



B-7

STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Linda Brown,
Atlantic County

CSC Docket No. 2015-852

Request for Interim Relief

ISSUED: **APR - 2 2015** (SLD)

Linda Brown, a Senior Library Assistant with Atlantic County, petitions the Civil Service Commission (Commission) for interim relief of a 45 working day suspension.

By way of background, the appointing authority served the petitioner with a Preliminary Notice of Disciplinary Action (PNDA), dated September 3, 2014, notifying her that she was to be suspended for 45 working days on charges of chronic or excessive absenteeism or lateness and other sufficient cause. The PNDA indicated that if she wanted a departmental hearing, she should notify it within five days of receipt of the PNDA, and the hearing would be held on September 19, 2014.

In her September 19, 2014 request for interim relief, the petitioner maintains she received the PNDA by certified mail on September 18, 2014, and that she immediately contacted James Ferguson, County Counsel, to notify him that she was requesting a departmental hearing. In support, she submits a copy of her certified letter envelope, with the notation "LN 9-4, 9/15, 9/19" and a copy of the certified return receipt she signed dated September 18, 2014.¹ The petitioner asserts that, despite the "formal paperwork" indicating that her hearing would be held on September 19, 2014, Mr. Ferguson told her that the departmental hearing would have to be rescheduled due to a conflict. The petitioner asserts that she also called her supervisor, who told her that she would have a departmental hearing, and she

¹ It is noted that the appellant's name is printed and signed in ink, but that the date is written in a heavy black marker.

would be notified by mail as to the new date. However, she maintains that when she called the Human Resources Office, she was told that she was suspended, and that a Final Notice of Disciplinary Action (FNDA) would be issued.

In response, the appointing authority, represented by Alan J. Cohen, Assistant County Counsel, argues that the petitioner's request for interim relief should be denied. The appointing authority asserts that the petitioner's stated grounds (*i.e.*, that she did not timely receive the PNDA, her supervisor told her that a hearing would be held in the future and that Mr. Ferguson told her that the hearing would be rescheduled) for interim relief are untrue. In this regard, the appointing authority states that it timely served the petitioner with the PNDA by both regular and certified mail on September 3, 2014. In this regard, it notes that the certified mail receipt indicates that delivery was attempted at the petitioner's home three times, on September 4, September 15 and September 19, 2014. In support, it submits a certified mail receipt dated September 3, 2014.² Moreover, the appointing authority argues that the copy of the PNDA sent by regular mail was not returned, and thus, it must be assumed that the petitioner also received that notice. Therefore, it maintains that the petitioner's request for a hearing was untimely since such a request had to have been made within five days of delivery. Additionally, the appointing authority asserts that neither Mr. Ferguson nor the petitioner's supervisor told her that she would be receiving a departmental hearing when she contacted them after accepting delivery of the certified mail. In support, the appointing authority submits certifications from the petitioner's supervisor and Mr. Ferguson, in which the petitioner's supervisor states that he did not promise her that a hearing would be held, and Mr. Ferguson states that there was no hearing scheduled for September 19 and that he had another engagement that day.

Additionally, the appointing authority argues that the petitioner has failed to establish a clear likelihood of success on the merits since she was excessively absent and the imposition of discipline was appropriate. Moreover, there is no immediate and irreparable harm to the petitioner since she was only suspended and there is no harm to others in imposing the discipline. Finally, the appointing authority maintains that the public interest would be served in holding public employees accountable for appearing for work when required.

Finally, the appointing authority submits a copy of a FNDA which upheld the charges and the 45 working day suspension from September 10, 2014 to November 14, 2014. The FNDA indicates that it was sent to the petitioner by certified mail on

² The tracking number for the certified mail receipt indicates that notice of the certified mail was left at the appellant's address on September 4, 2014 and delivery was accomplished on September 18, 2014 at 1:54 p.m.

September 19, 2014. In support, it submits a certified mail receipt, dated September 19, 2004.³

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition for a stay and interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

N.J.S.A. 11A:2-15 provides that appeals from major disciplinary matters be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. This 20-day time limitation is jurisdictional and cannot be relaxed or waived. See *Borough of Park Ridge v. Salimone*, 21 *N.J.* 28, 46 (1956); See also, *Mesghali v. Bayside State Prison*, 334 *N.J. Super.* 617 (App. Div. 2000), cert. denied, 167 *N.J.* 630 (2001); *Murphy v. Department of Civil Service*, 155 *N.J. Super.* 491, 493 (App. Div. 1978).

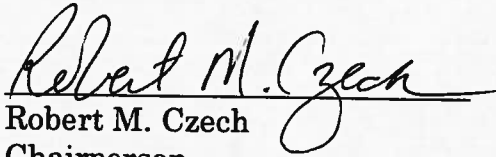
In the instant matter, the petitioner has failed to address any of the factors that are considered in evaluating a petitioner for interim relief. Rather, she merely argues that she is entitled to a departmental hearing. The record evidences that the appointing authority attempted to timely serve the petitioner with the PNDA, by both regular and certified mail. Rather, it was the petitioner's actions or inactions, as the case may be, which led her to not receive the certified mail copy of the PNDA until September 18, 2014. Therefore, a FNDA was issued to the petitioner on September 19, 2014. Although the petitioner did not submit a new appeal upon receipt of the FNDA, the Commission will accept her request for interim relief as her timely appeal of the disciplinary charges sustained on the FNDA. Accordingly, the Commission finds that the petitioner timely appealed her 45 working day suspension and is entitled to a hearing at the Office of Administrative Law.

ORDER

Therefore, it is ordered that this matter be referred to the Office of Administrative Law for a hearing on the petitioner's 45 working day suspension.

³ The tracking number for the certified mail receipt indicates that notice of the certified mail was left at the appellant's address on September 20, 2014 and delivery was accomplished on October 11, 2014 at 12:42 p.m.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF APRIL, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Linda Brown
Dennis Levinson
Alan J. Cohen, Assistant County Counsel
Ken Connolly
Joseph Gambino
Beth Wood