



STATE OF NEW JERSEY

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

In the Matter of Keith Scott,
Department of Corrections

CSC Docket No. 2021-1868

Interim Relief

ISSUED: AUGUST 6, 2021 (JET)

Keith Scott, a Senior Correctional Police Officer with Garden State Youth Correctional Facility, Department of Corrections, represented by Giovanna Giampa, Esq., petitions the Civil Service Commission (Commission) for interim relief of his immediate suspension without pay, effective May 14, 2021.

As background, on May 14, 2021, the appointing authority served the petitioner with a Preliminary Notice of Disciplinary Action (PNDA), suspending him without pay effective May 14, 2021, and charging him with conduct unbecoming an employee, violation of a rule, regulation, policy, procedure, and other sufficient cause. Specifically, the PNDA alleged that on March 7, 2021, the petitioner posted a video¹ to his TikTok social media account that threatened Custody staff. The PNDA alleged that, as a result of the video, staff expressed fear as they believed the video was posted by the petitioner in response to being harassed by staff regarding a relationship he maintained with a widow of a deceased Correctional Police Officer.² On May 18, 2021, a pre-termination hearing was conducted and it was determined that the appellant exercised poor judgement in posting the TikTok video, as it showed disturbing gestures and violent language. As such, the pre-termination decision found that the appellant had disregarded the professional requirements which should be displayed by a Correctional Police Officer. As such, the appellant was suspended without pay

¹ The video allegedly shows the appellant lip syncing the words to a song as consistent with a TikTok trend known as “Sea Shanty.”

² The appointing authority, upon notification of the of the March 7, 2021 incident, initially suspended the petitioner and subsequently returned him to duty with pay pending a pre-termination hearing. He relinquished his service weapon pending the outcome of this matter.

pending the departmental hearing. The departmental hearing has not yet been conducted.

In this matter, the petitioner requests to receive his salary and be restored to his position. The petitioner argues that a clear likelihood of success exists in this matter, since the appointing authority was aware as of March 7, 2021 of the video's existence, and he was not issued a PNDA until May 14, 2021. The petitioner maintains that the appointing authority did not charge him until over 60-days had passed after it was notified of the video, which is a clear violation of the 45-day rule. *See N.J.S.A. 40A:14-147.* The petitioner adds that the confidential informant who notified the appointing authority of the video, upon investigation, denied that he had felt threatened, harassed, or victimized, and believed the video was not threatening to the alleged victim. The petitioner contends that he was not perceived as unfit for duty, a hazard to anyone, or that the immediate suspension was necessary to maintain the safety and effective direction of public services of the facility. The petitioner states that he was permitted to remain on duty, albeit without a service weapon, for two months while awaiting a pre-termination hearing, and he is essentially being victimized as the appointing authority acknowledges in the charges that he was harassed by staff. The petitioner adds that it would set a bad example to the other Officers and he will experience irreparable harm if the suspension without pay is continued. The petitioner asserts that the appointing authority has not presented any evidence of any substantial harm or injuries, as there is no evidence that anyone was victimized or are in fear of the petitioner as a result of the video. As such, the petitioner maintains that the public interest is best served by returning him to duty, or in the alternative, implementing a suspension with pay. Moreover, the petitioner contends that, although he is a public employee, the posting of the video constitutes his right to free speech.

In response, the appointing authority, represented by Sean P. Havern, Deputy Attorney General, maintains that the petitioner's request in this matter should be denied. Specifically, the appointing authority asserts that the charges against petitioner stem from the posting of his TikTok video where he lip syncs a song that contains violent lyrics and makes disturbing gestures. The appointing authority explains that, although a pre-termination hearing was conducted, the petitioner is still awaiting a departmental hearing and, as such, the underlying charges cannot be resolved until the petitioner appeals the outcome of the departmental hearing to this agency. The appointing authority states that the petitioner has not satisfied the factors for interim relief in this matter, as he has not demonstrated a clear likelihood of success, shown irreparable harm, evidenced that substantial injuries have not occurred, that there is a lack of effective public services, or that the public will be best served by returning him to duty. The appointing authority adds that the 45-day rule is not applicable, as *N.J.S.A. 40A:14-147* does not require the appointing authority to issue the disciplinary action within 45-days of acquiring information pertaining to the infraction. Rather, the statute provides that the disciplinary action must be

issued “no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based.” In this regard, the appointing authority explains that, although the appointing authority was notified about the incident on March 7, 2021, an investigation was required to conduct interviews and determine if the complaint was substantiated. The appointing authority states that the investigation of the March 7, 2021 complaint was completed on May 5, 2021, and as a result, the PNDA was served on May 14, 2021 and was well within the 45-day timeframe. The appointing authority adds that the charges are not limited to the appointing authority’s internal rules, but rather, include the additional charges of conduct unbecoming an employee and other sufficient cause in accordance with this agency’s rules. *See N.J.A.C. 4A:2-2.3*. The appointing authority also maintains that the 45-day rule is not applicable to the charges in the instant case. The appointing authority asserts that since the TikTok video includes violent language and gestures, it was appropriate to suspend the petitioner to maintain the safety, health, order, or effective direction of public services. Moreover, the appointing authority states that the appellant’s financial situation can be remedied should he be successful in his appeal.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

In reviewing this matter, it is not necessary to address the merits of the charges against the petitioner. The issue to be determined is whether the nature and seriousness of the charges support the necessity for an immediate suspension.

N.J.S.A. 11A:2-13 and *N.J.A.C. 4A:2-2.5(a)1* provide that an employee may be suspended immediately without a hearing if the appointing authority determines that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. Additionally, where the suspension is immediate, the PNDA must be served within five days following the immediate suspension.

N.J.A.C. 4A:2-2.5(b) provides, in pertinent part, that when an employee is suspended immediately and without pay, the employee must be apprised orally or in writing of why the suspension is sought, the charges and general evidence in support of the charges, and provided sufficient opportunity to review the charges and the

evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

In the present case, the charges in the PNDA are undoubtedly serious. If the petitioner, a Senior Correctional Police Officer, allegedly posted a video of himself on TikTok making inappropriate gestures and miming a song with violent lyrics that allegedly threatened other Correctional Police Officers, his continued employment would negatively impact the order and effective direction of public services and would compromise the integrity of the appointing authority. As such, the petitioner's immediate suspension was clearly warranted.

With respect to his due process rights, the record reflects that the petitioner was apprised orally and in writing that he was immediately suspended on May 14, 2021, and was provided the basis for his suspension. The petitioner was served with the May 14, 2021 PNDA, charging him with conduct unbecoming an employee, violation of a rule, regulation, policy, procedure, and other sufficient cause, and the petitioner admits in this matter that a pre-termination hearing was conducted on May 18, 2021. The specification as indicated in the PNDA is the general evidence supporting the charges. Moreover, the PNDA was served within five days after the petitioner was suspended and the appellant was clearly notified of the charges against him orally and in writing.

With respect to the petitioner's argument that there was a violation of the 45-day rule, the petitioner's arguments in that regard are not applicable in this matter. *N.J.S.A. 40A:14-147* states:

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The 45-day time limit shall not apply if an investigation of a law enforcement officer for a violation of the internal rules and regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State. The 45-day requirement of this paragraph for the filing of a complaint against an officer shall not apply to a filing of a complaint by a private individual.

In this case, the appellant was charged with general causes for disciplinary action specified in *N.J.A.C. 4A:2-2.3* and internal rules and regulations concerning

employee conduct. The charges based on the violations of *N.J.A.C.* 4A:2-2.3 are not violations of internal rules and regulations. Therefore, *N.J.S.A.* 40A:14-147 does not apply to those charges. Regardless, even assuming, *arguendo*, that the appellant was solely charged with departmental charges, the record does not evidence a violation of the 45-day rule. The appointing authority explained that the March 7, 2021 complaint required an investigation prior to the issuance of the subject charges. A review of the record reveals that the PNDA was issued after the investigation had ended on May 5, 2021. At that point, the person filing the complaint had sufficient information to file the matter on which the complaint was based and did so on May 14, 2021, well within the 45-day period.

Other than his asserted procedural violations, the petitioner has not conclusively demonstrated that he will succeed in having the underlying charges dismissed and has not shown a clear likelihood of success on the merits. Given the serious nature of the charges, it is clear that the appointing authority met the standards for an immediate suspension enunciated in *N.J.A.C.* 4A:2-2.5(a)1. Moreover, the petitioner has not shown that he is in danger of immediate or irreparable harm if this request is not granted. While the Commission sympathizes with his financial situation, the harm that he is experiencing while awaiting his hearing is purely financial in nature, and as such, can be remedied by the granting of back pay should he prevail in his appeal. Moreover, the petitioner contends that the appointing authority would not be adversely affected if he were immediately returned to his position. However, the Commission does not find this argument persuasive. Based on the circumstances involved in the petitioner's alleged conduct, it would be harmful to the appointing authority, as well as the public at large, to allow an individual to be returned to employment without resolving the charges against him at a departmental hearing. In this regard, 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), *In re Phillips*, 117 *N.J.* 567 (1990). Accordingly, the petitioner's request for interim relief is denied.

ORDER

The Civil Service Commission orders that the petitioner's request for interim relief 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 4TH DAY OF AUGUST, 2021

Deirdre' L. Webster Cobb

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