

STATE OF NEW JERSEY

In the Matter of Bernadette : Dieujuste, New Jersey Veterans : Memorial Home – Menlo Park :

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

:

CSC Docket No. 2020-1615

Hearing Denied

ISSUED: JANUARY 17, 2020 (SLK)

Bernadette Dieujuste, a former Human Services Assistant with the New Jersey Veterans Memorial Home – Menlo Park, requests a hearing regarding her removal from employment, effective October 15, 2019.

By way of background, Dieujuste received a Preliminary Notice of Disciplinary Action (PNDA) on April 11, 2019 charging her with attendance-related issues between September 2018 and December 2018. Thereafter, a departmental hearing was held on August 23, 2019. A September 26, 2019 Final Notice of Disciplinary Action (FNDA) was issued to Dieujuste, which indicated that the charges were sustained, and she was removed effective that same date. On October 1, 2019, this agency received her appeal of her September 26, 2019 removal and that matter was transmitted to the Office of Administrative Law (OAL) as a contested case on October 7, 2019. Additionally, a second PNDA was received by Dieujuste on September 26, 2019. The second PNDA charged her with the same charges as the first PNDA. However, the second PNDA concerned attendance issues in February and March 2019. Dieujuste did not request a departmental hearing for the second PNDA. Thereafter, Dieujuste received a second FNDA, dated October 15, 2019, which indicated that the charges on the second PNDA were sustained and her removal for those charges were effective that same date. The record indicates that Dieujuste received that FNDA on October 18, 2019. In a letter postmarked December 6, 2019, Dieujuste appealed her second removal, effective October 15, 2019.

In her appeal, Dieujuste explains that she attended a departmental hearing on August 23, 2019. She states that the hearing officer advised that she would receive the hearing officer's written decision no later than 30 days. Thereafter, Dieujuste indicates that on September 26, 2019, the appointing authority advised her that the charges from the hearing were sustained, and her union representative advised her to appeal and handed her the appeal form. Subsequently, on October 15, 2019, she received the second FNDA with the same charges as the first FNDA. However, Dieujuste claims that she did not realize that the second FNDA involved attendance-related issues that were on different dates from the first FNDA. She indicates that she only learned that the second FNDA involved different dates when she attended a settlement conference at OAL on November 26, 2019 regarding the first FNDA. Dieujuste questions how she could be removed a second time when she already was removed. She explains that she did not timely file an appeal for the second FNDA because she already had an appeal pending regarding her removal at the OAL. Dieujuste emphasizes that she was confused by the situation and did not realize that she could be removed a second time after already being removed. She reiterates that the second FNDA involved the same charges as the first FNDA, she thought it was just a copy of the first FNDA and she was under the impression that her appeal of the first FNDA covered all removal charges.

CONCLUSION

N.J.S.A. 11A:2-15 provides that appeals of disciplinary charges shall be made to the Civil Service Commission (Commission) no later than 20 days from receipt of the final written determination of the appointing authority. *N.J.A.C.* 4A:2-2.8(a) provides that an appeal from a FNDA must be filed within 20 days or receipt by the employee.

In this matter, a review of the record indicates that on September 26, 2019, Dieujuste received a FNDA indicating that charges involving September 2018 through December 2018 attendance issues were sustained, and her removal was effective September 26, 2019. She timely appealed this removal and her appeal was transmitted to the OAL. Additionally, on September 26, 2019, Dieujuste received a second PNDA. Although the charges on the second PNDA were the same as the first PNDA, the second PNDA clearly outlined incidents that were on different dates (February and March 2019) from the first PNDA. Moreover, on October 15, 2019, she received a second FNDA which indicated that the charges from the second PNDA were sustained and her removal was effective October 15, 2019. As the two PNDAs and the two FNDAs referenced incidents on different dates and had two separate removal dates, Dieujuste knew or should have known that the second FNDA involved separate charges that needed to be appealed. At minimum, she should have asked the appointing authority or her union or other representative for clarification if she was confused. Dieujuste has not made any assertion or presented any evidence that the appointing authority advised her that the these separate FNDAs did not need to be separately appealed. Instead, she simply did not realize that these separate PNDAs and FNDAs involved separate incidents. Accordingly, as her appeal of the October 15, 2019 FNDA was filed more than 20 days from her receipt of that notice, her appeal is untimely. Moreover, the timeframes outlined in N.J.S.A. 11A:2-15 are jurisdictional and cannot be relaxed. 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).

ORDER

The Civil Service Commission denies Bernadette Dieujuste's request for a hearing and dismisses the appeal.

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 15th DAY OF JANUARY, 2020

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Chairperson

Civil Service Commission

Inquiries and Correspondence Christopher S. Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312

Trenton, New Jersey 08625-0312

c: Bernadette Dieujuste Robert Little Susan Sweeney Dawn Graeme Achchana Ranasinghe,DAG Mary Ann Bogan, ALJ Record Center