

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

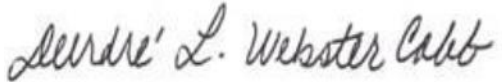
separate FNDAs did not need to be separately appealed. Instead, she simply did not realize that these separate PNDAs and FNDAs involved separate incidents. Accordingly, as her appeal of the October 15, 2019 FNDA was filed more than 20 days from her receipt of that notice, her appeal is untimely. Moreover, 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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