

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF JUNE, 2018

Deirdre' L. Webster Cobb

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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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 15927-16

AGENCY DKT. NO. 2017-1095

**IN THE MATTER OF CHRISTOPHER HINES,
WOODBINE DEVELOPMENTAL CENTER,
DEPARTMENT OF HUMAN SERVICES.**

Samuel Gaylord, Esq., for appellant Christopher Hines (Gaylord Popp, LLC,
attorneys)

Kimberly A. Eaton, Deputy Attorney General, for respondent Woodbine
Developmental Center (Gurbir S. Grewal, Attorney General of New Jersey,
attorney)

Record Closed: April 13, 2018

Decided: May 11, 2018

BEFORE BARRY E. MOSCOWITZ, ALJ:

STATEMENT OF THE CASE

On June 5, 2014, Christopher Hines was injured at work. He was granted a leave of absence but never returned to work after it expired. Did Hines resign not in good standing? Yes. Under N.J.A.C. 4A:2-6.2(c), an employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall

be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing.

PROCEDURAL HISTORY

On June 7, 2016, the Woodbine Developmental Center served Hines with a Preliminary Notice of Disciplinary Action. In that notice, Woodbine specified that on May 22, 2015, it advised Hines that his leave of absence would reach one year on June 9, 2015, and that it could only grant him a leave of absence for up to one year. Woodbine further specified that on June 9, 2015, it advised Hines to return to work or resign, and that he had failed to apply for accidental disability retirement. Moreover, Woodbine specified that on June 13, 2015, it advised Hines that his leave of absence had reached one year on June 9, 2015, and Woodbine reminded Hines that it could only grant him a leave of absence for up to one year. Therefore, Woodbine charged Hines with having violated N.J.A.C. 4A:2-6.2(c), because he had been absent from work without permission for five consecutive days, and sought his resignation not in good standing.

On September 21, 2016, Woodbine served Hines with a Final Notice of Disciplinary Action sustaining the charges and specifications in the Preliminary Notice of Disciplinary Action following a departmental hearing.

On September 28, 2016, Hines appealed the determination.

On October 18, 2016, the case was transmitted to the Office of Administrative Law as a contested under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On December 11, 2017, Woodbine filed a motion for summary decision. Although Hines is represented by counsel, Hines refused to communicate with his attorney and participate in his own appeal. Therefore, the motion for summary decision will be decided unopposed.

FINDINGS OF FACT

Based on the exhibits attached to the Certification of Kimberly Eaton, DAG, in support of the motion for summary decision, I **FIND** the following as **FACT**:

Appellant, Christopher Hines, was employed by the Woodbine Developmental Center as a human services assistant since March 31, 2007. Ex. G. The job requirements for a human services assistant include lifting and/or moving residents as required, bathing and/or assisting residents with bathing, and rendering basic first aid and emergency care to residents when necessary. Ex. H. On June 5, 2014, Hines was injured while working, and filed a Workers' Compensation claim, which was approved. Ex. A. Hines's Workers' Compensation claim eventually expired, and he did not return to work following the injury. Ibid.

On May 22, 2015, Angela Santandrea, the Manager of Human Resources, notified Hines by letter that his leave of absence had exceeded one continuous year, in violation of N.J.A.C. 4A:6-1.1. Ibid. That letter also advised Hines that he had three possible options: (1) return to work, if medically possible, prior to June 9, 2015, with appropriate documentation from his physician; (2) apply for accidental disability retirement benefits from the Public Employees' Retirement System; or (3) resign effective June 9, 2015. Ibid. That letter further advised Hines that if Woodbine received no response by June 9, 2015, the appointing authority would pursue his removal. Ibid.

On August 19, 2015, Hines applied for an Americans with Disabilities Act (ADA) accommodation of occasional lifting of no more than thirty-five pounds, and no push/pull greater than sixty-three pounds. Ex. B. These restrictions were outlined in his Functional Capacity Evaluation, dated June 17, 2015. Ibid. The job specification for a human services assistant states that "[p]ersons with mental or physical disabilities are eligible as long as they can perform essential functions of the job with or without reasonable accommodation. If the accommodation cannot be made because it would cause the employer undue hardship, such persons may not be eligible." Ex. H.

Gina M. Wasik, the ADA coordinator, informed Hines in a letter dated September 4, 2015, that Woodbine was unable to accommodate this request, "as it would result in the removal of an essential function of your position as Human Services Assistant." Ibid. Ms. Wasik advised Hines that due to the expiration of his one-year leave of absence, he was not eligible for any additional leave time. Ibid. Ms. Wasik further advised Hines that he might be eligible for accidental disability retirement benefits or, alternatively, could resign in good standing effective immediately. Ibid. Ms. Wasik instructed Hines that he had until September 14, 2015, to notify her of his decision, or he would be considered a resignation not in good standing. Ibid.

Subsequently, Hines applied for accidental disability retirement benefits, and was denied due to his failure to provide medical documentation. Ex. C. On June 13, 2016, Ms. Wasik advised Hines by letter that if he did not resign by June 24, 2016, the appointing authority would seek his removal as a resignation not in good standing. Ibid. On June 27, 2016, Hines was served with a Preliminary Notice of Disciplinary Action. Ex. D.

A departmental hearing was held on September 13, 2016, in which Woodbine recommended a resignation not in good standing. Ex. E.

CONCLUSIONS OF LAW

Motions for summary decision shall be entered if no genuine issue of material fact exists and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5. When a motion for summary decision is made and supported, an adverse party, in order to prevail, must, by responding affidavit, set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. Ibid. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered. Ibid.

In this case, it is undisputed that Hines's last day of work was June 5, 2014, and that Angela Santandrea advised Hines in the May 22, 2015, letter that he had three options: (1) return to work, (2) retire, or (3) resign. Ex. A. It is also undisputed that Hines

failed to return to work or resign, and that his application for accidental disability retirement benefits was denied because he failed to supply supporting medical documentation. Ex. E. Indeed, the record confirms that Hines was instructed to provide medical documentation clearing him to return to work, and that he failed to do so. Moreover, Ms. Santandrea stated in the letter that “[i]n the event that our physician clears you to return to duty with limitations, the interactive process must be initiated to determine if an accommodation can be approved.” Ibid.

Since Hines did not return to work, retire, resign, provide medical documentation clearing him to return to work, participate in the process to determine if his accommodation could be approved, or even participate in his appeal, I **CONCLUDE** that Hines has abandoned his job and that his position shall be recorded as resigned not in good standing under N.J.A.C. 4A:2-6.2(c).

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the motion for summary decision is hereby granted, and that Hines resigned not in good standing under N.J.A.C. 4A:2-6.2(c).

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.

5/11/18
DATE


BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

5/11/18


Date Mailed to Parties: **MAY 14 2018**
dr

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

DATE: June 13, 2018

TO: Civil Service Commission

FROM: Christopher S. Myers, Director
Division of Appeals and Regulatory Affairs

SUBJECT: Initial Decision on the Appeal of Christopher Hines A-3

Christopher Hines, Human Services Assistant, Woodbine Developmental Center, Department of Human Services, resignation not in good standing effective June 9, 2015 on charges of job abandonment.

The appointing authority alleged that the appellant was absent from work without permission for five consecutive business days.

Recommendation of the Administrative Law Judge – Grant the appointing authority's motion for summary decision and uphold the resignation not in good standing.

The following materials are provided for your review in order that you may render your final decision at the next Civil Service Commission meeting on June 20, 2018.

Initial Decision rendered by ALJ Barry E. Moscovitz, dated May 11, 2018.