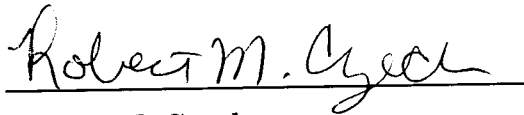


Re: Richard Sazon

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
SEPTEMBER 16, 2015

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 16590-14

AGENCY DKT. NO. 2014-507

**IN THE MATTER OF
RICHARD SAZON, CAMDEN COUNTY
HEALTH SERVICES CENTER.**

Joseph Waite, AFSCME Representative, for appellant, appearing pursuant to
N.J.A.C. 1:1-5.4(a)6

Michael Watson, Esq., for respondent (Brown & Connery, LLP, attorneys)

Record Closed: July 17, 2015

Decided: August 28, 2015

BEFORE **JOHN S. KENNEDY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant appeals Camden County Health Services Center's (CCHSC) Final Notice of Disciplinary Action (FDNA) dated August 2, 2013, terminating his employment for neglect of duty, incompetency, inefficiency or failure to perform duties and conduct unbecoming a public employee. He filed a timely appeal and the matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, and filed on December 12, 2014.

Status conferences were conducted on March 3, 2015, April 7, 2015 and June 19, 2015, but appellant's representative had been unable to determine if appellant would proceed as all of his attempts to contact appellant had been unsuccessful. On July 6, 2015, respondent filed a motion to dismiss due to appellant's abandonment. Appellant's representative filed a motion for back pay on July 2, 2015, which was opposed by respondent on July 8, 2015.

FACTUAL DISCUSSION

Appellant was employed as a registered nurse for CCHSC from September 8, 2003 to August 2, 2013. On June 13, 2013, respondent served appellant with a Preliminary Notice of Disciplinary Action (PNDA) alleging that two CCHSC employees found him sleeping while on duty (R-A). After a departmental hearing took place on July 9, 2013, appellant was issued a FNDA on August 2, 2013 and removed him from his employment. Appellant filed an appeal and the matter was transferred from the Civil Service Commission to the Office of Administrative Law.

On February 2, 2015, respondent provided appellant's representative with appellant's last known address (R-E) and, subsequently, this tribunal provided his representative with appellant's email address. Appellant's representative advised this tribunal during status conferences conducted on March 3, 2015, April 7, 2015 and June 19, 2015 that he had been unable to contact appellant despite sending multiple messages and letters via email, regular mail and certified mail (R-F). As of June 19, 2015, appellant's representative had been unable to determine if appellant wanted to proceed with his appeal as all of his attempts to contact him had been unresponsive. Respondent filed a motion to dismiss the appeal as a result of appellant's abandonment. His representative filed a motion for back pay resulting from appellant's termination after an official reprimand was issued.

Based on the foregoing, I **FIND** as **FACT** that appellant has not been in contact with his representative despite being sent multiple messages and letters via email, regular mail and certified mail.

LEGAL ANALYSIS AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-14.14(a), an Administrative Law Judge “may grant or deny a motion, suppress a claim or defense, or take other case-appropriate action against a party who unreasonably fails to comply with any order of an ALJ or with any requirements of the Uniform Administrative Procedure Rules.” Navarro v. The B. Manischewitz Co., LLC, OAL No. 1884-99, 2001 WL 34604601, *2 (N.J. Adm. January 22, 2001) (citing N.J.A.C. 1:1-14.14(a)); see also Statlend v. Dept. of Community Affairs, Sandy Recovery Division, OAL No. CAF 10794-14, 20114 WL 5834274 (N.J. Adm. October 10, 2014) (dismissing appeal where appellant failed to pursue appeal and contact number was “no longer in service”).

Similarly, the Merit System Board has affirmed the dismissal of an appeal where the facts presented “a clear indication of [the] appellant’s intent to abandon her appeal.” See In the Matter of Rebecca Oliver, OAL No. CSV 9504-96, 1999 WL 33883392, *2 (N.J. Adm. January 12, 1999). There, the appellant failed to provide her new address to counsel and had not been in contact with her counsel for more than six months.

Appellant has not shown any interest in pursuing this matter since filing the appeal in August 2013, nearly two years ago. The OAL regulations and case precedent demonstrate that an appeal will be dismissed with prejudice when an appellant shows no intention of pursuing his or her appeal. See Navarro and Statlend, supra. Here, appellant has not responded to his counsel’s attempts to contact him via email or certified and regular mail, nor has appellant attempted to contact counsel on his own (R-F).

Like the claimant in Oliver, appellant has not been in contact with his counsel for over six months. See R-E and R-F. Moreover, if appellant has moved over the last two years, he has failed to advise his counsel or the Court of his new address. See R-F; see also Oliver, 1999 WL 33883392 at *2. Appellant’s failure to communicate and lack of interest span nearly two years, despite being given multiple opportunities to keep this matter in good standing. See R-E and R-F. Therefore, I **CONCLUDE** that appellant

has abandoned his appeal and respondent's motion to dismiss the appeal is **GRANTED**.

Appellant's motion would require a determination on the merits of the case without conducting a hearing. OAL regulations require a hearing be conducted and an initial decision be based exclusively on the testimony, documents and arguments accepted by the judge. See N.J.A.C. 1:18.1(a). Civil Service regulations authorize an award of back pay only where a disciplinary penalty has been reversed. See N.J.A.C. 4A:2-2.10(a). As a result of appellant's lack of involvement in this appeal, no hearing can be conducted and no record can be established upon which to rely in order to reverse appellant's removal from employment. As a result, I **CONCLUDE** that the appellant has not established any facts whatsoever to permit this tribunal to reverse his removal from employment. Therefore, appellant's motion for back pay is **DENIED**.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the motion to dismiss this matter is **GRANTED**.

It is further **ORDERED** that appellant's motion for back pay is **DENIED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR**,

DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 28, 2015
DATE



JOHN S. KENNEDY, ALJ

Date Received at Agency:

August 28, 2015

Date Mailed to Parties:

August 28, 2015

cmo

EXHIBITS

For Appellant:

A-1 IMO Tina Sugar, Township of Andover, OAL DKT NO.CSV 10676-10

For Respondent:

R-A PNDA dated June 13, 2013

R-B Findings from Departmental Hearing Dated July 29, 2013

R-C FNDA dated August 2, 2013

R-D Civil service Commission decision granting hearing issued November 20, 2014

R-E Email from Joseph Waite to Michael Watson dated February 2, 2015

R-F Email from Joseph Waite to Michael Watson dated May 28, 2015

R-G Navarro v. The B. Manischewitz Co., LLC, OAL DKT NO. CRT 1884-99