

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF JANUARY, 2021

Deirdre L. Webster Cobb

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Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
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Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 05507-20

AGENCY DKT. NO. 2020-2178

**IN THE MATTER OF TRACY B. LEE
ESSEX COUNTY DEPARTMENT OF
HEALTH AND REHABILITATION.**

Tracy B. Lee, pro se appellant

**Sylvia Hall, Assistant County Counsel for respondent (Office of the County
Counsel)**

Record Closed: December 12, 2020

Decided: December 17, 2020

BEFORE ERNEST M. BONGIOVANNI, ALJ:

Petitioner appealed her termination, effective February 4, 2020, after a 90-day working test probationary period from November 4, 2019 to February 4, 2020. Petitioner's performance had been assessed as "unsatisfactory." On or about February 21, 2020, her appeal to the Civil Service Commission was docketed, and on May 11, 2020, it was transmitted to the Office of Administrative Law (OAL)

A Notice of Docketing at the OAL was sent to the appellant and to the Assistant County Counsel for the Essex County Department of Health and Rehabilitation on June

10, 2020. A prehearing conference was attempted for July 16, 2020. The Office of the County Counsel requested more time as they had just become aware of the filing. On September 29, the OAL sent an email to appellant and to Assistant County Counsel to hold a prehearing conference on October 2 at 1:30 p.m. Both replied they would be available. At the conference, appellant did not appear, and it was rescheduled for 2:00 p.m. During the conference, the Assistant County Counsel advised petitioner that the Civil Service Commission had not transmitted her pleadings to his office and asked that she forward them to his office which appellant agreed to do so no later than November 2, 2020. This and other procedures were incorporated into a Prehearing Order issued on October 5, 2020. A hearing date was set for January 20, 2021.

On December 2, 2020, the respondent filed its motion, with Certification and letter brief, to dismiss the complaint with prejudice citing, among other things, the appellant's failure to comply with the Prehearing Order by failing to deliver the aforesaid pleadings, filed months earlier with the Civil Service Commission, by November 2, 2020. The certification notes that no explanation for the failure by petitioner was given; petitioner had not availed herself to obtaining counsel, and as of the date of filing, petitioner had still not complied with the Prehearing Order. Respondent argues the dismissal with prejudice is warranted by R 4:37-2(a) (failing to comply with any Order) and by R. 4:6-2 (failure of service of process or failure to state a claim upon which relief may be granted.)

On December 7, 2020, appellant sent the Assistant County Counsel an email, later that day forwarded by her to the OAL, in which the appellant stated that "after talking with a union rep..." and "with the death of my father life as it is now...I am in agreement with the motion to dismiss filed by Sylvia Hall."

Also, as of this date, appellant has failed to file with the OAL any responsive pleading to the motion.

Based upon all of the foregoing, I **FIND** that this matter should be and is hereby **DISMISSED WITH PREJUDICE**.

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.

Ernest M. Bongiovanni

December 17, 2020

DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

December 17, 2020

Date Mailed to Parties:

December 17, 2020

id