



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Sherell Peterson,
Department of Corrections

CSC Docket No. 2015-2768

Request for Reconsideration

**ISSUED: NOV 30 2016
(CSM)**

Sherell Peterson requests reconsideration of the decision rendered on December 17, 2014 which acknowledged her general resignation.

By way of background, the appellant was removed from her position as a Senior Correction Officer effective June 4, 2014. The appellant appealed her removal to the Civil Service Commission (Commission) which transmitted the matter to the Office of Administrative Law (OAL) for a hearing as a contested case. At the OAL, a settlement conference was held on October 21, 2014. The Administrative Law Judge (ALJ) indicated in her initial decision that the parties agreed to the terms of an agreement orally on the record and the appellant agreed to a general resignation. At its meeting on December 17, 2014, the Commission adopted the recommendation of the ALJ and acknowledged the settlement.

In her March 16, 2015 request for reconsideration, the appellant states that she appeared before the ALJ on October 21, 2014 and agreed to a general resignation, but maintains that she accepted the general resignation "with a short period of time to really think about it." However, the appellant claims that the ALJ indicated that the matter will not become final until all parties received the settlement in writing, and was reviewed and signed by all of the parties. As such, on October 22, 2014, she states that she contacted her union representative and told him that she did not want to accept a general resignation and wanted to proceed with the hearing. Subsequently, the appellant contends that the ALJ prematurely signed her initial decision on November 14, 2014 prior to her review and she received a copy of the initial decision on December 2, 2014. Upon her receipt of the

initial decision, the appellant states that on December 3, 2014 she faxed the ALJ and advised her that she did not want to accept or sign a general resignation. The appellant contends that even though the ALJ based her decision on the oral record, the record also indicates that she must review any settlement agreement prior to finalizing the matter. In support of her request, the appellant provides a copy of a letter dated February 17, 2015 from James Heise, Executive Vice President, Policeman's Benevolent Association, Local 105, to the ALJ. In pertinent part, this correspondence indicates that on January 14, 2015, the parties appeared before the ALJ and a motion was made requesting that the appellant's matter be reopened as she changed her mind and would not agree to a general resignation. Under these circumstances, the appellant requests that the settlement be vacated and her matter be transmitted back to the OAL to continue with the hearing.

In response, the appointing authority, represented by Brian Scott, Deputy Attorney General, initially states that the appellant's March 16, 2015 request for reconsideration of the Commission's December 17, 2014 acknowledgment is untimely as it is well beyond 45 days of issuance of the decision. Regardless, even if the appellant filed a timely request, she has not satisfied the requirements for reconsideration. Specially, the appointing authority states that the appellant was represented by "able counsel" at the hearing and had extensive discussions with her representative regarding the terms of the settlement. Significantly, the parties put the terms of the settlement on the record and the ALJ *voir dire*d the appellant on the record, during which the appellant acknowledged that she fully understood the terms of the settlement and that she was voluntarily entering into it. Therefore, the appointing authority maintains that the appellant has not satisfied the standard for reconsideration.

CONCLUSION

N.J.A.C. 4A:2-1.6(a) states that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration.

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.

In the present matter, the appellant has not satisfied the standard for reconsideration. Initially, the appellant's request is untimely. The Commission issued its final decision acknowledging the settlement on December 17, 2014 and the appellant filed her request for reconsideration 89 days later, on March 16, 2015. Even assuming the appellant first become aware of the Commission's decision on January 14, 2015, the day the parties met with the ALJ, her request for

reconsideration is untimely as it was filed 61 days after that date.

Nevertheless, even assuming she filed a timely request, which she did not, the appellant still would not meet the standard for reconsideration. The policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. Such circumstances are not present in this matter. Moreover, a settlement agreement should be enforced where a party has competent representation of his or her choosing and entered into the agreement knowingly and voluntarily. *See e.g., In the Matter of Barbara Knier* (MSB, decided January 12, 1999) and *In the Matter of William Munoz* (MSB, decided June 16, 1998).

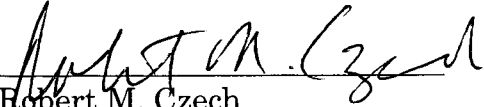
In this case, although the appellant maintains that it was agreed that the record would not close until she had the opportunity to review the written agreement, she concedes in her petition for reconsideration that she agreed to a general resignation at the settlement conference. Moreover, Heise, who represented her at the October 21, 2014 settlement conference, specifically indicated in his February 17, 2015 correspondence that he made a motion at the January 14, 2015 appearance to the ALJ to have the appellant's matter reopened because she changed her mind in reference to not signing the settlement agreement. He also indicated that "on the record we all agreed, including Ms. Peterson, that she would accept a general resignation." Therefore, the record indicates that the appellant voluntarily agreed to the settlement, and that she was properly represented at the settlement conference. Further, the terms of the settlement on the record do not contravene Civil Service rules and the reduction to writing is a formality that is not necessary and does not impede its enforceability. Since the appellant originally agreed to the settlement and the terms of the settlement are valid, the settlement was properly acknowledged and there is no basis on which to reinstate her appeal. *See In the Matter of Willie Jetty* (CSC, decided June 1, 2011), *aff'd on reconsideration* (CSC, decided December 21, 2011); *In the Matter of Nicholas Vamvakidis* (MSB, decided February 26, 2003); *In the Matter of Johnny Walcott* (MSB, decided September 10, 2002); *In the Matter of Edgar Medina* (MSB, decided May 23, 2000).

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

This is the final administrative determination with regard to this issue. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

c: Sherell Peterson
Brian Scott, DAG
Records Center



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CSR 09498-14

**IN THE MATTER OF SHERELL PETERSON,
ADULT DIAGNOSTIC & TREATMENT CENTER.**

James Heise, appearing for appellant pursuant to N.J.A.C. 1:1-5.4(a)(6).

Brian M. Scott, Deputy Attorney General, for respondent (John J. Hoffman,
Acting Attorney General of New Jersey, attorney)

Record Closed: October 21, 2014

Decided: November 14, 2014

BEFORE CARIDAD F. RIGO, ALJ:

This matter concerns the appeal of Sherell Peterson from the action of the respondent/appointing authority. The appeal was filed with the Office of Administrative Law (OAL) on July 24, 2014, pursuant to N.J.S.A. 40A:14-202(d).

After extensive discovery and settlement conferences, specifically, the settlement conference held on October 21, 2014, at the offices of the Office of Administrative Law (OAL). The parties agreed setting the terms of the agreement orally on the record. The appellant agreed to take a general resignation. The appellant was voir dired as to her understanding and voluntariness of the terms of the settlement.

I have reviewed the record and the terms of the settlement and I **FIND** that:

1. The parties have voluntarily agreed to the settlement as evidenced on the oral record.
2. The appellant understood the terms of the settlement.
3. The settlement fully disposes of all issues in controversy.

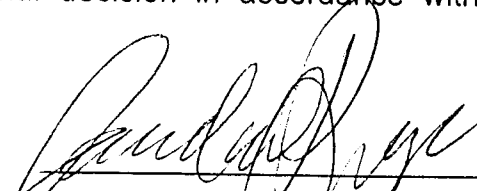
I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings are concluded.

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. 40A:14-204.

November 14, 2014

DATE



 CARIDAD F. RIGO, ALJ

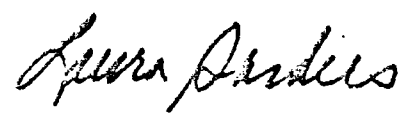
Date Received at Agency:

11-20-14

Date Mailed to Parties:

NOV 20 2014

lr



 DIRECTOR AND
 CHIEF ADMINISTRATIVE LAW JUDGE

