



**STATE OF NEW JERSEY**

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

In the Matter of Ronnie Belin, Jr.,  
Plainfield

Administrative Appeal

CSC Docket No. 2019-2372

**ISSUED: JULY 11, 2019 (SLK)**

Ronnie Belin, Jr., a Fire Fighter with Plainfield, appeals his suspension without pay, effective May 5, 2016.<sup>1</sup>

By way of background, the appellant was appointed as a Fire Fighter on May 25, 2015. On April 1, 2016, the appellant had a bucket of water poured on him by a fellow Fire Fighter as a prank. In response, the appellant retrieved a small axe and indicated that he was going to inflict violence. Later that month, the appointing authority sent the appellant for a Fitness for Duty psychological evaluation with Dr. Betty McLendon who found the appellant psychologically unfit for duty. Thereafter, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) immediately suspending the appellant, effective May 5, 2016. Starting on November 2, 2016, the appellant began individual therapy with Dr. Veronica Jensen for anger management and conflict resolution and, on November 23, 2016, she issued an opinion that the appellant was cleared from a psychiatric standpoint to return to work. Further, the appellant was evaluated by Dr. Carla Cooke in August 2017 and she issued a report on September 7, 2017 stating that the appellant should be reinstated as a Fire Fighter. The report also indicated that the appellant would benefit from re-enrolling in psychotherapy with a specialist in personality disorders who has expertise with a variety of concrete healthy adaptive coping strategies. In July 2018, the parties reached an agreement (Agreement)

<sup>1</sup> It is noted that the appellant's County and Municipal Personnel Systems (CAMPS) record does not indicate that the appellant was suspended.

indicating that the appellant was to be reinstated effective August 1, 2018. However, as part of the Agreement, the appellant needed to pass a Fitness for Duty Examination prior to returning to paid status. On December 20, 2018, Dr. McLendon evaluated the appellant, and on January 7, 2019, she issued a report recommending that the appellant engage in the services of a Licensed Therapist to help him with the development of problem-solving, anger management and conflict resolution skills for a period not less than six weeks with not less than six individual sessions. Upon completion, she indicated that a follow-up Fitness for Duty evaluation should be conducted on or about February 11, 2019. Until that time, Dr. McClendon determined that the appellant was unfit for duty. There is no record that the appellant completed these requirements.

On appeal, the appellant requests to be reinstated with back pay. He attaches a January 21, 2019 letter to the appointing authority stating that the Agreement was compromised due to the length of time he was absent from work as an employee. The appellant claims that the appointing authority indicated that a physical was required, but that a new psychological examination, which is was also requiring, was not part of their Agreement. The appellant notes that he submitted two psychological reports that indicated that he was fit for duty, including the second one that was performed by a Forensic Psychologist as requested by the appointing authority. However, he was not allowed to return to work. Further, the appellant claims that Dr. McClendon was biased as she commented about his clothing being inappropriate, made a statement that he had to impress her, and claimed their meeting caused her stress.

In response, the appointing authority, represented by Joseph M. Wenzel, Esq., argues that that Civil Service Commission (Commission) does not have jurisdiction over this matter as the appellant is a local employee covered by a collective negotiations agreement (CNA) and the Commission only has jurisdiction over grievances filed by State employees who are not subject to a CNA. With respect to the merits, although the Agreement did not specifically define what the Fitness for Duty examination involved, it asserts that it was clear based on the circumstances that the appellant's reinstatement was conditioned on him passing a psychological Fitness for Duty examination. The appointing authority asserts that the only Fitness for Duty examination that is relevant is the one that was performed on December 20, 2018 by Dr. McClendon as the other evaluations were not authorized or paid for by the appointing authority and they were performed prior to the July 2018 Agreement. As the appellant was deemed unfit by Dr. McClendon, the appointing authority argues that the appeal should be dismissed.

In reply, the appellant claims that City Council advised him that he should get a psychological evaluation, which is why he engaged Dr. Jensen in November 2016, who after five visits, determined that he was fit for duty. Thereafter, as the appointing authority indicated that he needed to see a Forensic Psychologist, he

was evaluated by Dr. Cooke, who determined in her September 2017 report that he was fit. Still, the appointing authority would not allow him to return to work. Moreover, after the Agreement, instead of sending him to an independent third-party psychologist, he was sent to the appointing authority's doctor, Dr. McClendon, who he claims was biased. Further, the appellant asserts that the appointing authority acted in bad faith throughout this process as he has only received the initial PNDA, where he indicated within five days that he requested a departmental hearing, but he never received one, and he was denied access to his union and his union attorney.<sup>2</sup>

In further response, the appointing authority reiterates its argument that the appellant did not follow proper grievance procedures. Also, it highlights all the negative findings that were found in Dr. Cooke's report and, therefore, it criticizes the report's conclusion that the appellant is fit for duty. Still, the appointing authority notes that even Dr. Cooke's report indicates that the appellant should continue with psychotherapy.

In further reply, the appellant emphasizes the two evaluations that he submitted that indicate that he is fit for duty. Additionally, he submits a text exchange with the Fire Chief that indicates that it was the Chief's belief that the Fitness for Duty examination condition in the Agreement meant that the appellant had to pass a physical and not that he be subjected to another psychological examination.

## CONCLUSION

*N.J.S.A.* 4A:2-2.4(a) provides that no suspension or fine shall exceed six months except for suspension pending criminal complaint or indictment. See *N.J.A.C.* 4A:2-2.7.

*N.J.S.A.* 4A:2-2.5(a)1 provides, in pertinent part, that an employee may be suspended immediately and prior to a hearing where it determined that the employee is unfit for duty.

Initially, it is noted that although the appellant captions this matter as a grievance, this matter is not a grievance. Instead, this matter involves the appellant's involuntary separation from employment, which is clearly a matter under the Commission's jurisdiction. Further, the Commission notes that it was appropriate for the appointing authority to immediately suspend the appellant as he was found unfit for duty. However, this entire matter has been procedurally deficient. The appellant claims that he timely requested a departmental hearing; however, there is no evidence in the record that he was afforded one. Moreover, the appellant's separation is now over three years old, which is beyond the six months

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<sup>2</sup> The record indicates that the appellant did have an attorney when he signed the Agreement.

limit for a suspension not involving a criminal complaint or indictment. *See N.J.S.A. 4A:2-2.4(a)*. Normally, under these circumstances, the appellant would be entitled to, at minimum, back pay for such procedural violations. However, as there is evidence in the record that the appellant is psychologically unfit for duty, an award of back pay would be inappropriate. Still, the appointing authority is warned that continued violations of Civil Service procedures in this matter or other matters may subject it to fines not to exceed \$10,000. *See N.J.A.C. 4A:10-2.1(a)2*.

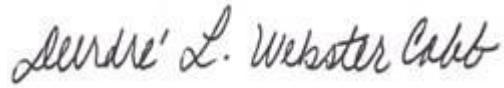
Concerning the merits, the Agreement in this matter was signed in July 2018, which is after the two Fitness for Duty evaluations that the appellant paid for. The Agreement indicates that the appellant's reinstatement to pay status was conditioned on him passing a Fitness for Duty examination. The Agreement did not define whether this was a psychological examination and/or a physical evaluation nor did it indicate who was to perform the evaluation. However, given that the appellant was suspended due to the determination that he was psychologically unfit to perform the duties of a Fire Fighter, it would not be unreasonable to assume that the appellant's reinstatement was conditioned upon his passing a psychological evaluation from a doctor who the appointing authority authorized to perform the evaluation. Regardless, as the appellant's own report performed by Dr. Cooke indicates that the appellant would benefit from continued psychotherapy and the appointing authority's report performed by Dr. McClendon indicates that the appellant should be reevaluated after further therapy sessions and was deemed unfit until determined otherwise, the Commission cannot authorize the reinstatement of the appellant without a conclusive finding that the appellant is fit for duty. Therefore, the Commission finds that the appointing authority should immediately have the appellant undergo a current psychological examination. If he is found to be unfit, it shall immediately issue a new PNDA seeking the removal of the appellant based on his failure to pass the fitness for duty evaluation, afford the appellant an opportunity for a departmental hearing and issue a Final Notice of Disciplinary Action as appropriate. Should he be found fit for duty, he shall be immediately reinstated. Failure for the appointing authority to take immediate action consistent with this decision shall subject it to fines not to exceed \$10,000 upon an enforcement action.

### **ORDER**

Therefore, it is ordered that this appeal be granted in part and the matter shall be proceed as indicated above.

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 9<sup>th</sup> DAY OF JULY, 2019



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