



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Deicles Moschen,
City of Newark

CSC Docket No. 2017-2206

Request for Reconsideration
Hearing Granted

ISSUED:

AUG 17 2017

(WR)

Deicles Moschen, a former Electrician, City of Newark (Newark), petitions the Civil Service Commission (Commission) for reconsideration of the attached decision rendered on October 12, 2016, in which the Assistant Director of the Division of Appeals and Regulatory Affairs (DARA), denied his request for a hearing with respect to his removal.

By way of background, in 2014 the petitioner suffered injuries during the course of his employment that made him unable to work. Therefore, on September 20, 2015, he provided the appointing authority a note from his physician requesting "permanent light duty." In a Final Notice of Disciplinary Action (FNDA), dated July 18, 2016, the petitioner was removed on charges of inability to perform duties and other sufficient cause, effective October 1, 2015. Specifically, the appointing authority asserted it does not have permanent light duty assignments. The FNDA was sent to the petitioner by certified mail on July 19, 2016 and returned as unclaimed on August 25, 2016. By letter postmarked October 4, 2016, the petitioner submitted an appeal to the Civil Service Commission (Commission). However, since the petitioner did not submit his appeal within 20 days of receipt of the FNDA, the request for a hearing was denied.

In support of his request for reconsideration, the petitioner claims in a notarized statement that the reason he did not appeal earlier was that he was out of the United States from July 18, 2016 until September 1, 2016. Moreover, he states that he informed Cecilia Cunningham, a representative of the appointing authority, of his travel plans prior to traveling. He also states that he did not receive a copy of

the FNDA until Cunningham personally delivered it to him on September 26, 2016. In support, he submits copies of his travel itinerary and his notarized statement.

Despite the opportunity, the appointing authority did not respond.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

N.J.S.A. 11A:2-15 provides that appeals from major disciplinary matters be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. This 20-day time limitation is jurisdictional and cannot be relaxed or waived. See *Borough of Park Ridge v. Salimone*, 21 N.J. 28, 46 (1956); See also, *Mesghali v. Bayside State Prison*, 334 N.J. Super. 617 (App. Div. 2000), cert. denied, 167 N.J. 630 (2001); *Murphy v. Department of Civil Service*, 155 N.J. Super. 491, 493 (App. Div. 1978).

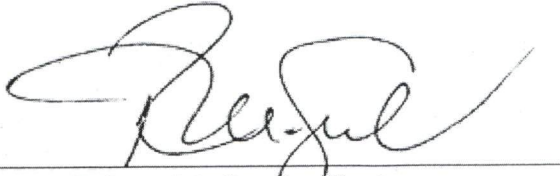
In the instant matter, the petitioner was issued an FNDA on July 19, 2016, which was returned on August 25, 2017. He did not appeal the FNDA until October 4, 2016. However, the petitioner contends that he did not receive the FNDA because he was abroad from July 18, 2016 until September 6, 2016; which he claims the appointing authority was aware of his plans. Rather, he states that he received the FNDA when it was personally served on him on September 26, 2016. His appeal was postmarked nine days later. Against the petitioner's claims, the appointing authority presents no arguments. Accordingly, under these particular circumstances, the Commission finds that the petitioner appealed his resignation not in good standing within 20 days of receipt of the amended FNDA and is therefore entitled to a hearing at the Office of Administrative Law.

Finally, the Commission must emphasize that this decision is limited to the unique facts presented in this matter and it should not be used as a precedent in any other matter.

ORDER

Therefore, it is ordered that this request for reconsideration be granted and the matter be referred to the Office of Administrative Law for a hearing on the petitioner's removal.

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



Robert M. Czedh, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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Attachment

c: Deicles Moschen
John D. Feeley, Esq.
Jack Kelly
Kelly Glenn
Beth Wood (with file)
Records Center



**STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION**

In the Matter of Deicles Moschen
City of Newark,
Department of Engineering

CSC DKT. NO. 2017-1034

Hearing Denied

ISSUED: OCTOBER 12, 2016

The Civil Service Commission considered the request for a hearing concerning Deicles Moschen from his appeal of a removal from the position of Electrician, City of Newark, Department of Engineering and made the following findings of fact:

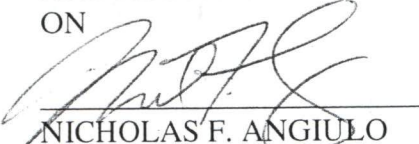
1. The Final Notice of Disciplinary Action was sent certified mail on July 19, 2016.
2. The letter was returned as unclaimed on August 25 2016.
3. The letter of appeal was post marked October 4, 2016.

An employee cannot avoid service of a Final Notice of Disciplinary Action and have the time frame to appeal extended. In this matter, there is no evidence that the certified mail was incorrectly addressed. Accordingly, since the appeal in this matter was not perfected within 20 days of the return of the certified mail, the request for a hearing was denied.

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

RE: Deicles Moschen

DECISION RENDERED BY THE
ASSISTANT DIRECTOR, DIVISION OF APPEALS
AND REGULATORY AFFAIRS
ON



NICHOLAS F. ANGIULO
ASSISTANT DIRECTOR

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