

CSC Docket No. 2025-1588

STATE OF NEW JERSEY
FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: March 19, 2025 (SLK)

By way of background, S.A. was removed for violating the time and attendance policy and improperly taking three unauthorized sick days without sufficient leave balances to cover the absences. He appealed his removal to the Civil Service Commission (Commission), and the matter was transmitted to the Office of Administrative Law as a contested case. The Administrative Law Judge (ALJ) recommended reversing the removal. In *In the Matter of S.A.* (CSC, decided May 19, 2021), the Commission found that a 15 working day suspension was the appropriate penalty and it awarded back pay from 15 working days after the initial removal date to the date of actual reinstatement. S.A. was to provide the DOC proof of income earned and an affidavit of mitigation. Thereafter, S.A. filed for reconsideration, but the Commission denied the request in *In the Matter of S.A.* (CSC, decided September 7, 2021). S.A. appealed to the Appellate Division, which in *In the Matter of S.A.*, Docket No. A-0327-21 (App. Div. April 13, 2023), affirmed the Commission's decision. Thereafter, S.A. submitted a request to the Commission to receive back pay. However, in *In the Matter of S.A.* (CSC, decided October 16, 2024), the Commission

¹ Initials are being used as S.A. claims that he could not return to work due to a disability.

denied his request as it found that he failed to make reasonable efforts to find suitable employment during the period of unlawful separation. Additionally, concerning the time after the Commission's May 19, 2021, decision, as S.A. claimed that he was disabled and could not perform the duties of his position, the Commission determined that he was not otherwise entitled to any back pay under *N.J.A.C.* 4A:2-2.10(d)9. Finally, as S.A. had not returned to work, the Commission indicated that he was not entitled to any other benefits, such as sick and vacation leave, *etc.*

In S.A.'s February 7, 2025, request for reconsideration, he states that in light of the Commission's October 16, 2024, decision denying him back pay, he needs to present a completely "new" view of his mitigation issue. He reiterates that he was unable to perform his work because of conditions at the correctional facility, which led him to illnesses which precluded him from working and inhibited his ability to mitigate as he was unable to get health insurance because he was out of work. S.A. asserts that there may be factual issue requiring a hearing regarding the mitigation issue. S.A. submits a certification where he explains in detail the circumstances which left him unable to more sufficiently mitigate his back pay award.

In response, the DOC, represented by Edward F. Chociey, Jr., Esq., argues that the Commission should not consider the request for reconsideration as it is untimely.

CONCLUSION

N.J.A.C. 4A:2-1.1(d) provides that except where a hearing is required by law, this chapter or *N.J.A.C.* 4A:8, or where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record.

N.J.A.C. 4A:2-1.6(a) provides that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration. *N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred, or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

Initially, the subject request for reconsideration is untimely. Specifically, the Commission's decision was issued on October 16, 2024, and S.A.'s request for reconsideration was submitted on February 7, 2025, which is 114 days later, and well after the 45-day period to file for reconsideration. *See N.J.A.C.* 4A:2-1.6(a). Moreover, no explanation for the untimely submission has been presented. As such, the request is denied on that basis.

Regardless, even if timely, S.A. has not met the standard for reconsideration. S.A. claims that his need to demonstrate his “new” reason for his failure to mitigate is an issue that was not uncovered until he reviewed the Commission’s October 16, 2024, decision. Therefore, he now submits a certification detailing the circumstances explaining why he did not mitigate his back pay award in a more sufficient manner. However, the Commission’s May 19, 2021, decision stated that, “The amount of back pay awarded is to be reduced and mitigated as provided as provided for in *N.J.A.C. 4A:2-2.10*.” Moreover, in the October 16, 2024, matter, the DOC argued that S.A. had not reasonably and diligently mitigated his back pay award, and S.A. had an opportunity to respond. Therefore, the record indicates that S.A. had notice that he needed to demonstrate during the October 16, 2024, proceeding that he engaged in sufficient efforts to mitigate his back pay award. Additionally, all the circumstances that S.A. presents in the current matter were available for him to present at the time of the October 16, 2024, proceeding, but he failed to present such circumstances at that time. Accordingly, S.A. has not submitted new evidence or additional information that was not available at the original proceeding, nor did he adequately explain why such evidence was not presented at that time. Further, S.A. has not demonstrated that a clear material error was made in the prior decision as the record in that matter demonstrated that he did not make reasonable efforts to mitigate his back pay award. Finally, the record in neither that nor the current matter presents any material and controlling disputes of fact sufficient to warrant a hearing.

ORDER

Therefore, the Civil Service Commission orders that this request be denied.

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 19TH DAY OF MARCH, 2025



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