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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2862-22**

**IN THE MATTER OF
JAMES DAVIS,
HILLSIDE TOWNSHIP
POLICE DEPARTMENT**

Submitted June 4, 2024 – Decided June 26, 2024

Before Judges Rose and Perez Friscia.

On appeal from the New Jersey Civil Service Commission, Docket No. 2023-1788.

Linder Wing Law Group, attorneys for appellant James Davis (Ryan Linder, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent Civil Service Commission (Sookie Bae-Park, Assistant Attorney General, of counsel; Paulina R. DeAraujo, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner James Davis appeals from an April 12, 2023 Civil Service Commission decision, upholding his termination by the Township of Hillside. Davis argues the Commission's dismissal of his appeal as untimely was improper

because his appeal was filed within a reasonable time after receiving notice of the charges against him. We disagree and affirm.

We summarize the pertinent facts and procedural history from the sparse record provided on appeal. According to his certification in support of his administrative appeal, the Township hired Davis in 2019 as a part-time parking enforcement officer with the Hillside Police Department (HPD). The following year, Davis was transferred to the Building Code Enforcement Department (BCED), where he served as a full-time code enforcement officer for six months. Davis then returned to his former position with the HPD.

Three years later, on September 19, 2022, Davis began his "working test period" as a code enforcement officer for the Department of Public Works (DPW). Among other responsibilities, Davis was charged with "issuing summonses to property owners for violations of the Township's [m]unicipal [o]rdinances."

On December 5, 2022, Davis was issued a "First Written Warning" from DPW Acting Director, Anthony Russomanno, for statements Davis allegedly made during a December 1, 2022 office meeting. According to Russomanno, Davis expressed his inability to ticket residents he personally knew because he feared "run[ning] into them while off duty." Davis was "reminded that despite

who he may know, it is his job as a code officer to treat everyone the same and uphold all Township ordinances he ha[d] sworn to uphold." The warning made no mention of the potential for termination, stating instead: "Please [n]ote, this warning is the first in the [T]ownship[']s progressive disciplinary policy."

On December 20, 2022, the Township hand delivered to Davis correspondence terminating his employment based on his discomfort with issuing tickets. The termination letter did not advise Davis of his right to appeal or request a hearing. Nor is there any evidence in the record Davis was issued a Preliminary Notice of Disciplinary Action (PNDA), received progress reports during his working test period, or was afforded an opportunity to return to his prior civil service position.

On February 24, 2023, more than two months after he received the Township's termination notice and with the assistance of his retained counsel, Davis filed an administrative appeal seeking "interim relief." According to his merits brief, in his order to show cause, Davis requested a hearing and reinstatement to his position as a code enforcement officer with the DPW, or restoration of his previous position as a code enforcement officer with the

BCED.¹ In his certification, Davis suggested he did not timely file his administrative appeal because he "was confused by the Township's position," having not received "any disciplinary notices or warnings following the December 5, 2022 notice, which was labeled an initial warning."

In its factual findings, the Commission found Davis was permanently employed "as a Parking Enforcement Officer with the [HPD]" at the time of his termination. Further, the Commission noted: "Agency records do not reveal that [Davis] was appointed as a Code Enforcement Officer or was in a working test period for that title. The appointing authority did not present [Davis]'s progress reports for the asserted position." Finding Davis failed to file his appeal within twenty days of his termination or "within reasonable time" thereafter, the Commission rejected his appeal as untimely filed.

The Commission elaborated:

In this matter, [Davis] indicated that he did not receive a [PNDA] and was not advised of his appeal rights. As such, he requested interim relief regarding a violation of Civil Service law and rules and appealed his removal from his position. However, [Davis] was terminated on December 20, 2022 and received a letter of termination. Thus, notwithstanding that the letter did

¹ The parties did not provide Davis's order to show cause (OTSC). Nor is the OTSC included in the Commission's statement of items comprising the record on appeal. See R. 2:5-4(b). In his merits brief, Davis states his OTSC was filed "on or about February 25, 2023."

not contain appeal rights, or that the appointing authority did not strictly follow the procedural requirements for imposing major discipline found in N.J.A.C. 4A:2-2.1 [to -2.13], the law indicates that if the appointing authority fails to provide a written determination, which it nonetheless did, an appeal may be made directly to the . . . Commission within a reasonable time. [Davis] did not file his appeal until February 24, 2023, over two months after his employment was terminated. Thus, since the appeal in this matter was not perfected within 20 days of termination or within a reasonable time thereafter, a hearing on [Davis]'s removal cannot be granted.

The Commission therefore dismissed Davis's request for interim relief as moot.

Before us, Davis raises three primary challenges to the Commission's decision. In essence, Davis argues the decision was arbitrary and capricious because it was contrary to the agency's policy to prevent termination of public employees without due process; the appointing authority's failure to issue a PNDA relieved Davis of the filing time limitations; and the Township's termination decision was made in bad faith.

As a threshold matter, we note the existence of factual discrepancies between Davis's certification and the Commission's decision concerning Davis's title at the time of his termination. Ordinarily, we might remand for clarification of the record. Because Davis does not raise the issue, however, we deem it waived. See Gormley v. Wood-El, 218 N.J. 72, 96 n.8 (2014) (issues not briefed

are deemed waived); Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2024). Moreover, because we conclude, as did the Commission, Davis's appeal was untimely, our review is not hampered by any mistake in his job title.

Our scope of review of an agency's decision is circumscribed. See Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (reiterating "[j]udicial review of agency determinations is limited"); see also Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). An agency decision will be upheld "unless there is 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." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the person challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

A reviewing court "affords a 'strong presumption of reasonableness' to an administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting City of Newark v. Nat.

Resource Council, Dep't of Env't Prot., 82 N.J. 530, 539 (1980)). That presumption is particularly strong when an agency is dealing with specialized matters within its area of expertise. See Newark, 82 N.J. at 540. We therefore defer to "[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility." Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001) (alteration in original). Indeed, our Supreme Court has long recognized appellate courts do not substitute their judgment for that of the agency and, if there is any argument supporting the agency action, it must be affirmed. See Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988); see also In re Stallworth, 208 N.J. 182, 194-95 (2011).

N.J.S.A. 11A:2-15 governs the appeal procedure for public employees subject to the Civil Service Act (CSA), N.J.S.A. 11A:1-1 to -12-6. An employee's appeal from an appointing authority's adverse action "shall be made in writing to the . . . Commission no later than 20 days from receipt of the final written determination of the appointing authority." N.J.S.A. 11A:2-15. "If the appointing authority fails to provide a written determination, an appeal may be made directly to the . . . Commission within reasonable time." Ibid.

Similarly, the Commission's implementing regulation, N.J.A.C. 4A:2-1.1(b), requires the filing of such appeals "within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed." (Emphasis added). However, when "the appointing authority fails to provide the employee with a Final Notice of Disciplinary Action, an appeal may be made directly to the Commission within a reasonable time" of notice of the disciplinary decision. N.J.A.C. 4A:2-2.8. (Emphasis added).

Citing our decision in Jones v. Department of Civil Service of the State of New Jersey, 118 N.J. Super. 323 (1972), Davis claims because the Township's termination notice failed to advise of his right to appeal, we should remand for a hearing. Davis's reliance on Jones is misplaced. In that case, Jones's attorney wrote to the appointing authority within the twenty-day period, objecting to the removal decision. Id. at 325. Receiving no response to the letter, Jones's attorney filed an appeal less than three weeks after the expiration of the twenty-day time limit. On those particular facts, we held Jones was entitled to a hearing on his appeal. Id. at 325-26.

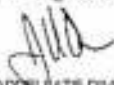
Conversely, in the present matter, Davis acknowledges he was aware of his termination as of December 20, 2022, and took no action within the

prescribed timeframe. Further, Davis provides no explanation for the delay other than he was "confused by the Township's position." Pursuant to our limited standard of review, see Russo, 206 N.J. at 27, we conclude the Commission's decision "is supported by sufficient credible evidence on the record as a whole," R. 2:11-3(e)(1)(D), and is not arbitrary, capricious, or unreasonable, see Virtua-West, 194 N.J. at 422. Simply stated, there is no evidence in the record justifying the two-month delay. Accordingly, the Commission lacked jurisdiction to decide Davis's appeal on the merits. See Mesghali v. Bayside State Prison, 334 N.J. Super. 617, 622 (App. Div. 2000); see also Borough of Park Ridge v. Salimone, 21 N.J. 28, 46 (1956).

To the extent we have not specifically addressed a particular argument, it is because either our disposition makes it unnecessary, or the argument was without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION