



STATE OF NEW JERSEY

In the Matter of Melissa Lespier,
Essex County, Department of Public
Safety and Corrections

CSC Docket No. 2025-817

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

Reconsideration

ISSUED: January 15, 2025 (SLK)

Melissa Lespier, represented by Anthony Pope, Esq. requests reconsideration of the denial of her request for a hearing concerning her removal as a County Correctional Police Officer, Essex County, effective January 4, 2024.

By way of background, on May 23, 2024, Lespier received a Final Notice of Disciplinary Action (FNDA) indicating that she was removed, effective January 4, 2024. Thereafter, as this agency received her appeal postmarked June 20, 2024, the Director of the Division of Appeals and Regulatory Affairs denied her request for a hearing as untimely on September 18, 2024, since the appeal was postmarked more than 20 days from her receipt of the final written determination of the appointing authority. *See N.J.S.A. 11A:2-15 and N.J.A.C. 4A:2-2.8(a).*

In Lespier's request for reconsideration, she presents that on January 4, 2024, she received a Preliminary Notice of Disciplinary Action (PNDA) advising her of her immediate and indefinite suspension from her position as a County Correctional Police Officer with Essex County. Thereafter, on May 15, 2024, Lespier waived her right for a departmental hearing and a FNDA was sent to her home via certified mail and received on May 23, 2024.¹ However, Lespier explains that she was unaware

¹ Although the appointing authority indicates that it also sent the FNDA to Lespier's counsel via regular mail, her counsel indicates that he never received it. Regardless, per *N.J.A.C. 4A:2-2.8(a)*, receipt of the notice by counsel on a different date than the appellant does not extend the appeal filing period.

that this document was a FNDA as she believed it was a confirmation of her departmental hearing waiver. Accordingly, she informed her attorney that she had not yet received the FNDA. Further, Lespier continued to advise her attorney that she had not yet received the FNDA. Subsequently, on June 20, 2024, Lespier's attorney sent a letter to both this agency and the Office of Administrative Law (OAL) indicating that Lespier never received a FNDA, and, therefore, as over 30 days had passed since she waived her request for a departmental hearing but never received a FNDA, she was requesting a hearing "within a reasonable time" pursuant to *N.J.A.C. 4A:2-2.13(d)*.

On July 26, 2024, this agency advised Lespier that it needed the FNDA, and her counsel reiterated on that same date that she never received a FNDA. Lespier emphasizes that this correspondence highlights that as of that date, both she and her counsel did not believe a FNDA had been sent. Thereafter, on August 20, 2024, this agency sent correspondence that it received the FNDA from the appointing authority, and her appeal was being processed. However, after Lespier's counsel made several attempts to confirm that the OAL received her appeal, on September 4, 2024, the OAL informed Lespier's counsel that it had not received it. Subsequently, on September 10, 2024, this agency informed Lespier's attorney that according to the appointing authority, Lespier's "agent" received the FNDA on May 23, 2024. Thereafter, on September 12, 2024, Lespier emailed the FNDA to her counsel asking if "this is the termination paper?" Her counsel responded that it was. Lespier then replied to her counsel explaining that she thought the FNDA was just confirmation that she waived her right to a departmental hearing. Lespier's counsel then advised this agency of Lespier's genuine mistake as she earnestly believed that she did not receive the FNDA as delaying her appeal was counterproductive to her interests.

Lespier presents that under *N.J.A.C. 4A:1-1.2(c)*, the Civil Service Commission (Commission) can relax a rule for good cause. She submits case law where the courts have found that "good cause" requires "a valid excuse for the delay" and a "demonstration that there is a substantial and meritorious question." See *In re Appeal of Syby*, 66 *N.J. Super* 460, 463, 169 A.2d 479 (App. Div. 1961). Further, Lespier provides that the courts have found that "[C]arelessness and inadvertence on the part of an attorney...[may be sufficient] grounds...when it comes to a determination of whether good cause exists to excuse late filings." See *Burns v. Belafsky*, 326 *N.J. Super*. 462, 471, 741 A.2d 649 (App. Div. 1999). However, there must be an absence of "demonstrable prejudice," *Ibid* (citing *Johnson v. Fairleigh Dickinson University*) 190, 196, 486 A.2d 920 (App. Div. 1985). "[J]ustice to the litigants is always the polestar." *Martindell v. Martindell*, 21 *N.J.* 341, 349, 122 A.2d 352 (1956). Additionally, Lespier submits *Galligan v. Westfield Centre Service, Inc.*, 82 *N.J.* 188, 192 (1980) (quoting *White v. Violent Crimes Comp. Bd.*, 76 *N.J.* 368, 379 (1978)) where the courts permitted a filing 20 days after the expiration of the statute of limitations, noting that "unswerving, 'mechanistic' application of statute of

limitations would at times inflict obvious and unnecessary harm upon individual plaintiffs without advancing...legislative purposes.”

Lespier emphasizes that her appeal was only eight days past the 20-day limitation period, and the reason for her delay was an honest mistake as authenticated by her attached exhibits. She asserts that allowing her appeal to proceed would not cause any demonstrable prejudice to any party. Further, Lespier argues that if carelessness and inadvertence on the part of attorneys may qualify as good cause to excuse late filings, then surely this extends to non-attorney litigants as well. She notes that attorneys are under ethical obligations to be careful, diligent, and knowledgeable about the law while non-attorney litigants are not under these same obligations and are not expected to be knowledgeable about the law. Lespier highlights this is why she hired an attorney. Therefore, for the aforementioned reasons, she requests reconsideration.

In reply, the appointing authority, represented by Jennifer Cacchioli, Assistant County Counsel, highlights that an appeal must be filed within 20 days, which in this matter was June 12, 2024. It submits the United States Postal Service tracking information to demonstrate that Lespier received the FNDA on May 23, 2024, as evidenced by the certified mail signed receipt. The appointing authority also states that it sent a copy to Lespier’s counsel via regular mail on May 20, 2024, and no return copy was ever received by it. It emphasizes that despite Lespier’s claim that she did not understand that the document that she received was her final notice, the first line of the FNDA states, “**Final Notice of Disciplinary Action (31-C).**” The appointing authority additionally presents that the bottom of the FNDA indicates, “**APPEAL PROCEDURE TO THE EMPLOYEE:** You have the right to appeal within 20 days from receipt of this form.” Therefore, the appointing authority contends that it is incomprehensible that Lespier did not know that the document she received was a FNDA. Further, she could have sent the document to her attorney but failed to do so. Therefore, the appointing authority argues that Lespier has failed to meet the standard for reconsideration as she has offered no material additional facts that were not already known to Director at the time of his decision.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. 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.S.A. 11A:2-15 provides that an any appeal from adverse actions specified in *N.J.S.A.* 11A:2-13 shall be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. *See also, N.J.A.C.* 4A:2-2.8(a).

In this matter, Lespier has not met the standard for reconsideration. Specifically, in the subject Director decision, a clear material error was not made as the appointing authority presents evidence and Lespier acknowledges, she received the FNDA on May 23, 2024. Further, as her appeal was postmarked on June 20, 2024, which was eight days after the June 12, 2024, statutorily mandated time, Lespier's request for a hearing was correctly denied. Additionally, Lespier has not presented any new evidence that was not available to her at the time of the original proceeding. Moreover, even if the new evidence that Lespier submits upon reconsideration had been presented at the time of the original proceeding, this additional information would not have changed the outcome of the determination as it does not change the fact that Lespier's appeal of her removal was untimely.

Regarding the case law that Lespier presents to "relax" the statutorily mandated 20-day time period for "good cause," this matter is distinguishable as those cases did not involve Civil Service law.² In this regard, the courts have clearly indicated that the statutory provisions in *N.J.S.A. 11A:2-15* are jurisdictional and cannot be relaxed. *See Borough of Park Ridge v. Salimone*, 21 *N.J.* 28, 46 (1956); *See also Mesghali v. Bayside State Prison*, 334 *N.J. Super.* 617 (App. Div. 2000), *cert. denied*, 167 *N.J.* 630 (2001); *Murphy v. Department of Civil Service*, 155 *N.J. Super.* 491, 493 (App. Div. 1978).

Moreover, even if those cases were germane, they involved instances where the appellants' attorneys made errors concerning the statute of limitation while the present matter involves the appellant's mistake. In this case, Lespier, not her attorney, failed to take the necessary action to have the appeal of her removal timely filed. Further, the claim that the time should be "relaxed for good cause" because she did not realize that the document that she timely received was the FNDA as she thought it was just confirmation that she waived her right to a departmental hearing is unpersuasive as the document clearly states, "Final Notice of Disciplinary Action (31-C) For Law Enforcement and Fire Fighter Removal Civil Service Commission – State of New Jersey." Further, at the bottom, the FNDA states, "APPEAL PROCEDURE TO THE EMPLOYEE: You have the right to appeal within 20 days from receipt of this form ... Any appeal postmarked after the 20 days statutory time limit will be denied." Moreover, to the extent that Lespier may have been confused, she could have forwarded the document to her counsel or asked her counsel about it or sought clarification from the appointing authority or even the Commission. However, she chose not to do so. Concerning Lespier's argument that the appointing authority would not be harmed by the late filing, the legislature has determined and the courts have confirmed that an appeal must be filed within 20 days of receipt of

² Although *Syby*, *supra*, did involve a Civil Service matter, the issue decided by the Court was whether to relax the Court Rules to allow *Syby* to file an appeal of a final decision of the then-Department of Civil Service to the Superior Court, Appellate Division outside of the time frames permitted for such an appeal.


the FNDA, which allows that an appointing authority may have a proper understanding as to whether a disciplinary matter was still ongoing or final. As such, a filing beyond this time frame cannot be permitted.

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 15TH DAY OF JANUARY, 2025



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: Melissa Lespier
Anthony Pope, Esq.
Jacqueline Jones
Jennifer A. Cacchioli, Assistant Corporation Counsel
Division of Human Resources Information Services
Records Center