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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 16953-19

AGENCY DKT. NO. 2020-1365

**IN THE MATTER OF MICHAEL JEAN BAPTISTE,
TOWNSHIP OF WEST ORANGE, DEPARTMENT
OF PUBLIC WORKS,**

Michael Jean Baptiste, petitioner pro se

Kenneth Rosenberg, Esq. for Respondent (Fox Rothchild, attorneys)

BEFORE: Nanci G. Stokes, ALJ

Record Closed: December 29, 2020

Decided: January 4, 2021

STATEMENT OF THE CASE

Jean Baptiste (Baptiste) appeals his October 25, 2019, removal from employment with the Township of West Orange (West Orange). An Order dated October 20, 2020, directed Baptiste to supply discovery to West Orange by November 30, 2020, and he did not. Is the sanction of dismissal appropriate for his failure to comply? Yes. Under N.J.A.C. 1:1-10.5 and 1:1-14.4, an Administrative Law Judge may dismiss a claim when a party unreasonably fails to comply with a discovery order.

PROCEDURAL HISTORY AND FACTUAL DISCUSSION

On August 23, 2019, the Township of West Orange (West Orange) served Baptiste with a Preliminary Notice of Disciplinary Action (PNDA) seeking his removal from employment. In response, Baptiste requested an administrative hearing before a hearing officer.

On September 26, 2019, West Orange conducted a hearing, and the hearing officer sustained the charges resulting in West Orange's Final Notice of Disciplinary Action (FNDA), terminating Baptiste effective October 25, 2019. Specifically, the FNDA sustained charges against Baptiste for several violations under N.J.A.C. 4A:2-2.3(a), and West Orange's policies and procedures.

On November 7, 2019, Baptiste appealed the termination, and the Civil Service Commission (Commission) received the appeal on November 9, 2019, that the Office of Administrative Law (OAL) filed on November 26, 2019.

On January 23, 2020, West Orange moved for partial summary decision, and on April 14, 2020, I granted the relief requested.

On June 8, 2020, I conducted a prehearing conference, and on June 22, 2020, I issued a prehearing order providing a discovery end date of September 8, 2020.

On June 26, 2020, West Orange served a request to produce documents and answers to interrogatories. Under N.J.A.C. 1:1-10.4(c), responses were due on July 13, 2020, and Baptiste requested an extension from West Orange until July 29, 2020, but he submitted no reply. I conducted a telephone conference on August 12, 2020, to discuss discovery issues and granted Baptiste an additional two-week extension.

On August 19, 2019, Baptiste supplied responses to discovery.

On August 27, 2020, West Orange sent a letter advising Baptiste's discovery responses were insufficient and non-responsive.

On September 9, 2020, I conducted a prehearing conference to discuss discovery issues and granted Baptiste an extension until September 23, 2020, to respond to the deficiency letter.

On September 25, 2020, West Orange submitted a motion to compel additional discovery responses under N.J.A.C. 1:10-10.4 after receiving no response from Baptiste to the August 27, 2020, deficiency letter. Baptiste did not respond to the motion, and the OAL received no additional reply by West Orange.

On October 20, 2020, I ordered that Baptiste supply additional discovery by November 30, 2020, noting West Orange is entitled to any documents and facts relating to the events resulting in Baptiste's discipline stated in the PNDA and FNDA. Indeed, the answers and requests sought would provide "access to facts which tend to support or undermine their position or that of their adversary." N.J.A.C. 1:1-10.1(a).

On October 22, 2020, Seth Gollin, Esq., then counsel for Baptiste, filed a motion to be relieved as counsel, and on October 23, 2020, West Orange advised it would not oppose Gollin's motion.

On October 30, 2020, Baptiste advised, via e-mail, that he objected to Gollin's withdrawal, and on November 2, 2020, Gollin replied.

On November 12, 2020, I heard oral argument on the motion by telephone, with all parties appearing. On that same date, I granted Gollin's request to be relieved as counsel, finding that Gollin and Baptiste's attorney-client relationship deteriorated to a point where it is not reasonable for Gollin to continue as counsel for Baptiste. Gollin disagreed with the litigation approach Baptiste desires in this case, and Baptiste did not accept his advice and expectations concerning the discovery process. Baptiste advised that he possessed recordings but did not wish to provide them until the hearing despite the October 20, 2020, order requiring him to produce these materials. Notably, Gollin

stated he supplied Baptiste with the October 20, 2020, discovery order and did not have the recordings. The November 12, 2020, order relieving Gollin as counsel reminded Baptiste of the outstanding discovery ordered on October 20, 2020, and due on November 30, 2020.

On December 1, 2020, West Orange submitted a motion for sanctions under N.J.A.C. 1:1-10.5 after receiving no additional discovery responses from Baptiste. Specifically, West Orange seeks dismissal of this appeal. The OAL advised Baptiste that his response to the motion was due on December 11, 2020, under N.J.A.C. 1:12.2(b). Yet, Baptiste did not respond to the application.

On December 14, 2020, I scheduled oral argument on the motion for December 29, 2020, at 2:00 p.m. The OAL noticed the parties through e-mail and written correspondence. Although West Orange appeared, Baptiste did not, and the record closed at 2:23 p.m.

Given the circumstances, I **FIND** that Baptiste did not produce discovery required by the order of October 20, 2020 and failed to participate in the motion seeking dismissal of his appeal in this case.

CONCLUSIONS OF LAW

The OAL regulates the conduct of contested cases through uniform standards and procedures. N.J.S.A. 52:14F-1 to -13; In re Uniform Administrative Procedure Rules (UAPR), 90 N.J. 85, 94-95 (1982).

Within the UAPR, an administrative law judge (ALJ) has powers designed to facilitate the expeditious and just resolution of contested cases. In re UAPR, at 106. Under N.J.A.C. 1:1-10.1(a), the purpose and function of discovery in the OAL "is to facilitate the disposition of cases by streamlining the hearing and enhancing the likelihood of settlement or withdrawal." Indeed, "the rules are designed to achieve this purpose by giving litigants access to facts which tend to support or undermine their position or that of their adversary." Ibid.

Under N.J.A.C 1:1-14.6(j), an ALJ possesses “sanction powers to ensure the proper conduct of the parties and their representatives appearing in the matter.” Notably, N.J.A.C. 1:1-14.4 permits an ALJ to dismiss a claim as a sanction against a party who unreasonably fails to comply with the ALJ’s orders. Moreover, N.J.A.C 1:1-10.5 allows for dismissal concerning discovery failures.

While the sanction of dismissal is harsh, the New Jersey Supreme Court recognizes the appropriateness of the remedy when a party “deliberately [pursues] a course that thwarts persistent efforts to obtain the necessary facts.” Abtrax Pharmaceuticals, Inc. v. Elkins-Sinn, Inc., 139 N.J. 499, 515 (1995). Failing to provide discovery within a reasonable time justifies dismissal. Ibid. (internal citations omitted).

Here, Baptiste required several extensions to provide initial responses to discovery that were unresponsive to West Orange’s requests. Even with an additional extension, Baptiste did not respond to the demand for further discovery requiring West Orange to file a motion to compel. Baptiste did not respond to the motion to compel, and I issued an order granting West Orange’s motion, in part. Similarly, Baptiste did not respond to the motion to dismiss and failed to appear for oral argument to offer any basis to challenge the sanction sought.

Therefore, I **CONCLUDE** that Baptiste’s ongoing failure to comply with ordered discovery is unreasonable and warrants the sanction of dismissal under N.J.A.C. 1:1-14.4 and 1-10.5.

ORDER

Based on the foregoing, I **ORDER** West Orange’s motion be **GRANTED**, and the case be and is hereby **DISMISSED**.

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.

January 4, 2021



DATE

NANCI G. STOKES, ALJ

ljb

Date Received at Agency:

January 4, 2021

Date Mailed to Parties:

January 4, 2021

ljb

DOCUMENTS RELIED ON

From petitioner

None

From respondent

Motion papers from respondent dated December 1, 2020