

In his request, the petitioner asserts that he has a clear likelihood of success on the merits. Specifically, the petitioner contends that he is requesting that the charges against him be dismissed and he be restored to his position, as the appointing authority violated its own procedures for conducting random drug tests. In this regard, the petitioner states that the appointing authority did not adhere to such drug policies since the toxicology results were not certified and returned within a 15-day timeframe. As such, the violation of the procedures warrants dismissal of the underlying charges. Further, the petitioner asserts that there is a danger of him experiencing immediate or irreparable harm as the appointing authority disregarded his due process rights at the time the petitioner was improperly terminated. The petitioner adds that neither the public nor the appointing authority would experience any harm if he was returned to duty. Rather, it would be in the public's best interest to restore him to duty as he is an experienced correctional employee.

In response, the appointing authority, represented by Jill Caffrey, Assistant County Counsel, asserts that there is no clear likelihood of success on the merits, as the petitioner has not provided any substantive law or rules in support of his claims. The appointing authority contends that, with respect to the drug test, even if there was a deviation from its procedures, the petitioner's reinstatement would only be warranted if it inhibits the employee's ability to challenge his removal, which has not occurred in this matter. Additionally, the petitioner's delay of receipt of the drug test within 15 days as required by the drug testing policy did not harm the petitioner, as the petitioner would have been removed from employment at a much earlier date. The appointing authority adds that such a technical deviation does not automatically demonstrate that the petitioner's drug test results are not valid. The appointing authority explains that the petitioner is not in danger of being irreparably harmed as he is entitled to a hearing at OAL, and if he is successful in his appeal before the Commission, he will be reinstated with backpay and benefits. The appointing authority adds that it would be unable to properly operate and carry out its functions if he were to remain on the job given that he tested positive for cocaine. As such, he has failed to show that the appointing authority and the public would not be harmed as a result of his removal.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for interim relief:

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, in reviewing this matter, it is not necessary to address the merits of the underlying charges against the petitioner. Rather, the issue before the Commission in this matter is to determine if the appointing authority presented a valid basis to immediately suspend the petitioner.

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. For the reasons set forth below, the appointing authority has clearly met this standard.

In this matter, the information and arguments provided in support of the instant petition do not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether or not the petitioner has actually committed the alleged infractions. In this matter, the petitioner argues that he is likely to succeed on the merits, the disciplinary penalty imposed was excessive, and he has suffered irreparable harm. The Commission notes that the charges against the petitioner are particularly serious, as they involved failure of a drug test and testing positive for cocaine. Further, the petitioner's argument that he did not receive the results of the drug test within the 15-day timeframe as required is not persuasive. In this regard, the petitioner has not persuasively established that, even assuming, *arguendo*, that the delay occurred as described, the procedural irregularity negates the results of the drug test. The Commission will not attempt to determine the propriety of the charges or the proper disciplinary penalty based on an incomplete written record. Such matters need a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses and weigh all the evidence in the record before making an initial decision. At that point, the Commission will be in a position to decide the propriety of the recommended penalty. Regardless, given the serious nature of the charges, it is clear that the appointing authority met the standards for an immediate suspension enunciated in *N.J.A.C. 4A:2-2.5(a)1*. Moreover, the petitioner has not shown that he is in danger of immediate or irreparable harm if this request is not granted. While the Commission sympathizes with his financial situation, the harm that he is experiencing is purely financial in nature, and as such, can be remedied by the granting of back pay should he prevail in his appeal. Moreover, the public is best served when a public employee facing such serious charges is kept out of the workplace pending adjudication of the charges.

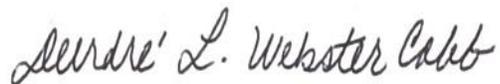
Moreover, the petitioner contends that the appointing authority would not be adversely affected if the disciplinary charges were summarily dismissed and he was returned to work. However, the Commission does not find this argument persuasive. Based on the circumstances involved in the petitioner's alleged conduct, it would potentially be harmful to the appointing authority, as well as the public at

large, to allow an individual facing such serious disciplinary charges to be returned to employment without the benefit of a *de novo* hearing at OAL. Accordingly, the petitioner's request for interim relief is denied.

ORDER

Therefore, it is ordered the petition for interim relief be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20th DAY OF FEBRUARY, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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