

EDU #4990-03S
C # 405-04
SB # 45-04

GEORGE WATSON, JR., :
 :
 PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE CITY OF :
 ASBURY PARK, MONMOUTH COUNTY, :
 :
 RESPONDENT-RESPONDENT. :
 _____ :

Decided by the Commissioner of Education, October 15, 2004

For the Petitioner-Appellant, George Watson, Jr., pro se

For the Respondent-Respondent, Schwartz, Simon, Edelstein, Celso & Kessler (Gregory G. Johnson, Esq., of Counsel)

On November 12, 2004, George Watson, Jr. (hereinafter "appellant"), a non-tenured teaching staff member, filed an appeal to the State Board of Education after the Commissioner dismissed his petition challenging the non-renewal of his employment by the Asbury Park Board of Education. The notice of appeal was filed jointly with an appeal filed by Yara Martin from a Commissioner's decision which dismissed her petition challenging her non-renewal by the Asbury Park Board.

On November 15, 2004, the appellant was notified that he was required to provide proof of service of the notice of appeal on Gregory G. Johnson, Esq., counsel for the Asbury Park Board, by November 26, 2004. When the appellant failed to correct that deficiency, he was notified in a letter dated December 1, 2004 from the Director of the State Board Appeals Office ("Director") that, unless proof of service on Mr. Johnson

was received by December 12, 2004, his appeal would be referred to the Legal Committee of the State Board for consideration of his failure to perfect.

On December 7, 2004, in a letter submitted jointly with Martin by fax, the appellant indicated that Mr. Johnson had been sent a copy of the notice of appeal. He also requested oral argument, an extension of time for filing a brief in support of his appeal, and consolidation of his appeal with the appeal filed by Martin. On December 10, the appellant was advised that he was required to provide a signed original and 17 copies of his letter of December 7th by December 20. The Director also informed the appellant and Martin by letter of that date:

In addition, you request an extension for an unspecified period of time in which to file your appeal briefs, which were due on December 2, 2004. By letter dated December 6, 2004, Mr. Johnson indicated that the Asbury Park Board was not willing to consent to your request. In a phone call to this office on December 7, you indicated that you would advise us by December 8 with regard to the length of the extension you are requesting. As of this date, we have not heard from you. As a result, these matters are being referred to the Legal Committee of the State Board of Education for consideration of your failure to perfect the appeals. If you wish to submit certifications setting forth the circumstances of your failure to file briefs in support of your appeals or to request an extension by the due date for your briefs, you must do so by providing an original and 17 copies of such certifications by December 20, 2004.

By letter dated December 23, 2004 and received by fax, the appellant indicated that he and Martin had not been able to file a brief in a timely manner "because we contacted the law firm and they didn't get back to us." The appellant also requested that the two matters be placed into abeyance while he and Martin ordered hearing transcripts.

By letter dated December 30, 2004, the Director acknowledged receipt by fax of the December 23 letter. The Director again reminded the appellant of his:

responsibility to serve all submissions on Gregory Johnson, Esq., counsel for the Asbury Park Board of Education. Please be advised that you are required to send us an original signed copy of your letter along with 17 copies by January 10, 2005. You are also required to provide proof of service on Mr. Johnson by January 10.

As previously stated in our letter dated December 10, 2004, these matters are being referred to the Legal Committee of the State Board of Education for consideration of your failure to perfect the appeals. Your request to place the briefing schedule in abeyance will be considered at that time.

On January 11, 2005, the appellant and Martin filed a joint letter brief.

By letter dated January 20, 2005, the Director advised the appellant that the Legal Committee had determined to accept his brief for filing. The appellant and Martin were further advised, however, that:

since the State Board has not yet considered your request to consolidate the two appeals, you are required to file two signed original copies of your brief with this office. You also are required to submit an additional 17 copies of the brief. In addition, your brief does not indicate that a copy was sent to Gregory Johnson, Esq., counsel for the Asbury Park Board. You are again reminded of your responsibility to serve all submissions on Mr. Johnson at Schwartz, Simon, Edelstein, Celso & Kessler, Ten James Street, Florham Park, NJ 07932. You are required to correct these deficiencies by January 31, 2005. The Asbury Park Board's answer brief will be due 20 days after service of your brief on Mr. Johnson.

Please be further advised that you still have not submitted an original signed copy of your letter of December 1, 2004, which was received by fax on December 7, in which you seek oral argument and request to consolidate your appeals. Nor does that letter indicate that a copy was sent to Mr. Johnson. The State Board cannot consider your request to consolidate until you have corrected these deficiencies, which must also be corrected by January 31.

The appellant did not respond to that letter or correct any of the cited deficiencies. By letter dated February 1, 2005, the Director notified the appellant that the matter was being referred to the Legal Committee for consideration of the effect of his failure to correct the deficiencies and perfect the appeal.

By letter dated January 31, 2005 and received by fax on February 2, the appellant, stressing that his letter was applicable to his appeal only, stated that a copy of his brief had been sent to Mr. Johnson. He added:

It is my opinion that Mr. Gregory Johnson is in default and should be noticed by letter to that effect by your office....By copy of this letter all problems have been corrected as far as George Watson, Jr. and now Mr. Gregory Johnson is in default.

Contrary to the appellant's assertion, all of the deficiencies have not been corrected. Despite repeated notice, the appellant has failed to file a signed original and 17 copies of his appeal brief, as required by the regulations governing appeals to the State Board, N.J.A.C. 6A:4-1.10, or provided an original copy of his proof of service on Mr. Johnson. Nor has he submitted an original signed copy of his request to consolidate the appeals or provided proof of service of that request on Mr. Johnson. In view of the fact that the appellant was provided with several opportunities to cure the problems, we find the deficiencies regarding his appeal brief to be fatal to his appeal. Hence, while we are mindful of the appellant's status as a pro se litigant, we conclude under these particular circumstances that dismissal of the appeal is warranted.

March 2, 2005

Date of mailing _____