



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Orlando Alicea,
State Parole Board

Request for Reconsideration

CSC Docket No. 2018-774

ISSUED: NOV 02 2017 (BW)

Orlando Alicea, a Senior Parole Officer with the State Parole Board (NJSPB), represented by Robert A. Fagella, Esq., petitions the Civil Service Commission (Commission) for reconsideration of the attached decision rendered on August 30, 2017, in which the Director of the Division of Appeals and Regulatory Affairs (DARA), denied his request for a hearing with respect to his 180 calendar day suspension.¹

By way of background, a Final Notice of Disciplinary Action (FNDA), dated June 16, 2017, was issued suspending the appellant for 180 calendar days on charges of conduct unbecoming a public employee and other sufficient cause. Because the petitioner was on vacation, the FNDA was sent to the petitioner's attorney, on June 29, 2017. Upon receipt of the FNDA, counsel initialed the FNDA, but did not put the date of receipt. By letter postmarked July 7, 2017, the petitioner submitted an appeal to the Commission. However, since the petitioner did not submit his appeal within 20 days of the June 16, 2017 FNDA, the request for a hearing was denied.

¹ While the Final Notice of Disciplinary Action indicates "180 working days," that suspension would exceed the maximum length of a suspension, which is six months.

In support of his request for reconsideration, the petitioner submits a certification from his attorney, who states that he advised the appointing authority in writing to forward the FNDA to him and he would accept service on the petitioner's behalf.

The appointing authority certified on September 11, 2017 that the petitioner's attorney did advise it in writing on June 29, 2017 that he would accept service as counsel for the petitioner.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. 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.

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). Additionally, *N.J.A.C.* 4A:2-2.8(a) provides, in pertinent part, that the receipt of the FNDA on a different date by the employee's attorney or union representative shall not affect this appeal period.

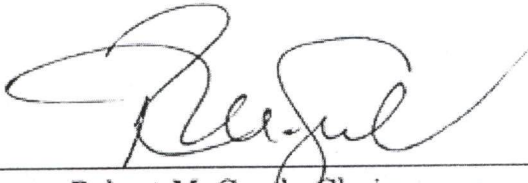
In the instant matter, counsel for the petitioner was served the original FNDA on June 29, 2017 on behalf of the petitioner who was on vacation. The appointing authority agrees in a certification that the only FNDA issued in this case was to the petitioner's counsel, and that it did not send a FNDA directly to the petitioner. Accordingly, under these particular circumstances, the Commission finds that the petitioner appealed his suspension within 20 days of receipt of the FNDA and is therefore entitled to a hearing at the Office of Administrative Law. However, the appointing authority is directed to ensure that in the future, it serves the employee, not just his or her attorney or other representative, a copy of the FNDA as required by *N.J.A.C.* 4A:2-2.6(d).

Finally, the Commission must emphasize that this decision is limited to the unique facts presented in this matter and it should not be used as a precedent in any other matter.

ORDER

Therefore, it is ordered that this request for reconsideration be granted and the matter be referred to the Office of Administrative Law for a hearing.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF NOVEMBER, 2017



Robert M. Czedh, Chairperson
Civil Service Commission

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and
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Attachment

c: Orlando Alicea
Robert A. Fagella, Esq.
Adam Verone
Kelly Glenn
Beth Wood (with file)
Records Center



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

In the Matter of Orlando Alicea :
New Jersey State Parole Board :

CSC DKT. NO. 2018-261 :

Hearing Denied

ISSUED: **AUG 31 2017** BW

The Civil Service Commission considered the request for a hearing concerning Orlando Alicea, from his appeal of a 180 calendar day¹ suspension from the position of Senior Parole Officer, New Jersey State Parole Board, and made the following findings of fact:

1. The Final Notice of Disciplinary Action was dated June 16, 2017.
2. The letter of appeal was postmarked July 7, 2017.

N.J.S.A. 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.

Since the appeal in this matter was not perfected within 20 days of receipt of the Final Notices of Disciplinary Action, the request for a hearing was denied. The Civil Service Commission has no authority to extend the statutory time limit in *N.J.S.A.* 11A:2-15 for filing such an appeal. See *Mesghali v. Bayside State Prison*, 334 *N.J. Super.* 617 (App. Div. 2000).

¹ While the Final Notice of Disciplinary Action indicates "180 working days," that suspension would exceed the maximum length of a suspension, which is six months.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

RE: Orlando Alicea

DECISION RENDERED BY THE
DIRECTOR,
DIVISION OF APPEAL AND REGULATORY AFFAIRS
ON 30 August 2017



CHRISTOPHER S. MYERS
DIRECTOR

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