



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Kevin Holmes,
Morris County

CSC Docket No. 2016-2118

Request for Reconsideration

ISSUED: February 14, 2020 (SLD)

Kevin Holmes, a former Juvenile Detention Officer with Morris County, Department of Human Services, petitions the Civil Service Commission (Commission) for reconsideration of the attached administrative decision, rendered on November 16, 2015, in which the Director of the Division of Appeals and Regulatory Affairs (DARA), denied his request for a hearing with respect to his 180-day suspension.

By way of background, on an October 7, 2015 Final Notice of Disciplinary Action (FNDA), the petitioner was suspended for 180 days, effective October 7, 2015, pursuant to a settlement agreement. The settlement agreement also provided that the petitioner would retire on or shortly thereafter, his 62nd birthday, in May 2016. On October 30, 2015, the appellant hand delivered his appeal to the Commission. However, since the petitioner did not submit his appeal within 20 days of receipt of the FNDA, the request for a hearing was denied.

In support of his request for reconsideration, the petitioner argues that he believed he had 20 business days to submit an appeal. The petitioner asserts that his entire career he has been “harassed, picked over, wrote up for things other officers look at as normal currents.” He also asserts that he went to retire, prior to receiving the September 10, 2015 Preliminary Notice of Disciplinary Action (PNDA), but was told he could not retire until May 2016.

In response, the appointing authority, represented by Robert J. Greenbaum, Esq., asserts that the petitioner unexpectedly retired, effective November 1, 2015,

despite having entered into a settlement agreement on October 7, 2015, which would have kept him employed through his 62nd birthday.¹ It maintains that since the petitioner retired, his request for reconsideration should be denied.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. 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 appeals from major disciplinary matters be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. This 20-day time limitation is jurisdictional and cannot be relaxed or waived. *See Borough of Park Ridge v. Salimone*, 21 *N.J.* 28, 46 (1956); *See also, Mesghali v. Bayside State Prison*, 334 *N.J. Super.* 617 (App. Div. 2000), *cert. denied*, 167 *N.J.* 630 (2001); *Murphy v. Department of Civil Service*, 155 *N.J. Super.* 491, 493 (App. Div. 1978). Further, *N.J.A.C.* 4A:2-2.8(a) states that “An appeal from a Final Notice of Disciplinary Action 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.”

In the instant matter, the FNDA was delivered to the petitioner on October 7, 2015. Thus, his appeal had to be postmarked or hand delivered no later than October 27, 2015 to meet the 20-day filing requirement. The petitioner does not dispute the fact that he received the FNDA on October 7, 2015 and that his letter of appeal was hand-delivered on October 30, 2015. Rather, the only argument offered by the petitioner is that he believed that he had 20 business days in which to appeal. However, whereas here, there is no dispute as to the date the FNDA was received by the employee, these circumstances do not justify accepting an appeal filed after the 20-day time period. As previously noted, the time frame for filing an appeal is statutory and cannot be relaxed. *See Mesghali, supra*. Accordingly, the petitioner has not met the standard for reconsideration.

ORDER

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

¹ The appointing authority noted that the petitioner was told that if he retired on November 1, 2015, he would be ineligible for retirement benefits, and therefore, he was given an opportunity to rescind his November 1, 2015 retirement. However, he did not rescind his retirement.

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 12TH DAY OF FEBRUARY, 2020



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
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Attachment

c: Kevin Holmes
Robert J. Greenbaum, Esq.
Frank Corrente
Kelly Glenn
Records Unit

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DECISION RENDERED BY THE
DIRECTOR, DIVISION OF APPEALS
AND REGULATORY AFFAIRS
ON *NOVEMBER 16, 2015*



HENRY MAURER
DIRECTOR

RE: Kevin Holmes

Inquiries
And
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c: Kevin Holmes
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Pensions
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