



STATE OF NEW JERSEY

In the Matter of Arturo Gonzalez
Town of West New York

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

CSC DKT. NO. 2019-134
OAL DKT. NO. CSV 10446-18

ISSUED: MAY 22, 2020 **BW**

The appeal of Arturo Gonzalez, Mechanic, Town of West New York, removal effective February 20, 2018, on charges, was heard by Administrative Law Judge Kimberly A. Moss, who rendered her initial decision on April 17, 2020. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on May 20, 2020, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission affirms the granting of the appointing authority's motion for summary decision and dismisses the appeal of Arturo Gonzalez.

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 20TH DAY OF MAY, 2020

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

SUMMARY DECISION

OAL DKT.NO. CSV 10446-18

AGENCY DKT. NO. 2019-134

**IN THE MATTER OF ARTURO
GONZALEZ, TOWN OF WEST NEW YORK
DEPARTMENT OF PUBLIC WORKS**

Arturo Gonzalez, pro se

**Andres Acebo, Esq., for Respondent, (DeCotus, Fitzpatrick, Cole & Giblin
LLP, attorneys)**

Record Closed: March 12, 2020

Decided: April 17, 2020

BEFORE KIMBERLY A. MOSS, ALJ:

This matter having been opened before the Office of Administrative Law by Andres Acebo, Esq., attorney for respondent Town of West New York (West New York) on motion for to summarily dismiss on March 9, 2020. Petitioner filed objection to the facts of respondent's motion on March 12, 2020.

By way of background, the matter was filed at the Office of Administrative Law on July 23, 2018. A telephone prehearing conference was held on August 2018. Several telephone conferences were held thereafter, the last one being February 25, 2020.

Petitioner's former attorney, Penelope A. Scudder of Weissman & Mintz filed a motion to be relieved as counsel on December 9, 2019. Schudder was relieved as counsel on December 10, 2019. Gonzalez has not retained substitute counsel. He has been assisted by Janelle Blackmon of CWA Local 1040.

FACTUAL DISCUSSION

Petitioner was employed by West New York. On August 31, 2017, he sustained an injury while working. Gonzalez took a leave of absence as a result of the injury and collected Workers Compensation.

A preliminary Notice of Disciplinary Action was served on Gonzalez on February 20, 2018, requesting his termination for abusing leave benefits. A hearing was held on April 23, 2018, which resulted in a Final Notice of Disciplinary Action removing Gonzalez from employment effective February 20, 2018.

The parties were negotiating a settlement which Gonzalez refused to execute. At that time Scudder withdrew as Gonzalez counsel. West New York withdrew the discipline and agreed to reinstate Gonzalez pending a fitness for duty exam. Gonzalez was medically cleared to return to work on December 23, 2019. West New York memorialized the withdrawal of Gonzalez' discipline and his reinstatement by letter dated January 8, 2020, a copy of which was sent to Gonzalez. Gonzalez has been reinstated to his Civil Service title and has returned to work. Gonzalez does not dispute that the discipline has been withdrawn or that he has returned to work. His concern is the loss of back pay from February 2018 to January 2020. On a conference call it was explained to Gonzalez that he has other forums to challenge the loss of back pay through his union.

LEGAL ANALYSIS AND CONCLUSION

Respondent seeks to summarily dismiss petitioner's claim. The rules governing motions for summary decision in an OAL matter are embodied N.J.A.C. 1:1-12.5. These provisions mirror the language of Rule 4:46-2 and the New Jersey Supreme Court's decision in Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67 (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary judgment should be based on the papers presented as well as any affidavits, which may have been filed with the application. In order for the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 523 (1995), set the standard to be applied when deciding a motion for summary judgment. Therein the Court stated:

The determination whether there exists a genuine issue with respect to a material fact challenged 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 fact finder to resolve the alleged disputed issue in favor of the non-moving party.

There are no material issues of fact in this matter. West New York withdrew the discipline against Gonzalez which was the basis for this matter. Since the discipline has been withdrawn and Gonzalez has returned to work, this matter is moot. Gonzalez has other avenues to address the loss of back pay through the union.

Having reviewed the West New York's motion and appellant's opposition, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law.

Accordingly, it is hereby **ORDERED** that the respondent's motion for summary decision be and hereby is **GRANTED**.

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.

April 17, 2020



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

April 17, 2020

Date Mailed to Parties:

April 17, 2020

ljb