



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Ruddy Castillo,
Union City

CSC Docket No. 2015-3120

Administrative Appeal

ISSUED: NOV 09 2015 (DASV)

Ruddy Castillo, a former Laborer 1 with Union City, represented by John T. Herbert, Esq., requests that his withdrawn appeal of his removal, effective December 12, 2011, be reinstated and transmitted to the Office of Administrative Law (OAL) for a hearing.

By way of background, on May 29, 2012, the petitioner was served with a Final Notice of Disciplinary Action (FNDA), dated April 26, 2012, removing him from employment, effective December 12, 2011, on charges of incompetency, inefficiency, or failure to perform duties; chronic or excessive absenteeism or lateness; neglect of duty; and other sufficient cause. Specifically, the appointing authority asserted that the petitioner was absent from work without permission and/or giving notice, beginning September 26, 2011, and had not returned. Upon his timely appeal,¹ the matter was transmitted to the OAL on June 20, 2012 for a hearing as a contested case. By letter dated February 22, 2013, the petitioner advised the Administrative Law Judge (ALJ) that he agreed to withdraw the pending appeal based on representations made to his attorney that the appointing authority agreed to a "rehearing" at the departmental level. The petitioner also

¹ The appointing authority indicates that the petitioner's initial appeal was untimely, as it was filed beyond the 20-day time period for filing an appeal. See N.J.S.A. 11A:2-15 and N.J.A.C. 4A:2-2.8. It presents tracking documentation from the United States Postal Service showing that the certified mail which contained the FNDA "arrived at 8:06 a.m. on May 14, 2012 in Union City, NJ 07087." However, the petitioner submitted a sworn statement at the time of his appeal that he did not receive the FNDA until May 29, 2012. It also appeared that the FNDA by certified mail was sent to an incorrect address. Thus, the petitioner's appeal, postmarked June 4, 2012, was considered timely.

indicated that if the decision of the hearing officer at the "rehearing" was not satisfactory to him, he would have an opportunity to appeal provided that he file a notice of appeal with the Civil Service Commission (Commission) "within the requisite time period." The matter was returned to the Commission, and at its meeting on May 1, 2013, the Commission noted the withdrawal without prejudice.

In a letter from his attorney, postmarked May 22, 2015, the petitioner indicates that he withdrew his appeal at the appointing authority's request in order to work out a settlement. However, the petitioner asserts that the appointing authority has been unresponsive and suspects that it has intentionally interfered with his ability to obtain new employment. Thus, because he claims that the appointing authority has acted in bad faith in promising to engage in settlement discussions, the petitioner requests that his appeal be reopened and transmitted to the OAL so that an ALJ can decide his case. The petitioner also seeks an award of attorney fees and costs and monetary damages for his unlawful dismissal and the appointing authority's intentional interference with his prospective employment.

In response, the appointing authority, represented by Kenneth B. Goodman, Esq., explains that when the petitioner received the FNDA, he claimed that he was not aware of the departmental hearing, which was held on February 16, 2012 in his absence. Thus, the appointing authority agreed to hold a second hearing to give the petitioner an opportunity to be heard. The hearing was held on July 16, 2012. In the meantime, the petitioner had already filed an appeal to the Commission and his appeal was transmitted to the OAL. Following the second departmental hearing, the parties engaged in settlement discussions. The parties discussed whether the petitioner would be eligible for ordinary disability retirement since he sustained injuries in 2010 in an automobile accident, which prevented him from performing his duties. Subsequently, the petitioner withdrew his appeal at the OAL and the parties continued their settlement discussions until sometime in July 2013. The appointing authority argues that the instant request is "woefully untimely" because the petitioner should have reasonably been aware of his situation in July 2013 and filed an appeal to the Commission at that time. Additionally, in December 2013, the petitioner's attorney requested the status of the petitioner's employment. In a letter dated December 13, 2013, the appointing authority's attorney confirmed that "consistent with the FNDA that was issued on April 26, 2012," [the petitioner's] employment with the City of Union City was terminated effective December 12, 2011." The appointing authority maintains that the petitioner was aware of his rights and unreasonably sat on them for more than two years. Therefore, his request should be denied.

CONCLUSION

N.J.A.C. 1:1-19.2(a) provides that a party may withdraw a request for a hearing by notifying the judge and all parties. Additionally, *N.J.A.C.* 1:1-19.2(b)

states that when a party withdraws, the Clerk shall return the matter to the agency which transmitted the case to the OAL for appropriate disposition. Further, *N.J.A.C. 1:1-19.2(c)* provides that after the Clerk has returned the matter, a party shall address to the transmitting agency head any motion to reopen a withdrawn case. *N.J.A.C. 1:1-19.2(c)* does not specify a time limit for the motion to be filed. In other words, the withdrawal of the petitioner's appeal was without prejudice. Although *N.J.A.C. 1:1-19.2* does not state this, this regulation is clearly analogous to the court rule on voluntary dismissals, *R. 4:37-1(a)*, which provides: "Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice." Thus, for good cause, such an appeal can be reinstated for purposes of a determination on the merits.

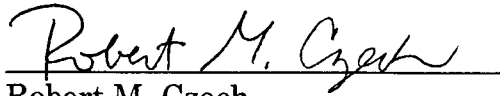
In the present case, the petitioner has not presented a sufficient basis to reopen his appeal. Although the settlement discussions may have come to an impasse in July 2013, there was no doubt that in December 2013, the appointing authority considered the petitioner removed from employment. By letter dated December 13, 2013, the appointing authority's attorney confirmed that "consistent with the FNDA that was issued on April 26, 2012," [the petitioner's] employment with the City of Union City was terminated effective December 12, 2011." However, the petitioner's request to reopen his appeal was not filed until May 22, 2015. Further, as indicated in his withdrawal letter, the petitioner understood that he would have an opportunity to appeal provided that he filed a notice of appeal with the [Commission] "within the requisite time period." Although as set forth above, there is no time limit for a motion to reopen a withdrawn case, the petitioner's request was filed almost a year and one-half after he received definite notice in December 2013 that he no longer would be reinstated to his Laborer 1 position. The petitioner has not provided any explanation regarding this delay. Moreover, the petitioner indicates that he sought other employment and apparently had difficulty securing new employment based on an alleged interference by the appointing authority. Given this admission, the Commission can only surmise that the petitioner chose not to request reinstatement of his appeal until he encountered difficulty in finding a new position. Under these circumstances, it is prejudicial to the appointing authority to permit the petitioner now to reopen his administrative appeal, almost four years after the disciplinary action in question and over two years after he withdrew his appeal. Accordingly, the petitioner's request that his withdrawn appeal of his removal be reinstated and transmitted to the OAL is denied.

ORDER

Therefore, it is ordered that this request 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 5TH DAY OF NOVEMBER, 2015



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