



STATE OF NEW JERSEY
DECISION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Plutarco Flores,
Department of Human Services

Administrative Appeal

CSC Docket Nos. 2016-1902 and
2016-1903

ISSUED: OCT 21 2016 (SLD)

Plutarco Flores, an Administrator of Plant Services, Greystone Park Psychiatric Hospital, Department of Human Services, represented by Kevin Jarvis, Esq., requests that the Civil Service Commission (Commission) reinstate the appeals of his two removals, effective November 5, 2015, which were dismissed based on his failure to appear at a scheduled settlement conference on March 10, 2016.

The pertinent facts of this matter are as follows: Flores was removed from his position, effective November 5, 2015, on charges of conduct unbecoming a public employee, insubordination, discourtesy to a co-worker and violation of policy, procedure or administrative directive. He was also removed from his position, effective November 5, 2015, on separate charges of conduct unbecoming a public employee, neglect of duty and violations of policy, procedure or administrative directive. Flores appealed his removals to the Commission which transmitted the matter to the Office of Administrative Law (OAL). The OAL scheduled the matter for a settlement conference on March 10, 2016. On that date, Flores did not appear for the hearing. Based on this absence the OAL noted that Flores failed to appear and the matter was returned to the Commission for a final decision on March 28, 2016.

In support of his April 1, 2016 request to reinstate the appeal, Mr. Jarvis alleges that the failure to appear was an inadvertent mistake. Specifically, he asserted that Flores has multiple matters currently pending at the OAL, with at least one of those matters being handled by another attorney. Mr. Jarvis maintains

that although he had attended a previous settlement conference, the failure to attend the March 10, 2016 settlement conference was simply due to him accidentally believing the other attorney was handling the matter scheduled for that date. Additionally, he maintains that as the matter was a settlement conference, and no hearing date had been scheduled, there has been no prejudice to the parties. Owing to this inadvertent error, Mr. Jarvis maintains that the matter should be remanded to OAL.

In response, the appointing authority argues that Mr. Jarvis and the appellant had been at an earlier settlement conference, and discussions regarding the instant matters were held. The appointing authority asserts that at no point did Mr. Jarvis make any representation that other counsel was handling those matters, and the Settlement Conference Notice clearly lists him as counsel of record. The appointing authority maintains that even if he believed another attorney was representing Flores for the instant matters, Mr. Jarvis was still required to advise the OAL of the change to counsel. Moreover, it contends that it was inconvenienced by the appellant's failure to appear at the settlement conference as it did appear. Accordingly, it asserts that Flores' appeals of his removals should be dismissed due to his failure to appear.

Mr. Jarvis reiterates that the failure to appear was due to his confusion regarding the scheduling of the settlement conference, and as such, it would be an injustice to deny Flores his opportunity for a hearing. Moreover, he notes that the Commission has previously reinstated matters, where, as here, a hearing or conference was missed, a written explanation was provided within the required 13-day timeframe, and it would be unjust to deprive the claimant of his or her appeal. *See In the Matter of Jason Pike* (CSC, decided August 15, 2013).

CONCLUSION

In this case, it is clear that Flores has sustained his burden of proof. Mr. Jarvis admits to having received the conference notice, but inadvertently believed the conference to be related to a matter, also pending before the OAL, that another attorney was handling. *N.J.A.C. 1:1-3.3(b)* provides that any explanation for a failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case. The record in this matter reveals that that Mr. Jarvis notified this agency within this 13-day time period of the reason for the failure to appear and the desire to continue the appeals. Moreover, the record indicates that there was a misunderstanding concerning who was to represent to Flores at the settlement conference. Therefore, as Flores did not intend to abandon his appeals of his removals, the Commission finds that to deny him a hearing on the merits of his disciplinary actions would be unjust.

ORDER

Therefore, it is ordered that Plutarco Flores' request to reinstate his appeals be granted and the matters be transmitted to the OAL for further proceedings.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF OCTOBER 2016



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