



A-14

STATE OF NEW JERSEY

In the Matter of Samuel Stango  
Lower Township,  
Department of Public Safety

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2014-219  
OAL DKT. NO. CSR 10913-13

ISSUED: DECEMBER 18, 2015 BW

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The appeal of Samuel Stango, Police Officer, Lower Township, Department of Public Safety, removal effective July 1, 2013, on charges, was heard by Administrative Law Judge W. Todd Miller, who rendered his initial decision on November 24, 2015. No exceptions were filed.

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 December 16, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

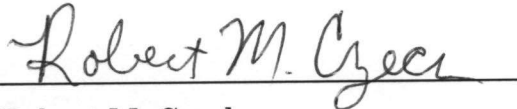
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Samuel Stango.

Re: Samuel Stango

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  
DECEMBER 16, 2015



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**

**SUMMARY DECISION**

OAL DKT. NO. CSR 10913-13

AGENCY DKT. NO. N/A

2014-219

**IN THE MATTER OF SAMUEL STANGO,  
LOWER TOWNSHIP.**

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**John Eastlack, Jr., Esq.**, for appellant (Weir & Partners, LLC, attorneys)

**William G. Blaney, Esq.**, for respondent Lower Township (Blaney & Donohue,  
PA, attorneys)

Record Closed: November 5, 2015

Decided: November 24, 2015

BEFORE **W. TODD MILLER**, ALJ:

**STATEMENT OF THE CASE**

Appellant, Samuel Stango (Stango or appellant) appeals his removal effective July 1, 2013, from his employment as police officer with Lower Township. Appellant was charged with a violation of N.J.A.C. 4A:2-2.3(a)1 (Incompetency, Inefficiency, or Failure to Perform Duties); N.J.A.C. 4A:2-2.3(a)3 (Inability to Perform Duties); N.J.A.C. 4A:2-2.3(a)6 (Conduct Unbecoming a Public Employee); N.J.A.C. 4A:2-2.3(a)7

(Neglect of Duty); N.J.A.C. 4A:2-2.3(a)12 (Other Sufficient Causes) involving the rules, regulations, and policies<sup>1</sup> of the police department (Certification of Counsel – Exhibit D).

Appellant was convicted of domestic violence and simple assault wherein he was prohibited from possessing a firearm by the Cape May County Prosecutor's Office pursuant to N.J.S.A. 2C:39-7. Exhaustive appeals followed but the appellant was unsuccessful in vacating the charges or the ban on possessing a firearm. Respondent now moves for summary decision on the basis that appellant's removal from employment must be upheld because he cannot perform the duties of a police officer without the ability to possess a firearm<sup>2</sup>. The motion was unopposed.

For the reasons stated below, summary decision is **GRANTED** in favor of respondent on the charge of N.J.A.C. 4A:2-2.3(a)3 (Inability to Perform Duties) and appellant is **REMOVED** from his position as a police officer with Lower Township.

### PROCEDURAL HISTORY

On or about March 29, 2012, appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) (Certification of Counsel – Exhibit A). On or about July 26, 2012, an Amended Preliminary Notice of Disciplinary Action was served upon appellant (Certification of Counsel – Exhibit C). On or about July 17, 2013 an Amended Final

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- <sup>1</sup> 3.1.4 - Abide by all rules, regulations and departmental procedures and directives governing police officer employees
  - 3.1.7 - Conduct themselves in accordance with high ethical standards, on and off-duty.
  - 3.1.9 - Perform their duties promptly, impartially, faithfully and diligently.
  - 3.1.10 - Perform all related work as required.
  - 4.1.1 - Performance of Duty. All employees shall promptly perform their duties as required or directed by law, department rule, policy or directive, or by lawful order of a superior officer.
  - 4.1.3 - Obedience to Laws and Rules. Employees shall obey all laws, ordinances, rules, policies, and procedures and directives of the department.
  - 4.1.8 - Compromising Criminal Cases. Employees shall not interfere with the proper administration of criminal justice.
  - 4.3.3 - Reports. No employee shall knowingly falsify any official report or enter or cause to be entered any inaccurate, false or improper information on record of the department.
  - 4.12.6 - Truthfulness. Employees are required to be truthful at all times whether under oath or not.

<sup>2</sup> See Civil Service Job Specifications ALJ-1

Notice of Disciplinary Action was served upon appellant (Certification of Counsel – Exhibit D).

This matter was filed with the Office of Administrative Law on July 23, 2013, for determination as a contested case, pursuant to N.J.S.A. 40A:14-202d; N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was assigned to the Hon. Damon Tyner, ALJ. The disciplinary charges emanated from appellant's conviction of domestic violence and simple assault resulting in a ban from possessing a firearm. Since the criminal conviction was appealed, the underlying disciplinary was stayed for an extended period. Appellant waived any claim for reinstatement of his salary pending his appeal of the criminal conviction and firearm ban. In the interim, Judge Tyner was elevated to the Superior Court. This matter was re-assigned to the undersigned.

### **SUMMARY OF THE FACTS**

Appellant, Samuel Stango, was a police officer employed by the Township of Lower. The disciplinary charges at issue stem from a series of events that occurred on March 21 and 22, 2013. Stango had a dispute with his then girlfriend, Regina Sheets. Stango reported this incident to his superiors at the police department, indicating his belief that Sheets may initiate a false complaint against him. Stango's report to the police department initiated an investigation in which Sheets made allegations consistent with a disorderly persons charges involving simple assault, N.J.S.A. 2C:12-1(a)(1), under the domestic violence category. On or about March 29, 2012, a Complaint and Warrant was issued charging Stango with simple assault N.J.S.A. 2C:12-1(a)(1), indicating that the same occurred during an act of domestic violence (Certification of Counsel - Exhibit G).

Lower Township issued a Civil Service Preliminary Notice of Disciplinary Action suspending Mr. Stango from employment pending the outcome of the municipal court matter (Certification of Counsel - Exhibit A). Stango's firearms were seized in accordance with the Attorney General Directive 2000-3 (Certification of Counsel - Exhibit H). On July 18, 2012, Stango was convicted of the charge of simple assault by

the Honorable, Louis J. Belasco, Jr., J.M.C. (Certification of Counsel – Exhibit B). Subsequently, motions were filed by both the State and Stango. Relevant to the instant issue, the State filed a motion under the Forfeiture Act, N.J.S.A. 2C:51-2. The same was denied with Judge Belasco holding:

In denying the forfeiture motion I determined that Samuel Stango was not convicted of an automatic disqualifying crime or offense; and that the act of simple assault did not involve or touch upon his position of police officer. N.J.S.A. 2C:51-2. The consequences that flow from conviction, i.e. inability to possess firearms may [a]ffect his employment as a police officer, but does not trigger a ban on public employment. See, State v. Hupka, 203 N.J. 222 (2010).

(Certification of Counsel – Exhibit I).

Stango appealed his municipal court conviction to the New Jersey Superior Court. On March 8, 2013, the guilty finding on the charge of simple assault was upheld by the Honorable, Mark H. Sandson, J.S.C. (Certification of Counsel - Exhibit E). Stango filed a Motion for a Rehearing and Amended Findings of Fact and Law. The same was denied by an Order and Opinion of Judge Sandson dated June 7, 2013. Stango subsequently appealed his municipal court conviction to the Superior Court, Appellate Division. On November 20, 2014, Appellate Division upheld the conviction. On or about April 30, 2015, the Supreme Court of New Jersey denied Mr. Stango's petition for certification of the judgment in his case, and the guilty finding on the simple assault charge remains upheld (Certification of Counsel – Exhibit F).

As a result of Stango's conviction for simple assault pursuant N.J.S.A. 2C:12-1(a)(1), involving domestic violence, he is barred from possessing a firearm under N.J.S.A. 2C:39-7 and has not been authorized to possess a firearm by the Cape May County Prosecutor pursuant to Attorney General Directive 2000-3. Stango's inability to possess a firearm renders him incapable of performing his duties as a police officer within the Lower Township Police Department (ALJ-1).

### STANDARD FOR SUMMARY DECISION

The OAL rules governing motions for summary decision are found at N.J.A.C. 1:1-12.5. These provisions mirror the language of R. 4:46-2 and the Supreme Court's decision in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67 (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary decision should be based on the papers presented as well as any affidavits, which may have been filed with the application. In order for the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding.

### CONCLUSIONS

The burden of persuasion rests with the agency in enforcement proceedings to prove violations of administrative regulations. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The agency must prove its case by a preponderance of the credible evidence, which is the standard in proceedings before an administrative agency. Atkinson v. Parsekian, 37 N.J. 143 (1962). An appeal requires the Office of Administrative Law to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris County Bd. of Social Serv., 197 N.J. Super. 307 (App. Div. 1984).

Respondent relies upon Mondry v. Jersey City Police Dept., 1999 WL 1189107, 10; CSV 9967-98 (1999) which holds that a law enforcement officer's inability to carry a firearm, as a result of a temporary restraining order (TRO), warrants a guilty finding relative to an inability to perform duties charge (Certification of Counsel – Exhibit J); see also, Freddie Frazier v. Northern State Prison, 2011 WL 5429054, CSV 07489-11 (2011) which holds a separation from employment may be based upon an inability to carry a firearm pursuant to a qualifying conviction pursuant to N.J.S.A. 2C:39-7 (Certification of Counsel – Exhibit K); and see, In the Matter of Michael James, 2011 WL 311019, CSV 8816-09 (2011) which holds a separation of employment may be based upon the County Prosecutor's decision not to re-arm a law enforcement officer,

even absent a TRO or qualifying conviction, but rather in according with Attorney General Directive 2000-3) (Certification of Counsel – Exhibit L).

I **CONCLUDE** that since appellant is no longer legally permitted to carry or possess a firearm, he is unable to perform his duties as a police officer for Lower Township Police Department. N.J.A.C. 4A:2-2.3(a)3.

### **ORDER**

Based upon the foregoing, the civil service charge of Inability to Perform Duties (N.J.A.C. 4A:2-2.3(a)3) is **SUSTAINED**, and appellant is **REMOVED** from his position as a police officer with the Lower Township Police Department.

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. 40A:14-204.



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.

11/24/15  
DATE

  
\_\_\_\_\_  
W. TODD MILLER, ALJ

Date Received at Agency:

11/24/15

Date Mailed to Parties:

11/24/15

/jb

**DOCUMENTS RELIED UPON**

For Appellant:

None

For Respondent:

October 14, 2015, Brief and Certification of Counsel

By the ALJ:

ALJ-1 Civil Service Job Specifications