

B-19



STATE OF NEW JERSEY

DECISION  
OF THE  
CIVIL SERVICE COMMISSION

Administrative Appeal

In the Matter of Consuelo Villegas  
Superior Court of New Jersey-  
Monmouth Vicinage  
Judiciary

CSC Docket No. 2015-791

ISSUED: PM MAY 08 2015

Consuelo Villegas, a Judiciary Clerk 3, Bilingual in Spanish and English, with the Judiciary, Monmouth Vicinage, represented by Alan Kaufman, CWA National Staff Representative, requests that the Civil Service Commission (Commission) reinstate her appeal of her 30 working day suspension, which was dismissed based on her failure to appear at the scheduled hearing.

By way of background, the appellant received a 30 working day suspension following sustained charges of incompetence, inefficiency or failure to perform duties, insubordination, neglect of duty, conduct unbecoming a public employee and other sufficient cause. The appellant appealed this action to the Commission, which transmitted the matter to the Office of Administrative Law (OAL). The OAL scheduled the matter for a hearing on December 16, 2014. The record indicates that neither the appellant nor her union representative appeared at the appointed time, nor did they attempt to contact the OAL. Based on their absence, the OAL issued a "Failure to Appear" notice which indicated that the appellant failed to appear at the scheduled proceeding. On January 13, 2015, this matter was returned to the Commission for a final decision, with a notice giving the parties 13 days to present any excuse for failure to appear to this agency.

In support of her request to reinstate her appeal, Mr. Kaufman argues that he was not notified by the OAL of the settlement conference and as such, neither was Ms. Villegas who was not on the service list. He states that this appeal was originally filed by Sandra McGraw, Staff Representative with CWA Local 1032, and as such, she was listed on the service list as the appellant's representative. Ms.

McGraw received notice that a settlement conference was scheduled for November 20, 2014. However, Ms. McGraw was contacted by Susanna Morris, Staff Counsel, Administrative Office of the Courts, (AOC), who requested that the matter be rescheduled. At that time, Ms. McGraw informed Ms. Morris that she had turned the case over to Mr. Kaufman and he would be handling this matter. On or about November 14, 2014, Ms. Morris then contacted Mr. Kaufman with the request to have the November 20, 2014 settlement conference rescheduled. Ms. Morris faxed a letter to the Administrative Law Judge indicating that they jointly requested the adjournment and new date. On November 21, 2014 Mr. Kaufman's office faxed over his "Notice of Appearance/Application Union Representative" to the OAL, but he argues that he never received any notice back from the OAL with the rescheduled settlement date. Further, he had spoken with Ms. Morris giving her a recounting of the chain of events and she informed him that the appointing authority would not oppose the rescheduling of this case for a hearing. Mr. Kaufman maintains that their non-appearance was an unintentional miscommunication and it would be unfair to deprive the appellant of her opportunity to resolve this matter through a hearing. Therefore, he requests that the matter be re-transmitted to OAL for a hearing.

Although provided the opportunity, the appointing authority did not provide any additional information or arguments for the Commission to review.

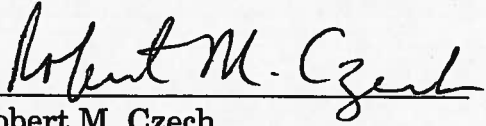
### CONCLUSION

In this matter, the appellant has sustained her burden of proof. A review of the November 26, 2014 service list for the Notice of Settlement Conference issued by the OAL scheduling the December 16, 2014 hearing indicates that it was sent to Sandra McGraw and not Alan Kaufman or the appellant as requested. Upon receipt of the Failure to Appear Notice, the appellant's representative filed a timely appeal to the Commission explaining her extenuating circumstances in not receiving the Notice of Hearing. Furthermore, the record indicates that OAL was properly notified of the appellant's change in representation. Therefore, the record as a whole indicates that the appellant intended to pursue her statutory right to challenge her 30 working day suspension, and did not intend to abandon her appeal. Accordingly, the Commission finds that under all of the circumstances in this matter, to deny the appellant a hearing on the merits of her appeal would be unjust.

### ORDER

Therefore, it is ordered that Consuelo Villegas' request to reinstate her appeal be granted and the matter be transmitted to the OAL for further proceedings.

**DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 6<sup>TH</sup> DAY OF MAY, 2015**



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

**Inquiries  
and  
Correspondence**

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

**c: Alan Kaufman  
Consuelo Villegas  
Susanna Morris, Staff Counsel  
Marsi Perkins  
Sandra Hlatky**