



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Lewis Harvey,
Mercer County Department of Public
Safety

Administrative Appeal

CSC Docket No. 2014-551

ISSUED: **DEC 21 2016** (WR)

Lewis Harvey, a County Correction Officer, Mercer County Department of Public Safety, represented by Stuart Alterman, Esq., requests that the Civil Service Commission (Commission) reinstate the appeals of his five-day suspension and two 10-day suspensions, which were dismissed based on his failure to appear at a scheduled settlement conference on July 20, 2016.

The pertinent facts of this matter are as follows: Harvey was issued a five-day suspension and two 10-day suspensions, effective October 8, 2013, October 15, 2013 and October 29, 2013, respectively, on charges of conduct unbecoming a public employee, chronic or excessive absenteeism or lateness and other sufficient cause. Harvey appealed his suspensions to the Commission which transmitted the matters to the Office of Administrative Law (OAL). The OAL scheduled the matters for a settlement conference on July 20, 2016. On that date, Harvey did not appear for the conference. Based on this absence the OAL noted that Harvey failed to appear and the matter was returned to the Commission on July 25, 2016.

In support of his August 8, 2016 request to reinstate the appeal, Mr. Alterman alleges that the failure to appear was the result of miscommunication between his office, Harvey and Harvey's union. Mr. Alterman states that Harvey had relied on his union's president in the past to instruct him when to appear for the hearing. However, Mr. Alterman indicates that the incumbent union president lost an election and the new president failed to notify Harvey of the settlement conference at issue. Nevertheless, Mr. Alterman states that his office left a message for and sent a letter to Harvey notifying him of the settlement conference. Mr.

Alterman further asserts that the Administrative Law Judge's (ALJ) action did not comply with relevant regulations regarding a "Failure to Appear" at an OAL hearing. In this regard, Mr. Alterman contends that the ALJ did not allow the filing of a motion or explanation, but rather ruled from the bench. Accordingly, Mr. Alterman claims that the ALJ abused his discretion and maintains that the matter should be remanded to OAL.

In response, the appointing authority, represented by Kristina Chubenko, Assistant County Counsel, argues that, at the hearing, Mr. Alterman "was in possession of correspondence that his office sent to [Harvey] advising of the time, date and location of the hearing." It states that the ALJ questioned counsel if Harvey was informed of the hearing and Mr. Alterman indicated that his "office had been in communication with [Harvey] a day or two prior to the date of the hearing." Accordingly, it asserts that Harvey's appeals of his suspensions should be dismissed due to his failure to appear.

CONCLUSION

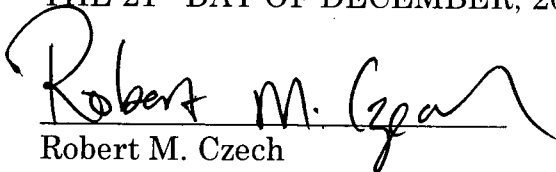
The appellant has clearly not sustained his burden of proof in this matter. While Mr. Alterman indicates that there was a miscommunication between his office, Harvey and Harvey's union, the appointing authority's assertion that Harvey was aware of the date, time and location of the settlement conference through communication with Mr. Alterman's office have not been rebutted. Thus, it is immaterial that Harvey's union failed to advise him of the settlement conference's date and time. Accordingly, the appeals are dismissed based on Harvey's failure to appear at the July 20, 2016 settlement conference.

ORDER

Therefore, it is ordered that Lewis Harvey's request to reinstate his appeals 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 21st DAY OF DECEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Lewis Harvey
Stuart Alterman, Esq.
Kristina Chubenko, Esq.
Beth Wood (w/files)
Records Center

