



STATE OF NEW JERSEY

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

In the Matter of Anthony Ricks, East
Orange

CSC Docket No. 2019-2614

Request for Interim Relief

ISSUED: June 26, 2019

(SLK)

Anthony Ricks, a Police Sergeant with East Orange, represented by R. Armen McOmber, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his immediate suspension.

By way of background, in a Preliminary Notice of Disciplinary Action (PNDA) dated September 26, 2018, the appointing authority immediately suspended the appellant without pay effective that same date and sought his removal. The PNDA indicates that the appellant was suspended on various charges related to sick leave and chronic absenteeism. The appellant indicates that he received the PNDA on October 13, 2018 and, in an October 16, 2018 letter, he responded that he was not guilty and requested a departmental hearing. However, the departmental hearing did not take place within 30 days of the issuance of the PNDA. Instead, it is currently scheduled for June 27, 2019. The appellant requests that the charges against him be dismissed due to the appointing authority's failure to timely schedule the departmental hearing.

In his request, the appellant presents documents to show that the appointing authority initially tried to conceal his suspension by listing him in its system as being on extended sick leave from February 3, 2018 until January 16, 2019. Thereafter, when the appointing authority found out the he knew that it was trying to conceal his suspension, it changed his status to suspended, effective September 26, 2018. The appellant states that on March 14, 2019 he received a letter from the appointing authority scheduling the departmental hearing on May 8, 2019, which

would have made his suspension 225 days without a hearing, which is well past the 30-day allowed time. Thereafter, he received a subsequent letter that the departmental hearing was rescheduled for June 27, 2018, which will make it 275 days that he has been suspended without a hearing. Further, the appellant states that he has not received an adequate explanation of the charges, a witness list, or discovery. In his response to the appointing authority's untimely scheduling of the hearing, the appellant presented to the appointing authority that the delay in the departmental hearing violated *N.J.S.A. 40A:14-147*, which requires that the departmental hearing be held within 30 days of the issuance of the complaint. However, the appointing authority did not respond to his assertion that the complaint needed to be dismissed. Therefore, the appellant requests that the Civil Service Commission (Commission) order the dismissal of the charges prior to the departmental hearing being held. The appellant also explains his defenses to the charges.

Although given the opportunity, the appointing authority has not responded.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

N.J.S.A. 40A:14-147 provides, in pertinent part, that a departmental hearing regarding the removal of a Police Officer shall be not less than 10 days nor more than 30 days from the issuance of the complaint. A failure to comply with said provisions as to the service of the complaint and the time with which a complaint is to be filed shall require a dismissal of the complaint.

N.J.S.A. 40A:14-149 provides that if any member or officer of the police department or force shall be suspended pending a hearing as a result of charges against him, such hearing, except as otherwise provided by law, shall be commenced within 30 days from the date of the service of the copy of the complaint upon him, in default of which the charges shall be dismissed and said member or officer may be returned to duty.

N.J.A.C. 4A:2-2.5(d) and *N.J.A.C. 4A:2-2.13(b)* provides, in pertinent part, a departmental hearing, if requested, shall be held within 30 days of the effective date of the removal unless waived by the employee or a later date as agreed by the parties.

Initially, it is noted that *N.J.S.A.* 40A:14-149, and not *N.J.S.A.* 40A:14-147 is the applicable statute as *N.J.S.A.* 40A:14-147 refers to dismissing a complaint for failure to comply with the timely service of the complaint, while *N.J.S.A.* 40A:14-149 concerns the failure to timely hold the departmental hearing.

In *King v. Ryan*, 262 *N.J. Super.* 401 (App. Div. 1993), *cert. denied*, 134 *N.J.* 474 (1993), the Appellate Division recognized that not every violation of the 30-day rule set forth in *N.J.S.A.* 40A:14-149 mandates dismissal of the disciplinary charges. The court stated:

We recognize that the flexibility with which the apparently mandatory statutory thirty-day provision of *N.J.S.A.* 40A:14-149 has been invested by the courts proceeds from the need to accommodate the prompt dispositional rights of the suspended officer with the public's overriding interest in an appropriate response to allegations of police misconduct. That flexibility is not, however, congruent with inexcusable and egregious disregard of the officer's rights. *Id.* at 411.

See also, In the Matter of Gideon Bernhard, Docket No. A-1934-03T1 (App. Div. April 18, 2005); *In the Matter of Joseph Gallant* (MSB, decided June 12, 2001).

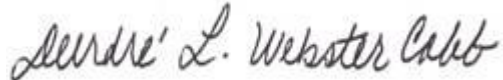
In this matter, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. Initially, it is clear that the petitioner faces numerous charges and is steadfast in his assertion that he is not guilty of these charges. In this regard, a critical issue in any disciplinary appeal is whether or not the petitioner's actions constituted wrongful conduct warranting discipline. The Commission will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing. Moreover, procedural deficiencies at the departmental level which are not significantly prejudicial to an appellant are deemed cured through the *de novo* hearing received at the Office of Administrative Law (OAL). *See Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995); *In re Darcy*, 114 *N.J. Super.* 454 (App. Div. 1971). Accordingly, even if such procedural deficiencies exist as alleged in this matter by the petitioner, the Commission will not dismiss such charges prior to a hearing absent explicit evidence that such charges are meritless. Moreover, should the petitioner be successful at the departmental level or upon further appeal to the Commission after a Final Notice of Disciplinary Action is issued, he would be entitled to back pay. Thus, any current harm he may be subject to can be fully remedied. Finally, while the Commission does not excuse any procedural violations in this matter, and cautions the appointing authority to strictly adhere to the rules underlying taking such discipline in the future, the current record is insufficient to support a dismissal of the charges.

ORDER

Therefore, it is ordered that the petition for interim relief be denied.

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
THE 26th DAY OF JUNE, 2019



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