



A-5

STATE OF NEW JERSEY

In the Matter of Sean Lavin
 Mercer County,
 Sheriff's Department

**FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2014-1760
 OAL DKT. NO. CSV 00977-14

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ISSUED: NOVEMBER 19, 2015 BW

The appeal of Sean Lavin, Sheriff's Officer Sergeant, Mercer County, Sheriff's Department, indefinite suspension on charges of conviction of a crime, was heard by Administrative Law Judge Joseph A. Ascione, who rendered his initial decision on October 29, 2015. Exceptions were filed on behalf of the appellant and reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on November 18, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

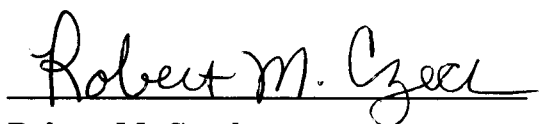
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant indefinitely was justified. The Commission therefore affirms that action and dismisses the appeal of Sean Lavin.

Re: Sean Lavin

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
NOVEMBER 18, 2015

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

GRANTING SUMMARY DECISION

OAL DKT. NO. CSV 00977-14

AGENCY DKT. NO. 2014-1760

**SEAN LAVIN, MERCER COUNTY
SHERIFF'S DEPARTMENT.**

Annie DiCola, Esq., for Sean Lavin, appellant (Fusco & Macaluso, LLC,
attorneys)

Kristina Chubenko, Esq., for Mercer County Sheriff's Department, respondent
(Arthur R. Sypek, Jr., County Counsel, attorneys)

Record Closed: October 27, 2015

Decided: October 29, 2015

BEFORE **JOSEPH A. ASCIONE, ALJ**:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On December 13, 2013, respondent, Mercer County Sheriff's Department (MCSD) indefinitely suspended appellant. On January 6, 2014, MCSD scheduled a departmental hearing for appellant. Appellant waived the departmental hearing. On January 7, 2014, a Final Notice of the Disciplinary Action, confirmed the indefinite suspension based upon the Mercer County prosecutor's December 12, 2013, complaint of criminal charges against appellant for violations of N.J.S.A. 2C:30-2A Official

Misconduct. The contested case was transmitted to the Office of Administrative Law, where it was filed on January 24, 2014, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Respondent filed a motion for summary disposition seeking the dismissal of the petition based upon the criminal proceeding. Appellant sought time to attempt to vacate the criminal charges. Appellant received time to resolve the criminal charges and pending that resolution responded to the motion. On October 27, 2015, respondent's counsel forwarded a Consent Order indicating that on October 5, 2015, the criminal charges were resolved by entering into an eighteen-month pre-trial intervention (PTI) program, one of the conditions of the PTI required appellant to resign as a Mercer County Sheriff's Officer and not seek future employment with MCSO. On October 2, 2015, appellant resigned as a Mercer County Sheriff's Officer. The record in this matter closed on October 27, 2015, upon receipt of the Superior Court Consent Order.

LEGAL ANALYSIS AND CONCLUSIONS

A summary decision motion is the administrative law equivalent of a summary judgment motion in the judicial branch. It is a well recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute and the application to that set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which evidence and testimony need be taken. The standards for determining motions for summary judgment are contained in Judson v. People's Bank & Trust Co. of Westfield, 17 N.J. 67, 74-75 (1954). The Supreme Court later elaborated on the motion and its standard in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). Under the Brill standard, as in Judson, a motion for summary decision may only be granted where there are no "genuine disputes" of "material fact." The determination as to whether disputes of material fact exist is made after a "discriminating search" of the record, consisting, as it may, of affidavits, certifications, documentary exhibits and any other evidence filed by the movant and any such

evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of “genuine” disputes of material fact. The facts upon which the party opposing the motion relies to defeat the motion must be something more than “facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful, frivolous, gauzy or merely suspicious.’” Judson, supra, 17 N.J. at 75 (citations omitted). The Brill decision focuses upon the analytical procedure for determining whether a purported dispute of material fact is “genuine” or is simply of an “insubstantial nature.” Brill, supra, 142 N.J. at 530. Brill concludes that the same analytical process used to decide a motion for a directed verdict is used to resolve a summary judgment motion. “[T]he essence of the inquiry in each is the same: ‘Whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)). In searching the proffered evidence to determine the motion, the judge must be guided by the applicable substantive evidentiary standard of proof, that is, the “burden of persuasion” that would apply at trial on the merits, whether that is the preponderance of the evidence standard or the clear and convincing evidence standard. If a careful review under this standard establishes that no reasonable fact finder could resolve the disputed facts in favor of the party opposing the motion, then the uncontradicted facts thus established can be examined in the light of the applicable substantive law to determine whether or not the movant is clearly entitled to judgment as a matter of law. However, where the proofs in the record are such that “reasonable minds could differ” as to the material facts, then the motion must be denied and a full evidentiary hearing held.

The sole issue before this tribunal is whether the public interest would best be served by suspending the employee until disposition of the criminal indictment. N.J.A.C. 4A:2-2.7(a)(1). The merits of the underlying charges are not at issue in this appeal. If the criminal charges did not result in a forfeiture of office, the respondent would be required to issue a second Preliminary Notice of Disciplinary Action specifying

charges for removal of the appellant. Accordingly, the December 13, 2013, indefinite suspension of the appellant is **AFFIRMED**.

Based upon the foregoing, I **CONCLUDE** that the respondent has presented sufficient evidence that supports the dismissal of the appeal.

ORDER

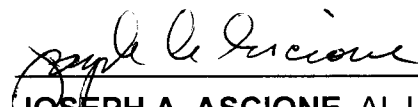
For the reasons set forth above, it is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**. Appellant is indefinitely suspended as of December 13, 2013.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 29, 2015
DATE


JOSEPH A. ASCIONE, ALJ

Date Received at Agency:

10/29/15

Date Mailed to Parties:

10/29/15

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