had been violated when she was terminated without just cause in late 2007, and ordered her reinstatement “to a secretarial position” with back pay and emoluments, less mitigation. Concurrent with the 2009 Commissioner decision, the Board offered petitioner the only secretarial position then vacant in the district – *i.e.* secretary to the child study team (“CST secretary”) – at the same salary she had previously made. The Board also advised petitioner that since she had taken no steps to mitigate her damages by seeking employment and/or applying for unemployment compensation after her 2007 termination, it would not disburse any back pay or benefits. Petitioner did not accept the position she was offered, and subsequently filed the instant petition, wherein she sought resolution of the issue of back pay and emoluments. The OAL issued an Initial Decision in this matter on August 5, 2010, finding that the Board owed back pay and emoluments for the period from December 15, 2007 to April 27, 2009, but no back pay from that point forward because petitioner should have accepted the CST secretary position that the Board offered her on April 28, 2009. The Commissioner issued a decision in the matter on February 9, 2011, which concluded that petitioner forfeited her tenure rights when she refused the CST position and remanded the case back to the OAL for fact-finding and recommendations on issues related to the amount of back pay due petitioner for the period from December 15, 2007 to April 27, 2009.

On remand, the ALJ found, *inter alia*, that: petitioner was not required to seek unemployment benefits to mitigate respondent’s damages because – even had she received such benefits – respondent would still have been required to reimburse the unemployment compensation fund since it wrongfully terminated the petitioner; petitioner is entitled to 4% pre-judgment interest pursuant to *N.J.A.C.* 6A:3-1.17; petitioner is not entitled to compensation for her unused sick days; the appropriate percent of salary increase for purposes of determining back salary is 2%, making total back salary due petitioner \$67,840.89. The ALJ concluded that petitioner is due the following specific damages: total back salary plus 4% pre-judgment interest equals \$70,554.52; accrued vacation days plus pre-judgment interest equals \$5,767.84; emoluments, including 4% pre-judgment interest, equals \$2,867.93; no award for unused sick days. Total award to petitioner including 4% pre-judgment interest: \$79,190.29.

The Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner found that petitioner’s exception that took issue with the ALJ’s use of a straight 4% for computation of pre-judgment interest was disingenuous as this amount had been stipulated in the parties’ June 18, 2012 Stipulation of Facts.

<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>

OAL DKT. NO. EDU 1621-11
(EDU 11596-09 ON REMAND)
AGENCY DKT. NO. 209-8/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions and replies of both petitioner and the Board – filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in making his determination herein.

The parties’ exceptions Board essentially replicate their arguments advanced in briefs before the Administrative Law Judge (ALJ) below. In that it is determined that the ALJ fully considered and correctly addressed these in his decision, they will not be revisited here.¹

Upon a reasoned deliberation, the Commissioner concurs with the findings and conclusions of the ALJ – for the reasons comprehensively detailed in his Initial Decision.

¹ It is noted, however, that petitioner’s exceptions additionally take issue with the ALJ’s use of a straight 4% figure in computing the award of pre-judgment interest to her. The Commissioner finds such argument to be wholly disingenuous in that the parties’ Stipulation of Facts (Exhibit J-1) – executed June 18, 2012 – specifies at 8: “The Court will also include in its determination whether or not to award pre-judgment interest in the amount of 4%...” Had petitioner believed that her potential pre-judgment interest differed from this stipulated percentage, it behooved her to decline agreement with this provision of the document. Given the parties’ Stipulation of Facts and the additional fact that petitioner’s argument was never previously raised below, the Commissioner declines to entertain any argument in this regard at this point in time.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. The Board is hereby directed to pay petitioner an award of \$79,190.29 for the period December 15, 2007 through April 27, 2009 – as delineated in the ALJ’s decision at p. 10 – as a consequence of its illegal termination of her employment.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 27, 2012

Date of Mailing: September 27, 2012

² 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).