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STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Kenneth
Poole, Passaic County

CSC Docket No. 2015-1570

Administrative Appeal

ISSUED: FEB - 5 2015 (CSM)

Kenneth Poole, a former Recreation Program Specialist with Passaic County, requests that his withdrawn good faith layoff appeal be reinstated and transmitted to the Office of Administrative Law (OAL) for a hearing.

By way of background, the appellant was laid off for reasons of economy and efficiency from his position of Recreation Program Supervisor effective March 3, 2008. The appellant appealed the good faith of the layoff and the determination of his layoff rights to the former Merit System Board, which transmitted his good faith appeal to the OAL for a hearing. The Civil Service Commission (Commission) denied the appellant's determination of rights appeal, finding that even if he had more seniority than other employees, his layoff was appropriate because he was only entitled to displace another employee if the employee is serving in a title to which the appellant had rights. Thus, since no such positions existed, the appellant's title rights were correctly determined. See *In the Matter of Kenneth Poole, Passaic County* (CSC, decided April 29, 2009). With respect to his good faith appeal, on May 28, 2009, through his former attorney, the appellant withdrew his good faith appeal at the OAL and it was returned to the Commission on June 17, 2009. However, there is no record of the Commission acknowledging the appellant's withdrawal of his appeal in the Commission's meeting minutes.¹

¹ As the retention schedule for appeal materials is three years, the file material returned by the OAL to the Commission has been destroyed. Additionally, OAL advises that its records only indicate that the appellant's former attorney requested that his appeal be withdrawn on May 28, 2009 and that the file was returned to the Commission on June 17, 2009.

In his May 10, 2012 request to reinstate his appeal, the appellant states that his case was withdrawn in error and he requests that the matter be reopened for review.

In response, the appointing authority, represented by Jose Santiago, Assistant County Counsel, presents that the Passaic County Board of Chosen Freeholders adopted resolution R-09-153 which began the process of closing the Passaic County Juvenile Detention Center effective March 31, 2009. Therefore, as the appellant's counsel withdrew the appeal shortly after the close of the Juvenile Detention Center over five years ago, there is now no position to which the appellant could return. Accordingly, the appointing authority maintains that the matter should not be reopened.

Although provided the opportunity, the appellant did not provide any additional argument or information for the Commission to review in this matter.

CONCLUSION

N.J.A.C. 1:1-19.2(a) provides that a party may withdraw a request for a hearing by notifying the judge and all parties. Additionally, *N.J.A.C.* 1:1-19.2(b) states that when a party withdraws, the Clerk shall return the matter to the agency which transmitted the case to the OAL for appropriate disposition. Further, *N.J.A.C.* 1:1-19.2(c) provides that after the Clerk has returned the matter, a party shall address to the transmitting agency head any motion to reopen a withdrawn case. *N.J.A.C.* 1:1-19.2(c) does not specify a time limit for the motion to be filed. In other words, the withdrawal of the petitioner's appeal was without prejudice. *N.J.A.C.* 1:1-19.2 is analogous to the court rule on voluntary dismissals, R. 4:37-1(a), which provides: "Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice." Thus, for good cause, such an appeal can be reinstated for purposes of a determination on the merits. However, in the present case, the appellant has not presented a sufficient basis to reopen his appeal.

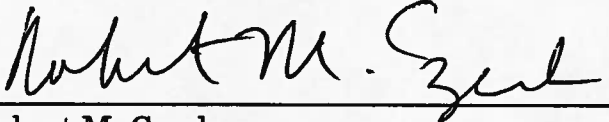
At the time the appellant withdrew his appeal, he was represented by an attorney. According to documentation provided by the OAL, the record demonstrates that through his attorney, the appellant voluntarily elected to withdraw his appeal. In his appeal submission, the appellant simply states that his appeal was withdrawn in error. However, there is nothing in the record indicating that he pursued the matter until, at the earliest, May 10, 2012, almost three years after his counsel initially withdrew the appeal at OAL. Moreover, the appellant does not explain why he waited so long to pursue the matter of reopening his appeal. Given this significant delay, it would be prejudicial to the appointing authority to permit the appellant to reopen his appeal now, almost seven years after his layoff and six years after the close of the Juvenile Detention Center on the mere

assertion that his appeal was withdrawn in error. Therefore, there is no basis on which to reinstate the appellant's good faith layoff appeal.

ORDER

Therefore, it is ordered that this request be denied.

DECISION RENDERED BY
THE CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF FEBRUARY, 2015



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