



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Juan Melendez,
Hudson County

Request for Reconsideration

CSC Docket No. 2019-3544

ISSUED: OCTOBER 25, 2019 (HS)

Juan Melendez, a County Correction Officer with Hudson County, represented by Debra Simon, Esq., petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decision, rendered on May 22, 2019, in which the Director of the Division of Appeals and Regulatory Affairs denied his request for a hearing with respect to his 20-day suspension.

By way of background, in an April 12, 2019 Final Notice of Disciplinary Action (FNDA), the petitioner was suspended for 20 days, effective March 31, 2019, on charges of incompetency, inefficiency or failure to perform duties; conduct unbecoming a public employee; neglect of duty; and other sufficient cause. Specifically, the appointing authority asserted that the petitioner had failed to notify his immediate supervisor of incidents involving inmates. The petitioner's FNDA was sent to his address on file on April 12, 2019, by certified mail and by regular mail. The tracking record of the certified mail shows that the mail was returned to the appointing authority since, as of April 18, 2019, the "Addressee [was] Unknown."¹ The FNDA sent via regular mail was not returned to the appointing authority. By letter postmarked May 14, 2019, the petitioner, through counsel, submitted an appeal to the Commission. In a submission dated May 17, 2019, the appointing authority maintained that the petitioner's appeal was untimely. It noted that the departmental hearing was held on March 6, 2019, and

¹ As discussed below, both the envelope and the certified mail receipt have inconsistencies with the house number.

the hearing officer issued his written decision on March 11, 2019. It argued that nothing prevented petitioner's counsel from timely filing the appeal upon receipt of the hearing officer's decision. The appointing authority also argued that the petitioner had actual notice of the penalty as early as March 31, 2019 as his suspension began on that date. Thus, it opposed the grant of a hearing. The request for a hearing was denied since the petitioner did not submit his appeal within 20 days of April 18, 2019, the date the "Addressee [was] Unknown" per the certified mail tracking history.

In his request for reconsideration, the petitioner states that as he only received the appointing authority's May 17, 2019 submission on May 20, 2019 and the decision denying a hearing was rendered on May 22, 2019, he did not have a reasonable opportunity to respond to the appointing authority's submission. The petitioner indicates that on April 10, 2019 and May 6, 2019, his counsel asked counsel for the appointing authority for a copy of the FNDA in order to proceed with the appeal process, which was not received. On May 9, 2019, petitioner's counsel received a copy of the FNDA from counsel for the appointing authority with a letter stating that the FNDA had previously been mailed to the petitioner on April 12, 2019 by certified mail. The petitioner maintains that the only FNDA he received was the FNDA served on counsel on May 9, 2019. Turning to the certified mail tracking history, the petitioner contends that this is not a situation where the mail was "refused" or "unclaimed," which may imply that he knew of the contents but refused to accept. He avers that both the certified mail envelope and return receipt show a problem with how his address was written: one of the digits in the house number is written over on the return receipt, and the house number is partially typed and partially handwritten on the envelope. It thus appears to the petitioner that the FNDA was mailed to another address, explaining why the "Addressee [was] Unknown" and his non-receipt of the regular mail. The petitioner also certifies that he never received the certified or regular mail containing his copy of the FNDA sent to his address of record, where he has lived for two years, and that he has never refused delivery of certified mail from the appointing authority. He states that he has no motive to avoid receipt as he and counsel were already preparing for the appeal.

The petitioner maintains that it is disingenuous for the appointing authority to argue that the commencement of his suspension on March 31, 2019 could substitute for "receipt of the final written determination of the appointing authority" as provided in *N.J.S.A. 11A:2-15*. He also disagrees that he could have filed his appeal upon receipt of the hearing officer's decision in that the hearing officer's decision in fact remained a recommendation until accepted by the appointing authority via an FNDA. The petitioner maintains that since he never received the certified or regular mail copy of his FNDA, his appeal was filed by counsel on his behalf within a reasonable time after counsel's receipt of the FNDA.

In response, the appointing authority, represented by John A. Smith III, Assistant County Counsel, maintains that the petitioner's address is clear on the certified mail envelope and return receipt. It also argues that since the regular mail was not returned to the appointing authority, that is presumptive evidence that the petitioner received it. It also reiterates its earlier arguments.

In reply, the petitioner notes that the regular mail envelope was never provided and reiterates his earlier arguments.

In reply, the appointing authority argues that it is absurd to suggest that it has the burden of producing an envelope sent by ordinary mail that was not returned to it and reiterates its earlier arguments.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. 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. A review of the record in the instant matter reveals that reconsideration is justified.

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). Further, *N.J.A.C.* 4A:2-2.8(a) states that "An appeal from [an FNDA] must be filed within 20 days of receipt of the [FNDA] by the employee. Receipt of the [FNDA] on a different date by the employee's attorney or union representative shall not affect this appeal period."

Upon review of the record, the Commission accepts that the petitioner did not receive either his certified or regular mail copy of the FNDA. The certified mail envelope and return receipt suggest that there were issues with the manner in which the petitioner's house number was written. According to the certified mail tracking history, the Postal Service did not deliver the mail to the petitioner because the "Addressee [was] Unknown." Further, the petitioner certifies that he did not receive either his certified or regular mail copy of the FNDA. While there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed, the petitioner has rebutted that presumption in certifying to non-receipt. *See SSI Medical Services, Inc. v. State Department of*

Human Services, 146 N.J. 614 (1996); *Szczesny v. Vasquez*, 71 N.J. Super. 347, 354 (App. Div. 1962); *In the Matter of Joseph Bahun*, Docket No. A-1132-00T5F (App. Div. May 21, 2001).

In addition, it is not appropriate to begin the 20-day appeal period from either the date petitioner's counsel received the hearing officer's decision or the commencement of the petitioner's suspension. Civil Service law does not require that an appointing authority accept a hearing officer's recommendation. Rather, *N.J.A.C. 4A:2-2.6(d)* states that within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with an FNDA. *See also N.J.S.A. 11A:2-14*. Therefore, it is implicit in this regulation that the discretion rests with the appointing authority to either accept or reject a hearing officer's recommendation. *See In the Matter of Devon Marshall* (MSB, decided December 7, 2005). It is receipt of the FNDA that triggers the 20-day appeal period.

Since the only FNDA received by the petitioner was the copy served on his counsel on May 9, 2019, his appeal to the Commission postmarked May 14, 2019, only five days later, was timely. Accordingly, the petitioner has met the standard for reconsideration, and it is appropriate to grant a hearing.

ORDER

Therefore, it is ordered that this request for reconsideration be granted and the matter be transmitted to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF OCTOBER, 2019



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Attachment

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Records Center



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

In the Matter of Juan Melendez
Hudson County, Department of
Corrections

CSC DKT. NO. 2019-3295

Hearing Denied

ISSUED: MAY 23 2019 BW

The Civil Service Commission considered the request for a hearing concerning Juan Melendez, from his appeal of removal from the position of Code Enforcement Officer Trainee, Hudson County, Department of Corrections and made the following findings of fact:

1. The Final Notice of Disciplinary Action (FNDA) was sent certified mail on April 17, 2019 and returned indicating "attempt-not known" on April 18, 2019.
2. The letter of appeal was postmarked May 14, 2019.

An employee cannot avoid service of a FNDA and have the time frame to appeal extended. In this matter, there is no evidence that the certified mail was incorrectly addressed. The FNDA sent via regular mail to the same address was not returned to the appointing authority. Accordingly, since the appeal in this matter was not perfected within 20 days of the return date of April 18, 2019 of the certified mail, the request for a hearing was denied. It is noted that pursuant to *N.J.A.C. 4A:2-2.8(a)*, receipt of the Final Notice on a different date by the employee's attorney or representative shall not affect the appeal period.

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

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

ON 5/22/19



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