

STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Rana Elsayed, Hudson County

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Interim Relief

CSC Docket No. 2019-2509

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ISSUED: APRIL 26, 2019 (HS)

Rana Elsayed, a Social Rehabilitation Specialist, Penal Institution with Hudson County, represented by Timothy J. Prol, Esq., petitions the Civil Service Commission (Commission) for interim relief of her indefinite suspension.

By way of background, the appointing authority immediately suspended the petitioner on February 7, 2019. On February 11, 2019, the appointing authority issued the petitioner a Preliminary Notice of Disciplinary Action (PNDA), charging her with conduct unbecoming a public employee, neglect of duty and other sufficient cause. Specifically, it was alleged that the petitioner engaged in numerous personal telephone calls with inmates without receiving prior authorization from the Director of Corrections, in violation of rules concerning fraternization with inmates. The PNDA noted the petitioner's immediate suspension from duty effective February 7, 2019, proposed a penalty of suspension or removal, and advised her that if she desired a departmental hearing, she was required to notify the appointing authority within five days. The petitioner apparently waived the departmental hearing. On February 26, 2019, the appointing authority issued the petitioner a Final Notice of Disciplinary Action (FNDA) stating that the disciplinary action of an "[i]ndefinite suspension pending hearing effective . . . Feb. 07, 2019" had been taken against the petitioner.

The petitioner appealed the FNDA to the Commission and requested that the matter be forwarded to the Office of Administrative Law (OAL). Since Civil Service regulations do not permit the imposition of an indefinite suspension unless the employee has been formally charged with certain crimes, the Division of Appeals

and Regulatory Affairs received the petitioner's appeal as a request for interim relief and allowed the parties to submit additional information.

In response, the appointing authority, represented by Daniel W. Sexton, Assistant County Counsel, states that since the allegations against the petitioner set forth criminal conduct, the matter has been sent to the Hudson County Prosecutor (Prosecutor) for review. It states that the Prosecutor has not yet indicated how the matter will be handled. The appointing authority maintains that it cannot move forward until the Prosecutor has completed its review. It states that if the Prosecutor ends up referring the matter back for administrative handling, the Hearing Officer will issue a report "with [sic] a hearing," as the petitioner has waived her departmental hearing, and will then issue an FNDA.

CONCLUSION

It must initially be emphasized that the role of the Commission at this stage in the proceedings is not to adjudicate the merits of the administrative charges. It is also unnecessary to discuss in detail whether the petitioner's immediate suspension was valid. It is sufficient to note that *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. Here, the petitioner's immediate suspension was necessary to maintain safety and the effective direction of the correctional facility. The petitioner's alleged conduct in fraternizing with inmates constitutes a serious breach of rules and has the potential to subvert prison security and discipline. Moreover, the petitioner does not contest the validity of her immediate suspension. As such, the immediate suspension was justified.

However, at issue is whether the appointing authority could "indefinitely" suspend the petitioner, pending the Prosecutor's review of this matter and when no criminal charges had been brought. The Commission finds that it could not. N.J.A.C. 4A:2-2.7(a)2 provides that an employee may be indefinitely suspended beyond six months where the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See also N.J.A.C. 4A:2-2.5(a)2. There are no grounds under Civil Service regulations to suspend an employee indefinitely without a criminal charge pending. Since the petitioner was not criminally charged, the appointing authority could not indefinitely suspend her. The Commission is not persuaded by the appointing authority's contention that it cannot move forward until the Prosecutor has completed its review. In this regard, the standard of proof in administrative proceedings is guilt by a preponderance of the evidence, not the stricter criminal

standard of proof beyond a reasonable doubt. Proof of criminal culpability is not required.

Nevertheless, the Commission takes note that as the petitioner has been suspended since February 7, 2019 and waived her departmental hearing, she has already been subjected to major discipline. See N.J.A.C. 4A:2-2.2(a)3. As such, it is appropriate to refer this matter to the OAL for a hearing on the administrative charges. The actual disciplinary penalty may be determined there. Further, it is noted that if the petitioner is later criminally charged, the appointing authority may then bring forth those charges via a new PNDA. Finally, the Commission cautions the appointing authority to adhere to the disciplinary regulations in the future. Its failure to do so may subject it to fines or penalties pursuant to N.J.A.C. 4A:10-1.1.

ORDER

Therefore, the indefinite suspension imposed by the appointing authority is not upheld. Further, the petitioner's immediate suspension is upheld. Finally, it is ordered that this matter be transmitted to the Office of Administrative Law for a hearing as set forth above.

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON THE 24TH DAY OF APRIL, 2019

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Chairperson

Civil Service Commission

Inquiries and

Correspondence

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

c. Rana Elsayed
Timothy J. Prol, Esq.
Elinor M. Gibney
Daniel W. Sexton, Assistant County Counsel
Kelly Glenn
Beth Wood (with file)
Records Center