

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DeLaine Andrews, :
Petitioner :
v. : No. 513 C.D. 2007
: SUBMITTED: September 28, 2007
State Civil Service Commission :
(Department of Transportation), :
Respondent :

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JIM FLAHERTY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: January 17, 2008

DeLaine Andrews (Andrews) petitions, *pro se*, for review of the order of the State Civil Service Commission (Commission), denying her request for reinstatement of appeals, which she had previously voluntarily withdrawn, and denying her request for alternative relief. The issue presented for appeal is whether the Commission abused its discretion when it denied Andrews' request for reinstatement of the withdrawn appeals or a grant of alternative relief.

The facts of this case are not in dispute. The Department of Transportation (PennDOT) employed Andrews as an Equal Opportunity Specialist (EOS). PennDOT promoted Andrews to a position as an EOS 3 effective October 5, 2004. Andrews served in this position on probationary status for a period of eighteen months. On February 28, 2006, PennDOT extended Andrews'

probationary period an additional month. At the end of the probationary period, PennDOT demoted Andrews to EOS 2. Andrews filed three appeals with the Commission. First, Andrews challenged the extension of her probationary status (Appeal No. 24764). Second, Andrews challenged her removal from probationary EOS 3 and her return to EOS 2 position (Appeal No. 24795). Finally, Andrews challenged the Employee Performance Review she received for the period of March 1, 2005 to March 30, 2006 (Appeal No. 24780).

The Commission consolidated the three appeals. On September 7, 2006, the Commission dismissed Andrews' challenge to the extension of her probationary period (Appeal No. 24764) and accepted Appeal No. 24795 and 24780 for review and scheduled hearings for these appeals. Andrews then filed a Petition for Review, which she later amended, with this Court challenging the Commission's dismissal of Appeal No. 24764. Thereafter, Andrews on the advice of counsel, withdrew Appeal No. 24795 and 24780. Meanwhile, our Court dismissed the Amended Petition for Review stating that the dismissal of Appeal No. 24764 was not appealable pursuant to Pa. R.A.P. 341,¹ 311,² or 313³ because the dismissal of Appeal No. 24764 did not dispose of all the claims before the Commission. After Appeal No. 24795 and 24780 had been withdrawn, Andrews then sought reinstatement of her appeal of No 24764 with this Court, but Andrews failed to do so in a timely manner. On this ground, our court refused to reinstate Andrews' Petition for Review. Andrews then requested that the Commission

¹ Final order must adjudicate all claims as to all parties. Pa. R.A.P. 341.

² Interlocutory appeals as of right. Pa. R.A.P. 311.

³ Collateral orders. Pa. R.A.P. 313.

reinstate Appeal No. 24795 and 24780. The Commission denied this motion. The present appeal followed.

Andrews is challenging the Commission's refusal to reinstate Appeal No. 24795 and 24780, which she had voluntarily withdrawn. As explained in Andrews' brief, she seeks reinstatement of the previously withdrawn claims in order to ultimately obtain a single order from the Commission disposing of all three claims she originally asserted. This, Andrews apparently believes, will then cure the initial prematurity of her appeal from the Commission's dismissal of Appeal No. 24764 and open the door to our review of that decision.⁴ In essence, Andrews seeks to skip backwards over several procedural missteps and begin the appeal process anew.

A denial of a request to reinstate an appeal is reviewed for abuse of discretion. *Neals v. City of Philadelphia*, 325 A.2d 341, 343 (Pa. Cmwlth. 1974) *citing Morgan v. Bucher*, 442 Pa. 498, 501, 276 A.2d 523, 525 (Pa. 1971) (“a request to reopen an appeal...after the employee has been give an opportunity to have a hearing and has knowingly and voluntarily waived his right...is a request for relief that is purely discretionary.”). The Commission reviewed the circumstances of Andrews' case, and in its discretion denied her Motion to Reinstate Appeal No. 24795 and 24780. A review of the record demonstrates that Andrews knowingly and voluntarily withdrew her appeal. Moreover, Andrews was represented by counsel at all times during the pendency of her case and made a

⁴ We note, however, that our review of the dismissal of Appeal No. 24764 cannot be achieved in this manner. Because our Court denied as untimely Andrews' attempt, following her withdrawal of Appeal No. 24780 and 24795, to reinstate her Petition for Review challenging the Commission's dismissal of Appeal No. 24764, that dismissal concluded her ability to challenge the Commission's dismissal of Appeal No. 24764 in an appeal to this Court.

strategic decision to withdraw Appeal No. 24795 and 24780. The fact that her strategy did not succeed in achieving her ultimate goals does not mean that the Commission was obligated to allow her to try again. The Commission was within its discretion to deny a reinstatement of Andrews' appeal and we will not disturb this proper exercise of administrative discretion. *See Neals*, 325 A.2d at 343.

Accordingly, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

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 Respondent :

ORDER

AND NOW, this 17th day of January, 2008, the order of State Civil Service Commission in the above captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge