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**STATE OF NEW JERSEY**

In the Matter of Armond Lucas  
Township of Union, Department of  
Public Works

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**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2014-1518  
OAL DKT. NO. CSV 17846-13

**ISSUED: FEBRUARY 6, 2015 BW**

The appeal of Armond Lucas, Laborer 1, Township of Union, Department of Public Works, 15 working day suspension, on charges, was heard by Administrative Law Judge Kelly J. Kirk, who rendered her initial decision on December 10, 2014. No exceptions were filed.

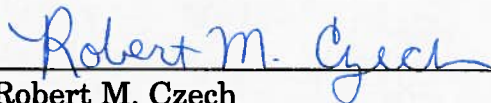
Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on February 4, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

**ORDER**

The Civil Service Commission dismisses the above appeal without prejudice based on appellant's lack of prosecution.

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  
FEBRUARY 4, 2015**



**Robert M. Czech**  
**Chairperson**  
**Civil Service Commission**

**Inquiries**  
**and**  
**Correspondence**

**Henry Maurer**  
**Director**  
**Division of Appeals and Regulatory Affairs**  
**Civil Service Commission**  
**44 S. Clinton Ave.**  
**P. O. Box 312**  
**Trenton, New Jersey 08625-0312**



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**FAILURE TO APPEAR**

OAL DKT. NO. CSV 17846-13

AGENCY DKT. NO. 2014-1518

**IN THE MATTER OF ARMOND LUCAS,  
TOWNSHIP OF UNION, DEPARTMENT  
OF PUBLIC WORKS.**

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**Marcia J. Tapia, Esq., for appellant Armond Lucas (Loccke, Correia, Linsky &  
Bukosky, attorneys)**

**Robert J. Merryman, Esq., for respondent Township of Union (Apruzzese,  
McDermott, Mastro & Murphy, attorneys)**

Record Closed: November 19, 2014

Decided: December 10, 2014

**BEFORE KELLY J. KIRK, ALJ:**

**STATEMENT OF THE CASE**

Appellant Armond Lucas appeals a 15-day suspension by the Township of Union (Union), Department of Public Works.

### PROCEDURAL HISTORY

On October 8, 2013, the Union served upon Lucas a Preliminary Notice of Disciplinary Action. A departmental hearing was held on October 22, 2013. On November 12, 2013, the Union served upon Lucas a Final Notice of Disciplinary Action, sustaining the charges of insubordination, chronic or excessive absenteeism, conduct unbecoming a public employee, neglect of duty and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3, and suspending Lucas for fifteen days.

Lucas appealed and the Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 to the Office of Administrative Law (OAL), where it was filed on December 19, 2013. A hearing was scheduled for June 17, 2014, but was adjourned due to the unavailability of a witness. The hearing was rescheduled for August 18, 2014, and notices were mailed by the OAL to counsel on June 20, 2014.

On Monday, August 18, 2014, counsel for Lucas and Union appeared, as well as three witnesses for Union. Lucas failed to appear and failed to contact the OAL. Lucas's counsel requested an adjournment rather than proceed in Lucas's absence. An adjournment was granted and Lucas's counsel was to advise the OAL by August 23, 2014, as to Lucas's intention to either withdraw or proceed. If Lucas's intention was to proceed, a telephone conference was to be scheduled to address the matter and his failure to appear.

On August 26, 2014, the undersigned sent a letter to counsel requesting information on this matter, as Lucas's counsel had not advised of Lucas's intention. On September 8, 2014, the undersigned received a letter from Lucas's counsel, stating that counsel had not heard from Lucas until September 3, 2014, and it was not until September 8, 2014, that Lucas advised counsel that his intention was to proceed with the hearing. Petitioner denied receipt of correspondence from counsel advising him of the August 18, 2014 hearing date.

A telephone conference was held on September 16, 2014, during which conference it was established that the hearing would be rescheduled for November 19, 2014, and that if Lucas again failed to appear, the matter would be dismissed. On September 18, 2014, Lucas's counsel sent a letter confirming the foregoing, with a notation that a copy of the letter was also sent to Lucas. Notices were mailed by the OAL to counsel on September 19, 2014.

Counsel for Lucas and Union appeared on November 19, 2014. Lucas again failed to appear.

### **FINDINGS OF FACT**

Based on the procedural record in the file and representations of Lucas's counsel, Marcia J. Tapia of Loccke, Correia, Limsky & Bukosky, I **FIND** the following **FACTS**:

On Monday, August 18, 2014, counsel for Lucas and Union appeared, as well as three witnesses for Union. Lucas failed to appear and failed to contact the OAL. Lucas's counsel requested an adjournment rather than proceed in Lucas's absence. An adjournment was granted and the hearing was rescheduled for November 19, 2014.

On September 18, 2014, Lucas's counsel sent a letter, with a notation that a copy of the letter was also sent to Lucas, confirming that the hearing was rescheduled for November 19, 2014 at 9:00 a.m., and that if Lucas failed to appear, the matter would be dismissed. Notices of Hearing were mailed by the OAL to counsel on September 19, 2014.

After Tapia received the notice from the OAL, she sent Lucas a copy of the notice, along with correspondence, via certified mail, to the address on file. She received confirmation that the letter was received.

Counsel for Lucas and Union appeared on November 19, 2014 at 9:00 a.m. Lucas again failed to appear. At 9:55 a.m., Lucas still had not appeared, and the failure to appear was noted on the record. Additionally, shortly before 9:55 a.m. on November 19, 2014, Lucas's counsel received a text message from a number she did not recognize stating "sorry Lucas won't be able to attend, I am working that day." She assumed that it was a text for Lucas indicating that he would not attend the hearing.

Lucas was no longer employed by Union on the date of the hearing.

### **CONCLUSIONS OF LAW**

N.J.A.C. 1:1-14.4(a) provides that if, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall direct the Clerk to return the matter to the transmitting agency for appropriate disposition.

Lucas failed to appear at the August 18, 2014, hearing. He nevertheless was permitted to reschedule the hearing. However, despite two notices of the November 19, 2014 hearing date, as well as notice that his failure to appear would result in the matter being dismissed, he again failed to appear on November 19, 2014.

For the above reasons, I **CONCLUDE** that Lucas has abandoned this matter and that it should be dismissed for lack of prosecution.

### **ORDER**

It is **ORDERED** that Lucas's appeal be dismissed pursuant to N.J.A.C. 1:1-14.4, and I **DIRECT** the Clerk to return the matter to the Civil Service Commission for appropriate disposition.

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.

12/10/14  
DATE

Kelly J. Kirk  
KELLY J. KIRK, ALJ

Date Received at Agency:

December 10, 2014 /db

Date Mailed to Parties:  
db

December 10, 2014 /db