



STATE OF NEW JERSEY

DECISION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Andrea Kinion,
City of Paterson

CSC Docket No. 2017-1633

Request for Reconsideration

ISSUED: MAR 13 2017 (JET)

Andrea Kinion, a former Affirmative Action Officer with the City of Paterson, represented by Seth Gollin, Staff Attorney/Staff Representative, Council 52, AFSCME, requests reconsideration of the attached decision by the Assistant Director, Division of Appeals and Regulatory Affairs, rendered on October 28, 2016, denying her request for a hearing regarding her resignation not in good standing.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) dated August 22, 2016, indicating that the appellant resigned not in good standing effective May 12, 2016. The appointing authority sent the FNDA to the appellant via U.S. certified mail and documentation from the U.S. Postal Service reflects that the letter was received on September 9, 2016.

By letter dated August 22, 2016, received by this agency on October 25, 2016, the appellant filed an appeal regarding the resignation not in good standing. However, her request for a hearing was denied by the Assistant Director of the Division of Appeals and Regulatory Affairs on October 28, 2016, since the appeal was not perfected within the 20-day time frame. See *N.J.A.C. 4A:2-6.2(d)* and *N.J.A.C. 4A:2-2.8*.

In her petition for reconsideration, the appellant submits a sworn and notarized letter dated November 18, 2016, stating that she sent the initial letter of appeal by regular mail on August 24, 2016 from the Post Office in Paterson. The appellant explains that she sent the appeal by regular mail because she could not afford to send it by certified mail as she was not receiving unemployment benefits at

that time. In addition, the appellant asserts that, although her appeal was considered untimely since there was no postmark listed on the appeal envelope,¹ a postal supervisor informed her of the reasons why a postmark date may not have appeared on the envelope. In this regard, the appellant claims that the postal supervisor explained that the mail is transported from the mailbox to the distribution center, and may have been set aside as a suspicious mailing, or the postal machine may have missed it. She further avers that the postal supervisor stated that, although there was a bar code on the envelope, it was placed on it by the distribution center. Moreover, she asserts that the postal supervisor indicated that, since there was no postmark date attached or a tracking number, there was no way to determine what caused the delay in delivering the appeal to this agency.

Additionally, in a sworn notarized statement dated November 18, 2016, Hazel D. Hughes, President, Local 3724, AFSCME, indicates that on August 22, 2016, she personally submitted the appellant's major disciplinary appeal form to the appointing authority's Business Administrator. She adds that the appointing authority date stamped the major disciplinary appeal form on August 22, 2016. Moreover, Ms. Hughes avers that the appellant stated on August 24, 2016 that she was on her way to the Post Office to mail the appeal to this agency.

It is noted that the record reflects a \$20 money order from the appellant dated August 22, 2016, which is written out the Civil Service Commission (Commission) as payment for the processing fee of the appeal in this matter.

In response, the appointing authority, represented by Steven S. Glickman, Esq., maintains that since the appellant's appeal was untimely, her request for a hearing should be denied. Moreover, the appointing authority asserts that the appellant's request for reconsideration should be dismissed as untimely.

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.A.C.* 4A:2-6.2(d) indicates that an employee who is resigned not in good standing shall have the right to appeal under *N.J.A.C.* 4A:2-2.8. *N.J.A.C.* 4A:2-2.8 states that an appeal of a FNDA must be filed within 20 days of receipt of the notice by the employee.

¹ In support of her appeal, the appellant submits a picture of the envelope that was sent from the Post Office by regular mail for her initial appeal. The picture shows the same bar code and hand writing that is on the envelope in the record.

The record reflects that the appellant received the FNDA on September 9, 2016, and the appellant's letter of appeal was not received until October 25, 2016. In a notarized letter dated November 18 2016, the appellant states that she mailed the letter of appeal via regular mail on August 24, 2016. In addition, in a notarized letter dated November 18, 2016, the President of Local 3724, AFSCME, confirms that she submitted the disciplinary appeal form to the appointing authority's Business Administrator on August 22, 2016, and the appellant stated to her on August 24, 2016 that she was on her way to send the appeal to this agency by regular mail.

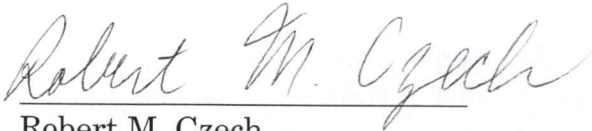
In this case, the appellant and her union represented submitted sworn, notarized certifications, in lieu of oath, which may be submitted in lieu of an affidavit, oath or verification. *See R. 1:4-4(b)*. Generally, the Commission is willing to accept that if an individual is prepared to make a statement under oath, understanding all its implications and consequences, then it is proper to permit the presumption of untimeliness to be overcome. The Commission recognizes that on occasion, certain circumstances may cause a delay in mail delivery. In this case, if the Commission did not accept a sworn statement averring that mail was sent out within the 20-day timeframe, there would be no remedy at all for individuals who find themselves in this particular situation. Moreover, the certification from the appellant's union representative, the fact that the appeal was initially filed with the appointing authority in error on August 22, 2016, as well as the August 22, 2016 money order written out to this agency, provide sufficient evidence to show that the appellant intended to file the appeal within the proper timeframe. Moreover, the appointing authority did not provide any substantive evidence to refute the appellant's claims. Therefore, the Commission finds that the appellant has shown that she timely filed her appeal. With respect to the appointing authority's argument that the instant request for reconsideration was untimely filed, the Commission disagrees. The prior decision was issued on October 28, 2016, and the request for reconsideration in this matter was received by this agency on November 22, 2016. As such, this matter was filed well within the required 45-day timeframe to file a request for reconsideration. *See N.J.A.C. 4A:2-1.6(a)*.

Accordingly, the Commission grants the appellant's request for a hearing, and the matter should be referred to the Office of Administrative Law (OAL) for a hearing. However, the appellant and her union representative are cautioned that, given the apparent mailing issues, they should seek to ensure that future appeals are postmarked within the required timeframe by delivering them directly to a postal facility or to this agency. Finally, the Commission notes that this determination is based on the specific facts and circumstances presented and cannot be used as precedent in any future matters.

ORDER

Therefore, it is ordered that the appellant's appeal of her resignation not in good standing be transmitted to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9th DAY OF MARCH, 2017



Robert M. Czech
Chairperson
Civil Service Commission

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and	Director
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Attachment

c: Andrea Kinion
Seth Gollin, AFSCME Council 52
Steven S. Glickman, Esq.
Nellie Pou
Beth Wood w/file

RE: Andrea Kinion

DECISION RENDERED BY THE
ASSISTANT DIRECTOR, DIVISION OF APPEALS
AND REGULATORY AFFAIRS

ON



NICHOLAS F. ANGIULO
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c: Andrea Kinion
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