



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Maria Bertone,
Department of Human Services

CSC Docket No. 2017-1658

Administrative Appeal

ISSUED: AUG 18 2017 (JET)

Maria Bertone, a former Cottage Training Technician with Hunterdon Developmental Center, Department of Human Services, represented by Rashidah N. Hasan, Esq., requests to reinstate the appeal of her removal effective April 29, 2016, which was dismissed on the basis of her failure to appear at her May 11, 2017 hearing at the Office of Administrative Law (OAL).

The appellant timely appealed her removal to this agency which transmitted the matter to OAL as a contested case. The OAL scheduled the matter for a hearing on May 11, 2017, and sent a notice dated January 24, 2017 to this effect to the appellant's attorney. On the scheduled date, the appellant's attorney failed to appear at the hearing. The OAL issued a "Failure to Appear" notice which indicated that the appellant failed to appear at the scheduled proceedings. On May 26, 2017, the matter was returned to the Civil Service Commission (Commission) for a final decision, with a notice giving the parties 13 days to present any excuse for failure to appear to this agency.

In support of the appellant's request for reinstatement of her appeal, the appellant's attorney argues that she did not appear because, as a result of an error, the matter was not properly calendared in her diary. In this regard, she explains that she listed that she was scheduled to appear for the hearing on June 11, 2017 rather than on May 11, 2017. In addition, the appellant's attorney avers that there was a scheduling conflict on May 11, 2017, as she was scheduled to appear for a separate OAL hearing for another matter on May 11, 2017. She adds that, had she been aware of the scheduling conflict, she would have requested an adjournment.

The appellant's attorney contends that, although she received the January 24, 2017 notice, she had no opportunity to correct the mistaken date listed for the hearing in her diary. She adds that she discussed the matter with opposing counsel and the matter was not scheduled for any pre-hearing conferences. Moreover, the appellant's attorney asserts that the appellant should not be denied a fair hearing as a result of the scheduling errors on her part.

In response, the appointing authority, represented by Rimma Razhba, Deputy Attorney General, maintains that the appellant's request in this matter should be denied. Specifically, the appointing authority asserts that a notice to appear for the hearing was sent to the parties, and on the date of the hearing, the appointing authority's witnesses appeared to testify at the May 11, 2017 hearing. The appointing authority states that neither the appellant nor her attorney appeared for the May 11, 2017 hearing, and the appellant's attorney does not explain in this matter why the appellant failed to appear. As such, the appointing authority contends that the appellant did not provide a reasonable excuse for her failure to appear.¹ In addition, the appointing authority asserts that this matter is distinguishable from prior cases where matters were reinstated when the employee's attorney provided a sworn certification that he did not receive notice to appear at the hearing and where the employee's attorney erroneously informed his client that his presence was not required at a settlement conference. *See In the Matter of Michael Rouse* (CSC, decided March 6, 2013) and *In the Matter of Leon Craig* (CSC, decided September 18, 2013).

CONCLUSION

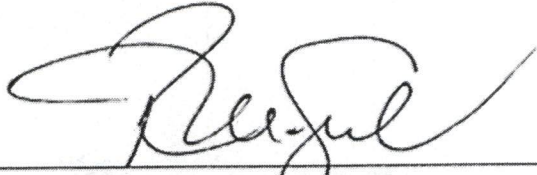
With regard to the instant matter, the record indicates that the appellant's attorney was notified of the scheduled OAL hearing on May 11, 2017. However, her attorney misrecorded the date of the hearing. Accordingly, as the appellant does not bear any individual responsibility for her attorney's error and her failure to appear at the hearing on May 11, 2017, the record as a whole indicates that the appellant intended to pursue her statutory right to challenge her removal, and she did not intend to abandon her appeal. Moreover, the cases cited by the appointing authority do not change the outcome of this matter, as the appellant cannot be blamed for her attorney's error in this case. Accordingly, the Commission finds that under all of the circumstances in this matter, to deny the appellant a hearing on the merits of her disciplinary action would be unjust.

ORDER

Therefore, it is ordered that Maria Bertone's request to reinstate her appeal be granted and matter be transmitted to the OAL for further proceedings.

¹ It is noted that when an appellant is represented by an attorney, the OAL *only* sends notice of the hearing to the attorney.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16th DAY OF AUGUST, 2017



Robert M. Czedh, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Maria Bertone
Rashidah N. Hasan, Esq.
Rimma Razhba, DAG
Beth Wood (w/file)