



STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

 In the Matter of Alexander Navas,
 Township of West New York

 CSC Docket Nos. 2019-580 and
 2019-581

Request for Reconsideration

ISSUED: January 17, 2019 (WR)

Alexander Navas, a former Laborer 1 with the Township of West New York, represented by Jason Jones, Esq., petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decisions, rendered on March 19, 2018 and April 13, 2018, in which the Director of the Division of Appeals and Regulatory Affairs (DARA), denied his requests for hearings with respect to his 30-working day suspension and removal. These matters have been consolidated as they contain common issues.

By way of background, on October 25, 2017, the petitioner received three Final Notices of Disciplinary Action (FNDA), two of which imposed a 30-working day suspension and one that sought his removal. On or around October 31, 2017, the appellant appealed one of his 30 working day suspensions, which was transmitted to the Office of Administrative Law (OAL) for a hearing on November 29, 2017. The petitioner's requests for hearings regarding the second 30-working day suspension and removal were denied as untimely by the Director of DARA, as the requests were postmarked on March 9, 2018. It is noted that the petitioner subsequently appealed the Commission's decisions to the New Jersey Superior Court, Appellate Division on May 2 and 4, 2018, but withdrew his appeals on October 30 and 31, 2018, in order to request reconsideration in the instant matters.

In his request for reconsideration, the petitioner argues in a signed certification that "he acted promptly to appeal the disciplinary actions" and

consequently met with his union representative, N.L.,¹ on October 31, 2017, who assured him that he would appeal all three FNDAs. The petitioner asserts that he did not learn that his union representative failed to timely appeal the second 30-working day suspension and his removal until he received the March and April 2018 decisions which denied his requests for a hearing. The petitioner asserts that the union representative never advised him that he did not appeal the second 30-working day suspension and removal during the 20-day filing period. The petitioner posits that the union representative may not have filed the two appeals due to ongoing health issues. In this regard, the petitioner claims that the union representative was diagnosed with lung cancer in "early 2017" and the treatment for his illness "impacted both his memory and his ability to perform his job" and caused him to work only two days a week. In support of his request, the petitioner cites *In the Matter of Gemma Matthews, Department of Human Services* (MSB, October 24, 2007) in which the Commission held that the appellant's failure to timely appeal a second FNDA was reasonable and granted her a hearing at OAL.

In response, the appointing authority, represented by Daniel Stark, Esq., argues that the petitioner's request for reconsideration should be denied because he has not satisfied the criteria for reconsideration set forth in *N.J.A.C. 4A:2-1.6(b)*. Additionally, the appointing authority claims that by appealing the Commission's decisions to the Appellate Division, the petitioner waived his right to request reconsideration.

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 appeals from major disciplinary matters be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. This 20-day time limitation is jurisdictional and cannot be relaxed or waived. 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). Further, *N.J.A.C. 4A:2-2.8(a)* states that "An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee. Receipt of the Notice on a different date by the employee's attorney or union representative shall not affect this appeal period."

¹ Initials are being utilized to protect the identity of the individual due to the medical information presented in this matter.

In the instant matter, it is evident that the petitioner attempted to timely file his appeals of the second 30-working day suspension and his removal. In this regard, the record reflects that, after receiving the FNDA's, the petitioner promptly met with his union representative who agreed to appeal the matters on his behalf. However, his union representative, who had serious health issues, failed to timely appeal the two of the three FNDA's. Clearly, it was the petitioner's intent to contest all of the FNDA's he was served on October 25, 2017, including the second 30-working day suspension and his removal. Thus, under the totality of circumstances and to afford the petitioner due process, the Commission grants the petitioner's hearing at the OAL with regard to the second 30-working day suspension and his removal.

ORDER

Therefore, it is ordered that this request for reconsideration be granted and the petitioner's second 30-working day suspension and removal be transmitted to the Office of Administrative Law for a hearing.

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 26th DAY OF JANUARY, 2019

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Christopher Myers
Director
Division of Appeals
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Attachment

c: Alexander Navas
Jason Jones, Esq.
Daniel Stark, Esq.
Kelly Glenn
Beth Wood w/file



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

In the Matter of
Alex Navas
Town of West New York

CSC DKT. NO. 2018-2617

Hearing Denied

ISSUED: MAR 19 2018 BW

The Civil Service Commission considered the request for a hearing concerning Alex Navas, from his appeal of removal from the position of Laborer 1, Town of West New York and made the following findings of fact:

1. The Final Notice of Disciplinary Action sent by certified mail and delivered on October 25, 2017.
2. The letter of appeal was postmarked March 9, 2018.

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: Alex Navas

DECISION RENDERED BY THE
DIRECTOR, DIVISION OF APPEALS
AND REGULATORY AFFAIRS
ON MARCH 29, 2013

Christopher S. Myers

CHRISTOPHER S. MYERS
DIRECTOR

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c: Alex Navas
CWA Local 1045
Agency Services
Pensions
Town of West New York



**STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION**

In the Matter of
Alex Navas
Town of West New York

CSC DKT. NO. 2018-2765

Hearing Denied

ISSUED: **APR 16 2018**

BW

The Civil Service Commission considered the request for a hearing concerning Alex Navas, from his appeal of a 30 working day suspension from the position of Laborer 1, Town of West New York and made the following findings of fact:

1. The Final Notice of Disciplinary Action was sent by certified mail and delivered on October 25, 2017.
2. The letter of appeal was postmarked March 9, 2018.

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: Alex Navas

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

APRIL 13, 2014

CSM —

CHRISTOPHER S. MYERS
DIRECTOR

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c: Alex Navas
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