

STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

SSUED: NOVEMBER 3, 2017 BW

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay and counsel fees are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Daryl Lindsey. The Commission further orders that appellant be granted 45 days back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay or counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 1ST DAY OF NOVEMBER, 2017



Robert M. Czech, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

attachment

Christopher S. Myeres
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, Northern Jersey 08625-0312



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CSV 10680-12

AGENCY DKT. NO. 2013-96

**IN THE MATTER OF DARYL LINDSEY,
CITY OF NEWARK, POLICE DEPARTMENT.**

Anthony J. Fusco, Jr., Esq., for appellant (Fusco & Macaluso, attorneys)

France Casseus, Assistant Corporation Counsel, for respondent (Kenyatta K. Stewart, Acting Corporation Counsel)

Record Closed: October 2, 2017

Decided: October 16, 2017

BEFORE LESLIE Z. CELENTANO, ALJ:

Petitioner appealed his forty-five (45) working day suspension. Petitioner was suspended without pay on November 11, 2010, effective November 6, 2010, through November 24, 2010, and again from July 16, 2012 through until August 24, 2012. Following the first suspension, a suspension hearing was held on November 22, 2010 and petitioner was reinstated effective November 25, 2010. No Final Notice of Disciplinary Action (FNDA) was provided to or served upon petitioner for this fifteen (15) working day suspension. He was then suspended again without pay effective July 16, 2012 through August 24, 2012, pursuant to FNDA dated June 9, 2012.

The matter was transmitted to the Office of Administrative Law on August 1, 2012 and scheduled for hearing on May 8, 2013. That date was adjourned at the request of the City and rescheduled for January 13, 2014.

The January 2014 hearing was adjourned, again at the request of the City which indicated that the attorney of record would be out of the office for eight weeks. Accordingly, the matter was rescheduled for July 21, 2014.

The July 21, 2014, date was adjourned, again at the request of the City which indicated that its chief witness and investigator, Sergeant Hill, would be on vacation until August 2014. The matter was rescheduled for hearing on March 6, 2015.

The March 6, 2015, hearing was then adjourned as none of the witnesses were available, according to a telephone conference held on that date. The matter was rescheduled for August 3, 2015. The August 2015 date was adjourned, again at the request of the City, as the assistant corporation counsel then assigned to the matter was attending to family matters.

The hearing was rescheduled for April 18, 2016, however that date was adjourned, again at the request of the City which indicated it "inadvertently did not calendar the matter for a hearing" and did not subpoena its witnesses to appear.

The matter was then rescheduled for October 25, 2016, on which date the parties appeared at long last for hearing. The City appeared with its witnesses, and petitioner's counsel also appeared but indicated that the subpoenaed witnesses had not appeared, and asked for an adjournment. The City represented that there had been extensive communications with counsel and no mention of communication issues with witnesses, and as such, the City objected to the adjournment. The adjournment was granted when petitioner's counsel indicated enforcement of the subpoenas would be sought, and also because until that time there had been no adjournment requests from petitioner. The parties were advised that the new dates assigned, February 16 and 17, 2017, were peremptory dates which would not be adjourned.

On January 17, 2017, correspondence was received from the City requesting an adjournment of the peremptory February dates, as the assistant corporation counsel then assigned to the matter, Mr. Saunders, indicated that he would be on a medical leave of absence from January 23, 2017 until March 3, 2017. The February dates were therefore adjourned, and the matter rescheduled for October 2, 2017, nearly eight months later.

By letter dated September 25, 2017 and faxed to the undersigned on September 26, 2017, the City yet again requested an adjournment, four (4) days before the scheduled October 2 date, indicating it "is not prepared to move forward on said trial date." The matter has now lingered for over five years and been adjourned nine times, and accordingly, the adjournment request was DENIED and all parties were ordered to appear on October 2, 2017, for hearing. On that date, petitioner appeared at 9:00 am ready to proceed. No one appeared on behalf of respondent, and there was no communication of any kind whatsoever explaining the failure to appear for hearing related to suspensions from seven (7) years ago.

Based upon all of the foregoing, I **FIND** that this matter should be and is hereby **DISMISSED WITH PREJUDICE**. Appellant is entitled to back pay from November 6, 2010 through November 24, 2010, and from July 16, 2012 through August 24, 2012; and to seniority to the actual date of reinstatement, August 25, 2012.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION**,

44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 16, 2017
DATE



LESLIE Z. CELENTANO, ALJ

Date Received at Agency:

10-16-17

Date Mailed to Parties:
dr

OCT 17 2017


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE