



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Christopher Munn,
City of Trenton Police Department

CSC Docket No. 2018-2366

Administrative Appeal

ISSUED: AUGUST 17, 2018 (BW)

Christopher Munn, a Police Officer with the City of Trenton Police Department, represented by Paul W. Tyshchenko, Esq., requests to reinstate the appeal of his 120-hour suspension, which was dismissed on the basis of his failure to appear at the April 17, 2018 settlement conference at the Office of Administrative Law (OAL).

The appellant timely appealed his suspension to this agency which transmitted the matter to OAL as a contested case. The OAL scheduled the matter for a settlement conference on April 17, 2018, and sent a notice dated March 6, 2018 to this effect to the appellant's attorney and the City of Trenton's (City) attorney. On the scheduled date, the appellant and/or his attorney failed to appear. The OAL issued a "Failure to Appear" notice which indicated that the appellant and his attorney failed to appear at the scheduled proceedings. On April 24, 2018, the matter was returned to the Civil Service Commission (Commission) for a final decision, with a notice giving the parties 13 days to present any excuse for failure to appear to this agency.

In support of the appellant's request for reinstatement of his appeal, the appellant's attorney argues that he did not appear as a result of a clerical error either on the part of his office or the OAL, as he never received the notice. Moreover, the appellant's attorney asserts that the appellant should not be denied a fair hearing because of a clerical error.

In response, the appointing authority, represented by Stephen E. Trimboli, Esq., maintains that the appellant's request in this matter should be denied. Specifically, the appointing authority asserts that the appellants failure to appear is the latest in a series of actions designed to burden the City and cause it to incur legal fees unnecessarily. The City had to pay for the services of its attorney and the loss of two superior police officers for the period of time they were required to appear for a settlement conference. The appointing authority states the OAL sent the notice to appellant's attorney and not to the appellant as is the procedure when someone is represented by an attorney. The City requests that if the appeal is reinstated that the appellant refund the City all costs and legal fees incurred by the City when it appeared for the settlement conference.

CONCLUSION

With regard to the instant matter, the appellant's attorney indicates that he did not receive the Notice of Settlement Conference dated March 6, 2018. In this regard, as noted correctly by the appointing authority, when an appellant is represented by an attorney, OAL only sends notice to the attorney. Accordingly, as the appellant does not bear any individual responsibility for his failure to appear at the settlement conference on April 17, 2018 and he did not intend to abandon his appeal, it would be unfair not to permit him to pursue his statutory right to challenge his suspension based on a clerical error by his attorney.

Moreover, the City's request for reimbursement due to nonappearance is denied as the Commission has no jurisdiction over sanctions for nonappearance at a settlement conference. In this regard, while *N.J.A.C. 4A:10-1.1* and *N.J.A.C. 4A:10-2.1* provide that if there is evidence of a violation or noncompliance with Title 11A or *N.J.A.C. 4A*, the Commission may take action which includes assessing costs, charges and fines, no such regulatory violations are evident in this matter. Rather, OAL rules, specifically *N.J.A.C 1:1.14.4*, govern such sanctions. That rule indicates that if the Judge does not receive an explanation from a party for nonappearance within one day, the matter is referred back to the transmitting agency. Sanctions under that rule are **only** considered where the Judge **has** received an explanation from a party **and** finds no good cause to reschedule the hearing. That did not occur in this matter. Moreover, even if the Commission could utilize this provision, since it has found good cause for the matter to proceed, no such sanctions would be warranted. Accordingly, the Commission finds that under the circumstances presented in this matter, to deny the appellant a hearing on the merits of his disciplinary action would be unjust.

ORDER

Therefore, it is ordered that Christopher Munn's request to reinstate his appeal be granted and the matter be transmitted to the OAL for further proceedings.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15 TH DAY OF AUGUST, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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