

#307-15 (OAL Decision: Not yet available online)

TOM KAEICHELE :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
NORTHERN VALLEY REGIONAL :
HIGH SCHOOL DISTRICT, :
BERGEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

On August 28, 2014, petitioner – the tenured Athletic Director at Old Tappan High School – filed an appeal of the determination of the respondent Board to withhold his salary increment for the 2014-2015 school year. The Board had notified petitioner by memorandum on May 8, 2014 that his salary increment would be withheld for the coming year based on his alleged poor performance with respect to his role in personnel matters. The petitioner acknowledged that his appeal was filed outside of the 90-day rule set forth in *N.J.A.C. 6A:3-1.3*, but claimed that extraordinary circumstances justified the relaxation of the 90-day limitation period in this case. Specifically, the petitioner detailed a medical diagnosis and hospitalization from June 22 through July 11, 2014, and an at-home recuperation period from July 12 through July 25, 2014, concluding that his month-long illness was the reason his petition was late-filed and that it would be a gross injustice if the 90-day limitations was not relaxed. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: boards of education may withhold salary increments for good cause pursuant to *N.J.S.A. 18A:29-14*; appeals to the Commissioner must be filed within 90-days pursuant to *N.J.A.C. 6A:3-1.3*; prior case law has determined that without a showing of circumstances amounting to genuine incapacity, relaxation of the 90-day rule is not warranted; in the instant matter, there is no evidence that petitioner was rendered mentally incapacitated by his condition; and by his own assertions, petitioner had two weeks after he was fully recuperated to file his petition. The ALJ concluded that the circumstances in this case do not warrant relaxation of the 90-day rule. Accordingly, the Board’s motion for summary decision was granted and the petition was dismissed.

Upon independent review and consideration, the Commissioner concurred with the ALJ that the within petition is appropriately dismissed because it was filed outside the 90-day limitation period, and that the petitioner failed to set forth any compelling reason to relax the timely filing requirement.

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.
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September 28, 2015

OAL DKT. NO. EDU 12811-14
AGENCY DKT. NO. 238-8/14

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL), along with the parties' exceptions filed in accordance with *N.J.A.C.* 1:1-18.4, have been carefully reviewed.

In essence, petitioner's exceptions contain an unpersuasive reiteration of the arguments he advanced at the OAL. Because the Administrative Law Judge thoroughly addressed those arguments in the Initial Decision, further discussion herein is unnecessary. While recognizing that unfortunate personal circumstances contributed to the late filing of petitioner's appeal, respondent maintains that – absent a showing of exceptional circumstances – the 90-day rule should be strictly enforced by the Commissioner.

Upon full consideration of the record and the parties' submissions, the Commissioner concurs with the ALJ that the instant petition is appropriately dismissed because it was filed outside the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(i). Additionally, the Commissioner finds that petitioner has failed to set forth any compelling reason to relax the timely filing requirement.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons stated therein; respondent's motion for summary decision is granted; and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: September 28, 2015

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* 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*).