

B-38



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Carlos Comitini,
Northern State Prison, Department
of Corrections

Request for Reconsideration

CSC Docket No. 2017-359

ISSUED: **MAR 15 2017** (ABR)

Carlos Comitini, a Senior Correction Officer with Northern State Prison (NSP), Department of Corrections (DOC), petitions the Civil Service Commission (Commission) for reconsideration of the decision, rendered on June 23, 2016, in which the Director of the Division of Appeals and Regulatory Affairs denied his request for a hearing with respect to his 10 working day suspension, effective May 20, 2016.

By way of background, in a May 18, 2016 Final Notice of Disciplinary Action (FNDA), the petitioner was suspended for 10 working days on charges of conduct unbecoming a public employee; neglect of duty, loafing, idleness, or willful failure to devote attention to tasks which could result in danger to persons or property; violation of a rule, regulation, policy, procedure, or administrative procedure; and other sufficient cause. The record indicates that the petitioner received the FNDA by personal service on May 20, 2016. The FNDA stated, in relevant part, that "Appeals should be addressed to the Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08825-0312. Any appeal postmarked after the 20 days statutory time limit will be denied...Do not give your appeal to your personnel office for forwarding to the Civil Service Commission." By letter postmarked June 14, 2016, the petitioner submitted an appeal to the Commission. However, since the petitioner did not submit his appeal within 20 days of receipt of the FNDA, the request for a hearing was denied.

In support of his request for reconsideration, the petitioner claims that his delay in filing an appeal with the Commission "was not directly [his] fault."

Specifically, the petitioner states that on May 25, 2016, his union, PBA Local 105, submitted a form labeled "Department of Corrections Appeal of Major Disciplinary Action," (Departmental Appeal Form) to DOC Human Resources (DOC-HR).¹ The petitioner notes that the Departmental Appeal Form was sent to DOC-HR within 20 days of his receipt of the FNDA. The petitioner adds that DOC-HR later sent the correct appeal form to PBA Local 105 via facsimile and that he thereafter completed that form and forwarded it to the Commission. The petitioner submits copies of the Departmental Appeal Form filed on May 25, 2016; the fax cover page and the blank appeal form sent from DOC-HR to PBA Local 105 on June 3, 2016; and a copy of the FNDA.

The appointing authority acknowledges that PBA Local 105 erroneously sent the Departmental Appeal Form to DOC-HR in error on May 25, 2016 and that it faxed the appropriate appeal form to PBA Local 105 on June 3, 2016. The appointing authority states that it did not provide PBA Local 105 with the Departmental Appeal Form.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. 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. A review of the record in the instant matter reveals that reconsideration is not justified.

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). Furthermore, *N.J.A.C.* 4A:2-2.8(a) states that "[a]n 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."

In the instant matter, the FNDA was delivered to the petitioner via personal service on May 20, 2016. Pursuant to *N.J.S.A.* 11A:2-15 and *N.J.A.C.* 4A:2-2.2.8(a), the petitioner was required to submit an appeal in writing to the Commission by June 9, 2016. In his request for reconsideration, the petitioner does not dispute the

¹ The Departmental Appeal Form instructs employees "desiring to appeal a major disciplinary action...to submit [the form] to his/her personnel office."

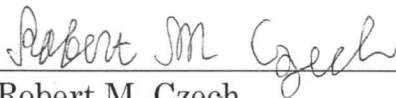
fact that he received the FNDA by personal service on May 20, 2016 and he does not suggest that he filed a written appeal with the Commission before his letter of appeal was postmarked on June 14, 2016. Additionally, while the record shows that PBA Local 105 filed a Departmental Appeal Form with DOC-HR on May 25, 2016, there is no evidence to suggest that a written appeal was submitted to the Commission before the petitioner's letter of appeal was postmarked on June 14, 2016. Moreover, the petitioner does not explain why a written appeal was not sent to the Commission on or before the June 9, 2016 deadline, even though DOC-HR sent the appropriate form to PBA Local 105 on June 3, 2016. Furthermore, the FNDA contained clear instructions to mail any appeal to the Commission within 20 days of receipt. Under these circumstances, the petitioner did not meet the 20-day filing requirement, and he has not presented a basis to grant a hearing. Accordingly, the petitioner has not met the standard for reconsideration.

ORDER

Therefore, it is ordered that this request for reconsideration 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 9TH DAY OF MARCH, 2017



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