



## STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE

## CIVIL SERVICE COMMISSION

## Reconsideration

In the Matter of Shawn Hunter City of  
Orange Township

CSC Docket No. 2021-87

ISSUED: OCTOBER 23, 2020 (BW)

Shawn Hunter, a former Account Clerk with City of Orange Township, petitions the Civil Service Commission (Commission) for reconsideration of the administrative decision, rendered on June 10, 2020, in which the Director of the Division of Appeals and Regulatory Affairs denied her request for a hearing with respect to her removal.

By way of background, in an October 25, 2019, Final Notice of Disciplinary Action (FNDA), the petitioner was removed, effective September 26, 2019, on charges of insubordination, chronic or excessive absenteeism or lateness, neglect of duty and other sufficient cause. Specifically, the appointing authority asserted that during the petitioner's employment she was absent from work and/or repeatedly late without permission. The appointing authority indicated that the petitioner exceeded the number of days allowed for this year and did not request a leave of absence. She also sent disrespectful e-mails to supervisors and to others with supervisors copied.

The record indicates that the petitioner's FNDA was hand delivered on October 25, 2019, to her address on file. The petitioner's appeal was postmarked November 15, 2019. As the appeal was not postmarked within 20 days of receipt, her request for a hearing was denied.

In her request for reconsideration, the petitioner states that there was a "lack of service." She submits a certification which states in part that she "discovered the Final Notice of Disciplinary Action, among my personal regular mail on October 30, 2019," and that the FNDA was in a plain white envelope without postage. She

argues that she should be given a new hearing and be reinstated. Further, the petitioner states that the service was “illegitimate” and “defective” and should be rejected as the appointing authority cannot provide proof of personal service as indicated on the FNDA. Petitioner claims its alleged service of the FNDA on October 25, 2019, through her mail slot was unlawful and constitutes deliberate indifference and deception. She further provides substantive arguments regarding the disciplinary action taken against her.

In response, the appointing authority, represented by John J.D. Burke, Esq., states that the petitioner does not dispute that she did not receive the FNDA or that the FNDA was left at the correct address. Further it states that, it is unreasonable not to check the mail if you are facing termination and the appeal timeframe is limited. The FNDA is dated October 25, 2019, and states in bold print the “Any appeal postmarked after the 20 days statutory time limit will be denied.” It also relies on the fact that the Commission has held that an employee cannot avoid service of an FNDA and have the time frame to appeal extended. Furthermore, it argues that the petitioner did not provide new evidence or additional information that would change the outcome of her appeal per N.J.A.C. 4A:2-1.6(b). It indicates that on reconsideration, she discusses the charges against her at length, while not providing new information on the lateness of her appeal.

## 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. A review of the record in the instant matter reveals that reconsideration is not justified.

N.J.S.A. 11A:2-15 provides that appeals from major disciplinary matters shall 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).

Petitioner states that she “discovered” her FNDA on October 30, 2020, five days after it was delivered to her home. This left the petitioner 15 days to file her appeal timely. She provides no persuasive explanation as to why it took her until November 15, 2019 to file her appeal. The appointing authority confirms that the FNDA was hand delivered to the address on file on October 25, 2020. It is the employee’s responsibility to go through her mail daily. In this regard, while the petitioner objects to the method of service, she does not persuasively demonstrate that it was not delivered on October 25, 2019. In this regard, an individual cannot extend the time period to appeal a served FNDA by denning service or otherwise

refusing receipt of an FNDA. The Commission acknowledges the presumption that mail correctly addressed, stamped and mailed is generally received by the party to whom it was addressed. *See SSI Medical Services, Inc. v. State Department of Human Services*, 146 N.J. 614 (1996); *Szczesny v. Vasquez*, 71 N.J. Super. 347, 354 (App. Div. 1962); *In the Matter of Joseph Bahun*, Docket No. A-1132-00T5F (App. Div. May 21, 2001).

Furthermore, petitioner states that she emailed and texted her union representative regarding her appeal on October 30, 2019 and November 4, 2019 Pursuant to N.J.A.C. 4A:2-2.8(a), receipt of the Final Notice on a different date by the employee's attorney or representative shall not affect the appeal period.

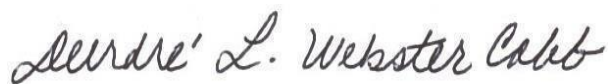
New Jersey Court Rules 1:3-1 states, in pertinent part: "In computing any period of time fixed by rule or court order, the date of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday." Thus, in this matter, the time period the appellant had to file spanned from October 26, 2019 to November 14, 2019. While it is unfortunate that the petitioner filed her appeal one day after this period, as the timeframe is statutory, under these circumstances, the Commission cannot extend that period.

## ORDER

Therefore, it is ordered that this petition for reconsideration 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 21ST DAY OF OCTOBER 2020



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