

GIUSEPPE AMATO,

Petitioner/Appellant,

vs.

TOWNSHIP OF OCEAN
SCHOOL DISTRICT,

Respondent/Respondent.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 090133

APPELLATE DIVISION
DOCKET NO: A-2543-23

CIVIL ACTION

ON APPEAL FROM: DIVISION OF
WORKERS' COMPENSATION
DEPARTMENT OF LABOR AND
WORK FORCE DEVELOPMENT-
CLAIM PETITION NO.: 2021-19450

SAT BELOW:

HON. LISA A. PUGLIACI, J.A.D.

HON. LISA ROSE, J.A.D.

HON. PATICK DEALMEIDA, J.A.D.

AMICUS CURIAE BRIEF
OF
NEW JERSEY ASSOCIATION FOR JUSTICE

PELLETTIERI, RABSTEIN &
ALTMAN
A PROFESSIONAL CORPORATION
989 LENOX DRIVE
SUITE 101
LAWRENCEVILLE, NEW JERSEY
08540
(609) 520-0900

On the Brief:

Jeffrey s. Monaghan, Esquire
Attorney ID No.: 011801984

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
LEGAL ARGUMENT.....	2
I. THE TRIAL JUDGE OF COMPENSATION CORRECTLY DETERMINED THAT THE DECEASED, DENISE AMATO, WAS AN ESSENTIAL EMPLOYEE UNDER N.J.S.A. 34:15-31.11, AND WAS THEREBY ENTITLED TO THE REBUTTABLE PRESUMPTION PROVISION OF N.J.S.A. 34:15-31.12 .	2
II. THE WORKERS' COMPENSATION ACT IS REMEDIAL LEGISLATION, WHICH SHOULD BE LIBERALLY CONSTRUED TO PROTECT INJURED WORKERS.	7
III. THE JUDGE OF COMPENSATION PROPERLY FOLLOWED THE RELEVANT RULES OF THE DIVISION OF WORKER' COMPENSATION IN GRANTING THE MOTION DELCARING THE DECEASED, DENISE AMATO, TO BE AN ESSENTIAL EMPLOYEE.	8
CONCLUSION.....	10

TABLE OF AUTHORITIES

STATE CASES

Aoletta V. Bergen Center for Child Development
338 N.J. SUPER 464 (App. Div. 2001)..... 7

Torres v. Trenton Times Newspaper
64 NJ 458, 461 (1974)..... 7

STATUTES CITED

N.J.S.A. 34:15-1..... 1
N.J.S.A. 34:15-31.11.....3,4,5
N.J.S.A 34:15-31.12..... 3,8

NEW JERSEY ADMINISTRATIVE CODE REGULATIONS

N.J.A.C. 12:235-3.2..... 9
N.J.A.C. 12:235-3.3..... 9
N.J.A.C. 12:235-3.5..... 9

EXECUTIVE ORDERS

EXECUTIVE ORDER 103..... 1,6,7
EXECUTIVE ORDER 104..... 1,2
EXECUTIVE ORDER 175..... 2,3,4

EXHIBITS

EXHIBIT A

CISA ADVISORY MEMORANDUM ON ENSURING

ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS ABILITY TO WORK DURING THE COVID-19 RESPONSE.....	6,7
--	-----

EXHIBIT B

STATE OF NEW JERSEY OFFICE OF EMERGENCY MANAGEMENT ESSENTIAL EMPLOYEES.....	7
--	---

MARCH 14, 2024, MOTION ORAL ARGUMENT TRANSCRIPT....	10
---	----

INTRODUCTION

This case presents an issue of great importance and concern to members of the New Jersey Association for Justice, (N.J.A.J.) its attorneys, their clients, and the citizens of the State of the New Jersey. The issue at hand is whether teachers fall within in the provisions of N.J.S.A. 34:15-31.11 and N.J.S.A. 34:15-31.12. This statute is referred to as the “presumption statute.” In essence, if during the public health emergency declared by the Governor of New Jersey for COVID-19, the essential employee contracted the corona virus disease while they were working in a place of employment other than their own residence, there is a presumption that the contraction of the disease is work related and fully compensable for the purposes of benefits provided under N.J.S.A. 34:15-1. This prima facie presumption may be rebutted by a preponderance of the evidence showing that the worker was not exposed to the disease while working in the place of employment.

On March 9, 2020, Governor Murphy issued an Executive Order 103 declaring a public health emergency and state of emergency in New Jersey as a result of the COVID-19 pandemic. Executive Order 103 authorized the State Office of Emergency Management (OEM), in conjunction with the New Jersey Department of Health (NJOH), to take any actions necessary to protect the health and welfare of New Jersey citizens.

On March 16, 2020, Governor Murphy issued Executive Order 104 closing all

schools in New Jersey. On August 13, 2020, the Governor signed Executive Order 175, which superseded the prior Executive Orders and allowed schools to reopen for in person instruction subject to health and safety protocols.

On October 16, 2020, the New Jersey Department of Health promulgated a COVID-19 vaccination plan, which identified “education and childcare workers as essential employees.”

The decedent, Denise Amato, age 43, was a full time schoolteacher for the Township of Ocean School District in the Middle School. The decedent was required to return to in person school instruction as part of the school’s reopening plan, which went into effect in September of 2020, for the 2020-2021 school year. Denise Amato passed away on May 18, 2021, after testing positive for COVID-19. Ms. Amato was employed as a full time teacher on this date as set forth in the claim petition that was filed on her behalf by her husband, Giuseppe Amato, and their two dependent children. It is not disputed that New Jersey was under the COVID state of emergency from March 9, 2020, through June 4, 2021. This time period covered the decedent’s period of occupational exposure from January 2021 through her passing on May 18, 2021.

LEGAL ARGUMENT

I. THE TRIAL JUDGE CORRECTLY DETERMINED THAT THE DECEASED, DENISE AMATO, WAS AN ESSENTIAL EMPLOYEE UNDER N.J.S.A. 34:15-31.11 AND WAS

**THEREBY ENTITLED TO THE REBUTTABLE PRESUMPTION
PROVISIONS OF N.J.S.A. 34:15-31.12.**

The Appellant has argued in their submissions to the Court, that the clear language of N.J.S.A. 34:15-31.11 does not specifically identify teachers or other educational employees as essential employees. The Appellate Division correctly disagreed with this narrow reading of the statute, which fails to take into consideration the changing landscape that the State was operating under at the time N.J.S.A. 34:15-31.11 and N.J.S.A. 34:15-31.12 were signed into law by Governor Murphy on September 14, 2020.

At the time this legislation became law, efforts were being made by the administration and other governmental officials to return to some form of in person activities. This included Governor Murphy's decision in August of 2020, to sign Executive Order 175 allowing schools to reopen for in person instruction. N.J. Executive Order 175, August 13, 2020.

Included in the terms of Executive Order 175 is language specifically acknowledging that "New Jersey schools serve a critical function for the state's workforce, in that they provide safe supervision of children during the day, allowing parents and guardians to work and move the economy forward; and in order to provide the many benefits of in person instruction, New Jersey's public and private schools alike must ensure that the school environment is safe for both students and staff." (Id

at PA 4)

Pursuant to Executive Order 175, the decedent, Denise Amato, returned to in person school instruction as part of the school's reopening plan that went into effect in September of 2020.

The New Jersey Association for Justice believes that support for the argument that schoolteachers be considered essential employees can be found in section 3 of N.J.S.A. 34:15-31.11, which sets forth the definition of essential employees.

Performs functions, which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services and the production, preparation, storage, sale, and distribution of the essential goods such as, food, beverages, medicine, fuel, and supplies for conducting essential business and work at home.

While schoolteachers are not included in the specific list of essential workers, the statute's use of the term, including, is not meant to limit the definition of essential employees to only the specific employments listed in the section but rather allows for other employees to be considered essential employees as the state began efforts to return to more in person services.

A middle school teacher required to return to in person instruction in a classroom setting is performing a function, which involves physical proximity to the members of the public and are essential to the public's health, safety, and welfare. Clearly, teachers such as, the deceased, Denise Amato, should be considered

“essential employees” as that term is defined under section 3 of N.J.S.A. 34:15-31.11.

The language in section 4 of N.J.S.A. 34:15-31.11 extends the definition of essential employees to include “any other employee” deemed an essential employee by the public authority declaring the State of Emergency. N.J.A.J. would argue that this language extending the definition of essential employees beyond those specific employees set forth in provision 3 of the Statute was in recognition of the changing circumstances occurring during this time. It provided the necessary flexibility in considering “other employees” to be considered “essential employees” as New Jersey began the transition back to in person activities even as we remained under the COVID-19 public health emergency.

N.J.A.J. would further argue that support for the finding that schoolteachers be considered essential employees can be found in guidance provided by the Cybersecurity and Infrastructure Agency (CISA), an agency within the United States Department of Homeland Security.

On August 18, 2020, CISA issued an advisory memorandum that was promulgated by CISA in collaboration with other federal agencies, state, and local governments, and the private sector, in developing a list of “Essential Critical Infrastructure Workforce” advisory lists. The purpose of this advisory memorandum was to help state local officials and organizations endeavor to protect their workers and communities as they continue to reopen in a phased approach coupled with the

need to ensure continuity functions critical to the public health and safety as well as economic and national security. CISA Advisory memorandum on insuring essential critical infrastructure workers ability to work during the COVID-19 response.
(Version 4.0 Aug.18, 2020)

Contained in the Advisory Memorandum's list of essential critical infrastructure workers is a section titled, "Education." Included in the "Education" section of the document is the following at page 10.

Workers who support the education of pre-school, K-12, college, university career and technical education and adult education students, including professional professors, teachers, teachers' aides, special education, and special needs teachers, ESOL teachers, para-educators, apprenticeship supervisors and specialists.

While the appellant is correct in their argument that the CISA Memorandum concerning essential workers is intended as an advisory guideline to help state and local governments protect their workers and communities, N.J.A.J. would argue that actions taken by Governor Murphy's administration indicate that New Jersey formally adopted the list of essential critical workers set forth in the CISA Memorandum

Contained within Executive Order 103, signed by Governor Murphy on March 9, 2020, declaring a State of Emergency due to the COVID-19 Pandemic, is specific language empowering the State Director of Emergency Management, who is the Superintendent of the State Police, in conjunction with the Commissioner of the

Department of Health, to take any emergency measures as the State Director may determine necessary including the implementation of the State Emergency operations plans and directing the activation of county and municipal emergency operation plans in order to fully and adequately protect the health, safety and welfare of the citizens of the State of New Jersey from any actual or potential threat or danger that may exist from the possible exposure to COVID-19. N.J. Executive Order 103, (March 9, 2020).

Pursuant to the authority contained in Executive Order 103, the New Jersey Office of Emergency Management adopted CISA's guidance on the essential critical infrastructure workforce in their Memorandum of August 18, 2020. Essential employees, OME <https://N.J. gov/njoem/program/essential-employees.shtml>.

II. THE WORKERS' COMPENSATION ACT IS REMEDIAL LEGISLATION WHICH SHOULD BE LIBERALLY CONSTRUED TO PROTECT INJURED WORKERS.

Any review of a workers' compensation matter must begin with the recognition of the long held understanding that the Workers' Compensation Act is remedial social legislation and should be given a liberal construction in order to "implement the legislative policy of affording coverage to as many workers as possible." Auletta v. Bergen Center for Child Development, 338 N.J. Super. 464, 470 (App. Div. 2001); Torres v. Trenton Times Newspaper, 64 N.J. 458 461 (1974). The Judge of Compensation carefully reviewed the law and the governmental pronouncements in reaching her decision to grant the respondent's motion, finding the decedent as a

classroom teacher required to be in class instruction be considered an essential worker.

A decision by the Supreme Court affirming the Trial Judge's carefully reasoned decision in this matter will clarify that teachers who performed in person school instruction during the specific time period that New Jersey was under the COVID-19 Public Health Emergency should rightfully be found to be essential workers, and thereby are entitled to the presumption provided in N.J.S.A. 34:15-31.12.

A decision by the Supreme Court affirming the Trial Judge's decision in this case is entirely consistent with the remedial social purposes of our Workers' Compensation Act which is to be construed liberally in favor of the injured workers.

III. THE JUDGE OF COMPENSATION PROPERLY FOLLOWED THE RELEVANT RULES OF THE DIVISION OF WORKERS' COMPENSATION IN GRANTING THE MOTION DECLARING THE DECEASED, DENISE AMATO, TO BE AN ESSENTIAL WORKER.

The Appellant in their submission to the Court has argued that the Respondent was denied due process because the Motion filed by the Petitioner's attorney seeking an Order from the Trial Judge, finding the deceased to be an essential employee was deficient and did not contain the required information in order for the Motion to be granted. The Appellant further argues that the Motion filed by the Petitioner's attorney should be considered a Motion for Summary Judgment under the requirements set forth under R.4:46-2, which the Petitioner has failed to satisfy.

N.J.A.J. believes that any references to the Petitioner's Motion being a Motion for Summary Judgment is incorrect. Generally, in the Division of Workers' Compensation Summary Judgment Motions are not part of the Motion practice. The rules governing the Division of Workers' Compensation set forth the requirements for Motion practice within the Division. Motions for Temporary Disability and or Medical Benefits covered under N.J.A.C. 12:235-3.2. Motions for Emergent Medical Care are covered under N.J.A.C. 12:235-3.3. All other Motions are covered under N.J.A.C. 12:235-3.5.

N.J.A.J. believes that the Motion filed by the Petitioner's attorney should properly be considered to fall within the requirements of other Motions set forth in N.J.A.C. 12:235-3.5.

N.J.A.C. 12:235-3.5 reads as follows.

All other Motions shall be in the form of a Notice of Motion, the original of which shall be filed with the District Office to which the case is assigned with copies served on the Petitioner (s), Respondent (s), carrier (s), or attorney(s). Every Notice of Motion shall include the factual and legal basis for the relief requested and a proposed form of Order in triplicate.

The Notice of Motion for essential worker presumption filed by the Petitioner's attorney on November 4, 2021, clearly meets this requirement.

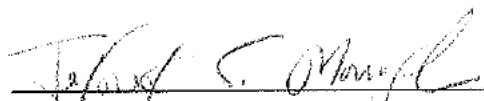
Furthermore, on March 14, 2024, both the Appellant Respondent and Petitioner Respondent Attorneys appeared before the Trial Judge at which time there was an

extensive on the record discussion concerning the Petitioner's Motion. Both attorneys had the opportunity to explain to the Trial Judge in detail their respective positions regarding the Motion. The Trial Judge, herself, discussed at length the governmental pronouncements, including Governor Murphy's Executive Orders in ultimately reaching her decision that Denise Amato fits into the essential employee category. 2T, Motion Trial Transcript of March 14, 2024.

CONCLUSION

As a result of all of the foregoing N.J.A.J. submits that this Court should affirm the decision of the Appellate Division in this matter.

Respectfully submitted,


Jeffrey S. Monaghan, Esq.

Dated: 4/14/25