



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Justin De La  
Bruyere

CSC Docket No. 2019-3364

Reconsideration

**ISSUED: JULY 2, 2020 (SLK)**

Justin De La Bruyere, a former Police Sergeant with the City of Hackensack (Hackensack), represented by Joseph M. Horn, Esq., requests reconsideration of the final decision rendered on March 27, 2019, which upheld his removal.

By way of background, Hackensack sought the petitioner’s removal based on allegations that he was one of several officers who conducted an illegal warrantless search of a residence on December 28, 2016. The officers acknowledged that they entered the apartment in question without a warrant. However, they claimed that one of the residents in the apartment building indicated that there was an unattended child inside the apartment. The ALJ did not find this claim credible based on her view of the video, the officers’ testimony, and since there was no corroborating witness to confirm this claim. Additionally, Hackensack alleged that the petitioner reviewed and approved a report filed by another officer concerning the warrantless search which contained inaccurate and misleading information. The petitioner claimed that he only reviewed the report for completeness and not for accuracy. The ALJ found that as the petitioner was present at the incident, he did in fact review the report, or if he did not, he should have reviewed the report for accuracy. Therefore, the ALJ sustained the charges against the petitioner, and based on the principles of progressive discipline, recommended that his removal be modified to a 150-day suspension. However, upon its review of the record, he Civil Service Commission (Commission) determined that a reduction in penalty was not warranted and upheld the removal.

On reconsideration, the petitioner argues that he has new evidence and/or additional information in the form of a notarized statement from now-retired Lieutenant Scott Sybel, who was present on the scene, and was the commanding officer on the scene upon the departure of Captain Riotto. Additionally, he presents that Sybel sent an informational packet to the ALJ for consideration and she alerted the parties that she was rejecting the submission because it was sent subsequent to the close of proceedings and was never presented to any counsel. The petitioner asserts that this packet was only recently obtained from Sybel and both the letter and information packet have an absolute bearing on the determination that he “submitted and approved” a knowingly false report. Moreover, since the close of the hearings, Lieutenant Levis, an officer who had assisted Captain Busciglio during his investigation of this case, was criminally charged with serious indictable criminal charges which would have a bearing on the credibility of the Hackensack’s case since Levis assisted in gathering and maintaining evidence in this case and his honesty and credibility must be called into question. The petitioner states that the Hackensack put on a case where its only witness was charged with a variety of offenses related to honesty and efficiency and withholding information and, in the interim, another key officer who assisted Captain Busciglio, has now been dealing with criminal and departmental charges related to stalking and domestic violence. He indicates that other egregious acts related to tampering with evidence are presented in the packet of information not considered by the ALJ as submitted by Sybel.

The petitioner further claims that the ALJ and the Commission improperly shifted the burden to the officers to establish that they had probable cause to enter the apartment. He indicates that Hackensack agreed that a gun for sale in the apartment would give rise to an exigent circumstance warranting entry without a warrant. However, he states that in addition to entering the apartment without a warrant due to a potential unattended child, they were also there for a potential gun sale in the apartment, and they entered the apartment in good faith due to these reasons. However, he argues that it was clear error that the Commission did not even address the "gun for sale" exigency.

Additionally, the petitioner argues that there was no credible evidence that supports the conclusion that he submitted a report or further that he “read and approved” a knowingly false police report which would warrant termination. He states that electronically marking a report “reviewed” is not the same as attesting to the accuracy of said report and there is no department policy or procedure that spells out that “reviewing” a report is attesting to said report’s accuracy. He claims that common sense dictates that reviewing a report does not mean that the supervisor is attesting to the accuracy of the report as the supervisor is not always present at an incident to know all the facts. Further, the electronic “audit log” indicated that he closed the report within 10 seconds which supports his statement that the report’s

contents were neither “read and/or their accuracy attested to.” Additionally, the petitioner presents that since Hackensack does not have a clear policy as to what constitutes “reviewing” a report, termination in this matter is inappropriate. Finally, he highlights his background and career with Hackensack to support his claim that termination is unjustified and against the principles of progressive discipline.

In response, Hackensack, represented by Raymond R. Wiss, Esq., asserts that the petitioner’s request for reconsideration is untimely. It presents that the Commission’s decision was issued on April 8, 2019 and, therefore, should have been received by the petitioner by no later than April 11, 2019. Accordingly, it contends that the request should have been received no later than May 27, 2019. However, the petitioner’s letter, although dated May 21, 2019, was not filed until May 28, 2019. Further, the letter only indicates an intent to file and does not meet the standard for reconsideration as it does not include new evidence or where the Commission made a clear material error. Moreover, his attorney did not submit his request until June 28, 2019, which is well after the time for reconsideration.

Further, Hackensack argues that his submission does not meet the standard for reconsideration. Specifically, it states that the petitioner chose not to call Sybel as a witness during the hearing and has provided no explanation as to why he did not subpoena him to testify. Therefore, Sybel’s statement cannot be considered for the first time. He notes that he was in possession of the Sybel Transcript, which he claims is “new evidence,” prior to the hearing. Further, Sybel’s June 14, 2019 letter was created after the petitioner indicated that he intended to file for reconsideration, which raises credibility concerns about this statement. Moreover, all evidence that is referenced by Sybel was presented at the hearing by other witnesses. Regarding the “information packet” that Sybel sent directly to the ALJ on January 29, 2019, six months after the hearing was closed, Hackensack indicates that it is just a re-arguing of evidence already presented. Also, it is the third time that the petitioner attempted to use statements from Sybel without calling him as a witness. Further, one of the officers provided the court a copy of a certification from Sybel alleging that the officers from Internal Affairs investigating the matter had conflicts. However, as the petitioner did not investigate the “conflicted” Internal Affairs officers, there is no evidence that the Internal Affairs officers were biased against him. Additionally, the ALJ’s findings were based on video evidence, and there was no evidence that the video was tampered with. Specifically, the ALJ found that the video evidence did not indicate that the officers were acting as if there were exigent circumstances that would justify a warrantless search. Additionally, there were no witnesses at the apartment building who indicated they heard child noises or other noises from the apartment. As such, there was no clear material error in the Commission’s determination.

Further, it contends that for the very first time in this proceeding, the petitioner argues that the alleged reported gun sale by the resident of the apartment

itself was such an exigent circumstance which justified the warrantless entry. However, the petitioner is unable to provide any testimony or other evidence that any of the officers made this argument during the hearing. Additionally, he did not cite this as an “error” by the ALJ in his exceptions. Also, an Internal Affairs witness testified that although a gun sale could be an exigent circumstance to justify a warrantless search under certain circumstance, those circumstances did not exist in this matter. Further, Hackensack states that there was no evidence that there was a gun sale taking place at the time the officers entered the building, that the resident of the apartment was in the building at the time the officers were there, or that a gun sale placed any one in imminent danger to justify a warrantless search. Concerning the petitioner’s claim that the ALJ improperly shifted the burden of proof to the officers, the ALJ found that there was no “unattended child” that would justify entry into the apartment without a warrant as an exigent circumstance as the video did not support any evidence that there was an unattended child. Additionally, concerning the claims that the ALJ had shifted the burden of proof to prove that there were exigent circumstances to justify a warrantless search, case law squarely places such burden on the officers to establish the lack of exigent circumstances. Moreover, the petitioner testified that if he was present during an incident, that he would review a report for accuracy. Therefore, it is irrelevant that a supervisor might not review a report for accuracy when the supervisor was not present at the incident. Accordingly, the Commission was within its authority to conclude that the petitioner reviewed and approved a false report and this conclusion was not clear material error. Further, as the report was short, and the petitioner had first-hand knowledge of the events, there was no reason why he could not have read the report within 10 seconds. Also, Hackensack presents that Sybel’s statement to the petitioner that the report was “good to go” is not new evidence as this evidence was already introduced and rejected. Finally, it argues that the petitioner’s actions of entering a residence without a warrant and then covering up this illegal entry with a false report is grounds for termination regardless of his prior unblemished record and principles of progressive discipline as such actions damage the public’s trust.

## CONCLUSION

*N.J.A.C.* 4A:2-1.6(a) provides within 45 days of receipt of a decision, a party to the appeal may petition the Civil Service Commission for reconsideration.

*N.J.A.C.* 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or

2. That a clear material error has occurred.

In this matter, the petitioner failed to meet the standard for reconsideration. Initially, the petitioner submitted a letter dated May 21, 2019, which was received by this agency on May 28, 2019. However, as the Commission does not know the exact date that the petitioner received the Commission's decision, and in most cases, seven days is considered a reasonable time for receipt of mailing. Accordingly, the Commission request was received within the 45-day reconsideration time frame. However, this initial letter does not include new evidence or additional information or indicate where the Commission is alleged to have committed clear material error. The letter simply states that his attorney was away and that he could not present new evidence without his attorney. Thereafter, his attorney submits, on June 28, 2019, a brief and the alleged new evidence in support of request. The new evidence consists of a June 14, 2019 statement from Sybel and a packet that Sybel sent directly to the ALJ, which was returned to him on January 30, 2019.

Concerning Sybel's June 14, 2019 statement, the Commission finds that this statement is untimely as it was clearly generated after the 45-day time period. Given that a petitioner must show error or new information within 45 of days of receipt of the decision, any information that would form the basis for a petition for reconsideration must be known and in a party's possession prior to filing a petition for reconsideration. *See In the Matter of Craig Augustoni, et al.* (CSC, decided October 21, 2015), *aff'd on recons.* (CSC, decided November 10, 2016). The timeframes to petition the Commission for a reconsideration of a decision, or the appeal of any action, is crucial not only to ensure the due process rights of all impacted parties but also so agencies can act in reliance on the Commission's determinations. Indeed, there are reasonable and legitimate expectations by Hackensack of the validity and finality of Commission decisions. *See In the Matter of Ralph Asplen and Edward Reardon*, Docket No. A-1609-06T3 (App. Div. July 8, 2008).

Regardless, the Commission finds the letter's contents unpersuasive. In this regard, the petitioner indicates that this packet was only recently obtained from Sybel and both the letter and information packet have an absolute bearing on his case. However, the petitioner has not clearly articulated or provided any evidence as to when he was in possession of this packet. If it was in his possession at the same time as Sybel's letter, this packet is untimely for the same reasons as the aforementioned statement. If the petitioner was aware of the packet in or around January 30, 2019 or earlier, then the petitioner has presented no evidence explaining why he did not present it during the hearing or if the ALJ was not admitting it, why he did not make a request for an interlocutory review prior to the ALJ's initial decision. Additionally, the petitioner did not present this packet as part of his exceptions to the initial decision. Also, the petitioner did not indicate in his May 21, 2019 letter that he has an information packet from Sybel which he only recently discovered after the Commission's decision. Most importantly, regardless of when

the petitioner became aware of the information packet, the petitioner had the option of calling Sybel as a witness to testify at the hearing about any information that he may have, but the petitioner chose not to. Therefore, the Commission finds that the information packet cannot be considered on reconsideration. Moreover, even if it was considered, as the ALJ found that there were no exigent circumstances in this matter that would justify a warrantless search based on a review of the video, as well a lack of corroboration from any witnesses at the apartment building that there was an unattended child, and the officers' testimony, Sybel's statement and packet would not change the Commission's ultimate determination.

Concerning the petitioner's claim that the Commission committed material error by not even considering that the warrantless search was justified because the officers believed that there were exigent circumstances based on a potential gun sale at the apartment, the petitioner has not presented any evidence that the petitioner presented this defense during the hearing or in his exceptions. Regardless, even if it had, the ALJ, after reviewing the video, found that none of the officers were acting in a manner that indicated that "exigent" circumstances existed that would justify a warrantless search. The Commission found no reason to question the ALJ's findings and conclusions in that regard.

With respect to the false report, the petitioner's claims that a supervisor's signing off on a report cannot be the same thing as verifying the accuracy of a report because a supervisor is not always present at the incident that the report is referencing. However, as the petitioner was present at the incident in this case, the petitioner either read the report and signed off on an inaccurate report or should have read the report and checked for the accuracy of its contents. Similarly, even if Sybel said that the report was "good to go" to the petitioner, as the petitioner was present at the time of the incident, he should not have approved an inaccurate report. Moreover, regardless of the petitioner's claims that certain witnesses *may now* have credibility issues, at the time of the ALJ's determination, the ALJ found that testimony credible. Upon its review, the Commission did not find any reasons to question those determinations.

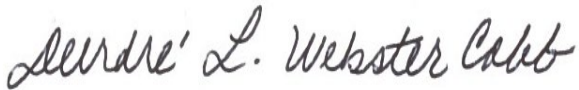
Regarding the appropriate penalty, even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). In this matter, as in the prior decision, the Commission finds that the petitioner's actions of conducting an unjustified warrantless search and approving a report concerning this incident that contains false and misleading information is so egregious as such actions betray the public trust that removal is the appropriate penalty.

**ORDER**

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>ST</sup> DAY OF JULY, 2020



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