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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3688-20**

**IN THE MATTER OF
GAMILL HAIDARA,
CITY OF NEWARK,
FIRE DEPARTMENT.**

Argued December 6, 2022 - Decided January 9, 2023

Before Judges Gummer and Paganelli.

On appeal from the New Jersey Civil Service Commission, Docket Nos. 2019-3637 and 2021-1809.

Catherine M. Elston argued the cause for appellant Gamill Haidara (C. Elston & Associates, LLC, attorneys; Catherine M. Elston, on the briefs).

Hugh A. Thompson, Assistant Corporation Counsel, argued the cause for respondent City of Newark (Kenyatta K. Stewart, Corporation Counsel, attorney; Hugh A. Thompson, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Civil Service Commission (Pamela N. Ullman, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Gamill Haidara appeals the decisions of the Civil Service Commission (Commission) denying, as untimely, an appeal of a disciplinary action and reconsideration of that denial. Haidara argues the Commission's decisions were arbitrary, capricious, and unreasonable and require reversal in the interest of justice. We disagree and affirm.

I.

On March 2, 2016, City of Newark (City) suspended firefighter Haidara without pay in connection with an incident that had occurred the previous day and that had resulted in his arrest. Haidara was administratively charged with "[c]onduct unbecoming a [p]ublic [e]mployee," N.J.A.C. 4A:2-2.3(a)(6); "[o]ther sufficient cause," N.J.A.C. 4A:2-2.3(a)(12); and violations of certain Newark Fire Division Rules and Regulations.

In July and August 2016, grand juries returned "no bills," and the criminal charges were dismissed. Over the next two years, Haidara and the City engaged in settlement negotiations. Ultimately, a hearing was held on June 20, 2018. At the hearing, it was determined that Haidara had tested positive for Cannabinoids (THC) and had engaged in conduct unbecoming a public employee in connection with his March 1, 2016 arrest. His employment was terminated effective March 2, 2016.

Before he left the country on June 26, 2018, to care for an ailing relative, Haidara was aware of the disposition of the matter and had discussed it with his "then-attorney [who] told [him] that he would file an appeal." On July 10, 2018, the "Final Notice of Disciplinary Action" (FNDA) was issued and was sent by certified mail to Haidara's then-attorney on August 13, 2018.¹ On September 16, 2018, Haidara returned to the United States. In November 2018, he inquired as to "where we are with the case" and his then-attorney replied, "I had a problem with your case. I am trying to resolve it. Once I have a grasp on what is going on and how to rectify it, I will email you later in the week to let you know what is going on." Haidara contacted the attorney again in April and June 2019 for a status report.

On July 11, 2019, the Commission denied Haidara's request for a hearing "from his appeal of removal." The Commission explained the appeal, "postmarked May 30, 2019," had been filed beyond the applicable twenty-day

¹ In his reply brief, Haidara questions the mode of service. However, we "decline to consider questions or issues not properly presented" to the trial court or agency hearing the matter, Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)), and "raising an issue for the first time in a reply brief is improper," Goldsmith v. Camden Cty. Surrogate's Off., 408 N.J. Super. 376, 387 (App. Div. 2009) (citing Borough of Berlin v. Remington & Vernick Eng'rs., 337 N.J. Super. 590, 596 (App. Div. 2001)).

period. On August 17, 2019, Haidara's attorney advised that he had "bad news." The appeal was denied "because it was filed late." According to Haidara, that was the first time his attorney advised him that he had not filed the appeal on time. Haidara inquired about his "options," and his attorney advised that he was "researching that very issue."

On March 30, 2020, Haidara emailed his attorney and noted he had not heard back from him. He inquired about "appealing the civil service." The attorney advised he was "still researching our options."

On May 26, 2020, Haidara advised the attorney that he had retained a new attorney. The former attorney requested the new attorney's contact information. On June 26, 2020, Haidara "pick[ed] up" his file from his former attorney. Haidara noted the file was "missing the labor piece," and he requested "any contacts we made with the city, civil service . . . etc." Throughout "2020 and into 2021," Haidara's new attorney and others in her office contracted COVID, which resulted in "absences, delays, and backlogs."

On May 26, 2021, Haidara filed a motion for reconsideration of the Commission's July 11, 2019 denial. On July 6, 2021, the Commission denied reconsideration, explaining the motion had been filed beyond the applicable

forty-five-day period and "there is no basis to relax the rules and extend the filing deadline given the nearly [two-year] delay in filing the . . . request."

II.

"Our review of agency action is extremely limited." Mesghali v. Bayside State Prison, 334 N.J. 617, 622, (2000) (quoting In Re Musick, 143 N.J. 206, 216 (1996)). We defer to the "specialized or technical expertise of the agency." In re Virtua-West Jersey Hosp. Voorhees, 194 N.J. 413, 422 (2008). We "affor[d] a 'strong presumption of reasonableness' to [the] administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting City of Newark v. Nat. Res. Council, Dep't of Env't. Prot., 82 N.J. 530, 539 (1980)). Thus, we overturn an administrative agency's determination only on a "clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 612 (2010) (quoting Virtua-West, 194 N.J. at 422).

III.

Haidara argues that the Commission's denial of his motion for reconsideration was arbitrary, capricious, and unreasonable. He contends that

the Commission should have relaxed N.J.A.C. 4A:2-1.6(a), thereby extending by nearly two years its forty-five-day deadline for the filing of a petition for reconsideration.

Under N.J.A.C. 4A:1-1.2(c), the Commission "may relax [its] rules for good cause in a particular situation." We have found "good cause" requires "a valid excuse for the delay" and a "demonstration that there is a substantial and meritorious question." In re Appeal of Syby, 66 N.J. Super. 460, 463 (App. Div. 1961).

Initially, we review whether the former attorney's late filing can be considered a "valid excuse for delay." Ibid. "[C]arelessness and inadvertence on the part of an attorney . . . [may be sufficient] grounds . . . when it comes to a determination of whether good cause exists to excuse late filings." Burns v. Belafsky, 326 N.J. Super. 462, 471 (App. Div. 1999). However, there must be an absence of "demonstrable prejudice." Ibid. (citing Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 196 (App. Div. 1985)). "[J]ustice to the litigants is always the polestar." Martindell v. Martindell, 21 N.J. 341, 349 (1956).

Haidara avers, without meaningful explanation, that "there is no prejudice to the City in granting [his] motion for reconsideration . . . [because] . . . Newark

would have the opportunity to address the discipline in a trial de novo" With that scant assertion, Haidara fails to establish the lack of prejudice. The argument completely ignores the impact of the nearly two-year delay in seeking reconsideration. The City convincingly argues "so much time has elapsed, witnesses are not readily available and their [recollections] of events from six years ago may not be as accurate." Moreover, the parties' participation in two-years of settlement negotiations similarly adds to the impact on witnesses. Consequently, the City is prejudiced by Haidara's lengthy delay in filing.

Haidara's reliance on Galligan v. Westfield Centre Service, Inc., 82 N.J. 188 (1980), is misplaced. In Galligan, the Court permitted a state court filing twenty-two days after the expiration of the statute of limitation. The Court noted that an "[u]nswerving, 'mechanistic' application of statutes of limitations would at times inflict obvious and unnecessary harm upon individual plaintiffs without advancing . . . legislative purposes." Id. at 192 (quoting White v. Violent Crimes Comp. Bd., 76 N.J. 368, 379 (1978)). Therefore, the Court tolled the statute of limitations and permitted the late filing "in the circumstances of this case," which included: (1) the plaintiff filed an identical complaint in federal court; (2) the defendant had timely notice and the twenty-two days did not impair the defendant's ability to litigate or the court's capacity to adjudicate;

(3) the "plaintiff's cause of action ha[d] not become 'stale'"; (4) the defendant knew plaintiff was seeking redress in a state forum; and (5) the filing of the federal lawsuit demonstrated the plaintiff's diligence. Id. at 193-95. In contrast, Haidara made no filing — anywhere — for nearly two years; the City had no notice he would pursue reconsideration; the delay was for an inordinate period of time; and plaintiff exhibited no diligence. Moreover, the City is prejudiced by the late filing.

Similarly, Haidara's reliance on Stone Harbor v. Wildwood Local 59, Policemen's Benevolent Association, 178 N.J. Super. 1 (App. Div. 1980), is misplaced. In Stone Harbor, we held that the record showed the defendant employer had been on notice of the plaintiff's intent to seek review after the plaintiff received written notice of termination, but before the expiration of the applicable time deadline. Id. at 5. Here, the City had no notice of plaintiff's intention to seek reconsideration until plaintiff sought reconsideration nearly two-years after the deadline.

On the facts presented here, Haidara's two-year delay in filing for reconsideration prejudiced the City, thereby precluding a finding of good cause. See Burns, 326 N.J. Super. at 471.

Moreover, in considering justice, we recognize Haidara was denied an appeal. The City, however, is also a litigant and is entitled to finality. "[T]he time must come when the appointing authority can rely upon the conclusion of the issue and proceed to make arrangements in the interest of the public to replace the dismissed employee without fear that its action will be undone." Borough of Park Ridge v. Salimone, 21 N.J. 28, 46 (1956). The interest of justice weighs in the City's favor.

Further, "good cause" must encompass "a showing . . . that there is a substantial and meritorious question" Syby, 66 N.J. Super. at 463. Haidara seeks relaxation of N.J.A.C. 4A:2-1.6(a) to require the Commission to reconsider its decision that Haidara's appeal was untimely under N.J.S.A. 11A:2-15. Under N.J.S.A. 11A:2-15, an appeal "shall be made in writing to the [Commission] no later than 20 days from receipt of the final written determination of the appointing authority." Haidara was on notice of the July 2018 disciplinary determination, and his former attorney was served with the FNDA on August 13, 2018. Therefore, an appeal had to be filed within twenty days of August 13, 2018. The appeal was not filed until May 30, 2019. Therefore, he would ultimately need the twenty-day appeal period to be relaxed for 270 days.

The "statutory time limitation for filing an administrative appeal," required in N.J.S.A. 11A:2-15, is "jurisdictional and 'mandatory.'" Mesghali, 334 N.J. at 621 (quoting Borough of Park Place, 21 N.J. at 46). The time period "may be extended only by the legislature, not by an agency or the courts." Ibid. Therefore, Haidara's pursuit of a second relaxation ruling - relaxing the time for appeal - lacks merit. See Syby, 66 N.J. Super. at 463.

IV.

Finally, Haidara argues that the Commission's failure to reconsider the denial of his appeal must be reversed in the "interests of justice," relying on an unpublished opinion² and equating the denial of reconsideration with an "involuntary dismissal" "[f]or failure of the plaintiff to cause a summons to issue" R. 4:37-2(a). We have addressed the issue of justice and determine these arguments "are without sufficient merit to warrant discussion in a written opinion." R. 2:11-3(e)(1)(E).

In short, we discern no abuse of discretion in the Commission's denial of Haidara's appeal and petition to reconsider that denial as untimely.

² Rule 1:36-3 provides "[n]o unpublished opinion shall constitute precedent or be binding upon any court."

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION