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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Ruddy Castillo,
Union City

CSC Docket No. 2016-2387

Request for Reconsideration

ISSUED: MAY 08 2017 (DASV)

Ruddy Castillo, a former Laborer 1 with Union City, represented by Timothy Smith, Esq., requests reconsideration of the attached final decision of the Civil Service Commission (Commission), rendered on November 5, 2015, which denied his request to reinstate his appeal of removal.

As set forth in the prior decision, the petitioner's appeal of removal, effective December 12, 2011, was transmitted to the Office of Administrative Law (OAL) on June 20, 2012 for a hearing as a contested case. By letter dated February 22, 2013, the petitioner advised the Administrative Law Judge (ALJ) that he agreed to withdraw the pending appeal based on representations made to his attorney that the appointing authority agreed to a "rehearing" at the departmental level. If the decision of the hearing officer at the "rehearing" was not satisfactory to him, the petitioner would have an opportunity to appeal provided that he file a notice of appeal with the Commission "within the requisite time period." The matter was returned to the Commission, and at its meeting on May 1, 2013, the Commission noted the withdrawal without prejudice. Over two years later, in a letter from his attorney, postmarked May 22, 2015, the petitioner indicated that he withdrew his appeal at the appointing authority's request in order to work out a settlement. However, he claimed that the appointing authority was unresponsive and requested that his appeal be reopened. In the prior decision, the Commission found that by December 13, 2013, there was no doubt that the appointing authority considered the petitioner removed from employment. Thus, given that the petitioner's request was filed almost a year and one-half after he received definite notice that he would no longer be restored to his Laborer 1 position and failed to provide an explanation

regarding the delay, the Commission denied the petitioner's request for reinstatement of his appeal. Furthermore, the Commission noted that the petitioner sought other employment and appeared not to have pursued his request until he encountered difficulty in finding a new position. Under the circumstances, the Commission concluded that it would be prejudicial to the appointing authority to permit the petitioner to reopen his appeal, almost four years after the disciplinary action in question and over two years after he withdrew his appeal.

In the instant matter, the petitioner asserts that he was unable to afford the expenses associated with a hearing before an ALJ at an earlier time because, in part, he could not secure new employment due to the alleged bad references given by Union City. However, he is now in the position to afford the expenses associated with litigating his claims. Moreover, the appellant contends that he would not have withdrawn his case if he knew he could not have it reopened. In addition, the petitioner alleges that he was bullied, harassed, and retaliated against by the appointing authority. He indicates that his doctor and the appointing authority's doctor agreed that he could return to work. However, the petitioner maintains that the appointing authority failed to make a good faith effort to settle the matter after it was agreed that he would withdraw his appeal.

In response, the appointing authority, represented by Kenneth B. Goodman, Esq., requests that reconsideration be denied since the petitioner presents no evidence that the Commission erred in its prior decision or evidence that would change the outcome of his case.¹ It disputes the petitioner's allegations, emphasizing that it did not retaliate against the petitioner and such claims were not raised in the initial proceeding. Moreover, the appointing authority notes that the petitioner could have appeared *pro se* at the OAL. Thus, it argues that the claimed expense of litigating an OAL hearing does not justify the petitioner's delay in seeking to reopen his appeal which "was woefully out of time."

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

¹ The appointing authority also argues that the petitioner's request for reconsideration is untimely. The Commission's written decision was issued on November 9, 2015. The appellant states that he did not receive the decision until the end of December 2015. He filed a request for reconsideration by letter postmarked January 7, 2016. Thus, pursuant to *N.J.A.C.* 4A:2-1.6(a), the petitioner's request for reconsideration was filed within 45 days of receipt of the prior decision. Accordingly, his petition was timely filed.

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.²

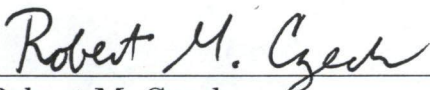
There is no dispute that the petitioner's request to reopen his appeal of his removal as a Laborer 1 with Union City was made on May 22, 2015, over two years after the Commission noted the withdrawal at its meeting on May 1, 2013. Moreover, as previously found, the appointing authority confirmed the petitioner's termination in a letter dated December 13, 2013. The petitioner explains that he could not afford the expenses associated with a hearing before an ALJ at that time since he could not secure new employment because of the alleged bad references given by Union City. However, the reason provided does not excuse the fact that it took him over two years to request that his appeal be reopened. As noted by the appointing authority, the petitioner could have represented himself *pro se*. Additionally, the petitioner submits substantive arguments against his removal, which is not relevant at this proceeding. The Commission did not previously address the reasons for his removal. Moreover, the petitioner maintains that he would not have withdrawn his case if he knew he was not able to reopen it. However, in the petitioner's withdrawal letter, it indicated that he understood that he would have an opportunity to appeal provided that he filed a notice of appeal with the Commission "within the requisite time period." Therefore, the petitioner has not demonstrated that a material error has occurred nor presented new evidence which would change the outcome of his case. Accordingly, the Commission finds no grounds on which to grant reconsideration of its prior decision.

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 3RD DAY OF MAY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

² It is noted that the parties were advised on July 26, 2016 that the information and arguments presented by the petitioner did not meet the standard for reconsideration. Consequently, the file in matter was closed. However, by letter dated August 11, 2016, the petitioner requested that the matter be reopened and reviewed by the Commission. No further arguments were submitted.

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Attachment

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- Timothy Smith, Esq.
- Tilo E. Rivas
- Kenneth B. Goodman, Esq.
- Kelly Glenn
- Records Center



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Ruddy Castillo,
Union City

CSC Docket No. 2015-3120

Administrative Appeal

ISSUED: NOV 09 2015 (DASV)

Ruddy Castillo, a former Laborer 1 with Union City, represented by John T. Herbert, Esq., requests that his withdrawn appeal of his removal, effective December 12, 2011, be reinstated and transmitted to the Office of Administrative Law (OAL) for a hearing.

By way of background, on May 29, 2012, the petitioner was served with a Final Notice of Disciplinary Action (FNDA), dated April 26, 2012, removing him from employment, effective December 12, 2011, on charges of incompetency, inefficiency, or failure to perform duties; chronic or excessive absenteeism or lateness; neglect of duty; and other sufficient cause. Specifically, the appointing authority asserted that the petitioner was absent from work without permission and/or giving notice, beginning September 26, 2011, and had not returned. Upon his timely appeal,¹ the matter was transmitted to the OAL on June 20, 2012 for a hearing as a contested case. By letter dated February 22, 2013, the petitioner advised the Administrative Law Judge (ALJ) that he agreed to withdraw the pending appeal based on representations made to his attorney that the appointing authority agreed to a "rehearing" at the departmental level. The petitioner also

¹ The appointing authority indicates that the petitioner's initial appeal was untimely, as it was filed beyond the 20-day time period for filing an appeal. See *N.J.S.A. 11A:2-15* and *N.J.A.C. 4A:2-2.8*. It presents tracking documentation from the United States Postal Service showing that the certified mail which contained the FNDA "arrived at 8:06 a.m. on May 14, 2012 in Union City, NJ 07087." However, the petitioner submitted a sworn statement at the time of his appeal that he did not receive the FNDA until May 29, 2012. It also appeared that the FNDA by certified mail was sent to an incorrect address. Thus, the petitioner's appeal, postmarked June 4, 2012, was considered timely.

indicated that if the decision of the hearing officer at the "rehearing" was not satisfactory to him, he would have an opportunity to appeal provided that he file a notice of appeal with the Civil Service Commission (Commission) "within the requisite time period." The matter was returned to the Commission, and at its meeting on May 1, 2013, the Commission noted the withdrawal without prejudice.

In a letter from his attorney, postmarked May 22, 2015, the petitioner indicates that he withdrew his appeal at the appointing authority's request in order to work out a settlement. However, the petitioner asserts that the appointing authority has been unresponsive and suspects that it has intentionally interfered with his ability to obtain new employment. Thus, because he claims that the appointing authority has acted in bad faith in promising to engage in settlement discussions, the petitioner requests that his appeal be reopened and transmitted to the OAL so that an ALJ can decide his case. The petitioner also seeks an award of attorney fees and costs and monetary damages for his unlawful dismissal and the appointing authority's intentional interference with his prospective employment.

In response, the appointing authority, represented by Kenneth B. Goodman, Esq., explains that when the petitioner received the FNDA, he claimed that he was not aware of the departmental hearing, which was held on February 16, 2012 in his absence. Thus, the appointing authority agreed to hold a second hearing to give the petitioner an opportunity to be heard. The hearing was held on July 16, 2012. In the meantime, the petitioner had already filed an appeal to the Commission and his appeal was transmitted to the OAL. Following the second departmental hearing, the parties engaged in settlement discussions. The parties discussed whether the petitioner would be eligible for ordinary disability retirement since he sustained injuries in 2010 in an automobile accident, which prevented him from performing his duties. Subsequently, the petitioner withdrew his appeal at the OAL and the parties continued their settlement discussions until sometime in July 2013. The appointing authority argues that the instant request is "woefully untimely" because the petitioner should have reasonably been aware of his situation in July 2013 and filed an appeal to the Commission at that time. Additionally, in December 2013, the petitioner's attorney requested the status of the petitioner's employment. In a letter dated December 13, 2013, the appointing authority's attorney confirmed that "consistent with the FNDA that was issued on April 26, 2012," [the petitioner's] employment with the City of Union City was terminated effective December 12, 2011." The appointing authority maintains that the petitioner was aware of his rights and unreasonably sat on them for more than two years. Therefore, his request should be denied.

CONCLUSION

N.J.A.C. 1:1-19.2(a) provides that a party may withdraw a request for a hearing by notifying the judge and all parties. Additionally, *N.J.A.C.* 1:1-19.2(b)

states that when a party withdraws, the Clerk shall return the matter to the agency which transmitted the case to the OAL for appropriate disposition. Further, *N.J.A.C. 1:1-19.2(c)* provides that after the Clerk has returned the matter, a party shall address to the transmitting agency head any motion to reopen a withdrawn case. *N.J.A.C. 1:1-19.2(c)* does not specify a time limit for the motion to be filed. In other words, the withdrawal of the petitioner's appeal was without prejudice. Although *N.J.A.C. 1:1-19.2* does not state this, this regulation is clearly analogous to the court rule on voluntary dismissals, *R. 4:37-1(a)*, which provides: "Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice." Thus, for good cause, such an appeal can be reinstated for purposes of a determination on the merits.

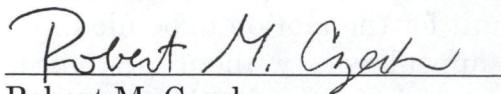
In the present case, the petitioner has not presented a sufficient basis to reopen his appeal. Although the settlement discussions may have come to an impasse in July 2013, there was no doubt that in December 2013, the appointing authority considered the petitioner removed from employment. By letter dated December 13, 2013, the appointing authority's attorney confirmed that "consistent with the FNDA that was issued on April 26, 2012," [the petitioner's] employment with the City of Union City was terminated effective December 12, 2011." However, the petitioner's request to reopen his appeal was not filed until May 22, 2015. Further, as indicated in his withdrawal letter, the petitioner understood that he would have an opportunity to appeal provided that he filed a notice of appeal with the [Commission] "within the requisite time period." Although as set forth above, there is no time limit for a motion to reopen a withdrawn case, the petitioner's request was filed almost a year and one-half after he received definite notice in December 2013 that he no longer would be reinstated to his Laborer 1 position. The petitioner has not provided any explanation regarding this delay. Moreover, the petitioner indicates that he sought other employment and apparently had difficulty securing new employment based on an alleged interference by the appointing authority. Given this admission, the Commission can only surmise that the petitioner chose not to request reinstatement of his appeal until he encountered difficulty in finding a new position. Under these circumstances, it is prejudicial to the appointing authority to permit the petitioner now to reopen his administrative appeal, almost four years after the disciplinary action in question and over two years after he withdrew his appeal. Accordingly, the petitioner's request that his withdrawn appeal of his removal be reinstated and transmitted to the OAL is denied.

ORDER

Therefore, it is ordered that this request 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 5TH DAY OF NOVEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

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