



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Faheem Murphy,  
Department of Human Services

CSC Docket No. 2016-3928

Request for Reconsideration

ISSUED: **Jan 30 2016** (DASV)

Faheem Murphy, a former Senior Medical Security Officer with the Ann Klein Forensic Center, Department of Human Services, represented by William A. Nash, Esq., petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decision, rendered on April 26, 2016, in which the Director of the Division of Appeals and Regulatory Affairs denied his request for a hearing with respect to his removal from employment effective September 1, 2015.

By way of background, a Final Notice of Disciplinary Action (FNDA), dated January 5, 2016, was issued, removing the petitioner from employment, effective September 1, 2015, on charges of conduct unbecoming a public employee, other sufficient cause, and conviction of a crime. Specifically, the appointing authority asserted that on September 16, 2015, the petitioner was convicted of obstructing the administration of law in the Ewing Township Municipal Court. In that regard, he had been arrested by the Ewing Township Police on June 21, 2015. The FNDA indicated that the petitioner was served by certified mail. The petitioner filed an appeal of his removal to the Commission, and his letter of appeal was postmarked April 22, 2016. On April 26, 2016, the Director determined that the petitioner's appeal was beyond the 20-day time period to file an appeal and the petitioner was denied a hearing. See *N.J.S.A. 11A:2-15*.

In his request for reconsideration, the petitioner contends that the FNDA was not properly served on him, despite that it was issued on January 5, 2016. He did not receive the FNDA sent to him by certified mail. In that regard, the petitioner

indicates that the tracking information of the certified mail states that on January 9, 2016, delivery was attempted but "Notice Left (No Authorized Recipient Available)." The petitioner states that no one was home. The certified mail was eventually returned to the appointing authority. The petitioner claims that he "received the FNDA on April 21, 2016 when it was handed to [him] by [his] attorney and [he] immediately appealed it that day." Moreover, he argues that due process requires notice and an opportunity to be heard, which he did not receive. In support of his request, the petitioner submits an affidavit, certifying to the truth of his statements.

In response, the appointing authority states that if an employee is not on duty and it is unable to personally serve the employee with the FNDA, the FNDA is sent by both certified and regular mail. In the petitioner's case, the appointing authority indicates that it did not have any issues in serving the petitioner with notice in the past. It is noted that in addition to the subject FNDA, the appointing authority served the petitioner with two other FNDAs, dated September 1, 2015 and September 17, 2015, removing him from employment effective September 1, 2015. The September 1, 2015 FNDA removed the petitioner on charges of conduct unbecoming a public employee, other sufficient cause, and conviction of a crime. The appointing authority asserted that on May 4, 2015, the petitioner was convicted of obstructing the administration of law and sentenced to one year of probation. In that regard, the petitioner had been arrested by the Willingboro Township Police on December 30, 2014. In addition, the September 15, 2015 FNDA removed the petitioner on charges of conduct unbecoming a public employee, violation of a rule, regulation, policy, procedure or administrative decision, obstruction of law enforcement and disorderly conduct. The appointing authority asserted that on June 21, 2015, the petitioner was arrested by the Ewing Township Police and failed to report the arrest as required. The petitioner appealed these two FNDAs and the matters were transmitted to the Office of Administrative Law (OAL) for a hearing.<sup>1</sup> The appointing authority notes that the September 1, 2015 FNDA sent by certified mail was returned as unclaimed, but the petitioner nonetheless timely appealed the notice. Moreover, it argues that the Commission previously rejected an employee's request for a hearing when the certified mailing of his FNDA was returned as undeliverable. *See In the Matter of Christopher Anodide* (CSC, decided November 21, 2012) (Although provided with two opportunities to provide a response, the employee did not rebut the appointing authority's contention that the FNDA mailed via regular mail was not returned as undeliverable). Similarly, the appointing authority contends that the petitioner's request for a hearing should be denied because the regular mailing of the subject FNDA was not returned as undeliverable. It also maintains that the petitioner received the subject FNDA as part of the discovery provided to him at the OAL.

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<sup>1</sup> The appointing authority moved for summary decision on these matters. However, they have been placed on hold at the OAL pending the Commission's decision on the third FNDA.

In reply, the petitioner reiterates that the certified mailing of the FNDA was returned to the appointing authority, as demonstrated in the tracking history. Additionally, he argues that, while the appointing authority claims that the FNDA was sent by regular mail, the FNDA reflects that it was only served by certified mail. Moreover, the petitioner argues that the appointing authority has failed to submit evidence that the FNDA allegedly sent by regular mail was correctly addressed, proper postage was affixed, the return address was correct, and the mailing was deposited in a proper receptacle or at the post office. Thus, given the foregoing and the fact that he appealed the two prior FNDAs which he received, the appellant contends that he has overcome the presumption that the subject FNDA was mailed.

It is noted that Steven Hahn, Deputy Attorney General, counsel for the appointing authority in the two OAL matters submits a response. He explains that on February 25, 2016, the petitioner was supplied the FNDA in the course of discovery. Hahn asked the petitioner's attorney whether the petitioner appealed the FNDA. On February 29, 2016, the petitioner's attorney responded that he would "look into this." On March 30, 2016, Hahn again asked but the petitioner did not confirm. Hahn argues that, assuming that the first time that the petitioner received the FNDA was on February 25, 2016, he should then have filed an appeal by March 16, 2016. However, he did not file an appeal until April 22, 2016. Further, Hahn asserts that there is no due process issue in this case, since service on the petitioner's attorney "is more than adequate to provide Appellant notice of his FNDA – especially when Respondent specifically asked about it" twice.

The petitioner responds that the plain language of the regulatory provision provides that the 20-day period to file an appeal of a disciplinary action begins from the employee's receipt of the FNDA and not when his attorney receives the notice. Thus, regardless of whether the FNDA was included in the discovery material does not dismiss the appointing authority's obligation to serve the notice to the petitioner properly. Moreover, the petitioner notes that the appointing authority has failed to submit an affidavit of service or evidence that the FNDA was served on him by certified mail, as set forth above, or by regular mail.

### 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 any appeal from adverse actions specified in *N.J.S.A. 11A:2-13* and subsection a.(4) of *N.J.S.A. 11A:2-6* shall be made in writing

to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. If the appointing authority fails to provide the employee with a FNDA, an appeal may be made directly to the Commission within a reasonable time. *See also N.J.A.C. 4A:2-2.8.* The instant matter concerns a disciplinary action covered by *N.J.S.A. 11A:2-13* and subsection a.(4) of *N.J.S.A. 11A:2-6*; therefore, the 20-day time limit is applicable. This 20-day time limitation is jurisdictional and cannot be relaxed. *See Borough of Park Ridge v. Salimone*, 21 *N.J.* 28, 46 (1956); *See also Murphy v. Department of Civil Service*, 155 *N.J. Super.* 491, 493 (App. Div. 1978); *Mesghali v. Bayside State Prison*, 334 *N.J. Super.* 617 (App. Div. 2000), *cert. denied*, 167 *N.J.* 630 (2001).

In the instant matter, the petitioner certifies that he received the FNDA when it was handed to him on April 21, 2016 by his attorney. However, he does not dispute that the certified mail was sent to his home. In that regard, although the petitioner emphasizes that the certified mail was returned to the appointing authority, he acknowledges that notice was left at his home and no one was there to receive the FNDA. The petitioner cannot benefit from refusing to pick up the certified mail at the post office when he clearly received notice of the attempted delivery. Under circumstances where certified mail is unclaimed, the Commission will count the 20-day appeal period from the date the certified mail is returned. This is necessary to prevent employees from artificially extending the 20-day period by never accepting receipt of the FNDA and thus claiming that he or she never received it. *See e.g., In the Matter of Joshua Giles* (CSC, decided November 5, 2009). In the instant matter, the certified mail was returned to the appointing authority on February 4, 2016. Therefore, the petitioner should have filed his appeal no later than February 24, 2016.

Regardless, the appointing authority indicates that its ordinary practice is to send the FNDA by both certified and regular mail when an employee is not on duty. The record in this matter does not indicate that the regular mail containing the FNDA was returned. There is a presumption that mail correctly addressed, stamped and mailed was 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). Although the appellant submits an affidavit, he does not specifically state that he did not receive the FNDA by regular mail or that it was his *first* time receiving the FNDA when it was handed to him by his attorney. Given the foregoing and the appointing authority's undisputed method of service of the petitioner's other two FNDAs by certified and regular mail, the petitioner has not persuasively rebutted the presumption. It is emphasized that even though one of the prior FNDAs sent by certified mail was returned as undeliverable, the petitioner timely appealed that removal.

Furthermore, *N.J.A.C. 4A:2-2.8(a)* provides that “an appeal from a [FNDA] must be filed within 20 days of receipt of the Notice by the employee. Receipt of the Notice on a different date by the employee’s attorney or union representative shall not affect this appeal period.” Although the critical issue regarding this regulatory provision is when the petitioner received the notice, it cannot be ignored that the petitioner’s attorney had notice of the third removal on February 29, 2016 when he responded to Hahn. He was again contacted on March 30, 2016. It is suspect that the petitioner’s attorney would not have conveyed this information to the petitioner at any time during this time period. Thus, the filing of the petitioner’s appeal on April 22, 2016 was not made within a reasonable time. As noted above, if the appointing authority fails to provide the employee with a FNDA, an appeal may be made within a reasonable time. *See N.J.S.A. 11A:2-15 and N.J.A.C. 4A:2-2.8.*

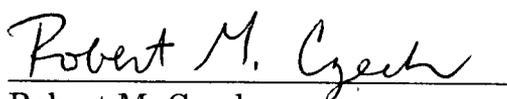
Therefore, the petitioner has not demonstrated that a material error has occurred nor presented new evidence which would change the outcome of his case. Accordingly, the Commission finds no grounds on which to grant reconsideration of its prior decision.

### 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 23<sup>RD</sup> DAY OF NOVEMBER, 2016



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Attachment

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Charles Moore  
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