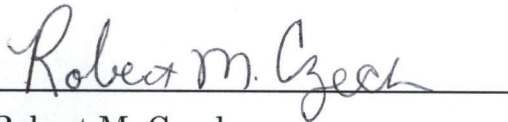


Re: Johnny Mendez

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
MARCH 9, 2017

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

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 DOCKET NO. CSV 15234-16

JOHNNY MENDEZ,

Appellant,

v.

CITY OF NEWARK, WATER AND SEWERS,

Respondent.

John D. Feeley, Esq., for Appellant Johnny Mendez (Feeley & LaRocca,
attorneys)

Kenneth Calhoun, Esq., Corporation Counsel for Respondent, City of Newark

Record Closed: January 3, 2017

Decided: February 7, 2017

BEFORE **JOHN P. SCOLLO, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Johnny Mendez, appeals from the Final Notice of Disciplinary Action (FNDA) dated September 1, 2016, rendered after an August 8, 2016, disciplinary hearing before Hearing Officer L'Tanya L. Williamson.

Newark alleges that Mendez took fifteen vacation days that he had not yet earned and must compensate Newark for same.

In both the Preliminary Notice of Disciplinary Action (PNDA) dated July 15, 2016, and the FNDA, the employer, Respondent City of Newark, Department of Water and Sewers (Newark) charged Mendez with Resignation Not In Good Standing under N.J.A.C. 4A:2-6.2.

A hearing was held on August 8, 2016, out of which came the unsigned FNDA stating: "Resignation Not In Good Standing, effective July 5, 2016." The FNDA was served on Mendez on September 12, 2016.

Mendez requested a fair hearing before the Office of Administrative Law. The matter was filed on October 5, 2016, as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52: 14F-1 to -13.

The tribunal received Appellant's Motion to Dismiss the Charges on December 19, 2016. The City of Newark has not submitted opposition and the time for doing so expired on January 3, 2017, and the record closed that day.

ISSUE

The issue in this case is whether the charge of failing to report to work on July 1, 2016, through July 5, 2016, pursuant to N.J.A.C. 4A:2-6.2 can be sustained. This legal question depends upon the determination of the question of whether or not Mendez was still an employee on July 1, 2016, and thereafter.

FACTUAL DISCUSSION

The following facts are not in dispute:

On May 18, 2016, Mendez submitted his application to the Public Employees Retirement System (PERS) for early retirement with an effective retirement date of July

1, 2016. On June 9, 2016, the City of Newark submitted its Certification to PERS in connection with Mendez's application. In its June 22, 2016, letter sent simultaneously to Mendez and Newark, PERS approved Mendez's retirement application with an effective date of July 1, 2016.

On May 25, 2016, Mendez submitted a request to take fifteen vacation days between June 10, 2016, and June 30, 2016, stating on the request that he would return to work on July 1, 2016. This vacation request was approved by Newark. According to the PNDA, Mendez called in sick on July 1, 2016; Mendez has not disputed this assertion. Mendez did not report to work on July 1, 2016, or on any date thereafter. According to Mendez, he became retired effective July 1, 2016; Newark has not disputed that Mendez's status was "retired" as of July 1, 2016.

The FNDA was not signed. Besides the unsigned FNDA, actual adjudication has not been received by this tribunal. The "Memorandum" of Hearing Officer L'Tanya L. Williamson dated August 29, 2016, does not set forth an adjudication of the charges, but only makes a "recommendation" that the Newark Law Department should "pursue repayment" of the vacation days that Mendez had used but (allegedly) had not yet earned.

LEGAL ANALYSIS AND CONCLUSION

Under N.J.A.C. 4A:2-6.1(a) any employee may resign in good standing by giving the appointing authority at least fourteen days written or verbal notice.

Under N.J.A.C. 4A:2-6.2(a) if an employee resigns without complying with the required notice set forth in N.J.A.C. 4A:2-6.1, he is considered and recorded as having resigned not in good standing.

Under N.J.A.C. 4A:2-6.2(b) an employee who fails to return to duty for five consecutive business days without the approval of his superior is considered to have abandoned his position and shall be recorded as having resigned not in good standing.

Under N.J.A.C. 4A:2-6.2(c) an employee who fails to return to duty for five consecutive business days following an approved leave of absence shall be considered to have abandoned his position and shall be recorded as having resigned not in good standing.

It is beyond question that Mendez met the notice requirement set forth in N.J.A.C. 4A:2-6.1 when he submitted his written application for retirement on May 18, 2016. Newark submitted its Certification in connection with Mendez's retirement application on June 9, 2016, which makes it clear that Newark knew about Mendez's retirement application and that the requested effective date of July 1, 2016. The June 22, 2016, letter that PERS sent to Mendez approving his retirement application with an effective date of July 1, 2016, was simultaneously sent to Newark.

From the undisputed facts and the logical deductions that follow from them, I **CONCLUDE** that Newark was put on notice by Mendez and by PERS that on July 1, 2016, Mendez would no longer be an employee, but would be a retiree. I **CONCLUDE** that under the aforesaid regulations only employees are required to report to work and I **CONCLUDE** that retirees are not required to report to work. I **CONCLUDE** that on July 1, 2016, Mendez was a former employee and was a retiree as of that date forward, and, therefore, was not required to report to work.

I **CONCLUDE** that inasmuch as N.J.A.C. 4A:2-6.1 and -6.2 only apply to employees—and not to retirees—it was impermissible to charge Mendez for violation of these sections for any action or inaction of his from July 1, 2016, forward. I **CONCLUDE** that the charges brought by Newark against Mendez under the aforementioned sections were null and void when brought. Given the fact that the FNDA has not been signed, it is not clear to this tribunal that an adjudication has actually been made against Mendez.

I nonetheless **CONCLUDE** that any adjudication of wrongdoing against Mendez under said charges must be and hereby is reversed.

Newark raises an issue as to whether Mendez was entitled to take fifteen vacation days or some other amount of vacation days or none at all between June 10, 2016, and June 30, 2016. Newark alleges that Mendez was paid for vacation days that he had not yet earned as of his last official day as an employee, June 30, 2016. As noted above, the only issue properly before this tribunal is the issue of whether Mendez complied with the requirements of N.J.A.C. 4A:2-6.1 and -6.2. This tribunal has decided that Mendez fully complied with said notice requirements. I **CONCLUDE** that the issue of whether Mendez owes or does not owe money to Newark for vacation days he used with Newark's approval (whether due to Newark's mistake or due to some other reason) is beyond the scope of the issue before this tribunal. As noted above, the only proper issue before this tribunal is whether Mendez was still an employee on July 1, 2016, and thus obligated to report to work. That question has been answered herein.

ORDER

It is hereby **ORDERED** that the charges brought against Johnny Mendez under N.J.A.C. 4A:2.6.2 must be **DISMISSED**; and it is **ORDERED** that any adjudications of wrongdoing entered against Johnny Mendez on the basis of the aforesaid charges must be and hereby are **REVERSED**.

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.

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, P.O. 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.

February 7, 2017
DATE

John P. Scollo
JOHN P. SCOLLO, ALJ

Date Received at Agency:

February 7, 2017

Date Mailed to Parties:

February 7, 2017

List of Exhibits submitted by Appellant:

Mendez's Application for Retirement dated May 18, 2016

Letter dated June 22, 2016, from PERS to Mendez, copy to Newark

Newark's June 9, 2016, Certification of Service and Final Salary Retirement

Mendez's Time Off Request Form dated May 25, 2016, signed by Newark's agent

PNDA dated July 15, 2016

FNDA dated September 1, 2016

Hearing Officer L'Tanya L. Williamson's "Memorandum" dated August 29, 2016