



STATE OF NEW JERSEY

In the Matter of MacArthur Lee, Jr.,
Hackensack, Department of Public
Works

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

CSC DKT. NO. 2020-1786
OAL DKT. NO. CSV 06681-20

ISSUED: AUGUST 24, 2022

The appeal of MacArthur Lee, Jr., Maintenance Worker 1, Grounds, Hackensack, Department of Public Works, removal, effective October 18, 2019, on charges, was heard by Administrative Law Judge John P. Scollo (ALJ), who rendered his initial decision on July 20, 2022. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of August 24, 2022, accepted the recommendation as contained in the attached ALJ's initial decision.

ORDER

The Civil Service Commission dismisses the appeal of MacArthur Lee, Jr., for failure to provide discovery.

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 24TH DAY OF AUGUST, 2022

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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 DOCKET NO. CSV 06681-20
AGENCY REF. NO.: 2020-1786

**MACARTHUR LEE, JR.,
CITY OF HACKENSACK, DEPARTMENT
OF PUBLIC WORKS.**

Matthew Rocco, Esq., for Appellant, Macarthur Lee, Jr.

Raymond R. Wiss, Esq., for Respondent, City of Hackensack, Department of
Public Works (Wiss & Bouregy, P.C., attorneys)

Record Closed: May 4, 2022

Decided: July 20, 2022

BEFORE: **JOHN P. SCOLLO, ALJ:**

STATEMENT OF THE CASE

This case arises out of a petition filed by the Appellant, Macarthur Lee, Jr. (hereinafter, "Mr. Lee" or "the Employee") seeking to challenge the City of Hackensack, Department of Public Work's (hereinafter, "the Employer's") decision to terminate him for unexcused absences and for violating the terms of a "Last Chance Agreement" dated September 23, 2019.

At the present time, the Tribunal has before it the Respondent-Employer's Motion to Dismiss the Petition with Prejudice for Failure to Provide Discovery.

PROCEDURAL HISTORY

The Appellant, Macarthur Lee, Jr., represented by counsel provided by his labor union, the United Public Service Employees Union, filed a Petition with the Civil Service Commission (CSC Document Number 2020-1786), which the CSC referred to the Office of Administrative Law (OAL) where it was filed as a contested case on July 29, 2020.

On September 3, 2020, the matter was assigned to Administrative Law Judge, John P. Scollo, who held an Initial Telephone Conference on September 16, 2020 and issued a Pre-Hearing Order dated September 24, 2020. The Pre-hearing Order provided a schedule for the parties to conduct discovery and to file motions for the enforcement of the discovery process. Initially, paper discovery was to be completed by November 16, 2020.

On December 4, 2020, during a telephone status conference, Employer's counsel, Raymond R. Wiss, Esq., reported that he had not received responses to his discovery requests from Mr. Lee and was requesting leave to file a Motion to Dismiss for Failure to Provide Discovery. Lee's counsel, Matthew Rocco, Esq., reported that he forwarded the discovery requests to Lee, but Lee had neither provided discovery responses nor responded to subsequent, multiple and various attempts to contact him concerning his discovery obligations.

The Tribunal granted leave to Mr. Wiss to file a Motion to Dismiss without Prejudice for Failure to Provide Discovery. Mr. Rocco requested leave to file a Motion to be Relieved as Counsel. The Tribunal granted leave to Mr. Rocco to file his Motion, but Mr. Rocco has not yet filed it.

On February 16, 2021 the Tribunal granted the Respondent's Motion to Dismiss the Petition without Prejudice. The February 16, 2021 Order further provided that that if Appellant failed to provide discovery responses and failed to move to set aside the Order of Dismissal, the City was granted leave to file a Motion to Dismiss the Petition with Prejudice. After the issuance of the February 16, 2021 Order, there have been discussions among the Tribunal, Attorney Rocco and Attorney Wiss regarding attempts to contact Mr. Lee to obtain his cooperation for completing his discovery obligations; the failure of Mr. Lee to respond to Mr. Rocco's attempts to procure his cooperation for completing his discovery obligations; and the inability of Mr. Rocco to obtain Mr. Lee's responsive communications about this matter at all. Now, Respondent has moved to dismiss Mr. Lee's Petition with Prejudice for failing to provide discovery responses. According to the Respondent's Proof of Mailing, the Motion to Dismiss with Prejudice was served by regular mail on Matthew Rocco, Macarthur Lee, the United Public Service Employees Union (Mr. Lee's union) and by email upon Matthew Rocco and Macarthur Lee. The Respondent's Motion to Dismiss with Prejudice is unopposed.

FACTUAL DISCUSSION

In the matter at bar, the Respondent-Employer (City of Hackensack, Department of Public Works) brought charges against Mr. Lee for unexcused absences from work on October 16, 17, and 18, 2019, in violation of the Department's rules and regulations and in violation of a Last Chance Agreement dated September 23, 2019. The Last Chance Agreement was signed as part of a settlement of previous, work-related disciplinary charges. The present charges regarding Mr. Lee's unexcused absences resulted in Mr. Lee's termination. In the present matter, Mr. Lee seeks to overturn the Respondent's decision to terminate his employment.

As part of the litigation process in the present matter, the Respondent-Employer served discovery requests upon the Appellant's counsel on October 16, 2020. Discovery responses were due on November 16, 2020. Appellant did not request any extensions of time to answer Respondent's discovery requests. The Appellant did not serve

discovery requests upon the Respondent. Since the Respondent was not served with discovery requests, the Respondent is deemed not to be in default of its discovery obligations. At the present time, the Appellant has not yet responded to the Respondent's discovery requests.

The Tribunal held a telephone status conference on December 4, 2020. There was some discussion about whether Mr. Rocco represented the United Public Service Employees Union (hereinafter, the "Union") of which Mr. Lee is a member, or Macarthur Lee, Jr himself. Judge Scollo decided, based on the facts presented, that Mr. Rocco represented both the Union (which paid the bill for legal services pursuant to a retainer agreement) and Mr. Lee (the union member receiving the legal services).

During the December 4, 2020 status conference, Mr. Wiss presented his request for leave to file a discovery motion citing his service of discovery demands on October 16, 2020 and the fact that no discovery was provided by the November 16, 2020 deadline, which was three weeks overdue. During the telephone conference, Mr. Rocco conceded that Mr. Lee had not provided responses to the Respondent's discovery requests. Mr. Rocco stated that his firm had made multiple and various attempts to contact Mr. Lee concerning his case in general and about his discovery obligations. However, Mr. Rocco reported that Mr. Lee had been completely non-responsive to his firm's attempts to contact him. Mr. Rocco requested leave to file a Motion to be Relieved as Counsel. Mr. Rocco was granted leave but has not filed a Motion to be relieved as Counsel.

At the conclusion of the December 4, 2020 status conference, Judge Scollo followed-up with a letter dated December 7, 2020 summarizing the telephone conference of December 4, 2020 and granting leave to Attorney Wiss to file the discovery motion and granting leave to Attorney Rocco to file a motion to be relieved as counsel. Attorney Wiss filed a Motion to Dismiss without Prejudice, which was granted. The Order further provided that that if Appellant failed to provide discovery responses and failed to move to set aside the Order of Dismissal, the City was granted leave to file a Motion to Dismiss the Petition with Prejudice. Since attempts by Lee's counsel to obtain Lee's cooperation

in providing discovery responses have not been successful, the Respondent has moved to Dismiss the Petition with Prejudice.

FINDINGS OF FACT

Having had the opportunity to review the Respondent's Motion to Dismiss with Prejudice dated May 4, 2022, I **FIND** it to have been properly filed and served upon Attorney Rocco, Mr. Lee and the Union. I **FIND** that Mr. Lee has not provided responses to the Respondent-Employer's discovery requests (Interrogatories and Request for Production of Documents) within the time allowed. The Tribunal has not received any papers from the Appellant's counsel in Opposition to the Motion to Dismiss with Prejudice. I **FIND** that the Respondent's discovery motion against the Appellant is unopposed. I **FIND** that Mr. Rocco has not filed a Motion to be Relieved as Counsel and I further **FIND** that Mr. Rocco is still Mr. Lee's counsel and the Union's counsel.

APPLICABLE LAW

The Uniform Administrative Procedure Rules (UAPR) are published pursuant to N.J.S.A. 52:14F-5. The UAPR's rules governing discovery, including discovery motions are found at N.J.A.C. 1:1-10.1 through 1:1-10.6. The rules governing civil case discovery motion practice in the Superior Court are found at Rule 4:23-1 through -5. Motion practice in an OAL action is substantially similar to motion practice in the Superior Court. Rule 4:23-5 (a)(2) provides that once an Order of Dismissal without Prejudice has been entered, the party seeking discovery may seek dismissal with prejudice after the prescribed time period for the delinquent party to produce discovery and to seek restoration of his pleadings has expired.

LEGAL ANALYSIS

The discovery rules set forth in the Uniform Administrative Procedure Rules and the New Jersey Rules of Court mandate that parties provide good faith responses to

discovery requests. Here, the discovery requests served by Respondent upon Appellant were in accordance with the rules and have not been answered. There were no exceptional or mitigating circumstances, which might serve as a basis for the Appellant's failure to provide discovery responses.

CONCLUSION

I **CONCLUDE** that the Appellant has failed to comply with the Respondent-Employer's discovery requests within the time allowed. I **CONCLUDE** that despite the issuance of the February 16, 2021 Order of Dismissal without Prejudice, the Appellant has not complied with his discovery obligations and has not moved to set aside said Order. The foregoing being so, I **CONCLUDE** that it is appropriate that the Petition should be dismissed with prejudice. I **CONCLUDE** that because the Appellant did not file any Opposition papers in response to the Respondent-Employer's discovery motion, the discovery motion must be considered "unopposed" and that it must be, and hereby is, **GRANTED**.

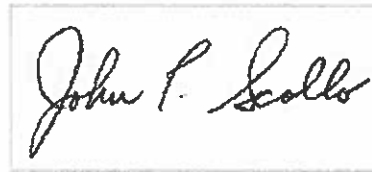
ORDER

Based upon the foregoing, it is on this Twentieth (20th) day of July, 2022 **ORDERED** that Respondent-Employer's Motion to Dismiss the Petition with Prejudice for Failure to Provide Discovery is **GRANTED**.

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. 40A:14-204.

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 20, 2022
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

Appendix

Witnesses

None

Appellant's Exhibits

None

Respondent's Exhibits

None

Court Exhibits

Order to Dismiss without Prejudice dated February 16, 2021

Respondent's Motion to Dismiss with Prejudice dated May 4, 2022