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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jose DeJesus,
Juvenile Justice Commission

Administrative Appeal

CSC Docket No. 2015-2277

ISSUED: **AR 21 2017** (ABR)

Jose DeJesus, a Senior Correction Officer with the Juvenile Justice Commission (JJC), represented by Colin M. Lynch, Esq., requests that the Civil Service Commission (Commission) reinstate his appeal of his 45 working day suspension, which was dismissed based upon his failure to appear at a scheduled settlement conference.

By way of background, Mr. DeJesus was suspended for 45 days, effective January 28, 2015, following a sustained charge of other sufficient cause, defined as a violation of JJC policies concerning inappropriate physical contact or mistreatment and the use of force. Mr. DeJesus appealed the sanction to the Commission, which transmitted the matter to the Office of Administrative Law (OAL). The OAL scheduled the matter for a prehearing conference on May 5, 2015. The record indicates that the appellant's representative at the time, Kareem Pritchett, Vice-President Liaison, PBA Local 105¹, 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 May 15, 2015, 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.

¹ The appellant filed a Major Disciplinary Appeal Form with the Commission dated January 29, 2015 which listed Mr. Pritchett as his representative. The Commission, as is its custom, transmitted the matter to the OAL, naming the President of PBA Local 105, Lance Lopez, on its Service List. Both forms state the correct address for PBA Local 105.

The appellant submitted his request to reinstate his appeal to the Commission by letter dated April 14, 2016. In support of his appeal, the appellant submits an affidavit wherein he states that he never received notice of the scheduled prehearing conference and that his union representative, Mr. Pritchett, "only recently received a text message copy" of the "Failure to Appear" notice. The appellant's union representative, Mr. Pritchett, also submits an affidavit, in which he claims that both he and the appellant were unaware of the scheduled prehearing conference and that he "only recently obtained a text message copy" of the "Failure to Appear" notice. Mr. Pritchett submits a copy of the "Failure to Appear" notice he received. However, neither he nor the appellant supplies further details of the purported text messages.

Despite an opportunity to do so, no response was submitted by the appointing authority.

CONCLUSION

Pursuant to *N.J.A.C.* 1:1-3.3(b), a party's written explanation of his or her failure or the failure of his or her representative to appear at an OAL proceeding must be received by the Commission within 13 days of the date of the Clerk's notice returning the case. However, *N.J.A.C.* 1:1-3.3(b) permits the Commission to extend the deadline for receiving explanations regarding the failure to appear when a party shows good cause.

In this matter, the appellant has not sustained his burden of proof. Both the appellant's and Mr. Pritchett's explanations for the 11-month delay for the request to reinstate the instant appeal raise more questions than they answer. While both claim that they never received notice of the hearing or the "Failure to Appear" notice, the OAL has indicated that it sent notices to PBA Local 105's address. 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). The appellant does not present any evidence which would suggest that PBA Local 105 did not timely receive the "Failure to Appear" notice, even though he and Mr. Pritchett may not have personally seen the notice until sometime thereafter. Curiously, neither the appellant nor Mr. Pritchett names the source of the "recently obtained" text message. Neither affirmatively state that the OAL or the appointing authority transmitted the said text message and the Commission has no reason to believe that the OAL or the appointing authority would have used that method to send a copy of a "Failure to Appear" notice. Additionally, since neither the appellant nor Mr. Pritchett specify when Mr. Pritchett received the "recently obtained" text message, it is unclear whether they filed the instant request within a reasonable timeframe following their receipt of

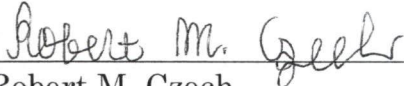
the said text message. Moreover, the appellant has not demonstrated that he or his representatives exercised reasonable diligence in pursuing the appellant's major discipline appeal, as the record is devoid of evidence that the appellant or his representative made any effort to inquire about the status of his appeal during the one year period that elapsed between the appellant's filing of a Major Disciplinary Appeal Form with the Commission on January 29, 2015 and his receipt of the text message circa April 2016. As such, the foregoing does not demonstrate good cause to grant the appellant's request.

ORDER

Therefore, it is ordered that Jose DeJesus' request to reinstate his appeal be denied and his appeal be dismissed.

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 19TH DAY OF APRIL, 2017


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