

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF DECEMBER, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
44 S. Clinton Ave.
P. O. Box 312
Trenton, New Jersey 08625-0312



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL WITH PREJUDICE

OAL DKT. NO. CSV 07216-19

AGENCY REF. NO.2019-3209

**IN THE MATTER OF DOUGLAS EDLER,
BOROUGH OF RINGWOOD, DEPARTMENT
OF PUBLIC WORKS.**

George G. Cotz, Esq. No appearance appearing for appellant, Douglas Edler

Rafael Corbalan, Esq., for respondent, Borough of Ringwood (Kaufman,
Semeraro & Leibman, LLP)

Record Closed: October 29, 2019

Decided: November 21, 2019

BEFORE ERNEST M. BONGIOVANNI, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 28, 2019 this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14f 1 to-13. A telephone prehearing was held on June 26, 2019. As a result of the conference, a hearing was scheduled for November 26, 2019. Further a

status conference was scheduled for September 9, 2019. The parties were sent written notice on July 10, 2019 of these scheduled events.

On August 23, 2019, Mr. Cotz sent to the OAL a "Notice of Dismissal." However, the body of the Notice, signed by Mr. Cotz, stated that "Douglas Edler, Petitioner dismisses the within matter without prejudice." On August 27, 2019, my office wrote to Mr. Cotz, advising that the form of "Dismissal" was unacceptable as it purported to be "without prejudice." He was requested to provide a proper form without seeking to dismiss the matter "without prejudice.:. On August 28, 2019, Mr. Cotz submitted another Dismissal, signed by him however again purporting to be "without prejudice."

On September 13, 2019, I scheduled a telephonic conference for September 17, 2019 to determine what was causing a delay in getting a proper form of dismissal, however as counsel for respondent became unavailable that day, the conference did not take place. On October 8, 2019, both counsels were advised by regular mail that I would hold a status conference at the OAL at 33 Washington Street, Newark, on October 29, 2019 at 1:30 a.m. Both the appellant, Mr. Edler and his attorney, Mr. Cotz failed to appear. Mr. Corbalan, for respondent the Borough of Ringwood advised that Mr. Edler had obtained employment in another District which perhaps explains his lack of interest in the proceedings and his attorney's preparation of the aforesaid Notice of Dismissal "without prejudice." Mr. Cotz and Mr. Edler have not contacted the OAL since their nonappearance on October 29, 2019 and have been nonresponsive and uncooperative since sending, and then resending his "Notice of Dismissal, without prejudice."

CONCLUSIONS OF LAW

N.J.A.C. 1:1-14.4(a) and N.J.A.C. 1-1.3 provide that, if after appropriate notice, a party does not appear in a proceeding scheduled by the Clerk of OAL, the judge may direct the Clerk to return the matter to the transmitting agency if the judge does not receive an explanation for the nonappearance within one day. Appellant was duly

notified of all the proceedings through notice to his counsel including the in-person status conferenced scheduled for October 29, 2019 and both counsel and appellant failed to appear or offer an explanation before during or since that event. Further, appellant's counsel his counsel has twice submitted a "Notice of Dismissal without prejudice", which has not been consented to by respondent. The hearing in this matter is still scheduled for November 26, 2019 and it is an unfair burden to respondent to continue these proceedings when the appellant and his counsel have completely abandoned them.

For the above reasons, I **CONCLUDE** that appellant has abandoned his request for a hearing in this matter and has forfeited his right to further contest the actions complained of. Accordingly, this matter should be dismissed with prejudice for lack of prosecution and failure to appear.

ORDER

It is **ORDERED** that Edler's appeal be **DISMISSED WITH PREJUDICE** pursuant to N.J.A.C. 1:1-14.4, and I **DIRECT** the Clerk to return the matter to the Civil Service Commission for appropriate disposition.

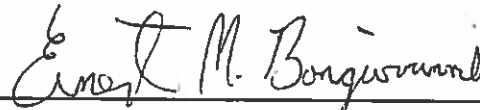
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 21, 2019

DATE



ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

11/21/19

Date Mailed to Parties:

id