

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 29TH DAY OF JANUARY, 2020



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 12948-19

AGENCY DKT. NO. 2020-614

**IN THE MATTER OF SHAWN KING,
BURLINGTON CITY, DEPARTMENT
OF PUBLIC WORKS.**

Shawn King, appellant pro se

**Nicholas J. Repici, Esq., for respondent (Lenox, Socey, Formidoni, Giordano,
Lang, Carrigg & Casey, LLC, attorneys)**

BEFORE DAVID M. FRITCH, ALJ:

Record Closed: January 2, 2020

Decided: January 13, 2020

STATEMENT OF THE CASE

The appellant, Shawn King, initiated the present action by appealing the decision of his employer, the Burlington City Department of Public Works, (BCDPW or respondent) on a disciplinary action terminating his employment effective August 7, 2019, on charges of incompetency, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. The charges arise from the appellant failing to comply with the duties of his position by not obtaining a

Commercial Driver's License (CDL) within a year of the start of his employment with the respondent.

PROCEDURAL HISTORY

The appellant appealed the dismissal, and the matter was heard before a hearing officer on July 16, 2019. The charges were sustained by the hearing officer in a Final Notice of Disciplinary Action (FNDA) which was issued on August 12, 2019. The appellant filed an appeal with the Civil Service Commission, and it was transferred to the Office of Administrative Law (OAL) as a contested case where it was filed on September 17, 2019. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The OAL scheduled an initial prehearing conference call to be held with the parties on October 30, 2019. Prior to the scheduled call, the respondent requested, and was granted, an adjournment of that call and the call was rescheduled for November 7, 2019, at 3:30 p.m. The appellant was given notice, via email from the OAL, of the scheduling of the prehearing conference call to be held on November 7, 2019, at 3:30 p.m. On the date and time of the scheduled prehearing conference, however, the appellant failed to answer his phone to participate in the scheduled call. After the appellant failed to appear for the scheduled call, this tribunal scheduled a second prehearing conference call and, on November 15, 2019, the appellant was sent notice via USPS regular mail of a rescheduled telephone prehearing conference to be held on December 18, 2019, at 3:00 p.m. On the date and time of this second scheduled prehearing conference, the appellant failed to answer his phone to participate in the scheduled call.

Following the appellant's second non-appearance for a scheduled proceeding in this matter, pursuant to N.J.A.C. 1:1-14.4, the matter was held for one day before taking any action to give the appellant the opportunity to provide an explanation for his non-appearance. On December 23, 2019, this tribunal reached out to the appellant via letter sent by regular mail asking him to contact the OAL within ten days of receipt of the letter to arrange for a rescheduling of the missed prehearing conference calls. As

of January 7, 2020, the appellant has not responded to that letter or otherwise provided any explanation for his failure to appear for the two prior scheduled teleconference calls.

FACTUAL FINDINGS

As the relevant facts are procedural, I **FIND** the following facts:

- On October 30, 2019, the appellant was given notice via email by the OAL that a prehearing conference call in his pending appeal was to be held on November 7, 2019, at 3:00 p.m.
- On November 7, 2019, despite multiple attempts by OAL staff to reach the appellant via telephone at the designated time, the appellant did not answer the OAL's calls to participate in the scheduled prehearing conference call.
- The appellant did not contact the OAL within twenty-four hours of his non-appearance to provide any explanation for his failure to participate in the designated conference call on November 7, 2019.
- Following the appellant's non-appearance on the scheduled conference call on November 7, 2019, this tribunal scheduled a subsequent conference call to be held on December 18, 2019, at 3:00 p.m. On November 15, 2019, the OAL sent the appellant written notice of this scheduled conference call via regular mail.
- On December 18, 2019, despite multiple attempts by OAL staff to reach the appellant via telephone at the designated time, the appellant did not answer the OAL's calls to participate in the scheduled prehearing conference call.
- The appellant did not contact the OAL within twenty-four hours of his non-appearance to provide any explanation for his failure to participate in the designated conference call on December 18, 2019.
- Following the appellant's non-appearance on the scheduled conference call on December 18, 2019, this tribunal attempted to contact the appellant via mail, sending him a letter on December 23, 2019, asking him to contact the OAL within

ten days of receipt of the letter to arrange for a rescheduling of the missed prehearing conference calls.

- As of January 7, 2020, the appellant has not contacted the OAL to arrange for a rescheduling of his missed prehearing conference calls or otherwise provide any explanation for his failure to appear on the two previously scheduled conference calls.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-14.4:

(a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

(b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

(c) If the judge receives an explanation:

1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or

2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

(d) If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

I **CONCLUDE** that the appellant was provided with appropriate notice of two scheduled proceedings, namely telephone conference calls, the first to be held on November 7, 2019, at 3:30 p.m., and a second call which was scheduled after the appellant failed to appear for the November 7, 2019, conference call to be held on December 18, 2019, at 3:00 p.m. The appellant was provided written notice of these scheduled proceedings and, despite having been provided with appropriate notice, neither the appellant, nor any designated representative, appeared on the scheduled conference calls by answering any of the multiple phone calls placed to his phone number by the OAL staff to participate in the scheduled conference calls at the scheduled dates and times. The appellant has further been unresponsive to subsequent efforts by this tribunal to communicate with him regarding his pending matter as evidenced by his failure to respond to the letter sent to him on December 23, 2019.

The OAL did not receive “an explanation for the nonappearance within one day” of the appellant’s non-appearance for these scheduled conference calls within the meaning of N.J.A.C. 1:1-14.4(a). Having not received an explanation from the appellant to explain his non-appearance, N.J.A.C. 1:1-14.4 directs that this tribunal “shall, unless proceeding pursuant to [N.J.A.C. 1:1-14.4(d)], direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).” As the respondent has not requested a decision on the merits of the matter be issued ex parte, no further proceedings pursuant to N.J.A.C. 1:1-14.4(d) are necessary. This tribunal, therefore, is left only with the mandate that the matter “shall” be returned to the transmitting agency for appropriate disposition. N.J.A.C. 1:1-14.4(a).

I **CONCLUDE** that the appellant has been dilatory in prosecuting his appeal, effectively abandoning the prosecution of his petition, has been unresponsive to communications from the OAL regarding his pending matter, and failed to present good cause in a timely manner as to why his failure to appear for two previously scheduled conferences should be excused pursuant to the provisions of N.J.A.C. 1:1-14.4(c). A plain reading of N.J.A.C. 1:1-14.4(a), therefore, requires that the matter now be returned to the transmitting agency for appropriate disposition. See also N.J.A.C. 1:1-3.3(b).

ORDER

Based on the foregoing, I **ORDER** that the clerk return the case to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

I hereby **FILE** this 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 order 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.

January 13, 2020
DATE



DAVID M. FRITCH, ALJ

Date Received at Agency: 1/13/20

Date Mailed to Parties: 1/13/20

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