



STATE OF NEW JERSEY

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

In the Matter of Idesha Howard, Essex
County

CSC Docket No. 2023-552

Interim Relief

ISSUED: December 7, 2022 **(EG)**

Idesha Howard, County Correctional Police Officer with Essex County, represented by Luretha M. Stribling, Esq., petitions the Civil Service Commission (Commission) for interim relief of her immediate and indefinite suspension.

As background, the record indicates that the petitioner was hired as a County Correctional Police Officer in May 2014. The petitioner was issued a Preliminary Notice of Disciplinary Action (PNDA) dated March 3, 2022, charging her with incompetency, inefficiency or failure to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause. The appointing authority indicated that on March 3, 2022, the petitioner was charged with two 3rd degree criminal charges. Specifically, the petitioner was charged with knowingly engaging in conduct which created a substantial risk of bodily injury to another person and knowingly making false entries or false alteration of a government document. The Final Notice of Disciplinary Action (FNDA) was issued April 7, 2022 sustaining the charges and indefinitely suspending the appellant pending the disposition of the criminal charges. The criminal charges were dismissed on July 12, 2022. A subsequent PNDA containing administrative charges was issued on August 31, 2022.

In the instant matter, the petitioner argues that the criminal charges against her were dismissed on July 12, 2022. She submits a printout from the Superior Court of New Jersey indicating that the criminal case against the petitioner was dismissed on July 12, 2022. In this regard, the petitioner contends that she has not been

returned to work as required by *N.J.S.A.* 30:8-18.2. She adds that notice of this issue was provided to Director Ronald Charles with no response. Additionally, she argues that pursuant to *N.J.S.A.* 30:8-18.2, the charges were not properly brought forth within 45 days. Specifically, she contends that the 45-day period began immediately upon the disposition of the criminal charges, and since no charges were filed in this period no charges can be filed against her in this matter. Further, the petitioner claims that pursuant *N.J.S.A.* 40A:14-201(2) she should have been returned to work on August 31, 2022, after 180 days of no charges being brought forth against her since her suspension on March 3, 2022.

The petitioner argues that she has a clear likelihood of success on appeal due to a violation of the 45-day rule and a violation of the 180-day rule. The petitioner also states that she will suffer irreparable harm due to loss of income and her reputation will suffer. She also argues that it would not cause any harm to the appointing authority to return her to work. Further, the petitioner contends that it is in the public interest for the appointing authority to follow the laws, rules and regulations which apply in the instant matter.

In reply, the appointing authority, represented by Jeanne-Marie Scollo, Assistant County Counsel, maintains that that the instant appeal before the Civil Service Commission (Commission) is premature as the administrative charges against the petitioner are currently pending a hearing. It contends that on July 13, 2022, it was advised by the Acting Assistant Prosecutor that the criminal charges against the petitioner had been dismissed and Internal Affairs (IA) could begin its investigation. IA concluded its investigation on August 20, 2022, and forwarded its findings to the Office of the Director and the Disciplinary Unit. A PNDA was issued on August 31, 2022, containing violations of *N.J.A.C.* 4A:2-2.3(a)1 - incompetency, inefficiency or failure to perform duties; *N.J.A.C.* 4A:2-2.3(a)6 - conduct unbecoming a public employee; *N.J.A.C.* 4A:2-2.3(a)7 - neglect of duty; *N.J.A.C.* 4A:2-2.3(a)11 – other sufficient cause, *i.e.*, violation of Essex County Departmental Policies and Procedures; and violation of Essex County Departmental Policies and Procedures regarding competence, truthfulness, neglect of duty, standard of conduct, knowledge of laws and regulations, and withholding information or giving false information. It argues that the PNDA was issued within 11 days of the Director receiving sufficient information to file charges. Further it asserts that the petitioner presents incomplete information and false statements and thus cannot succeed on the merits. It also contends that harm would be done to Essex County and the precedent set for the public if the petitioner is allowed to subvert the disciplinary process simply by ignoring facts.

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 addition, *N.J.A.C.* 4A:2-2.7(a)2 provided that an appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in *N.J.A.C.* 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment. *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a) provide that an employee may be suspended immediately and prior to a hearing when the employee has been formally charged with certain crimes or where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services.

N.J.S.A. 30:8-18.2 states the following:

A person shall not be removed from employment or a position as a county correctional police officer, or suspended, fined or reduced in rank for a violation of the internal rules and regulations established for the conduct of employees of the county corrections department, unless a complaint charging a violation of those rules and regulations is filed 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. A failure to comply with this section shall require a dismissal of the complaint. The 45-day time limit shall not apply if an investigation of a county correctional police officer for a violation of the internal rules and regulations of the county corrections department 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 limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement in this section for the filing of a complaint against a county correctional police officer shall not apply to a filing of a complaint by a private individual.

Additionally, *N.J.S.A.* 40A:14-201(2) states that:

When a law enforcement officer employed by a law enforcement agency or a firefighter employed by a public fire department that is subject to

the provisions of Title 11A of the New Jersey Statutes is suspended from performing his official duties without pay for a complaint or charges, other than (1) a complaint or charges relating to the subject matter of a pending criminal investigation, inquiry, complaint, or charge whether pre-indictment or post indictment, or (2) when the complaint or charges allege conduct that also would constitute a violation of the criminal laws of this State or any other jurisdiction, and the law enforcement agency employing the officer or the public fire department employing the firefighter seeks to terminate that officer's or firefighter's employment for the conduct that was the basis for the officer's or firefighter's suspension without pay, a final determination on the officer's or firefighter's suspension and termination shall be rendered within 180 calendar days from the date the officer or firefighter is suspended without pay.

If a final determination is not rendered within those 180 days, as hereinafter calculated, the officer or firefighter shall, commencing on the 181st calendar day, begin again to receive the base salary he was being paid at the time of his suspension and shall continue to do so until a final determination on the officer's or firefighter's termination is rendered.

Initially, the Commission notes that the petitioner's reliance on the "180-day rule" is misplaced. The "180-day rule" for law enforcement officers and firefighters as provided for in *N.J.S.A. 40A:14-201(2)* clearly states that the when the law enforcement officer or fire fighter "is suspended from performing his official duties without pay for a complaint or charges, other than (1) a complaint or charges relating to the subject matter of a pending criminal investigation, inquiry, complaint, or charge whether pre-indictment or post indictment" then a final determination on the officer's or firefighter's suspension and termination shall be rendered within 180 calendar days from the date the officer or firefighter is suspended without pay. In the instant matter, there was clearly a criminal investigation and criminal charges. Accordingly, the 180-rule is not implicated in the instant case as to the petitioner's indefinite suspension on March 3, 2022.

Further, the Commission finds that the petitioner's reliance on the "45-day rule" is also misplaced. The "45-day rule" for a county correctional police officers as provided for in *N.J.S.A. 30:8-18.2* states that the complaint must be filed 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. There is no indication in the statute that the passage "the 45-day limit shall begin on the day after the disposition of the criminal investigation" was meant to subvert an appointing authority's ability to conduct a proper investigation after the disposition of criminal charges and deprive the person filing the complaint from obtaining

sufficient information to file the matter. In fact, in *Roberts v. State, Div. of State Police* 191 N.J. 516 (2007), the Supreme Court analyzed a similar statute to N.J.S.A. 30:8-18.2 and agreed with the Appellate Court's finding that "[i]t would be illogical for the Legislature to have provided the necessary investigative period to determine whether disciplinary charges should issue when no criminal conduct has been alleged, but to have shortened that period when potential criminal conduct is under investigation. We decline to infer an intent to achieve such an unreasonable result." In the instant matter, the Director, the person filing the complaint, filed the August 31, 2022, PNDA only 11 days after receiving sufficient information to do so. Therefore, no 45-day rule violation is evident.

Moreover, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether or not the petitioner has actually committed the alleged infractions. In this regard, the petitioner has not addressed the actual merits of the charges against her. Her arguments are solely on procedural grounds which have been denied above. Furthermore, the petitioner has failed to show a danger of immediate or irreparable harm or how the public interest would be served by granting her request. In this regard, there are available mechanisms for relief, such as back pay in appropriate cases.

However, the Commission does find that the petitioner is entitled to some relief. Upon dismissal of the criminal charges, an employee is entitled to immediate reinstatement to employment following an indefinite suspension or prompt service of any remaining administrative charges upon which the appointing authority wishes to base disciplinary action. Even when an employee is ultimately removed on administrative disciplinary charges, he or she is entitled to an award of back pay for the period between dismissal of the criminal charges and service of a PNDA setting forth any remaining administrative charges. See *In the Matter of Stanford Harris* (CSC, decided December 17, 2008); *In the Matter of James Shanks* (MSB, decided May 7, 2003). In the instant matter, the criminal charges against the petitioner were dismissed on July 12, 2022. The petitioner was not returned to work thereafter and a new PNDA was not issued until August 31, 2022.¹ Therefore, the petitioner is entitled to back pay from July 13, 2022 to August 31, 2022. The Commission denies any further interim relief.

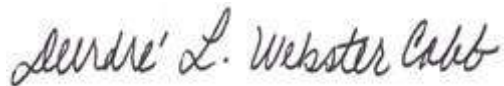
¹ The Commission notes that with the issuance of that PNDA, the petitioner was thereafter appropriately not permitted back to work as, based on the nature and seriousness of the administrative charges, the appointing authority met the standard for an immediate suspension under N.J.A.C. 4A:2-2.5(a).

ORDER

Therefore, it is ordered that the petitioner's request for interim relief be granted in part.

This is the final administrative action in the 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: Luretha M. Stribling, Esq.
Idesha Howard
Jeanne-Marie Scollo, Assistant County Counsel
Records Center