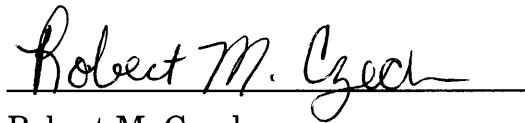


Re: Julio Mateo

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
JUNE 17, 2015

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a solid horizontal line.

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

SUMMARY DECISION

OAL DKT. NO. CSR 00003-15

AGENCY DKT. NO. N/A

2015-1160

**IN THE MATTER OF JULIO MATEO,
DEPARTMENT OF CORRECTIONS,
CENTRAL MEDICAL UNIT.**

Brian Renshaw, PBA Local #105, for appellant pursuant to N.J.A.C. 1:1-5.4(a)(6)

Steven Hahn, Deputy Attorney General, for petitioner (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Record Closed: April 20, 2015

Decided: May 19, 2015

BEFORE **JOHN S. KENNEDY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent, Department of Corrections, Central Medical Unit, has moved to dismiss appellant's complaint pursuant to N.J.A.C. 1:1-12.1(a)(2) asserting that the appellant has made neither a proper nor timely appeal of his removal.

The original Petition of Appeal was filed with the Civil Service Commission (CSC) on December 17, 2014. The CSC transmitted the matter to the Office of Administrative Law (OAL), where it was received on December 23, 2014. N.J.S.A. 52:14B-1 to -15;

N.J.S.A. 52:14F-1 to -13. On January 9, 2015, the OAL sent a Notice of Improper Filing to appellant and his union representative. Respondent filed a brief in support of the motion to dismiss and after providing appellant an opportunity to respond, the record closed on April 20, 2015.

FACTUAL DISCUSSION

The following facts are not in dispute in this matter and as such I **FIND** them as **FACT**:

On October 3, 2014, appellant was served a Preliminary Notice of Disciplinary Action ("PNDA"), notifying him that he was being removed for conduct unbecoming an employee, falsification, violation of DOC policy, and other sufficient cause. A disciplinary appeal hearing was held on November 17, 2014. Neither appellant nor any representative on his behalf appeared or participated in the hearing. Accordingly, the hearing officer sustained the charges against appellant and sustained the recommended penalty of removal.

A Final Notice of Disciplinary Action was received by appellant on December 1, 2014. The FNDA describes the procedure an employee must take if he wants to appeal his discipline:

You have the right to appeal **WITHIN 20 DAYS FROM RECEIPT** of this form. **ALL** appeals must include a copy of this form and must be sent to **BOTH** the Civil Service Commission [. . .] **AND** the Office of Administrative Law [. . .] Your appeal cannot be processed until a copy of this form is received.

Appellant submitted his appeal with the Civil Service Commission ("CSC") on December 17, 2014, but did not submit an appeal to the Office of Administrative Law ("OAL"). On January 9, 2015, the OAL sent a Notice of Improper Filing to appellant, and his union representative, which advised him that his appeal had not been perfected because he failed to not submit the Law Enforcement Officer & Firefighter Removal Appeal Form. Appellant was advised that in order to perfect the filing of the appeal, the

Law Enforcement Officer & Firefighter Removal Appeal Form must be received by the OAL within twenty days.

As of the date of the within motion, 129 days after receipt of the FNDA, appellant has not filed the necessary Removal Appeal Form or taken any steps to pursue his disciplinary appeal.

LEGAL ANALYSIS AND CONCLUSION

Consistent with the Administrative Law rule and the Civil Service rules, all disciplinary appeals by a law enforcement officer must be filed with both the OAL and CSC. N.J.A.C. 1:4B-3.1; N.J.A.C. 4A:2-2.13(d). Appeals must be submitted on the "Law Enforcement Officer and Firefighter Removal Appeal form" ("Appeal Form") within twenty days from the date of the receipt of the final notice of disciplinary action. N.J.A.C. 1:4B-3.1 and 3.2; see also N.J.A.C. 4A:2-2.13. If an appellant fails to file the Appeal Form, the OAL must notify the appellant and give him an additional twenty days to cure the deficiency. N.J.A.C. 1:4B-3.1(d). If the appellant still does not cure the deficiency after the additional twenty days, the rule allows the OAL to issue an initial decision dismissing the appeal. Ibid. Similarly, an ALJ may impose a sanction, up to dismissal, if a party fails to comply with a court order or with any requirement of the Uniform Administrative Procedure Rules. N.J.A.C. 1:1-14.14; see also Green v. The State-Operated School District of the City of Jersey City, OAL Dkt. No. EDU 07401-00 (dismissal was a proper sanction for petitioner's lack of prosecution).

In this case, appellant has failed to observe any of these rules. As of the date of this motion, 129 days after he received his FNDA and eighty-nine days since the Notice of Improper Filing, appellant has not properly filed an appeal with the OAL.

In Pryor v. Township of Moorestown, the ALJ explained that the twenty-day filing rule is a practical and equitable device

[I]ntended to stimulate a litigant to pursue a claim within a reasonable period of time; to punish for the negligent (late)

bringing of a claim; and to promote repose, security and stability in the parties' relationship within one another and with others.

[Id. 92 N.J.A.R.2d (CSV) 18 (1991) citing O'Keeffe v. Snyder, 83 N.J. 478, 490-491 (1980)].

In Pryor, the appellant filed an appeal twenty-three days after he agreed to resign from his position to resolve a disciplinary matter. Even though the appeal was only three days late, the ALJ dismissed it as "out-of-time." Pryor at 7. The initial decision was then affirmed by the Merit System Board. Id. at 1.

Appellant's neglect here is far longer than the three-day delay in Pryor. More than twenty weeks have lapsed since he received his FNDA and over fourteen weeks since the mailing of the Notice of Improper Filing. Even at the departmental level, appellant did not participate in his disciplinary hearing. Likewise, he did not file a response to the within Motion to Dismiss. Appellant has clearly demonstrated his intent to abandon his claims. For the foregoing reasons, I **CONCLUDE** that appellant has made neither a proper nor timely appeal of his removal.

N.J.A.C. 1:12-5, governing motions for summary decision, permits early disposition of a case before the case is heard if, based on the papers and discovery which have been filed, it can be decided "that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:12-5(b). The provisions of N.J.A.C. 1:12-5 mirror the language of R. 4:46-2 of the New Jersey Court Rules governing motions for summary judgment. To survive summary decision, the opposing party must show that "there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. Failure to do so entitles the moving party to summary decision. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995).

Moreover, even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536. This tribunal is required to do "the

same type of evaluation, analysis or sifting of evidential materials as required by Rule 4:37-2(b) in light of the burden of persuasion that applies if the matter goes to trial.” Id. at 539-540. Like the New Jersey Supreme Court’s standard for summary judgment, summary decision is designed to “liberalize the standards so as to permit summary [decision] in a larger number of cases” due to the perception that we live in “a time of great increase in litigation and one in which many meritless cases are filed.” Id. at 539 (citation omitted).

As appellant did not oppose the motion, there is no genuine issue as to any material fact in this matter. Based upon the above, I **CONCLUDE** that appellant failed to properly file his appeal and that therefore the petition in this matter should be dismissed.

Accordingly, it is **ORDERED** that:


1. Respondents’ motion for summary decision is **GRANTED**; and
2. The petition in this matter is **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. 40A:14-204.

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.

May 19, 2015
DATE



JOHN S. KENNEDY, ALJ

Date Received at Agency:

May 19, 2015

Date Mailed to Parties:

May 19, 2015

cmo