



STATE OF NEW JERSEY

In the Matter of Robert Armstrong :
Division of Developmental :
Disabilities, :
Department of Human Services :
CSC DKT. NO. 2016-2310 :
OAL DKT. NO. CSV 02876-16 :

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: NOVEMBER 15, 2016 BW

The appeal of Robert Armstrong, Chief Executive Officer, Care Facility, Division of Developmental Disabilities, Department of Human Services, 20 working day suspension, on charges, were heard by Administrative Law Judge Sarah G. Crowley, who rendered her initial decision on September 14, 2016. Exceptions were filed on behalf of the appellant.

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 10, 2016, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

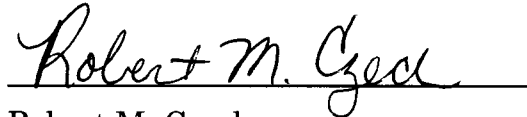
ORDER

The Civil Service Commission therefore grants the motion for summary decision and dismisses the appeal of Robert Armstrong.

Re: Robert Armstrong

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 10, 2016

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

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Assistant 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

OAL DKT. NO. CSV 02876-16

AGENCY DKT. NO. 2016-2310

**IN THE MATTER OF ROBERT
ARMSTRONG, DEPARTMENT
OF HUMANS SERVICES,
DEVELOPMENTAL DISABILITIES.**

William G. Blaney, Esq., for appellant (Blaney & Karavan, attorneys)

Peter H. Jenkins, Deputy Attorney General, for respondent (Christopher S. Porrino, Attorney General of New Jersey, attorney)

Record Closed: July 29, 2016

Decided: September 14, 2016

BEFORE **SARAH G. CROWLEY, ALJ**:

PROCEDURAL HISTORY

Appellant Robert Armstrong is employed by the Department of Human Services (DHS), as the Chief Executive Officer of the Vineland Development Center. On December 10, 2015, he was served with a notice of discipline imposing a twenty day suspension for falsification, intentional misstatement of material fact, violation of rule, regulation and policy, intentional abuse or misuse of authority or position and conduct unbecoming of an employee. After a department hearing, a final notice of discipline was serviced on December 15, 2015, sustaining the discipline and imposing a fifteen

day suspension. On January 5, 2016, the appellant filed an appeal, and the matter was transmitted to the Office of Administrative Law (OAL) as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The respondent filed a motion for summary decision on July 21, 2016.

STATEMENT OF THE CASE

The appellant, Robert Armstrong appeals the decision of the respondent, DHS, charging him with a violation of N.J.A.C. 4A:2-2.3(a)12, conduct unbecoming an employee, violation of Administrative Order 4:08, falsification; violation of Administrative Order 4:08-E1, violation of rule, regulation and policy, and intentional abuse or misuse of authority or position. After a departmental hearing, a final notice of discipline was served sustaining the charges and imposing a twenty day suspension. The appellant appeal and the DHS moves to dismiss on the grounds that appellant has no right of appeal to the OAL as a non-civil servant unclassified employee.

DHS moves for summary decision claiming that there are no factual issues in dispute and summary decision should be granted in their favor. DHS has submitted the certification of Deputy Attorney General Peter H. Jenkins in support of the motion. DHS also submits the Civil Service Commission job specification for the appellant, which provides that his position is unclassified. The appellant has responded claiming that the "interests of justice call for an OAL hearing." The petitioner argues that since he was served a notice citing to the civil service law and given a departmental hearing consistent with civil service law, that a subsequent appeal to the OAL should be given. The appellant concedes that he is not a civil service employee and has no rights under the civil service laws. There are no factual issues in dispute.

LEGAL ANALYSIS

The issue presented here is whether the respondent is entitled to summary decision dismissing the appeal as a matter of law. The respondent has filed a motion for summary decision pursuant to N.J.A.C. 1:1-12.5(b) which provides: "if the papers and discovery which have been filed, together with the affidavits, if any, show that there

is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). These provisions mirror the summary-judgment language of R. 4:46-2(c) of the New Jersey Court Rules. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. Super. 520 (1995). In making a determination on a motion for summary judgment, the judge should consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. Brill, supra, 142 N.J. Super. at 523. The issue present is whether the respondent is entitled to a dismissal of the petition as a matter of law.

In this matter, the appellant has challenged the imposition of a twenty day suspension imposed on him. The appellant was given a Preliminary Notice of Discipline and after a departmental hearing, was served with a Final Notice of Discipline sustaining the charges. An appeal was filed and the matter was transmitted here as a contested cases. DHS has moved to dismiss the matter claiming there is no right of appeal to the OAL since the appellant is an unclassified employee pursuant to N.J.S.A. 11A:3-4. It is undisputed that appellant is a Chief Executive Officer at DHS and that this position is unclassified and he has no contractual right to an appeal to the OAL. Pursuant to N.J.S.A. 11:2-6 and N.J.A.C. 4A:2-2.1(a), only classified employees are afforded a right to appeal a major disciplinary matter.

The provisions of the Civil Service Act and its implementing regulations which concern “Major Discipline” apply exclusively to “career service” employees. The Civil Service Act, provides, in pertinent part, as follows:

In addition to other powers and duties vested in it by this title or by any other law, the commission shall:

a. After a hearing, render the final administrative decision on appeals concerning permanent career service employees or those in their working test period in the following categories:

(1) Removal,

- (2) Suspension or fine as prescribed in N.J.S.A. 11A:2-14,
- (3) Disciplinary demotion, and
- (4) Termination at the end of the working test period for unsatisfactory performance;

[N.J.S.A. 11A:2-6 (emphasis added).]

The Civil Service Act's implementing regulations state that, "[t]his subchapter applies only to permanent employees in the career service or a person serving a working test period." N.J.A.C. 4A:2-2.1(a). The regulations further state that the "[a]ppointing authorities may establish major discipline procedures for other employees." N.J.A.C. 4A:2-2.1(b).

In the present matter, petitioner was employed as a Chief Executive Officer of the Vineland Developmental Center. The position is an unclassified position. As an employee serving in an unclassified position, petitioner was not entitled to the protections provided pursuant to the Civil Service Act and its implementing regulations. Petitioner is, in effect, serving as an "at-will" employee. Accordingly, petitioner is not entitled to appeal the suspension imposed by the agency. The fact that the agency provided the appellant with a departmental hearing and charged him with violations of the Civil Service Act, does not create statutory rights to an appeal to the OAL.

CONCLUSION

Respondent's Motion to Dismiss is hereby granted because the Civil Service Commission lacks the jurisdiction to decide this matter. Petitioner is not permitted to appeal to the agency's determination regarding the suspension to the Civil Service Commission because the petitioner is not a civil service employee. Appellant's argument that such a right is created because the agency provided a departmental hearing before imposing the discipline lacks any legal basis. I therefore **CONCLUDE** that the respondent is entitled to a dismissal of the petition as a matter of law. Accordingly, the motion to dismiss is **GRANTED**, and the appeal is dismissed.

ORDER

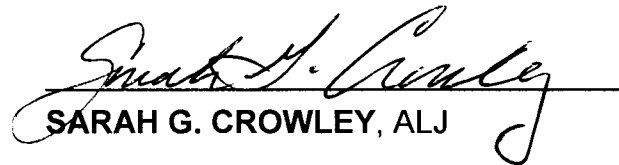
I hereby **ORDER** that the respondent's motion for summary decision/dismissal is hereby **GRANTED**.

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.

September 14, 2016
DATE


SARAH G. CROWLEY, ALJ

Date Received at Agency:

September 14, 2016 (mailed)

Date Mailed to Parties:

September 14, 2016 (mailed)

SGC/mel