

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Appeals, Discipline, and Separations

Readoption with Amendments: N.J.A.C. 4A:2

Adoption Repeal and New Rule: N.J.A.C. 4A:2-2 Appendix

Proposed: July 20, 2015 at 47 N.J.R. 1689(a).

Adopted: November 5, 2015 by the Civil Service Commission, Robert M. Czech, Chairperson.

Filed: November 5, 2015 as d. , without change.

Authority: N.J.S.A. 2C:51-2, 11A:1-2(e), 11A:2-6, 11A:2-11(h), 11A:2-13 et seq., 11A:4-15(c), 11A:7-1 et seq., 11A:8-4, 40A:14-200 et seq., and 52:14B-10(c); and P.L. 2008, c. 29, P.L. 2009, c. 16, and P.L. 2011, c. 70; and 49 CFR Part 382.

Effective Date: November 5, 2015

Expiration Date: November 5, 2022

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on this readoption with amendments was held on August 18, 2015 in Trenton, New Jersey. Walker Ristau served as hearing officer. No comments were received on the readoption with amendments at that time, and no recommendations were made by the hearing officer. No written comments were received. The record of the public hearing may be reviewed by contacting Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments, a new rule, and a repeal govern State and local government employee matters and are not subject to any Federal standards or requirements.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:2. Full text of the adopted amendments follows:

SUBCHAPTER 1. APPEALS

4A:2-1.1 Filing of appeals

(a) All appeals to the Civil Service Commission shall be in writing, signed by the person appealing (appellant) or his or her representative and include the reason for the appeal and the specific relief requested. See N.J.A.C. 4A:2-1.8 for appeal processing fees.

(b) Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

(c) The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

(d) Except where a hearing is required by law, this chapter or N.J.A.C. 4A:8, or where the Civil Service Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. In written record appeals:

1. Each party must serve copies of all materials submitted on all other parties; and

2. A party may **either** review the file at the Civil Service Commission during business hours, **or request copies of file materials.**

(e) A party in an appeal may be represented by an attorney, authorized union representative, or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of

Administrative Law.

4A:2-1.2 Stay and interim relief requests

(a) Upon the filing of an appeal, a party to the appeal may petition the [Commissioner] **Civil Service Commission** for a stay or other relief pending final decision of the matter.

(b) A request for a stay or interim relief shall be in writing, signed by the petitioner or his or her representative and must include supporting information for the request.

(c) The following factors will be considered in reviewing such requests:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted; and
4. The public interest.

(d) The filing of a petition for interim relief will not stay administrative proceedings or processes.

(e) Each party must serve copies of all materials submitted on all other parties.

(f) Following a final administrative decision by the [Commissioner or the Board] **Civil Service Commission**, and upon the filing of an appeal from

that decision to the Appellate Division of Superior Court, a party to the appeal may petition the [Commissioner] **Commission** for a stay or other relief pending a decision by the Court in accordance with the procedures and standards in (b) and (c) above. See N.J. Court Rules 2:9-7.

(g) See N.J.A.C. 1:1-12.6 for interim relief rules on matters pending before the Office of Administrative Law.

4A:2-1.3 Adjournments

(a) Any party requesting an adjournment of a hearing or other review must establish good and sufficient reason for such request. Such reason may include, but is not limited to:

1. Unavoidable appearance by an attorney for a party in any state or [federal] **Federal** court; or

2. Illness of a party evidenced by an affidavit and a doctor's certificate.

(b) Where an adjournment is found not to be for good and sufficient reason, the [Commissioner or Board] **Civil Service Commission** may impose a fine or penalty.

(c) See N.J.A.C. 1:1-9.6 for Office of Administrative Law adjournment rules.

4A:2-1.4 Burden of proof

(a) In appeals concerning major disciplinary actions, N.J.A.C. 4A:2-2[.1 et seq.], the burden of proof shall be on the appointing authority.

(b) In appeals concerning minor disciplinary actions, See N.J.A.C. 4A:2-3.7(f) for burden of proof standards.

(c) In all other [Commissioner and Board] **Civil Service Commission** appeals, the burden of proof shall be on the appellant.

4A:2-1.6 Reconsideration of decisions

(a) Within 45 days of receipt of a decision, a party to the appeal may petition the [Commissioner or Board] **Civil Service Commission** for reconsideration.

(b) A petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or

2. That a clear material error has occurred.

(c) Each party must serve copies of all materials submitted on all other parties.

4A:2-1.7 Specific appeals

(a) For specific appeal procedures see:

1. Awards in State service (N.J.A.C. 4A:6-6.10);
2. Classification (N.J.A.C. 4A:3-3.9);

3. Discipline, major (N.J.A.C. 4A:2-2);
4. Discipline, minor (N.J.A.C. 4A:2-3);
5. Discrimination in State service (N.J.A.C. 4A:7-3.2 and 3.3);
6. Employment list removal for medical reasons (N.J.A.C. 4A:4-6.5);
7. Employment list removal for psychological reasons (N.J.A.C. 4A:4-6.5);
8. Examinations (N.J.A.C. 4A:4-6);
9. Grievances (N.J.A.C. 4A:2-3);
10. Layoffs (N.J.A.C. 4A:8-2.6);
11. Overtime in State service (N.J.A.C. 4A:3-5.10);
12. Performance Assessment Review in State service (N.J.A.C. 4A:6-5.3);
13. Reprisals (N.J.A.C. 4A:2-5);
14. Resignations (N.J.A.C. 4A:2-6);
15. Salary (job reevaluation) in [state] **State** service (N.J.A.C. 4A:3-4.3); **and**
- [16. Sick leave injury in State service (N.J.A.C. 4A:6-1.7); and]
- [17.] **16.** Supplemental compensation on retirement in State service (N.J.A.C. 4A:6-3.4).

(b) Any appeal not listed above must be filed in accordance with N.J.A.C. 4A:2-1.1.

SUBCHAPTER 2. MAJOR DISCIPLINE

4A:2-2.1 Employees covered

(a) This subchapter applies only to permanent employees in the career service or a person serving a working test period.

(b) Appointing authorities may establish major discipline procedures for other employees.

(c) When the State of New Jersey and the majority representative have agreed pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, to a procedure for appointing authority review before a disciplinary action is taken against a permanent employee in the career service or an employee serving a working test period, such procedure shall be the exclusive procedure for review before the appointing authority.

(d) When the State of New Jersey and the majority representative have agreed pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, to a disciplinary review procedure that provides for binding arbitration of disputes involving a disciplinary action [which] **that** would be otherwise appealable to the [Board] **Commission** under N.J.A.C. 4A:2-2.8, of a permanent employee in the career service or a person serving a working test period, such procedure shall be the exclusive procedure for any appeal of such disciplinary action.

4A:2-2.2 Types of discipline

(a) Major discipline shall include:

1. Removal;
2. Disciplinary demotion; and
3. Suspension or fine for more than five working days at any one time;

(b) See N.J.A.C. 4A:2-2.9 for minor disciplinary matters that are subject to a hearing, and N.J.A.C. 4A:2-3 for all other minor disciplinary matters.

(c) The length of a suspension in a Final Notice of Disciplinary Action, a [Board] **Commission** decision, or a settlement, when expressed in "days," shall mean working days, unless otherwise stated.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on a pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action. The notice should include a statement that N.J.S.A. 2C:51-2 may apply to the employee, and that the employee may choose to consult with an attorney concerning the provisions of that statute.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to

the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services.

2. The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in N.J.A.C. 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

i. Where an employee who has been indefinitely suspended enters Pre-Trial Intervention (PTI) or has received a conditional discharge, the criminal complaint or indictment shall not be deemed disposed of until completion of PTI or until dismissal of the charges due to the employee's satisfaction of the conditions in a conditional discharge, as the case may be.

ii. An appointing authority may continue an indefinite suspension until completion of PTI or until satisfaction of the conditions imposed in a conditional discharge. If an appointing authority chooses not to continue an indefinite suspension during the PTI period or during the period of conditional discharge, it may restore the employee to employment or initiate disciplinary action against the employee.

3. Where the appointing authority determines that an indefinite

suspension should be imposed, a Final Notice of Disciplinary Action shall be issued stating that the employee has been indefinitely suspended pending disposition of the criminal complaint or indictment.

(b) When a court has entered an order of forfeiture pursuant to N.J.S.A. 2C:51-2, the appointing authority shall notify the employee in writing of the forfeiture and record the forfeiture in the employee's personnel records. The appointing authority shall also forward a copy of this notification to [the Department of Personnel] **appropriate Civil Service Commission staff.**

1. If the criminal action does not result in an order of forfeiture issued by the court pursuant to N.J.S.A. 2C:51-2, the appointing authority shall issue a second Preliminary Notice of Disciplinary Action specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under N.J.A.C. 4A:2-2.5 and 2.6.

(c) Where an employee has pled guilty or been convicted of a crime or offense [which] **that** is cause for forfeiture of employment under N.J.S.A. 2C:51-2 but the court has not entered an order of forfeiture, the appointing authority may seek forfeiture by applying to the court for an order of forfeiture. The appointing authority shall not hold a departmental hearing regarding the issue of the applicability of N.J.S.A. 2C:51-2. If the court declines to enter an order of forfeiture in response to the appointing authority's application, the appointing authority may hold a departmental hearing regarding other

disciplinary charges, if any, as provided in (b)1 above.

4A:2-2.11 Interest

(a) When the [Commissioner or Board] **Civil Service Commission** makes an award of back pay, it may also award interest in the following situations:

1. When an appointing authority has unreasonably delayed compliance with an order of the [Commissioner or Board] **Commission or Chairperson, as applicable**; or

2. Where the [Board] **Commission** finds sufficient cause based on the particular case.

(b) Where applicable, interest shall be at the annual rate as set forth in New Jersey court rules, R.4:42-11.

(c) Before interest is applied, an award of back pay shall be reduced in accordance with N.J.A.C. 4A:2-2.10(d)2 and 3.

(Agency Note: The text of proposed new N.J.A.C. 4A:2-2 Appendix follows without boldface symbolizing proposed new text; those portions of the appendix appearing in boldface are intended to be so permanently.)

APPENDIX

MAJOR DISCIPLINARY APPEAL FORM

New Jersey Civil Service Commission - Division of Appeals and Regulatory Affairs

Mail completed form to: Civil Service Commission, Unit H, P.O. Box 312, Trenton, NJ 08625-0312.

1. Your Name: _____

Address: _____

Daytime Telephone: () _____

(City) (State) (Zip Code)

Email: _____

2. Will you be represented by a lawyer or union representative at the hearing? YES NO
If YES, complete Section 2.

Representative Name: _____

Union or Law Firm: _____

Address: _____

Telephone: () _____

(City) (State) (Zip Code)

Email: _____

3. Give a copy of this form and attachments to your Personnel Officer/Employer Representative
Personnel Officer's/
Employer Representative's Name: _____

Address: _____

Telephone: () _____

(City) (State) (Zip Code)

Email: (if known) _____

4. Your or your representative's signature _____ Date: _____

5. ATTACH the following to this form:

1. Preliminary Notice of Disciplinary Action.
2. Final Notice of Disciplinary Action.
3. Check or Money Order for \$20.00 payable to NJCSC.

NOTE: Your appeal will NOT be processed unless Sections 1-4 are completed and the three documents listed in Section 5 are included. Pursuant to P.L. 2010, c. 26, effective July 1, 2010 there is a \$20 fee for disciplinary appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to NJ CSC and sent to the CSC, Unit H, P.O. Box 312, Trenton, N.J. 08625. Persons receiving public assistance pursuant to P.L. 1947, c.156 (C.44:8-107 *et seq.*), P.L.1973, c. 256 (C.44:7-85 *et seq.*), or P.L.1997, c.38 (C.44:10-55 *et seq.*), and veterans as defined by N.J.S.A.11A:S-1 *et seq.* are exempt from this appeals fee. If you have been suspended or removed, you should seek alternate employment. In case your penalty is reduced, failure to seek alternate employment could reduce your back pay award.

SUBCHAPTER 3. MINOR DISCIPLINE AND GRIEVANCES

4A:2-3.1 General provisions

(a) Minor discipline is a formal written reprimand or a suspension or fine of five working days or less.

(b) A grievance is an employee complaint regarding any term or condition [which] **that** is beyond the employee's control and is remedial by management.

(c) The causes for minor disciplinary actions shall be the same as for major disciplinary actions. See N.J.A.C. 4A:2-2.3.

(d) This subchapter shall not apply to local service, where an appointing authority may establish procedures for processing minor discipline and grievances.

(e) In State service, this subchapter shall only apply to:

1. Minor discipline appeals of permanent employees in the career service or persons serving a working test period. Appointing authorities may establish procedures for other employees.

2. Grievance appeals of any employees in the career or unclassified services.

(f) Grievance procedures shall not be used to address any matter for which there is another specific type of appeal to the [Commissioner or Board] **Civil Service Commission**.

(g) [These rules] **This subchapter** shall not be utilized to review a matter exclusively covered by a negotiated labor agreement.

4A:2-3.2 Minor discipline appeal to appointing authority: State service

(a) Where departmental minor discipline appeal procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) Employees not covered by a negotiated agreement or covered by an agreement that does not address a minor discipline appeal process shall request a departmental hearing within five days of receipt of a notice of discipline or such additional time as may be agreed to by the appointing authority.

1. The departmental hearing shall be conducted within 30 days of such request unless adjourned by the consent of the parties.

2. The burden of proof shall be on the appointing authority.

3. The department shall make a final written disposition of the charges within 20 days of the hearing on Appeal of Minor [Discipline] **Disciplinary** Action form (**DPF-335**), unless the parties have consented to a time extension. The lack of response by the department within this period shall be considered a denial of the appeal.

(c) See N.J.A.C. 4A:2-3.6 for conduct and scheduling and **N.J.A.C.** 4A:2-3.7 for appeals to the [Board] **Civil Service Commission**.

4A:2-3.4 Grievance procedure: Step One: State service

(a) A grievance shall be presented in writing on the [Department of Personnel

grievance form] **Grievance Procedure Form (DPF-251)** to the office or individual designated by the department to process the matter. It must be filed within 30 calendar days from either the date on which the alleged act occurred or the date on which the grievant should reasonably have known of its occurrence. Efforts should be made to resolve the matter informally.

(b) All grievances shall:

1. Specify the particular act or circumstance being grieved;
2. State the requested remedy; and
3. Indicate whether the employee is representing himself or herself or the name of the employee's counsel or agent.

(c) The office or individual receiving the grievance shall notify the employee of the scheduled hearing or grievance meeting date within seven days of receipt of the grievance. Such hearing or grievance meeting shall be conducted within 30 days of receipt of the grievance, unless an additional time period is agreed to by the parties.

(d) A written decision shall be rendered within 14 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a negative response.

SUBCHAPTER 4. TERMINATION AT END OF WORKING TEST PERIOD

4A:2-4.1 Notice of termination

(a) An employee terminated from service or returned to his or her former permanent title at the conclusion of a working test period due to unsatisfactory performance shall be given written notice in person or by certified mail by the appointing authority.

(b) The notice shall inform the employee of the right to request a hearing before the [Board] **Civil Service Commission** within 20 days of receipt of the notice.

(c) The notice shall be served not more than five working days prior to or five working days following the last day of the working test period. A notice served after this period shall create a presumption that the employee has attained permanent status.

4A:2-4.2 Time for appeal

(a) An appeal shall be made in writing to the [Board] **Civil Service Commission** no later than 20 days from the employee's receipt of written notification from the appointing authority of the termination from service or return to a former permanent title.

(b) If the appointing authority fails to provide the notice as specified in N.J.A.C. 4A:2-4.1, an appeal must be filed within a reasonable time.

4A:2-4.3 [Board] **Civil Service Commission** hearing

(a) An appeal to the [Board] **Commission** shall be processed in accordance with N.J.A.C. 4A:2-2.9 [et seq].

(b) The employee has the burden of proof to establish that the action was in bad faith.

(c) If bad faith is found by the [Board] **Commission**, the employee shall be entitled to a new full or shortened working test period and other appropriate remedies. See N.J.A.C. 4A:2-1.5.

SUBCHAPTER 5. EMPLOYEE PROTECTION AGAINST REPRISALS OR POLITICAL COERCION

4A:2-5.2 Appeals

(a) An employee may appeal a reprisal or political coercion action to the [Board] **Civil Service Commission** within 20 days of the action or the date on which the employee should reasonably have known of its occurrence.

(b) The appeal must be in writing and specify the basis for appeal.

(c) The [Commissioner] **Commission** shall review the appeal and request any additional information, or conduct any necessary investigation.

(d) The [Board] **Commission** shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate.

(e) Where improper reprisal or political coercion is established, the [Board] **Commission** shall provide appropriate protections and remedies to the employee.

SUBCHAPTER 6. RESIGNATIONS

4A:2-6.1 Resignation in good standing

(a) Any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days['] written or verbal notice, unless the appointing authority consents to a shorter notice.

(b) The resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.

(c) A request to rescind the resignation prior to its effective date may be consented to by the appointing authority.

(d) Where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the [Board] **Civil Service Commission** under N.J.A.C. 4A:2-1.1.

4A:2-6.2 Resignation not in good standing

(a) If an employee resigns without complying with the required notice in N.J.A.C. 4A:2-6.1, he or she shall be held as having resigned not in good standing.

(b) Any employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. Approval of the absence shall not be unreasonably

denied.

(c) An employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for extension of leave shall not be unreasonably denied.

(d) Where an employee is resigned not in good standing under (a), (b), or (c), the employee shall be provided with notice and an opportunity for a departmental hearing under N.J.A.C. 4A:2-2.5, and Final Notice and a right to appeal to the [Board] **Civil Service Commission** under N.J.A.C. 4A:2-2.8. An employee shall be in unpaid status pending the departmental decision. Should an employee seek to return to employment pending the departmental decision, a review under N.J.A.C. 4A:2-2.5(b) shall be conducted prior to continuation of the unpaid status.

(e) Where the resignation is reversed, the employee shall be entitled to remedies under N.J.A.C. 4A:2-2.10.

(f) The appointing authority or the [Board] **Commission** may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.