

B-13



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Janet Francis
Burlington County
Board of Social Services

Request for a Hearing

CSC Docket No. 2015-523

ISSUED: November 24, 2014 PM

Janet Francis, a former Human Services Specialist 1, Burlington County Board of Social Services, requests a hearing regarding her removal from employment effective December 5, 2012.

By way of background, the appellant was removed from employment following sustained charges of incompetency, inefficiency or failure to perform duties, conduct unbecoming a public employee, and other sufficient cause (falsification of records). The record indicates that the appellant's Final Notice of Disciplinary Action (FNDA) was sent via certified or registered mail on December 5, 2012 to her address on file. The tracking record of the certified mail indicates that it was personally received and signed by the appellant on December 6, 2012. The appeal procedure outlined on the FNDA advised the petitioner that any appeal to the Civil Service Commission (Commission) was required to be filed within 20 days of her receipt of the letter. The appellant's appeal to the Commission was postmarked August 25, 2014.

In support of her request for a hearing, the appellant indicates that she filed her appeal within the permitted 20-day timeframe. However, she states that she mistakenly filed her appeal with the Division on Civil Rights. Furthermore, when she was hired, she received an employee binder that did not contain the proper appeal procedures. The appellant states that she became aware that she had to file her appeal with the Commission only after she attempted to file an appeal with the Superior Court of New Jersey, Appellate Division, and was informed that all avenues of internal administrative review must be exhausted prior to filing an

appeal with the court. Furthermore, she asserts that the decision to remove her was baseless, unjustly harsh and violated her due process rights because the departmental hearing convened without her being present. Therefore, the appellant requests that her appeal be transmitted to the Office of Administrative Law for a hearing.

In response, the appointing authority represented by Richard C. Strobel, Esq., states the appellant's request for a hearing is untimely as it was not filed within 20 days after she received notice or should reasonably have known of the decision, situation or action being appealed. The appointing authority underscores that the appellant was served with the FNDA on December 6, 2012 and the last day to appeal this matter was December 26, 2012. However, the appellant did not file her appeal with the Commission until August 25, 2014, 607 days past the deadline. Furthermore, the FNDA provided the appeal rights to the Commission and advised that any appeal to the Commission was required to be filed within 20 days of her receipt of such notice. Therefore, the appointing authority maintains that the appellant's request for a hearing should be denied because it was not filed within the 20-day timeframe.

CONCLUSION

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). 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." *See Mesghali, supra.*

A review of the record indicates that the appellant failed to appeal her removal to the Commission within the time limits provided in *N.J.S.A.* 11A:2-15. In this regard, the record establishes that the appellant was provided with notice and an opportunity for a hearing pursuant to *N.J.S.A.* 11A:2-14. Further, the FNDA was sent to the appellant via certified or registered mail on December 5, 2012 to her address on file. The postal tracking record of the certified mail indicates that it was personally received and signed by the appellant on December 6, 2012. Furthermore, the FNDA clearly advised the petitioner that any appeal to the Commission was required to be filed within 20 days of her receipt of the FNDA.

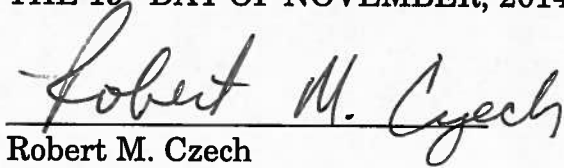
Additionally, the fact that the appellant initially filed her appeal with the incorrect venue does not establish that she timely appealed her removal to the Commission. The responsibility to file a timely appeal rests solely with the appellant. The appellant fails to provide any evidence of notice of filing with the Division of Civil Rights in support of this argument. However, even if she provided such evidence, the filing of an appeal in a different forum does not toll the time to file an appeal with the Commission. *See In the Matter of Richard Vogel* (MSB, decided March 9, 1999); *See also In the Matter of Jose Gonzalez* (MSB, decided September 10, 1998). Lastly, the Commission finds that the appellant did not file her appeal until August 25, 2014, which is 607 days beyond the time she was required to file by statute. Accordingly, the appellant has not sustained her burden of establishing the timeliness of her appeal, and her request for a hearing is denied.

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 19th DAY OF NOVEMBER, 2014



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