



## STATE OF NEW JERSEY

In the Matter of Carlos Pimentel  
State Parole Board

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

CSC DKT. NO. 2019-3434  
OAL DKT. NO. CSV 07975-19

**ISSUED: JUNE 2, 2021 (NFA)**

The appeal of Carlos Pimentel, Senior Parole Officer, State Parole Board, removal effective February 1, 2019, on charges, was heard by Administrative Law Judge Sarah G. Crowley (ALJ), who rendered her initial decision on May 19, 2021, modifying the removal to a resignation in good standing. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on June 2, 2021, did not adopt the ALJ's recommendation to modify the removal to a resignation in good standing. Rather, the Commission upheld the removal.

DISCUSSION

The appellant in this matter was charged with inability to perform duties and conduct unbecoming a public employee. Specifically, the appointing authority alleged that the appellant was subject to a Final Restraining Order (FRO) as a result of a domestic violence proceeding and could not carry a firearm as required by his position.

In her initial decision, the ALJ granted the appointing authority's motion for summary decision finding that as a result of the FRO, the appellant was unable to perform the essential functions of his position as a Senior Parole Officer. She further stated that "the State clarified that they (sic) are seeking removal as a matter of law based on inability to perform his duties and not on the conduct unbecoming. Accordingly, I **ORDER** that his termination is hereby **MODIFIED** to

a resignation in good standing.” No further reasoning was provided.

In its exceptions, the appointing authority argues that the modification of the removal is inappropriate and contends that the removal should be upheld.

After its *de novo* review of the record in this matter, the Commission agrees with the ALJ’s granting of the motion for summary decision. However, it disagrees that the removal should be modified to a resignation in good standing.

In determining the proper penalty, the Commission’s review is *de novo*. In this regard, it is clear that the removal should not be modified in this matter. The underlying basis for the charge of inability to perform duties was that the appellant was legally barred from carrying a firearm pursuant to a FRO based on a domestic violence proceeding. While the Commission has modified removals to resignations under certain circumstances, such a modification is inappropriate to the case at bar. In previous matters, such a modification was appropriate where the employee’s inability to perform his duties was based on, for example, a serious, chronic and debilitating medical or psychological condition or disability that came about through no fault of the employee. See *N.J.A.C. 4A:2-2.9(d)*; *Eugene Verdell v. New Jersey State Department of Military and Veterans Affairs*, Docket No. A-0497-04T5 (App. Div. February 16, 2006); See also, e.g., *In the Matter of Darryl Duncan* (CSC, decided December 16, 2015); *In the Matter of Nadine Downing* (CSC, decided April 20, 2011). The Commission will not make such a modification where the circumstance leading to the inability to perform was brought about by the employee’s underlying misconduct, such as this matter. In this regard, the FRO based on a domestic violence proceeding led to the appellant’s legal inability to perform the essential functions of his position. To modify the removal to a resignation in good standing under these circumstances would essentially be rewarding the appellant for the underlying conduct which led to the FRO and his subsequent inability to perform.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appellant’s appeal.

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 2<sup>ND</sup> DAY OF JUNE, 2021

*Deirdre L. Webster Cobb*

Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

attachment

Allison Chris Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. CSR 07975-19

AGENCY DKT. NO. n/a 2019-3434

**IN THE MATTER OF CARLOS PIMENTEL,  
NEW JERSEY STATE PAROLE BOARD.**

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**Robert Fagella, Esq., for appellant (Zazzalia, Fagella, Nowak, Kleinbaum & Friedman,  
PC, attorneys at law)**

**Sean P. Halvern, Deputy Attorney General, for respondent (Gurbir S. Grewal,  
Attorney General)**

Record Closed: March 30, 2021

Decided: May 19, 2021

**BEFORE SARAH G. CROWLEY, ALJ:**

**STATEMENT OF THE CASE**

Appellant Carlos Pimentel (Pimentel) was a Senior Parole Officer for the New Jersey State Parole Board (Board, NJSPB). On November 27, 2018, a Final Restraining Order (FRO) was entered prohibiting the appellant from carrying a weapon. On May 22, 2019, appellant was served with a Final Notice of Disciplinary Action (FNDA) removing him from his position as a result of the FRO. He was charged with failure to perform duties, conduct unbecoming, and other sufficient cause.

### PROCEDURAL HISTORY

An appeal was filed, and the matter was transmitted the Office of Administrative Law (OAL) as a contested case. N.J.S.A. 52:14B-1 to -15 and 14F-1 to -13. The matter was delayed for over a year due to an appeal of the restraining order. The respondent consented to the delay. The respondent filed a motion for summary decision on February 12, 2021. Opposition was filed by the appellant on February 25, 2021, and the matter was again delayed pending another appeal to the Superior Court to dismiss or modify the restraining order. The Superior Court denied the request to modify the restraining order in March 2021, and this matter was scheduled for oral argument. Oral argument was heard by the parties on May 5, 2021, via Zoom Video Communications Inc. (Zoom), and the record closed on that date.

The foregoing facts are undisputed, and I **FIND** them as **FACT**.

1. Carlos Pimentel was employed as a Senior Parole Officer by the respondent, State Parole Board.
2. The duties of a Senior Parole Officer require officers to carry a weapon when on duty.
3. On November 27, 2018, a Final Restraining Order (FRO) was issued against appellant as a result of the domestic violence proceeding.
4. The FRO prohibits him from possessing a firearm.
5. On January 22, 2019, a Preliminary Notice of Disciplinary Action (PNDA) was served on the appellant based upon the issuance of the FRO.
6. After a departmental hearing, a Final Notice of Disciplinary Action (FNDA) was issued on May 22, 2019 removing appellant from his position.

7. The appellant made several unsuccessful applications to the Superior Court to rescind or modify the FRO to eliminate the weapons prohibition.
8. The matter was placed on the inactive list with the consent of the State while the appellant sought to get relief from the FRO.
9. A renewed application in the Superior Court was denied in March 2021.

### LEGAL ANALYSIS AND CONCLUSION

A motion for summary decision should be granted where there is no genuine issue as to any material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). The same standard is applied in the courts of this State pursuant to R. 4:46-2. Summary judgment "is designed to provide a prompt, businesslike and inexpensive method" to dispose of actions which do not present any genuine issue of material fact. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). The movant must show that there is no genuine issue of material fact, and all inferences of doubt are drawn against the movant. Id. at 74-75.

In determining whether there exists a genuine issue as to a material fact, the judge must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995). In this matter, there are no genuine issues of material fact. A restraining order prohibiting the appellant from carrying a firearm has been issued and efforts to modify or dismiss that have been unsuccessful. One of the essential requirements of a parole officer is to carry a firearm while on duty. There has been one exception to this rule since the change in the law in 1994, for an individual who was hired in 1990 and thus, grandfathered.

The Civil Service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See, Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1971); Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). The standard of behavior for police and correction officers is set higher than that of other civil service employees, meaning that infractions will lead to major discipline of officers than otherwise may not have warranted severer discipline for some other position. See, Moorestown Township v. Armstrong, 89 N.J. 560, 566 (App. Div. 1965).

This matter involves a major disciplinary action brought by the respondent appointing authority against appellant seeking his removal. Specifically, appellant was removed from his position pursuant to N.J.A.C. 4A:2-2.3(a)(3) inability to perform duties; N.J.A.C. 4A:2.2.3(a)(6) conduct unbecoming; and N.J.A.C. 4a:2-2.3(a)(12) other sufficient cause. In addition, NJSPB Policy 02.007II.B.10 Inability to discharge one's duties; NJSPB Policy 02.007F II.C.11 Conduct unbecoming; and NJSPB Policy 02.007F.E.1 Violation of a rule, regulation, policy, procedure, order or administrative decision. The charges all stem from the FRO which was issued pursuant to N.J.S.A. 2C:25-17, on November 27, 2018. Pursuant to the language of the FRO, appellant is prohibited from carrying a firearm. A parole officer is required to carry their State issued firearm while on duty. The respondent has brought a motion for summary decision arguing that there are no genuine issues of material fact in dispute, and as a matter of law the appellant is unable to perform the essential functions of his job without carrying a firearm, and thus, they are entitled to a judgment as a matter of law removing his from his position pursuant to N.J.A.C. 4A:2-2.3(a)(3) for the inability to perform duties. The State clarified on the record that they are seeking a judgment as a matter of law on the inability to perform the essential functions/inability to discharge the duties of the job and not the conduct unbecoming charge. It was conceded, and the undersigned agrees that the conduct unbecoming charge would involve issues of fact.

The only defense raised by the appellant is there is one other parole officer who has been permitted to keep his job and is not permitted to carry a firearm on duty. However, the respondent has submitted sworn documentation which indicates that parole officer in question was hired in 1990, prior to the mandatory firearm provisions and the Parole Board becoming an armed agency in 1994, and thus, he was grandfathered. The appellant has not disputed this information. The only other argument asserted by the appellant is that the appointing authority has discretion to place him in an assignment where he does not have to carry a weapon. The state has countered that the only person that does this is the one individual who was grandfathered and occasionally with an employee coming off of a workers compensation leave. The appellant has tried unsuccessfully for the past two and a half years to have the restraining order modified or dismissed. After his last denial, the appellant offered to resign, and the State advised that they would not accept it as the within motion had already been filed.

There is no dispute that the appellant is prohibited from carrying a firearm and that the requirement of the job require him to carry a firearm. The respondent maintains that there are no exceptions to this rule and the one individual employed in this position without a firearm was grandfathered. It is undisputed that the appellant cannot meet the requirements of the job due to the restraining order, and the removal of an employee under these circumstances is supported by the cases of Hawkins v. Juvenile Justice Commission, CSV 2814-05 (April 4, 2006) adopted May 12, 2006, and Frazier v. Department of Corrections, 2012 NJ CSC LEXIS 2, 22. There is no basis for exclusion of the appellant from the mandatory requirement of the position, and no basis to require the respondent to make an exception of this essential function of the position. Moreover, I **CONCLUDE** that it is not an abuse of discretion to remove someone who cannot meet the requirements of the job.

Based upon the undisputed facts in this case, I **CONCLUDE** that the appellant is incapable of performing the essential function of a parole officer due to the FRO which prohibits him from carrying a firearm. I therefore **CONCLUDE** that the removal of the appellant is appropriate, and the appeal is dismissed. However, the State clarified that they are seeking removal as a matter of law based on the inability to perform his duties and not on the



conduct unbecoming. Accordingly, I **ORDER** that his termination is hereby **MODIFIED** to a resignation in good standing.

**ORDER**

The charges against the appellant have been sustained. I, therefore, **ORDER** the removal of the appellant is **AFFIRMED**, and that the termination be modified to a resignation in good standing.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 19, 2021

DATE

Date Received at Agency:

Date Mailed to Parties:

SGC/nd



SARAH G. CROWLEY, ALJ

May 19, 2021

May 19, 2021 (emailed)