B-22

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Sam Schulman,
Lakewood Township

CSC Docket No. 2016-3498

Administrative Appeal

ISSUED: MAY 08 2017 (DASV)

Sam Schulman, a former Truck Driver, Heavy with Lakewood Township, represented by David M. Bander, Esq., appeals an alleged resignation in good standing.

By way of background, the appointing authority maintains that the appellant verbally resigned his position during a meeting in which union representatives were present and when he was to be served with two Preliminary Notices of Disciplinary Action (PNDAs) for suspensions of 10 and 30 days. This meeting was held on February 3, 2016. Consequently, the appointing authority recorded the appellant resigned in good standing effective February 9, 2016. In response to an inquiry from the appellant's union, the appointing authority set forth the circumstances of what allegedly occurred at the February 3, 2016 meeting in a letter dated March 11, 2016.

On appeal, the appellant asserts that he did not resign his position and the appointing authority failed to serve him with the required disciplinary notices for his separation from employment. Moreover, he submits that his appeal is timely, as it was filed within 20 days of the March 11, 2016 "formal notice" from the appointing authority as to the cessation of his employment.[1]

[1] In a letter dated April 18, 2016, the Division of Appeals and Regulatory Affairs advised the appellant that his appeal was untimely as it was not filed within a reasonable time of the notice of the adverse action, namely his alleged resignation, *N.J.A.C.* 4A:2-1.1 and *N.J.A.C.* 4A:2-6.1(d), or

In response, the appointing authority, represented by Steven Secare, Esq., indicates that the appellant "absolutely voluntarily resigned from his employment." It explains that, on February 3, 2016 at 7:10 a.m., the appellant and two shop stewards[2] were at the offices of the Department of Public Works and the then acting Director of Public Works was to serve him with two PNDAs. An Assistant Public Works Superintendent was also present. Before the PNDAs could actually be served, the appellant said it was not necessary since he was quitting and left the room. At 8:21 a.m. on the same day, the appellant's union representative was notified of the appellant's resignation. The appellant was then advised of his rights to continued health insurance coverage under COBRA. In support, the appointing authority presents the certifications of the then acting Director of Public Works, who is now the Assistant Director of Public Works, and the Assistant Public Works Superintendent who both confirm the appellant's verbal resignation. The Assistant Public Works Superintendent indicates that the appellant said "well it's all moot because I'm quitting anyway." Then the Assistant Director of Public Works asked if the appellant was giving him notice and the appellant stated "yeah I am giving you two weeks' notice." The appointing authority indicates that it immediately accepted the appellant's resignation, consenting to a resignation notice shorter than 14 days. According to the Assistant Public Works Superintendent, the Assistant Director of Public Works responded that the appellant "did not need two weeks' notice and that [the appellant] was free to leave the building, which he did."

In reply, the appellant requests a hearing "to resolve the disputed factual question of whether he resigned from employment with the Township." He certifies that he told the Assistant Director of Public Works that he was "thinking about moving on from the Township" and "thinking about coming to [the Assistant Director of Public Works'] office and giving him 2 weeks' notice." The appellant maintains that these statements only reflect his frustration and anger at being served with major disciplinary actions. He maintains that at no time did he intend to quit his job or advise that he was planning to quit. Further, the appellant contends that the Assistant Director of Public Works told him that he needed to submit something in writing to confirm his intention to quit. However, the appellant states that he did not submit a letter of resignation. Later in the meeting, the appellant states that the Assistant Public Works Superintendent told him that the Assistant Director of Public Works wanted him to leave the premises. The appellant believed that was because he was to begin his suspensions. Moreover, the appellant acknowledges that he received several forms from the appointing authority. He completed the COBRA form because he needed health insurance coverage for his family. However, he did not fill out the form for payment of his unused sick and vacation time, as he understood that the form pertained to

---

removal from employment, *N.J.S.A.* 11A:2-15 and *N.J.A.C.* 4A:2-2.8. The appellant filed his appeal on March 31, 2016.

[2] According to the submissions, only one shop steward was present at the time the appellant allegedly resigned during the meeting.

employees whose employment had been terminated. It is noted that, along with this form, the Assistant Director of Public Works sent the appellant a letter dated February 3, 2016 which stated "[p]ursuant to the resignation of employment tended by you on Wednesday, February 3rd @ 7:10 a.m., from the position of Equipment operator-Heavy[3] for the Township of Lakewood Department of Public Works, please complete and return the enclosed form." In support of his appeal, the appellant submits the statement of one of the shop stewards, who corroborates the appellant's version of what happened that the appellant was thinking of seeing the Assistant Director of Public Works to give his two weeks' notice and that the Assistant Director of Public Works told the appellant to submit paperwork so he can get paid correctly. It is noted that this statement is not sworn.

Furthermore, the appellant reiterates that his appeal was timely filed. In that regard, he indicates that he was never sent the March 11, 2016 letter, but nevertheless filed an appeal within 30 days of receipt of the letter from his union. He notes that his union also received a letter on March 1, 2016 from the appointing authority's attorney confirming the appointing authority's position that the appellant resigned and the resignation was accepted. The appellant was not sent this letter. Moreover, the appellant indicates that he filed a request for a hearing to contest the PNDAs and the union "began an investigation" regarding what transpired in the February 3, 2016 meeting. The union requested that the appointing authority issue the appellant a Final Notice of Disciplinary Action (FNDA) for each charge against him. However, it did not issue the appellant the FNDAs nor provide him with appeal rights.

Additionally, the appellant contends that, based on all of the certifications submitted by the parties, there is a general agreement that he was upset at being served the PNDAs, there was a discussion between him and the Assistant Director of Public Works about him possibly resigning, and the appellant was ordered to leave the premises. The appellant argues that what is in dispute is the precise language used and the meaning of the language. Therefore, he maintains that a hearing is warranted to resolve the material dispute which largely depends on the credibility of the witnesses.

In reply, the appointing authority reiterates its previous arguments and emphasizes that the Assistant Director of Public Works wrote the appellant on February 3, 2016, as set forth above, acknowledging the appellant's resignation. Thus, it agrees that the appellant's appeal was untimely filed. It maintains that the appellant was not removed from employment and clearly knew the facts and circumstances of the appointing authority's position when he received the February 3, 2016 letter. Regarding the PNDAs, the appointing authority indicates that they were not served on the appellant because of his resignation as "it was moot to offer the PNDAs." Furthermore, it maintains that the Assistant Director of Public Works

---

[3] As previously noted, the appellant's Civil Service title is Truck Driver, Heavy.

did not "demand or request" written notice of his resignation. Rather, the appellant was told that if he wants to submit something in writing that it would be acceptable, but it was not necessary. Moreover, the appointing authority indicates that it is "nonsense" for the appellant to assert that he thought the Assistant Director of Public Works wanted him to leave the premises because of his suspensions. It emphasizes that the PNDAs were never served. The appointing authority claims that the appellant is attempting to "reconstruct the facts to benefit himself." Lastly, it states that to allow the appellant "to resign and then un-resign is hardly the model of efficient government, and in fact, sends the opposite message, that is, a government in chaos."

CONCLUSION

Initially, *N.J.A.C.* 4A:2-6.1(d) and *N.J.A.C.* 4A:2-1.1(b) provide that appeals must be filed within 20 days after either an appellant has notice or should reasonably have known of the decision, situation or action being appealed. In this case, although the appellant claims that he did not resign, the record clearly shows that the appointing authority considered him resigned on February 3, 2016. The appellant does not dispute that he received the February 3, 2016 letter which stated "[p]ursuant to the resignation of employment tended by you on Wednesday, February 3rd @ 7:10 a.m. . . . ." At that point, the appellant should reasonably have known that the appointing authority accepted a resignation from him. Additionally, there is no basis in this particular case to extend or relax the time for appeal. *See N.J.A.C.* 4A:1-1.2(c) (the Commission has the discretionary authority to relax rules for good cause). In that regard, it is appropriate to consider whether the delay in asserting his right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). *See also Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993) (allowing relaxation of the appeal rules where police officer repeatedly, but unsuccessfully, sought clarification of his employment status). In the instant matter, the appellant cannot persuasively deny that the adverse action against him occurred on February 3, 2016, as there was documentary evidence from the appointing authority concerning the resignation. Accordingly, the appellant has failed to show good cause to justify relaxing the requirements of *N.J.A.C.* 4A:2-6.1(d) and *N.J.A.C.* 4A:2-1.1(b), and the appellant's appeal is clearly out of time. *See also In the Matter of Roberta Howard* (MSB, decided January 28, 2004); *In the Matter of Henrietta Mik* (MSB, decided November 19, 2003).

Further, even if the appellant is considered removed from employment rather than resigned, then his separation would be a disciplinary action covered by

N.J.S.A. 11A:2-13 and subsection a.(1) of *N.J.S.A.* 11A:2-6. In that regard, *N.J.S.A.* 11A:2-15 provides that any appeal from adverse actions specified in *N.J.S.A.* 11A:2-13 shall be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority or within a reasonable time if no determination is received. *See also, N.J.A.C.* 4A:2-2.8. This 20-day time limitation is jurisdictional and cannot be relaxed. *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). Allowing the latest date of February 9, 2016 for the appellant to realize that he was separated, the filing of an appeal on March 31, 2016 was not reasonable. As set forth above, the appellant received the February 3, 2016 letter acknowledging his resignation. Moreover, according to the appointing authority, the appellant's union was also advised of the resignation on February 3, 2016 and again by letter dated March 1, 2016.

Nonetheless, even assuming that the appellant timely filed his appeal, he has not submitted convincing evidence that he did not intend to resign. Apart from his own certification, there is no other sworn statement to corroborate his version of what occurred at the February 3, 2016 meeting. The statement from the union member who was present at the meeting was not sworn. On the other hand, both the Assistant Director of Public Works and the Assistant Public Works Superintendent certified to the appellant's verbal resignation. It is noted that *N.J.A.C.* 4A:2-6.1(b) and (c) provide that a resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation and a request to rescind the resignation prior to its effective date may be consented to by the appointing authority. In the present case, the appointing authority clearly accepted the appellant's separation as a resignation and does not wish to rescind it. *N.J.A.C.* 4A:2-6.1(c) grants an appointing authority the discretion to consider such requests to rescind, but there is no obligation to accept.

Additionally, *N.J.A.C.* 4A:2-6.1(d) allows an employee to appeal a resignation in good standing if the resignation was the result of duress or coercion. The appellant has the burden of proving by a preponderance of the evidence that the resignation was the result of duress or coercion on the appointing authority's part. Although the appellant may have been under pressure during the February 3, 2016 meeting, the fact that the appointing authority presented the appellant with two PNDAs, absent evidence of force or intimidation, does not constitute illegal duress or coercion to resign. The appointing authority has a legal right to pursue disciplinary action against an employee, and a resignation in the face of discipline has generally not been found to be a coercive action. *See Ewert v. Lichtman*, 141 *N.J. Eq.* 34, 36 (Ch. Div. 1947); *In the Matter of Claudia Grant* (MSB, decided June 8, 2005) (Appellant's decision to resign was a personal choice given her belief that she would have been removed from employment and that disciplinary action, absent

evidence of force or intimidation, does not constitute illegal duress). Moreover, in this case, the appointing authority was not attempting to remove the appellant from employment. Rather, the proposed penalty on the PNDAs was a 10 and 30 working day suspension. Therefore, the record does not demonstrate that the appointing authority's actions were so oppressive that the appellant was deprived of his free will.

ORDER

Therefore, it is ordered that this appeal be dismissed as untimely.

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 3RD DAY OF MAY, 2017

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Sam Schulman
David M. Bander, Esq.
Steven Secare, Esq.
Thomas Henshaw
Kelly Glenn
Records Center