

Re: Edite Martins

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
OCTOBER 7, 2015

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 00317-14
CSC DKT NO 2014-1555

**IN THE MATTER OF EDITE MARTINS,
CITY OF NEWARK,
DEPARTMENT OF ENGINEERING,**

E.M., petitioner, pro se

Alison Brown Jones, Corporation Counsel City of Newark, New Jersey, for
respondent

Record Closed: September 2, 2015

Decided: September 3, 2015

BEFORE **SANDRA ANN ROBINSON**, ALJ:

STATEMENT OF THE CASE

On August 6, 2007, E.M., petitioner, was hired by the City of Newark Department of Engineering (respondent) as a DP Technician, Receptionist. On November 6, 2007 her working test period ended. Her Disciplinary History indicates disciplinary actions were taken on July 19, 2010 and March 5, 2012. On September 18, 2013, respondent issued to petitioner a Preliminary Notice of Disciplinary Action (PNDA) for the following charges,

Violation of N.J.A.C. 4A:2-2.3(a)(1), Incompetency, inefficiency or failure to perform duties; Violation of N.J.A.C. 4A:2-2.3(a)(4), Chronic or excessive absenteeism or lateness; Violation of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; Violation of N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; Violation of N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause; and, N.J.A.C. 4A:2-6.2 Resignation Not In Good Standing. On September 18, 2013, respondent reported specifications for the PNDA on in the form of a letter, in pertinent part, as follows,

Between June 17, 2013 and September 18, 2013 you have

been absent a total of twenty-one and a half day (21½) from work. You have exhausted all of your sick time and presently have been placed on salary deletion. You were given a Memorandum on June 21, 2013 regarding Departmental Time and Attendance Policy.

Despite repeated warnings you have shown a frequent nature of absenteeism and lateness, which demonstrates an unwillingness to meet, obtain or produce the effects necessary for adequate or satisfactory performance.

As of September 11, 2013, you have been absent without official leave for five(5) consecutive days and you have failed to follow the Leave of Absence Procedure.

Petitioner was notified that the disciplinary action against her for the charges in the PNDA may be removal or resignation not in good standing effective September 11, 2013. Petitioner requested an internal hearing on the PNDA charges, which was held on October 2, 2013.

On November 18, 2013, respondent issued a Final Notice of Disciplinary Action (FNDA) that sustained all charges set forth in the PNDA. The disciplinary actions against petitioner are removal and a resignation not in good standing, both effective September 11, 2013. On December 2, 2013, petitioner requested an appeal of the FNDA disciplinary action.

PROCEDURAL HISTORY

The New Jersey Civil Services Commission Division of Appeals and Regulatory Affairs transferred this matter to the Office of Administrative Law (OAL) on January 9, 2014, for a hearing pursuant to N.J.S.A. 52:14B-1 to B-15 and N.J.S.A. 52:14F-1 to F-13. The undersigned was assigned responsibility for the case on January 15, 2014. A prehearing conference was completed on March 19, 2014 and the undersigned issued a Prehearing Order on March 21, 2014. The parties requested a Status Conference, which was held on May 22, 2014 and during the conference everyone agreed on June 11 and June 12, 2014 for hearing dates. On June 10, 2014, petitioner emailed the undersigned to inform that she (petitioner) had received the discovery package from corporation counsel last week and after reviewing the documents she wants to retain an attorney and therefore needs an adjournment of the June 11 hearing date.

On June 10, 2014, October 29, 2014 and April 23, 2015 the undersigned wrote to the parties. No back pay notice was included in each letter.¹ The correspondence dated April 23, 2015, summarizes the pertinent part each of the letters, as follows,

I have reviewed Miss Martin's faxed transmission dated April 21, 2015 that requests an adjournment of the April 22, 2015 hearing date at the Office of Administrative Law because, "I am currently in Philadelphia tending to my daughter' medical situation that is still unresolved."

Miss Martin previously requested postponements of the ...hearings scheduled for June 11-12, 2014 because she wanted to retain legal counsel, and for the October 8, 2014 hearing due to a family emergency in Mexico. Both requests were granted with the understanding that if petitioner is successful on appeal then the City of Newark will not be responsible for petitioner's back-pay, during the period of the requested adjournment from June 10, 2014, to the first date of testimony.

... I am granting petitioner's third request (postponement of April 22, 2015 hearing) with the understanding that if petitioner is successful on appeal then the City of Newark

¹ On November 14, 2014, petitioner emailed corporation counsel and the undersigned to acknowledge that respondent will not be responsible for back-pay, during the period of the requested adjournment from June 10, 2014 to the first day of testimony.

will not be responsible for petitioner's back-pay from June 10, 2014 to the first date of testimony. Further, petitioner is required to contact at 973-648-6052, upon returning to New Jersey permanently, so that a scheduling conference date can be agreed on for the purpose of establishing a date on which testimony can commence.

The email transmittal page of the April 23, 2015 letter required petitioner to confirm receipt of the email. The email was successfully transmitted. As of September 3, 2015, the date of this decision, petitioner has not communicated with OAL.

CONCLUSION

Based on all of the above, I **CONCLUDE** that since petitioner has not communicated with OAL for approximated five months, has not confirmed receipt of the April 23 email from OAL and has not expressed a desire to continue an appeal of this matter that a dismissal for failure to litigate is warranted.

ORDER


Accordingly, since petitioner has failed to prosecute/litigate or otherwise proceed with an appeal with an attorney and/or pro se, I hereby **ORDER** the **DISMISSAL** of this matter and **FILE** this initial decision with the **CIVIL SERVICE COMMISSION** to administratively dispose of the case.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five 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 days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 3, 2015
DATE


SANDRA ANN ROBINSON, ALJ

Date Received at Agency:

September 3, 2015

Date Mailed to Parties:


**DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE**

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