

**CHAPTER 2**

**APPEALS, DISCIPLINE, AND SEPARATIONS**

**Authority**

N.J.S.A. 2C:51-2, 11A:1-2(e), 11A:2-6, 11A:2-11(h), 11A:2-13 et seq., 11A:4-15(c), 11A:7-1 et seq., 11A:8-4 and 52:14B-10(c); and 49 CFR Parts 382 et seq.

**Source and Effective Date**

R.2008 d.215, effective July 1, 2008.  
See: 40 N.J.R. 1402(a), 40 N.J.R. 4520(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 2, Appeals, Discipline and Separations, expires on July 1, 2015. See: 43 N.J.R. 1203(a).

**Chapter Historical Note**

Chapter 2, Appeals, Discipline and Separations, was adopted as R.1987 d.407, effective October 5, 1987. See: 19 N.J.R. 1013(a), 19 N.J.R. 1827(a). See, also, Title Historical Note prior to N.J.A.C. 4A:1.

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, Discipline and Separations, was readopted as R.1992 d.414, effective September 22, 1992. See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, Discipline and Separations, was readopted as R.1997 d.435, effective September 22, 1997. See: 29 N.J.R. 3102(a), 29 N.J.R. 4455(b).

Chapter 2, Appeals, Discipline and Separations, was readopted as R.2003 d.112, effective February 13, 2003. See: 34 N.J.R. 3570(a), 35 N.J.R. 1407(b).

Chapter 2, Appeals, Discipline and Separations, was readopted as R.2008 d.215, effective July 1, 2008. See: Source and Effective Date. See, also, section annotations.

Chapter 2, Appeals, Discipline and Separations, was renamed Appeals, Discipline, and Separations by R.2014 d.099, effective June 2, 2014. See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

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**SUBCHAPTER 1. APPEALS**

**4A:2-1.1 Filing of appeals**

(a) All appeals to the Civil Service 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. See N.J.A.C. 4A:2-1.8 for appeal processing fees.

(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.

(c) The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

(d) Except where a hearing is required by law, this chapter or N.J.A.C. 4A:8, or where the Civil Service 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. In written record appeals:

1. Each party must serve copies of all materials submitted on all other parties; and

2. A party may review the file at the Civil Service Commission during business hours.

(e) A party in an appeal may be represented by an attorney, authorized union representative or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of Administrative Law.

Amended by R.1992 d.414, effective October 19, 1992.

See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Added new (d)1.-2.

Amended by R.2011 d.173, effective June 20, 2011.

See: 43 N.J.R. 470(a), 43 N.J.R. 1419(b).

In (a) and the introductory paragraph of (d), substituted "Civil Service Commission" for "Commissioner or Board"; in (a), deleted "must" preceding "include", and inserted the last sentence; in the introductory paragraph of (d), inserted ", this chapter", and substituted "N.J.A.C. 4A:8" for "these rules"; and in (d)2, substituted "Civil Service Commission" for "Department of Personnel".

#### Law Review and Journal Commentaries

Civil Service — Disability Retirement — Police Seniority. Judith Nallin, 133 N.J.L.J. No. 13, 55 (1993).

#### Case Notes

Time in which fire fighter was required to appeal decision of township board of fire commissioners classifying fire fighters commenced when fire fighter learned of representations. Matter of Tavani, 264 N.J.Super. 154, 624 A.2d 75 (A.D.1993).

Appeals to Department of Personnel (DOP) and Merit System Board by police officer were timely. Matter of Allen, 262 N.J.Super. 438, 621 A.2d 87 (A.D.1993).

Removal of provisional juvenile detention officer from eligible list was improper without hearing by Merit System Board to resolve good faith factual disputes. Matter of Wiggins, 242 N.J.Super. 342, 576 A.2d 932 (A.D.1990).

Civil Service Comm'n acted within its discretionary powers to deny hearing and only allow petitioner to submit additional facts for review (citing former N.J.A.C. 4:1-5.1). Honachefsky v. New Jersey Civil Service Comm'n, 174 N.J.Super. 539, 417 A.2d 67 (App.Div.1980).

Employee's appeal of the determination of her layoff rights was untimely pursuant to N.J.A.C. 4A:2-1.1(b). She was aware of the determination when she received notification of her separation from employment, but she did not file an appeal requesting to be placed on the Special Reemployment List (SRL) until over a year after the layoff. Even if the merits of the matter were considered, she failed to show that the Division of State and Local Operations did not properly apply the uniform regulatory criteria found in N.J.A.C. 4A:8-2.1 et seq. She was not permanent in the title Social Worker 2 at the time of her displacement and, therefore, could not be placed on an SRL for that title. In re Tysen Graham, Dep't. of Human Serv., CSC DKT. No. 2014-658, 2013 N.J. CSC LEXIS 1089, Final Decision (December 6, 2013).

Employee's appeal of his placement on temporary unpaid leave was dismissed because it was untimely pursuant to N.J.A.C. 4A:2-1.1(b). It was clear that the employee was aware of his situation but there was no documentation that he ever pursued the matter with either the Township or filed an appeal with the Civil Service Commission until three years and seven months later. Because the Township completely and egregiously failed to comply with the established layoff procedures, the Civil Service Commission imposed a fine of \$5000 on the Township for its acts and omissions pursuant to N.J.S.A. 11A:10-3 and N.J.A.C. 4A:10-2.1(a)2. In re James Anderson, Twp. of Berkeley, CSC Dkt. No. 2013-1033, 2013 N.J. CSC LEXIS 814, Final Decision (September 20, 2013).

Civil Service Commission denied the appeal of a decision of the Division of Classification and Personnel Management that upheld the bypass of an applicant's name on the eligible list for fire fighter. His

appeal of the bypass on two certifications was untimely under N.J.A.C. 4A:2-1.1(b), and he provided no reason why he did not file the appeal. In re Phillip cherry, Fire Fighter (M2320H), Asbury Park, CSC Dkt. No. 2013-530, 2013 N.J. CSC LEXIS 634, Final Decision (May 21, 2013).

Given that a candidate's position would be properly classified as Management Assistant and the eligibility list for that position was incomplete, good cause was established to consider her eligibility appeal that was untimely filed under N.J.A.C. 4A:2-1.1(b). In re Lynn Brzozowski and Kimberly Sampson, Jersey City Sch. Dist. CSC Dkt. Nos. 2012-3182, 2012-3193, 2013 N.J. CSC LEXIS 535, Final Decision (May 15, 2013).

Failure by an employee to appeal what he claimed to be an improper reduction of his salary in the position of Program Support Specialist 3 within 20 days of the date on which he had notice that the salary as originally determined was incorrect and a lower salary would apply foreclosed any review of that decision. The purpose of the 20-day appeal deadline imposed by N.J.A.C. 4A:2-1.1(b) was to establish a threshold of finality, and that rule was properly enforced where, as here, the employee not only waited nine months to file the appeal but provided no explanation for the unreasonable delay. In re Jack Laurie, Department of Community Affairs, CSC Docket No. 2013-559, 2013 N.J. CSC LEXIS 202, Final Decision (March 8, 2013).

Employee's failure to appear at scheduled hearings on a removal action supported employer's motion to dismiss appeal, especially where the employee lied about the reason he failed to appear; however, because the removal became final for failure to appear, the employer did not have the authority to order a subsequent removal based on the employee's action in lying during the administrative process (adopting result in 2005 N.J. AGEN LEXIS 519 on other grounds). In re Drayton, OAL Dkt. No. CSV 2151-05, 2005 N.J. AGEN LEXIS 1250, Final Decision (November 3, 2005).

Employee's failure to appear at scheduled hearings on removal action supports employer's motion to dismiss appeal. Maycheck v. Atlantic City Housing Authority, 97 N.J.A.R.2d (CSV) 182.

No timely appeal to the Merit Systems Board. N.J.S.A. 11A:1-1 et seq. Pryor v. Township of Morristown, 92 N.J.A.R.2d (CSV) 18.

Time limits for appeal construed to have been met when petitioner was advised a letter sent prior to final notice of disciplinary action would act to reinstate her appeal (citing former N.J.A.C. 4:1-5.3). Clark v. New Jersey Dep't of Agriculture, 1 N.J.A.R. 315 (1980).

#### 4A:2-1.2 Stay and interim relief requests

(a) Upon the filing of an appeal, a party to the appeal may petition the Commissioner for a stay or other relief pending final decision of the matter.

(b) A request for a stay or interim relief shall be in writing, signed by the petitioner or his or her representative and must include supporting information for the request.

(c) The following factors will be considered in reviewing such requests:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted; and
4. The public interest.