



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Jessenia Jimenez,
Cape May County

CSC Docket No. 2016-3680

Request for Stay

ISSUED: **OCT 06 2017** (SLK)

Cape May County, represented by Lauren F. Fogarty, Assistant County Counsel, petitions the Civil Service Commission (Commission) for a stay of the Commission's Final Administrative Action pending the outcome of its appeal in the Appellate Division.

By way of background, Jessenia Jimenez, a Keyboarding Clerk 1 with the Cape May County Board of Social Services, appealed her release at the end of her working test period (WTP), effective September 30, 2014. The matter was transmitted to the Office of Administrative Law (OAL) for a hearing. The Administrative Law Judge (ALJ) rendered his initial decision on December 22, 2015, reversing the release at the end of the WTP. In his initial decision, the ALJ found that the sole reason that the appointing authority was releasing Jimenez at the end of her WTP was its conclusion that Jimenez, prior to her current position, had committed fraud by lying on her applications for General Assistance, SNAP benefits and Medicaid by failing to report to the Board of Social Services that she was employed at PNC Bank. The ALJ found that deficiencies with the appellant's work performance was never discussed with the appellant. Therefore, the ALJ concluded that the appellant could only be released at the end of her WTP based on job performance and that the appointing authority's remedy against Jimenez would require the filing of termination charges for conduct unbecoming a public employee. Exceptions were filed on behalf of the appointing authority. However, due to a lack of quorum and the Commission's inability to secure a second 45-day extension, the Division of Appeals and Regulatory Affairs (DARA) advised the parties in a March

21, 2016 letter, that the ALJ's recommended decision was deemed adopted as the final decision per *N.J.S.A. 52:14B-10(c)*. It further advised that Ms. Jimenez was entitled to reinstatement with the opportunity to complete a new WTP. Thereafter, the appointing authority appealed the matter to the Appellate Division. Further, it petitioned the Commission for a stay of its Final Administrative Action pending the outcome of its appeal. However, on April 3, 2017, the Appellate Division dismissed the appointing authority's appeal for failure to prosecute. Consequently, in a June 5, 2017 letter, DARA advised the parties that the appointing authority's request for a stay was moot and directed the appointing authority to comply with its March 21, 2016 letter. Subsequently, the Appellate Division granted the appointing authority's request to vacate the dismissal and reinstate its appeal. Accordingly, the appointing authority again petitions the Commission for a stay of the Final Administrative Action pending the outcome of its appeal in the Appellate Division. The appointing authority submits its arguments pursuant to the factors under *N.J.A.C. 4A:2-1.2* that are to be considered for a stay.

In its request for a stay, the appointing authority argues that it is likely to succeed on the merits of the case. Specifically, Jimenez listed on her employment application that she was employed with PNC Bank from June 2011 to the present. The application she signed included a statement that indicated she could be discharged for giving false or misleading information. After she was hired, the appointing authority's fraud supervisor advised it that Jimenez was the subject of a fraud investigation because she was receiving General Assistance, Snap Benefits, and Medicaid during a time she was employed at PNC Bank. When advised of the fraud case against Jimenez, the appointing authority realized that there were discrepancies between her employment application and the facts as set forth in the fraud complaint. Therefore, at Jimenez's 60-day evaluation, she was given an unsatisfactory progress report, advised of these discrepancies and given the opportunity to correct them. However, Jimenez failed to do so, was given an unsatisfactory 90-day progress report and then released at the end of the WTP on the basis that her fitness and conduct did not merit permanent employment.

The appointing authority asserts that it released Jimenez for not being honest when it confronted her with inconsistencies on her application and receipt of benefits. It states that honesty and responsibility, among other traits, are highly considered when determining whether an employee can successfully perform the duties of the position. Further, Jimenez presented no evidence that the appointing authority acted in bad faith. Moreover, it asserts that the ALJ's decision is contrary to controlling law by replacing his opinion as to whether Jimenez is fit for the job, instead of determining if the appointing authority acted in bad faith. Additionally, if Jimenez is reinstated, she will be given a new WTP, which will mean an increased workload on the appointing authority as it has reasonable and rightful concerns about her honesty, integrity, and trustworthiness with sensitive and confidential information. In addition, since Jimenez's potential harm is purely financial, she can

be retroactively granted seniority, back pay, and/or benefits after successfully completing a WTP if the appointing authority's appeal is denied. Lastly, the appointing authority argues that it is against the public's interest to place Jimenez in a position that would expose her to claimants' confidential and sensitive information and this would be against the appointing authority's pursuit of running an efficient and trustworthy government.

Jimenez did not respond to the appointing authority's initial and subsequent requests for a stay of the Commission's Final Administrative Action pending the outcome the outcome of its appeal in the Appellate Division.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions 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, as the subject matter of Jimenez' initial appeal was her release at the end of the working test period, the burden of proof to show the release was in bad faith was hers. *See N.J.A.C.* 4A:2-4.3(b). The Commission notes that to sustain that burden in such appeals is substantial. Thus, there is certainly a significant possibility that the appointing authority will succeed on the merits of its petition to the Appellate Division. In this regard, in *In the Matter of William R. Hendrickson, Jr.*, ___ *N.J. Super.* ___ (App. Div. 2017), the court determined that an ALJ's deemed-adopted decision, where the Commission could not adopt or reject the ALJ's decision until months after the mandatory 45-day time frame elapsed because it did not have a full roster of three members constituting a quorum, should not be reviewed deferentially and that it would instead apply the standard of review for bench trials. Specifically, the court stated that an ALJ's factual findings would be affirmed to the extent that they are supported by substantial credible evidence in the record, but no deference would be accorded to the ALJ's legal conclusions. The court noted that such legal conclusions would be reviewed *de novo*.

Under the standard of review announced in *Hendrickson*, there does appear to be a clear likelihood of success on the merits of the appointing authority's appeal before the Superior Court, Appellate Division. Specifically, Jimenez was advised that there were discrepancies between her employment application and the facts as outlined in the fraud complaint against her. Although given the opportunity, Jimenez did not correct these discrepancies. It cannot be ignored that Jimenez's position as a Keyboarding Clerk 1 was with the Board of Social Services, which

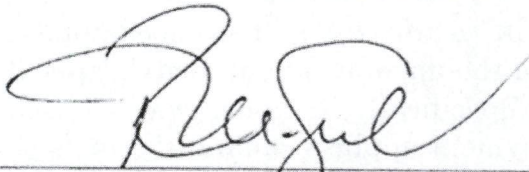
administers various financial assistance programs to members of the public. Jimenez indicated on her application for this position that she worked with another employer. In this regard, the appointing authority's fraud unit investigated if she inappropriately claimed financial benefits while being employed. A key ability in the job specification for Keyboarding Clerk 1 is the ability to work effectively with associates, superior officials and members of the public. As Jimenez would be exposed to sensitive and confidential information, her lack of cooperation with the appointing authority's investigation of the fraud complaint is indicative of her inability to work with associates, superior officials and members of the public. Thus, the appointing authority's determination that Jimenez did not demonstrate she could perform essential duties associated with the position does not appear to be in bad faith.

Additionally, if she were reinstated in her position, the appointing authority has a legitimate concern regarding her honesty and trustworthiness and therefore there is a danger of immediate or irreparable harm if she is returned to her position. Further, as Jimenez's injury is purely financial in nature, she can be retroactively granted seniority, back pay, and/or benefits after successfully completing a WTP if the appointing authority's appeal is denied. Lastly, the public expects that employees who are exposed to sensitive and confidential information are individuals who are honest and trustworthy and it is in the public's best interest to protect this information from someone who has not exhibited these traits. Additionally, it is in the public's interest that a government entity runs in a cost effective and efficient manner, and returning Jimenez to her position would cause the appointing authority to use additional resources to monitor her due to her exposure to confidential information. Accordingly, there is a basis for a stay of the final decision.

ORDER

Therefore, it is ordered that the petitioner's request for a stay of the Commission's Final Administrative Action is granted pending the outcome of the appointing authority's appeal in the Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 4th DAY OF OCTOBER, 2017



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