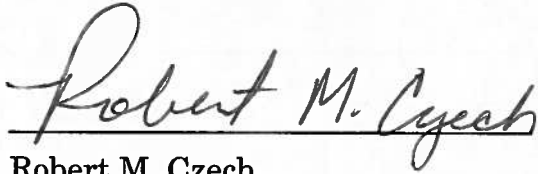


Re: Daniel Everett

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
SEPTEMBER 17, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSR 12397-11

AGENCY DKT. NO. N/A 2011-3492

OAL DKT. NO. CSV 12888-11

AGENCY DKT. NO. 2012-1209

**IN THE MATTER OF DANIEL EVERETT,
BURLINGTON COUNTY JAIL.**

Daniel Everett, petitioner, appearing pro se

Laurel B. Peltzman, Esq. for respondent Burlington County Jail (Capehart & Scatchard, attorneys)

Record Closed: August 14, 2014

Decided: August 19, 2014

BEFORE LAURA SANDERS, Acting Director and Chief ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Corrections Officer (CO) Daniel Everett (Petitioner) appeals the action of the Burlington County Jail terminating him from his position on grounds of insubordination, conduct unbecoming and other grounds related to a State Police traffic stop and municipal court hearings on the resulting tickets. He was served with a Preliminary Notice of Disciplinary Action (PNDA) on March 11, 2011. Following a departmental hearing on August 31, 2011, CO Everett was advised by a Notice of Final Disciplinary Action dated October 5, 2012, that he had been terminated effective February 23, 2011, the same date as a resignation resulting from a previous major disciplinary hearing. On October 14, 2011, Petitioner filed an appeal with the Office of Administration Law, and with the Civil Service Commission (CSC), as required under N.J.S.A. 40A:14-202(d). This was docketed as OAL Dkt. No. CSR 12397-11.

In addition, Everett appealed a 90-day suspension on charges of, among other things, insubordination and conduct unbecoming in relation to events on October 14, 2010, in which Everett allegedly interfered with a Sheriff's Department arrest in North Carolina, and then on October 20, 2010, caused a private citizen and a bartender to call the police due to his behavior. This resulted in a PNDA dated March 11, 2011, and an FNDA issued on or about September 29, 2011. He timely requested a hearing from the CSC, which transmitted the contested case to the OAL on October 25, 2011. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. This was docketed as CSV 12888-11. Originally assigned to Administrative Law Judge Tiffany Williams, it was reassigned to the undersigned for possible consolidation with CSR 12397-11.

In June 2012, respondent moved to dismiss both appeals on grounds that they had been rendered moot as a result of a resignation in good standing imposed by the Civil Service Commission effective February 23, 2011, in In re Everett, Burlington County, CSR 3471-11, Initial Decision (March 30, 2012), adopted, Civil Service Commission (May 2, 2012), 2010 N.J. AGEN LEXIS 147. The undersigned denied the appeal, on grounds that Everett had appealed the Commission's decision to the Appellate Division. The matter was then set down for hearing on August 30, 2012. On

August 29, 2012, the parties requested a telephone conference. During the call Mr. Everett advised that he relieved his prior legal counsel and determined that he would represent himself. Additionally, they were seeking an adjournment of the August 30, 2012 hearing and requesting that the matter be placed on the inactive list pending the Appellate Division's decision. On August 29, 2012, I placed the matter on the inactive list of cases for the first of what became three six-month periods, ending on March 1, 2013, September 25, 2013 and April 11, 2014 respectively.

On April 14, 2014, the Appellate Division issued its opinion (A-5310-11T3), affirming the resignation in good standing. The matter was then moved back to the active list of cases. In a May 5 conference call with the parties, we discussed the effect of the Appellate Division opinion, which was to render the remaining appeals moot. Petitioner indicated he would withdraw his appeal. Having not received a letter of withdrawal from Petitioner, I sent him a letter on July 9, 2014, reiterating that the matter is moot, and providing a withdrawal form and self-addressed envelope. Having received no reply from Petitioner, I closed the record on August 14, 2014.

LEGAL CONCLUSION AND ORDER

It is firmly established that controversies which become moot or academic prior to judicial resolution ordinarily will be dismissed. Cinque v. N.J. Dept. of Corr., 261 N.J.Super. 242, 243 (App. Div. 1992). An issue is moot when a determination is sought on any matter which, when rendered, cannot have any practical effect on the existing controversy. In other words, the conflict between the parties has become merely hypothetical. In re Conroy, 190 N.J.Super. 453, 458 (App. Div. 1983.) Here, the Appellate Division has affirmed Petitioner's resignation in good standing effective February 23, 2011. Since the 90-day suspension was not issued until September 29, 2011, after the effective date of his resignation, it is now **MOOT**. Similarly, the termination which followed the prior resignation can have no practical effect. Therefore, it is **ORDERED** that both appeals by Daniel Everett are **DISMISSED** on grounds of mootness.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 19, 2014
DATE

Laura Sanders
LAURA SANDERS
Acting Director and Chief
Administrative Law Judge

Date Received at Agency:

August 19, 2014

Date Mailed to Parties:

August 21, 2014

/caa