



STATE OF NEW JERSEY

In the Matter of Taralyn Young,
Department of Environmental
Protection

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2020-1778

Reconsideration

ISSUED: JANUARY 30, 2020 (BW/NFA)

Taralyn Young, a State Park Police Officer with the Department of Environmental Protection (DEP), represented by Jeffrey S. Ziegelheim, Esq., requests reconsideration of the attached administrative decision, rendered on December 18, 2019, in which the Civil Service Commission (Commission) denied her request for a hearing with respect to her removal.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action (FNDA), dated July 12, 2019, to Young, imposing removal. The FNDA was sent with a cover letter via United Parcel Service (UPS) on July 12, 2019.¹ Per the UPS tracking data, the FNDA was delivered on July 15, 2019. Young's attorney filed an appeal, via certified mail, to both the Civil Service Commission (Commission) and the Office of Administrative Law (OAL),² regarding the appellant's removal which was postmarked November 5, 2019. In its December 18, 2019 decision, the Commission denied Young's request for a hearing finding that her appeal was untimely filed.

In her request for reconsideration, Young reasserts a secondary argument presented in the original appeal where she contends that she never received the FNDA by personal service or certified mail. In this regard, she states that the town

¹ As noted by Young, the Commission erroneously indicated in the prior decision that the FNDA was sent via certified mail. Although, it is noted that the appointing authority's cover letter did incorrectly indicate that it was sent "via overnight certified mail" when it was actually sent via UPS.

² As this matter involves the removal of a law enforcement employee, this appeal is required to be filed simultaneously with the Commission and the OAL. See *N.J.A.C. 4A:2-2.13(d)*.

and zip code listed on the mailing were incorrect. She also indicates that serving the FNDA by overnight UPS is not interchangeable with serving the FNDA via certified mail from the United States Postal Service. Young relies on *N.J.A.C. 4A:2-2.8(b)*, which states that if the appointing authority fails to provide the employee with a FNDA, an appeal may be made directly to the Commission within a reasonable time. She claims that the appeal postmarked November 5, 2019 from the July 12, 2019 termination was filed within a reasonable time.

In response, the appointing authority asserts that the FNDA was mailed to the address Young had on record while at DEP. It indicates that the town listed was correct and posits, for example, that someone using either Ewing Township or Trenton as their mailing address will receive the mailing if otherwise addressed properly. While it acknowledges that the zip code was incorrect, it argues that the UPS tracking demonstrates that the FNDA was delivered to the correct address. Further, it contends that, due to the deadlines found in the “180-day rule,”³ it sent the FNDA by overnight UPS to the address on file. Finally, it claims that Young previously claimed that Ziegelheim’s office appealed the matter timely on July 18, 2019. When that was found to be unsubstantiated by the Commission, she is now backtracking, trying a different theory alleging that she was never served either personally or by certified mail.

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 any appeal from adverse actions specified in *N.J.S.A. 11A:2-13* shall be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. *N.J.A.C. 4A:2-2.6(d)* and *N.J.A.C. 4A:2-2.13(c)* provide, in pertinent part, that an appointing authority has 20 days from the conclusion of a departmental hearing to issue a FNDA, and that such service should be “by either personal service or certified mail.” *N.J.S.A. 11A:2-15*, *N.J.A.C. 4A:2-2.8(b)* and *N.J.A.C. 4A:2-2.13(d)* state that if the appointing authority fails to provide a written determination, an appeal may be made directly to the Commission within a reasonable time.

In Young’s original appeal, Ziegelheim stated that the appeal letter was purportedly sent to the Commission on July 18, 2019, after he received the FNDA via e-mail from the appointing authority. In this regard, he provided certifications from staff attesting to that assertion. For the reasons set forth in its December 18,

³ Found in *N.J.S.A. 40A:14-200, et seq.* See also, *N.J.A.C. 4A:2-2.13* and *N.J.A.C. 1:4B-1.1, et seq.*

2019 decision, the Commission wholly rejected that contention. In the current matter, Young renews a secondary argument made in the original matter that the service of the FNDA was procedurally deficient pursuant to *N.J.A.C. 4A:2-2.8(b)* as it was not provided via personal service or certified mail. While the facts of this matter confirm that the FNDA was served utilizing UPS, which is not personal service or certified mail, it was clearly sent to Young by the appointing authority in a timely manner. Further, there is no evidence that the mailing was returned to the appointing authority, as it was delivered to an address on July 15, 2019. As such, it is clear that **someone** received the FNDA in July 2019. Nevertheless, at this juncture, given what will be presented below, the Commission need not reconcile whether Young actually received the FNDA at that time. Rather, the Commission will accept that Young did not receive the FNDA at that time.⁴ However, the Commission notes that the provisions of *N.J.A.C. 4A:2-2.6(d)* and *N.J.A.C. 4A:2-2.13(c)* proscribing the **methods** of service are **not** statutory. As such, failure to adhere to those provisions is **not** a basis to deem an appeal timely filed where there is other evidence that the FNDA was otherwise received. Unfortunately, in this case, other than the tracking information from UPS, there is no evidence when or if Young herself received the FNDA.⁵ To avoid any similar issues in the future, the Commission strongly recommends that the appointing authority adhere to the provisions of *N.J.A.C. 4A:2-2.6(d)* and *N.J.A.C. 4A:2-2.13(c)* and deliver FNDAs via personal service or certified mail.

Regardless, the Commission will now address whether, pursuant to *N.J.S.A. 11A:2-15*, *N.J.A.C. 4A:2-2.8(b)* and *N.J.A.C. 4A:2-2.13(c)*, Young's appeal filed on November 5, 2019 was within a reasonable time. The Appellate Division has interpreted what constitutes a "reasonable time" to appeal a major disciplinary action. For example, in *Jones v. Department of Civil Service*, 118 *N.J. Super.* 323

⁴ The Commission has concerns in this matter. As indicated in the previous matter, the Commission rejected that the appeal was ever sent in July 2019, notwithstanding that Ziegelheim indicated in a certification that he instructed his paralegal to do so, and the paralegal indicated he did so in his certification. Young has apparently abandoned that claim as there is no argument that the Commission's prior determination in that regard was erroneous, and she is now pursuing a claim that her appeal filed in November 2019 was within a reasonable time. This progression is perplexing, as Ziegelheim would now have the Commission believe in the first instance that Young did not receive the FNDA in July 2019, yet he, *sua sponte*, as her representative, ordered his staff to file an appeal on her behalf after he received the FNDA on July 17, 2019. To believe these facts would be to assume that Ziegelheim ordered that the appeal on Young's behalf in July 2019 be filed **without her knowing about it or**, did he assume she received the FNDA, did he contact her after he received the FNDA to discuss appealing, or was he authorized to file an appeal at that time without her approval pursuant to some type of negotiated agreement? Given the Commission's decision in this case, such questions need not be answered, but do tend to instill in the Commission a lack of confidence in the information that has been provided.

⁵ Although, the Commission notes that, for example, if a FNDA is sent via certified mail, and that mailing is received by **anyone** at the correct address, it is considered to be **received by an appellant** at that time. In other words, an appellant cannot avoid certified mail service, or the start of the 20-day period to appeal, by claiming the FNDA was given to, for example, a family member who did not thereafter provide it to the appellant.

(App. Div. 1972), the Court found that because the appointing authority had failed to notify Jones that he had 20 days to appeal his removal, Jones was entitled to a hearing even though his appeal was not received within 20 days of receipt of a letter informing him of his termination. The notice letter was dated December 29, 1970, and Jones' appeal was dated February 1, 1971. It is noted that, in *Jones*, his counsel was in contact with the appointing authority within the 20-day period, requesting information regarding the removal; however, the appointing authority failed to respond to the attorney's request. Conversely, in *In the Matter of John Lance*, Docket No. A-0415-06T5 (App. Div. March 20, 2008), the Court found that Lance did not file his appeal within a reasonable time, where he received the hearing officer's report and discussed filing an appeal at the end of January but did not actually do so until two months later. Additionally, in *In the Matter of Anthony DeProspero, Paterson*, Docket No. A-3172-08T3 (App. Div. June 18, 2010), the Court determined that filing an appeal with the Commission upon ultimate receipt of an FNDA, almost five months after DeProspero became aware of his removal, was not considered a reasonable time. Moreover, in *In the Matter of Lauren Schwartz* (CSC, decided May 2, 2012) *aff'd In the Matter of Lauren Schwartz*, Docket No. A-5067-11T1 (App. Div. May 22, 2014) the Court found that even assuming that Schwartz did not receive the FNDA, her filing of an appeal 35 days after she knew of her removal was found to be unreasonable. Finally, in *In the Matter of Thomas Sweeney*, Docket No. A-5011-11T2 (App. Div. September 6, 2013), the Court found that the filing of an appeal with the Commission almost three months after Sweeney became aware that an appeal was not filed on his behalf was not considered a reasonable time to file his appeal.

The record indicates in this case that Young was present at her departmental hearing on June 18, 2019.⁶ Further, the FNDA and her official personnel record indicates that she was removed from employment effective July 12, 2019. In other words, she was no longer employed as of that date. Since the departmental hearing concluded on June 18, 2019 and her employment ceased on July 12, 2019, after she did not receive the FNDA within 20 days of the hearing, she should have appealed directly to the Commission or at the very least inquired as to whether an FNDA was issued. Rather, she waited more than four and one-half months from the conclusion of her departmental hearing and more than three and one-half months from her date of removal to file an appeal. This cannot be considered a reasonable time. Accordingly, her request for reconsideration is denied.

⁶ The record also indicates that at the time of the issuance of the Preliminary Notice of Disciplinary Action, Young was **immediately suspended** pending her departmental hearing. It is not clear in the record if she was still suspended at the time of her hearing. However, assuming that was the case, especially given the appointing authority's reference to the "180-day rule," Young knew or should have known that after the departmental hearing it was unlikely that she was going to be returning to work, at least not until the issuance of an FNDA in her favor. As such, at the very least, after 20 days beyond the hearing, if she truly did not receive the FNDA or any notice of her employment status, she should have inquired about the results.

ORDER

Therefore, it is ordered that this request be denied.

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 29TH DAY OF JANUARY, 2020



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries Christopher S. Myers
and Director
Correspondence Division of Appeals
 & Regulatory Affairs
 Civil Service Commission
 Written Record Appeals Unit
 P.O. Box 312
 Trenton, New Jersey 08625-0312

Attachments

c: Taralyn Young
 Jeffrey S. Ziegelheim, Esq.
 Carla Winbush
 Robin Liebeskind
 Kurt Schwartz
 Kelly Glenn
 Beth Wood



STATE OF NEW JERSEY

In the Matter of Taralyn Young,
Department of Environmental
Protection

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2020-1344

Hearing Denied

ISSUED: DECEMBER 19, 2019 (BW/NFA)

Taralyn Young, a State Park Police Officer with the Department of Environmental Protection, represented by Jeffrey S. Ziegelheim, Esq., requests a hearing regarding her removal, effective July 12, 2019.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action (FNDA), dated July 12, 2019, to Young, imposing removal. The FNDA was sent with a cover letter via certified mail on July 12, 2019. Per the certified mail tracking data, the FNDA was delivered on July 15, 2019. Young's attorney filed an appeal, via certified mail, to both the Civil Service Commission (Commission) and the Officer of Administrative Law (OAL),¹ regarding the appellant's removal which was postmarked November 5, 2019.

In the appeal, Ziegelheim indicated that the appeal was originally filed via "correspondence dated July 18, 2018" and was being "resubmitted" as no information regarding the submission had been received. In support, he attached, among other things, a current \$20 check for the appeal filing fee and two certifications, one from himself and one from paralegal Anthony Berinato. Of note, Ziegelheim indicated in his certification that on July 17, 2019, he received a copy of the cover letter and FNDA, addressed to Young, from the appointing authority, but argued that the FNDA did not indicate personal service or certified mailing "necessary for the termination process to be properly completed." The following

¹ As this matter involves the removal of a law enforcement employee, this appeal is required to be filed simultaneously with the Commission and the OAL. See N.J.A.C. 4A:2-2.13(d).

pertinent information was provided in Berinato's certification. He was directed by Ziegelheim on July 18, 2019 to file the subject appeal, which he indicates he did with the Commission and OAL by way of regular mail. He states that he then contacted Commission staff on August 7, 2019 and purportedly spoke to someone he believed was named "Diana" who stated that "the intake unit was backlogged" and that he should call again in a few weeks. Subsequently, on September 4, 2019, he indicated that he contacted staff and spoke directly with staff member "R.D."² who told him that "the intake unit was backlogged and that the docketing" of the matter would be looked in to.

Upon receipt of this appeal in November 2019, Commission staff found absolutely no record of ever having received this matter in July 2019. It also contacted OAL to see whether it had received the appeal. OAL indicated that it had no record of having ever received the July appeal, but had received the "resubmitted" version in November. In an effort to ascertain whether the appeal was timely filed, and since the alleged original appeal was sent via regular mail which would prohibit tracking, staff sent a letter to Ziegelheim requesting that he provide evidence, such as the corresponding check stub from the original appeal fee filed with the purported July appeal to help establish the timeliness of the appeal.

In response, a certification from Lori A. Dvorak, Esq., was submitted, which indicated, in pertinent part, that on or about July 18, 2019, she signed check number 3328 addressed to the Commission regarding the appeal. She also stated the check was never cashed and voided on October 22, 2019. Further, Dvorak stated that the firm does not retain any check "stubs" but she provided a screenshot indicating the check was produced in July 2019. She also indicated that "the employer has still not produced proof of service of the FNDA on the employee as is required to trigger the time for filing an appeal."

CONCLUSION

N.J.S.A. 11A:2-15 provides that any appeal from adverse actions specified in *N.J.S.A. 11A:2-13* shall be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. See also, *N.J.A.C. 4A:2-2.8(a)*.

Initially, the Commission will address Ziegelheim's and Dvorak's contentions regarding the service of the FNDA. While the FNDA in the record does not indicate any information regarding its service upon Young, Ziegelheim himself, in his certification, indicates that he received a copy of the FNDA and cover letter addressed to Young. That cover letter indicates that it and the FNDA were sent to Young via certified mail. Moreover, the record indicates the following attached documents: a copy of the cover letter, dated July 12, 2019; a copy of the appointing

² As that individual is no longer with the Commission, initials are being utilized.

authority's certified mailing receipt log and its July 15, 2019 printout of the delivery's progress showing its delivery on that date; the Commission's subsequent printout of the tracking of that package. Thus, there can be no argument that Young was not actually provided a copy of the FNDA on July 15, 2019.³

The record reflects that the only letter of appeal received by the Commission was postmarked November 5, 2019. In his certification, Berinato states that he mailed the letter of appeal via regular mail on July 18, 2019 to both the Commission and the OAL, yet, inexplicably, neither agency received it until it was "resubmitted" in November 2019. While Berinato's certification, in many instances, would be sufficient for the Commission to find that the appeal was timely filed, several circumstances in this matter prevent such a finding.

Initially, the Commission finds it peculiar that the original July 18, 2019 appeal was purportedly sent via regular mail while the resubmitted appeal in November was sent via certified mail. While it is potentially coincidental that both the Commission and OAL did not receive the regular mailed copies while receiving the certified mail copies, it is more likely, for the reasons set forth below, that the appeal was never actually sent in July 2019. In this regard, Berinato indicates that he spoke with two Commission staff members about this matter, one in August 2019 and one on September 4, 2019. Both told him something to the effect that the intake unit was backlogged which had some impact on this matter. The Commission finds it highly unlikely that staff, if such conversations occurred, would communicate such information to Berinato. Appeals that are received in the Division of Appeals and Regulatory Affairs are logged into an appeals tracking system upon receipt and there is no "backlog" of such entries. At the very most, appeals are logged into the system no later than five days from receipt. If a matter has not been logged in, it has not been received, whatever the reason. Thus, staff would not have told Berinato in August or September that a "backlog" was the cause for the Commission not having record of the matter. However, much more disturbing and significant is the fact that Berinato specifically states that he spoke with R.D. on September 4, 2019, regarding this matter. Contrary to this assertion, R.D. left her position with the Commission on July 19, 2019.⁴ Accordingly, the

³ The Commission also finds it curious that Ziegelheim and Dvorak would bring this up as an issue. In this regard, if Young's appeal was actually filed by them acting as her representatives and on her behalf on July 18, 2019, it would clearly be considered timely. Thus, it *could be* surmised that the only reason one would make this argument in November 2019 after resubmitting what you argue is an already timely submitted appeal, would be because you knew or suspected that the appeal was not actually filed in July 2019, and were attempting to somehow extend the period for filing an appeal by arguing that Young did not receive the FNDA. See *N.J.A.C. 4A:2-2.8(b)* stating that if an appointing authority fails to provide a FNDA, an appeal may be made to the Commission within a reasonable time.

⁴ Also, there is no individual with the first name "Diana" in the Division of Appeals and Regulatory Affairs, although there is a "Diane."

purported information regarding this appeal could not have been communicated to him by R.D. at that time, or indeed, at any time as she left the Commission prior to when the original July 18, 2019 appeal could have possibly been received via regular mail. Of course, Berinato could be mistaken as to this information, however, the Commission cannot now give him the benefit of the doubt. In this regard, the certification submitted by Berinato is similar to one he previously submitted for another similar matter *In the Matter of Steven Ramzi* (CSC, decided December 4, 2019) (copy attached). While such similarity would not normally be an issue, in that matter, the Commission also had serious issues with information Berinato indicated in a certification regarding the filing of that appeal.

Given the above, the Commission cannot credit Berinato's certification as to the original mailing of the appeal in July 2019 and the only logical and reasonable conclusion is that the original letters were never sent in July 2019.⁵ While it is Young who is the unfortunate party in this matter, there is no way for the Commission to deem her November 5, 2019 appeal timely. In this regard, the statutory time frame for such an appeal under *N.J.S.A. 11A:2-15* is 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). Further, *N.J.A.C. 4A:2-2.8(a)* states, in pertinent part, that “[a]n appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee.” As Young received the FNDA on July 15, 2019, her appeal postmarked November 5, 2019 is untimely.

ORDER

Therefore, it is ordered that this request be denied.

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

⁵ In this regard, the Commission is also unpersuaded by the submission of the information regarding the original appeal fee check. While the Commission has no reason to disbelieve that the check was produced and signed at that time, for all the reasons presented, it cannot find that it was actually sent at that time.

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

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
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Attachments

c: Taralyn Young
Jeffrey S. Ziegelheim, Esq.
Carla Winbush
Jason Strapp
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State of New Jersey

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PHILLIP D. MURPHY
Governor
SHEILA Y. OLIVER
Lt. Governor

CATHERINE R. McCABE
Commissioner

July 12, 2019

Via Certified Mail

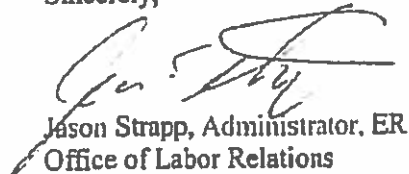
Taralyn Young
2 Short Hills Road
Andover, NJ 07621

Dear Ms. Young:

Pursuant to N.J.A.C. 4A: 2-2.3(a), enclosed is a Final Notice of Disciplinary Action for a Removal, charging you with N.J.A.C. 4A:2-2.3(a): 6: Conduct unbecoming an employee 7. Neglect of duty 12. Other sufficient cause; Violation of Policy and Procedure 2.20A Violation of SOP 1.03; Falsification of Time sheets; Leaving assigned work area without permission.

Please be advised that the appeal procedures are listed on the Final Notice of Disciplinary Action.

Sincerely,



Jason Strapp, Administrator, ER
Office of Labor Relations

Enclosures

c: Ray Bukowski, Assistant Commissioner
Teri Genardi, Chief
George Pearce, Lt.
Jeffrey Ziegelheim, Esq.

Name and Address of Sender NJ Dept. of Environmental Protection Division of Human Resources Office of Labor Relations P.O. Box 420 Mail Code 440-01A Trenton, NJ 08625		Check type of mail or service <input type="checkbox"/> Adult Signature Required <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> COD <input type="checkbox"/> Delivery Confirmation <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured	<input type="checkbox"/> Adult <input type="checkbox"/> Record <input type="checkbox"/> Registered <input type="checkbox"/> Return <input type="checkbox"/> Signature
Article Number IZF089182210124559 Overnight LTR - Young Control Number: 648065		Addressee (Name Street, City, State & Zip) Taralyn Young 2 Short Hills Road Andover, NJ 07621	
Number of Pieces by Sender		Total Number of Pieces Received at Post Office	
Postmaster, Per (Name of Receiving Employee)			

Severe Weather Causing Service Impacts in Louisiana [More \(us/en/service-alerts.page?id=alert1\)](#)

in (https://www.ups.com/esso/login?loc=en_US&returnto=https%3A%2F%2Fwww.ups.com%2Ftrack%3Floc%3Den_US%2Fredirect) |
Up (https://www.ups.com/doapp/SignUp?loc=en_US&returnto=https%3A%2F%2Fwww.ups.com%2Ftrack%3Floc%3Den_US%2Fredirect) |
to @UPS (https://www.ups.com/dropoff?loc=en_US) | United States - English | My Profile



Tracking Details

1ZF089102210124559

Updated: 07/15/2019 9:10 A.M. EST

Out for Delivery Today



Scheduled Delivery

Monday
07/15/2019

Estimated Time

10:30 A.M.

View delivery time window with UPS My Choice®. [Continue.](#) > (https://www.ups.com/doapp/SignInMyChoice?loc=en_US&returnto=https%3A%2F%2Fwww.ups.com%2Ftrack%3Floc%3Den_US%2Fredirect)

Send Updates

Delivery Options

Ship To
BYRAM TOWNSHIP, NJ, US

We care about the security of your package. [Log in\(\)](#) to get more details about your delivery.

Shipment Progress

Overview Detailed View

	Date	Location
Delivery	-	-
Out for Delivery	07/15/2019 8:34 A.M.	Budd Lake, NJ, United States
Shipped	07/12/2019 6:33 P.M.	Hamilton, NJ, United States

Ask UPS



Tracking Details

1ZF089182210124559

Updated: 11/12/2019 2:38 P.M. EST

Delivered



Delivered On

Monday
07/15/2019

Delivery Time

at 9:30 A.M.

Send Updates

Delivered To

BYRAM TOWNSHIP, NJ, US

Left At: Front Door

Received By: DRIVER RELEASE

Proof of Delivery

Ask UPS

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZF089182210124559

Weight

0.00 LBS

Service

UPS Next Day Air®

Shipped / Billed On

07/18/2019

Delivered On

07/15/2019 9:30 A.M.

Delivered To

BYRAM TOWNSHIP, NJ, US

Received By

DRIVER RELEASE

Left At

Front Door

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/12/2019 2:38 P.M. EST



STATE OF NEW JERSEY

**In the Matter of Steven Ramzi,
Weehawken Township, Department
of Public Safety**

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2020-1017

Request for Reconsideration

ISSUED: DECEMBER 5, 2019 (BW/NFA)

Steven Ramzi, a Police Officer with Weehawken Township, Department of Public Safety, represented by Jeffrey S. Ziegelheim, Esq., requests reconsideration of the attached decision by the Director, Division of Appeals and Regulatory Affairs, rendered on September 16, 2019, denying his request for a hearing regarding his removal.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) dated January 16, 2019 to Ramzi, imposing removal. The FNDA was sent certified and regular mail. Ramzi's attorney filed an appeal regarding the appellant's removal which was postmarked August 15, 2019. His request for a hearing was denied by the Director of the Division of Appeals and Regulatory Affairs on September 16, 2019, since the appeal was not perfected within the 20-day time frame. See *N.J.S.A. 11A:2-15*.

In his petition for reconsideration, the appellant's attorney submits documentation including certifications from himself and Anthony Berinato, a paralegal employed by the attorney's law office. Ziegelheim states, in pertinent part, that Ramzi texted him a copy of his FNDA on January 23, 2019, stating that he received it at home the night before on January 22, 2019. Berinato states, in pertinent part, that at the direction of Ziegelheim, an appeal letter "was sent Certified Mail, Return Receipt Requested," to both the Civil Service Commission (Commission) and the Office of Administrative Law (OAL), on February 11, 2019. The copy of that letter he includes with his certification states "VIA CERTIFIED MAIL" (see attached). He indicates that Ziegelheim asked him to track the certified

mail receipt to ensure the letter was delivered. At this time, he discovered that the boxes containing Ramzi's documents had been damaged and the receipts could not be located due to the office relocating. He also states that on August 12, 2019, he spoke to staff in this agency who indicated that they did have the February 11, 2019 appeal letter but still needed the \$20 appeal fee, and he was also asked to resubmit all documents. He then resubmitted the appeal letter on August 20, 2019. As evidence, he attaches to his certification the letter he claims he resubmitted, dated February 11, 2019, clearly indicating "VIA REGULAR MAIL" and containing his handwritten notation "re-sent on 8/20/19 – AJB"¹ (see attached). Finally, he states that upon Ziegelheim's completion of the appeal form, he sent the information and check to the Commission on August 28, 2019.

In response, the appointing authority, represented by David F. Corrigan, Esq., argues that *N.J.A.C. 4A:2-2.8(b)* states that if the appointing authority fails to provide the employee with a Final Notice of Disciplinary Action, an appeal may be made directly to the Commission within a reasonable time. He also 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. Corrigan certifies that he did not receive anything from Ziegelheim relative to this case until he filed the motion for reconsideration and maintains that since Ramzi's appeal was untimely, his request for a hearing should be denied.

In reply to Corrigan's submission, Ziegelheim states that Ramzi did not receive the FNDA until late on January 22, 2019, and the appeal needed to be postmarked by February 12, 2019.

It is noted that neither the Commission nor the OAL has record of receiving the purported appeal filed on February 11, 2019, until it was included with the filing postmarked August 15, 2019. Moreover, the original copy of the February 11, 2019 letter received by the Commission in the submission postmarked August 15, 2019, indicates "VIA REGULAR MAIL" (see attached letter with original docket number² written by Commission Staff and postmarked envelope).

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

¹ It is unclear as to whether the initials are AJB or ASB.

² It is noted that the Director's September 19, 2019 decision indicates an incorrect original docket number. The actual docket number of the initial appeal was 2020-634. It is also noted that any appeal with a docket number starting with "2020" would have been received no earlier than July 1, 2019. In this regard, the year designation for Commission appeals indicates the fiscal year received, which, for the State of New Jersey, begins on July 1 of each year.

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 any appeal from adverse actions specified in *N.J.S.A.* 11A:2-13 shall be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. See also, *N.J.A.C.* 4A:2-2.8(a).

The record reflects that Ramzi admittedly received the FNDA on January 22, 2019, and his letter of appeal was received by the Commission was postmarked August 15, 2019. In his certification, Berinato states that he mailed the letter of appeal via certified mail on February 11, 2019. Neither the Commission nor the OAL received this letter until August 2019. In failing to produce the certified mail receipts for those letters, Berinato presents that the boxes containing Ramzi's documents had been damaged and the receipts for the certified mailing could not be located due to the office relocating.

However, for the reasons set forth below, the Commission is unpersuaded. In his certification, Berinato provides two copies of the appeal letter he purportedly sent dated February 11, 2019 via certified mail. The first copy of that letter clearly states, "VIA CERTIFIED MAIL" and is the copy that Berinato indicates in his certification that he sent in February 2019. As stated previously, neither this agency nor OAL received that appeal at that time. Regardless, with Berinato's explanation above regarding the issues with the receipt, the Commission would normally be persuaded that the appeals were originally sent as indicated in February 2019 and both copies were inexplicably not received by it or OAL or returned to the sender. However, there is evidence in the record belying these assertions. Namely, with the appeal filed on August 15, 2019, the copy of the same purported letter sent in February 2019 clearly states "VIA REGULAR MAIL." Moreover, the second copy of the letter Berinato presents in his certification which he allegedly sent in February 2019 and resent in August 2019 with his written notation also clearly states "VIA REGULAR MAIL." Moreover, while Berinato indicates that he spoke with Commission staff on August 12, 2019, who indicated that they had the February 11, 2019 letter, the date that conversation happened is unlikely to have been that date. As stated previously, there is no record of the Commission receiving the February 11, 2019 letter prior to its submission with the appeal postmarked August 15, 2019. More likely is that Berinato either spoke with staff on that date but was not told that staff had the February 11, 2019 appeal, or the conversation actually occurred after the appeal was received sometime after August 15, 2019. In this regard, the required \$20 appeal fee was not included with that submission and was subsequently sent, in an envelope postmarked September 4, 2019 (contrary to the August 28, 2019 date indicated by Berinato - see attached postmarked envelope).

Given these conflicts, the only logical and reasonable conclusion is that the original letters were either sent via regular mail and lost in transit to the Commission and OAL, or more likely, that the original letters were never sent in February.³ In this regard, based on Berinato's representation, which has been sufficiently rebutted above, that they were originally sent via certified mail, along with what appears now to be non-authentic copies of the February 11, 2019 letter inscribed "VIA CERTIFIED MAIL," the Commission can only conclude the letter was never actually sent in February. While it is Ramzi who is the unfortunate party in this matter, there is no way for the Commission to deem his August 15, 2019 appeal timely. In this regard, the statutory time frame for such an appeal under *N.J.S.A. 11A:2-15* is 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). Further, *N.J.A.C. 4A:2-2.8(a)* states, in pertinent part, that "[a]n appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee." As Ramzi received the FNDA on January 22, 2019, his appeal postmarked August 15, 2019 is untimely.

ORDER

Therefore, it is ordered that this request be denied.

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 4TH DAY OF DECEMBER, 2019

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

³ While the Commission is seriously concerned with how these documents came to be produced, it makes no further findings in that regard, as such is unnecessary in the deciding of this matter.

**Inquiries
and
Correspondence**

**Christopher S. Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachments

**c: Steven Ramzi
Jeffrey S. Ziegelheim, Esq.
David F. Corrigan, Esq.
Kelly Glenn
Beth Wood w/file**

DECISION RENDERED BY THE
DIRECTOR, DIVISION OF APPEALS
AND REGULATORY AFFAIRS
ON *SEPTEMBER 16, 2019*

Christopher S. Myers
CHRISTOPHER S. MYERS
DIRECTOR

Inquiries
And
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Hearings Unit
PO Box 312
Trenton, NJ 08625-0312

c: Steven Ramzi
Jeffrey S. Ziegelheim, Esq.
Weehawken Township, Dept. of Public Safety
Agency Services
Pensions
Kurt Schwartz (via e-mail)

Dvorak & Associates, LLC
Attorneys-at-Law

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Certified by the Supreme Court of New Jersey as a Civil Trial Attorney
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909 Belmont Avenue, Ste. 2, North Haledon, NJ 07508
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www.dvorakandassociates.com

February 11, 2019

VIA CERTIFIED MAIL
Civil Service Commission
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
P.O. Box 312
Trenton, NJ 08625-0312

VIA CERTIFIED MAIL
Office of Administrative Law
33 Washington Street
Newark < N.J. 07102

Re: Removal Appeal-Weehaken Police Officer Steven Ramzi

Dear Sir/Madam:

Please be advised that I represent Steven Ramzi, a police officer with the Weehawken Police Department. Please accept this correspondence as my clients formal request for an appeal to the Merit System Board resulting from a Final Notice of Disciplinary Action dated January 16, 2019. The grounds for the appeal is that the decision at the local level is faulty, against the manifest weight of the evidence presented and is contrary to the well settled law of this State. A copy of the Final Notice of Disciplinary Action is attached hereto.

Please docket same and forward to the Office of Administrative Law for trial of all issues.

Respectfully,

/s/ Jeffrey S. Ziegelheim

Jeffrey S. Ziegelheim

JZ:ajb

Enclosure

cc: David Corrigan, Esq.
Steven Ramzi

Dvorak & Associates, LLC
Attorneys-at-Law

Lori A. Dvorak

Certified by the Supreme Court of New Jersey as a Civil Trial Attorney

Marc D. Mory

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February 11, 2019

VIA REGULAR MAIL

Civil Service Commission
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
P.O. Box 312
Trenton, NJ 08625-0312

re-sent on 8/20/19
-ASB

VIA REGULAR MAIL

Office of Administrative Law
33 Washington Street
Newark<N.J. 07102

Re: Removal Appeal-Weehaken Police Officer Steven Ramzi

Dear Sir/Madam:

Please be advised that I represent Steven Ramzi, a police officer with the Weehawken Police Department. Please accept this correspondence as my clients formal request for an appeal to the Merit System Board resulting from a Final Notice of Disciplinary Action dated January 16, 2019. The grounds for the appeal is that the decision at the local level is faulty, against the manifest weight of the evidence presented and is contrary to the well settled law of this State. A copy of the Final Notice of Disciplinary Action is attached hereto.

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Respectfully,

/s/ Jeffrey S. Ziegelhelm

Jeffrey S. Ziegelhelm

JZ:ajb

Enclosure

cc: David Corrigan, Esq.
Steven Ramzi

2020-534

Dvorak & Associates, LLC
Attorneys-at-Law

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February 11, 2019

VIA REGULAR MAIL
Civil Service Commission
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
P.O. Box 312
Trenton, NJ 08625-0312

VIA REGULAR MAIL
Office of Administrative Law
33 Washington Street
Newark, N.J. 07102

Re: Removal Appeal-Wechaken Police Officer Steven Ramzi

Dear Sir/Madam:

Please be advised that I represent Steven Ramzi, a police officer with the Weehawken Police Department. Please accept this correspondence as my clients formal request for an appeal to the Merit System Board resulting from a Final Notice of Disciplinary Action dated January 16, 2019. The grounds for the appeal is that the decision at the local level is faulty, against the manifest weight of the evidence presented and is contrary to the well settled law of this State. A copy of the Final Notice of Disciplinary Action is attached hereto.

Please docket same and forward to the Office of Administrative Law for trial of all issues.

Respectfully,

/s/ Jeffrey S. Ziegelheim

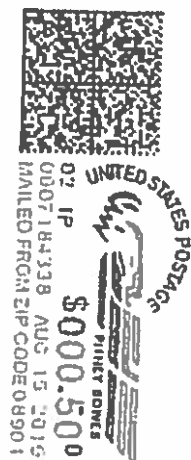
Jeffrey S. Ziegelheim

JZ:njb
Enclosure
cc: David Corrigan, Esq.
Steven Ramzi

Dvorak & Associates, LLC
ATTORNEYS AT LAW
467 Middlesex Avenue
Metuchen, NJ 08840

Civil Service Commission
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
P.O. Box 312
Trenton, NJ 08625-0312

08625\$0312 B001



2020-534 (Steven Ramzi)

September 9, 2019

Docket Number

SP

Due Date

Jeffrey S. Ziegelheim, Esq.
Dvork & Associates, LLC
390 George Street, 8th Floor
New Brunswick, NJ 08901

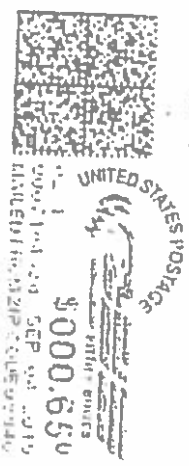
Please send us Steven Ramzi's preliminary notice, final notice, and the appeal form enclosed. Please also send a copy of all these documents to the Office of Administrative Law. Thank you.

August 20, 2019

Dvork & Associates, LLC
ATTORNEYS AT LAW
467 Middlesex Avenue
Metuchen, NJ 08840



1009 2103322920



Civil Service Commission
Division of Appeals and Regulatory Affairs
P.O. Box 312
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