

In the Matter of Kathy Grayson, City of Newark
CSC Docket No. 2012-3397
OAL Docket No. CSV 7947-12
(Civil Service Commission, decided August 15, 2013)

The appeal of Kathy Grayson, a Police Communications Clerk with the City of Newark, of her removal, effective April 17, 2012, on charges, was heard by Administrative Law Judge Jeffrey A. Gerson (ALJ), who rendered his initial decision on July 1, 2013. Exceptions were filed on behalf of the appellant, and cross exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on August 15, 2013, accepted and adopted the Findings of Fact and Conclusions as contained in the initial decision and the recommendation of the ALJ to uphold the appellant's removal.

DISCUSSION

The appellant was served with a Final Notice of Disciplinary Action (FNDA), removing her from employment, effective April 17, 2012, on charges of violations of the Newark Police Department Rules and Regulations concerning criminal law, conduct in public and private, and association with a criminal element. Specifically, the appointing authority asserted that the appellant was arrested for receiving stolen property, conspiracy, possession of heroin, and possession of a firearm and related offenses.¹ The appointing authority also claimed that the appellant violated the Newark Police Department Rules and Regulations when she maintained a relationship with a known felon. Upon the appellant's appeal to the Commission, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

In the initial decision, the ALJ set forth that on May 3, 2011, by way of a warrant, a search was conducted of the appellant's residence, which she shared with Khasim Williams.² The search warrant was issued due to allegations of drug activity by Williams. Upon the police entering the premises, Williams ran to the basement, where heroin was discovered. Additionally, a stolen handgun was found in the closet shared by the appellant and Williams. The appellant denied any knowledge of the handgun, the drug activities of Williams, and his criminal history.

¹ The appellant was indefinitely suspended, effective May 3, 2011, pending the disposition of the criminal charges.

² The ALJ noted that a search warrant was obtained on April 25, 2011. The documentation in the record indicates that the actual search and arrests of the appellant and Williams occurred on May 3, 2011.

Moreover, the ALJ indicated that when the appellant was questioned regarding Williams' source of income, she told a "rather incredible tale" that Williams' relatives were providing him with money on an irregular basis. As to the criminal charges against the appellant, the ALJ noted that the charges were "no billed" by the grand jury.

The ALJ determined that notwithstanding the "specificity which attend [to] the rules and regulations which apply to either police officers and civilians" and regardless of whether the appellant was found not guilty of the criminal charges, the appellant impugned the reputation of the Police Department. The appellant did not sever her relationship with Williams, a known felon, after the execution of the search warrant and after having a clear knowledge of the seriousness of his record. The ALJ concluded that the appellant's conduct was unbecoming a public employee and she violated the Newark Police Department Rules and Regulations prohibiting association with a criminal element. Accordingly, the ALJ recommended removing the appellant from employment.

In her exceptions, the appellant contends that the ALJ's decision "is woefully devoid of crucial factual and legal determinations" and he failed to properly apply the rules and regulations against her, a civilian employee. In this regard, the appellant emphasizes that two rules³ which she allegedly violated proscribe conduct of police officers and clearly are not applicable to her. In comparison, she cites rules that apply to both police officers and civilian employees. Thus, the appellant maintains that this differentiation should not have been overlooked by the ALJ and demonstrates a disregard for her notice and due process rights. Furthermore, she argues that police officers are held to a higher standard of conduct than other public employees since police officers are authorized to make arrests and carry weapons. The appellant underscores that her position of Police Communications Clerk does not have the same authority as a police officer, and therefore, association with a criminal element is far less serious. Moreover, the appellant notes that the charge against her of a violation of criminal law pertains to both police officers and civilian employees as "Department members." The appellant states that this charge was properly dismissed by the ALJ since she was found not guilty of any criminal offenses.

Furthermore, the appellant takes exception with the ALJ's upholding of the charge of conduct unbecoming a public employee,⁴ which she asserts was not sustained in her Final Notice of Disciplinary Action. In this regard, she cites *Hammond v. Monmouth County Sheriff's Department*, 317 N.J. Super. 199 (App. Div. 1999), maintaining that the ALJ exceeded his authority by considering a

³ The appellant refers to the charges of "conduct in public and private" and "association with the criminal element."

⁴ The charge of conduct unbecoming a public employee was listed in the appellant's Preliminary Notice of Disciplinary Action (PNDA).

charge not sustained at the department level. Lastly, the appellant argues that the ALJ erred in not considering her years of service, good performance, and lack of prior discipline.⁵ Therefore, she requests that the ALJ's recommendation be rejected and she be reinstated to her position.

In its cross exceptions, the appointing authority maintains that the ALJ's findings of fact, legal analysis, and conclusions are correct and the Commission should accept the ALJ's recommendation to remove the appellant. It elaborates that the findings and conclusions reached by the ALJ "have a foundation of sufficient, credible evidence and testimony consistent" with Civil Service rules. The appointing authority contends that the rules and regulations regarding association with a criminal element apply to civilian employees. It argues that, if this were not the case, then civilian employees would be free to associate with known criminals without consequence. Moreover, the appointing authority asserts that its witnesses credibly testified and testimonial evidence was introduced which clearly showed that the appellant was aware of Williams' criminal activity. Lastly, it submits that, regardless of her limited prior disciplinary record, the appellant committed a serious infraction and her removal is the only appropriate penalty under the circumstances. It emphasizes that the appellant's responsibilities involve dispatching police officers on complaints of criminal activity. Her continued employment is adverse to the public interest. Therefore, the appointing authority requests that the ALJ's decision be affirmed.

Upon its *de novo* review, the Commission agrees with the ALJ's assessment of the charges and the penalty imposed. Initially, it is well established that the ALJ and the Commission only have jurisdiction to adjudicate disciplinary charges and specifications which were sustained at the departmental level hearing. *See Hammond, supra; Lamont Walker v. Burlington County*, Docket No. A-3485-00T3 (App. Div. October 9, 2002); *In the Matter of Charles Motley* (MSB, decided February 25, 2004). However, in this case, the appellant's PNDA noted a charge of conduct unbecoming a public employee. Additionally, the appellant was provided with sufficient notice as to what alleged conduct predicated her removal in the specifications of the PNDA and FNDA. In other words, the appellant's relationship with a known felon (including after the May 3, 2011 search of her residence and their arrests) is the conduct which caused her removal. Such conduct is clearly unbecoming a public employee and falls under the "conduct in public and private" and "association with the criminal element" charges set forth in the FNDA. Moreover, there is no explicit indication on the FNDA that the charge of conduct unbecoming a public employee was dismissed and, given that the appellant was charged on the PNDA with both conduct unbecoming a public employee under the New Jersey Administrative Code and "conduct in public and private" under the

⁵ Personnel records indicate that the appellant was appointed as a Police Communications Clerk with the City of Newark, effective August 12, 2002, and served a three-day suspension effective November 22, 2004.

appointing authority's rules, it is unreasonable to conclude that the charge of conduct unbecoming a public employee was dismissed on the FNDA. To conclude otherwise would be placing form over substance in an instance where it is clear that the appellant understood the conduct and charges she needed to defend herself against. Additionally, the fact that the appellant was charged under the rules that apply to police officers is of no consequence. As indicated above, the sustained conduct falls under what would be considered unbecoming conduct for a public employee, especially one that works in a Police Department. It is emphasized that the appellant is a Police Communications Clerk, whose position is vital in assisting with the administration of law enforcement. Her continued relationship with Williams after his arrest is adverse to her position, regardless of whether police officer rules of conduct do not apply to civilian personnel. It is underscored that the appellant was provided with sufficient notice of the charges and had the opportunity to defend herself. Accordingly, the Commission finds the appellant's arguments unpersuasive.

With regard to the penalty, the Commission's review is also *de novo*. In addition to considering the seriousness of the underlying incident in determining the proper penalty, the Commission utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). Although the Commission applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's prior disciplinary history may be outweighed if the infraction at issue is of a serious nature. *Henry v. Rahway State Prison*, 81 N.J. 571, 580 (1980). It is settled that the principle of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). In the instant matter, personnel records indicate that the appellant has one minor discipline in over nine years of employment. Nevertheless, her prior record does not mitigate her offense. It is reiterated that the appellant's position is vital to law enforcement and her continued relationship with a known felon is adverse to that position. Moreover, it is well settled public policy that all public employees are expected to exhibit appropriate behavior, both on and off the job, in order to project a positive image to the public that they serve and the taxpayers who fund their positions. Any conduct that serves to diminish the public's trust in the integrity of its employees is intolerable. *See e.g., Karins v. City of Atlantic City*, 152 N.J. 532 (1998). This is especially true where, as here, the appellant is a Police Communication Clerk and serves in the Police Department. The employer and the public must be assured that employees in such positions are worthy of the utmost confidence and trust. Therefore, the Commission finds that the only appropriate course of action is to remove the appellant from employment.

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 Kathy Grayson.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.