



STATE OF NEW JERSEY

In the Matter of Cynthia White
City of Trenton, Department of
Public Works

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2019-3184
OAL DKT. NO. CSV 06478-19

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ISSUED: APRIL 7, 2021 BW

The appeal of Cynthia White, Security Guard, City of Trenton, Department of Public Works, removal effective April 10, 2019, on charges, were heard by Administrative Law Judge David M. Fritch, who rendered his initial decision on March 19, 2021. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on April 7, 2021, accepted and adopted the Findings of Facts and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission dismisses the appeal based on appellant's failure to appear.

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 7TH DAY OF APRIL, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
44 S. Clinton Ave.
P. O. Box 312
Trenton, New Jersey 08625-0312



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION DISMISSAL

OAL DKT. NO. CSV 06478-19

AGENCY DKT. NO. 2019-3184

**IN THE MATTER OF CYNTHIA WHITE,
CITY OF TRENTON, DEPARTMENT
OF PUBLIC WORKS**

Cynthia White, petitioner, pro se

John P. Harrington, Esq., for respondent City of Trenton, Department of Public Works (Trimboli & Prusinowski, LLC, attorneys)

Record Closed: March 15, 2021

Decided: March 19, 2021

BEFORE DAVID M. FRITCH, ALJ

STATEMENT OF THE CASE

The appellant, Cynthia Young, appeals her termination from employment with the respondent, the City of Trenton, Department of Public Works (TDPW).

PROCEDURAL HISTORY

Following a departmental hearing held on February 6, 2019, TDPW sustained a charge of inability to perform duties, in violation of N.J.A.C. 4A:1-2.2, which was incorporated into a Final Notice of Disciplinary Action (FNDA) dated April 10, 2019, with a proposed penalty of removal effective April 10, 2019. The appellant timely requested a fair hearing and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on May 13, 2019, to be heard as a contested case. N.J.S.A. 52-14B-1 to -15 and 14F-1 to -13.

On January 5, 2021, the appellant's counsel filed a motion to be relieved as counsel. Pursuant to N.J.A.C. 1:1-12.2(b), the record remained open for ten days after the filing date of the motion to permit the filing of responsive papers to oppose the motion. No responsive filing was received within the ten-day period. To further give the appellant the opportunity to be heard if she wished to oppose the motion, a telephonic status conference was scheduled for March 11, 2021, at 3:00 p.m. The appellant was given written notice of this conference via email on February 19, 2021. The written notice contained specific instructions to the appellant, informing her that she was to participate in the call and if she did not participate in the call, her matter would be dismissed and returned to the transmitting agency. On March 11, 2021, at 3:00 p.m., both counsel for the appellant and respondent were on the conference call, but the appellant did not dial into the call. 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 her non-appearance. As of March 15, 2021, the appellant has not communicated with the OAL or otherwise provided any explanation for her failure to appear for the scheduled conference.

FACTS

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

1. On January 5, 2021, the appellant's counsel filed a motion to be relieved as counsel.

2. In a certification accompanying his motion to withdraw as counsel, appellant's counsel certified that, despite his efforts to communicate with the appellant regarding her pending appeal, he has been unable to contact the appellant since September 2020.

3. Appellant's counsel served the appellant with a copy of his motion to withdraw as counsel via U.S. Mail and email on January 5, 2021.

4. Although the appellant did not file any responsive papers in opposition to her counsel's motion within the ten days prescribed in N.J.A.C. 1:1-12.2(b), a telephonic status conference was scheduled for March 11, 2021, at 3:00 p.m. to determine if the appellant wished to oppose her attorney's motion and, if necessary, to establish an appropriate briefing schedule to permit the appellant to respond to her attorney's motion to withdraw as counsel.

5. On February 19, 2021, the appellant was served with written notice of the March 11, 2021, status conference via email. That notice specifically informed the appellant that:

[T]his is a peremptory call for you, as well. If you do not participate in the dial-in call, your matter will be dismissed and sent back to the agency.

6. Counsel for both the appellant and the respondent were on the March 11, 2021, status call at 3:00 p.m., however, the appellant did not dial into the call at the designated date and time.

7. Following the appellant's failure to appear on the scheduled status call, the OAL took no action to give the appellant the opportunity to contact the OAL within twenty-four hours of her non-appearance to provide a good cause explanation for her failure to participate in scheduled teleconference on March 11, 2021.

8. As of March 15, 2021, the appellant has not contacted the OAL to arrange for rescheduling of this missed teleconference or otherwise provide any explanation for her failure to appear on the previously scheduled conference.

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 a scheduled proceeding, namely a telephonic prehearing status conference, to be held on March 11, 2021, at 3:00 p.m. The appellant was provided with written notice of this scheduled proceeding which contained a specific warning to the appellant of the consequences of a non-appearance and, despite having been provided with appropriate notice, the appellant failed to appear and failed to provide the OAL with an explanation for her non-appearance.

The OAL did not receive “an explanation for the nonappearance within one day” of the appellant’s non-appearance for this scheduled conference within the meaning of N.J.A.C. 1:1-14.4(a). Having not received an explanation from the appellant to explain her 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 her appeal, effectively abandoning the prosecution of her petition, and failed to present good cause in a timely manner as to why her failure to appear for a previously scheduled conference 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. 40A:14-204.

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.

March 22, 2021
DATE


DAVID M. FRITCH/ALJ

Date Received at Agency:

March 22, 2021

Date Mailed to Parties:

March 22, 2021

/dw