



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>TH</sup> DAY OF NOVEMBER, 2020

*Deirdre L. Webster Cobb*

Deirdre L. Webster Cobb  
Acting Chairperson  
Civil Service Commission

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attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO.: CSV 03143-19

AGENCY DKT. NO.: 2019-1971

**IN THE MATTER OF RICHARD SENDLINGER,  
DEPARTMENT OF HUMAN SERVICES,  
WOODBINE DEVELOPMENTAL CENTER.**

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**William A. Nash, Esq, for petitioner (The Nash Law Firm, L.L.C., attorneys)**

**Dipti Vaid Dedhia, Deputy Attorney General, for respondent, New Jersey  
Department of Human Services, Woodbine Developmental Center (Gurbir  
S. Grewal, Attorney General, State of New Jersey)**

Record closed: February 18, 2020

Decided: October 2, 2020

**BEFORE ELAINE B. FRICK, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Richard Sendlinger, was employed as a Human Services Assistant by respondent, Department of Human Services (DHS). He appeals his removal, effective February 3, 2019, which is the second Final Notice of Disciplinary Action (FNDA), in a series of four disciplinary actions, all resulting in removal from his position of employment. DHS filed a motion for summary decision, asserting that petitioner did not

appeal the fourth FNDA, rendering moot his three pending appeals and warranting dismissal of the matters.

### PROCEDURAL HISTORY

Appellant was served on January 28, 2019, with an FNDA for his removal effective February 3, 2019, which he timely appealed. The matter was transmitted to the Office of Administrative Law (OAL) simultaneously with two other removal appeals, where they were filed on March 5, 2019, to be heard as contested matters. N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13. Respondent initially filed legal briefs, dated July 3, 2019, received on July 9, 2019, asserting petitioner's three pending OAL removal appeals should be dismissed. Respondent filed its Notice of Motion to Dismiss on July 15, 2019. The motion was held in abeyance while discovery was completed.

Appellant's opposition letter brief was filed on December 10, 2019. Respondent's letter brief reply was filed on December 16, 2019. Appellant filed a sur reply on December 16, 2019. On January 9, 2020, DHS filed a letter brief reply to appellant's sur reply. Appellant's letter of further opposition was submitted on January 23, 2020. During a telephonic conference on February 18, 2020, counsel confirmed their submissions were complete and a decision on the motion may be rendered on the papers.

On March 9, 2020, the Governor of the State of New Jersey issued Executive Order 103, declaring a public health emergency, due to the COVID-19 pandemic. The Governor's Executive Order 127 authorized the extension of time for the completion of administrative decisions, after the public health emergency. Subsequent Executive Orders have extended the public health emergency, which continues as of the date of this initial decision.

## FACTUAL DISCUSSION AND FINDINGS

The following undisputed facts were gleaned from the written submissions of the parties, which I adopt and **FIND** as **FACTS**:

Richard Sendlinger was employed by DHS at Woodbine Developmental Center (Woodbine) as a Human Services Assistant. He received a Preliminary Notice of Disciplinary Action (PNDA) on September 24, 2018, alleging a violation of Administrative Order A8.5, unreasonable excuse for lateness more than fifteen minutes; N.J.A.C. 4A:2-2.3(a)4 chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)6 conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)12 other sufficient cause. The charges arose from petitioner being fifteen minutes late to work on June 3, 2018, and June 10, 2018; forty five minutes late on July 10, 2018; thirty minutes late on July 15, 2018, and July 21, 2018; ninety minutes late on July 22, 2018; thirty minutes late on July 29, 2018; fifteen minutes late on August 22, 2018 and August 28, 2015; and thirty minutes late on September 11, 2018, all considered unauthorized lateness.

Appellant received a second PNDA on September 24, 2018, alleging a violation of Administrative Order A1.4, absent from work as scheduled without permission and without giving proper notice of intended absence; N.J.A.C. 4A:2-2.3(a)4 chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)6 conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)12 other sufficient cause. The charges arose from absences considered unauthorized on June 4, 2018, and August 13, 2018, when petitioner called late to report he would be absent on those days.

Appellant received a third PNDA on October 24, 2018, alleging a violation of charge A2.4, absent from work as scheduled without permission but with giving proper notice of intended absence, for having left work on July 10, 2018, and having failed to provide required proof of illness within five days of the absence. Petitioner requested a departmental hearing for each of the three PNDA's. He participated in the departmental hearing conducted on January 16, 2019, for all three PNDA's. Each matter resulted in an FNDA for his removal.

Appellant requested appeals for the three FNDAs, which were simultaneously transmitted to the OAL. The first FNDA, for removal effective February 2, 2019, was docketed as CSV 03144-2019, CSC docket number 2019-1970. The second FNDA, for removal effective February 3, 2019, was docketed as CSV 03143-2019, CSC docket number 2019-1971. The third FNDA, for removal effective February 4, 2019, was docketed as CSV 03144-2019, CSC docket number 2019-1970.

On January 14, 2019, appellant personally received a fourth PNDA, charging him with N.J.A.C. 4A:2-2.3(a)4 chronic or excessive absenteeism or lateness; N.J.A.C. 4A:2-2.3(a)6 conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)12 other sufficient cause; and A8.6 unreasonable excuse for lateness more than fifteen minutes. The incidents giving rise to the charges occurred on October 23, 2018, November 17, 2018, and December 1, 2018, when appellant was late for work by thirty minutes and fifteen minutes, respectively, which were considered unauthorized absences. Appellant did not request a departmental hearing after receipt of that PNDA. An FNDA issued on February 28, 2019, sustaining the charges and removing appellant from employment effective February 5, 2019. The fourth FNDA for appellant's removal was not appealed.

Respondent seeks summary decision, dismissing the three pending removal appeals, asserting that appellant's failure to appeal the fourth FNDA renders the pending matters moot, because he is effectively removed from his position, as per the fourth FNDA.

Respondent's representative, Laura Adams, Personnel Assistant ERO at Woodbine, certified that appellant's primary residence on file with Woodbine was the address utilized to send him the fourth FNDA. She certified that it is customary practice that when an employee cannot be served personally, Woodbine will send notices via regular mail and certified mail, return receipt requested, to the employee's primary residence. She certified that on February 28, 2019, appellant was sent the fourth FNDA via regular mail and certified mail, to his primary address. The regular mail was never returned to Woodbine as undeliverable. The certified mail return receipt card was

received by Woodbine, with a signature to indicate the certified mail was delivered. There is no printed name in the box beneath the signature on the card.

Appellant asserts that he never received the fourth FNDA and therefore was not able to appeal same in a timely manner. Appellant certified that the signature on the return receipt card is not his signature. He certified he showed the signature card to everyone at his household and no one has that signature. He asserts he never received the FNDA. Had he received it, he would have appealed it, just as he appealed the three prior FNDAs.

### **LEGAL ANALYSIS AND CONCLUSION**

In an administrative law matter, a “party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). The motion “shall be served with briefs and with or without supporting affidavits” and the decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). The non-moving party will prevail if they “set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Id.

This standard for a summary judgment motion is set forth in New Jersey Court Rule 4:46-2, which is substantially equivalent to an administrative law summary decision motion. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court stated:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

Brill, 142 N.J. at 540.

“The ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill at 540, citing Anderson v Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Summary judgment, like summary decision, “is designed to provide a prompt, businesslike and inexpensive method of disposing of any case which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial.” Brill at 530, citations omitted. “An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” In re Farmers’ Mutual Fire Assurance Association of New Jersey, 256 N.J. Super. 607, 618 (App. Div. 1992).

A civil service employee’s rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1, et. seq.; N.J.A.C. 4A:1-1.1. The objective of the Act is to attract qualified individuals to public service positions. Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 145 (1965). The Act is to be liberally construed to attain appointments to positions based upon merit, with broad tenure protection to all appointees. Id.

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, including suspension or removal, depending upon the incident. N.J.S.A. 11A:2-6; N.J.A.C. 4A:2-2.2, 4A:2-2.3. The appointing authority employer shall follow steps to appropriately advise an employee, and afford them due process, before imposing major discipline, such as removal from employment. N.J.A.C. 4A:2-2.5(a). The employee shall be served with a PNDA, which sets forth the charges and a statement of facts supporting the charges. Id. If the employee wants to contest major discipline, they may request a departmental hearing, within five days of receipt of the PNDA. N.J.A.C. 4A:2-2.5(c). If no request is made, the departmental hearing may be considered waived and the appointing authority employer may issue an FNDA. Id.

The departmental hearing shall be held within thirty days of the PNDA, unless waived by the employee or on a later day agreed to by the parties. N.J.A.C. 4A:2-



2.5(d). The departmental hearing is held “before the appointing authority or its designated representative” and the “employee may be represented by an attorney or authorized union representative.” N.J.A.C. 4A:2-2.6(a); 4A:2-2.6(b). The appointing authority “shall make a decision on the charges and furnish the employee either by personal service or certified mail” with an FNDA, within twenty days of the hearing, or at a time as agreed to by the parties. N.J.A.C. 4A:2-2.6(d). An appeal of the FNDA by the employee shall be filed with the Civil Service Commission “within 20 days of receipt of the Notice by the employee.” N.J.A.C. 4A:2-2.8(a).

An FNDA may be served personally or by certified mail. N.J.A.C. 4A:2-2.6(d). New Jersey Court Rule 1:5-4 provides that if service is required by certified or registered mail, and that mail is refused, service may be made by ordinary mail sent simultaneously with the certified mail. If service is done by simultaneous mailing of ordinary mail and certified mail, service shall be considered complete upon mailing of the ordinary mail. R. 1:5-4(b). “New Jersey cases have recognized a presumption that mail properly addressed, stamped, and posted was received by the party to whom it was addressed.” Ssi Medical Services, Inc. v. HHS, Division of Medical Assistance & Health Services, 146 N.J. 614, 621 (1996), citations omitted. This presumption is rebuttable and “may be overcome by evidence that the notice was never in fact received.” Szczesny v. Vasquez, 71 N.J. Super. 347, 354 (App. Div. 1962).

Here, appellant contends that there is a genuine issue of material fact in dispute because in construing the facts most favorable to him, as the non-moving party, he disputes having been served with the FNDA. He asserts that he was not served with the FNDA because it is not his signature on the return receipt card. There is no other evidence before me to support the assertion that although there is a signature purportedly by appellant on the return receipt card, that it is not his signature, so he never received the FNDA. He has not asserted that no one else in his household signed for the certified mail. He artfully stated that he showed the return card to everyone in his household and “no one has that signature.” He does not contest that the wrong address was used to mail him the FNDA by certified mail and ordinary mail. Someone signed the certified return receipt card at the primary residential address used for the mailing. Appellant has not asserted that he never received the ordinary mail.

Appellant argues that his contention that he did not receive the FNDA is supported by the fact that he never filed an appeal. He contends it defies logic that he would not have filed an appeal of the fourth FNDA, when he appealed the other three. That is contradictory to the circumstances. All four PNDAs were personally served upon him. He requested departmental hearings for the first three PNDAs. He never requested a departmental hearing on the fourth PNDA. After the fourth FNDA issued, he never requested an appeal of that FNDA. I cannot accept his asserted logical reasoning that he would have acted similarly under the circumstances and filed an appeal of the fourth FNDA, when he did not act similarly with respect to requesting a departmental hearing for the fourth PNDA personally served upon him, as he did for the three prior matters. The presumption remains that appellant received notice of the FNDA at his primary residence. I **CONCLUDE** that appellant has not overcome the presumption that the FNDA was received by him. I thus **CONCLUDE** there is no genuine issue of material fact in dispute, and the matter is ripe for adjudication.

The twenty-day statutory time limitation for filing an administrative disciplinary appeal is jurisdictional and mandatory. See Borough of Park Ridge v. Salimone, 21 N.J. 28, 46 (1956). "When a statutory time limitation for filing an administrative appeal is mandatory and jurisdictional, it may be extended only by the legislature, not by an agency or the courts." Mesghali v. Bayside State Prison, 334 N.J. Super. 617, 621 (App. Div. 2000).

Untimely appeals of FNDAs are "fatal" procedural failures because an "employee is statutorily barred from filing an untimely administrative appeal." Shaquaya Lane v. Trenton Psychiatric Hospital, CSV 08595-11, Initial Decision (July 27, 2012), <<http://njlaw.rutgers.edu/collections/oal>>, citing N.J.S.A. 11A:2-15; Monice Lawrence v. Montclair State University, OAL Dkt. No. CSV 15428-18, Initial Decision (October 10, 2019) <<http://njlaw.rutgers.edu/collections/oal>>. Summary decision has thus been granted, based upon the doctrine of mootness, where a civil service employee has appealed one, but not all, FNDAs that were issued. Tialynn Johnson v. Department of Human Service, Woodbine Developmental Center, CSV 12438-11, Initial Decision (August 8, 2012), <<http://njlaw.rutgers.edu/collections/oal>> (finding the appeal of a

disciplinary matter moot where appellant timely appealed one FNDA but failed to appeal the other issued FNDAs).

The United States Constitution limits the judiciary to the adjudication of actual cases and controversies. U.S. Const. art III, § 2. “Simply stated, a case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” Powell v. McCormack, 395 U.S. 486, 496 (1969). “[A]n actual controversy must exist not only at the time the complaint is filed, but through all stages of the litigation.” Already, LLC v Nike, Inc., 568 U.S. 85, 90-91 (2013). Mootness thus occurs when the original issue raised by the parties who initiated the litigation has been resolved. Comando v. Nugiel, 426 N.J. Super. 203, 219, (App. Div. 2014), citing DeVesa v. Dorsey, 134 N.J. 420, 428 (1993). If the requested decision “can have no practical effect on the existing controversy”, the matter is moot. Redd v. Bowman, 223 N.J. 87, 104 (2015), citing Deutsche Bank National Trust Co. v. Mitchell, 422 N.J. Super. 214, 221-222 (App. Div. 2011). If a case involves a hypothetical issue which a judgment could not grant effective relief or where the parties do not have “concrete adversity of interest”, the matter should be deemed moot and no decision is required to be rendered. Cinque v. New Jersey Department of Corrections, 261 N.J. Super. 242, 242 (App. Div. 1993), citing Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976).

In this matter, appellant was removed from his position effective February 5, 2019, by operation of law, having failed to appeal the fourth FNDA. It is undisputed that he did not file an appeal of the fourth FNDA. Even if he were successful in this, or either of the other two pending appeals of his removal, he has no position of employment for him to be reinstated. Therefore, I **CONCLUDE** that appellant's appeals are rendered moot, and respondent is entitled to summary decision dismissing this, and appellant's other two pending appeals.

### **ORDER**

It is **ORDERED** that respondent's motion for summary decision is **GRANTED**. It is **ORDERED** that appellant's appeal shall be **DISMISSED** as moot.

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, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO 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.



October 2, 2020  
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

EBF/dm

**APPENDIX**

**DOCUMENTS CONSIDERED:**

Respondent's letter briefs, filed July 3, 2019

Notice of Motion to Dismiss by respondent, filed July 15, 2019

Appellant's oppositional letter brief, filed December 10, 2019

Respondent's letter brief reply, filed December 16, 2019

Appellant's sur reply, filed December 16, 2019

Respondent's letter brief reply to sur reply, filed January 9, 2020

Appellant's letter of further opposition, filed January 23, 2020