



STATE OF NEW JERSEY

In the Matter of David Peterson,
Stockton University

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

CSC Docket No. 2023-717

Request for Reconsideration

ISSUED: December 7, 2022 (SLK)

Stockton University (Stockton), represented by Rimma Razhba, Deputy Attorney General, requests reconsideration of *In the Matter of David Peterson* (CSC, decided August 3, 2022). In the alternative, Stockton requests a stay.

By way of background, Peterson, a Senior Repairer with Stockton, was removed for having taken a student’s bicycle and using his work vehicle to remove the bicycle from a housing unit area on campus. Peterson appealed his removal to the Civil Service Commission (Commission), and the matter was transmitted to the Office of Administrative Law (OAL) as a contested case. After a hearing, the Administrative Law Judge (ALJ) recommended that the removal be upheld. The Commission accepted and adopted the Findings of Fact as contained in the ALJ’s initial decision. However, the Commission did not adopt the recommendation to uphold the removal. Rather, the Commission imposed a six-month suspension. The Commission indicated that a six-month suspension was warranted based on the particular facts of the matter and since Peterson had no previous disciplinary action over his 15-year career with Stockton.

In its request, Stockton asserts that the Commission made a clear material error. It contends the Commission erred and was arbitrary in concluding that Peterson’s conduct was “apparently out of character based on his lack of any previous discipline over his long career” as there was no testimony regarding Peterson’s character. Further, Stockton presents that the Commission is bound by the ALJ’s

credibility findings unless they were arbitrary, capricious or unreasonable, which is not the case here. It cites prior Commission decisions which it argues indicate that the Commission's decision in this matter is inconsistent with its own "precedent." Stockton states that these cases demonstrate that theft is the type of egregious conduct for which the Commission has consistently upheld removal, even for a first offense.

Stockton also argues that the Commission failed to consider its concerns about the impact of reinstatement of an employee who is removed for misconduct. It presents that during the hearing, it made it abundantly clear that stealing, especially from a student, was unacceptable, and how Peterson's conduct violated its code and proper procedures. Stockton emphasizes that as a Senior Repairer, Peterson is required to have access anywhere on campus. He is required to have a master swipe card and a set of master keys. Thus, Stockton asserts that Peterson is in a position of trust by virtue of his position of employment and his theft of the student's bicycle is so far removed from what is acceptable behavior, it cannot permit him access to campus.

In the alternative, Stockton requests that the Commission stay its decision to reinstate Peterson pending appeal to the Appellate Division. It contends that it has a clear likelihood of success on the merits as Commission "precedent" on theft cases involving a public employee supports his removal. Further, it reiterates its argument that the Commission's decision will be reversed because it assumed evidence about Peterson's character which was not in the record. Additionally, Stockton asserts that there is a real threat of danger and immediate and irreparable harm if the stay is not granted because Peterson should not return to work because he works solo as a Senior Repairer and has access to almost every space on campus, including bedrooms. It presents that it would be costly for it to assign someone to shadow Peterson to ensure he does not engage in further theft. Moreover, Peterson is not suffering substantial injury if his reinstatement is stayed as he will receive back pay if he ultimately prevails. Finally, Stockton argues that it is in the public interest to stay his reinstatement as he is a proven thief who would have access throughout campus, and Stockton's students and their families expect safety and security for themselves and their personal property.

In response, Peterson, represented by Louis M. Barbone, Esq., asserts that the facts found by the ALJ do not conflict or impair the Commission's modification of the penalty. He presents that he has been employed by Stockton for 16 years and has no prior disciplinary history. Peterson indicates that the ALJ accepted his testimony regarding prior opportunities where he found property and returned it to the Police or Housing Departments. Further, due to the pandemic, Stockton was like "a ghost town" as there were no students there, which is why Peterson thought that the bicycle in question was abandoned. Moreover, once Peterson learned that the bicycle was being claimed by a student, he called the Police Department long before any charges

were filed against him, and offered to pay full restitution. He notes that the criminal charge was dismissed by the prosecutor and expunged. Peterson emphasizes that the facts indicate that he did not intend to steal anything. Further, he presents that the ALJ found that he did not think about Stockton's property policy given the circumstances of the campus due to the pandemic. Peterson argues that the Commission did not make a clear material error in modifying the penalty as it appropriately found that Peterson's conduct was "out of character" and was not so egregious to warrant removal. Further, case law cited by Stockton indicates that the Commission needed to evaluate the penalty based on Peterson's disciplinary history, and in this case, there was no disciplinary history to be examined. He argues that the cases that Stockton presents are distinguishable as those cases involved theft, where in this case, Peterson did not believe and did not act with any intent to take the property of another. Further, Peterson asserts that the Commission did consider Stockton's concern about the impact of his reinstatement, and it concluded, based on the facts present in this matter, that a six-month suspension would prevent future misconduct.

Peterson also argues that there is no basis for a stay as Stockton does not have a likelihood of success in the Appellate Division. Further, he asserts that there is no danger of immediate or irreparable harm to Stockton as the incident occurred during a peculiar time in our history and Peterson believed that the bicycle was abandoned. Therefore, he argues that the unique circumstances in this matter do not indicate that he presents any future risk.

In reply, Stockton asserts that Peterson's response is based on a false premise that he did not commit theft when the ALJ explicitly found that his taking of the bicycle was an intentional and unauthorized act, which is prohibited conduct of theft. It reiterates its argument that the Commission's finding that Peterson's conduct "was apparently out of character," was prohibited under *N.J.S.A. 52:14B-10(c)*, because there was no character evidence in the record, and the Commission cannot independently find facts related to credibility "unless it is first determined from a review of the record that the [ALJ's] findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." Stockton presents that the dismissal of criminal charges against Peterson has no bearing on this matter because he engaged in an intentional act which violated Stockton's Code of Conduct. Further, without the Commission "detailing the specific evidence at hearing and interpretation of law" or determining the ALJ's decision was "arbitrary, capricious or unreasonable" as required by law, it was the Commission, without evidence in determining that Peterson's actions were "out of character," which acted arbitrarily. Stockton emphasizes the prior Commission decisions where it found that theft warranted removal.

Stockton also reiterates its position that if reconsideration is not granted, Peterson's reinstatement should be stayed pending appeal to the Appellate Division.

It asserts that it previously demonstrated that it met the criteria for a stay and Peterson's response is devoid of merit as he does not provide any substantive opposition, but simply states that Stockton has not met the criteria.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;
and
4. The public interest.

In this matter, the Commission finds that Stockton has not met the standard for reconsideration as Stockton's argument that the Commission cannot find Peterson's actions to be "out of character" because there was no testimony regarding his character is not in error. The Commission modified Peterson's removal to a six-month's suspension based on the particular facts of the matter and his lack of disciplinary history over his 15-year career with Stockton. In other words, the Commission found that the appellant's lack of disciplinary history was evidence of his character and testimony regarding Peterson's character was not needed to make this determination. Further, the Commission did not need to find that the ALJ's credibility determinations were "arbitrary, capricious or unreasonable" to come to this conclusion as the Commission did not make this decision based on a credibility determination. Moreover, it is noted that the ALJ only makes a recommendation concerning the penalty and the Commission, based on the Findings of Facts as found by the ALJ, ultimately concluded that a six-month suspension was appropriate under the concept of progressive discipline after finding the conduct was not so egregious under the circumstances in this matter to warrant removal.

Concerning Stockton's assertion that the Commission's decision goes against its own "precedent," it is noted that while the Commission is guided by its prior decisions, they do not act as precedent as each case has its own unique facts and are

decided on that basis. Further, contrary to Stockton's statement that the Commission failed to consider its concerns if Peterson was reinstated, the Commission found "this penalty should impress upon the appellant the seriousness of his misconduct and serve as a warning that any future misconduct may result in his removal from employment." In other words, while the Commission acknowledged Stockton's concerns by indicating that Peterson's conduct was "serious," it found that given the particular facts in this matter, Peterson's lack of disciplinary history, and the potential for future removal, he was unlikely to be a repeat offender.

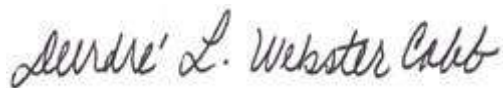
Regarding Stockton's request for a stay pending a potential appeal to the Appellate Division, the Commission denies this request as Stockton is unlikely to prevail on the merits. As stated above, Stockton's arguments are unpersuasive as the Commission's decision to modify the penalty was based on the record, *i.e.*, the ALJ's Findings of Fact and Peterson's lack of disciplinary history. The fact that Stockton disagrees with the Commission's decision regarding the appropriate penalty is not a basis to find that it is likely to succeed on appeal. *See In the Matter of Christopher D'Amico* (CSC, decided August 14, 2019). Further, the Commission does not find that there is a danger of immediate or irreparable harm if Peterson is reinstated as it found that Peterson is unlikely to be a repeat offender. Moreover, it is Peterson who is suffering serious injury as he has served more than a six-month suspension without reinstatement. Finally, it is in the public interest that the Commission's orders be followed.

ORDER

Therefore, it is ordered that these requests 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 7TH DAY OF DECEMBER, 2022



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: David Peterson
Louis M. Barbone, Esq.
Rimma Razhba, DAG
Ellen D. Bailey, Esq.
Records Center