



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Brian Pio, Salem  
County Sheriff's Office

Request for Stay

CSC Docket No. 2021-328

**ISSUED: NOVEMBER 6, 2020 (HS)**

The Salem County Sheriff's Office, represented by Joseph M. DiNicola, Jr., Esq., petitions the Civil Service Commission (Commission) for a stay of Brian Pio's reinstatement, pending the outcome of its request for reconsideration.

As background, Pio, a County Correctional Police Officer,<sup>1</sup> was removed from employment, effective July 19, 2019, on charges of conduct unbecoming a public employee; violation of rules and regulations; and other sufficient cause. The appointing authority asserted that Pio made harassing, racial comments towards co-workers. Upon his appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing. The Administrative Law Judge (ALJ) recommended that the charges and penalty be upheld. Although the Commission agreed with the recommendation to uphold the charges, it did not agree with the recommendation to uphold the penalty. While the Commission found Pio's comments to be completely inappropriate, it did not find them to be so egregious as to warrant removal without following the tenets of progressive discipline. Accordingly, the Commission imposed a six-month suspension; ordered that Pio attend diversity training; and ordered Pio's immediate reinstatement to his permanent position. *See In the Matter of Brian Pio, Salem County Sheriff's Office* (CSC, decided January 15, 2020).

Thereafter, the appointing authority petitioned the Commission for reconsideration, requesting that the original penalty of removal be upheld. The

<sup>1</sup> Pursuant to *N.J.S.A. 40A:14-180.3*, effective December 1, 2019, the title of County Correction Officer has been retitled to County Correctional Police Officer.

appointing authority presented an incident report prepared by another County Correctional Police Officer. The Commission noted that the report was information to which it was not previously privy and that it could not ignore the alarming nature of the alleged incident described in the report: an inmate's suggestion that Pio's comments deserved to be met with physical violence. Therefore, the Commission remanded the matter to the OAL for additional factfinding surrounding the incident report. The Commission noted that it would be in a position to determine whether it should reconsider Pio's disciplinary penalty after the additional proceedings at the OAL are complete. The appointing authority had also requested that Pio's reinstatement be stayed until it files the appropriate appeal with the Appellate Division. However, since no appeal had been filed with the Appellate Division and the Commission had determined that additional factfinding was necessary, the Commission found no basis for a stay. *See In the Matter of Brian Pio, Salem County Sheriff's Office* (CSC, decided July 29, 2020).<sup>2</sup>

In the instant matter, the appointing authority requests that Pio's reinstatement be stayed until the additional proceedings at the OAL are complete and the Commission renders a final decision on its request for reconsideration. The appointing authority argues that if the allegations in the incident report are accurate, the safety and security of both Pio and the correctional facility will clearly be compromised by reinstating Pio. As such, according to the appointing authority, there is a clear likelihood that the Commission will decide favorably on its request for reconsideration if the allegations are true. The appointing authority also contends that if its request is not granted, there could be immediate and irreparable harm to it and Pio as Pio's reinstatement could create a dangerous environment for everyone involved assuming the allegations are true. The appointing authority further asserts that there would not be substantial injury to Pio if the stay was granted as he would be entitled to all of his back pay if the Commission finds that the additional information is not sufficient to reconsider the penalty. Additionally, the appointing authority proffers that if the threat to Pio exists as stated in the incident report, there is great liability to the public as the correctional facility is a public institution. The appointing authority maintains that there is clear public interest in not allowing the safety and security of the correctional facility to be adversely affected by an individual who was found to commit racial workplace harassment.

In response, Pio, represented by Christopher A. Gray, Esq., counters that there is no clear likelihood of success on the merits as the appointing authority's request is based on what an inmate allegedly said. Pio also contends that the appointing authority cannot claim that there is a danger of immediate or irreparable harm when he has been reinstated to work as of September 22, 2020 with no restrictions on the amount of overtime or shift that he may work on and he was working without incident from the date of the event underlying his discipline, April 8, 2019, through the date of removal, July 19, 2019. Pio adds that he completed the Commission-mandated

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<sup>2</sup> A copy of that decision is attached and incorporated herein.

diversity training with the trainers concluding that he would become a “student of cultural intelligence and an ambassador of cultural pluralism.” Pio further maintains that it is strange for the appointing authority to argue that he would receive back pay if the stay is granted but the Commission does not ultimately reconsider the penalty and that the public would be adversely affected by allowing him to return to his position. In this regard, Pio points out that he was returned to pay status retroactive to the completion of the six-month suspension and was reinstated to unrestricted duty. In support, Pio presents copies of the diversity trainers’ report; a letter from the Salem County Counsel; and a memorandum stating that Pio returned to work on September 22, 2020. It is noted that in her letter, the Salem County Counsel stated, among other things:

Even with Officer Pio’s completion of the diversity training, the County chose to keep Officer Pio out, with pay, until the Civil Service Commission made a decision of the filed motion for reconsideration and request for a stay.

On July [29], 2020 the Civil Service Commission reopened the case for further fact finding, however denied the County’s request for a stay. As such, we now feel it is appropriate to return Officer Pio back to work. The Jail administration will be contacting Officer Pio shortly to coordinate his return.

## CONCLUSION

*N.J.A.C.* 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition for a stay:

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.

Initially, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. In the July 29, 2020 decision, the Commission specifically noted that it would be in a position to determine whether it should reconsider Pio’s disciplinary penalty *after* completion of the additional factfinding proceedings at the OAL, where an ALJ will hear live testimony, assess the credibility of witnesses, and weigh evidence. The Commission declines to stay Pio’s reinstatement, which it has ordered and declined to stay already once before, without the benefit of a full record of those proceedings before it. Since the appointing authority has not conclusively demonstrated that it will succeed in having Pio’s original penalty of removal reinstated as there are material issues of fact present in the case, it has not shown a clear likelihood of success on the merits. Furthermore,

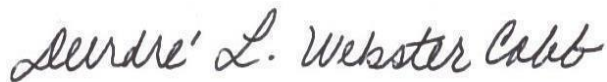
the appointing authority has not shown that it is in danger of immediate or irreparable harm if this request is not granted. In this regard, the appointing authority's claim that Pio's reinstatement could create a dangerous environment is speculative. Nevertheless, the appointing authority retains the ability to impose discipline if warranted in the future. Additionally, the public interest is not served when an administrative order is not implemented. Accordingly, the appointing authority has not demonstrated any basis for a stay of Pio's reinstatement.

Finally, the record in this matter indicates that Pio was apparently returned to pay status retroactive to the completion of his six-month suspension but was not returned to duty until September 22, 2020, months after the January 15, 2020 decision in which the Commission ordered Pio's immediate reinstatement to his permanent position. It is noted that the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Jersey City, Docket No. A-4347-87T3 (App. Div. February 2, 1989).* Therefore, the appointing authority is cautioned that future noncompliance may result in the assessment of fines.

### ORDER

Therefore, it is ordered that the Salem County Sheriff's Office's request for a stay be denied.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>TH</sup> DAY OF NOVEMBER 2020



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