



**STATE OF NEW JERSEY**

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

In the Matter of John Arrington,  
Department of Corrections

CSC Docket No. 2021-1279

Interim Relief

**ISSUED: MAY 3, 2021 (SLK)**

John Arrington, a Senior Correctional Police Officer at Edna Mahan Correctional Facility for Women, Department of Corrections, represented by Luretha Stribling, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his pending disciplinary action.

By way of background, Arrington was served with a Preliminary Notice of Disciplinary Action (PNDA) on April 6, 2020, charging him with conduct unbecoming a public employee and other sufficient cause as well as violating certain departmental rules and regulations. The charges specified that an investigation received on March 30, 2020, revealed that Arrington admitted that he used his cell phone while on his assigned post at the Edna Mahan Correction Facility for Women between October 2019 and January 2020. Further, Arrington admitted that he was aware of the department's policy prohibiting the use of cell phones while on duty. Subsequently, he filed a request for interim relief alleging certain statutory and procedural violations in the disciplinary process. However, in *In the Matter of John Arrington* (CSC, decided June 17, 2020), the Commission found that given the nature of the charge and the standards of *N.J.A.C. 4A:2-2.5(a)1*, there was a basis for an immediate suspension. Further, the Commission found that it could not determine whether Arrington's ultimate removal was appropriate without the benefit of a full hearing record for it. Therefore, it denied his request.

In his current request, Arrington presents that on April 6, 2020, he was served with a PNDA and he requested a hearing on April 17, 2020.<sup>1</sup> However, he states that he was never provided one. Arrington indicates that by October 8, 2020, he had been out of work for 180 days and continues to remain so. He requests to be returned to pay status and have his charges dismissed. Specifically, Arrington argues that he is likely to succeed on the merits since *N.J.A.C. 4A:2-2.4(a)* and *N.J.S.A. 11A:2-20* require that when an officer has been suspended for 180 days, he must be placed back on the payroll. Additionally, he asserts that he is suffering immediate and irreparable harm as his house is in risk of going into foreclosure and he cannot provide food and otherwise support his family, including his children, without his pay. Further, if he is placed back in pay status, this will not cause substantial injury to the appointing authority, while he is suffering substantial injury due to the lack of pay. Moreover, Arrington argues that it is in the public interest for his disciplinary process to be resolved in the proscribed statutory and regulatory time and manner. Finally, he states that the appointing authority has not scheduled the requested hearing within 30 days of service of the PNDA as required under *N.J.S.A. 11A:2-13* and continues to not schedule the hearing even though it has been conducting virtual hearings since mid-2020 during the current pandemic.

In response, the appointing authority, represented by Sean P. Havern, DAG, states that Arrington can be placed in pay status by writing a letter to the department advising that he has been suspended without pay for more than 180 days. Concerning his request that the matter be dismissed, the appointing authority asserts that he has not met the threshold for interim relief. It also notes that Arrington has not appealed this matter to the Appellate Division as a final administrative decision by the Commission as one has not been issued. Further, even if the Commission considers his request, the appointing authority asserts that Arrington has failed to show that he is likely to succeed on the merits as he has not provided any facts that indicate that the charges are inaccurate or inappropriate and he admitted to using his cell phone and to knowing that this conduct was prohibited. Instead, Arrington argues that the charges should be dismissed on procedural grounds. However, the appointing authority presents case law to indicate that the Appellate Division has rejected this argument. Further, it indicates that the current pandemic cannot be ignored and the request for a hearing came shortly after the issuance of Executive Order 103 as every State agency was attempting to adjust to the challenges to the pandemic, and departmental hearings were not being held at that time. Further, the appointing authority notes that Arrington was advised of this on April 17, 2020. The appointing authority further notes that the departmental hearing was scheduled for March 30, 2021.<sup>2</sup> Additionally, the appointing authority asserts that Arrington has not suffered irreparable harm since he will be entitled to back pay should he

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<sup>1</sup> The record indicates this request was e-mailed at 11:19 p.m. on April 16, 2020. As there is no indication that the appointing authority opened that request prior to midnight, the Commission shall use the date of April 17, 2020 as the date the hearing was requested.

<sup>2</sup> There is no indication in the record as to whether the hearing did, in fact, occur.

ultimately prevail. Further, it argues that it will be subjected to substantial harm if he is returned to duty while there are pending charges which indicate that he disregarded safety procedures. Similarly, it is in the public interest to not reinstate Arrington while these charges are pending due to safety concerns.

### CONCLUSION

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;  
and
4. The public interest.

*N.J.S.A.* 11A:2-13, *N.J.A.C.* 4A:2-2.5(d), *N.J.A.C.* 4A:2-2.13(b) provide, in pertinent part, if a law enforcement officer requests a departmental hearing regarding his or her removal in accordance with *N.J.A.C.* 4A:2-2.5, the appointing authority shall conduct a hearing within 30 days of the removal's effective date

*N.J.S.A.* 40A:14-201(2)a states, in pertinent part, that a final determination on a law enforcement officer's suspension and termination shall be rendered within 180 calendar days from the date the officer is suspended without pay. If a final determination is not rendered within those 180 days, as hereinafter calculated, the officer shall, commencing on the 181st calendar day, begin again to receive the base salary he was being paid at the time of his suspension and shall continue to do so until a final determination on the officer's termination is rendered. *See also, N.J.A.C.* 4A:2-2.13.

*N.J.A.C.* 4A:2-2.13(h)1 provides, in pertinent part, that the period between the date of removal and the date on which the officer requests a departmental hearing shall not be counted toward the 180-day period.

Initially, the appointing authority states that Arrington can be placed back in pay status by writing a letter to the department advising that he has been suspended without pay for more than 180 days and that interim relief is not required to place him back on the payroll. However, it is noted that there is no statutory or regulatory requirement that a law enforcement officer "write the department" to be put back on pay status when the officer has been suspended for more than 180 days. Further, even if there was, the subject appeal would certainly qualify as satisfying this requirement. Therefore, the record is unclear as to why the appointing authority has not already restored Arrington to pay status. Regardless, the record indicates that the appointing authority received Arrington's request for a departmental hearing on

April 17, 2020. *N.J.A.C.* 4A:2-2.13(h)1 provides that the period between the date of removal and the date on which the officer requests a departmental hearing shall not be counted toward the 180-day period. Therefore, the 180-day period began on April 18, 2020 and ended October 14, 2020. Accordingly, Arrington is to be restored to pay status effective October 15, 2020, and shall receive his base pay retroactive to that date which shall continue until the ultimate final decision on any appeal of any major disciplinary action that results from the subject charges.

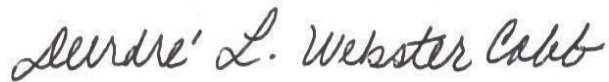
Concerning Arrington's request to dismiss the complaint because he did not receive a timely hearing, an appointing authority's unilateral delay in holding a departmental hearing does not warrant a dismissal of the charges. *See Goodman v. Department of Corrections*, 367 *N.J. Super.* 591 (App. Div. 2004). Further, procedural deficiencies at the departmental level which are not significantly prejudicial to an appellant are deemed cured through the *de novo* hearing received at the OAL. *See Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995); *In re Darcy*, 114 *N.J. Super.* 454 (App. Div. 1971). It is noted that the appointing authority indicates that a departmental hearing was scheduled for March 30, 2021. Moreover, this delay cannot be considered significantly prejudicial since Arrington is being awarded base pay in this matter as indicated above. Additionally, the charges are serious and cannot be ignored. As indicated in *In the Matter of John Arrington, supra.*, the Commission will not make a determination on the merits of such charges absent a full hearing. However, the Commission admonishes the appointing authority in this matter. Even a delay due to the COVID-19 pandemic does not permit it to unilaterally ignore or relax relevant statutory provisions. *See In the Matter of Ryan Marsh* (CSC, decided February 17, 2021). As such, the appointing authority shall either immediately reinstate the appellant if it is determined that removal is no longer appropriate or, if appropriate, hold a departmental hearing and issue a FNDA imposing a disciplinary penalty. Further, even if it determines that removal is appropriate, as indicated above, Arrington must continue to receive his base pay until the Commission issues a final administrative determination on any subsequent appeal of any major discipline imposed after the departmental hearing on the current charges. The Commission notes that if Arrington's removal is ultimately upheld, he shall be required to reimburse the appointing authority for all base pay received during his appeal. *See N.J.S.A.* 40A:14-205(6)b and *N.J.A.C.* 4A:2-2.13(j).

## ORDER

Therefore, it is ordered that this petition be granted in part. The appointing authority shall pay Arrington his base pay beginning on October 15, 2020, until he is either reinstated or until a final administrative determination is made by the Commission on any subsequent appeal of any major discipline imposed after the departmental hearing on the current charges. All other requests are 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 28th DAY OF APRIL, 2021



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