

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 condition. 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

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