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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Bryan Miller,
Department of Environmental
Protection

Minor Discipline Appeal

CSC Docket No. 2015-¹⁹²²~~1232~~

ISSUED: **AUG 20 2015** (LDH)

Bryan Miller, a Repairer with the Department of Environmental Protection, appeals a five working-day suspension.

The record indicates that the appellant was served with notification of a five working-day suspension on charges of insubordination, chronic or excessive absenteeism or lateness, and other sufficient cause. Specifically, the appointing authority alleged that on October 6, 2014, the appellant failed to follow office policies when he notified his supervisor of his absence two hours and fifteen minutes past his scheduled start time. The appellant did not request a hearing for this disciplinary action.

On appeal to the Civil Service Commission (Commission), the appellant contends that the charge of insubordination should be removed. In this regard, he argues that insubordination only refers to intentionally refusing to do what a supervisor asks an employee to do, or arguing with or disrespecting a supervisor. The appellant maintains that his lateness and failure to call his supervisor before his scheduled start time was unintentional and that he did not disrespect his supervisors, and therefore the appointing authority cannot support a change of insubordination.

In response, the appointing authority argues that the appellant failed to follow departmental policies, the direct orders from his supervisors, and thus a charge of insubordination was correct. It also points to the appellant's prior disciplinary record of a written warning, one day suspension, and three day

suspensions for similar instances of failure to call out prior to the start of his shift. Consequently, the appointing authority maintains that a five working-day suspension was warranted.

CONCLUSION

N.J.A.C. 4A:2-3.7(a) provides that minor discipline may be appealed to the Commission. The rule further provides:

1. The [Commission] shall review the appeal upon a written record or such other proceeding . . . and determine if the appeal presents issues of general applicability in the interpretation of law, rule or policy. If such issues or evidence are not fully presented, the appeal may be dismissed and the [Commission's] decision will be a final administrative decision.
2. Where such issues or evidence under (a)1 above are presented, the [Commission] will render a final administrative decision upon a written record or such other proceeding as the [Commission] directs.

This standard is in keeping with the established grievance and minor disciplinary procedure that such actions should ordinarily terminate at the departmental level.

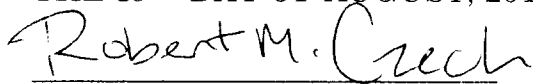
Moreover, in considering minor discipline actions, the Commission generally defers to the judgment of the appointing authority as the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by statute to the appointing authority. The Commission will also not disturb an appointing authority's determination in minor discipline proceedings unless there is substantial credible evidence that such judgments and conclusions were motivated by invidious discrimination considerations such as age, race or gender bias or were in violation of Civil Service rules. A review of the record evidences no showing that either factor, which would warrant further Commission review, is present in this case. Although the appellant argues that his failure to call his supervisor before his shift was unintentional and therefore cannot support a charge of insubordination, the appellant has a duty to follow departmental policies which included calling out prior to the start of his shift. Based on this record, the appellant has not established an abuse by the appointing authority of its discretion in this minor disciplinary case. Therefore, there is no basis to disturb the appointing authority's discipline of a five working-day suspension and no further review will be conducted by the Commission.

ORDER

Therefore, it is ordered that this appeal be denied.

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 19TH DAY OF AUGUST, 2015



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