

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF NOVEMBER, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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

SUMMARY DECISION

OAL DKT. NO. CSR 00373-22

AGENCY DKT. NO. N/A

2022-1445

**IN THE MATTER OF LINDA ORTIZ,
MIDDLESEX COUNTY,
DEPARTMENT OF CORRECTIONS.**

Timothy J. Prol, Esq., for appellant (Alterman & Associates, LLC, attorneys)

**Benjamin D. Leibowitz, Senior Deputy County Counsel, for respondent (Thomas
F. Kelso, County Counsel)**

Record Closed: August 25, 2022

Decided: September 23, 2022

BEFORE TRICIA M. CALIGUIRE, ALJ:

STATEMENT OF THE CASE

Appellant Linda Ortiz (appellant or Ortiz) was diagnosed with cancer in September 2019 and has not worked since October 2019. Though a member of the Public Employees' Retirement System (PERS), Ortiz is not eligible for ordinary disability retirement benefits. As of April 2020, Ortiz has received long-term disability insurance benefits. Even though Ortiz has not worked for close to three years, her employer, respondent Middlesex County Department of Corrections (respondent or County), cannot

fill Ortiz's position as a County Correction Police Officer unless Ortiz resigns or is terminated. Ortiz is not willing to resign, lest she lose her long-term disability insurance benefits. Therefore, respondent terminated Ortiz's employment on charges of inability to perform duties; chronic or excessive absenteeism or lateness; and other sufficient cause, specifically, medical inability to perform job duties and unauthorized absence. Ortiz appeals that decision.

PROCEDURAL HISTORY

On October 6, 2021, respondent served Ortiz with a Preliminary Notice of Disciplinary Action (PNDA), charging her with (1) inability to perform duties in violation of N.J.A.C. 4A:2-2-2.3(a)(3); (2) chronic or excessive absenteeism or lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); and (3) other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically medical inability to perform job duties and unauthorized absence. Ortiz did not request a departmental hearing, and, on December 7, 2021, respondent issued a Final Notice of Disciplinary Action (FNDA) to Ortiz, sustaining all charges against her, with notice that she would be removed from employment effective October 6, 2021.

Ortiz filed an appeal on December 13, 2021, and the Civil Service Commission (CSC) transmitted this matter on January 6, 2022, to the Office of Administrative Law (OAL), which filed it for determination 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. The parties appeared for a telephone prehearing conference on February 4, 2022, and stated their intention to engage in settlement discussions.¹

During three subsequent status conferences, the parties reported on continuing settlement discussions but, settlement was not reached and on June 28, 2022, appellant filed a motion for summary decision in her favor claiming there are no genuine issues of material fact in dispute. Specifically, appellant seeks a ruling that summary decision be

¹ During this conference, counsel for Ortiz stated on behalf of his client that he would enter a waiver of the statutory deadline of 180 days for a final decision in this matter. To date, such waiver has not been received. Given that Ortiz is not able to return to work for medical reasons and has been on unpaid status since September 2020, counsel's failure to supply the waiver is of little consequence.

granted in her favor finding that because she was approved for disability insurance benefits prior to the effective date of removal, the disciplinary charges are moot. On July 18, 2022, respondent filed a cross-motion for summary decision in its favor seeking a finding that Ortiz is guilty of the charges described in the FNDA and that she was properly removed from employment; notwithstanding the foregoing, respondent requests a modification of the removal to a resignation in good standing.

The parties appeared for oral argument on August 24, 2022. By letter, dated August 24, 2022, counsel for appellant confirmed that neither party would file additional briefs and the cross-motions are now ripe for review.

FACTUAL DISCUSSION AND FINDINGS

Based on the papers filed by the parties in this case, including the certifications of appellant and of Joseph Revolinsky (Revolinsky), Middlesex County Director of Labor Relations and Compliance, and arguments of counsel, I **FIND** the following undisputed **FACTS**:

On July 8, 2013, respondent hired appellant as a Correction Officer. This title was later renamed to Correction Police Officer. Appellant held this position until October 6, 2021, the effective date of her removal from employment.

As of July 8, 2013, appellant was older than thirty-five years old, making her ineligible for membership in the Police and Firemen's Retirement System (PFRS). She became a member of the Public Employees' Retirement System (PERS), Tier 5.

For medical reasons, appellant has not worked since October 14, 2019. She applied and was deemed eligible for short term disability benefits, which she received until December 2019.

Between December 6, 2019, and September 28, 2020, appellant was returned to full pay status using donated sick leave. Between September 29, 2020, and February 16,

2021, appellant again received short term disability benefits and has had no income since February 16, 2021. Certification of Linda Ortiz (October 21, 2021), ¶¶ 1-8.

Respondent stated that as of September 29, 2020, when appellant exhausted donated sick leave, she began unpaid medical leave.² Pursuant to County Human Relations (HR) Policy 1:13-9, a county employee may continue in unpaid status for one year. Certification of Joseph Revolinsky (July 15, 2022), Ex. 7.

Appellant became a member of PERS after May 21, 2010, as a Tier 5 employee, and was therefore not eligible for ordinary or accidental disability retirement benefits. N.J.S.A. 43:15A-42.1(a). She was, however, eligible for long-term disability insurance coverage as follows:

The disability benefit coverage . . . shall provide a monthly income if the member becomes totally disabled from occupational or nonoccupational causes for a period of at least six consecutive months following the effective date of the coverage. The monthly disability benefit may be paid by the insurance company so long as the member remains disabled up to the seventieth birthday, provided the disability commenced prior to the sixtieth birthday. The benefit shall terminate when the member is no longer considered totally disabled or begins to receive retirement benefits.

The member shall be considered totally disabled if the member is unable to perform each duty of the member's occupation and is under the regular care of a physician.

[N.J.S.A. 43:15A-42.1(d).]

The parties agree that appellant is unable to perform each duty of a Correction Police Officer and is under the regular care of a physician, making her "totally disabled" for the purposes of N.J.S.A. 43:15A-42.1(d).

² After oral argument, the parties confirmed that the County computes unpaid medical leave without consideration of non-employer sources of wage replacement income, such as temporary disability insurance benefits.

The New Jersey Division of Pensions and Benefits published Fact Sheet #85, which includes the following summary of the Long-Term Disability Insurance Program for PERS Tier 4 and 5 employees, in pertinent part:

Most Tier 4 and 5 members hired on or after May 21, 2010, become eligible for long-term disability insurance coverage after one year of continuous employment in a PERS- or TPAF-covered position.

A disability benefit may begin after six consecutive months of disability due to an occupational or nonoccupational condition. To be considered disabled due to sickness . . . the member must be unable to perform the material and substantial duties pertaining to his/her regular occupation [and] must be under a doctor's regular care.

Benefits will be paid as long as the member remains disabled or until the member attains age 70.

[Revolinsky Cert., Ex. 6.]

On August 26, 2021, appellant filed for long-term disability insurance benefits with Prudential Insurance Company, which administers the long-term disability insurance program for PERS. This claim was initially denied, but appellant appealed and after reconsideration, on February 3, 2022, Prudential approved appellant's claim pursuant to N.J.S.A. 43:15A-42.1, with an effective date of April 6, 2020. Br. of Appellant in Support of Motion for Summary Decision (July 6, 2022), Ex. B.

Respondent's policy regarding employee disability leave is that after an employee has exhausted their paid leave, including the use of donated time, the County will maintain the employee in unpaid status for one year. The County does not replace an employee as long as he or she is on unpaid leave.³

³ It is unclear whether the inability of respondent to hire someone to fill appellant's position while she is on disability leave—even if such leave is long-term—is a matter of policy, regulation, or contract. Appellant does not dispute respondent's statement regarding its inability to replace her position.

POSITIONS OF THE PARTIES

Appellant contends that summary decision in her favor is appropriate here as there is no dispute that: she suffers a disabling medical condition that prevents her from performing the duties of a Correction Police Officer; she filed for long-term disability benefits prior to the effective date of removal; her appeal of the initial denial of benefits was pending at the time of removal; and she was granted benefits effective more than one year prior to the effective date of removal. Simply put, the disciplinary charges were imposed after the effective date of approval for disability insurance benefits, making the discipline moot.

Respondent contends that summary decision in its favor is appropriate as Ortiz has been medically unable to perform her job as a Correction Police Officer from the time she left employment for medical reasons in September 2019, through October 6, 2021, the effective date of her removal. For this reason, and because there was no reason to anticipate appellant's recovery in the foreseeable future, respondent contends that it had good cause to remove appellant from employment. Unless appellant's employment is terminated by removal for violations of the above-cited regulations, respondent cannot replace her in the workforce. Given, however, that this discipline is rendered due to appellant's inability to return to work and not for misconduct, respondent seeks to modify the penalty to a resignation in good standing. See I/M/O Thalia Tretsis, Middlesex Cty Sheriff's Office, OAL Dkt. Nos. CSR 18651-17 and CSR 05113-18, Final Decision (May 1, 2020), https://njlaw.rutgers.edu/collections/oal/final/csr18651-17_2.pdf.

LEGAL ANALYSIS AND CONCLUSIONS

Standards for Summary Decision

Summary decision is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute. By applying the applicable law and standard of proof to the undisputed facts, a decision may be reached in a case without the necessity of a hearing at which evidence is

presented and testimony taken. The procedure is equally applicable in judicial as well as executive branch administrative proceedings. N.J.A.C. 1:1-12.5.

The regulations provide that the decision sought by the movant "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). Here, the parties agree that the absence of disputed facts makes summary decision appropriate.

The standards for determining motions for summary judgment are found in Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74–75 (1954), and later in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). A motion for summary decision may only be granted where the moving party sustains the burden of proving "the absence of a genuine issue of material fact," and all inferences of doubt are drawn against the movant. Judson, 17 N.J. at 74-75. Summary decision is appropriate when "the evidence . . . is so one-sided that one party must prevail as a matter of law." Brill, 142 N.J. at 541 [quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)]. In reviewing the proffered evidence to determine the motion, the judge must be guided by the applicable evidentiary standard of proof that would apply at trial on the merits.

In an appeal of major disciplinary action, such as involved here, the burden is on the appointing authority to establish by a preponderance of the credible evidence that the employee is guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Respondent charged appellant with (1) inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(3); (2) chronic or excessive absenteeism or lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); and (3) other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically medical inability to perform job duties and unauthorized absence. All charges arise out of appellant's failure to report to work after October 14, 2019.

Appellant's Claim that the Proposed Discipline is Moot

Appellant argues that respondent's discipline is moot because the FNDA was issued after she had applied for long-term disability insurance benefits and the effective date of termination, October 6, 2021, is more than one year after the date from which she was deemed eligible for long-term disability insurance benefits. Respondent counters that the receipt of insurance benefits does not change that appellant has been unable to work—and has not reported for work—for more than one year, making disciplinary removal appropriate, even though respondent has modified the determined penalty of removal to a resignation in good standing, as the basis for the removal is appellant's medical condition and not any misconduct.

An action is moot when the decision sought "can have no practical effect on the existing controversy." Redd v. Bowman, 223 N.J. 87, 104 (2015); Greenfield v. N.J. Dep't of Corrs., 382 N.J. Super. 254, 257-58 (App. Div. 2006). For reasons of judicial economy and restraint, it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976). Consequently, if a party "still suffers from the adverse consequences to [him] caused by [a] proceeding," an appeal is not moot. Div. of Youth and Family Servs. v. G.M., 398 N.J. Super. 21, 51 (App. Div. 2008), aff'd as modified on other grounds, 198 N.J. 382 (2009).

Appellant supports her claim of mootness with cases in which employers issued terminations after the employees' applications for disability retirement had been approved; when the effective date of disability retirement preceded the effective date of the proposed termination, the disciplinary action was moot as the employee was no longer subject to such discipline. See In re Jewell, OAL Dkt. No. CSV 07396-09, Initial Decision (July 2, 2010); In re Acevedo, OAL Dkt. No. CSV 11356-08, Initial Decision (December 15, 2008), adopted, Civ. Serv. Comm. (February 11, 2009). Both cases, however, differ significantly from appellant's case as Jewell and Acevedo involved employees who retired on disability benefits prior to the effective date of the discipline. When an employee retires prior to discipline being issued, the discipline can have no effect; the matter is moot. Cf., In re Dunson, OAL Dkt. No. 13136-08, Initial Decision (May 6, 2010), Aff'd., Final Decision

(June 10, 2010) (discipline upheld when police officer was approved for disability retirement after issuance of FNDA), <https://njlaw.rutgers.edu/collections/oal/final/csv13136-08.pdf>.

Here, appellant did not retire before the effective date of the discipline; she became eligible for long-term disability insurance benefits prior to the effective date of the discipline. In other words, she was granted an alternate source of income through the insurance program before respondent terminated her employment, but she did not retire. As long as appellant remains an employee of the County, she is subject to discipline—even while on unpaid leave—and therefore, I **CONCLUDE** that the discipline issued by respondent to Ortiz is not moot.

Specific Charges Supporting Discipline

As stated above, it is undisputed that appellant is medically unfit to perform the duties of a full, active-duty Correction Police Officer and I so **CONCLUDE**. This is consistent with the grant by Prudential of Ortiz's application for long-term disability insurance benefits. At the same time, respondent recognizes that a "disciplinary penalty is unduly harsh when the employee can no longer function in his or her position because of a medical condition, not due to misconduct, or a deliberate or intentional action." In re Dunson, Initial Decision, citing Verdell v. N.J. State Dep't of Military and Veterans' Affairs, A-0497-04T5 (App. Div. 2006). Respondent has, therefore, modified the penalty sought in this matter to a resignation in good standing by which appellant shall be deemed to have resigned effective October 6, 2021.

Imposition of the Penalty

At oral argument, respondent made clear that as long as appellant remains on the County employment roll, respondent cannot replace her position of Correction Police Officer. Presumably, the effective administration of the County Department of Corrections requires staffing of all positions, including the one still held by appellant.

The statute creating the long-term disability insurance program states that current employees are eligible for insurance benefits while in service, until they retire:

A member shall be deemed to be in service and covered by the disability benefit insurance provisions for a period of no more than six months while on official leave of absence without pay if satisfactory evidence is presented to the Division of Pensions and Benefits that such leave of absence without pay is due to illness and that the member was not actively engaged in any gainful occupation during such period of leave of absence without pay.

When a member begins to receive a disability benefit under such group policy or policies, the insurance company shall pay an amount equal to the employee contribution which would have been required of the member and deducted from the member's base salary in order to meet the member's obligation for the purchase of the member's individual retirement annuity. Such amount shall be paid by the insurance company without reduction by any other periodic benefit which the member is eligible to receive. Such amount shall be paid by the insurance company to the insurer or insurers for the member's retirement annuity.

No employer obligations shall be paid when the member is on a leave of absence without pay or when the member no longer is enrolled in [PERS].

[N.J.S.A. 43:15A-42.1(e), (f), (g) (emphasis added).]

The Division of Pensions and Benefits similarly states that the long-term insurance program provides coverage for "Tier 4 and Tier 5 actively contributing members of the PERS." Revolinsky Cert., Ex. 7 (Fact Sheet #85) (emphasis added).

Recently, the Board of Trustees of PERS found that the clear language of N.J.S.A. 43:15A-42.1(e) requires an applicant for long-term disability insurance to be in active service at the time of application. In re Gonzalez, Final Administrative Decision (February 17, 2022), at 3 (Gonzalez "was no longer eligible to apply for [long-term disability] at the time her application was submitted, because she was no longer considered in active service after 6 months of her leave of absence under the plain language of the statute governing [long-term disability] benefits.").

Based on the Board's ruling in Gonzalez, if appellant were to have retired, resigned or been terminated prior to the date of her application to Prudential, she would not have been eligible for insurance benefits. Here, the date of appellant's application, August 26, 2021, preceded the effective date of her termination. Prudential determined that Ortiz became eligible for long-term disability insurance benefits on April 6, 2020, prior to the beginning of her unpaid leave of absence. The statute further provides that appellant "may" continue to receive benefits "so long as the member remains disabled up to the seventieth birthday, provided the disability commenced prior to the sixtieth birthday. The benefit shall terminate when the member is no longer considered totally disabled or begins to receive retirement benefits." N.J.S.A. 43:15A-42.1(d); see also Fact Sheet #85 ("Benefits will be paid as long as the member remains disabled or until the member attains age 70.")

Appellant argued against the imposition of a resignation in good standing by disclosing that Ortiz could not agree to settle this matter due to recent cases in which the Appellate Division found that voluntary resignation from employment prevented an employee from then applying for disability retirement benefits. Cardinale v. Bd. of Trs., 458 N.J. Super. 260 (App. Div. 2019); Rooth v. Bd. of Trs., Pub. Emps.' Ret. Sys., 472 N.J. Super. 357 (App. Div. 2022).⁴ Notwithstanding that any discussion of settlement negotiations is improper as such are confidential and not part of the record in this matter,⁵ I disagree with appellant's view of Cardinale and Rooth for two reasons.

First, as respondent argues,⁶ the cited cases can be distinguished from this matter in that the employees in those cases were not disabled and/or their alleged disability was

⁴ Cardinale involved the Police and Firemen's Retirement System (PFRS) and the other cases cited below, as with the present matter, involved PERS. Comparisons of the various pension schemes is "particularly appropriate" and has been conducted by the Supreme Court of New Jersey. M.R. v. Bd. of Trs., 2020 N.J. Super. Unpub. LEXIS 615, at *5 (App. Div. Ap. 6, 2020) (citations omitted).

⁵ Respondent objected to the introduction by appellant of these cases at oral argument as appellant had not cited them previously and objected to any discussion of settlement negotiations. Despite the merits of those objections, I note and respond to appellant's arguments here only to ensure a full record on an issue of first impression at the OAL.

⁶ Respondent also argues that any analogy to the PERS system of disability retirement benefits is improper as the benefits at issue here are disability insurance benefits, meant to replace income that would have been earned by the disabled member up until retirement. Even accepting that the statute creating the long-term disability insurance program does not confer benefits after age seventy, comparisons to the PERS and PFRS systems are helpful. See fn. 5, above.

not the reason they resigned. Cardinale, 458 N.J. Super. at 273 (police officer who irrevocably resigned in settlement of pending drug-related disciplinary charges could not file for ordinary disability retirement benefits); Rooth, 472 N.J. Super. at 370 (“A member cannot apply [for ordinary disability retirement benefits] if he or she separated from employment pursuant to a ‘[s]ettlement agreement . . . reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability.’” quoting N.J.A.C. 17:1-6.4(b).) Here, but for her medical condition and related disability to perform the duties of her position, Ortiz would not be removed from employment with a resignation in good standing. All underlying charges related directly to her disability.

Second, the Appellate Division made clear that it was not just the nature of the underlying discipline that made the employees ineligible for disability retirement benefits, but the irrevocable nature of their retirement. In both cases, the settlement agreements provided that the employees would never again seek a position with their former employers; the employees were permitted to retire rather than face discipline. As the court explained, in enacting N.J.S.A. 43:16A-8.2 (providing for disability retirement benefits), the Legislature granted the Board authority to stop paying disability retirement benefits only if the employee recovers and then refuses the employer’s offer to return to employment:

The Legislature obviously did not devise a disability retirement system that, on the one hand, would grant ordinary disability benefits to PFRS members who could never return to active service, and on the other hand, require that other PFRS members return to duty when their purported disability vanishes or materially diminishes. That would be absurd. Instead, N.J.S.A. 43:16A-8(2) balances a worker’s interest with those of an employer and the public by requiring PFRS workers — upon rehabilitation — to forgo the benefits and return to work.

[Cardinale, 458 N.J. Super. at 270.]

Unlike the settlement agreements in Cardinale and Rooth, resignation in good standing is not an agreement to never again seek employment with the former employer. Respondent agrees that Ortiz would not be precluded from returning to work, should her condition improve. Like the disability retirement program, the disability insurance program

provides for continuing proof of disability and for the rehabilitation and return to work of members:

Total disability shall not be considered to exist if the member is gainfully employed. Following an agreement with the insurance company and the policyholder, the member may continue to receive disability benefits for a limited time while performing some type of work. During the period of rehabilitation, the monthly benefit shall be the regular payment less 80% of the member's earnings from such rehabilitative position.

[N.J.S.A. 43;15A-42.1(d).]

I **CONCLUDE** that following her resignation in good standing, Ortiz will be able to return to full employment should her medical condition improve and should respondent have a position available for her. In the meantime, however, the County will be unable to hire Ortiz's replacement unless she is removed from employment, and I **CONCLUDE** that respondent has proved its case for such removal.

Appellant's eligibility for long-term disability insurance benefits was not, apparently, affected by the FNDA being issued prior to the decision by Prudential to issue her benefits. (Though it is not clear that Prudential was notified of the PNDA or FNDA, both of which were issued during the insurance appeal process.) Based on the statute and the single Board decision regarding eligibility under the statute, it appears that if appellant were to have been deemed ineligible for long-term disability insurance benefits, it would have been because her application for benefits was filed more than six months after she began unpaid leave. That information, though, was available to Prudential and the company found her eligibility for benefits began in April 2020, five months before her unpaid leave began.

The statute appears to say that the recipient of disability insurance benefits must remain in active service after being deemed eligible for such benefits, but this specific question has not yet been reviewed by the Division of Pensions and Benefits or the Civil Service Commission (at least no such review has been found to date). Given that the statute permits Prudential to continue to pay benefits once eligibility is determined ("the

monthly disability benefit may be paid by the insurance company") until the member is no longer disabled or retires, it may be that the Legislature intended that once a member is found eligible for insurance benefits, her eligibility continues as long as the disabling condition continues, regardless of whether she is kept by the employer on unpaid leave.

It is unlikely that in creating the long-term disability insurance program, the Legislature intended a system that would prevent (or at least discourage) public employers from maintaining adequate staffing levels, especially in agencies, such as respondent, which administer the county court and jail systems. At the same time, neither party provided evidence to support that the Legislature intended for public employees who suffer from long-term disabilities to only receive insurance benefits so long as their former employer can make do without hiring their replacements. While it seems unfair to appellant, the interpretation of that portion of the statute does not impact the decision in this case.

For the reasons stated above, I **CONCLUDE** that respondent has proved by a preponderance of the credible evidence that appellant is guilty of (1) inability to perform duties in violation of N.J.A.C. 4A:2-2-2.3(a)(3); (2) chronic or excessive absenteeism or lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); and (3) other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically medical inability to perform job duties and unauthorized absence, and her employment record will include her resignation in good standing, effective October 6, 2021.

ORDER

I hereby **ORDER** that the motion of respondent, Middlesex County Department of Corrections, for summary decision in its favor is **GRANTED** and the motion of appellant Linda Ortiz for summary decision in her favor is **DENIED**. I **ORDER** that appellant's appeal of the Final Notice of Disciplinary Action issued by respondent on December 7, 2021, is hereby **DISMISSED**. Finally, I **ORDER** that appellant shall be recorded as having resigned in good standing, effective October 6, 2021.

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.

September 23, 2022
DATE


TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/nn