

B-29



STATE OF NEW JERSEY

In the Matter of Montoya Key,  
New Jersey Veterans' Memorial  
Home – Vineland,  
Department of Military and Veterans'  
Affairs

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-3241

Request for  
Reconsideration

ISSUED: **AUG 21 2015** (JET)

Montoya Key, represented by William A. Nash, Esq., requests reconsideration of the attached final administrative decision rendered on December 19, 2012, which dismissed her appeal of her removal.

In the prior matter, Key was removed from her position for an incident involving a resident on January 12, 2012.<sup>1</sup> A Preliminary Notice of Disciplinary Action (PNDA) was issued on January 30, 2012, charging her with mental abuse of a resident, verbal abuse of a patient, mistreatment of a resident, neglect of duty, discourtesy to a resident, and conduct unbecoming a public employee. A departmental hearing was held, and Key's removal was sustained. Upon Key's appeal, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case. At the OAL, the appointing authority requested to dismiss the appeal given that Key's Nurse Aide certification was in revocation status. The ALJ granted the appointing authority's request to dismiss the appeal, which was affirmed by the Commission on December 19, 2012.

<sup>1</sup> In a separate but related matter, Key was removed from her position, on charges, effective October 6, 2010. Subsequently, Key entered into a settlement agreement dated August 11, 2011, where the appointing authority agreed to modify the removal to a 45-day suspension. The Civil Service Commission (Commission) approved the settlement agreement on September 21, 2011. Thereafter, Key's nurse aide certification was revoked by the Department of Health (DOH). Prior to the hearing at OAL for this matter, DOH issued a Notice of Revocation of Nurse Aide Certification dated September 12, 2012 pursuant to *N.J.S.A. 8:39-43.5(a)(1)*, which revoked Key's nurse certification. DOH restored the nursing certification on September 8, 2014 retroactive to September 12, 2012.

In the instant matter, Key maintains that the appeal of her removal was improperly dismissed by the ALJ. Specifically, Key explains that her Nurse Aide certification was reinstated on September 8, 2014, retroactive to September 12, 2012, which is prior to when the ALJ recommended to dismiss her appeal. Thus, Key argues that the ALJ's recommendation is now erroneous since her certification was reinstated with a retroactive date. Further, Key contends that her appeal did not become "ripe" for a decision until DOH reinstated her Nurse Aide certification. In this regard, the reinstatement of her certification did not occur within the 45-day timeframe to file the instant request for reconsideration. Key adds that, since it took DOH a lengthy amount of time to reinstate her certification, she should not now be subjected to the 45-day timeframe. Moreover, Key avers that it is reasonable for the request for reconsideration in the instant matter to be considered based on the principles of fundamental fairness and the unique circumstances presented in this matter.

In response, the appointing authority, represented by Adam Verone, Deputy Attorney General, asserts that the instant request for reconsideration is untimely. Specifically, it states that the request was not filed in a reasonable amount of time from the date Key's Nurse Aide certification was reinstated. In this regard, Key filed the request for reconsideration on June 8, 2015, which is nine months after DOH reinstated her certification in September 2014. The appointing authority contends that Key only had 45 days to file the request for reconsideration after DOH reinstated the Nurse Aide certification in September 2014. In addition, the instant request was filed two and half years after the date the prior decision of this matter was issued. As such, it would now be prejudicial to the appointing authority to restore her to the prior position. In this regard, the appointing authority explains that it has filled the position and to restore her now would cause an upheaval with staffing. Moreover, the appointing authority maintains that the request for reconsideration should be denied since no new evidence or information has been presented that would change the outcome of the case or show that a material error has occurred.

## CONCLUSION

*N.J.A.C.* 4A:2-1.6(a) provides that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration. *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.

Initially, the appointing authority argues that the request for reconsideration of the instant matter is untimely filed. As noted above, a request for reconsideration must be filed within 45 days. However, since the time limits are not statutory, the Commission may relax the time for filing a request for reconsideration if presented a compelling reason. See *In the Matter of Larry Hanks* (MSB, decided February 23, 2005). See also, *In the Matter of William Love* (MSB, decided March 23, 1999) (Appointing authority's request for reconsideration was untimely and it did not rebut employee's claim that it had notice of the initial decision in a timely manner). In this case, there is no compelling reason to relax the 45-day time limit to file for reconsideration.

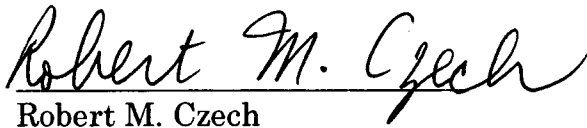
The prior decision in this matter was issued on December 19, 2012, but Key did not file the request her reconsideration until June 8, 2015, which is nearly two and a half years after the prior decision was issued. Further, her Nurse Aide certification was restored in September 2014, but she waited an additional nine months to file her request for reconsideration. Key has not provided any information or explanation as to why she waited so long after her certification was restored to petition for reconsideration. Therefore, Key's appeal is clearly untimely. Although Key argues that her petition is timely since the certification was restored retroactive to September 12, 2012, she never advised the Commission that she had a pending appeal where she was attempting to have her certification restored. The purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the delay in filing the request for reconsideration unreasonably exceeds that threshold of finality. Moreover, given that the prior decision of this matter was issued in December 2012, it would be prejudicial to the appointing authority to now entertain the request for reconsideration, especially in light of the fact that Key's prior position has been filled.

### **ORDER**

Therefore, it is ordered that this request for reconsideration be denied.

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 19<sup>th</sup> DAY OF AUGUST, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
& Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

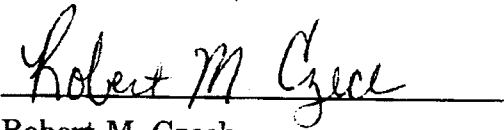
c: Montoya Key  
William A. Nash, Esq.  
Adam Verone, DAG  
Maryann Brown  
Kenneth Connolly  
Joseph Gambino



Re: Montoya Key

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  
DECEMBER 19, 2012



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Unit H  
P. O. Box 312  
Trenton, New Jersey 08625-0312

attachment



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**(On Motion to Dismiss)**

OAL DKT. NO. CSV 8318-12

AGENCY DKT. NO. 2012-2609

**I/M/O MONTOYA KEY, NEW JERSEY  
VETERAN'S MEMORIAL HOME –  
VINELAND, NJ MILITARY &  
VETERAN'S AFFAIRS.**

---

**Montoya Key, appellant, pro se**

**Jennifer Heger, Deputy Attorney General, for respondent (Jeffrey S. Chiesa,  
Attorney General of New Jersey, attorney)**

Record Closed: October 16, 2012

Decided: November 16, 2012

**BEFORE W. TODD MILLER, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This matter concerns the appeal of a disciplinary matter against appellant, a Human Services Assistant with the New Jersey Veteran's Memorial Home (NJVMH). Appellant appeals her removal on charges in a Final Notice of Disciplinary Action (FNDA) dated May 30, 2012. The NJVMH charged appellant with patient abuse.

Appellant perfected this appeal by filing a notice of appeal with the Department of Personnel on February 10, 2012.

On June 21, 2012, the above-captioned matter was received by the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14-B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On September 24, 2012, respondent filed a motion to dismiss the present matter as moot. Respondent asserts that in a prior case from 2011, appellant settled a disciplinary charge involving abuse allegations. (Motion, Ex C.) Her admission of physical and mental abuse resulted in the revocation of her Nurse Aide Certification by the Department of Health on September 12, 2012. (Motion, Ex. D). The undisputed facts are that appellant lost her Nurse Aide Certification and without which she cannot serve as an employee at the NJVMH. N.J.A.C. 8:39-43.1. (Motion, Ex. E.).

Appellant did not filed opposition to the present motion.

### CONCLUSIONS

Appellant has been effectively removed from her title as a Human Service Assistant because Nurse Aide Certification was revoked on September 12, 2012.

In present appeal appellant is defending charges of patient abuse. Her removal was effective January 23, 2012. In an unrelated action, her Nurse Aide Certification was revoked on September 12, 2012. This is a timing differential of about eight months and, if appellant was successful in defending her new patient abuse charges, she might be entitled to some back pay. But appellant has not filed any opposition to this matter.

Even though appellant has timely appealed the Final Notice of Disciplinary Action dated May 30, 2012, removing her effective January 23, 2012, there is no practical purpose to going forward with the present case because appellant can no longer work at the NJVMH without a certification. Had appellant filed opposition to the



motion to dismiss, she may have been able to seek back pay between the period of her removal (January 23, 2012) and the period of her nurse aide certification revocation (September 12, 2012) by defending the present disciplinary charges. But her recovery is limited to the period between January 23, 2012, and September 12, 2012. She could never return to work without her nurse certification.

Under similar circumstances, Administrative Law Judge M. Kathleen Duncan held:

An issue is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. In other words, the conflict between the parties has become merely hypothetical. See Black's Law Dictionary, 409 (5th Ed. 1979) and In re Conroy, 190 N.J. Super. 453, 458 (App. Div. 1983). Our courts, and administrative forums as well, ordinarily will refuse to review questions which have become academic prior to the issuance of a decision out of reluctance to render a legal decision in the abstract and a desire to conserve judicial or administrative resources. In Re Conroy, supra. Since appellant has already been removed from his position, effective January 25, 1999, by Final Decision of the Merit System Board, issued on February 26, 2001, proceeding to a hearing in this matter could not result in a different determination. Furthermore, appellant was also removed, effective January 25, 1999, on a separate Final Notice of Disciplinary Action, dated August 20, 1999, which he did not appeal.

Johnson v. New Lisbon Development Center, CSV 2854-00, Initial Decision (July 30, 2001), <<http://lawlibrary.rutgers.edu/oal/search.html>>. See also, Carl Oliver v. Trenton State Prison, CSV 8692-00, Initial Decision (September 21, 2001)

I **CONCLUDE** that based upon the procedural history, together with the proofs presented by respondent, further hearings will not produce a result that is meaningful, practical or one that will result in a different determination other than appellant's removal from her title as a Human Service Assistant. The fact that appellant avoided

filing any opposition to the present motion leaves me no alternative but to grant respondent's motion to dismiss, as unopposed.

**ORDER**

Based upon respondent's moving papers, supporting exhibits and certification, I **GRANT** the motion to dismiss the appellant's appeal of this disciplinary matter as moot. I therefore, **ORDER** the action filed by appellant be **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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

November 16, 2012

DATE

  
W. TODD MILLER, ALJ

Date Received at Agency:

11-16-12

Date Mailed to Parties:

11/21/12

sd

**APPENDIX**

**Respondent's September 24, 2012, motion, brief and exhibits.**