



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Melvin Finley,
Newark School District

CSC Docket No. 2022-2459

Hearing Granted

ISSUED: November 23, 2022 **(EG)**

Melvin Finley, a former Security Guard with the Newark School District, represented by Arnold Shep Cohen, Esq., requests reconsideration of the decision of the Director, Division of Appeals and Regulatory Affairs, rendered on January 28, 2022, denying his request for a hearing regarding his removal.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) dated August 4, 2021, indicating the petitioner’s removal effective August 5, 2021. The appointing authority sent the FNDA to the petitioner via U.S. regular mail and email.

By letter post-marked September 3, 2021, the petitioner filed an appeal regarding his removal. However, his request for a hearing was denied by the Director of the Division of Appeals and Regulatory Affairs on January 28, 2022, since the appeal was not perfected within the 20-day time frame. *See N.J.A.C. 4A:2-2.8(a)*.

In his request for reconsideration, the petitioner submits a certification dated March 16, 2022, stating that he never received the mailed copy of the FNDA. The petitioner also explains he found out from his union that the FNDA had been emailed to his work computer, which he could not access since he had been removed from employment. The petitioner’s union representative, Larry Howell, Business Agent of Local 617, SEIU, certified that on September 1, 2021, he found the FNDA in another

union official's email and submitted the petitioner's appeal to the Civil Service Commission (Commission) the same day.

The appointing authority, despite the opportunity, did not submit any arguments or evidence in response to the request for reconsideration.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. *N.J.A.C.* 4A:2-2.8(a) states that an appeal of a FNDA must be filed within 20 days of receipt of the notice by the employee. Further, *N.J.A.C.* 4A:2-2.8(b) states that if the appointing authority fails to provide the employee with a FNDA, an appeal may be made directly to the Commission within a reasonable time.

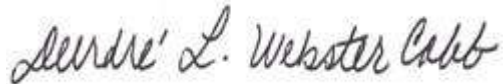
The record reflects that the FNDA was dated August 4, 2021, and the petitioner's letter of appeal was not post marked until September 3, 2021. In a certification dated March 16, 2022, the petitioner stated that he never received the FNDA and that he was instead informed by his union that the FNDA had been emailed to his work computer, which he could not access since he had been removed. In addition, the petitioner's union representative certifies that on September 1, 2021, he found the FNDA in another union official's email and submitted the petitioner's appeal to the Commission the same day. It is presumed that mail properly stamped and addressed is received. However, that presumption can be rebutted as the Commission recognizes that on occasion, certain circumstances may cause mail to be lost or undelivered. Generally, the Commission is willing to accept that if an individual is prepared to make a statement under oath, understanding all its implications and consequences, then it is proper to permit the presumption of mailing to be overcome. In this case, if the Commission did not accept a certification that mail was not received in the 20-day timeframe, there would be no remedy at all for individuals who find themselves in this particular situation. Further, sending the FNDA to the petitioner's work email when he was terminated and could no longer access that account does not indicate proper service of the FNDA. Moreover, the appointing authority did not provide any substantive evidence to refute the petitioner's claims that he did not receive the FNDA via regular mail.

Therefore, the Commission finds that the petitioner's appeal shall be considered timely filed. Accordingly, the Commission grants the petitioner's request for a hearing, and the matter should be referred to the Office of Administrative Law.

ORDER

Therefore, it is ordered that the petitioner's appeal of his removal be transmitted to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF NOVEMBER, 2022



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