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STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Tomory
Boyer, New Jersey State
Parole Board

Request for Interim Relief

CSC Docket No. 2015-519

ISSUED: NOV - 7 2014 (CSM)

Tomory Boyer, a Parole Officer Recruit with the New Jersey State Parole Board, represented by John Anello, Esq., requests interim relief for his suspension without pay effective February 25, 2014.

By way of background, the appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) dated February 18, 2014 charging him with other sufficient cause, namely, failure of a Parole Officer Recruit to complete Police Academy (Division of Criminal Justice Academy) requirements. Specifically, it was asserted that on February 14, 2014 the appellant failed to report to Police Academy training on time and that he failed to follow written procedures regarding notification of emergent circumstances and for reporting back to the Academy. Therefore, the appellant was dismissed from the Division of Criminal Justice Academy effective February 14, 2014. It is noted that the appellant appealed the matter of his dismissal from the Division of Criminal Justice Academy to the Police Training Commission (PTC) and that matter is pending at the Office of Administrative Law (OAL). However, the appellant's departmental hearing regarding the disciplinary charges brought against him by the appointing authority has been held in abeyance pending the outcome of his appeal to the PTC. As such, the appellant has not filed an appeal of the pending disciplinary action by the appointing authority to the Civil Service Commission (Commission) because he never had a departmental hearing and a Final Notice of Disciplinary Action (FNDA) has not been issued.

In his petition for interim relief, the appellant requests that he be restored to the appointing authority's active payroll effective August 17, 2014. Specifically, he

argues that *N.J.A.C. 4A:2-2.4(a)* provides that, except where criminal charges are pending, no suspension or fine shall exceed six months. Further, he contends that *N.J.A.C. 4A:2-2.13(h)* generally provides that the Civil Service Commission shall render a final administrative determination of an appeal of a law enforcement officer's removal, unless tolled for a number of reasons, within 180 days of the filing of the appeal. Thus, since the appellant appealed his suspension on February 20, 2014 and he has not sought to adjourn or delay any proceeding relating to the instant appeal, he maintains that he should be restored to the New Jersey State Parole Board's active payroll as of August 17, 2014.

In response, the appointing authority presents that the appellant was dismissed from the Division of Criminal Justice Academy effective February 14, 2014 and it timely served him with a PNDA on February 18, 2014 suspending him without pay. However, when the appellant's former counsel was contacted to schedule his departmental hearing, the appointing authority was advised that the appellant wanted the matter held in abeyance pending the outcome of his appeal to the PTC regarding his dismissal from the Academy. Subsequently, he changed counsel and the appointing authority was advised that the appellant wanted to pursue his departmental hearing within a month. Similarly, when the appointing authority contacted the appellant's new counsel scheduling the departmental hearing for September 25, 2014, it was advised by letter dated August 19, 2014 that the appellant desired that the hearing be held in abeyance until his appeal to the PTC was resolved. As such, the appointing authority states that the provisions governing the maximum amount of time an employee may be suspended without pay has essentially been tolled. Therefore, the appointing authority requests that the provisions regarding a maximum six month suspension be relaxed and the appellant's request be denied.

CONCLUSION

Initially, the issue before the Commission in a petition for interim relief of this nature is to determine if the appointing authority presented a valid basis to suspend the appellant pursuant to *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5*. The record indicates that the appointing authority had a valid basis to immediately suspend the appellant based on his dismissal from the Academy. *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(a)1* provide that an employee may be suspended immediately without a hearing if the appointing authority determines that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. Clearly, the appellant's dismissal from the Division of Criminal Justice Academy renders the appellant unfit for duty as a Parole Officer Recruit. Indeed, the job specification for Parole Officer Recruit specifically indicates that an incumbent receives training while attending a PTC certified training program in order to qualify as a peace officer for the detection, apprehension, arrest,

and conviction of offenders and assists Senior Parole Officers in the performance of duties. Thus, if the appellant is unable to receive the required training because of his dismissal from the Academy, he cannot perform the duties required in the job specification for Parole Officer Recruit. Further, the Commission is mindful that, like a Correction Officer or municipal Police Officer, a Parole Officer Recruit is a law enforcement officer, and as such, is held to a higher standard than other public employees. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). Thus, based on the nature of the charges against him, the Commission finds that the appointing authority possessed a valid basis for imposing an immediate suspension.

While the appointing authority had a valid basis to immediately suspend the appellant, the issues in this case are the length of the appellant's suspension and the fact that he has not yet had a departmental hearing. Pursuant to N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(d), a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or *a later date as agreed to by the parties*. Further, N.J.A.C. 4A:2-2.13(a)1 defines a law enforcement officer as "an individual employed as a *permanent*, full-time member of a State, county, or municipal law enforcement agency who is statutorily . . . required to successfully complete a training course approved by, or certified as substantially equivalent to such an approved course, by the Police Training Commission" (emphasis added). As the appellant had not yet completed his Academy training or working test period, he is not considered a permanent employee. Thus, N.J.A.C. 4A:2-2.13 does not apply. Even assuming, *arguendo*, that it did apply to the appellant, N.J.A.C. 4A:2-2.13(h)2 tolls the application of base salary for any "period of agreed-upon adjournment of a departmental hearing." In this case, the appellant was issued two PNDA's on February 18, 2014, one suspending him with pay effective February 14, 2014 and the second suspending him without pay effective February 25, 2014. In the process of scheduling a departmental hearing in March 2014, the appointing authority was advised on March 19, 2014 by the appellant's former counsel that the matter should be held in abeyance until his appeal to the PTC regarding his dismissal from the academy was finalized. Subsequently, on August 13, 2014, the appellant contacted the appointing authority via e-mail requesting to have his pay and health benefits restored as he had been suspended at that point for more than six months in violation of N.J.S.A. 11A:2-20 and N.J.A.C. 4A:2-2.4(a). The appointing authority responded that his departmental hearing was being held in abeyance at the direction of his counsel, to which the appellant replied that he had new counsel. Accordingly, the appointing authority scheduled a departmental hearing for September 25, 2014. However, in correspondence dated August 19, 2014, the appellant's new counsel requested that the appointing authority hold the departmental hearing in abeyance until the matter regarding his appeal to the PTC was completed. Despite being provided an opportunity on two occasions, the appellant agreed to postpone his departmental

hearing until such time as the matter of his dismissal from the academy was resolved.

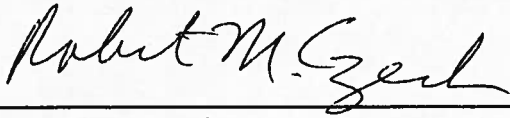
In this case, all of the evidence indicates that the appointing authority attempted to schedule the appellant's departmental hearing in a timely manner. On March 19, 2014, which is within 30 days of the appellant's suspension without pay, the appointing authority was advised by the appellant's former counsel that he wanted his departmental hearing held in abeyance. Similarly, in August 2014, the appointing authority again attempted to schedule a departmental hearing, only to be advised by the appellant's new counsel that he desired to have the hearing held in abeyance. Stated differently, in compliance with *N.J.S.A. 11A:2-13*, both parties consented to an adjournment of the departmental hearing to a later date. The appellant cannot request that the appointing authority continue to hold the matter of his departmental hearing in abeyance pending the results of the PTC proceeding, and then, after six months elapses, argue that the appointing authority constructively suspended him for more than six months in violation of *N.J.S.A. 11A:2-20* and *N.J.A.C. 4A:2-2.4(a)*. Indeed, *N.J.S.A. 11A:2-13*, *N.J.A.C. 4A:2-2.5(d)* and *N.J.A.C. 4A:2-2.13(b)2* all permit the parties to agree to an adjournment of the departmental hearing to a later date. Thus, while these rules do not specify a time limit for such agreed upon adjournments, any time period where the parties agreed to adjourn the departmental hearing is essentially similar to an agreed upon leave of absence without pay as the appellant would not be entitled to any back pay for this time period. See *N.J.A.C. 4A:2-2.10(d)8* and *N.J.A.C. 4A:2-2.13(h)*. See also, *In the Matter of Bruce Cornish*, Docket No. A-4051-08T3 (App. Div. July 22, 2010). Accordingly, as the parties agreed to hold the matter of the appellant's departmental hearing in abeyance until the matter of the appeal of his dismissal by the academy to the PTC is resolved, the appellant is not entitled to any remedial relief.

One final comment is warranted. While the appointing authority has apparently consented to the adjournment of the departmental hearing in this matter, it is under no obligation to do so. If it chose to deny the appellant's requests for adjournments, it could have proceeded with the departmental hearing. If the appellant did not appear, the appointing authority could then have upheld the charges and issued a Final Notice of Disciplinary Action.

ORDER

Therefore, it is ordered that this request be denied.

DECISION RENDERED BY
THE CIVIL SERVICE COMMISSION ON
THE 6TH DAY OF NOVEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Tomory Boyer
John Anello, Esq.
Joseph P. Horan, II
Lise-Kirsten S. Higgins
Joseph Gambino