

## STATE OF NEW JERSEY

In the Matter of Nadeyah Sarmad Department of Children and Families

CSC Docket No. 2014-0629

DECISION
OF THE
CIVIL SERVICE COMMISSION

Administrative Appeal

ISSUED: October 1, 2014 PM

Nadeyah Sarmad, a former Family Service Specialist 2 with the Department of Children and Families (DCF), represented by Laurie Taylor, CWA Local 1037, requests that the Civil Service Commission (Commission) reinstate her appeal of her release at the end of the working test period effective September 9, 2013, which was dismissed based on the petitioner and her union representative's failure to appear at the scheduled hearing.

By way of background, the appellant was released at the end of her working test period effective September 9, 2013, following an unsatisfactory rating for the second half of the probationary period. The appellant appealed this action to the Commission, which transmitted the matter to the Office of Administrative Law (OAL). The OAL scheduled the matter for a hearing on July 14, 2014. The record indicates that neither the appellant nor her union representative appeared at the appointed time, nor did they attempt to contact the OAL. Based on their absence, the OAL issued a "Failure to Appear" notice which indicated that the appellant failed to appear at the scheduled proceeding. On July 16, 2014, this matter was returned to the Commission for a final decision, with a notice giving the parties 13 days to present any excuse for failure to appear to this agency.

In support of her July 28, 2014 request to reinstate her appeal, the appellant argues that she became aware of the scheduled hearing only after receiving the Failure to Appear Notice and that she provided a response to the Commission within the 13-day timeframe. Further, the appellant's representative, Laurie Taylor, states that there was miscommunication between the local and the national

CWA as to who would represent the appellant at the hearing. Ms. Taylor explains that the national CWA office has always handled working test period cases until recently. Thus, the appellant's case was caught in the middle of the new change as to which CWA office would handle working test period cases and there was no clear indication as to who would be the appellant's representative. Ms. Taylor maintains that it was an unintentional miscommunication and it would be unfair to deprive the appellant of her opportunity to resolve this matter through a hearing. Therefore, she requests that the matter be re-transmitted to OAL for a hearing.

In response, the appointing authority, represented by Ila Bhatnagar, Director of Employee Relations, maintains that the appellant's reasons for non-appearance at her hearing at the OAL are insufficient to warrant rescheduling of this matter. In this regard, the service list clearly indicates that the appellant's representative was Laurie Taylor and the scheduling notice was sent to CWA Local 1037's address of record. Additionally, there is no evidence that the notice was returned as undeliverable. Furthermore, the appellant's claim of confusion over her representation clearly was an internal matter over which the DCF has no control. Lastly, there is no evidence that CWA sought an adjournment to clarify any issues with regard to representation pursuant to N.J.A.C. 1:1-9.6. As such, the appointing authority requests that the matter not be rescheduled.

## CONCLUSION

In this matter, the appellant has sustained her burden of proof. A review of the April 15, 2014 service list for the Notice of Prehearing Telephone Conference and Hearing issued by the OAL scheduling the July 14, 2014 hearing indicates that it was only sent to DCF and Laurie Taylor and not the appellant. Upon receipt of the Failure to Appear Notice, the appellant filed a timely appeal to the Commission explaining her extenuating circumstances and that she did not receive the Notice of Hearing. Furthermore, the record indicates that there was a miscommunication between the national and local CWA offices regarding the appellant's representation. Therefore, the record as a whole indicates that the appellant intended to pursue her statutory right to challenge her release after the end of her working test period and 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 appeal would be unjust.

## ORDER

Therefore, it is ordered that Nadeyah Sarmad's request to reinstate her appeal be granted and the matter be transmitted to the OAL for further proceedings.

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON THE 1<sup>ST</sup> DAY OF OCTOBER, 2014

Robert M. Czech

Chairperson

Civil Service Commission

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