



## STATE OF NEW JERSEY

In the Matter of Jason Martin  
 City of East Orange, Police Department

DECISION OF THE  
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2020-1050  
 OAL DKT. NO. CSV 16115-19

ISSUED: SEPTEMBER 16, 2020 NFA

The appeal of Jason Martin, Police Officer, City of East Orange, Police Department, removal effective September 10, 2019, on charges, was heard by Administrative Law Judge Jude-Anthony Tiscornia (ALJ), who rendered his initial decision on May 5, 2020. No exceptions were filed by the parties.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on September 16, 2020, accepted and adopted the Findings of Fact as contained in the attached ALJ's initial decision. However, the Commission does not adopt the recommendation to suspend the removal for a one-year period. Rather, the Commission reverses the removal and orders that the appellant be reinstated.

The appellant was removed on charges or inability to perform duties and other sufficient cause. Specifically, the appointing authority alleged that the appellant was unqualified to be a Police Officer since he was dismissed from the Mercer County Police Academy (Academy). The pertinent facts of this matter are discussed in the ALJ's initial decision. Briefly, the ALJ found that the alleged "contraband" possessed by the appellant was insufficient to support his removal from the Academy. As this matter was a joint case between the Commission and the Police Training Commission (PTC), where the PTC had the predominant interest, the PTC's August 19, 2020 final decision affirming the ALJ's recommendation to reverse the appellant's dismissal from the Academy is attached. Any findings of facts made by the PTC regarding the appellant's dismissal from the Academy are binding on the Commission. However, the Commission has sole

jurisdiction over the appellant's removal from employment. As his removal from the Academy was the reason for his removal from employment, and that dismissal has been reversed, the Commission finds that the disciplinary charges underlying his removal are dismissed.

In his initial decision, the ALJ indicated that the removal should "be suspended for a period of one year from the date of this decision pending Martin's successful completion of Police Academy training." The Commission rejects this determination. It is clear that a Police Officer appointed from a Civil Service list who has not yet completed a working test period can only be removed from employment via disciplinary action.<sup>1</sup> In this case, the appellant was appointed from a list and removed during his Academy training and prior to the completion of his working test period. Accordingly, his removal is governed by *N.J.A.C. 4A:2-2, et seq.*, and therefore, he is entitled to any and all remedies provided for in that chapter upon the reversal of that removal. As such, as the charges underlying his removal have been dismissed, the Commission orders that the removal be reversed, and the appellant be reinstated and sent to a new Academy as soon as practicable.

As the removal has been reversed, the appellant is entitled to mitigated back pay, benefits, and seniority and reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*. However, the appellant is not entitled to receive back pay, benefits and seniority for the entire period from the date of his removal to the date of his reinstatement. In this regard, the Commission notes that the appellant was not yet a permanent employee and, per *N.J.A.C. 4A:4-5.2(d)1*, had not even begun his working test period when he was removed. Since it cannot be assumed that the appellant would have successfully completed the Academy or his subsequent working test period, he should only receive back pay from September 10, 2019 until the date the Academy he was removed from concluded. *See e.g., In the Matter of Justin Miller* (MSB, decided June 18, 2014); *In the Matter of Terrell Twiggs* (MSB, decided May 9, 2007); *In the Matter of Jennifer Mortimer* (MSB, decided April 26, 2006) and *In the Matter of Rosalind Candelaria* (MSB, decided November 10, 1998).

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*, unpublished, Docket No. A-5581-01T2F (App. Div. Feb.

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<sup>1</sup> Per *N.J.A.C. 4A:4-5.2(d)1*, law enforcement officers who are required by the Police Training Act to complete a police training course shall not begin their working test period until notification is received by the appointing authority from the PTC of the successful completion of the police training course. However, major disciplinary procedures applicable to employees serving in a working test period (*see N.J.A.C. 4A:2-2*) shall also be applicable to such officers from the date of appointment until completion of police training. Upon successful completion of the working test period, the date of appointment from the eligible list shall be recorded as the date of regular appointment.

26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. However, under no circumstances should the appellant's reinstatement be delayed based on any dispute regarding back pay or counsel fees.

### 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. It is further orders that the appellant is entitled to mitigated back pay, seniority and benefits pursuant to *N.J.A.C. 4A:2-2.10* from September 10, 2019 until the date the Academy he was removed from concluded. Additionally, the appellant is entitled to reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of mitigation and 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. However, under no circumstances should the appellant's reinstatement be delayed based on any dispute regarding back pay or counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel 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 ON  
THE 16<sup>TH</sup> DAY OF SEPTEMBER, 2020

*Deirdre L. Webster Cobb*

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachments



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**  
**SUMMARY DECISION**  
**(CONSOLIDATED)**

**JASON MARTIN,**

Petitioner,

v.

**MERCER COUNTY POLICE ACADEMY,**

Respondent.

OAL DKT. NO. PTC 17579-19

AGENCY DKT. NO. N/A

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**IN THE MATTER OF JASON MARTIN,  
CITY OF EAST ORANGE POLICE DEPARTMENT.**

OAL DKT. NO. CSV 16115-19  
AGENCY DKT. NO. 2020-1050

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**Bette R. Grayson, Esq.,** for petitioner/appellant Jason Martin

**John K. Maloney, Esq.,** Assistant County Counsel for respondent Mercer County Police Academy (Paul R. Adezio, County Counsel, County of Mercer)

**Joseph V. Campbell, Jr. Esq.,** (Assistant Corporation Counsel) for respondent, City of East Orange Police Department

Record Closed: March 24, 2020

Decided: May 5, 2020

**BEFORE JUDE-ANTHONY TISCORNIA, ALJ:**

**STATEMENT OF THE CASE**

Petitioner/appellant Jason Martin (Martin) appeals dismissal from the Mercer County Police Academy for an alleged rule violation, and subsequent removal from the City of East Orange Police Department for failure to complete training at the Academy. Respondent Mercer County alleges that Martin, while training at the Academy, possessed contraband in his automobile in the form of an empty glass liquor bottle and false/prop currency. Martin argues that neither of the items were illegally obtained or illegal to possess, and, therefore, cannot possibly constitute contraband.

**ISSUES**

Were the items found in Martin's care contraband? If not, was Martin wrongfully dismissed from the Police Academy?

**PROCEDURAL HISTORY**

On September 23, 2019, Martin was served with a Final Notice of Disciplinary Action (FNDA), calling for his removal from the position of police officer. The following charges were sustained against Martin:

1. N.J.A.C. 4A:2-2.3(a)(3)—inability to perform duties
2. N.J.A.C. 4A:2-2.3(a)(12)—other sufficient cause

The matter was transmitted to the Office of Administrative Law on November 13, 19, under docket number CSV 1611-19. The matter was thereafter consolidated with PTC 17579-19 by the undersigned by way of an Order dated January 16, 2020, and the Police Training Commission was determined to have the predominant interest. No opposition was filed.

A motion for summary decision was filed by Martin on February 26, 2020. A notice from Mercer County was received on March 3, 2020, notifying the undersigned that all operative facts were stipulated to, and that the County had reviewed the pending motion for summary decision and declined to submit opposition to said motion. A notice from the City of East Orange was received on March 6, 2020, notifying the undersigned that all operative facts were stipulated to, and that the City had reviewed the pending motion for summary decision and declined to submit opposition to said motion.

### FINDINGS OF FACT

As the operative facts are entirely undisputed, I **FIND** the following to be the **FACTS** in this case:

1. On September 10, 2019, Jason Martin went for his first day of training at the Mercer County Police Academy.
2. On that date, Jason Martin's automobile, parked in the parking lot of the Academy, was subjected to a random search by Academy authorities.
3. During the search, Martin opened the glove compartment to take out his automobile registration and insurance cards, at which time the staff of the Academy observed an empty glass liquor bottle in the glove compartment.
4. There is neither an allegation that Jason Martin was imbibing from the bottle while at the Academy, nor an allegation that Jason Martin was under the influence of alcohol while at the Academy.
5. On the same date, during the same search, movie-prop money in the form of paper currency was also found in Jason Martin's vehicle.

6. Jason Martin legally purchased said prop money and has a receipt for said purchase. (See Exhibit A.)
7. The aforementioned prop money was clearly denoted as not being real money in the following manner (See Exhibit B):
  - a) The upper left side of each note was clearly marked "REPLICA" underneath the serial number;
  - b) On the lower left corner, instead of stating "THIS NOTE IS LEGAL TENDER FOR ALL DEBTS, PUBLIC AND PRIVATE," it stated, "THIS NOTE IS NOT LEGAL, IT IS TO BE USED FOR MOTION PICTURES";
  - c) Underneath this wording in the above paragraph, on the lower left corner, instead of stating "Treasurer of the United States," it stated "Not the Real Secretary";
  - d) Underneath the picture of Jackson, instead of stating "JACKSON," it stated "THIS IS A REPLICA";
  - e) At the lower right corner, instead of stating "Secretary of the Treasury," it stated "This is not a Treasure";
  - f) On the right-hand side in the middle, underneath "TWENTY" and the seal on top of the wording, instead of stating "TWENTY USA" and below it "USA TWENTY" in a curved fashion, it is clear with no wording.
8. There is no allegation that Jason Martin attempted to use the prop money to purchase any goods or services at any time, nor is there any allegation that Jason Martin presented the prop money to anyone or made any representation that the prop money was valid currency.

9. Martin was removed from his position as a police officer for the City of East Orange solely due to his being dismissed from the Mercer County Police Academy.

Given the above-cited undisputed facts, I **FIND** that the two items in question, namely, the empty glass liquor bottle and the prop currency, do not, in and of themselves and without any surrounding facts to show otherwise, constitute contraband. I further **FIND** that the appointing authority, here the Academy, has provided no factual basis to suggest that the items were in any way used or intended to be used by Martin in any illicit way so as to constitute a breach of any law or regulation.

#### **LEGAL ANALYSIS AND CONCLUSION**

Civil service employees' rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.

The appointing authority shoulders the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

In the case at bar, the City of East Orange has represented that the sole reason for removing Jason Martin from his position as a police officer was his inability to complete



the Police Academy. It is undisputed that the sole reason for Martin's dismissal from the Academy was the presence of the two aforementioned items in his automobile, which the Academy found to be contraband, and, thus, grounds for dismissal. The questions are, thus, whether the items do actually constitute contraband, and, if not, whether Martin was wrongfully dismissed from the Academy. As I have already found that the items do not constitute contraband, I **CONCLUDE** that Martin was wrongfully dismissed from the Mercer County Police Academy.

### **ORDER**

I hereby **ORDER** that Jason Martin's dismissal from the Mercer County Police Academy be, and hereby is, rescinded. It is further **ORDERED** that Jason Martin's removal as a police officer for the City of East Orange be suspended for a period of one year from the date of this decision pending Martin's successful completion of Police Academy training.

I hereby **FILE** this Initial Decision with the **POLICE TRAINING COMMISSION**.

This recommended decision may be adopted, modified or rejected by the **POLICE TRAINING COMMISSION**, which by law is authorized to make the final decision on all issues within the scope of its predominant interest. If the Police Training Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision on all of the issues within the scope of predominant interest shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Pursuant to N.J.A.C. 1:1-17.8, upon rendering its final decision the **POLICE TRAINING COMMISSION** shall forward the record, including this recommended decision and its final decision, to the **CIVIL SERVICE COMMISSION**, which may subsequently render a final decision on any remaining issues and consider any specific remedies which may be within its statutory grant of authority.

Upon transmitting the record, the **POLICE TRAINING COMMISSION** shall, pursuant to N.J.A.C. 1:1-17.8(c), request an extension to permit the rendering of a final decision by the **CIVIL SERVICE COMMISSION** within forty-five days of the predominant-agency decision. If the **CIVIL SERVICE COMMISSION** does not render a final decision within the extended time, this recommended decision on the remaining issues and remedies shall become the final decision.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DEPUTY ATTORNEY GENERAL, POLICE TRAINING COMMISSION**, Richard J. Hughes Justice Complex, PO Box 085, Trenton, New Jersey 08625-0085, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 5, 2020

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:  
**POLICE TRAINING COMMISSION**

5/5/20  
\_\_\_\_\_

Mailed to Parties:

id  
\_\_\_\_\_

**APPENDIX**

**LIST OF JOINT EXHIBITS**

Exhibit A      Receipt for prop currency

Exhibit B      Prop currency



PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lieutenant Governor*

*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE  
POLICE TRAINING COMMISSION  
PO BOX 085  
TRENTON, NJ 08625-0085  
TELEPHONE (609) 376-2800

GURBIR S. GREWAL  
*Attorney General*

VERONICA ALLENDE  
*Director*

JASON MARTIN,

Petitioner

v.

MERCER COUNTY  
POLICE ACADEMY,

Respondent

FINAL DECISION

OAL Docket No. PTC 17579-19

OAL Docket No. CSV 16115-19

(CONSOLIDATED)

**BY THE COMMISSION:**

The Police Training Commission ("Commission") received the Initial Decision in this matter on June 29, 2020. The Commission was scheduled to meet on this matter on August 5, 2020, but due to Tropical Storm Isaias, rescheduled the meeting to the following week. The Commission met on August 13, 2020. Due to the Executive Orders in place during the COVID-19 pandemic, this final decision was rendered within the time limits prescribed.

The Police Training Commission, at its meeting of August 13, 2020, considered the attached Initial Decision, dated May 5, 2020, from Jude-Anthony Tiscornia, ALJ. There were no exceptions filed by the parties. The Initial Decision is hereby **ADOPTED** without modification as the **FINAL DECISION** of the Police Training Commission.

This is the final administrative determination by the Police Training Commission in this matter. Any appeal of this Final Decision should be made pursuant to N.J. Court Rules, R. 2:2-3.

POLICE TRAINING COMMISSION

By:

  
John F. Cunningham, Designated Chairman

Date:

8/19/2020