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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 02762-23

CSC Docket No. 2022-1138

VERONICA PETERSON,

Petitioner,

v.

NEWARK PUBLIC SCHOOL DISTRICT,

Respondent.

Seth B. Kennedy, Esq., for petitioner (Kroll Heineman Ptasiewicz & Parsons,
attorneys)

John Burke, Esq., for respondent

Record Closed: May 22, 2024

Decided: July 9, 2024

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

STATEMENT OF THE CASE

Petitioner, a custodian at the Harold Wilson School, appeals from the determination by Respondent-Newark Public Schools ("NPS") to terminate her

employment for theft of time. This matter arises out of allegations contained in a PNDA dated March 30, 2021, that on Saturday, February 20, 2021 and Sunday, February 21, 2021, Veronica Peterson was scheduled to work overtime at the school, failed to appear on both dates, yet clocked in and out with an electronic device called Kronos, and was paid for work she did not perform. It was also alleged that Peterson exhibited disrespectful and aggressive behavior towards her supervisors on February 22, 2021 while being questioned about her whereabouts on February 20 and 21, 2021.

PROCEDURAL HISTORY

A PNDA dated March 30, 2021 was issued charging Veronica Peterson with violations of:

- N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming;
- N.J.A.C. 4A-2-2.3(a) (7) Neglect of Duty; and
- N.J.A.C. 4A:2-2.3(a)(11) Other Sufficient cause.

The above-listed charges were brought due to allegations that February 20 and 21, 2021 Peterson stole time and on February 22, 2021, Peterson exhibited disrespectful and aggressive conduct to her superiors while being questioned about her whereabouts on February 20 and 21, 2021. It appears that the PNDA was re-issued for the same charges on September 13, 2021.

On September 29, 2021, Hearing Officer Joseph Licata, Esq. issued a decision in which he sustained the charges that on Saturday, February 20, 2021 and Sunday, February 21, 2021, Veronica Peterson was scheduled to work overtime at the school, failed to appear on both dates, yet clocked in and out with an electronic device, and was paid for work she did not perform. Specifically, the hearing officer found Victoria Peterson guilty of all three charges set forth above. An FNDA was issued on October 21, 2021 setting forth the penalty of Termination / Removal.

Peterson filed a major disciplinary appeal with the Civil Service Commission (CSC) on November 12, 2021. This matter was transmitted to the Office of Administrative Law ("OAL") on March 27, 2023, for determination as a contested case. The matter was received by the OAL and docketed on March 28, 2023 and assigned OAL Docket Number CSV 02762-23. On April 3, 2023, the matter was assigned to John P. Scollo, ALJ.

Judge Scollo held a Pre-Hearing Conference on April 19, 2023 and on April 19, 2023 he issued a Pre-Hearing Order which provided for a schedule for discovery, motions and for conferences. The parties engaged in discovery and the Tribunal sponsored settlement discussions.

The parties agreed to a settlement of the matter on March 6, 2024. On March 6, 2024, Judge Scollo sent an email to both counsel, Seth Kennedy, Esq. representing Peterson and to John Burke, Esq, representing NPS, in which the terms of the settlement were set forth: (1) that in lieu of termination (removal), Peterson would be allowed to resign her position in good standing; (2) that Peterson would receive no money; and (3) that Peterson would not be allowed to re-apply for a job with the NPS. As an operational detail, which did not constitute a substantive disagreement between the parties, Attorney Burke was tasked with writing the Settlement Agreement, the terms of which were already agreed-upon as aforesaid herein. By a responding email dated March 6, 2024, Attorney Kennedy confirmed his receipt of the Judge Scollo's email and emailed his client's assent to the above-listed settlement terms. Attorney Burke also emailed his client's assent to the settlement terms.

The attorneys drafted a written settlement Agreement, which was presented to Veronica Peterson within a few days for her to sign. On May 2, 2024, the Tribunal asked Peterson's attorney, Seth Kennedy for an update on the process of the signing of the Settlement Agreement and the Tribunal also scheduled an in-person conference for Friday, May 10, 2024 for the parties to either present the signed settlement agreement or to explain why it was not signed. On May 6, 2024, Attorney Kennedy responded to the Tribunal by email stating that he was told by her nephew that Veronica Peterson

was recovering from recent medical procedure and has been unable to sign and return the Settlement Agreement. He added that Local 68 (Peterson's Union) had been in contact with a member of Peterson's family and that he (Kennedy) expected to have the signed Settlement Agreement by May 7, 2024.

Again, on May 7, 2024, the Tribunal contacted the attorneys to make further inquiry into the signing of the Settlement Agreement and suggested that someone go to Peterson's home to pick up the signed document. On May 9, 2024, Attorney Seth Kennedy advised the Tribunal that Ms. Peterson had still not signed the Settlement Agreement and that he learned through a family member that Ms. Peterson had second thoughts about whether she would sign the Settlement Agreement. Attorney Kennedy also stated that the Union had afterwards spoken directly to Ms. Peterson, who stated that she would have a final decision on whether she would sign the Settlement Agreement by Monday, May 13, 2024. On May 10, 2024 the Tribunal acknowledged Mr. Kennedy's May 9, 2024 correspondence and observed that whether or not Ms. Peterson was now having reservations about signing the Settlement Agreement, she had entered into the settlement on March 6, 2024 with the assistance of counsel and was obligated to abide by its terms. The Tribunal thereupon granted leave for the Respondent's counsel to file a Motion to Enforce the Settlement Agreement on an abbreviated basis. The Tribunal also cancelled the May 10, 2024 in-person conference. Also, on May 10, 2024, the Tribunal notified the attorneys that it was scheduling preemptive hearing dates for May 22 and 23, 2024 at 9:30 a.m. The Tribunal told the attorneys to make sure that they told their respective clients that they must appear at the hearing.

On May 13, 2024, Mr. Kennedy advised the Tribunal (while the judge was on vacation) that he had still not received the signed Settlement Agreement from his client. On May 15, 2024, Mr. Kennedy advised this Tribunal that he had still not received the signed Settlement Agreement from Ms. Peterson; he also submitted his law firm's Motion for Leave to Withdraw as Counsel.

On May 21, 2024, the Tribunal set up a Zoom link for the May 22 and 23, 2024 hearing dates; advised the attorneys that Mr. Kennedy's Motion would be handled first; that Mr. Burke's Motion would be handled next; and that both sides should be prepared to present their witnesses forthwith. The judge re-iterated his warning to Mr. Kennedy that if Ms. Peterson failed to appear on May 22, 2024 her Petition would be dismissed with prejudice for failing to appear for a scheduled hearing. On May 21, 2024, Mr. Kennedy acknowledged receipt of the Tribunal's May 21, 2024 correspondence and stated his intention to try his best to comply with the Tribunal's instructions.

On May 22, 2024, Mr. Kennedy, Mr. E.J. Medina (a Business Agent from Local 68), and Mr. Burke appeared for the scheduled Zoom hearing. Ms. Peterson did not appear. Mr. Kennedy stated that he conveyed the Tribunal's notice of the hearing dates to Ms. Peterson, but was unable to communicate directly with her. He added that in early May, 2024, he had spoken with Ms. Peterson's nephew, who told him that Ms. Peterson had undergone a medical procedure. Mr. Medina testified that he tried three times to reach Ms. Peterson by telephone on May 21, 2024 at her home phone number, but there was no answer. He added that he sent a text to her cell phone on May 21, 2024. Mr. Kennedy had no information to offer about whether or not Ms. Peterson had hired another attorney to represent her. The Tribunal denied Mr. Kennedy's Motion to Withdraw as Peterson's counsel. Mr. Kennedy waived the right to file a written response to Mr. Burke's Motion to Enforce the Settlement Agreement and stated that he was prepared to accept the Tribunal's decision on that motion. The Tribunal heard the attorneys regarding Mr. Burke's Motion to Enforce the Settlement Agreement, but reserved its decision to allow more time for Attorney Kennedy to try to make contact with Ms. Peterson. At the end of the hearing, Mr. Burke made an additional motion to Dismiss Peterson's Petition for failing to appear at the hearing. The Tribunal reserved on that motion as well.

On May 28, 2024, the Tribunal sent follow-up correspondence to the attorneys asking Mr. Kennedy to send twice-weekly status reports on his efforts to make contact with Ms. Peterson or to procure a signed Settlement from her. On May 28, 2024, Mr. Kennedy responded to the Tribunal by stating that to date he has not received any

indication that Ms. Peterson intends to execute the Settlement Agreement and noted that he still has no information about any other attorney who might represent Peterson.

On May 31, 2024, Mr. Kennedy sent a status report to the Tribunal reporting that despite his firm's and the union's efforts to get Ms. Peterson to sign the Settlement Agreement, they have remained unsuccessful. In his June 5 and June 7, 2024 status reports Mr. Kennedy reported the same lack of progress. In his status reports of June 17 and June 26, 2024, Mr. Kennedy reported that he and the union have been unsuccessful in their attempts to contact Veronica Peterson. In his status reports of June 28 and July 3, 2024, Attorney Kennedy reported that he has been unable to obtain a signed Settlement Agreement from Ms. Peterson.

FINDINGS OF FACT

No attorney other than Seth Kennedy, Esq. has contacted the Tribunal on behalf of Ms. Peterson since March 6, 2024. If there was an attorney hired by Ms. Peterson to represent her in this matter, he or she would certainly have been in contact with the Tribunal and with Mr. Kennedy by this time. This indicates that Veronica Peterson has not hired another attorney to represent her interests. I **FIND** that Attorney Kennedy learned from Ms. Peterson's relative in March, 2024 that Ms. Peterson was having second thoughts about signing the Settlement Agreement and that in May, 2024, Kennedy learned, again through Ms. Peterson's relative, that Ms. Peterson had undergone an unspecified medical procedure. I **FIND** that the lack of any correspondence or other form of contact from Veronica Peterson or from an attorney representing her interests indicates that she has not discharged Seth Kennedy, Esq. from representing her interests. I **FIND** that Veronica Peterson's failure to respond directly to Attorney Kennedy and her failure to direct a family member to respond to Mr. Kennedy on her behalf to the repeated communications made by Seth Kennedy, Esq. indicates that she wants nothing more to do with the matter at hand. I **FIND** that Ms. Peterson did not, as promised to the Union representative, make good on her promise to make a decision on signing the Settlement Agreement by May 13, 2024.

Given the allegation that Veronica Peterson may have undergone a medical procedure, I have given time for her or someone on her behalf to communicate with Attorney Kennedy about Veronica Peterson's medical condition and her intentions regarding the matter at bar. I **FIND** that the lack of any response to Attorney Kennedy by Veronica Peterson or by any other person on her behalf explaining her present circumstances and/or her position regarding the Settlement Agreement is unreasonable and indicates that Veronica Peterson does not wish to communicate with her attorney or with the Tribunal about this matter. I **FIND** that Veronica Peterson's failure to communicate with her attorney, despite his repeated requests for her to respond to him, and Veronica Peterson's failure to appear for the hearing scheduled for May 22, 2024, amounts to her abandonment of this matter. The settlement terms were negotiated between the parties and agreed to by the parties on March 6, 2024. I **FIND** that the confirmation of the settlement terms by each attorney on March 6, 2024 means that the Settlement Agreement setting forth those agreed-upon terms is the parties final expression of their intention to resolve this matter by means of a settlement. I **FIND** that the parties, through their respective counsel assented to the terms of the settlement and thereby unequivocally, knowingly and voluntarily resolved this matter on March 6, 2024. I **FIND** that Veronica Peterson failed to appear for a scheduled hearing on May 22, 2024 and that she failed to offer an explanation for her non-appearance since that date to the present.

APPLICABLE LAW

Regarding a party's failure to appear at a scheduled proceeding, URAP provides:

- (a) If, after appropriate notice, neither a party nor a representative appears at a proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

Regarding a party's failure to comply with orders or requirements set by the Tribunal, the URAP provides:

- (a) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:
 - (1) Dismiss or grant the motion or application;
 - (2) Suppress a defense or claim; or
 - (5) Take other appropriate case-related action.

LEGAL ANALYSIS AND CONCLUSIONS

Having found that the parties agreed to the terms of a settlement on March 6, 2024 and confirmed said terms in writing; and having found that both attorneys confirmed the accuracy of the settlement terms, I **CONCLUDE** that the parties reached a binding agreement that resolves the issues presented to this Tribunal and which is consistent with the law.

Having found that Veronica Peterson was given notice to appear for a hearing scheduled for May 22, 2024 and having found that she failed to appear for said hearing date, and having found that Veronica Peterson has not communicated to the repeated communications of her attorney, and having found that Veronica Peterson has not offered an explanation for her non-appearance on May 22, 2024, I **CONCLUDE** that Veronica Peterson has abandoned this matter.

Having **CONCLUDED** that Veronica Peterson has abandoned this matter, I **CONCLUDE** that the Petition filed on behalf of Veronica Peterson on November 12, 2021 should be and hereby is **DISMISSED WITH PREJUDICE** for abandoning the matter and for failing to prosecute her Petition.

Having **CONCLUDED** that the matter should be dismissed with prejudice, it follows, and I **CONCLUDE** that any benefit which Veronica Peterson might have derived

from the settlement she entered into on March 6, 2024, has become subsumed in the aforesaid dismissal with prejudice of this matter.

ORDER

Based on the foregoing, it is hereby

ORDERED that the Petition filed on behalf of Victoria Peterson on November 12, 2021 seeking to overturn the determination of the CSC as set forth in its Final Notice of Disciplinary Action dated October 21, 2021, should be and hereby is **DISMISSED WITH PREJUDICE** for abandoning the matter and failing to prosecute her Petition; and it is further

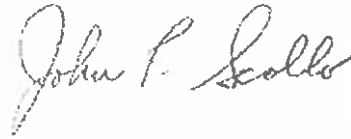
ORDERED that OAL Docket Number CSV 02762-23 has hereby come to an end, is finished, and shall be forthwith returned by the Clerk of the OAL to the Civil Service Commission; and it is further

ORDERED that this Initial Decision - Dismissal shall be sent forthwith by email to Seth Kennedy, Esq. and to John Burke, Esq., each of whom shall acknowledge receipt of same.

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.



July 9, 2024

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

Respondent's Motion to Enforce the Settlement