



Inquiries  
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Civil Service Commission  
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 07894-22

AGENCY DKT. NO. 2023-452

**IN THE MATTER OF KECIA NELSON,  
DEPARTMENT OF HEALTH, ANCORA  
PSYCHIATRIC HOSPITAL,**

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**Kecia Nelson**, petitioner, pro se

**Bryce K. Hurst**, Deputy Attorney General, for respondent (Matthew J. Platkin,  
Attorney General of New Jersey, attorney)

Record Closed: May 17, 2023

Decided: June 14, 2023

BEFORE **SARAH H. SURGENT**, ALJ:

**STATEMENT OF THE CASE**

Petitioner Kecia Nelson (Nelson), formerly a Practical Nurse at respondent Department of Health, Ancora Psychiatric Hospital (Ancora), appeals from Ancora's March 23, 2022 removal from her employment at Ancora for alleged violations of N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)12, other sufficient cause, by failing to abide by the Centers for Medicare and Medicaid Services' (CMS) November 5, 2021 emergency regulation, CMS' updated guidance December 28,

2021 Guidance for the Interim Final Rule, and Governor Murphy's January 19, 2022 Executive Order Number 283, all requiring that all staff and contractors providing services to any licensed and/or CMS certified facility in the State be vaccinated and boosted to prevent COVID-19 and its spread by dates certain in January and February 2022. Petitioner requested a religious exemption/accommodation which was denied, provided no proofs of vaccination, and was therefore terminated from Ancora's employ on March 23, 2022.

### **PROCEDURAL HISTORY AND FACTUAL DISCUSSION**

Nelson requested a departmental hearing which was held on March 22, 2022, and the charges were sustained. She filed a timely appeal, and the matter was transmitted by the Civil Service Commission to the Office of Administrative Law (OAL), to be heard as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq, and N.J.S.A. 52:14F-1 et seq.

The matter was initially assigned to the Honorable Susan M. Scarola, ALJ, who scheduled a telephonic status conference for March 27, 2023, at 3:30 p.m. Nelson was duly notified, failed to appear, and did not provide any explanation to the OAL. On April 12, 2023, the matter was reassigned to me, as Judge Scarola had become unavailable. I scheduled a telephonic status conference for May 16, 2023, at 2:00 p.m. Nelson again was duly notified, failed to appear, and failed to provide the OAL with any explanation, despite my assistant's May 17, 2023, emailed request for such information.

### **LEGAL ANALYSIS AND CONCLUSION**

N.J.A.C. 1:1-14.4 provides that when a party fails to appear at any proceeding:

- (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.

[N.J.A.C. 1:1-14.4 (emphasis added).]

Pursuant to N.J.A.C. 1:1-14.4(c)2, it must be determined whether Nelson presented good cause for her failures to appear twice in a row at the above-scheduled status conferences. Nelson provided no explanation whatsoever. Given the lack of any

explanation for Nelson's failures to appear, I **CONCLUDE** that Nelson has not demonstrated good cause, that this this matter need not be rescheduled for more conferences and/or a hearing, and that this matter should be dismissed.

**ORDER**

It is therefore **ORDERED** that Nelson's appeal 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.

June 14, 2023 \_\_\_\_\_

DATE



SARAH H. SURGENT, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

SHS/nn

**APPENDIX**

**WITNESSES**

**For petitioner**

None

**For respondent**

None

**EXHIBITS**

**For the Judge**

C-1 Email from my assistant to Nelson, dated May 17, 2023

**For petitioner**

None

**For respondent**

None