



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Arteshia Darby,
Department of Children and Families

CSC Docket No. 2014-1796

Minor Discipline Appeal

ISSUED: **SEP 22 2014** (WR)

Arteshia Darby, a Principal Clerk Typist, appeals a five day suspension issued by the Department of Children and Families (DCF).

The record indicates that the appellant was served with an amended Preliminary Notice of Disciplinary Action (PNDA) on August 21, 2013, which charged her with incompetency, inefficiency or failure to perform duties; conduct unbecoming of a public employee; neglect of duty; and other sufficient cause (violation of DCF's code of ethics, improper access of DCF computer systems and misuse of official position and information).¹ Specifically, the appointing authority alleged that the appellant used confidential information concerning two employees that she gained solely through her position, for her personal benefit.

A departmental hearing was conducted on November 26, 2013. Mark Kears, a Manager in the appointing authority's Office of Human Resources, testified on behalf of the appointing authority that the appellant works in the Human Resources' Leave Unit and her duties include processing leave requests. Kears testified that on March 12, 2013, the appellant sent an email in response to the denial of her request for use of donated leave time in which she argued that the denial was not accurate and, in support of her position, noted that two other employees were approved for donated leave. Kears testified that the information

¹ The original PNDA was served to the appellant on August 1, 2013, charging the appellant with incompetency, inefficiency or failure to perform duties; conduct unbecoming of a public employee; and neglect of duty

that the appellant communicated in her email was a violation of confidentiality to gain for her own personal benefit. Kears testified that upon receipt of the email he reported it to DCF management, due to what he believed was the appellant's improper access of confidential information. The appellant testified that she believed that the subject charges were filed against her in retaliation for a grievance that she told her manager she planned to file due the denial of her multiple attempts to get her donated leave request approved.² In support of her claim, the appellant noted that this incident took place in March 2013, but she was not served with the PNDA until August 2013, well after she informed her manager that she planned to file a grievance. The appellant further testified that working on donated leave requests was a duty of her position and, in fulfilling this duty, she discussed past practices regarding the granting of leave requests with other employees in the Leave Unit. Finally, the appellant testified that she obtained the information from files she was working on and not from any computer system. The hearing officer found that the appellant referenced the confidential information of two employees for her own benefit in the email she sent on March 12, 2013. Based on this finding, the hearing officer sustained all of the charges. As a result, the appellant was issued a five day suspension.

On appeal to the Civil Service Commission (Commission), the appellant contends that her departmental hearing, which was originally scheduled for October 1, 2013, was improperly adjourned. The appellant cites *N.J.A.C. 4A:2-3.2(b)1*, which states that a departmental hearing shall be held within 30 days of the request unless adjourned by the consent of the parties and *N.J.A.C. 4A:2-1.3(a)*, which provides that a party requesting an adjournment must present good cause and sufficient reason for its request. The appellant argues that she did not consent to an adjournment and the appointing authority did not establish good cause and sufficient reason for the adjournment. Rather, she claims that the only reason the appointing authority provided her for the adjournment was its "operational needs," which it then refused to explain. However, the appellant asserts that the appointing authority sought adjournment to complete discovery, which was in contravention of *N.J.A.C. 1:1-9.6(e)*.³ Finally, the appellant contends that the adjournment caused her a "great inconvenience." In support of her appeal, the appellant submits the Final Notice of Disciplinary Action (FNDA), the hearing officer's Report and Recommendation from the departmental hearing, lists of the appointing authority's discovery documents made prior to and after the adjournment, and copies of emails relating to the adjournment.

In response, the appointing authority states that the departmental hearing originally scheduled for October 1, 2013 was "rescheduled for 10:00 am and . . . the

² The appellant indicated that she did not file the grievance.

³ *N.J.A.C. 1:1-9.6(c)* is part of the Uniform Administrative Procedure Rules, which governs hearings at the Office of Administrative Law (OAL). It provides that adjournments will not be granted to complete discovery if the parties have not timely complied with *N.J.A.C. 1:1-10.4*.

appellant was absent from work” for most of the day. The appointing authority further states that the appellant appeared *pro se* at the November 26, 2013 departmental hearing. Regarding the appellant’s claim that it sought an adjournment to complete discovery, the appointing authority contends that her reliance on *N.J.A.C. 1:1-9.6(e)* is misplaced, because that regulation applies to administrative law courts and not departmental hearings. Finally, the appointing authority contends that “any issues to the adjournment of the hearing were cured by the scheduling of the new hearing.”

CONCLUSION

N.J.A.C. 4A:2-3.7(a) provides that minor discipline may be appealed to the Commission. The rule further provides:

1. The [Commission] shall review the appeal upon a written record or such other proceeding as the [Commission] directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule or policy. If such issues or evidence are not fully presented, the appeal may be dismissed and the [Commission’s] decision will be a final administrative decision.
2. Where such issues or evidence under (a)1 above are presented, the [Commission] will render a final administrative decision upon a written record or such other proceeding as the [Commission] directs.

This standard is in keeping with the established grievance and minor disciplinary procedure that such actions should terminate at the departmental level.

In considering minor discipline actions, the Commission generally defers to the judgment of the appointing authority as the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by statute to the appointing authority. A review of the record evidences no showing that either factor, which would warrant further Commission review, is present in this case. The appellant’s appeal presents no issue of general applicability in the interpretation of law, rule or policy. Rather, the charges specifically relate to the appellant’s job performance. Furthermore, while the appellant contends that the charges were filed against her in retaliation for a grievance she planned to file, nothing in the record supports her contention. In this regard, an assertion of retaliation, without substantial credible evidence in support of such allegation, is not sufficient to meet the Commission’s minor discipline standard in this circumstance. To prevail in a charge of retaliation, the charging party must provide proofs in the form of documents, testimony, affidavits and/or witnesses that would

support the charge. *See In the Matter of Terry Whitfield*, CSC decided March 26, 2002.

With respect to the appellant's argument regarding discovery, the Commission observes that it does not have jurisdiction to address it. *See N.J.A.C. 4A:2-3.6*. Regarding the appellant's argument that the hearing was improperly adjourned, procedural flaws in the minor discipline process that are not material to the facts or resolution of an appeal are not sufficient to warrant dismissal of the charges. Moreover, *N.J.A.C. 4A:2-1.3(b)* provides that where an adjournment is found not to be for good and sufficient reason, the Commission may impose a fine or penalty. Thus, although the appellant claims that her departmental hearing was improperly adjourned, there is not a sufficient basis to dismiss the charges against her. However, the Commission is troubled by the appointing authority's failure to provide a reason other than the mere statement of "operational needs" for the adjournment and rescheduling of the appellant's departmental hearing. Therefore, the Commission warns the appointing authority that any additional failures to follow Civil Service laws or regulations may subject it to fines and penalties.

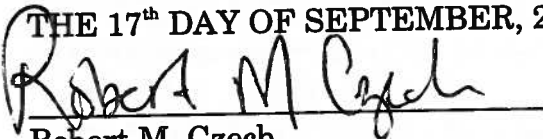
Based on this record, the appellant has not established an abuse by the appointing authority of its discretion in this disciplinary case. Accordingly, no further review will be conducted by the Commission.

ORDER

Therefore, it is ordered that this appeal 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 17th DAY OF SEPTEMBER, 2014



Robert M. Czech

Chairperson

Civil Service Commission

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