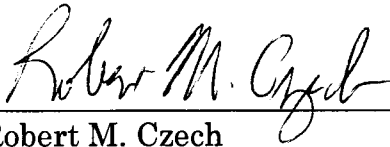


ORDER

Therefore, the Civil Service Commission rescinds its October 19, 2016 determination and acknowledges the settlement.

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

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

Attachments

c: Marzettie Shamberger
Colin M. Lynch, Esq.
Elizabeth Whitlock
Records Center



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Marzettie
Shamberger, Northern State Prison,
Department of Corrections

Request for Reconsideration

CSC Docket No. 2016-1394

ISSUED: **OCT 21 2016** (HS)

Marzettie Shamberger, represented by Colin M. Lynch, Esq., requests reconsideration of the final decision rendered on August 19, 2015, which dismissed his appeal of his 60 working day suspension. A copy of that decision is attached hereto and incorporated herein.

By way of background, the petitioner was issued a Final Notice of Disciplinary Action (FNDA) dated May 18, 2012 suspending him for 60 working days on charges of insubordination, conduct unbecoming a public employee, other sufficient cause and violations of departmental policy. Specifically, it was alleged that on February 13, 2012, the petitioner was observed wearing an unauthorized jacket while on duty and refused several orders to remove the jacket. Upon the petitioner's appeal to the Civil Service Commission (Commission), the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case. In her initial decision, the Administrative Law Judge (ALJ) noted that a hearing was scheduled for December 10, 2012 but adjourned at the parties' request. The ALJ further noted that the parties subsequently engaged in settlement discussions and agreed to settle the matter. The appointing authority later advised the ALJ that the file was "inadvertently archived" without forwarding the final signature page to the ALJ, and, by letter dated May 14, 2015, the appointing authority noted that the matter was previously disposed of and was no longer an active matter. Based on the foregoing, the ALJ ordered that the matter be dismissed. It is noted that the initial decision advised the parties that, within 13 days from the date on which the recommended decision was mailed to the parties, any party could file written exceptions to the Commission. However, no exceptions

were filed. At its meeting on August 19, 2015, the Commission accepted and adopted the Findings of Fact and Conclusion as contained in the ALJ's initial decision.

In his request for reconsideration, the petitioner disputes both the initial decision and the Commission's decision on the basis that he never in fact agreed to settle the matter. Although a settlement conference occurred on or about May 30, 2014 at which the proposed settlement agreement was provided to the petitioner, the petitioner emphasizes that he never executed the settlement agreement. He notes that the initial decision, incorporating the terms of the settlement agreement, reveals that it is signed only by a representative of the appointing authority and not by the petitioner or his representative. The petitioner adds that he never agreed to the terms of the settlement either in writing or orally on the record. Further, the petitioner claims that neither he nor his union representative, James Heise, Executive Vice-President, Policemen's Benevolent Association (PBA) Local 105, ever received notice that the appointing authority forwarded the unsigned settlement agreement to the ALJ or that the appointing authority represented to the ALJ that he had agreed to the settlement terms. In addition, he maintains that neither he nor his representative were aware that the ALJ approved the purported settlement and dismissed his appeal, nor were they aware that the ALJ had forwarded the same to the Commission for approval.

The petitioner claims that the first notice he and his then-representative Heise received regarding approval of the settlement was their receipt of the Commission's final decision. Therefore, he maintains that he never had an opportunity to object to approval of the settlement or file exceptions. As such, the petitioner requests reconsideration in light of the clear material error that occurred. In this regard, the petitioner notes that a settlement agreement requires mutual assent by both parties, and there was no agreement in this case because he never agreed to the terms of the offer. Thus, the petitioner contends that it was inappropriate for the appointing authority to represent that he had agreed to the settlement terms, and for the ALJ to accept such a representation in the face of an unsigned agreement and in the absence of any written or other statement in the record by the petitioner that he agreed to the terms of the agreement. For relief, the petitioner requests that this matter be remanded for a hearing on his disciplinary appeal or, alternately, that the matter be remanded for an initial hearing as to whether he agreed to the terms of the proposed settlement with a hearing on the merits if it is determined that he did not.

In support, the petitioner submits statements from Earl Williams, former Executive Vice-President, PBA Local 105, and Heise. Williams states that he was assigned to represent the petitioner in connection with his disciplinary appeal and was involved in settlement discussions. Williams states that he received two proposed settlement agreements, which were presented to the petitioner. However,

Williams maintains that the petitioner did not agree to the terms of either proposed settlement agreement and declined to sign the agreement. Williams indicates that he retired in May 2013 and had no further involvement in the matter thereafter. Heise states that he was assigned to represent the petitioner in February 2015. Heise states that, to his knowledge, the petitioner had not agreed to the proposed settlement offer as of February 2015, and the petitioner did not thereafter indicate that he had agreed to the terms of the settlement agreement. Heise maintains that from February 2015 until receipt of the Commission's final decision, he was not notified that there was a hearing scheduled for the petitioner. Heise further maintains that he was unaware that the ALJ had approved a settlement agreement and forwarded the same to the Commission and that he would have filed exceptions to the initial decision had he been aware.

The appointing authority, although provided the opportunity, did not present any arguments or documentation for the Commission's review.

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.


Although the appointing authority advised that the matter was no longer active, the Commission finds no substantive evidence in the record that the petitioner agreed to settle the matter. The settlement agreement attached to the initial decision was not signed by the petitioner or his representative, and there was no other written statement by the petitioner indicating his acceptance of the settlement terms. There was also no substantive evidence that the petitioner orally agreed to the terms. Rather, the petitioner maintains that although the proposed settlement agreement was presented to him, he never agreed to settle the matter. In addition, both the petitioner and Heise maintain that they would have filed exceptions to the initial decision dismissing the matter had they been aware of that action. Under these circumstances, where it appears that there was no meeting of the minds, the Commission cannot find that an agreement was reached. *See e.g., In the Matter of Frank Hoffman*, Docket No. A-6443-03T1 (App. Div. July 1, 2005) (The attorneys for the parties discussed and preliminarily agreed to terms of a settlement during the pendency of the departmental hearing. However, the appointing authority ultimately rejected the terms of the settlement. The Appellate Division affirmed the former Merit System Board's determination that the appointing authority's credible testimony that the settlement was rejected signified that there was no meeting of the minds, and it upheld the appellant's removal).

Thus, the Commission concludes that the petitioner did not enter into a settlement agreement, and is therefore entitled to a hearing on the charges imposed. Since the agreement was not reached, the charges set forth in the May 18, 2012 FNDA concerning the February 13, 2012 incidents are considered not to have been dismissed. Accordingly, the Commission grants the petitioner a hearing at the OAL on the charges set forth in the May 18, 2012 FNDA regarding the February 13, 2012 incidents.

ORDER

Therefore, it is ordered that the petitioner be granted a hearing at the OAL as set forth above.

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



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

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

Attachment

- c. **Marzettie Shamberger
Colin M. Lynch, Esq.
Elizabeth Whitlock
Nicholas Angiulo
Records Center**

Re: Marzettie Shamberger

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
AUGUST 19, 2015**

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 09385-12

AGENCY DKT. NO. 2012-3645

**IN THE MATTER OF MARZETTIE SHAMBERGER,
NORTHERN STATE PRISON.**

James Heist, Executive Vice President, PBA Local 105 for appellant
Marzettie Shamberger pursuant to N.J.A.C. 1:1-5.4(a)(6)

Kathleen Asher, Esq. for respondent Northern State Prison

Record Closed: May 14, 2015

Decided: June 23, 2015

BEFORE **IRENE JONES**, ALJ:

STATEMENT OF THE CASE

On June 6, 2012 appellant, Marzettie Shamberger filed an appeal challenging the action of the respondent, Northern State Prison that proposed to suspend her from her position for 60 days. On July 10, 2012, the matter was transmitted by the Civil Service Commission to the Office of Administrative Law for hearing as a contested case.

OAL DKT. NOS. CSV 09385-12

A hearing was scheduled for December 10, 2012, but adjourned at the request of the parties. Subsequently, the parties engaged in settlement discussions and agreed to settle the matter.

Subsequently, the respondent advised the undersigned that the file was inadvertently archived without the final signature page being forwarded to the undersigned. By letter dated May 14, 2015, the respondent noted that the matter was previously disposed of and is no longer an active matter.

Thus, for the foregoing reasons it is **ORDERED** and this matter is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

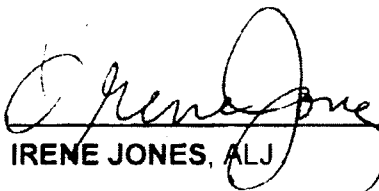
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NOS. CSV 09385-12

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 23, 2015

DATE

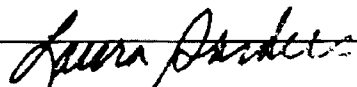


IRENE JONES, ALJ

Date Received at Agency:

Date Mailed to Parties:
sej

JUL 24 2015



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

OALDocket No. CSV09385-2012

Agency No. 2012-3645

SETTLEMENT AGREEMENT

SCO MARZETTIE SHAMBERGER

V.

NORTHERN STATE PRISON, NJ

DEPARTMENT OF CORRECTIONS

The parties in this appeal have voluntarily resolved all disputed matters and enter into the following settlement, which fully disposes of all issues in controversy between them.

A. The **Final** Notice of Disciplinary Action dated May 18, 2012 contains the following charges and proposed discipline:

<u>Charge</u>	<u>Discipline</u>	<u>Date Effective</u>
NJAC 4A:2-2.3 (A-2)	Insubordination	
NJAC 4A:2-2.3 (A-6)	Conduct Unbecoming a Public Employee	
NJAC 4A:2-2.3 (A-11)	Other Sufficient Cause	
HRB 84-17 (C-9)	Insubordination	
HRB 84-17 (E-1)	Violation of a rule, regulation, policy, procedure or order	
		60 day suspension

The parties have agreed to the following:

1. The total number of days of suspended pay the Respondent has imposed on Appellant to date is as follows: **Twenty (20)**.
2. The total number of days of back pay, if any, to be paid by the appointing authority to the Appellant is as follows: **n/a**

3. Any other days from the time of last suspension day until reinstatement shall be treated as follows: n/a

C. Appellant, Marzettie Shamberger, withdraws his appeal and request for a hearing, and the Respondent Appointing Authority agrees that the following result will occur with regard to each charge:

<u>Charge</u>	<u>Discipline</u>
1) NJAC 4A:2-2.3 (A-2)	Insubordination - DISMISSED
2) NJAC 4A:2-2.3 (A-6)	Conduct Unbecoming a Public Employee
3) NJAC 4A:2-2.3 (A-11)	Other Sufficient Cause
4) HRB 84-17 (C-9)	Insubordination- DISMISSED
5) HRB 84-17 (E-1)	Violation of a rule, regulation, policy, procedure or order

On the basis of the remaining charges, the Appellant's disciplinary record shall reflect a sixty (60) day suspension. Appellant shall serve a suspension of twenty (20) days without pay.

The parties acknowledge that under N.J.A.C. 17:1-2.18, no pension or seniority time may be credited for periods for which the employee is not paid by the employer.

E. The NJ Department of Corrections shall amend Appellant's personnel records to conform to the terms of the settlement. All internal records of the Department of Corrections will be kept intact. Nothing herein shall preclude the Department from releasing information on this matter to anyone who has a release executed by appellant or as consistent with the law. Any information regarding the underlying charges will be provided to the Division of Pensions pursuant to N.J.S.A. 43:1-3.3 as amended effective April 14, 2007.

F. Appellant waives all other claims against Respondent Appointing Authority with regard to this matter, including any award of back pay, counsel fees or other monetary relief, except as may otherwise be provided herein.

G. Except for the assessment of Marzettie Shamberger's disciplinary record in any subsequent personnel disciplinary hearing, nothing in this agreement shall be deemed to be an admission of liability on behalf of either party. This agreement shall not constitute a precedent in matters involving other employees.

H. **In connection with OAL Docket No. CSV09385-2012 ONLY**, Appellant waives all claims, suits or actions, whether known, unknown, vested or contingent, civil, criminal or administrative, in law or equity against the State of New Jersey, the New Jersey Department of Corrections, their employees, agents, or assigns, including but not limited to those which have been or could have been made or prosecuted on account of any conduct of any party occurring at any time with respect to the events, information or disputes giving rise to this action up to the date of this agreement, including, but not limited to, all claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Family Leave Act, the Family and Medical Leave Act, the New Jersey Law Against Discrimination, the Equal Pay Act, the Conscientious Employee Protection Act, the Age Discrimination in Employment Act, Title 11A - the Civil Service Act, the Older Workers Benefits Protection Act, the Occupational Safety and Health Act, the Public Employee Occupational Safety and Health Act, the New Jersey Smoking Act, New Jersey wages and hours law, public works statutes, unemployment compensation laws, disability benefits laws, the United States Constitution, the New Jersey Constitution, any workers compensation or common law claims and any contract express or implied. **In connection with OAL Docket No. CSV09385-2012 ONLY**, this waiver includes all claims involving any continuing effects of actions or practices which arose prior to the date of this Settlement Agreement and bars the use in any way of any past action or practice in any subsequent claims, except pending workers compensation claims.

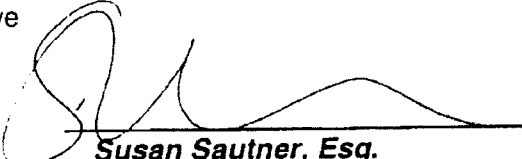
I. The parties agree that if any portion of this Settlement Agreement is deemed unenforceable, the remainder of this Settlement Agreement shall be fully enforceable.

J. The parties waive the right to file exceptions and cross exceptions.

K. This agreement will become effective only if approved by the **CIVIL SERVICE COMMISSION**. Any disapproval by the **CIVIL SERVICE COMMISSION** shall not interfere with the rights of either party to pursue the matter further.

DATE: _____ Appellant: _____

DATE: _____ Appellant's:
Representative _____

DATE: 12/19/12 Respondent: 
Susan Sautner, Esq.
ON BEHALF OF RESPONDENT

CERTIFICATION

I, **Marzette Shamberger**, being the moving party in this matter, hereby certify that I have reviewed this Settlement Agreement and fully understand its meaning and terms. I acknowledge my understanding and verify my acceptance of the terms of this Settlement Agreement. I acknowledge that my representative questioned my understanding, verified my acceptance of the terms of this Settlement Agreement, and answered all my questions regarding this settlement to my satisfaction. I am satisfied with my representation and I enter into this Settlement Agreement voluntarily.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATE: _____

(SIGNATURE)