

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

George J. Nagy,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 421 C.D. 2012
	:	
State Civil Service Commission	:	Submitted: December 28, 2012
(Bethlehem Housing Authority),	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: January 25, 2013**

George J. Nagy petitions for review of the February 13, 2012 Order of the State Civil Service Commission (Commission) denying his request for reconsideration of the Commission's January 18, 2012 Order<sup>1</sup> dismissing, as untimely, his appeal from the alleged forced resignation from his position as a building construction inspector with the Bethlehem Housing Authority (Housing Authority). Discerning no abuse of discretion, we affirm.

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<sup>1</sup> The Commission's January 18, 2012 Order was mailed on January 20, 2012.

On December 5, 2011, the Commission received Nagy's Appeal Request Form, postmarked December 2, 2011, requesting a hearing to challenge his removal from employment with the Housing Authority. Therein, Nagy alleged that he was forced to resign. Attached to the Appeal Request Form was Nagy's October 24, 2011 resignation letter stating that his job demands were forcing him to leave his position in order to improve his health. Nagy further informed the Housing Authority that his official resignation date would be November 4, 2011. Also attached to the Appeal Request Form was the Housing Authority's October 24, 2011 letter accepting Nagy's letter of resignation and noting that Nagy's last day of employment would be November 4, 2011. Along with the acceptance letter, the Housing Authority provided Nagy with a copy of the Commission's regulation regarding his re-employment rights after a resignation, which could involve reinstatement as a regular status employee.<sup>2</sup> (Appeal Request Form, R. Item 1.)

By Order dated January 18, 2012, the Commission denied Nagy's request for a hearing as untimely because it was filed beyond the twenty-day time limit as

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<sup>2</sup> See 4 Pa. Code § 101.54 (Reemployment after resignation). Section 101.54 provides, in pertinent part, as follows:

(a) Initiation of action. An appointing authority may make written application to the Director for reinstatement of a former regular status employee to a position in the same or comparable class from which resigned. The appointing authority shall submit a current application of the former employee and certify that[] the former employee is in all respects qualified and able to serve in the class involved.

Id.

provided by 4 Pa. Code § 105.12(a)(3).<sup>3</sup> The Commission pointed out that: (1) Nagy's letter of resignation was dated October 24, 2011; (2) the Housing Authority accepted Nagy's resignation by acceptance letter dated October 24, 2011; and (3) Nagy's appeal to the Commission was postmarked December 2, 2011. Thus, the Commission concluded that the foregoing dates indicated that Nagy's appeal was filed beyond the twenty-day time limit. (Commission Order, January 18, 2012, C.R. at Item 2.)

On January 31, 2012, Nagy requested reconsideration of the Commission's January 18, 2012 Order because he was: (1) delayed in seeking legal counsel; (2) not able to obtain his personnel file; (3) awaiting a letter from the Housing Authority accepting his notice of resignation; and (4) constructively discharged. (Request for Reconsideration, R. Item 3.) By Order mailed February 13, 2012, the Commission denied Nagy's request for reconsideration. (Commission Order, February 13, 2012, R. Item 6.) Nagy now petitions this Court for review of the Commission's February 13, 2012 Order denying his request for reconsideration.<sup>4</sup>

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<sup>3</sup> Section 105.12(a)(3) requires that a request for a hearing "shall be received or postmarked not more than 20 calendar days after the employee receives notice of the challenged personnel action." 4 Pa. Code § 105.12(a)(3). Section 951(a) of the Civil Service Act, Act of August 5, 1941, P.L. 752, as amended, 71 P.S. § 741.951, provides:

Any regular employe in the classified service may, within twenty calendar days of receipt of notice from the appointing authority, appeal in writing to the commission. Any permanent separation, suspension for cause, furlough or demotion on the grounds that such action has been taken in his case in violation of the provisions of this act, upon receipt of such notice of appeal, the commission shall promptly schedule and hold a public hearing.

<sup>4</sup> "Our scope of review in an appeal of an agency's grant of a request for reconsideration or the denial thereof is limited to whether the agency abused its discretion." Fatool v. State Civil  
(Continued...)

In support of this appeal, Nagy does not directly address whether the Commission abused its discretion by denying his request for reconsideration. Instead, Nagy sets forth the following creative argument. Nagy contends that his “December 2, 2011 appeal was, in essence, an appeal for something he had yet to formally institute: reinstatement.” (Nagy’s Br. at 6.) Nagy states that he was informed of his reinstatement rights by the Housing Authority on October 24, 2011, but he did not exercise those rights until he sought reinstatement to his former position on January 30, 2012, in an email to the Housing Authority. Nagy argues that since his reinstatement rights do not expire, the twenty-day time period for filing an appeal to the Commission did not begin until his request for reinstatement was denied. However, Nagy contends that the “record is devoid of any indication that [his] request for reinstatement was ever acted upon by the . . . Housing Authority.” (Nagy’s Br. at 6.) Nagy contends further that because he was not fully advised of his rights with respect to the issues of resignation, constructive discharge, and reinstatement, he mistakenly believed, at the time his employment ended, that his only remedy was to appeal his constructive termination.<sup>5</sup> Nagy contends that, in reality, when he filed his December 2, 2011 appeal he was opting to exercise his right to be reinstated. Nagy argues that his misinformed belief regarding his rights for reinstatement and subsequent appeal constitute the type of circumstances that are akin to the non-negligent circumstances justifying grounds

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Service Commission, 14 A.3d 919, 921 n.3 (Pa. Cmwlth. 2011). “We will not review the actions of an administrative tribunal involving acts of discretion absent bad faith, fraud, capricious action or abuse of power.” Id.

<sup>5</sup> We note that, because the Commission denied Nagy’s appeal as untimely, there was no determination as to whether Nagy voluntarily resigned, was forced to resign, or was constructively discharged from his employment.

for an appeal *nunc pro tunc* of the denial of his January 30, 2012 reinstatement request. As a result, Nagy asserts, this matter is not ripe for review and requests that this Court “remand for further proceedings to determine whether a mistaken appeal for termination, when [Nagy] actually sought to be reinstated to his position and has yet to be denied reinstatement, is a non-negligent circumstance that would permit [him] to file an appeal *nunc pro tunc*.” (Nagy’s Br. at 13.)

Upon review of Nagy’s contentions, it appears that he is no longer challenging the October 24, 2011 end of his employment. Rather, it appears that Nagy is attempting to transform his December 2, 2011 appeal into a challenge to the *possible* denial of his January 30, 2012 reinstatement request. However, Nagy’s January 30, 2012 reinstatement request, and any inaction or later denial thereof by the Housing Authority, are not issues before this Court.<sup>6</sup> While Nagy would like for this Court to treat his December 2, 2011 appeal as “an appeal for something he had yet to formally institute,” this Court cannot remand this matter for further proceedings to determine whether he is entitled to a *nunc pro tunc* appeal from an action that had not yet occurred at the time Nagy filed his Appeal Request Form challenging the October 24, 2011 end of his employment.

Here, Nagy filed an appeal with the Commission challenging the October 24, 2011 end of his employment on the basis that he was forced to resign.

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<sup>6</sup> Nagy’s January 30, 2012 reinstatement request is not part of the certified record in this case. “It is well settled that an appellate court cannot consider anything which is not part of the certified record in a case.” Commonwealth v. Geatti, 35 A.3d 798, 800 (Pa. Cmwlth. 2011) (citing Smith v. Smith, 637 A.2d 622, 623-24 (Pa. Super. 1993)). See also Rule 1551(a) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 1551(a) (“Review of quasijudicial orders shall be conducted by the court on the record made before the government unit.”).

However, Nagy did not appeal the Commission's January 18, 2012 Order denying his appeal as untimely, but instead asked the Commission to reconsider its January 18, 2012 Order. Nagy's request for reconsideration was denied by the Commission and it is that denial of reconsideration that is presently before this Court for review. As such, this Court is limited to determining whether the Commission abused its discretion in denying Nagy's request for reconsideration. Upon review, we are constrained to conclude that the Commission did not abuse its discretion.

Section 951(a) of the Civil Service Act, 71 P.S. § 741.951(a), mandates that an employee is required to file an appeal with the Commission within twenty days from any adverse employment action, such as a permanent separation. As stated by this Court, "the twenty-day appeal limitation must be strictly enforced. The appeal period is mandatory and has jurisdictional effect; the commission has no jurisdiction to consider a late appeal." Department of Education, Scranton State School for the Deaf v. Maskaly, 554 A.2d 146, 147 (Pa. Cmwlth. 1989) (citations omitted); See also Petsinger v. Department of Labor and Industry, 988 A.2d 748, 758 (Pa. Cmwlth. 2010) (stating that the twenty-day appeal period found in Section 951(a) of the Civil Service Act is jurisdictional). Accordingly, the Commission was mandated to deny Nagy's appeal and request for a hearing as untimely.

For the foregoing reasons, the Commission's February 13, 2012 Order is affirmed.

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**RENÉE COHN JUBELIRER, Judge**

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(Bethlehem Housing Authority),	:	
	:	
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**ORDER**

**NOW**, January 25, 2013, the Order of the State Civil Service Commission, entered February 13, 2012, in the above-captioned matter is **AFFIRMED**.

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**RENÉE COHN JUBELIRER, Judge**