



STATE OF NEW JERSEY

DECISION OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Cynthia Pena,  
Passaic County Board of Social  
Services

CSC Docket No. 2019-927

Reconsideration

ISSUED: NOVEMBER 2, 2018 (BW)

Cynthia Pena, a Human Services Specialist 1 with the Passaic County Board of Social Services, represented by Pauline M.K. Young, Esq., requests reconsideration of the Civil Service Commission's (Commission) August 15, 2018 decision which dismissed the appeal of her removal on the basis of her failure to appear at the July 23, 2018, settlement conference at the Office of Administrative Law (OAL).

The appellant timely appealed her removal to this agency which transmitted the matter to OAL as a contested case. The OAL scheduled the matter for a settlement conference on July 23, 2018 but mistakenly typed July 23, 2019 on the notice, and sent a notice dated May 21, 2018 to this effect to the appellant's union representative, the appellant and the Passaic County Board of Social Service's attorney. On the scheduled date, the appellant and her union representative failed to appear. On July 25, 2018, the Administrative Law Judge issued an initial decision dismissing the appeal for failure to appear and returned the matter to the Commission for a final decision.

In support of the appellant's request for reinstatement of her appeal, the appellant's attorney argues that the appellant did not appear as a result of a clerical error on the part of the OAL, as the date on the notice was July 23, 2019. Moreover, the appellant's attorney asserts that the appellant should not be denied a fair hearing because of a clerical error.

## CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which the 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.

Given the new evidence presented, namely, the incorrectly dated notice of the settlement conference, it would be unfair not to permit the appellant to pursue her statutory right to challenge her removal based on a clerical error. Accordingly, the Commission finds that under the circumstances presented in this matter, to deny the appellant a hearing on the merits of her disciplinary action would be unjust.

## ORDER

Therefore, it is ordered that Cynthia Pena's 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 31<sup>ST</sup> DAY OF OCTOBER, 2018

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries and Correspondence	Christopher S. Myers Director Division of Appeals and Regulatory Affairs Civil Service Commission P.O. Box 312 Trenton, New Jersey 08625-0312
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attachment

c: Cynthia Pena  
Pauline M.K. Young, Esq.  
Frank Sciro, Esq.  
Beth Wood (w/file)



CIVIL SERVICE COMMISSION ON  
THE 15<sup>TH</sup> DAY OF AUGUST, 2018

*Deirdre L. Webster Cobb*

Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
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 05838-18

AGENCY DKT. NO. 2018-2902

**IN THE MATTER OF CYNTHIA PENA,  
PASSAIC COUNTY BOARD OF SOCIAL  
SERVICES,**

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**David H. Weiner**, Union Representative for appellant, failed to appear

**Albert C. Buglione, Esq.**, appearing on behalf of respondent, Passaic County  
Board of Social Services

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Record Closed: July 24, 2018

Decided: July 25, 2018

**BEFORE JOANN LASALA CANDIDO, ALAJ:**

Appellant, Cynthia Pena, appeals from the Final Notice of Disciplinary Action (FNDA) dated March 17, 2018, terminating her employment for chronic excessive absenteeism or lateness. Appellant filed an appeal with the Civil Service Commission and the Commission granted appellant's request for a hearing and transmitted the matter to the Office of Administrative Law on April 23, 2018, for determination as a contested case. By notice dated May 1, 2018, appellant and respondent's counsel were notified of a telephone prehearing scheduled for May 21, 2018 at 3:00 p.m. The notice requested that appellant provide a telephone number where she could be reached for

the call. On May 18, 2018, Union Representative David H. Weiner entered an appearance on behalf of appellant. The undersigned held a pre-hearing telephone conference on May 21, 2018, whereby Mr. Weiner advised that he was having an issue trying to reach his client. An in-person conference was scheduled for July 23, 2018. Prior to this hearing, Mr. Buglione spoke to Mr. Weiner and was advised that he still had not been able to reach appellant.

Based upon the lack of appearance by either Mr. Weiner or his client and having had notices sent to all parties on May 21, 2018, I must **FIND** this conduct tantamount to an abandonment of her request for a hearing.

**ORDER**

Based upon the foregoing, I **ORDER** that the appeal filed by appellant in this matter be and is hereby **DISMISSED**.

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

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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.

July 25, 2018  
DATE

Joann Lasala Candido  
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

July 25, 2018

Date Mailed to Parties:

ljb

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