



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Linda Moore, Paterson Free Public Library

Request for Reconsideration

CSC Docket No. 2016-1880

ISSUED: OCT 21 2016 (HS)

Linda Moore, a former Senior Library Assistant with the Paterson Free Public Library, represented by Kathleen Fantacone Mazzouccolo, Esq., petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decision, rendered on October 15, 2015, in which the Director of the Division of Appeals and Regulatory Affairs denied her request for a hearing with respect to her removal.

By way of background, in an August 24, 2015 Final Notice of Disciplinary Action (FNDA), the petitioner was removed, effective October 5, 2015, on a charge of abuse of sick leave. Specifically, the appointing authority asserted that the petitioner had previously served a one-day suspension in July 2014, a three-day suspension in October 2014 and a five-day suspension in January 2015. It is noted that the petitioner received the FNDA via personal service on August 25, 2015. By letter postmarked September 28, 2015, the petitioner submitted an appeal to the Commission. However, since the petitioner did not submit her appeal within 20 days of receipt of the FNDA, the request for a hearing was denied.

In support of her request for reconsideration, the petitioner presents the following narrative. By letter dated June 18, 2015, the Library Director notified the petitioner that her name would be placed on the agenda for discussion at the June 24, 2015 meeting of the Library Board of Trustees (Board). The petitioner received a Preliminary Notice of Disciplinary Action (PNDA) dated July 6, 2015 charging her with abuse of sick leave and, subsequently, a letter dated July 30, 2015 advising her that her name would be placed on the Board agenda for discussion at a meeting on

August 12, 2015. The appellant then received the aforementioned August 24, 2015 FNDA, which listed October 5, 2015 as the effective date of removal. Subsequently, via letter dated September 18, 2015, the petitioner was notified that her name would be placed on the agenda for discussion at the Board's September 23, 2015 meeting. In a letter dated September 24, 2015, the petitioner summarized the events of the September 23, 2015 meeting. The petitioner wrote, among other things, that Board members questioned her regarding her attendance and that she offered an explanation to the best of her ability. By memorandum dated September 25, 2015 with the subject "Termination from the position of Senior Library Assistant," the Library Director informed the petitioner that the Board had voted at the September 23, 2015 meeting to terminate her for abuse of sick leave and that her last day of work would be October 3, 2015. The September 25, 2015 memorandum stated that "[y]our abuse of sick leave extended for at least three years; you were verbally warned, received multiple written warnings and from late 2014 through early 2015, received progressive suspensions, beginning at one day and extending to five days. Yet, after those suspensions, you continued to take your sick days, exhausting all your time by June 2015."

Based on the foregoing, the petitioner argues that the 20-day appeal period should run from September 23, 2015, when the Board actually terminated her, rather than from the date of the premature August 24, 2015 FNDA. She argues that her appeal postmarked September 28, 2015, five days after the Board voted to terminate her and three days after the September 25, 2015 memorandum, was well within the appeal period, and the existence of a prematurely issued FNDA should not preclude her appeal. In support, the petitioner submits, among other documents, the June 18, 2015 letter; the PNDA; the July 30, 2015 letter; the August 24, 2015 FNDA; the September 18, 2015 letter; the petitioner's September 24, 2015 letter; and the September 25, 2015 memorandum.

In response, the appointing authority, represented by Heather W. Goldstein, Esq., states that the petitioner was advised in the PNDA that she could request a hearing, which would be held on August 12, 2015. It states that although the petitioner had requested a hearing and been advised via the July 30, 2015 letter that her name would be placed on the agenda at a special meeting on August 12, 2015, she did not appear on that date. The aforementioned August 24, 2015 FNDA was served on August 25, 2015. The petitioner's appeal letter was postmarked September 28, 2015, well after 20 days from receipt of the August 24, 2015 FNDA. The appointing authority notes that the FNDA advises that the employee has the right to appeal within 20 days from receipt of the form. The appointing authority states that the Commission cannot accept untimely appeals. It further states that when a statutory time limitation for filing an administrative appeal is mandatory and jurisdictional, it may be extended only by the legislature, not by an agency or the courts. *See Schaible Oil Co. v. New Jersey Dep't of Env'tl. Protection*, 246 N.J. Super. 29, 31 (App. Div. 1991), *cert. denied*, 126 N.J. 387 (1991).

In reply, the petitioner argues that the Board is the governing body of a municipal library such as Paterson's and has the authority to ". . . hire librarians, and other necessary personnel, and fix their compensation, make proper rules and regulations for the government of the library, and generally do all things necessary and proper for the establishment and maintenance of the free public library in the municipality." See *N.J.S.A.* 40:54-12. She thus argues that the Board is the appointing authority for Civil Service purposes. Since the Board is the governing body of the library, the actual decision to terminate her employment rested not with an employee but with the Board, which did not authorize that action until it voted to do so on September 23, 2015. Consequently, the petitioner maintains that the issuance of the August 24, 2015 FNDA, lacking proper Board authorization, was premature and should have no legal effect on the appeal filing period. Rather, the appeal filing period should begin with the Board's September 23, 2015 vote to terminate her. Even though the FNDA indicates that she failed to appear at the Board's August 12, 2015 meeting, she received additional notice that her name would be placed on the agenda for discussion at the Board's September 23, 2015 meeting. She maintains that she was in fact heard on September 23, 2015. Thus, the petitioner argues that the FNDA should not have been issued until after the Board's September 23, 2015 action.

In addition, the petitioner notes that

within 20 days of the hearing provided in *N.J.S.* 11A:2-13, the appointing authority shall make a **final disposition** of the charges against the employee and shall furnish the employee with written notice. If the appointing authority determines that the employee is to be removed . . . the employee shall have a right to appeal to the Civil Service Commission.

*N.J.S.A.* 11A:2-14 (petitioner's emphasis). The petitioner maintains that the Board is the appointing authority. Thus, the date of the Board's action, at which she was afforded an opportunity to appear and plead her case, should be deemed the action commencing the appeal period with its "**final disposition** (petitioner's emphasis)." Further, the petitioner subsequently received notice of her termination by Board action via the September 25, 2015 memorandum, and the petitioner contends that this should be considered her final notice of disciplinary action. Doing otherwise, in her view, "places form over substance and it is from the substance of the action taken by the Board that [she] appealed."

### CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented

at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record in the instant matter reveals that reconsideration is justified.

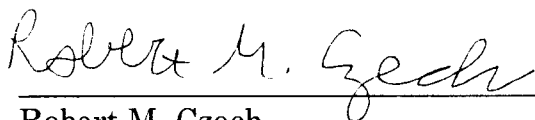
*N.J.S.A. 11A:2-15* provides that appeals from major disciplinary matters be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. This 20-day time limitation is jurisdictional and cannot be relaxed or waived. See *Borough of Park Ridge v. Salimone*, 21 *N.J.* 28, 46 (1956); See also, *Mesghali v. Bayside State Prison*, 334 *N.J. Super.* 617 (App. Div. 2000), *cert. denied*, 167 *N.J.* 630 (2001); *Murphy v. Department of Civil Service*, 155 *N.J. Super.* 491, 493 (App. Div. 1978). Further, *N.J.A.C. 4A:2-2.8(a)* states that "An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee. Receipt of the Notice on a different date by the employee's attorney or union representative shall not affect this appeal period."

In the instant matter, it does not appear that the August 24, 2015 FNDA represented the final written determination by the appointing authority to remove the petitioner. Although the petitioner failed to appear at the August 12, 2015 meeting of the Board, the record reflects that additional steps were nonetheless taken before the appointing authority's decision in the petitioner's major disciplinary matter was finalized. In this regard, the petitioner's matter was again placed on a Board agenda for discussion, at a September 23, 2015 meeting. At that meeting, the Board held a vote to terminate the petitioner. The petitioner was then notified via the September 25, 2015 memorandum that the Board had voted to terminate her and that her last day of work would be October 3, 2015. It is also noted that the September 25, 2015 memorandum included a more detailed statement of the facts supporting the charges than was stated on the August 24, 2015 FNDA. Whereas the August 24, 2015 FNDA listed only the petitioner's three previous suspensions, the September 25, 2015 memorandum also asserted that the petitioner's abuse of sick leave extended for at least three years; that she had been verbally warned and received multiple written warnings; and that she had continued to take her sick days after those suspensions, exhausting all her time by June 2015. In light of the events that occurred *after* service of the August 24, 2015 FNDA, it is apparent that the September 25, 2015 memorandum, in effect, served as the appointing authority's *final* written determination in the petitioner's major disciplinary matter within the meaning of *N.J.S.A. 11A:2-15*. With that understanding, her appeal to the Commission postmarked September 28, 2015 was timely. Accordingly, the petitioner has met the standard for reconsideration, and it is appropriate to grant a hearing.

**ORDER**

Therefore, it is ordered that this request be granted and the petitioner be granted a hearing on her removal. It is further ordered that the matter be transmitted to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 19<sup>TH</sup> DAY OF OCTOBER, 2016



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Chairperson  
Civil Service Commission

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and  
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**Attachment**

- c. Linda Moore
- Kathleen Fantacone Mazzouccolo, Esq.
- Cynthia Czesak
- Heather W. Goldstein, Esq.
- Nicholas Angiulo
- Records Center



RE: Linda Moore

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