



STATE OF NEW JERSEY

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

In the Matter of Mario Fucci,
Salem County

CSC Docket No. 2022-1336

Interim Relief

ISSUED: MARCH 25, 2022 (JET)

Mario Fucci, a Sheriff’s Officer Sergeant¹ with Salem County, represented by Ben Weathers, Esq., petitions the Civil Service Commission (Commission) for relief of his demotion.

As background, the petitioner, while assigned to the appointing authority’s drone unit, on July 13, 2021, operated and damaged the appointing authority’s drone. The petitioner reported the drone’s damage, and his supervisors determined that the petitioner identified a different drone in the documentation he submitted pertaining to the incident.² As a result, an Internal Affairs investigation was conducted, and the petitioner admitted during the investigation that he had inaccurately reported the incident pertaining to the drone. The appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) dated October 20, 2021, recommending a 25-day suspension, and demotion to Sheriff’s Officer. A limited purpose hearing was held pursuant to *N.J.A.C. 4A:2-2.5(a)* on February 3, 2022,³ and it was determined that the petitioner’s lack of candor was sufficient to demote him to the position of Sheriff’s Officer, as remaining in his supervisory position would be detrimental to the appointing authority’s ability to provide effective services to the public and its ability maintain order within the organization. To date, no departmental hearing on the merits of the charges has been held.

¹ Official personnel records reflect that the petitioner was demoted to Sheriff’s Officer, effective February 7, 2022.

² The petitioner reported the incident in the Unmanned Aircraft System (UAS) Flight Activity Log.

³ The appointing authority continued to pay the petitioner as a Sheriff’s Officer Sergeant until the February 3, 2022 pre-termination hearing.

In his petition for interim relief, the petitioner asserts that on October 21, 2021, he requested a departmental hearing, and that the demotion be rescinded until the time the departmental hearing could be conducted. The petitioner states that, although his attorney confirmed that the appointing authority would not demote him, the appointing authority subsequently notified him that it would conduct a limited purpose hearing to address the issue pertaining to demotion. The petitioner explains that, in response, his attorney informed the appointing authority that it was inappropriate to conduct a limited purpose hearing with respect to determining if the petitioner should be demoted.⁴

Additionally, the petitioner asserts that he has a clear likelihood of success on the merits, as the appointing authority's actions of demoting him is in violation of Civil Service law and rules. The petitioner adds that he is likely to experience immediate or irreparable harm if his request is not granted, as the appointing authority deliberately refuses to comply with Civil Service law and rules, and he has been inappropriately subjected to major discipline. The petitioner states that even if he receives monetary relief, it would not be sufficient to overcome the irreparable harm that he is experiencing in this matter. The petitioner argues that there is an absence of substantial injury to other parties if his request is granted, as the appointing authority would not suffer any hardship by reinstating him to his position in compliance with Civil Service rules. The petitioner adds that the public interest would not be harmed, as enforcing the petitioner's rights is within the public's interest. Moreover, the petitioner asserts that the appointing authority should immediately rescind the demotion until the departmental hearing has been held, and he should be entitled to receive retroactive differential back pay.

In response, the appointing authority, represented by Joseph M. DeNicola, Esq., asserts that the petition should be denied, as the petitioner has not established that he has been subjected to irreparable harm, nor has he shown that the appointing authority acted improperly with respect to his demotion. The appointing authority adds that the petitioner is not experiencing irreparable harm, as he would be awarded back pay if he is successful in an appeal of his demotion. Further, the appointing authority explains that the petitioner did not lose any pay from the time the PNDA was issued to the date that the February 3, 2022, pre-termination hearing was conducted. The appointing authority states that it notified the petitioner of the pre-termination hearing, and since it did not receive a response from the petitioner, it properly conducted the pre-termination hearing and he was demoted.⁵

⁴ The petitioner states that, on November 16, 2021, the appointing authority asked the petitioner to report to work in uniform without his Sergeant's stripes, as he had been demoted.

⁵ The appointing authority maintains that such action is appropriate pursuant to *N.J.A.C. 4A:2-2.5* and *Cleveland. Bd. Of Education v. Loudermill*, 470 U.S. 532 (1985).

The appointing authority asserts that the petitioner did not accurately complete documents pertaining to the drone activity in which he was involved, and given that the petitioner was serving in the supervisory rank of Sergeant, it was appropriate to demote him in order to provide effective services to the public and maintain order within the organization. The appointing authority states that the petitioner's actions were so egregious as to warrant his demotion.⁶ Moreover, the appointing authority asserts that the petitioner has not requested a departmental hearing.

In response, the petitioner asserts that he was on vacation from January 28, 2022 to February 10, 2022, and as such, he could not schedule a departmental hearing, and he could not agree to a stipulation of the facts without the benefit of a departmental hearing. The petitioner states that he requested a conference with the hearing officer to discuss the demotion, and to date he has not received a response. The petitioner adds that he was notified by way of a February 3, 2022, letter that he was to respond to the allegations against him in the PNDA by February 4, 2022, or he would be demoted in rank and his pay would be reduced. The petitioner states that the appointing authority indicated that "an immediate demotion in rank would be afforded the same due process rights as an immediate suspension without pay." The petitioner contends that the appointing authority did not provide any legal authority with respect to the due process rights afforded to him.⁷

Moreover, the petitioner asserts that, although he did not lose any pay prior to February 7, 2022, he experienced immediate and irreparable harm in the form of lost benefits, including being demoted and his stripes being removed from his uniform. The petitioner adds that he was reassigned as an officer, and he was required to take orders from other Sergeants and from employees who were previously his subordinates. The petitioner states, after he was demoted, another employee was promoted to the position of Sergeant.

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;

⁶ The appointing authority adds that it provided the petitioner with an opportunity to settle the matter which would not have resulted in a reduction of pay, but the matter was not settled.

⁷ The petitioner adds that he sent a letter to the appointing authority inquiring about what legal authority the appointing authority was relying on with respect to the due process rights afforded to a public employee where an employer seeks an immediate suspension without pay pursuant to *Loudermill* are applicable when the employer seeks an immediate demotion in rank as discipline. On February 7, 2022, an FNDA was issued by the appointing authority, which imposed a demotion on the petitioner to the position of Sheriff's Officer.

2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

In the instant matter, the petitioner has demonstrated, based on the standards above, that he is entitled to interim relief. In this matter, it is not the merits of the charges at issue, but rather, whether the appointing authority's "immediate demotion" was appropriate. *N.J.A.C.* 4A:2-2.5(a) provides that an employee must be served with a PNDA setting forth the charges and statement of facts supporting the charges, and afforded the opportunity for a hearing prior to the imposition of major discipline. *N.J.A.C.* 4A:2-2.5(a)1 provides that an employee may be immediately **suspended** without pay prior to a hearing.⁸ *N.J.A.C.* 4A:2-2.5(d) provides that a departmental hearing, if requested, shall be held within 30 days of the issuance of the PNDA unless waived by the employee or a later date as agreed to by the parties.

In this matter, the petitioner accurately states that the appointing authority improperly demoted him prior to conducting a substantive departmental hearing pursuant to *N.J.A.C.* 4A:2-2.5(a). In this regard, *N.J.A.C.* 4A:2-2.5(a)1 does not provide any information indicating that employees may be immediately *demoted* prior to a departmental hearing. Rather, the rules only indicate that employees may be immediately *suspended* prior to a departmental hearing under certain circumstances. There is no Civil Service law, rule or standard that permits an "immediate demotion." Since a PNDA was issued and the petitioner requested a departmental hearing prior to the demotion, the appointing authority in this matter infringed upon the petitioner's entitlement to a departmental hearing prior to imposing discipline. Based on the facts presented in this matter, the limited purpose hearing should not have been substituted for the departmental hearing. More importantly, it was inappropriate for the appointing authority to utilize a limited purpose hearing to immediately demote the petitioner. Limited purpose hearings are conducted when it is necessary to address if an immediate **suspension** is necessary based on the severity of the disciplinary charges at issue. Although the appointing authority argues that it went forward with the limited purpose hearing because the petitioner did not respond to the notice pertaining to it, such arguments are without merit for the reasons noted above.

Additionally, since the petitioner requested a stay of the demotion until a departmental hearing could be conducted, and since the October 20, 2021, PNDA specifying the charges recommended a 25-day suspension, the appointing authority appropriately should have scheduled the departmental hearing. In this matter, the parties admit that the departmental hearing could not be scheduled as settlement discussions were being conducted, and the petitioner admits that he could not agree

⁸ *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.

to a date to schedule the departmental hearing as he was on vacation for part of the time proposed by the appointing authority. Since the petitioner requested a departmental hearing, he did not waive his rights to have a departmental hearing conducted. As such, if it has not already done so, upon receipt of this decision, the appointing authority must immediately schedule a departmental hearing to be conducted with respect to the administrative charges, and it should be held as soon as possible.

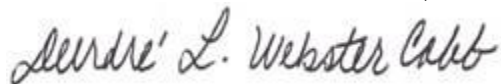
Based on the imposition of the procedurally deficient immediate demotion, the Commission finds that the petitioner is entitled to differential back pay, benefits and seniority as of the first date of his demotion to the date that an FNDA is issued.⁹ However, such procedural errors do not warrant dismissal of the underlying charges. The charges against the petitioner are serious and the Commission will not dismiss such charges based on procedural errors. Moreover, the Commission has provided an appropriate remedy in this circumstance and should the petitioner be successful at the departmental hearing or upon any subsequent appeal to the Commission based on the discipline ultimately imposed, he will be afforded all other appropriate remedies. Finally, the appointing authority is cautioned that, in the future, it strictly follow the provisions of *N.J.A.C.* 4A:2-2.1, *et seq.*, in imposing future disciplinary actions.

ORDER

The Civil Service Commission orders that the petition be granted in part and the petitioner be granted differential back pay, benefits, and seniority from the first date of his demotion until the actual date an FNDA is issued. The Commission further orders the appointing authority to conduct the departmental hearing on the merits of the charges as soon as possible.

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 23RD DAY OF MARCH, 2022



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

⁹ As noted above, the appointing authority states that the petitioner was paid until February 3, 2022, but the County Municipal and Personnel System (CAMPS) indicates that the petitioner was demoted effective February 7, 2022.

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