



**STATE OF NEW JERSEY
DECISION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Osarobo Akingbala
Hunterdon Developmental Center
Department of Human Services

CSC Docket No. 2015-686

Request for Reconsideration

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ISSUED: December 17, 2014 (PM)

Osarobo Akingbala, a former Cottage Training Technician with Hunterdon Developmental Center (HDC), Department of Human Services, represented by John F. McDonnell, Esq., petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decision, rendered on September 11, 2014, in which the Director of the Division of Appeals and Regulatory Affairs (DARA) denied her request for a hearing with respect to her removal effective May 13, 2014.

By way of background, the petitioner was removed effective May 13, 2014, following sustained charges of neglect of duty which could result in danger to persons or property, sleeping while on duty, failure to perform duties, conduct unbecoming a public employee and other sufficient cause. The appointing authority issued a Final Notice of Disciplinary Action (FNDA), dated August 8, 2014 and mailed it to the petitioner via certified mail and delivery was attempted by the postal authorities on August 14, 2014. However, the certified mail was returned as unclaimed on August 20, 2014. Thereafter, in a letter postmarked September 4, 2014, the petitioner appealed the disciplinary action. On September 11, 2014, the Director of DARA denied the petitioner's request for a hearing, finding that the petitioner's appeal was beyond the 20-day time period to file an appeal.

In the instant matter, the petitioner states that a material error occurred in connection with the determination of denying her request for a hearing and requests that she be granted a hearing. The petitioner states that the envelope addressed to her enclosing the FNDA was postmarked August 20, 2014 and not

August 14, 2014. The petitioner provides a copy of the envelope and a sworn certification attesting to the fact that she was not served the FNDA on August 14, 2014 or any time prior to August 20, 2014. Therefore, she filed her appeal on September 4, 2014 when she was in receipt of the FNDA, thus making her appeal to the Commission timely. As such, the petitioner requests that the matter be transmitted to the Office of Administrative Law (OAL) for a hearing.

In response, the appointing authority, represented by Kim Heft, Senior Management Assistant, Employee Relations Department, states that on August 12, 2014, HDC sent the petitioner her FNDA and the hearing officer's decision via certified mail to her address on file. On August 20, 2014 HDC received the certified mail back from the postal service unclaimed. On August 20, 2014, the petitioner was sent another FNDA and hearing officer's decision via regular postal mail to the same address. However, since the petitioner did not sign the receipt for the certified mail, the appointing authority argues that the petitioner chose not to pursue her appeal until she received the second mailing, thus making her appeal untimely. Therefore, the appointing authority maintains her appeal was untimely.

CONCLUSION

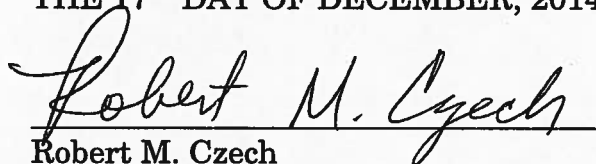
N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In this matter, the appellant has sustained her burden of proof. The petitioner provided a copy of an envelope postmarked August 20, 2014 and a sworn certification attesting to the fact that her FNDA was enclosed in that envelope. She also certifies that she was not served the FNDA on August 14, 2014 or any time prior to August 20, 2014. The copy of the postmarked envelope provides credence to the petitioner's argument and the appointing authority confirms that it mailed her a second copy of the FNDA via regular mail on August 20, 2014. Therefore, the record as a whole indicates that the petitioner intended to pursue her statutory right to challenge her removal effective May 13, 2014 and that she filed a timely appeal of that action. Accordingly, the Commission finds that under all of the circumstances in this matter, to deny the appellant a hearing on the merits of her disciplinary action would be unjust.

ORDER

Therefore, it is ordered that Osarobo Akingbala's request to reinstate her appeal be granted and the matter be transmitted to the OAL for further proceedings.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17TH DAY OF DECEMBER, 2014



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Chairperson
Civil Service Commission

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