



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of H.P., Police Officer
(S9999U), City of Margate

CSC Docket No. 2018-2797

List Removal Appeal

ISSUED: JUNE 6, 2018 (DASV)

H.P., represented by Steven P. Scheffler, Esq., appeals his rejection as a Police Officer candidate by the City of Margate and its request to remove his name from the eligible list for Police Officer (S9999U) on the basis of psychological unfitness to perform effectively the duties of the position.

By way of background, the appellant’s name was certified on November 17, 2017 from the Police Officer (S9999U), City of Margate, eligible list. In disposing of the certification, the appointing authority requested the removal of the appellant’s name on the basis that he was not psychologically fit to perform effectively the duties of the position. A Certification Disposition Notice (Notice), dated February 26, 2018, was sent to the appellant. The Notice indicated that should the appellant wish to file an appeal, he may do so “within 20 days from the date of this notice.” See *N.J.A.C.* 4A:4-6.5(c)2. The Notice also provided the appellant with the address to where he should file his appeal, as well as information regarding the appeal fee. The appellant filed an appeal of his removal by letter dated March 23, 2018 and postmarked March 26, 2018. It was also emailed to a Civil Service Commission (Commission) representative on March 23, 2018 and received by the Division of Appeals and Regulatory Affairs on March 29, 2018. In response, the appointing authority, represented by Stephen D. Barse, Esq., objected to the filing of the appeal based on untimeliness. Since the date of the Notice was February 26, 2018, the appellant’s appeal was due on or before March 19, 2018, as the twentieth day fell on Sunday, March 18, 2018. The appellant was then given an opportunity to submit additional information as to why “good cause” should be found to accept his appeal. The matter has now been presented to the Commission for its review.

The appellant states that he received his removal notice “on or shortly after February 26, 2018.” He then contacted his attorney’s office requesting legal services. However, “due to scheduling issues,” the attorney’s office “could not accommodate him with an appointment prior to the filing deadline.” Thus, the appellant requests that the Commission permit the filing of his appeal.

In reply, the appointing authority argues that “good cause” has been interpreted to require a valid excuse for the delay and a showing that the appeal has merit.¹ It cites *Appeal of Syby*, 66 *N.J. Super.* 460 (App. Div. 1961), which construed “good cause” in appellate court rules governing the time for appeal. The appointing authority emphasizes that in *Syby*, *supra*, the demands of a trial did not justify good cause to file an untimely appeal. In the present case, the appointing authority contends that the sole reason for the delay was scheduling issues. It asserts that no suggestion has been made that the appellant was not capable of filing his appeal within the required 20 days and no extraordinary circumstance has been shown to justify the delay in the filing of his appeal. Therefore, the appointing authority submits that the appellant’s request should be denied.

CONCLUSION

N.J.A.C. 4A:4-6.5(a) states in part that an appointing authority may request that an eligible’s name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title. Additionally, *N.J.A.C.* 4A:4-6.5(c) provides that upon receipt of satisfactory documentation, appropriate Commission staff shall notify the eligible that:

1. He or she has been disqualified for appointment;
2. He or she may file an appeal with the [Commission] within 20 days of such notification;
3. If no appeal is received within the specified time, his or her name will be removed from the eligible list; and
4. If the eligible does file an appeal, an opportunity will be provided to submit a report from a physician, psychologist or psychiatrist of his or her own choosing.

N.J.A.C. 4A:4-6.5(c)2 clearly states that an appeal is to be filed “within 20 days of such notification” and not 20 days from when the appellant receives the Notice. Significantly, *N.J.A.C.* 4A:4-6.5(c)3 specifically states that if no appeal is filed within the specified timeframe, the eligible’s name will be removed from the

¹ It is noted that although the 90-day time period set forth in *N.J.A.C.* 4A:4-6.5(e) for filing an independent psychological or psychiatric report has not yet expired, the appellant has not submitted a report challenging the pre-appointment evaluation. Thus, as it currently stands, the appellant has been deemed psychologically unfit to perform the duties of a Police Officer by a licensed psychiatrist.

eligible list. This is unlike the regulatory guidelines for other administrative appeal timeframes as the rules governing the medical and psychological disqualification appeal process mandate removal of the eligible's name from the eligible list if no appeal is received within the required 20-day timeframe from the date on the Notice. The strict timeframe to file medical and psychological disqualification list removal appeals is necessary given the unique implications a potentially meritorious appeal can have on the parties, *i.e.*, a mandated appointment of the eligible with a retroactive date of appointment. *See In the Matter of Stanley Kolbe, Jr.* (CSC, decided May 21, 2014) (Commission enforced prior order granting retroactive appointment to the appellant after a mandated appointment resulting from successfully appealing a failed psychological evaluation and dismissed the appointing authority's claims of fiscal constraints and recent layoff when three employees who ranked lower than the appellant on eligible list were not impacted by the layoff).

As such, unlike the rules governing other types of written record appeals in Title 4A, the medical and psychological disqualification appeal rules contain a number of specific timeframes for each of the parties to act. For example, upon receipt of a timely medical and psychological disqualification appeal, the appointing authority is required to submit to the Commission, an appellant's attorney, and/or licensed physician or psychologist/psychiatrist, all medical/psychological reports, etc., that served as the basis for the removal request. An appointing authority's failure to do so could result in retention of the eligible's name on the eligible list. *See N.J.A.C. 4A:4-6.5(d)*; *see also, In the Matter of R.S.* (CSC, decided September 20, 2017) and *In the Matter of Kiahna Walcott, et al.* (CSC, decided April 5, 2017) (Despite being provided with the opportunity, the appointing authority did not provide the medical documentation of the appellants for review by this agency to uphold its requested list removal. Accordingly, the Commission restored the appellants to the eligible list and ordered their appointments as County Correction Officers. The appointing authority's failure to submit the medical evaluations constituted an unreasonable delay and it was warned that any future delays in complying with the timeframes would result in being subjected to fines).

Moreover, in order to further facilitate the timely processing of these types of appeals, the Commission amended *N.J.A.C. 4A:4-6.5(e)*, effective June 21, 2017, to require that the appellant, if he or she chooses to do so, to submit a report from a physician or psychologist/psychiatrist to rebut the appointing authority's report within 90 calendar days of filing of the appeal. *See 49 N.J.R. 492*. In addition, should the matter be referred to the Medical Review Panel or Medical Examiners Panel, upon issuance of the panel's recommendation and report to the Commission, the parties may file exceptions within 10 days and cross exceptions within five days. As noted earlier, these strict timeframes are in place to facilitate the timely processing of these appeals. They are designed to facilitate the opportunity for the parties to establish a contemporaneous record of an eligible's medical or

psychological condition at the time of appointment for the panel to consider. In that regard, it is noted that based on longstanding administrative practice, a psychological assessment for employment in law enforcement is only considered valid for one year. *See In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff'd on reconsideration* (MSB, decided April 9, 2008). As such, the timeliness of initial appeals in these matters is imperative. *Compare, N.J.A.C. 4A:2-1.1(b)* (“Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed”) and *N.J.A.C. 4A:4-6.6(a)* (“Appeals other than scoring, item, and administration appeals . . . and *medical and/or psychological disqualification appeals* . . . shall follow the following procedures: 1. The appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed. 2. An appeal must be filed with an appropriate representative of the [Commission] as indicated on the notice advising of disqualification.” Emphasis added).

Therefore, considering the regulations governing these types of appeals and the fact that the appellant was also specifically informed of the time requirement in the Notice, his appeal is untimely. It is noted that, even taking the earliest possible date of filing, namely March 23, 2018 when the appellant emailed his appeal to a Commission representative,² the appeal was still four days late. The appellant was required to file his appeal on or before March 19, 2018. The Commission emphasizes that the purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. In the instant case, the delay in filing the appeal exceeds that threshold of finality. However, the Commission has the discretionary authority to relax rules for good cause. In that regard, *N.J.A.C. 4A:1-1.2(c)* provides that the rules may be relaxed for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes. Thus, it is appropriate for the Commission to consider whether the delay in asserting the appellant’s right to appeal was reasonable and excusable. *See Syby, supra, Atlantic City v. Civil Service Commission*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Board of Education*, 90 *N.J.* 145 (1982).

In this case, although arguably the delay was a *de minimus* infraction, the appellant has not presented a sufficient reason that would excuse such delay. Rather, it appears from the appellant’s submission that the reason for the delay was

² However, at this time, appeals cannot be emailed to the Commission. *N.J.A.C. 4A:2-1.1(a)* states that all appeals to the Commission shall be in writing, signed by the person appealing (appellant) or his or her representative and include the reason for the appeal and the specific relief requested. Additionally, pursuant to *N.J.A.C. 4A:2-1.8*, the appropriate appeal processing fee or proof of exemption must be submitted.

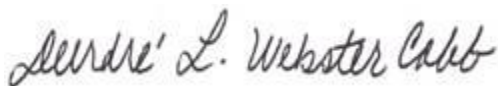
that he was securing legal services for his appeal, and due to scheduling issues, an appointment could not be made prior to the filing due date. As noted by the appointing authority, there is nothing in the record to suggest that the appellant was incapable of filing a timely appeal himself, where clearly in this case, he received the Notice which specifically advised him when and where to file his appeal. Moreover, to the extent that the appellant may have relied on his representative to file a timely appeal, relief has not been given in that regard. *See e.g., In the Matter of Annemarie Krusznis* (MSB, decided May 18, 2005) (Appellant's reliance on her attorney to file a timely good faith appeal of her layoff did not provide a basis to grant relief when the attorney never filed the appeal and appellant subsequently filed an untimely appeal); *In the Matter of George Phillips*, Docket No. A-2296-02T2 (App. Div. April 6, 2004) (Notwithstanding appellant's contention that he and his counsel were misled by the union to believe that an appeal had been filed, the Superior Court of New Jersey, Appellate Division, affirmed the decision denying appellant's appeal of his removal as untimely since it was filed beyond the 20 day filing period). The responsibility to file a timely appeal rests solely with the appellant. Furthermore, failure to recognize or to explore the legal basis for an appeal, without more, does not constitute good cause to extend or relax the time for appeal under Civil Service rules. *See In the Matter of Nasira Johnson* (CSC, decided August 5, 2009), citing *Savage v. Old Bridge-Sayreville Med. Group* 134 N.J. 241, 248 (1993) (ignorance of the specific basis for legal liability does not operate to extend the time to initiate legal action). Accordingly, the appellants appeal is untimely, and he has failed to show good cause to justify relaxing the requirements of *N.J.A.C. 4A:4-6.5(c)2*.

ORDER

Therefore, it is ordered that this appeal be dismissed as untimely.

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
THE 6TH DAY OF JUNE, 2018



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