

BEVERLY GUSLER, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 STATE OPERATED SCHOOL : DECISION
 DISTRICT OF THE CITY OF :
 PATERSON, PASSSAIC COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner, a retired tenured teacher, contends that the Board violated *N.J.S.A.* 18A:30-2.1 when it charged her sick days for time lost due to a work-related injury. The Board filed a motion for summary decision, arguing that petitioner's appeal is time-barred by the 90-day limitation period of *N.J.A.C.* 6A:3-1.3(i)1.

The ALJ found that: the facts in this matter are not in dispute; petitioner filed a petition with the Division of Workers' Compensation, which settled on April 25, 2008; petitioner received the Workers' Compensation settlement order from her attorney on June 9, 2008; petitioner thought she had 90 days from that date to file a petition with the Commissioner; and petitioner's argument that there is a Constitutional defect in the regulation since it disregards the issue of notice to a petitioner is without merit. The ALJ concluded that the instant appeal was untimely filed, and dismissed the petition.

The Commissioner concurred with 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>

April 21, 2009

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The record of this matter, the Initial Decision and the exceptions thereto have been reviewed. For the reasons set forth therein, the Commissioner adopts the Initial Decision of the Office of Administrative Law (OAL) as the final decision in this case.

In her exceptions, petitioner maintains that *N.J.A.C. 6A:3-1.3(i)(1)* – the regulation governing the deadline for school employee appeals to the Commissioner for the restoration of sick days – must control the instant controversy. Under that provision, a petitioner is required to file an appeal to the Commissioner within 90 days of the order deciding or settling his/her workers’ compensation claim. In this case, the order was dated April 25, 2008. Ninety days from that date was July 24, 2008, but petitioner filed her appeal on August 28, 2008.

Petitioner’s exceptions repeat, *verbatim*, the contentions in her brief opposing summary judgment below – *i.e.*, that the 90 day limitations period should be relaxed in her case because she allegedly did not receive a copy of the above referenced April 25, 2008 settlement order until June 9, 2008, on which day her lawyer sent her a copy of the order with apologies for

neglecting to forward it sooner.¹ The Commissioner is constrained to agree with the Administrative Law Judge's (ALJ) rejection of that argument.

The delay in receiving the April 25, 2008 workers' compensation settlement order notwithstanding, petitioner still had 45 days from June 9, 2008 to institute an action before the Commissioner. Further, as the ALJ explained, petitioner did not consult with her lawyers to test her belief that she had 90 days from June 9, 2008 to file, and her unsubstantiated belief about the law cannot serve as an excuse for her tardy filing or grounds for relaxation of the regulatory 90-day deadline for instituting petitions.²

Finally, it is unnecessary to address petitioner's arguments concerning the absence of a notice provision in *N.J.A.C. 6A:3-1.3(i)(1)*, since petitioner concededly had 45 days or more between her actual notice of the date of the April 25, 2008 settlement order and the filing deadline of July 24, 2008. Accordingly, for the reasons set forth in the Initial Decision, the petition is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: April 21, 2009

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¹ Respondent points out that petitioner was likely aware of the existence of the settlement order before June 9, 2008.

² Petitioner's delayed receipt of the workers' compensation settlement order is an issue between petitioner and her attorney.

³ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.