

RICHARD VINCENTI, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
STATE-OPERATED SCHOOL DISTRICT OF : DECISION  
THE CITY OF PATERSON, PASSAIC COUNTY, :  
RESPONDENT. :  
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SYNOPSIS

Petitioner, a teacher employed by the Board, contends that the Board violated *N.J.S.A.* 18A:30-2.1 when it charged his sick days for a work related injury during the 2001-2002 school year. Petitioner previously filed a petition in May 2002 seeking restoration of sick leave for the same period of time; petitioner subsequently entered into a settlement agreement with respondent, pursuant to which respondent reinstated 11 sick days. The agreement was approved by the Commissioner in a final decision issued in April 2003. Respondent district asserts that this matter should be dismissed, as petitioner is seeking restoration of additional sick leave contrary to the doctrine of *res judicata*; additionally, the instant petition was not timely filed pursuant to *N.J.A.C.* 6A:3-1.3(i).

The ALJ found that: the settlement agreement approved by the Commissioner in 2003 was a final determination; the petitioner voluntarily and with aid of counsel entered into an agreement which restored certain days to his accumulated sick leave bank; the instant petition is therefore barred by the doctrine of *res judicata*, and is additionally time barred by the 90-day rule. The ALJ determined that the instant petition should be dismissed with prejudice.

The Commissioner concurs with the ALJ's determination that this matter is appropriately dismissed as untimely, which renders unnecessary any consideration on the merits of whether the instant claim is barred by the doctrine of *res judicata*. The Commissioner, however, points out that petitioner's criticism on exception of the ALJ's findings and conclusions – which were made based on the record before her – is unwarranted, as any culpability here lies solely with the petitioner. Accordingly, the Initial Decision of the OAL is adopted, and the instant petition is dismissed.

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.

October 12, 2006

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner filed timely exceptions; however, subsequent review indicated that he had neglected to serve copies of these exceptions upon his adversary and the Administrative Law Judge (ALJ) as required by *N.J.A.C. 1:1-18.4*. Upon faxed notification of this deficiency from the Bureau of Controversies and Disputes on September 13, 2006, petitioner, by return facsimile, certified that the requisite service would immediately be accomplished. The District's reply exceptions were filed three business days from its receipt of petitioner's exceptions, well within the timeframe dictated by *N.J.A.C. 1:1-18.4* for such replies. These submissions were fully considered by the Commissioner in reaching her determination herein.

On exception, petitioner charges that the Initial Decision is replete with errors and/or determinations which are without factual basis, resulting in an almost irreparable situation in this matter. (Petitioner's Exceptions at 1) Initially, he asserts, the ALJ's determination that the instant petition must be dismissed as *res judicata* is clearly in error. Although conceding that he, indeed, filed a Petition of Appeal in March 2002 which sought restoration of sick days in the 2001-02 school year, petitioner maintains it is readily apparent that the March 2002 petition (attached as Appendix B) had nothing whatsoever to do with the instant case. Rather, he advances:

\*\*\*the issue presented in [the March 2002] matter was, after Mr. Vincenti rested his leg and received appropriate medical treatment, he was released to return to work as of February 14, 2002. This is set forth in a memo dated February 1, 2002 (paragraph 3 of the Petition of Appeal; Appendix B.)

However, rather than allowing Mr. Vincenti to return to work, the District sent Mr. Vincenti a letter indicating that before he could return to work he had to see a psychiatrist (see paragraph 4 of the Petition of Appeal).

Pursuant to the school law, a request was then made of the District, as Mr. Vincenti's original injury was not of a psychological origin, but, rather, involved his left leg, why was Mr. Vincenti asked to see a psychiatrist and where did Mr. Vincenti's behavior deviated (sic) from the norm (see paragraph 5 of the Petition of Appeal).

The District chose to ignore the request for a statement of reasons and never indicated why it believed Mr. Vincenti's behavior deviated from the norm (see paragraph 6 of the Petition of Appeal).

Accordingly, the sick days that were sought in the first Petition of Appeal referenced by the Administrative Law Judge had nothing to do with an injury to Mr. Vincenti's ankle and/or leg. Rather, the issue was limited solely to receiving back-pay and restoration of sick days for the period of time that the District refused to allow Mr. Vincenti to return to work after he was medically cleared to return to work, when the District did not comply with the school laws and indicate why it was requesting that Mr. Vincenti see a psychiatrist. The period of time involved was February 14, 2002, the date that the District was advised that Mr. Vincenti would be able to return to work, in connection with his leg injury, through March 5, 2002, the date that Mr. Vincenti was finally allowed to return to work.

Accordingly, the Settlement Agreement (attached as Appendix C) specifically referenced that case, i.e., the case in which Mr. Vincenti was not allowed to return to work, and gave him eleven sick days, a compromise figure, for the period of time from February 14 through and including March 5, 2002. (*Id.* at 1-2)

In contrast, petitioner argues, the instant petition is the first time he requested restoration of sick days, pursuant to *N.J.S.A.* 18A:30-2.1, for the period of time he was unable to work due to his work-related injury. Petitioner charges that the ALJ probably never looked at the Petition of Appeal in the first matter and, therefore, was oblivious to the fundamental differences between these two matters. Consequently, "[b]ecause the [ALJ] ignored this basic fact, the rest of

her legal conclusions are specious at best and totally without any legal foundation.” (Petitioner’s Exceptions at 3) Therefore, he argues, *res judicata* is totally inapplicable in this matter. Notwithstanding, he argues, even if the two petitions *had been on the same issue*, the language in paragraph 3 of the Settlement Agreement in the first case – specifically: “[t]his settlement shall not impact Vincenti’s claim for additional sick days to which he claims entitlement pursuant to the school laws in a manner to be determined by the Workers Compensation Courts” – served to preserve his right to bring the second additional action. (*Id.* at 4) (emphasis added)

As to the issue of timeliness of the petition, petitioner advances that “[i]t is also significant that the [ALJ], while citing *N.J.A.C.* 6A:3-1.3(i), never actually looked at the statute (sic)” which he avers, in sub paragraph 1, reads:

[a]ny petitioner claiming benefits under *N.J.S.A.* 18A:30-2.1 shall file petition within 90 days of the date of the determination at the Division of Worker’s Compensation that either finds the employee to have sustained a compensable injury or settles the compensation case without a determination of work-related causation.\*\*\*

He professes this is precisely what happened in the instant matter – this petition “was filed within 90-days of the date that the Worker’s Compensation Division determined that [his] injury to his foot was compensable.” (*Id.* at 4)

In reply, the District charges that petitioner’s arguments advanced in his Exceptions are disingenuous and contrary to those arguments he made before the ALJ below in response to the District’s Motion to Dismiss. (District’s Reply Exceptions at 2) With respect to the *res judicata* issue, the District points out that petitioner’s Brief in Opposition to the Respondent’s Motion to Dismiss makes no mention whatsoever that his prior petition (March 2002) was “separate and distinct” from the instant petition. Rather, it professes, “the argument posed in the opposition brief rests solely on the interpretation and the alleged intention behind the various settlement agreements, noting the ‘perverse and inequitable result’ should the District be permitted to renege on the language of the settlement agreement related to the pursuit of additional sick days. (See June 29, 2006

Opposition Brief, pages 2 and 3).” (District’s Reply Exceptions at 2) Now, it proposes, petitioner, in blatant violation of *N.J.A.C.* 1:1-18.4(c), is attempting to supplement the record - subsequent to the issuance of the ALJ’s decision in this matter - by submitting with his Exceptions, as [Appendix B], a copy of the March 2002 petition: a document which heretofore had never been presented to or shared with either the District or the ALJ during the course of these proceedings. (*Id.* at 2-3)

Turning to the timeliness of the petition, pursuant to *N.J.A.C.* 6A:3-1.3(i), the District urges:

any possible means of calculating the days during which Petitioner had to file the within Petition mandates a conclusion that the Petition had to be filed in late July-early August 2005. As Petitioner noted in paragraph 5 of the Petition, the workers comp case “concluded via settlement agreement” on May 2, 2005. If the date of that decision constitutes the beginning of the running of the limitations period, then the Petition had to be filed within ninety days, by July 31, 2005. As the 31<sup>st</sup> was a Sunday, the limitations period expired on August 1, 2005. If an allowance is made for mailing the decision, then presumably three days must be added to the May 2 date, beginning the limitations period on May 5, 2005. Thus, the limitations period ended on August 3, 2005. The Petition in this case was not filed until on or about November 9, 2005, more than 180 days after the workers comp case was settled and incorporated into a decision. (District’s Reply Exceptions at 2)

Interestingly, the District observes, in his June 29, 2006 Opposition Brief, petitioner admits that his petition was filed “in excess of the 90 days” mandated by regulation and, rather, argues that the rule should be relaxed because of the important public policy issues involved. Now, in his exceptions, petitioner maintains that his instant petition “was filed within 90 days of the date that the Worker’s Compensation Division determined that [his] injury to his foot was compensable.” The District queries “[h]ow does May 2, 2005 to November 9, 2005 equal 90 days? And how can counsel go from admitting fault to making a bold but false representation that the Petition was timely filed?” (*Id.* at 3)

The District, therefore, urges that the Commissioner adopt the decision of the ALJ.

Upon a full and independent review of the record, and after due consideration of the parties' exception arguments, the Commissioner concurs with the ALJ's determination that this matter is appropriately dismissed as untimely. Whether it is accepted that the 90-day timeline of *N.J.A.C. 6A:3-1.3(i)* expired "90 days after petitioner's sick days were originally charged against his accumulated sick leave, presumably during the early part of 2002," as found by the ALJ (Initial Decision at 4) **or**, as argued by petitioner, "90 days of the date of the determination at the Division of Worker's Compensation that either finds the employee to have sustained a compensable injury or settles the compensation case without a determination of work related causation"<sup>1</sup> (ie: May 2, 2005), it is without question that the instant Petition of Appeal, filed on November 10, 2005, was untimely. It is further determined that the record presents no compelling circumstance whatsoever which would warrant relaxation of the regulatory time line. Finally, the Commissioner observes that it cannot reasonably be argued that provisions in settlement agreements which purport to preserve petitioner's possible claim for additional sick days to which he might contend entitlement – either in this forum or the Division of Worker's Compensation – could serve to waive the administrative filing requirements for such claim.

Although the above dismissal of this matter on the procedural issue of timeliness renders consideration on the merits of whether the instant claim is barred by the doctrine of *res judicata* unnecessary, the Commissioner is, nonetheless, compelled to point out the abject incongruity of petitioner's exception arguments criticizing the ALJ's adjudication of this issue as a consequence of her total failure to recognize the separate and distinct subject matter of his petition

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<sup>1</sup> It is noted, however, that petitioner's cited version of *N.J.A.C. 6A:3-1.3(i)* became effective *July 3, 2006*. Prior to this time, this regulatory provision specified:

[a]ny petitioner claiming benefits under *N.J.S.A. 18A:30-2.1* must file a petition within 90 days of receipt of the notice of the district board's action, or of the action of the district board's agent, which has the effect of denying such benefits, notwithstanding that the Commissioner may hold the petition in abeyance pending determination by the Division of Workers' Compensation as to whether the underlying injury is work-related.

filed on May 2, 2002, and that of this matter, filed on November 10, 2005. First of all, it is observed that the instant Petition of Appeal specifically addresses the prior matter, stating:

On February 4, 2003, Petitioner Vincenti, represented by the undersigned, entered into an agreement with the Paterson State-Operated School district to settle EDUOR 05137-02N, *which was a dispute concerning the allocation of Petitioner's accumulated sick leave during the 2002 school year. The dispute was over absences commencing on or about December 10, 2001, and continuing into the 2002 school year. These absences were caused by an injury to Petitioner's left ankle that occurred in the workplace on or about December 5, 2001.* By the terms of the settlement (a copy of which is attached hereto) the District agreed to reinstate eleven sick days to Vincenti's accumulated leave. (Petition of Appeal, #2. at page 2) (emphasis supplied)

Moreover, at no time during the course of the adjudication of this matter did petitioner raise the issue of subject matter distinction or submit documentation in this regard, but rather – in violation of *N.J.A.C. 1:1-18.4(c)* – first aired this charge and appended a copy of the first petition in his exceptions to the Initial Decision. As such, derisive criticism of the ALJ's findings and conclusion on this issue made based on the record before her is unwarranted, as any culpability here lies solely with the petitioner.

Accordingly, the Initial Decision of the OAL is adopted, as modified above, and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 12, 2006

Date of Mailing: October 12, 2006

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<sup>2</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C 6A:4-1.1 et seq.*