



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Terry Buchanan,
City of Newark, Department of
Engineering

CSC Docket No. 2019-2868

Reconsideration

ISSUED: JUNE 14, 2019 (BW)

Terry Buchanan, a Code Enforcement Officer Trainee with the City of Newark, Department of Engineering, represented by Seth Gollin, Staff Representative, AFSCME, petitions the Civil Service Commission (Commission) for reconsideration of the decision rendered on March 6, 2019, in which the Director of the Division of Appeals and Regulatory Affairs (DARA) denied his request for a hearing with respect to his removal.

By way of background, a Final Notice of Disciplinary Action (FNDA), dated November 16, 2018, was issued removing the appellant on charges of conduct unbecoming a public employee and other sufficient cause. The appointing authority sent the FNDA by USPS Tracking and not by Certified Mail with signature required. By letter postmarked January 28, 2019, the petitioner submitted an appeal to the Commission. However, the Director determined that the petitioner did not submit his appeal within 20 days of the December 5, 2018 delivery date indicated on the USPS Tracking. Therefore, the request for a hearing was denied.

In support of his request for reconsideration, the petitioner submitted a sworn affidavit, stating that he did not receive the FNDA from the appointing authority in the mail on December 5, 2018. He indicates that he did receive the FNDA from his Union representative via e-mail on January 18, 2019, and therefore, his appeal is in time.

The appointing authority, represented by Hugh Thompson, Assistant Corporation Counsel, certified that it sent the FNDA to the petitioner via USPS and argues that mail properly addressed and mailed is presumed to have been received. The tracking indicates that the FNDA was delivered on December 5, 2018 "in/at mailbox". No signature was required.

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.

N.J.S.A. 11A:2-15 provides that appeals from major disciplinary matters be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. This 20-day time limitation is jurisdictional and cannot be relaxed or waived. *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).

In the instant matter, the appointing authority mailed the FNDA via USPS Tracking, which requires no signature. The petitioner states that he never received the FNDA by mail from the appointing authority on December 5, 2018, but rather by e-mail from his Union representative on January 18, 2019. 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 applicant. 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 case, there is no proof that the appellant personally received the FNDA on December 5, 2018. Moreover, the petitioner has rebutted the presumption of mailing by providing a sworn affidavit indicating he did not receive

the FNDA on December 5, 2018. Accordingly, under these circumstances, the Commission finds that the petitioner appealed his removal within 20 days of receipt of the FNDA and is therefore entitled to a hearing at the Office of Administrative Law. It is recommended that the appointing authority, in the future, serve employees by certified mail with signature required.

ORDER

Therefore, it is ordered that this petition be granted and the matter be referred to the Office of Administrative Law for a hearing.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF JUNE, 2019



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