

## Chapter 2: Determinations of the New York City Civil Service Commission

### § 2-01 Appeals from Disciplinary Determinations.

(a) Any person entitled under § 76 of the Civil Service Law to take an appeal from a finding of guilt and/or a penalty of punishment in a disciplinary proceeding conducted pursuant to § 75 of the Civil Service Law, shall duly make such appeal by sending by ordinary, registered or certified mail or by delivering personally, a written notice of appeal to the Commission and by sending a copy thereof by the same means to appellant's employer agency. All notices of appeal shall be mailed or delivered within twenty (20) days after the date of service of a written notice of the determination to be reviewed. Such additional time in which to appeal as provided in CSL Sec. 76 shall be allowed where service of the determinations was by mail. The agency head concerned (or his/her designee) shall transmit to the Commission within ninety (90) days after receipt of the notice of appeal the entire record of the disciplinary proceeding including the written transcript of the hearing. Proof of service of the notice of determination to be reviewed shall be submitted where the agency moves to dismiss the notice of appeal as untimely. Motions for dismissal on jurisdictional grounds may be made prior to submission of the record below.

(b) Where a hearing officer other than the agency head is designated in writing to hear the charges preferred, the record furnished the Commission shall contain such written designation of a copy thereof unless such designation is on file with the Commission or provided for in the City Charter and/or published agency rules.

(c) Where an appeal is taken, the Commission shall review the record below and shall afford appellant and the employing agency the opportunity to make an oral presentation and/or to submit written statements to the Commission. Oral arguments may be heard by one or more members of the Commission, or any person duly designated pursuant to § 76(2) of the Civil Service Law. When an appellant declines to make an oral argument, the appeal shall be deemed submitted to the Commission. The agency may elect to reset on the record adduced at the disciplinary proceeding.

(d) Oral argument shall be scheduled within ninety (90) days of receipt of the record below or as soon thereafter as practicable. The determination of the Commission shall be rendered within ninety (90) days after the record on appeal has been submitted for decision or as soon thereafter as practicable.

(e) When the Commission reviews determinations regarding the fitness and discipline of agency employees after hearings conducted pursuant to Civil Service Law § 75, the Commission may affirm, reverse or modify the findings of fact, conclusions of law and penalties imposed below.

(f) Where the Commission upon appeal modifies a determination of dismissal by permitting or requiring the transfer of an appellant to a vacancy in a similar position in another division or department;

- (1) the appellant shall be transferred to another division of department provided the head of such division or department consents thereto;
- (2) such transferee, prior to the approval of such transfer, shall execute all appropriate documents to record his transfer, including, if required by the Commission, a waiver of back pay and civil service rights and status during the period of dismissal;
- (3) such transferee shall be required to service the same probationary term as required for original appointments.

### § 2-02 Appeals from Determinations of the City Personnel Director.

(a) An appeal to the Commission by any person aggrieved by an action or determination by the City Personnel Director or his or her designee on accordance with his or her powers as specified in 60 RCNY § 2-02(b) herein, shall be made by application in writing to the Commission within thirty (30) days of the date of the action or determination appealed from. Such action or determination shall be deemed to be effective upon notice to the appellant. If notice of the action or determination is by mail, there shall be a rebuttable presumption that notice occurred as of five calendar days after the date of the mailing of the action or determination.

(b) An appeal to the Commission shall lie only where the action or determination appealed from is made pursuant to the City Personnel Director's powers and duties as enumerated in paragraphs 3, 4, 5, 6, 7, and 8 of Section 813(a) of the Charter and paragraph 5 of Section 813(b) of the Charter.

(c) The Commission may affirm, modify, reverse or remand such action or determination.

(d) The Commission shall decide appeals from determinations of the City Personnel Director or his or her designee on the basis of written submissions by the parties. Such submissions shall include the record support in the determination of the City Personnel Director or appropriate motions to dismiss the notice of appeal. The Commission, however, may hear oral argument to afford appellant an opportunity to make an explanation and to submit facts in opposition to the action or determination of the City Personnel Director. At such proceedings, the City Personnel Director will be permitted to defend his/her action or determination.

(e) The appellant shall be entitled to a transcript of the Commission's proceedings upon payment of a reasonable cost for the production of same.

(f) All appeals to the Commission which result from medical disqualifications by the City Personnel Director and/or his or her designee pursuant to Section 813(6) of the Charter shall be supported by medical documentation which shall be received by the Commission within sixty (60) days of the filing of the appeal.

(g) All appeals to the Commission which result from a psychological disqualification by the City Personnel Director and/or his or her designee pursuant to Section 813(6) of the Charter shall be supported by medical documentation which shall be received by the Commission within sixty (60) days of the filing of the appeal.

(h) Extension of the time periods set forth in 60 RCNY § 2-02(f) and (g) may be granted for good cause shown.

(i) When the Commission deems that oral argument is required as set forth in 60 RCNY § 2-02(d), such proceeding shall be scheduled within ninety (90) days of receipt of the complete record or as soon thereafter as practicable.

(j) The Commission shall in all appeals from actions or determinations of the City Personnel Director render a written determination within ninety (90) days of the date such appeal is received or as soon thereafter as practicable.

(k) The Commission may, in its discretion, take whatever measures it deems appropriate to ensure review of pending appeals prior to the expiration of the pertinent eligible list.