

B-11



STATE OF NEW JERSEY

**DECISION
OF THE
CIVIL SERVICE COMMISSION**

Administrative Appeal

In the Matter of David Shenko
Mid-State Correctional Facility
Department of Corrections

CSC Docket No. 2014-2297

ISSUED: November 7, 2014 PM

David Shenko, a Senior Correction Officer with Mid-State Correctional Facility, Department of Corrections, represented by Todd McConnell, Policeman's Benevolent Association Local #105, requests that the Civil Service Commission (Commission) reinstate his appeal of his 10-day suspension, which was dismissed based on his union representative's failure to call in for the scheduled telephone prehearing conference.

By way of background, Mr. Shenko received a 10-day suspension following sustained charges of conduct unbecoming a public employee, inappropriate physical contact or mistreatment of an inmate, patient, client, resident or employee and other sufficient cause. Mr. Shenko appealed the sanction to the Commission, which transmitted the matter to the Office of Administrative Law (OAL). The OAL scheduled the matter for a telephone prehearing conference on July 21, 2014. The record indicates that the union representative for the appellant did not call in at the appointed time and based on his absence, the OAL issued a "Failure to Appear" notice which indicated that the appellant's representative failed to appear at the scheduled proceeding. On July 28, 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 the August 11, 2014, request to reinstate Mr. Shenko's appeal, the appellant's representative, Mr. McConnell, indicates that he did have the matter listed on his calendar but had to call off sick due to a family emergency. He asserts that he inadvertently failed to inform appellant of his emergency and was

unable to participate in the conference call. Mr. McConnell indicates that he spoke with his adversary, Kathleen Asher, Legal Specialist, and she consented to rescheduling the matter. Mr. McConnell maintains that his emergency family matter was unavoidable and it would be unfair to deprive Mr. Shenko of his opportunity to resolve this matter through a hearing.

In response, the appointing authority, represented by Asher, states that it does not oppose reinstating this matter at the OAL.

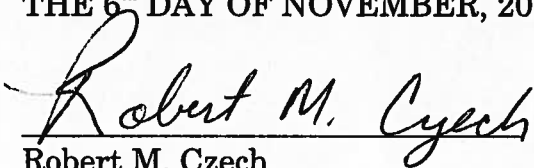
CONCLUSION

With regard to the instant matter, the record indicates that the union representative and the appointing authority were notified of the telephone prehearing conference scheduled on July 21, 2014. Mr. Shenko does not bear any individual responsibility for the union representative's failure to promptly notify the parties of his family emergency and his failure to participate in the scheduled telephone prehearing conference on July 21, 2014. *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. The record indicates that Mr. McConnell presented to the Commission within this 13-day timeframe his written explanation for his failure to appear. Moreover, the appointing authority does not oppose this matter being reinstated at the OAL. Furthermore, it would be unfair to deny Mr. Shenko a hearing on the merits of his case based on the failure of his union representative to call in for the scheduled telephone prehearing conference. Therefore, the record as a whole indicates that the appellant intended to pursue his statutory right to challenge his suspension, and he did not intend to abandon his appeal. Accordingly, the Commission finds that under all of the circumstances in this matter, to deny the appellant a hearing on the merits of his disciplinary action would be unjust.

ORDER

Therefore, it is ordered that David Shenko's request to reinstate his appeal be granted and the matter be transmitted to the OAL for further proceedings.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 6th DAY OF NOVEMBER, 2014



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