



STATE OF NEW JERSEY

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

In the Matter of Benjamin Daniels,
Department of Corrections

CSC Docket No. 2021-1466

Reassignment Appeal

ISSUED: SEPTEMBER 24, 2021 (EG)

Benjamin Daniels, a Correctional Police Lieutenant with the Department of Corrections, appeals his reassignment.

As background, the appellant was hired as a Correction Officer Recruit in September 1994.¹ He received a permanent appointment to Correctional Police Officer on October 1, 1994. The appellant was appointed as a Correctional Police Sergeant on December 1, 2001 and Correctional Police Lieutenant on June 23, 2007. Official records indicate the appellant was assigned to work at Central Reception and Assignment Facility (CRAF) from October 9, 2010 to January 30, 2021. On January 30, 2021 the appellant was reassigned to New Jersey State Prison (NJSP) due to the closure of CRAF.

On appeal, the appellant argues that he was involuntarily reassigned to “another facility” without cause. He claims that his reassignment was in retaliation for him testifying as a witness in a deposition on February 21, 2021, during a discrimination matter against the appointing authority. Additionally, the appellant asserts that his reassignment was reprisal for having filed a Conscientious Employee Protect Act (CEPA) claim against New Jersey State Prison and in particular, Correctional Police Major C.S., for a cover-up by corrections staff utilizing inmate labor to perform custody staff duties and allowing inmates to utilize custody staff computer access codes. Further, the appellant states that he accepted an assignment to NJSP when CRAF closed. He adds that on March 20,

¹ The Correction Officer title series has been by the Correctional Police title series.

2021², he was then involuntarily transferred from NJSP to Northern State Prison and subsequently reassigned to Mid-State Prison. Moreover, the appellant contends that he was told that his reassignment was due to an impending investigation but that he was not advised as to the context of the investigation.

The appellant argues that per the contractual agreement between his bargaining unit and the appointing authority, he could only be reassigned for cause, to improve or maintain operational effectiveness, or to provide development and job training. The appellant argues that his reassignment was not for any of those reasons, and that he was not moved until after his deposition against the appointing authority and his filing a CEPA complaint. Finally, the appellant requests that the Civil Service Commission (Commission) intervene in his involuntary reassignment and direct the appointing authority to return him to his “previous post.”

In response, the appointing authority argues that the appellant’s contentions concerning his involuntary reassignment to another facility are without merit. It states that it may reassign staff to improve or maintain operational effectiveness. In this regard, it argues that an Ethics Investigation found that the appellant entered into a romantic relationship with a subordinate officer in the same facility, without the benefit of a recusal on file. Information provided by the appointing authority indicated that the Ethics Investigation found that the appellant was cohabitating with the other officer and was considering purchasing a home with this person, while he was also advocating for this officer to receive a pay adjustment. Moreover, the appointing authority submitted a copy of a Preliminary Notice of Disciplinary Action (PNDA) dated March 29, 2021, charging the appellant with ethics violations and seeking a 120-working day suspension, a demotion to Senior Correctional Police Officer, and that he be barred from ever working in the same facility as the officer he was in a relationship with.

In reply, the appellant provides numerous arguments and exhibits³ to argue the validity and findings of the Ethics Investigation.⁴

CONCLUSION

Initially, the Commission notes that it does not have the authority to review an Ethics Investigation in the context of the present appeal. There is no statute or regulation which provides an individual the right to appeal an Ethics

² Official records do not currently indicate that the appellant was reassigned from NJSP.

³ The appellant provided 50 separate exhibits and a copy of the lawsuit in which he testified against the appointing authority.

⁴ As noted in the conclusion of this decision, the Commission has no authority to review an Ethics Investigation in this appeal, and thus the appellant’s arguments and exhibits regarding the findings of the Ethics Investigation warrant no further discussion at this time.

Investigation's findings to the Commission. The appellant may however, choose to raise such arguments during his disciplinary hearings.

N.J.A.C. 4A:4-7.2 provides, in pertinent part, that reassignments shall be made at the discretion of the head of the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit. *N.J.S.A.* 11A:4-16 and *N.J.A.C.* 4A:4-7.7 provide that a reassignment shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a reassignment, the burden of proof shall be on the employee.

The appellant has argued that his reassignment was contrary to provisions contained in his contractual agreement between his bargaining unit and the appointing authority. The Commission generally does not enforce or interpret items that are contained in a collective bargaining agreement between the employer and the majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). The proper forum to bring such concerns is the Public Employment Relations Commission. *See N.J.S.A.* 34:13A-5.3 and *N.J.S.A.* 34:13A-5.4(c).

Nevertheless, the appellant has the right to appeal his reassignment to the Commission, which may properly consider whether a reassignment is appropriate under *Civil Service* law and regulations. In that regard, reassignments are at the discretion of the appointing authority, but they may not be used for disciplinary purposes except when disciplinary procedures have been utilized and must be made in good faith. *See N.J.A.C.* 4A:4-7.2 and *N.J.A.C.* 4A:4-7.7. On the record in this matter, there is substantive proof that the appellant's reassignment was proper as the disciplinary process was utilized. The appellant was reassigned due to the findings of an Ethics Investigation. Additionally, the appellant was issued a PNDA based on those findings and was seeking to impose a 120-working day suspension, a demotion to Senior Correctional Police Officer, and that he be barred from ever working in the same facility as the officer he was in a relationship with.

Turning to the appellant's claim of reprisal, *N.J.A.C.* 4A:2-5.1 generally provides that an appointing authority shall not take or threaten to take any reprisal action against employees in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority or on the employee's permissible political activities or affiliations. *See also, N.J.S.A.* 11A:2-24. In *Katherine Bergmann v. Warren County Prosecutor*, Docket No. A-5665-01T5 (App. Div. December 1, 2004), it was determined that an employee asserting a cause of action under *N.J.S.A.* 11A:2-24 is required to prove the following elements:

- 1) The employee “reasonably believed” in the integrity of the disclosure at the time it was made, meaning the employee had no reasonable basis to question the substantive truth or accuracy of the content of the disclosure just prior to communication (it is here that the term “reasonable belief” is borrowed from the Conscientious Employee Protection Act (CEPA), *N.J.S.A. 34:19-1, et seq.*, to define what is the substantive content of a “lawful disclosure”);
- 2) The employee disclosed the information to a source “reasonably” deemed an appropriate recipient of such information just prior to communication (here, the term “reasonably” is used to describe the perceived proper channels through which a “lawful disclosure” should be communicated);
- 3) There is a connection, or nexus, between the disclosure and the complained of action (this is a standard cause-and-effect showing by the employee). *Carlino v. Gloucester City High School*, 57 *F. Supp. 2d* 1, 35 (D.N.J. 1999); *Kolb v. Burns*, 320 *N.J. Super.* 467, 476 (App. Div. 1999).

Only after the employee satisfies the criteria above does the appointing authority bear the burden of showing that the action taken was not retaliatory. *See Wright Line*, 251 *NLRB* 1083 (1980); *Mount Healthy City School District Bd. of Educ. v. Doyle*, 429 *U.S.* 274 (1977).

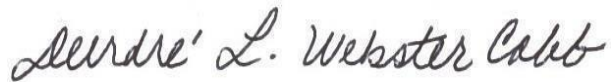
Using the test as enumerated above, the appellant has presented a *prima facie* case of reprisal. His contention that the reprisal was due to his testify in a discrimination complaint against the appointing authority and the filing of a CEPA complaint shortly before his reassignment satisfy the three requirements enumerated above. Thus, the burden shifts to the appointing authority to show that its actions were not retaliatory. In this regard, the appointing authority has met its burden and demonstrated that its actions were not retaliatory. As noted above, the appellant’s reassignment was due to his ethics violations. Further, the violations were of a serious nature and resulted in the appointing authority seeking to impose major discipline upon the appellant, and included the appellant being barred from working in the same facility as the subordinate officer he was in a relationship with. Therefore, in the present matter, the appellant’s reassignment was clearly not an act of reprisal.

ORDER

Therefore, it is ordered that the appellant's appeal be denied. It is further ordered that the appointing authority update personnel records with the appellant's reassignment.

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 22 DAY OF SEPTEMBER, 2021



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Benjamin Daniels
Lisa Gaffney
Division of EEO/AA
Records Center