

#### **STATE OF NEW JERSEY**

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Lillian Serino Berkeley Township Department of Administrative Services

CSC Docket No. 2015-2193

Request for Reconsideration

AUG 0 3 2015

**ISSUED:** 

(SLK)

Irene Netzel,¹ on behalf of Lillian Serino, a former Technical Assistant Construction Official with Berkeley Township, Department of Administrative Services, petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decision, rendered on February 3, 2015, in which the Director of the Division of Appeals and Regulatory Affairs (DARA) denied her request for a hearing with respect to her resignation not in good standing effective September 24, 2014.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action (31B) dated October 21, 2014 to the petitioner via certified or registered mail. The record indicated that the 31B was served October 25, 2014. Thereafter, in a letter postmarked January 13, 2015, Irene Netzel, serving in the capacity of power of attorney for the appellant, appealed this action to the Commission on behalf of the appellant. On February 3, 2015, the Director of DARA denied her request for a hearing, finding that the petitioner's appeal was beyond the 20-day time period to file an appeal.

In the instant matter, the petitioner states that in May 2013 she was diagnosed with a catastrophic medical condition that required an extensive regimen of treatment and therapy. The treatments were very rough on her body and she had many side effects which resulted in her being unable to work. Once her

<sup>&</sup>lt;sup>1</sup> Netzel submits Serino's Power of Attorney which appoints her Attorney-In-Fact in the event Serino is unable to act.

treatments were complete, the petitioner went back to work. However, she was absent for many days due to the side effects of the therapy she had received. In May 2014, the petitioner states that she was admitted to the hospital for another During this time, she requested that her doctors send her medical documentation to the appointing authority so her absences could be documented in her file. However, due to her condition, she did not have the ability to follow up to ensure that this was being done. Subsequently, in September 2014, the petitioner states that she was again admitted to the hospital and underwent several surgeries. Netzel states that she was not involved in helping the petitioner with her affairs as power of attorney until it was too late to file a timely appeal. In this regard, Netzel presents that the initial notice of removal from the appointing authority was returned unclaimed because the petitioner was in the hospital when it was issued. Significantly, she explains that the certified letter that was sent to the petitioner was not signed for by the petitioner. Rather, Netzel claims that her brother signed for the letter. Therefore, the petitioner maintains that she did not receive the notice of removal in a timely manner and that once Netzel received the notice, she filed a timely appeal.

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

### **CONCLUSION**

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Civil Service Commission (Commission) may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. Additionally, 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. Further, N.J.A.C. 4A:2-2.8(a) states that "An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee." Paragraph (b) of that rule states that if the FNDA is not provided to the employee, an appeal may be made to the Commission "within a reasonable time."

Both the Commission and the Appellate Division have interpreted what constitutes a "reasonable time" to file an appeal without receipt of notice. For example, in *Jones v. Department of Civil Service*, 118 N.J. Super. 323 (App. Div. 1972), the Court found that because the appointing authority had failed to notify the appellant, a permanent employee, that he had 20 days to appeal his removal, the appellant was entitled to a hearing even though his appeal was not received within 20 days of receipt of a letter informing him of his termination. The notice letter was dated December 29, 1970, and the Jones' appeal was dated February 1,

1971. It is also noted that in *Jones, supra*, the appellant's counsel was in contact with the appointing authority within the 20-day period, requesting information regarding the removal; however, the appointing authority failed to respond to the attorney's request. In *In the Matter of Valerie Ealy*, Docket No. A-6867-9975 (App. Div. February 6, 2002), the Court found that Ealy was not provided with appeal rights regarding her termination from employment, and while it also determined that the six months Ealy waited to appeal would ordinarily be too long a period of time to qualify as "reasonable," the fact that she was invited to reapply for employment once she was medically cleared to return to work, could lead a reasonable person to believe that filing an appeal was not a pre-requisite to returning to work.

In the instant matter, the Commission accepts the representation that the petitioner never saw her notice of removal when it was issued due to her medical condition and the fact that she was in the hospital. Indeed, given her medical condition, the petitioner has established credible arguments that she was unaware that the appointing authority was even seeking her removal. Further, when the petitioner was in the hospital, Netzel's brother, without her knowledge, had signed for the certified mail as confirmation of receipt of the FNDA and once Netzel became aware that the petitioner was being removed, she filed an appeal on her behalf. Although provided the opportunity, the appointing authority has not refuted this argument or presented any evidence for the Commission to consider. Therefore, the record as a whole indicates that the appellant intended to pursue her statutory right to challenge her removal and filed a timely 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 disciplinary action would be unjust.

#### **ORDER**

The Commission grants reconsideration of the prior decision in this matter and grants the petitioner a hearing on her removal. It is further ordered that the matter be transmitted to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON THE 29th DAY OF JULY, 2015

Robert M. Czech

Chairperson

Civil Service Commission

Inquiries

and

Correspondence

Henry Maurer

Director

Division of Appeals & Regulatory Affairs

Civil Service Commission

Hearings Unit P.O. Box 312

Trenton, New Jersey 08625-0312

## Attachment

c: Lillian SerinoIrene NetzelThomas G. Gannon, Esq.Joseph Gambino



# STATE OF NEW JERSEY CIVIL SERVICE COMMISSION

In the Matter of Lillian Serino Berkeley Township

CSC DKT. NO. 2015-2193

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Hearing Denied

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**ISSUED:** 

FEB 0 3 2015

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The Civil Service Commission considered the request for a hearing concerning Lillian Serino, from her appeal of resignation not in good standing, and made the following findings of fact:

- 1. The Final Notice of Disciplinary Action was served October 25, 2014.
- 2. The letter of appeal was postmarked January 13, 2015.

Since the appeal in this matter was not perfected within 20 days of receipt of the Final Notice of Disciplinary Action, the request for a hearing was denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE

DIRECTOR,

DIVISON OF APPEALS AND REGULATORY AFFAIRS

ON FEBRUARY 3, 2015

HENRY MAURER

DIRECTOR

RE: Lillian Serino

Inquiries And Correspondence

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c: Agency Services
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Lillian Serino