



STATE OF NEW JERSEY

In the Matter of Eddie Armstrong,
Newark Public School District

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-3662

Administrative Appeal

ISSUED: AUG 18 2017 (JET)

The Estate of Eddie Armstrong, represented by John Branigan, IV, Esq., requests to reinstate the appeal of Eddie Armstrong, a former Truck Driver with Newark Public School District, of his removal effective February 27, 2015, which was dismissed on the basis of failure to appear at the March 24, 2017 hearing at the Office of Administrative Law (OAL).

The petitioner's removal was timely appealed to this agency which transmitted the matter to OAL as a contested case. On November 12, 2015, the petitioner, Mr. Armstrong passed away. His wife, Juliet Armstrong, is the administratrix to the Estate and is acting as petitioner in this matter.¹ The OAL scheduled the matter for a hearing on March 24, 2017 and sent a notice dated February 27, 2017 to this effect to the petitioner's attorney. On the scheduled date, the petitioner failed to appear at the hearing. The OAL issued a "Failure to Appear" notice which indicated that the petitioner failed to appear at the scheduled proceedings. On March 31, 2017, the matter was returned to the Civil Service Commission (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 petitioner's request for reinstatement of the appeal, the petitioner argues that she did not appear because she was hospitalized from March 22, 2017 to March 27, 2017. The petitioner explains that, during her

¹ It is noted that the petitioner submits an affidavit dated May 19, 2017 stating that she is the administratrix of Mr. Armstrong's estate.

hospitalization, she did not have access to her phone or any other means to notify the parties that she would be unable to appear at the March 24, 2017 hearing at OAL. The petitioner adds that her hospitalization made it impossible for her to appear at the hearing. In addition, the petitioner states that this matter should be reinstated as she is an interested party, and she filed a motion to intervene and a brief in opposition to the appointing authority's claims at OAL.² The petitioner adds that it is of no moment that her witness did not appear at the March 24, 2017 hearing since the appointing authority has the burden of proof in this matter. Moreover, the petitioner avers that OAL initially scheduled the matter for a hearing on February 27, 2017. However, the matter was rescheduled for the second hearing on March 24, 2017 because the appointing authority's witness failed to appear.

In an affidavit dated May 19, 2017 in support of her claims, the petitioner states that she was hospitalized from March 22, 2017 to March 27, 2017. She explains that she was unable to contact OAL or her attorney during the hospitalization as the hospital took possession of her phone as a safety precaution. The petitioner also submits medical documentation from Newark Beth Israel Medical Center pertaining to a list of personal items, and a form dated March 27, 2017 signed by Juliet Thomas regarding receipt of patient education materials.

In response, the appointing authority, represented by Bernard Mercado, Esq., maintains that the request in the instant matter should be denied since the petitioner and her witness failed to appear at the March 24, 2017 hearing. In addition, the appointing authority asserts that the petitioner did not present any formal documentation to show that she is the administratrix of the Estate or that she is legally authorized to intercede in this matter. As such, the appointing authority explains that the petitioner does not have standing to pursue the appeal of the instant matter. Moreover, the appointing authority asserts that its witnesses appeared for the hearings and no one appeared for the petitioner at two separate OAL hearings.

CONCLUSION

In this matter, the appointing authority has not provided any substantive documentation to refute the petitioner's claim that she is the administratrix of the Estate. As such, the appointing authority has not established that the petitioner does not have standing to pursue the appeal of this matter. However, the petitioner has not sustained her burden of proof. The record establishes that OAL clearly notified the petitioner to appear for the March 24, 2017 hearing. Although the petitioner states in her affidavit that she was hospitalized from March 22, 2017 to March 27, 2017, the petitioner does not explain the circumstances for the

² The petitioner submits a copy of the legal brief and motion to intervene that was submitted at OAL. The petitioner acknowledges in this matter that no formal decision was rendered by OAL pertaining to the motion to intervene and her legal brief.

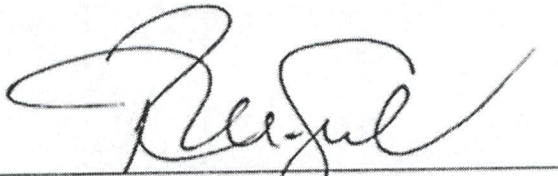
hospitalization. In this regard, the petitioner does not produce substantive documentation to establish that she was unable to appear at the March 24, 2017 hearing due to a sickness and/or injuries that she had sustained. The medical documentation submitted in this matter does not show that the petitioner was somehow incapacitated or otherwise medically limited from communicating with the parties when she was in the hospital on March 24, 2017. More importantly, with respect to the petitioner's argument that she did not have access to a phone or any other means to contact the parties on March 24, 2017, such arguments do not establish her contentions. There is no indication in the record that she asked hospital staff to use a hospital telephone. In this regard, the Commission cannot fathom that hospital staff would have denied the petitioner access to a telephone for a matter as important as contacting the parties regarding her appearance at an OAL hearing. Further, it seems highly unlikely that the petitioner could not have found some way, either via a family member, friend or otherwise, to contact the OAL to communicate her predicament. As such, the Commission cannot ultimately conclude that the record in this matter demonstrates good cause to grant the petitioner's request in this matter.

ORDER

Therefore, it is ordered that the request to reinstate the appeal be denied and the appeal be dismissed.

This is the final administrative determination in this matter. Any further review should be reviewed in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16th DAY OF AUGUST, 2017

A handwritten signature in black ink, appearing to read 'R. Czech', is written over a horizontal line.

Robert M. Czech, Chairperson
Civil Service Commission

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