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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 15110-19

AGENCY DKT. NO. 2020-946

**IN THE MATTER OF CHARITY BROWN,
MOTOR VEHICLE COMMISSION.**

Charity Brown, appellant, pro se

Nonee Lee Wagner, Deputy Attorney General, for respondent (Andrew J. Bruck,
Acting Attorney General of New Jersey, attorney)

BEFORE DAVID M. FRITCH, ALJ:

Record Closed: December 10, 2021

Decided: December 16, 2021

STATEMENT OF THE CASE

The appellant, Charity Brown, initiated the present action by appealing the decision of her employer, the Motor Vehicle Commission (MVC or respondent), on a disciplinary action imposing a thirty-working-day suspension on Civil Service disciplinary charges.

PROCEDURAL HISTORY

The appellant appealed the discipline, and the matter was transferred to the Office of Administrative Law (OAL) as a contested case where it was filed on October 24, 2019. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The parties engaged in extensive discussions directed at settling this and other pending disciplinary matters involving the appellant from her employment with the respondent. At a status conference call held with the parties on October 4, 2021, the appellant's union counsel indicated that he was having difficulty communicating with the appellant, and a new status conference was scheduled with the parties for November 3, 2021. At the status conference on November 3, 2021, the appellant's union counsel indicated that the union was no longer pursuing the appeal on behalf of the appellant and had sent the appellant written notice of same. They further detailed, however, that the appellant may have moved from her last known address and left no forwarding address. A subsequent status conference was scheduled with the parties for December 10, 2021, at 3:00 p.m. The appellant was sent written notice of the scheduled status conference along with instructions that, because she was no longer being represented by the union's counsel, she would have to appear on the call and failure to do so would result in the matter being dismissed and the file returned to the referring agency. This notice was sent via USPS regular mail to the appellant's mailing address on file with the OAL and not otherwise returned as undeliverable.

On the date and time of the scheduled status conference, however, the appellant failed to dial into the conference bridge to participate in the call. Following the appellant's nonappearance for a scheduled proceeding in this matter, pursuant to N.J.A.C. 1:1-14.4, the matter was held for one day before taking any action to give the appellant the opportunity to provide an explanation for her nonappearance. As of December 14, 2021, the appellant has not contacted the OAL to provide any explanation for her failure to appear for the scheduled call.

FACTUAL FINDINGS

As the relevant facts are procedural, I **FIND** the following facts:

- After being informed at a status conference on November 3, 2021, by counsel for the union representing the appellant that the labor union that had previously represented the appellant in this matter was no longer pursuing this appeal and that the union had informed the appellant in writing of its termination of representation in this matter, a new status conference was scheduled with the parties via telephone for December 10, 2021. Due to the termination of the union's representation on her behalf in this matter, that status conference was scheduled to include the appellant.
- On November 9, 2021, the appellant was sent written notice via USPS at her mailing address on file with the OAL of a scheduled status conference in her pending appeal to be held on December 10, 2021, at 3:00 p.m.
- The written notice to the appellant was not returned as undeliverable, and the OAL does not have any other address or electronic mail address to deliver notice to the appellant other than the mailing address utilized to send the written notice of the December 10, 2021, conference.
- That written notice from the OAL of the December 10, 2021, status conference specifically advised the petitioner that:

THIS IS A PEREMPTORY CALL. AS YOU
ARE NO LONGER REPRESENTED BY
COUNSEL, IF YOU DO NOT APPEAR FOR
THIS CALL, THE MATTER WILL BE
DISMISSED AND THE FILE RETURNED TO
THE AGENCY.

- On December 10, 2021, at 3:00 p.m., the appellant did not dial into the conference bridge to join in the scheduled status conference.
- The appellant did not contact the OAL within twenty-four hours of her nonappearance to provide any explanation for her failure to participate in the designated conference call on December 10, 2021.

- As of December 14, 2021, the appellant has not contacted the OAL to arrange for a rescheduling of her missed status conference or otherwise provide any explanation for her failure to appear on the scheduled conference call.

LEGAL ANALYSIS

Pursuant to N.J.A.C. 1:1-14.4:

(a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

(b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

(c) If the judge receives an explanation:

1. If the judge concludes that there was good cause for the failure to appear, the judge shall reschedule the matter for hearing; or

2. If the judge concludes that there was no good cause for the failure to appear, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter and, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

(d) If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision

on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

I **CONCLUDE** that the appellant was provided with appropriate notice of a scheduled proceeding, namely a status conference call, to be held on December 10, 2021, at 3:00 p.m. The appellant was provided written notice of this scheduled proceeding and, despite having been provided with appropriate notice, neither the appellant, nor any designated representative, appeared on the scheduled conference call. The OAL did not receive “an explanation for the nonappearance within one day” of the appellant’s nonappearance for this scheduled conference call within the meaning of N.J.A.C. 1:1-14.4(a). Having not received an explanation from the appellant to explain her nonappearance, N.J.A.C. 1:1-14.4 directs that this tribunal “shall, unless proceeding pursuant to [N.J.A.C. 1:1-14.4(d)], direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).” As the respondent has not requested a decision on the merits of the matter be issued ex parte, no further proceedings pursuant to N.J.A.C. 1:1-14.4(d) are necessary. This tribunal, therefore, is left only with the mandate that the matter “shall” be returned to the transmitting agency for appropriate disposition. N.J.A.C. 1:1-14.4(a).

I **CONCLUDE** that the appellant has been dilatory in prosecuting her appeal, effectively abandoning the prosecution of her petition and failed to present good cause in a timely manner as to why her failure to appear for a previously scheduled conference should be excused pursuant to the provisions of N.J.A.C. 1:1-14.4(c). A plain reading of N.J.A.C. 1:1-14.4(a), therefore, requires that the matter now be returned to the transmitting agency for appropriate disposition. See also N.J.A.C. 1:1-3.3(b).

ORDER

Based on the foregoing, I **ORDER** that the clerk return the case to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

I hereby **FILE** this 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 order 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.

December 16, 2021
DATE



DAVID M. FRITCH, ALJ

Date Received at Agency:

December 16, 2021

Date Mailed to Parties:

12/20/2021

/dw