



STATE OF NEW JERSEY

In the Matter of David Harrington
 City of Jersey City, Department of
 Public Safety

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

CSC DKT. NO. 2020-2019
 OAL DKT. NO. CSV 02847-20

ISSUED: JULY 2, 2021 BW

The appeal of David Harrington, Police Officer, City of Jersey City, Department of Public Safety, removal effective June 11, 2019, on charges, was heard by Administrative Law Judge Gail M. Cookson, who rendered her initial decision on June 7, 2021. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of June 30, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of David Harrington

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 30TH DAY OF JUNE, 2021



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02847-20

AGENCY DKT. NO. 2020-2019

**IN THE MATTER OF DAVID HARRINGTON,
CITY OF JERSEY CITY, DEPARTMENT
OF PUBLIC SAFETY.**

Giovanna Giampa, Esq., for appellant David C. Harrington (Fusco and Macaluso, attorneys)

James B. Johnston, Assistant Corporation Counsel, for respondent City of Jersey City (Peter J. Baker, Corporation Counsel, attorneys)

Record Closed: May 26, 2021

Decided: June 7, 2021

BEFORE GAIL M. COOKSON, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

David Harrington (appellant) appeals the decision by the respondent City of Jersey City (City or respondent) to remove him from his position as a Police Recruit with the Department of Public Safety effective June 11, 2019, on the basis that he failed to successfully complete police academy training and thereafter, in spite of an attempt by the City to "recycle" him to another training session, appellant failed certain other background requirements. Thus, the City found that he was incompetent in his duties,

in violation of N.J.A.C. 4A:2-2.3(a)(1); he was unable to perform the duties of his position, in violation of N.J.A.C. 4A:2-2.3(a)(3); and other sufficient cause for dismissal, in violation of N.J.A.C. 4A:2-2.3(a)(12). (R-1).

Appellant appealed in a timely manner and the Department of Personnel transmitted the appeal to the Office of Administrative Law (OAL), where it was filed on February 26, 2020, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. I convened several case management conferences throughout 2020, during which both parties announced that settlement discussions were continuing. In early 2021, it was determined that those efforts had failed and a hearing date of May 26, 2021, was scheduled.

FACTUAL DISCUSSION AND FINDINGS OF FACT

The essential facts that form the foundation of the charges against the appellant are, for the most part, not disputed. Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Each party presented the testimony of one witness. The City, who carries the burden of proof in this de novo proceeding, called Lieutenant Anthony Musante. Lieutenant Musante has been with the Jersey City Police Department for over twenty-six years and has been at this rank since 2014. He is the Commander of the Background Investigation Unit and, among his other duties, is responsible for the orientation of police candidates and their background reports. Lieutenant Musante presented the history of appellant's path as a recruit with the City.

As is the usual process, appellant David Harrington was given a Conditional Offer of Employment by the City as a Police Recruit (R-2) which set forth the requirements that he would have to meet in order to become a full-fledged Police Officer. Appellant acknowledged those requisites. In or after July 2018, appellant was enrolled at the John

H. Stamler Police Academy (Academy) in Scotch Plains, Union County, New Jersey. While details were not provided, it is undisputed that appellant suffered a broken leg during this period of time. As a result, the Academy dismissed appellant because of his failure to satisfactorily complete the physical demands. (R-3; R-4).

In light of the unfortunate nature of the dismissal from the Academy, Lieutenant Musante explained that the City was in favor of re-enrolling appellant into another training class. Nevertheless, certain evaluations had to be undertaken a second time, including a psychological evaluation and a background check. Apparently, there was a second Conditional Offer of Employment issued and acknowledged by appellant in 2019. On or about June 11, 2019, appellant was notified that his psychological evaluation resulted in a negative recommendation for employment as a police officer.

Lieutenant Musante further testified that it is always discretionary with a department as to whether it will re-enroll a recruit who has failed the Academy. Even after the filing of the appeal from appellant's negative psychological evaluation¹, the City continued to evaluate whether it would pursue recycling Harrington through another Academy session. It undertook a third background check in late 2020 that resulted in receipt of information from the Motor Vehicle Commission (MVC) that appellant had numerous unpaid parking tickets which themselves had resulted in his license being suspended from December 14, 2019 (R-6), (one month after the first unpaid summons) through November 2, 2020 (paid restoration fee). At that point, the City determined to stand by its removal of appellant for his original failure to pass the physical requirements of the Academy and that it would opt not to re-enroll him.

Appellant testified on his own behalf and generally reviewed the same broad outline of the timeline of his enrollment in the Academy as a recruit in 2018 and later efforts by the City to re-enroll him. His only other statements concerned the Motor Vehicle Commission MVC history. Appellant explained that MVC had his address incorrectly with respect solely to his apartment number. As a result, he claimed that he was unaware that his license

¹ Neither party raised nor presented any evidence on this second psychological evaluation that appellant apparently failed.

had been suspended until he was stopped on October 27, 2020. He then immediately restored his driving privileges with the MVC.

On cross-examination, appellant acknowledged that he failed the psychological examination and that then the parties engaged in some further attempts at settlement. He also acknowledged that he knew of his driving suspension before the City. While appellant did not state it, it is clear that he did not independently inform the City of the fact of his MVC suspension or restoration. Upon my own questioning, appellant disclosed that he was stopped on October 27, 2020, because he had run a red light. At that time, he received summonses for that moving violation as well as driving while suspended and failure to have his vehicle registered. On re-direct examination, appellant stated that he entered a plea agreement in municipal court on February 17, 2021, to dispose of those most recent summonses (A-1).

LEGAL DISCUSSION

The Civil Service Act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. See N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined are whether the employee is guilty of the charges brought against her and, if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

An appointing authority may discipline an employee for, among other causes, an inability to perform duties. N.J.A.C. 4A:2-2.3(a)(3). The City bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). In this matter, the City terminated appellant's employment predicated on his inability to perform duties, stemming from his failure to successfully complete the training course at the

Academy, and thereafter, failing both the repeated psychological fitness examination and a background check.

The statutory scheme governing police training dictates that successful completion of a police training course at a PTC-approved school is a mandatory prerequisite to a permanent appointment as a police officer. N.J.S.A. 52:17B-68 instructs that "every municipality and county shall require that no person shall hereafter be given or accept a permanent appointment as a police officer unless such person has successfully completed a police training course at an approved school." In other words, the training laws apply to all police officers and establish a classification of temporary or probationary employment for police officers until successful completion of the mandatory program of training. Borger v. Borough of Stone Harbor, 178 N.J. Super. 296, 301-02 (Ch. Div. 1981); see N.J.S.A. 52:17B-68, -69.

The failure to complete police training is clearly grounds for termination of employment. Appellant was fully aware of this requirement when he accepted the Conditional Offer of Employment with Jersey City. Simply put, as a result of appellant's dismissal from the Academy, petitioner could not perform the essential duties of his position. N.J.A.C. 4A:2-2.3(a)(3). Accordingly, I **CONCLUDE**, as a matter of law and on the basis of the findings of fact and conclusions of law set forth above, that the Jersey City Department of Public Safety's determination to terminate appellant's employment for failure to complete the Academy, a sine qua non to a permanent appointment, was within the scope of its authority and cannot be said to be arbitrary, capricious or unreasonable under the circumstances. Moreover, appellant did not challenge or appeal his dismissal from Stamler.

Moreover, it is up to appellant's potential law enforcement employer to determine if he should be allowed to re-enroll in an Academy. Unless and until it does, petitioner cannot fulfill the requirements of his position as a Police Officer. In this case, because of the accidental nature of appellant's temporarily disabling injury during his stint at the Academy, the City agreed to recycle him into another police training opportunity. This agreement occurred after this appeal was filed from his initial dismissal. While a settlement agreement is not evidential and is not enforceable unless and until executed

by all parties, the parties hereto agree as to the procedural dates that led to the FNDA issued on December 9, 2020, as found above. Accordingly, it is undisputed that appellant failed once again to meet the prerequisites to becoming re-employed as a Police Officer at the full and sole discretion of the City, this time the evaluation and background check required prior to Academy re-enrollment, and I so **CONCLUDE**.

I also **CONCLUDE** that it was solely appellant's responsibility to properly register his correct address with the Motor Vehicle Commission, let alone comply with all motor vehicle laws and regulations. Furthermore, appellant obviously knew he had received and failed to pay for six parking violation summonses between November 2019 and June 2020, even if I were to find it credible that he did not know of the suspension that resulted therefrom. The fact that he entered into a plea agreement on the charges, inter alia, of driving while suspended and running a red light only on February 17, 2021, does not change the analysis herein that the City has supported its determination to dismiss him as a Police Recruit initially in October 2018 and then on December 9, 2020, for failing to meet the requirements of employment by the preponderance of the credible evidence and as a matter of law, in accordance with N.J.A.C. 4A:2-2.3(a)(1), N.J.A.C. 4A:2-2.3(a)(3), N.J.A.C. 4A:2-2.3(a)(12).

ORDER

For the reasons stated above, it is hereby **ORDERED** that the action of respondent Jersey City Department of Public Safety of dismissing appellant from his position as a Police Recruit is **AFFIRMED**.

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. 52:14B-10.

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.

June 7, 2021
DATE


GAIL M. COOKSON, ALJ

Date Received at Agency: 6/7/21

Mailed to Parties: 6/7/21
id

APPENDIX

LIST OF WITNESSES

For Appellant:

David Harrington

For Respondent:

Lt. Anthony Musante

EXHIBITS IN EVIDENCE

For Appellant:

A-1 Municipal Court, Borough of Bergenfield, Notice of Disposition, Dated May 21, 2021

For Respondent:

R-1 Final Notice of Disciplinary Action, dated December 9, 2020

R-2 Jersey City Police Department, Conditional Offer of Employment, dated May 23, 2018

R-3 Stamler Police Academy, Letter re Recruit Dismissal, dated October 18, 2018

R-4 State of New Jersey Police Training Commission, Dismissal Notice, dated October 18, 2018

R-5 New Jersey Motor Vehicle Services, Driver Inquiry and Abstract, dated December 8, 2020

R-6 Bergenfield Municipal Court, Summonses, dated October 27, 2020

R-7 State of New Jersey Police Training Commission, Notice of New Appointment, dated July 5, 2018