



**STATE OF NEW JERSEY**

In the Matter of Wanda Downing,  
Irvington Housing Authority

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-2832

Request for Reconsideration

**ISSUED: August 23, 2023 (SLK)**

The Irvington Housing Authority (IHA), represented by Jennifer L. Barnes, Esq., requests reconsideration of *In the Matter of Wanda Downing* (CSC, decided May 3, 2023).

By way of background, Wanda Downing, a former Tenant Relations Assistant, was laid off on December 31, 2022. Downing appealed her separation from employment asserting that her layoff was not in good faith as it ignored Civil Service law and rules. She argued that the IHA incorrectly claimed that it was no longer covered by Civil Service layoff requirements. In its decision, the Civil Service Commission (Commission) found that the IHA was in violation of statutory and regulatory provisions regarding layoffs as it did not follow Civil Service layoff procedures. The Commission stated that while the IHA seemed to believe that because the Secretary of the United States Department of Housing and Urban Development (HUD), or its designee, had taken possession of the IHA that it did not need to follow Civil Service layoff procedures, the Commission found that this was not the case as the IHA had not responded to the appeal nor had it provided documentation to support this belief. Therefore, the Commission ordered the IHA to submit a layoff plan to this agency. Further, it indicated that if the layoff plan was not approved by this agency, Downing was to be reinstated with mitigated back pay. In the alternative, if the layoff plan was approved, Downing’s personnel record was to be amended accordingly. The Commission also warned the IHA that if failed to comply with the Commission’s decision, it could be subjected to fines.

In its request, the IHA states that the Commission's decision should be reconsidered because it had no knowledge that Downing filed her appeal, it has since complied with the Commission's decision by filing a layoff plan, federal law preempts the Commission's jurisdiction to evaluate Downing's layoff, and the IHA is under the control of the federal government after having substantially defaulted upon an agreement with the HUD and is not subject to State Civil Service law and rules.

The IHA asserts that it did not respond to Downing's appeal because it did not become aware of her appeal until after the Commission's decision as Downing did not copy it on her appeal as required and this agency's acknowledgment letter concerning the appeal was not timely seen as it received in the Executive Director's spam e-mail folder. Further, although the IHA disagrees with the determination that it was subjected to State Civil Service law and rules, it complied with the Commission's order and submitted a layoff plan to this agency. Additionally, the IHA indicates that it provided 45 days' notice of the layoff to Downing as she was notified about the December 31, 2022, layoff on November 9, 2022. Moreover, it indicates that when the HUD took over possession of the IHA on April 5, 2022, the Commission no longer had jurisdiction under 42 *U.S.C.* 1437D(j)(3)(C)(iv). The IHA submits an affidavit from its Executive Director to support its position. It also submits documentation to demonstrate that HUD has taken possession of the IHA. Further, it presents that it received a letter from Downing indicating that she was requesting that the Commission sanction it. However, it asserts that for the aforementioned reasons, it should not be sanctioned.

Additionally, the IHA submits its layoff plan where it states that it withdrew from Civil Service effective March 1, 2014. However, it provides that when Downing was previously laid off in May 2018, since she had permanent Civil Service status as of October 2011, this agency determined that she retained special re-employment rights. Further, when she was rehired on January 31, 2019, this agency determined that she was entitled to layoff notice under Civil Service rules. The record indicates that this agency approved IHA's layoff plan, effective December 31, 2022, and Downing received sufficient notice on November 9, 2022.

Although given the opportunity, Downing did not respond in this matter.

## CONCLUSION

*N.J.A.C.* 4A:2-1.6(a) provides that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration.

*N.J.A.C.* 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show either new evidence or additional information not presented at the original proceeding,

which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or that a clear material error has occurred.

Initially, the Commission accepts the IHA's explanation that it did not respond to Downing's appeal because it did not see the notice until after the Commission's decision. However, the Commission denies the IHA's request for reconsideration because it disagrees with its argument that the IHA is not subject to Civil Service layoff procedures. 42 U.S.C. 1437D(j)(3)(C)(iv) provides that the receiver shall not be required to comply with any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or administrative controls that, in the receiver's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default. Therefore, contrary to the IHA assertion, the HUD's takeover of the IHA did not automatically indicate that the IHA was no longer bound by State law and State Civil Services law and rules. Instead, the IHA was still bound by Civil Service law and rules unless the receiver issued a written determination indicating that the IHA no longer need to comply with State Civil Service. However, the IHA has not presented such documentation. Regardless, the Commission finds that the IHA has complied with the Commission's order as it submitted a layoff plan to this agency, which approved Downing's layoff, effective December 31, 2022, and it also indicated that she received sufficient notice on November 9, 2022. As such, no further action is required, and no sanctions are necessary.

Additionally, in the future, unless the IHA can produce such documentation from the receiver, it is directed to comply with Civil Service layoff procedures for any employee who obtained permanent career status before it opted out of Civil Service.

### **ORDER**

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 23<sup>RD</sup> DAY OF AUGUST, 2023



---

Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Wanda Downing  
Arnold Shep Cohen, Esq.  
Megan Chambers  
Martha Rodriguez  
Leonard Spicer  
Jennifer L. Barnes, Esq.  
Division of Agency Services  
Records Center