

STATE OF NEW JERSEY

In the Matter of William Nielsen, Cape May County Sheriff's Department DECISION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2021-89

Administrative Appeal

ISSUED: JULY 26, 2021 (BW)

William Nielsen, a County Correctional Police Officer with the Cape May County Sheriff's Department, represented by Sebastian B. Ionno, Esq., requests to reinstate the appeal of his 25 (12 hour) working day suspension, which was dismissed on the basis of his failure to appear at the May 18, 2021 settlement conference at the Office of Administrative Law (OAL).

:

:

The appellant timely appealed his suspension to this agency which transmitted the matter to OAL as a contested case. The OAL scheduled the matter for a settlement conference on May 18, 2021, and sent a notice dated January 25, 2021 to this effect to the appellant's attorney and the appointing authority's attorney. On the scheduled date, the appellant and/or his attorney failed to appear. The OAL issued a "Failure to Appear" notice which indicated that the appellant and his attorney failed to appear at the scheduled proceedings. On May 26, 2021, the matter was returned to the Civil Service Commission (Commission) for a final decision, with a notice giving the parties 13 days to present any excuse for failure to appear to this agency.

In support of the appellant's request for reinstatement of his appeal, the appellant's attorney argues that he did not appear due to the fact that a few days before the settlement conference, he noticed the matter on his calendar and thought it referred to a civil case the appellant had with Cape May County and not the administrative matter. Thinking this matter was before the Superior Court Judge, his office contacted the Judge and was advised that there was not a settlement conference on that date. Accordingly, the matter was removed from his calendar. He indicates that he was also surprised that his adversary did not contact him, as he has

his personal cell phone number. Moreover, the appellant's attorney asserts that the appellant should not be denied a fair hearing because of his misunderstanding.

In response, the appointing authority, represented by Charles E. Schlager, Jr., Esq., maintains that the appellant's request in this matter should be denied. Specifically, the appointing authority asserts that the appellant's attorney's statement that he was confused regarding the two court matters he was handling for appellant is inconsistent with the information that was immediately given to the Administrative Law Judge by email on May 25, 2021. He also argues that despite knowing the attorney professionally for a number of years and only learning that he was representing appellant within the 15 minute wait time, it was not his responsibility to contact him regarding the conference.

CONCLUSION

With regard to the instant matter, the appellant's attorney indicates that his and the appellant's non-appearance was due to his confusing the current matter with a concurrent civil matter. In this regard, when an appellant is represented by an attorney, OAL only sends notice of any proceedings to the attorney. Accordingly, as the appellant does not bear any individual responsibility for his failure to appear at the settlement conference and as he did not intend to abandon his appeal, it would be unfair not to permit him to pursue his statutory right to challenge his suspension based on an inadvertent error by his attorney.

Accordingly, the Civil Service Commission finds that under the circumstances presented in this matter, to deny the appellant a hearing on the merits of his disciplinary action would be unjust.

ORDER

Therefore, it is ordered that William Nielsen's request to reinstate his appeal be granted and the matter be transmitted to the OAL for further proceedings.

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON THE 21^{ST} DAY OF JULY, 2021

Derrare' L. Webster Calib

Deirdré L. Webster Cobb

Chairperson

Civil Service Commission

Inquiries Allison Chris Myers

and Director

Correspondence Division of Appeals and Regulatory Affairs

Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625-0312

c: William Nielsen

Sebastian B. Ionno, Esq. Charles Schlager, Esq.

Division of Appeals and Regulatory Affairs (w/file)