



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Equina Taylor,
Vineland Developmental Center,
Department of Human Services

CSC Docket No. 2019-1945

Reconsideration

ISSUED: APRIL 26, 2019 (BW)

Equina Taylor, a Cottage Training Technician at Vineland Developmental Center, Department of Human Services (DHS), represented by John P. Morris, Esq., requests reconsideration of the Civil Service Commission's (Commission) October 3, 2018 dismissal of the appeal of her removal, based on her failure to appear at an August 30, 2018 settlement conference at the Office of Administrative Law (OAL).

The pertinent facts of this matter are as follows: The petitioner was removed on charges of conduct unbecoming a public employee and other sufficient cause. The petitioner appealed this action to the Commission which transmitted the matter to the OAL. The OAL scheduled a settlement conference on August 30, 2018 and sent notice to the petitioner on August 7, 2018. On the scheduled date of the conference, the petitioner did not appear. The OAL issued a "Failure to Appear" notice dated September 13, 2018, which indicated that the petitioner failed to appear at the scheduled date and time. The notice also advised the parties that any excuse for failure to appear must be mailed to the Commission within 13 days of the date of the notice. At its October 3, 2018 meeting, the Commission dismissed the petitioner's appeal.

In support of the petitioner's request to reinstate her appeal, she submitted a certification and a sworn statement under oath that she did not receive the conference notice or the Failure to Appear notice.

Petitioner states that on January 17, 2019, she called Vineland Developmental Center regarding the status of her case and was informed that her case was dismissed because she did not appear at the August 30, 2018 settlement

conference. At that time, she contacted her Union Representative who she claims stated that she did have a hearing on August 30, 2018 and that he was there to represent her.

Petitioner states that the Union never contacted her prior to or after the August 30, 2018 settlement conference. When a petitioner is represented by a Union Representative, the OAL sends the notices to both the petitioner and the Union Representative. Whereas, when a petitioner is represented by an attorney, only the attorney will be sent the notices making it their responsibility to contact their client of the date and times of the hearings.

In response, the DHS indicates that the petitioner certified that she received the Notice of Filing of the appeal dated July 5, 2018 by mail at the address on the service list. DHS also points out that the phone number for OAL is listed on the Notice of Filing and the petitioner could have called to see why she has not received the notice of settlement conference as noted on the Notice of Filing or contact any Union Representative to inquire about her representation and status of her appeal. DHS contacted OAL to confirm that the notices were sent to the correct address and that neither notice was returned as being unclaimed or undeliverable.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. 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.

The Commission acknowledges the presumption that mail correctly addressed, stamped and mailed is generally received by the party to whom it was addressed. *See SSI Medical Services, Inc. v. State Department of Human Services*, 146 N.J. 614 (1996); *Szczesny v. Vasquez*, 71 N.J. Super. 347, 354 (App. Div. 1962); *In the Matter of Joseph Bahun*, Docket No. A-1132-00T5F (App. Div. May 21, 2001). It also recognizes that on occasion, such mail never reaches its intended destination. Generally, the Commission is willing to accept that if an individual is prepared to make a statement under oath, understanding all its implications and consequences, then it is proper to permit the presumption of receipt to be overcome. In actuality, there is no other alternative for an individual as it is not possible to prove a negative, *i.e.*, that mail was not received. If the Commission did not accept a sworn statement averring that mail was not received, there would be no remedy at all for individuals who find themselves in this particular situation. *See In the Matter of Neil Nelson* (MSB, decided January 26, 2005).

In this matter, given that the petitioner has provided a certification and a sworn statement under oath indicating that she did not receive the notice of settlement conference or the notice of Failure to Appear, she has successfully rebutted the presumption of mailing. Thus, under the circumstances presented 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 the petitioner's request to reinstate her appeal be granted.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24th DAY OF APRIL, 2019



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