



STATE OF NEW JERSEY

In the Matter of Anthony
Sempkowski, Motor Vehicle
Commission

**DECISION OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-2656

Administrative Appeal

ISSUED: February 7, 2024 (AMR)

Anthony Sempkowski, an Investigator 1 New Jersey Motor Vehicle Commission, represented by Brian Largey, Esq., requests to reinstate the appeal of his removal, effective August 31, 2022, which was dismissed on the basis of his failure to appear at the October 10, 2023, prehearing telephone conference at the Office of Administrative Law (OAL).

By way of background, the appellant timely appealed his removal to this agency which transmitted the matter to the OAL as a contested case. The OAL scheduled the matter for a prehearing telephone conference on October 10, 2023, and sent a notice, dated September 21, 2023, to this effect to the appellant’s attorney and the Deputy Attorney General representing the Motor Vehicle Commission. On the scheduled date, the appellant and his representative failed to appear. The OAL issued a Failure to Appear notice which indicated that the appellant failed to appear at the scheduled proceedings. On October 18, 2023, 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 to this agency for failure to appear at the OAL proceedings.

In support of the appellant’s request for reinstatement of his appeal, the appellant’s attorney indicates that the appellant did not appear as a result of not receiving the aforementioned September 21, 2023, notice by email or mail. The attorney asserts that he was unaware that notices are sent via email, rather than by mail. Consequently, he explains that when an unknown email arrives in his inbox, it is sent to a spam folder, where it is automatically deleted after 10 days. Therefore, he did not receive the notice and was only notified of the failure to appear after the

appellant received a letter from the OAL on October 24, 2023, stating that his case was sent back to the Commission.

The Motor Vehicle Commission, represented by Nonee Lee Wagner, Deputy Attorney General, indicates that it has been asked by the appellant's attorney to provide consent to retransmit the appellant's case to the OAL. However, since the Motor Vehicle Commission does not have the jurisdiction or the ability to reopen a case that has been transmitted back from the OAL to the Commission, it submits that it does not consent to reopen the case. It notes that its Deputy Attorney General received the notice that was emailed on September 21, 2023.

CONCLUSION

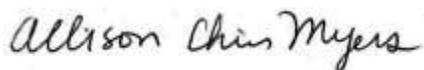
In this matter, the appellant's attorney indicates that the September 21, 2023, email containing the notice to appear for the prehearing telephone conference arrived in a spam folder and was subsequently automatically deleted after 10 days, which prevented him from receiving it. In this regard, when an appellant is represented by an attorney or union representative, the OAL only sends notice to the attorney or union representative. As such, since the appellant does not bear any individual responsibility for his failure to appear at the prehearing telephone conference on October 10, 2023, and he did not intend to abandon his appeal, it would be unfair not to permit him to pursue his statutory right to challenge his removal.

Accordingly, the 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. However, the Commission advises the appellant and his attorney to make any necessary changes to ensure that email correspondence from the OAL or the Commission is properly monitored so that this situation can be avoided in the future.

ORDER

Therefore, it is ordered that Anthony Sempkowski'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 7TH DAY OF FEBRUARY, 2024



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