

B-43



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Richard Holland,
Rowan University

CSC Docket No. 2009-536

Administrative Appeal

ISSUED: **OCT 13 2015** (LDH)

Richard Holland, a Grounds Worker with Rowan University, requests that the Civil Service Commission (Commission) reinstate his appeal of his release at the end of his working test period, which was dismissed based on his failure to appear for a telephone conference.

By way of background, Holland was released at the end of his working test period, effective July 12, 2008. Holland appealed his termination to the Commission, which transmitted the matter to the Office of Administrative Law (OAL) for a hearing as a contested case. The case was originally scheduled for a hearing on May 20, 2010 but the appellant failed to appear because of an oversight. Ultimately, the Administrative Law Judge (ALJ) determined that the case should move forward despite the appellant's oversight. Meanwhile, the case was stayed as a pending federal court matter between the parties was being litigated. The federal court matter was resolved in 2011 and this case was removed from the OAL's inactive list. The initial hearing began on May 30, 2013 with seven additional hearing dates between November 2013 and September 2014. A Notice of Hearing was issued on September 25, 2014 setting out additional hearing dates for October 6, 2014, April 8, 2015, May 4, 2015, and May 19, 2015. On May 5, 2015, the appellant sent a letter to the court requesting an adjournment of the May 19, 2015 hearing date as he had surgery scheduled for that date. As a result, a telephone

conference was scheduled for 3:00 p.m. on July 8, 2015.¹ The record indicates that the appellant did not participate at the appointed time and based on his absence, the OAL issued a "Failure to Appear" notice. On July 15, 2015, this matter was returned to the Commission for a final decision, with a notice giving the appellant 13 days to present any excuse for failure to appear to this agency.

In support of the appellant's request to reinstate his appeal, he indicates that he was ill on the day of the telephone conference. He states that when the call was initiated by the appointing authority he was in the bathroom and could not take the phone call. In this regard, he states that he has had several complications with major surgery. In support, he submits a letter from Dr. Frank Bowen stating that the appellant had surgery on May 26, 2015 with a recovery period of eight to 12 weeks, Transition of Care documentation created on June 16, 2015, and Cooper University Hospital discharge papers for July 28, 2015. The appellant maintains that he called Ms. Jensen after he was finished in the bathroom but was told that she left her desk. Afterward, he called the ALJ's office and was told that the ALJ was on another call and to write a letter explaining the details. He argues that the delay was unintentional and that the appointing authority has not been affected adversely. Lastly, the appellant stated he visited his neurologist on August 31, 2015 for complications with daily migraine headaches and nausea.

In response, the appointing authority, represented by Deputy Attorney General Lauren Jensen, argues that the case should be dismissed because of the appellant's failure to appear. The appointing authority states it tried numerous times to get in contact with the appellant on July 8, 2015 for the telephone conference but the calls went unanswered. According to the appointing authority, the phone was eventually answered by a woman who stated that the appellant was not available as he was outside. At the request of the Administrative Law Judge (ALJ), the appointing authority called the appellant fifteen minutes later but was advised by the woman that the appellant could not come to the phone. The woman did not provide any reason or a timeframe of when the appellant would be available. Subsequently, the appointing authority notified the ALJ that the appellant had not answered the phone for the telephone conference. The appointing authority points out that this is the appellant's second failure to appear without an adequate explanation. Thus, the appointing authority argues that this matter should not be rescheduled for a hearing because the appellant has failed to provide an adequate explanation for his failure to appear.

¹ The Notice stated that "If you do not participate in the prehearing conference, the file will be returned to the transmitting agency for appropriate action which may include imposition of the proposed penalty or granting the relief requested by the other party."

CONCLUSION

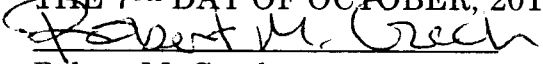
The appellant has clearly not sustained his burden of proof in this matter. The appellant has not provided adequate documentation for his failure to appear for the telephone conference. While the appellant submitted medical documentation that establishes that he was in recovery at the time of telephone conference, it is unclear as to the nature and extent of his illness on that date. In this regard, the medical documentation does not indicate any illness that would have prevented him from participating in the telephone conference on July 8, 2015, as the only medical documentation submitted refers to the dates of May 26, 2015, June 16, 2015 and July 28, 2015. Moreover, the appellant was put on notice that if he did not participate in the telephone conference, the case would be dismissed. Most importantly, the matter was rescheduled to July 8, 2015 to accommodate the appellant's request for adjournment due to his surgery. Accordingly, the appellant has failed to appear for a scheduled proceeding without adequate explanation and, therefore, this matter is dismissed.

ORDER

Therefore, it is ordered that Richard Holland's request to reinstate his appeal be denied and his appeal be dismissed.

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
THE 7TH DAY OF OCTOBER, 2015


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