

B-46



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Thomas Landers,
Village of Ridgewood

Administrative Appeal

CSC Docket No. 2016-658

ISSUED: MAY 03 2017

(WR)

Thomas Landers, a Laborer 1 with the Village of Ridgewood (Ridgewood), petitions the Civil Service Commission (Commission) for a retroactive date of appointment and benefits.

By way of background, the appellant was hired to a seasonal hourly position as a Laborer 1, effective April 4, 2011. The appellant was hired to work 32 hours a week and was provided with three days of leave time. In December 2011, his seasonal position was terminated.¹ This practice occurred again in 2012, 2013 and on April 9, 2014. It is noted that agency records only list the April 4, 2011 temporary appointment. In October 2014, the appellant complained to this agency that Ridgewood had misclassified his position as temporary because he had worked more than six months in a 12-month period. *See N.J.A.C. 4A:4-1.7*. As a result, the appointing authority appointed the appellant and similarly-situated employees to the permanent non-competitive hourly position of Laborer 1, effective October 1, 2014. In December 2014, the appellant's appointment date in the County and Municipal Employee System (CAMPS) was changed to April 9, 2014.²

In an appeal letter dated July 23, 2015 to the Commission, the appellant claims that he contacted this agency in April 2015 to inquire whether this agency would grant him a retroactive appointment date to April 2011 and whether he was entitled to accumulate leave time from that date. The appellant states that a

¹ It appears that on November 28, 2011, he was transferred to the Street Division for leaf removal.

² It appears that the appointing authority initiated this change.

representative of this agency informed him that he would accumulate leave time based on the April 9, 2014 effective date of this permanent appointment. He claims that the agency representative stated that the appointing authority would have to provide documentation for him to be granted leave time prior to the effective date of his permanent appointment. Subsequently, the appellant states that he met with Ridgewood's Human Resources staff, who told him he is entitled to accumulate leave time only after October 2014 and refused to submit his personnel records to this agency. The appellant complains that his temporary appointments lasted more than six months, contrary to civil service rules. He also argues that seasonal/temporary appointments are not recognized in local government and therefore asserts that when he was hired on April 4, 2011, he was appointed to a permanent part-time position. The appellant thus requests retroactive benefits to that date. In support of his appeal, the appellant submits Ridgewood Employee Action Forms regarding his employment from 2011 to 2014. It is noted that these forms generally indicate that the appellant was appointed to a temporary position as a Laborer in April 2011, 2012, 2013 and 2014; transferred to another division for leaf removal in October of the same calendar year, and separated from employment in December of the same calendar year.

In response, the appointing authority, represented by Dominick Bratti, Esq., claimed that it reclassified the appellant's position to a non-competitive hourly position in mid-October 2014, which was made retroactive to October, 1, 2014. Thus, the appointing authority indicates that the appellant's vacation and sick leave began to accrue on October 1, 2014, pursuant to Ridgewood's Collective Negotiation Agreement (CNA). Moreover, the appointing authority asserts that if the appellant was not satisfied, he had 20 days to appeal that action pursuant to *N.J.A.C. 4A:2-1.1(b)*. As the appellant did not appeal until July 23, 2015, the appointing authority contends that the appellant's claim is untimely and should be dismissed. Additionally, the appointing authority argues that the Commission does not have jurisdiction in the present matter, as the appellant's claim is governed by the CNA. Finally, the appointing authority asserts *N.J.S.A. 11A:6-3(e)*, which provides that vacation days may only be carried over for one year, prevents the appellant from carrying vacation leave earned in 2014 into 2016.

CONCLUSION

N.J.A.C. 4A:2-1.1(b) provides that an appeal must be filed within 20 days of notice of the action, decision or situation being appealed. Although the appellant presents a substantive challenge regarding appointments as a temporary Laborer, the controlling issue regarding this matter is whether the appellant's request was timely filed. The record reflects that the appellant was generally appointed to temporary positions as a Laborer in April 2011, 2012, 2013 and 2014 and separated from employment in December of the same calendar year. While he contacted this agency in October 2014 and April 2015, he did not appeal until July 23, 2015. The

purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the one to five year delays in filing his request unreasonably exceeds that threshold of finality. Thus, it is clear that the appellant's request for retroactive benefits regarding his appointments is untimely.

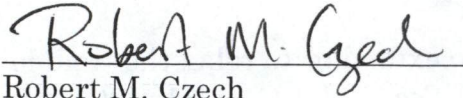
Nor is there any basis in this particular case to extend or to relax the time for his request as it relates to these appointments. See *N.J.A.C. 4A:1-1.2(c)* (the Commission has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting his right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). See e.g., *Matter of Allen*, 262 *N.J. Super.* 438 (App. Div. 1993) (allowing relaxation of the Commission's appeal rules where police officer repeatedly, but unsuccessfully, sought clarification of his employment status). In this case, the appellant has not presented any reason that would excuse the delay, ranging one to five years, in filing his request. In fact, the appellant failed to address the issue of the untimeliness of his request. The Commission notes that the failure to recognize or to explore the legal basis for an appeal, without more, does not constitute good cause to extend or relax the time for appeal under the Commission's rules. See *Savage v. Old Bridge-Sayreville Med. Group*, 134 *N.J.* 241, 248 (1993) (ignorance of the specific basis for legal liability does not operate to extend time to initiate legal action). Moreover, assuming *arguendo*, that the appellant's appeal is timely, he has not presented any convincing argument or evidence that demonstrates that the October 1, 2014 appointment date, one he agreed to via the CNA, should be disregarded in favor of an earlier appointment date. Accordingly, the appellant's request for retroactive benefits regarding his temporary appointments is denied.

ORDER

Therefore, it is ordered that this appeal be denied. It is further ordered that the Division of Agency Services record the appellant's permanent appointment date as a Laborer 1 as October 1, 2014.

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 3rd DAY OF MAY, 2017



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