

MICHELLE CHISM, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF :
THE TOWNSHIP OF GLEN RIDGE, :
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner, a tenured kindergarten teacher in the respondent's school district, contends that the Board violated *N.J.S.A.* 18A:30-2.1 when it failed to pay full salary without loss of sick time for an injury sustained in the course of her employment. The parties stipulated to the facts, and agreed that the matter would be decided on the papers based upon the respective briefs.

The ALJ found that: the parties are in agreement that petitioner suffered an accident arising out of and in the course of her work when she inhaled chemical fumes in her classroom; petitioner was unable to return to work due to the possibility that she could again be exposed to the chemical fumes and the Board could not accommodate her request to be moved to another building or position until the following school year; and petitioner is entitled to her full salary from April 22, 2004 to June 30, 2004, minus disability benefits awarded by the Division of Workers Compensation.

The Commissioner adopted the Initial Decision of the OAL with modification, for purposes of clarity, to the relief ordered. The Board was directed to remit to petitioner her salary from April 22, 2004 to June 30, 2004, minus *temporary* disability benefits, if any, *actually paid to petitioner* by the Division of Workers Compensation.

<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>

January 7, 2009

MICHELLE CHISM, :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, to which the Board of Education (Board) did not reply.

In her exceptions, petitioner seeks modification of the remedy recommended by the Administrative Law Judge (ALJ), contending that the remedy as it stands is “confusing” because: 1) it fails to limit any offset to *temporary* disability benefits as specified by *N.J.S.A. 18A:30-2.1*;¹ and 2) offset even by temporary disability benefits would apply only if the sum in question was actually paid to petitioner – which there is no indication in the record that it was – since such sums are frequently paid to the employing board of education because of the board’s obligation to pay the employee’s full salary pursuant to statute. (Petitioner’s Exceptions at 1-2)

Upon review, the Commissioner finds that the ALJ fully and fairly considered the arguments of the parties in light of the operative facts and applicable law, and correctly

¹ The Order for Settlement issued by the Division of Workers’ Compensation in this matter (Exhibit J-20) provides for both temporary *and* permanent disability benefits.

concluded that petitioner was entitled to her full salary from April 22, 2004 to June 30, 2004 as a result of the work-related illness she contracted on December 8, 2003. The Commissioner does agree with petitioner, however, that *N.J.S.A.* 18A:30-2.1 expressly limits offset to *temporary* disability benefits and contemplates such offset only where benefits have been actually paid to the employee, so that the total amount received will equal the employee's full salary.

Accordingly, for the reasons set forth above, the Initial Decision of the OAL is adopted as the final decision in this matter, with modification as to the relief ordered. The Board is directed to remit to petitioner forthwith her salary from April 22, 2004 to June 30, 2004, reduced by the amount of any workers' compensation award paid to her for temporary disability.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 7, 2009

Date of Mailing: January 8, 2009

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36.