

B-42



STATE OF NEW JERSEY
DECISION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Matthew A. Gomm,
Borough of Carteret

CSC Docket No. 2016-3829

Request for Reconsideration

ISSUED: FEB 13 2017 (JET)

Matthew A. Gomm, a Police Officer with the Borough of Carteret, represented by Leonard C. Schiro, Esq., requests reconsideration of the attached decision by the Director, Division of Appeals and Regulatory Affairs, rendered on April 18, 2016, denying his request for a hearing regarding his 45 working day suspension.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) dated March 9, 2016, imposing a 45 working day suspension. The FNDA indicates the date of personal service as March 9, 2016, which the appellant does not dispute. By letter dated March 24, 2016, postmarked March 30, 2016, the appellant's attorney filed an appeal regarding the appellant's 45 working day suspension. His request for a hearing was denied by the Director of the Division of Appeals and Regulatory Affairs on April 18, 2016, since the appeal was not perfected within the 20-day time frame. See N.J.S.A. 11A:2-15.

In his petition for reconsideration, the appellant's attorney explains that he sent the appellant's appeal letter by certified and regular mail via the mailbox outside of his office on March 24, 2016. Further, the appellant's attorney contends that the Post Office indicated to him that when it obtains the mail from the mailbox outside of his office, it transports it to a facility in Iselin, dumps it in a large storage container, and then transports it to a facility in Kearny. As such, the appellant's attorney states that, as a result of the Post Office's above noted mailing procedures, the appellant's March 24, 2016 letter was not coded in the Post Office's system until it was received at the Kearny facility. Moreover, the appellant's attorney asserts

that, since he mailed the letter on March 24, 2016, the appellant's appeal should not be considered as untimely. In support, the appellant's attorney submits a certification dated April 25, 2016, by Rose Joyce, Paralegal, indicating that she mailed the appellant's appeal letter on March 24, 2016.

In response, the appointing authority, represented by Robert J. Bergen, Esq., maintains that since the appellant's appeal was untimely, his request for a hearing should be denied.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Civil Service Commission (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.S.A.* 11A:2-15 provides that 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).

The record reflects that the appellant received the FNDA on March 9, 2016, and the appellant's letter of appeal was postmarked March 30, 2016. In a certification dated April 25, 2016, the paralegal for the appellant's attorney states that she mailed the letter of appeal via certified and regular mail on March 24, 2016.

In this case, the appellant submitted a sworn, notarized certification, in lieu of oath, which may be submitted in lieu of an affidavit, oath or verification. *See R.* 1:4-4(b). 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 untimeliness to be overcome. The Commission recognizes that on occasion, certain circumstances may cause a delay in mail delivery. In this case, if the Commission did not accept a sworn statement averring that mail was sent out within the 20-day timeframe, there would be no remedy at all for individuals who find themselves in this particular situation. Therefore, the Commission finds that under the circumstances of this matter, the appellant has shown a sufficient reason to excuse the delay.

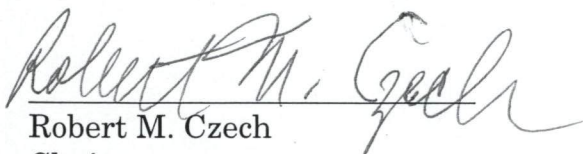
Accordingly, the Commission grants the appellant's request for a hearing, and the matter should be referred to the Office of Administrative Law (OAL) for a hearing. However, the appellant's attorney is cautioned that, given the apparent mailing issues, he should seek to ensure that future appeals are postmarked within the required timeframe by delivering them directly to a postal facility. Finally, the

Commission notes that this determination is based on the specific facts and circumstances presented and cannot be used as precedent in any future matters.

ORDER

Therefore, it is ordered that the appellant's appeal of his 45 working day suspension be transmitted to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 8th DAY OF FEBRUARY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

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and Assistant Director
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Attachment

- c: Matthew A. Gomm
- Leonard C. Schiro, Esq.
- Robert J. Bergen, Esq.
- Daniel J. Reiman
- Kelly Glenn
- Beth Wood w/file



**STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION**

In the Matter of Matthew A. Gomm :
Borough of Carteret, :
Police Department :

CSC DKT. NO. 2016-3502 :
:
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Hearing Denied

ISSUED: APR 18 2016 BW

The Civil Service Commission considered the request for a hearing concerning Matthew A. Gomm, from his appeal of 45 working day suspension, Borough of Carteret, Police Department, and made the following findings of fact:


1. The Final Notice of Disciplinary Action was served March 9, 2016.
2. The letter of appeal was postmarked March 30, 2016.

Since the appeal in this matter was not perfected within 20 days of receipt of the Final Notice of Disciplinary Action, the request for a hearing was denied.

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

RE: Matthew A. Gomm

DECISION RENDERED BY THE
DIRECTOR, DIVISION OF APPEALS
AND REGULATORY AFFAIRS
ON APRIL 18, 2016


HENRY MAURER
DIRECTOR

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