



STATE OF NEW JERSEY

In the Matter of Neeham Roghanchi
 Township of Union, Department of
 Public Works

CSC DKT. NO. 2018-765
 OAL DKT. NO. CSV 15252-17

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

ISSUED: OCTOBER 19, 2018 BW

The appeal of Neeham Roghanchi, Laborer 1, Township of Union, Department of Public Works, release at the end of the working test period effective September 5, 2017, was heard by Administrative Law Judge (ALJ) Leslie Z. Celentano, who rendered her initial decision on September 26, 2018. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on October 17, 2018, accepted and adopted the Findings of Fact as contained in the attached Administrative Law Judge's initial decision. However, the Commission does not adopt the recommendation to uphold the release at the end of the working test period. Rather, for the reasons expressed in the initial decision, the Commission dismisses the appeal as moot.

ORDER

The Civil Service Commission dismisses the appeal of Neeham Roghanchi as moot.

Re: Neeham Roghanchi

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 17th DAY OF OCTOBER, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. CSV 15252-17

AGENCY DKT. NO. 2018-765

**IN THE MATTER OF NEEHAM ROGHANCHI,
TOWNSHIP OF UNION, DEPARTMENT OF
PUBLIC WORKS.**

Robert D. Kuttner, Esq., for appellant Neeham Roghanchi

Robert J. Merryman, Esq., for respondent Township of Union (Apruzzese,
McDermott, Mastro & Murphy, P.C., attorneys)

Record Closed: August 28, 2018

Decided: September 26, 2018

BEFORE LESLIE Z. CELENTANO, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Neeham Roghanchi ("appellant") appeals his termination as a laborer at the end of his working test period for respondent Township of Union ("Union"). Appellant had also been charged with conduct unbecoming, and those charges were sustained and resulted in his termination as of August 31, 2017, three days before the working test period expired.

Appellant did not appeal his termination for conduct unbecoming, and that decision is therefore final. Respondent asserts that appellant's appeal of his removal at the end of his working test period is therefore moot, and should be dismissed. On October 13, 2017, the matter was transmitted to the Office of Administrative Law for hearing pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On August 8, 2018, respondent filed a motion for summary decision asserting that appellant's appeal of the removal at the end of the working test period is moot, as he was previously terminated for misconduct. No opposition has been received to the motion, and would have been due on or before August 28, 2018.

FINDINGS OF FACT

Union filed the following statement of facts in support of its motion for summary decision. Since the motion is unopposed, I **FIND** it as **FACT**:

Appellant was hired as an entry-level laborer by the Township of Union on or about June 5, 2017. As a new employee, appellant was subject to a ninety-day probationary period which ran from June 5, 2017, through September 3, 2017.

On or about August 4, 2017, appellant was involved in an incident at work in which he physically assaulted another Township employee, Benny DelMauro. This incident occurred during the workday in the break room. After the incident, the Human Resources director, Karen Caulfield, investigated the matter and requested statements from the individuals who had witnessed the incident. Ms. Caulfield also interviewed the individuals who had witnessed the incident.

The eyewitnesses to the incident confirmed that appellant physically assaulted Mr. DelMauro without warning and without any immediate provocation. The witness statements further indicate that Mr. DelMauro never even had a chance to defend himself and was struck multiple times by appellant. When Ms. Caulfield interviewed appellant, he did not deny attacking Mr. DelMauro.

Based on the incident, appellant was immediately suspended, first with pay and then without pay. On August 31, 2017, appellant was served with a Preliminary Notice of Disciplinary Action charging him with conduct unbecoming a public employee based on his physical assault on a coworker without any immediate provocation. Appellant never requested a disciplinary hearing, despite written notice that he could request such a hearing within five days.

On September 7, 2017, appellant was served with a Final Notice of Disciplinary Action advising him that the penalty for his conduct was termination of his employment, with an effective date of August 31, 2017. Petitioner never appealed his termination, despite the fact that he received written notice that he could file an appeal with the Civil Service Commission within twenty days of the receipt of the Final Notice of Disciplinary Action.

CONCLUSIONS OF LAW

Under N.J.A.C. 1:1-12.5, summary decision may be rendered if no genuine issue of material fact exists and the moving party is entitled to prevail as a matter of law. In this case no genuine issue of material fact exists and Union is entitled to prevail as a matter of law for the reasons stated below.

The Constitution limits the judiciary to the adjudication of actual cases and controversies. U.S. Const. art III, § 2. Accordingly, “[a] case is moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome.” Donovan v. Punxsutawney Area Sch. Bd., 336 F.3d 211, 216 (3rd Cir. 2003) (citing Powell v. McCormack, 395 U.S. 486, 496 (1969)). Specifically, it is “[t]he court’s ability to grant effective relief [that] lies at the heart of the mootness doctrine.” Ibid. (citation omitted). For instance, when developments evolve during the “course of adjudication” that negate the plaintiff’s interest in the outcome of a case or thwart a court from being able to give the requested relief, the suit must be dismissed as moot. Ibid. (citation omitted). “This requirement that a case or controversy be ‘actual [and] ongoing’ extends throughout **all stages** of . . . judicial proceedings” Ibid. (citing Khodara Env’tl., Inc. v. Beckman, 237 F.3d 186, 193 (3rd Cir. 2001) (emphasis supplied). In the

absence of an actual case or controversy, a ruling by a court would constitute an advisory opinion, disregarding the Constitution's limitation of jurisdiction. See id. at 217, n.3; see also Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 410 (3d Cir. 1992) (stating, "[Article III, section 2 of the Constitution] 'stands as a direct prohibition on the issuance of advisory opinions.'").

Similarly, the doctrine of mootness has utility in the administrative setting if no effective relief can be granted in a case. Benjamin v. Masciocchi, Comm'r of Educ., EDU 14102-11, Initial Decision (March 12, 2013), adopted, Comm'r (April 11, 2013), <http://njlaw.rutgers.edu/collections/oal/> (citing In re Tenure Hearing of Mujica, EDU 5184-01, Initial Decision (March 15, 2006), adopted, Comm'r (April 25, 2006), <http://njlaw.rutgers.edu/collections/oal/>). An action is considered moot when it no longer presents a justiciable controversy, and the conflict between the parties has become merely hypothetical. Ibid. (citing In re Conroy, 190 N.J. Super. 453, 458 (App. Div. 1983)). It is well-settled law in New Jersey that cases that have become moot prior to adjudication are no longer actionable. Ibid. (citing Mujica, EDU 5184-01). Cases in which the issues are hypothetical, a judgment cannot grant effective relief, or there is no concrete adversity of interest between the parties are moot. See Advance Elec. Co., Inc. v. Montgomery Twp. Bd. of Educ., 351 N.J. Super. 160, 166 (App. Div. 2002) (citing Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976)).

In the within matter, appellant appealed from the termination at the end of his working test period when he had not appealed the separate removal effective August 31, 2017. The working test period concluded after the termination for cause on August 31, 2017, and appellant's failure to appeal the determination renders his working test period moot. Appellant cannot be reinstated even if successful in the working-test-period appeal by virtue of his failure to appeal his disciplinary termination. See In re Black, CSV 8953-06, Initial Decision (May 21, 2007), adopted, Merit Sys. Bd. (July 12, 2007), <http://njlaw.rutgers.edu/collections/oal/>. Respondent is entitled to prevail as a matter of law.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the decision removing appellant at the end of his working test period be and hereby is **AFFIRMED** and the appeal is **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 26, 2018
DATE



LESLIE Z. CELENTANO, ALJ

Date Received at Agency:

September 26, 2018

Date Mailed to Parties:

dr