

ASKIAA NASH, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, :
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the determination of the respondent State-Operated School District of the City of Newark to deny his application to be reinstated as an educational media specialist. Petitioner filed the same appeal in 2013 and the underlying dispute was previously heard in its entirety in the Office of Administrative Law. Petitioner had been employed by the respondent under yearly contracts as an educational media specialist from 1993 until 2001, when he was terminated following a criminal indictment. A jury trial resulted in a verdict against him on May 16, 2002, and petitioner was subsequently incarcerated until his conviction was reversed by the New Jersey Supreme Court in a decision dated January 22, 2013. The petitioner filed the first appeal of his 2001 termination in May 2013, in which he claimed that he is a tenured employee and therefore entitled to reinstatement and back pay to the date of his wrongful termination. The Commissioner issued a final decision dismissing that case on November 25, 2013, as the petition was found to have been filed well outside the 90-day limitation period set forth in *N.J.A.C. 6A:3-1.3(i)* for the filing of an appeal.

In the within appeal, the ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; Judge Ellen Bass heard the same appeal in 2013, and dismissed it pursuant to *N.J.A.C. 6A:3-1.3(i)*; Judge Bass additionally concluded that petitioner was not serving under tenure at the time his employment was terminated; petitioner appealed to the New Jersey Appellate Division, which affirmed the Commissioner's 2013 final decision dismissing the appeal; petitioner takes the same position in the instant petition that he took in his 2013 appeal; petitioner raises no new issues to be resolved in the instant case; the doctrines of res judicata and collateral estoppel preclude petitioner from bringing the instant appeal; and petitioner's claim of "newly discovered evidence" is without merit, as the information presented involves an alleged occurrence that happened in 2010, which was reasonably discoverable in 2013 when petitioner first brought his claim. Accordingly, the ALJ granted the District's motion for summary decision, and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion; accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter.

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.

July 27, 2017

ASKIAA NASH, :
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 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 STATE-OPERATED SCHOOL DISTRICT OF : DECISION
 THE CITY OF NEWARK, ESSEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, along with petitioner’s exceptions – filed pursuant to *N.J.A.C. 1:1-18.4* – and the District’s reply thereto.¹

In his exceptions, petitioner argues that the Administrative Law Judge (ALJ) failed to consider the newly discovered evidence that another employee was given the opportunity to become certified as an Associate Library Media Specialist, while petitioner was not permitted to do so. Petitioner points out that he was incarcerated at the time that the requirements for certification were amended, and he was not notified of the changes nor given the opportunity to submit his credentials for review by the New Jersey State Board of Examiners. Instead, petitioner argues that he was forced to start from the beginning while another employee was permitted to be “grandfathered in.”

In reply, the District argues that the ALJ properly found that the doctrines of res judicata and collateral estoppel preclude this matter, as the same issues were decided in a 2013 Initial Decision, which was adopted by the Commissioner and affirmed by the Appellate

¹ Petitioner submitted a response to the District’s reply. Such a response is not permitted under *N.J.A.C. 1:1-18.4*, and was therefore not considered by the Commissioner.

Division in 2015. The District also argues that the “newly discovered evidence” raised by petitioner is not new – it occurred in 2010 and could have been discovered with due diligence during the 2013 proceeding. As such, the District argues that the Initial Decision should be affirmed.

Upon review, the Commissioner agrees with the ALJ that this matter is barred by the doctrines of res judicata and collateral estoppel. The Commissioner is not persuaded by petitioner’s exceptions. Instead, the Commissioner concurs with the ALJ that the “newly discovered” evidence does not qualify as “newly discovered” because it was reasonably discoverable in 2013 when petitioner first brought his claim.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter – for the reasons thoroughly expressed therein – and the petition is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 27, 2017

Date of Mailing: July 27, 2017

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*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 01563-17

AGENCY DKT. NO. 244-9/16

ASKIAA NASH,

Petitioner,

v.

**STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF NEWARK,**

Respondent.

Askiaa Nash, petitioner, pro se

Adam S. Herman, Esq., for respondent (Adams, Gutierrez & Lattiboudere,
attorneys)

Record Closed: May 18, 2017

Decided: June 14, 2017

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

Petitioner appeals the determination of respondent State-Operated School District of the City of Newark denying his application to be reinstated as an education media specialist. Petitioner filed the same appeal in 2013 and the underlying dispute was already heard in its entirety by Judge Ellen Bass, ALJ and reviewed by the

Appellate Division of the State of New Jersey. I **FIND** the instant petition must be dismissed pursuant to N.J.A.C. 1:1-12.5 as there is no issue of material fact to be resolved since the matter has already been fully litigated and decided.

PROCEDURAL HISTORY

Petitioner Askiaa Nash (petitioner) filed the instant petition with the New Jersey Commissioner of Education, received on August 25, 2016, by the Department of Controversies and disputes.

Respondent filed a Motion to Dismiss and support brief with the Commissioner on October 11, 2016. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on February 2, 2017.

I received petitioner's final response to respondent's motion on May 18, 2017. The parties had not requested oral argument and I determine that the written submissions are sufficient to dispose of the matter.

STATEMENT OF FACTS

I **FIND** the following to be the facts of the case.

Petitioner was employed as an education media specialist by respondent from September 1993 until June 22, 2001.

Petitioner was formally terminated by respondent on June 22, 2001, due to a pending criminal indictment. Petitioner was convicted but the conviction was overturned by the New Jersey Supreme Court and the charges against Nash were dismissed. On May 7, 2013, Nash filed an action with the Commissioner of Education for reinstatement as an education media specialist, claiming that he was a tenured employee.

The matter transmitted to the Office of Administrative Law (OAL) as a contested case on June 18, 2013, OAL DKT. NO. EDU 08449-13. The case was assigned to the

Honorable Ellen Bass, ALJ who issued an Initial Decision on October 9, 2013, dismissing petitioners appeal. Nash v State Operated School District of Newark, EDU 08449-13, Initial Decision, (November 25, 2013), adopted Comm'r (February 2013) <http://www-camlaw.rutgers.edu/library/oal>

Petitioner appealed to the New Jersey Appellate Division (DKT.#A-2473-13T4), which affirmed the Final Decision on October 16, 2015.

Petitioner now brings the instant appeal based on the same set of facts as the prior appeal and argues that both the Appellate Division and the ALJ erred in their findings of fact and conclusions of law and asks the Commissioner to reinstate him as an educational media specialist.

As the Motion to Dismiss is pending, petitioner claims that he has found “newly discovered evidence” to support his appeal. Petitioner claims that another individual was able to obtain a media specialist certificate in 2010 and argues that he has a right to same under the Privileges and Immunities Clause of the U.S. Constitution.

LEGAL DISCUSSION

The District seeks relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” The regulation mirrors R. 4:46-2(c), which provides that “[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.”

I **FIND** the arguments presented and documents submitted, when viewed in the light most favorable to the non-moving party, are sufficient to permit me to resolve the

instant matter. I **CONCLUDE** that this matter is ripe for summary decision and that the District's motion should be granted.

a. Res Judicata

Respondent contends that the doctrine of res judicata prohibits petitioner from litigating the instant appeal. Judicially created principles related to issue preclusion such as collateral estoppel and res judicata may be applied in the administrative law setting. Hennessey v. Winslow Twp., 183 N.J. 593, 599 (2005).

The term "res judicata" pertains to a common law doctrine barring re-litigation of claims or issues that have already been adjudicated. Velasquez v. Franz, 123 N.J. 498, 505 (1991). In accordance with the doctrine of res judicata, a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be re-litigated by those parties or their privies in a new proceeding. Ibid.

Petitioner had already filed an appeal regarding the same issue in 2013. Respondent takes the same position now as he did in the 2013 appeal. He argues that the Appellate Division and the ALJ in the 2013 appeal were incorrect in their finding of fact and conclusion of law but he does not raise any new issue to be resolved by this tribunal. I cannot allow a litigant to re-litigate a claim that has already been decided. I **FIND** the doctrine of res judicata precludes petitioner from bringing the instant appeal and respondent's motion to dismiss should be granted.

b. Collateral Estoppel

Respondent contends that the doctrine of collateral estoppel prohibits petitioner from litigating the instant appeal. Collateral estoppel is an equitable principle that bars re-litigation "when an issue of fact or law is actually litigated and determined by a valid and final judgment." Winters v. N. Hudson Reg'l Fire and Rescue, 212 N.J. 67, 85 (2012); In re DaCosta, EDE 1895-14, Initial Decision (December 2, 2014), <http://njlaw.rutgers.edu/collections/oal/>. The question is whether a party has had his

day in court on a given issue. McAndrew v. Mularchuck, 38 N.J. 156, 161 (1962). As concluded in DaCosta collateral estoppel bars re-litigation of an issue if

(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

[Winters, supra, 212 N.J. at 85.]

In the instant matter, facts and arguments presented are the same as those contemplated by Judge Bass in her decision. That decision was adopted by the Department of Education and upheld by the Appellate Division. I **FIND** the doctrine of collateral estoppel precludes petitioner from bringing the instant appeal and respondent's motion to dismiss should be granted.

c. Newly Discovered Evidence

Petitioner claims that he has found "newly discovered evidence." The issue of new evidence was not raised when he filed the instant appeal but was brought to my attention via a correspondence from petitioner dated April 10, 2017. (P-1) In the correspondence petitioner claims that another individual was able to obtain a standard school library media specialist certificate from respondent in May of 2010. Petitioner argues that he should be entitled to the same certificate and cites as authority the United State Constitution, Privileges and Immunities Clause.

I **FIND** that referencing another employee's experience with respondent does not create legal precedent upon which relief may be granted. Further, since the alleged occurrence happened in 2010, it does not qualify as "newly discovered" as it was reasonably discoverable in 2013 when petitioner first brought his claim.

ORDER

It is hereby **ORDERED** that the District's Motion for Summary Decision be **GRANTED**; it is further **ORDERED** that

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Jude - Anthony Tiscornia

JUNE14, 2017
DATE

JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

6/14/17

Date Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

None

For Respondent

None

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 Correspondence from petitioner dated April 10, 2017

For Respondent:

None