



STATE OF NEW JERSEY

In the Matter of Rebecca Recine
Hamilton Township,
Department of Public Safety

DECISION OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2016-2244
OAL DKT. NO. CSV 471-16

ISSUED: JUL 17 2017 BW

The appeal of Rebecca Recine, Public Safety Telecommunicator, Hamilton Township, Department of Public Safety, removal effective December 15, 2015, on charges, was heard by Administrative Law Judge Solomon A. Metzger, who rendered his initial decision on June 7, 2017 reversing the removal. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on July 13, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

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 Public Safety*, 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 or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to her permanent position.

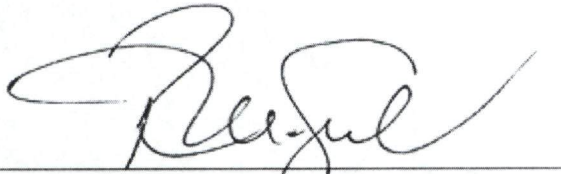
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Rebecca Recine. The Commission further orders that appellant be granted back pay, benefits, and seniority for the period of separation to the actual date of reinstatement. 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 and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and 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
JULY 13, 2017



Robert M. Czedo, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

attachment

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**IN THE MATTER OF REBECCA
RECINE, HAMILTON TOWNSHIP
DEPARTMENT OF PUBLIC SAFETY.**

OAL DKT. NO. CSV 471-16
AGENCY DKT. NO 2016-2244

Frank M. Crivelli, Esq., for appellant Rebecca Recine (Crivelli & Barbati, LLC,
attorneys)

Lindsay Burbage, Esq., for respondent Department of Public Safety

Record Closed: May 12, 2017

Decided: June 7, 2017

BEFORE **SOLOMON A. METZGER**, ALJ t/a:

This matter arises out of a Final Notice of Disciplinary Action terminating appellant's employment with the Hamilton Township Department of Public Safety under the Civil Service Act, N.J.S.A. 11A:2-1 et seq. Appellant sought review and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14B-1 to-15. A hearing was conducted on August 16 and August 23, 2016.¹

Certain facts are undisputed. Appellant was hired as a Public Safety Telecommunicator, more commonly known as a dispatcher, in September 2010. This is a

¹ The matter was heard before John Schuster III, ALJ, who retired before rendering an initial decision. I have been temporarily assigned to review the record and complete the OAL's work in the matter. Counsel have consented to this procedure.

civilian position. Her duties included taking emergency calls, quickly eliciting needed information, and directing the problem to appropriate units for intervention. On March 31, 2015, and April 3, 2015, she failed to report for work and officers were sent to find her. Appellant was tested on suspicion of drug use and was suspended on April 9, 2015. Appellant was terminated from her position effective December 15, 2015.

Though multiple charges were filed, the parties agreed that the hearing would focus on appellant's fitness for duty as a dispatcher.

Dr. Howard Adelman was presented by the appointing authority as an expert in Psychology. On September 25, 2015, he undertook psychological testing using the Personality Assessment Inventory (PAI) geared toward law enforcement. Dr. Adelman testified that this is a highly reliable test that has been in use for many years. He also interviewed appellant and integrated this information with the test results. The process took approximately five hours. Dr. Adelman thought that appellant answered his questions openly and without any effort to evade. He concluded that she was anxious, depressed, ruminative, and strongly reactive. She could be explosive when frustrated. She might prove unreliable at work and had poor inter-personal skills. Appellant used medications, both prescribed and otherwise, that engendered somatic symptoms such as fatigue and lack of clarity. Together, these conditions would impede her performance as a dispatcher and Dr. Adelman found her unfit for that particular duty. He did not inquire into appellant's work history, as his assessments were intended to be predictive of future complications.

Dr. Daniel S. Cowan is a board-certified psychiatrist called by appellant. Dr. Cowan examined appellant on June 23, 2016. He found that she suffered from a generalized anxiety disorder and has had episodes of depression. She also suffers from attention deficit disorder. Appellant reported taking medications on and off for these conditions, but was not on medication when he saw her. While working as a dispatcher she was taking Xanax for anxiety and Adderall for attention issues. Dr. Cowan offered that many people take these medications and have no problem working.

Dr. Cowan also reviewed Dr. Adelman's report and found it unclear. It appeared Dr. Adelman relied in part on a personality test designed for law enforcement personnel. These are predictive tests generally used for interview purposes, or if someone is not performing well. They help determine whether a certain personality type is suited to a given organization or position. Dr. Cowan does not use formal written testing, as this is the province of psychologists. He felt; however, that in this instance it would be more informative to inquire into appellant's work history. In his seventy-five-minute session with appellant she denied alcohol or drug abuse and denied being angry, aggressive, or having difficult relationships. She reported that she had worked for five years as a dispatcher without much incident. Dr. Cowan felt that this was better evidence of fitness than a personality test.

Appellant testified that her record as a dispatcher was generally free of incident, other than the two events that led to her fitness for duty exam and a prior lateness in 2011. As to the incidents she related that she had been ill, not impaired and that her error was not calling in sick. More generally she was not hostile, impatient, depressed or fatigued and felt that she handled her duties professionally. This is the substance of the record.

The burden of proof rests with the appointing authority to show that appellant is unfit for her title, N.J.S.A. 11A:2-21. This was not accomplished. I have accorded greater prominence to appellant's work history than to the predictive testing. Over the course of five years as a dispatcher the incidents were few. No peer or supervisor appeared to endorse the image of her as angry, argumentative, brooding, or depressed. There is no evidence that appellant ever failed to properly receive or route a call, or that there were complaints from the public about her manner. As to the events of March 31 and April 3, 201⁵, we have only appellant's testimony that she was ill and did not call out for her shifts. While it is possible to exclude a candidate based on psychological testing, this is no small matter, see, In re Vey, 124 N.J. 534 (1991). I do not entirely discount Dr. Adelman's assessment; Dr. Cowan recognized as well that appellant had issues requiring medications. However, Dr. Adelman opined that work history is insignificant in the face of testing and he thereby marginalized a common

measure of evaluation. The traits he ascribed to appellant would weigh more heavily were they better correlated with known conduct.

Based on the foregoing, it is ordered that appellant be restored to her position as a dispatcher, with back pay, benefits and counsel fees, in accordance with the regulations.

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.

June 7, 2017

DATE


SOLOMON A. METZGER, ALJ t/a

Date Received at Agency:

6/7/17

Date Mailed to Parties:

6/7/17

mph

WITNESSES:

For appellant:

Rebecca Recine

Dr. Daniel S. Cowan

For respondent:

Dr. Howard Adelman