B-132 (5)



STATE OF NEW JERSEY

In the Matter of Catina Wainwright New Jersey Memorial Home -Vineland

CSC Docket No. 2016-1377

DECISION OF THE **CIVIL SERVICE COMMISSION**

Administrative Appeal

ISSUED:

OCT 2 2016 (SLK)

Catina Wainwright, a former Human Services Assistant with the New Jersey Memorial Home - Vineland, represented by Richard D. Robinson, Esq., requests that the Civil Service Commission (Commission) reinstate her appeal of her removal, which was dismissed based on her failure to appear at a scheduled conference.

By way of background, Ms. Wainwright was removed, effective September 18, 2015, following sustained charges of chronic or excessive absenteeism from work without pay. Ms. Wainwright appealed the sanction to the Commission, which transmitted the matter to the Office of Administrative Law (OAL). scheduled the matter for a prehearing conference on February 11, 2016. The record indicates that the appellant's counsel and the appellant did not appear at the appointed time and based on their absences, the OAL issued a "Failure to Appear" notice which indicated that the appellant failed to appear at the scheduled proceedings. On February 12, 2016, the matter was returned to the Commission for a final decision, with a notice giving the appellant 13 days to present any excuse for failure to appear to this agency.

In support of the request to reinstate the appellant's appeal, the appellant's representative, Mr. Robinson, indicates that the only correspondence that his office received, prior to the failure to attend notice, was a January 6, 2016 letter from the OAL informing his office of the docket number and indicating that he would be receiving further correspondence with the details of the date and location.

Thereafter, he states that the next notice that his office received was the OAL's February 12, 2016 letter indicating that they failed to appear at the February 11, 2016 hearing. He represents that all the mail in his office is meticulously reviewed daily to ensure that they do not miss dates and he maintains that he never received correspondence from the OAL. Mr. Robinson also states that the appellant called the OAL several times inquiring about her court date. He reiterates that had he received the notice, they would have been present at the hearing.

In response, the appointing authority, represented by Susan C. Sautner, Esq., indicates that her office received the OAL's correspondence dated January 19, 2016 scheduling the February 11, 2016 conference. Ms. Sautner indicates that the appellant's attorney at that time, Ronald Thompson, Esq. was copied on the correspondence. She highlights that Mr. Thompson was copied on the initial filing with OAL dated January 6, 2016 and the Failure to Appear notice dated February 12, 2016. She asserts that it is curious that Mr. Thompson received the initial filing notice and the Failure to Appear notice, but not the notice scheduling the conference.

It is noted that Mr. Thompson's office informed the Commission on February 23, 2016 that his office was never retained in this matter nor has there been any agreement to represent the appellant. Therefore, he requested that his name be removed as the attorney of record.

CONCLUSION

With regard to the instant matter, the record indicates that the law firm that the appellant initially listed as her counsel, Mr. Thompson, and the appointing authority were notified of the conference scheduled on February 11, 2016. Further, the appellant's actual counsel, Mr. Robinson, indicates that he did receive the notice regarding the initial filing and the Failure to Appear notice. However, Mr. Robinson states that he did not receive notice of the prehearing conference. Additionally, the appellant does not bear any individual responsibility for her counsel's failure to participate in the scheduled conferences on February 11, 2016. N.J.A.C. 1:1-3.3(b) provides that any explanation for failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case, and a timely explanation was submitted in this regard. Therefore, the record as a whole indicates that the appellant intended to pursue her statutory right to challenge her removal, and she did not intend to abandon her appeal. Accordingly, the Commission finds that under all of the circumstances 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 Catina Wainwright's request to reinstate her appeal be granted and this matter be transmitted to the OAL for further proceedings.

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON THE 19th DAY OF OCTOBER, 2016

Robert M. Czech Chairperson

Civil Service Commission

Inquiries

and

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