



STATE OF NEW JERSEY

In the Matter of M.E., Township of
Lawrence

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

CSC Docket No. 2022-2454

Request for Interim Relief

ISSUED: JULY 5, 2022 (ABR)

M.E., a Police Officer with the Township of Lawrence, represented by Ben Weathers, Esq., petitions the Civil Service Commission (Commission) for interim relief in relation to his immediate suspension without pay, effective January 9, 2022.

By way of background, the instant matter was precipitated by a domestic dispute on January 8, 2022, which led to the petitioner being charged with simple assault, in violation of *N.J.S.A. 2C:12-1A(1)*, a disorderly persons offense. Additionally, the petitioner’s service weapon was seized in accordance with New Jersey Attorney General Law Enforcement Directive No. 2000-3. On January 9, 2022, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA), immediately and indefinitely suspending the petitioner, pending the outcome of criminal charges. A departmental hearing was held on January 19, 2022, and, on February 14, 2022, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) upholding the petitioner’s immediate and indefinite suspension. On March 1, 2022, the criminal charges against the petitioner were dismissed and the Municipal Court of New Jersey, Burlington City Court issued an expungement order. On March 17, 2022, the petitioner requested to be returned to duty immediately, in light of the March 1, 2022, dismissal of the charges against him. In response, on March 18, 2022, the appointing authority advised that it would not reinstate the petitioner until after his service weapon was returned to him and that it would have to schedule him for a fitness for duty evaluation before it would consider doing so. In this regard, the appointing authority maintained that the February 14, 2022 FNDA

incorporated the hearing officer's determination that the petitioner would be placed on unpaid suspension pending resolution of the charges and the return of his service weapon and that the FNDA included supplemental charges/incidents which continued his suspension pending a departmental internal affairs investigation and/or the return of his service weapon. The appointing authority scheduled the petitioner for a fitness for duty evaluation on March 29, 2022, and April 5, 2022. On April 6, 2022, the appointing authority's Chief of Police was advised of the results of the fitness for duty evaluation via phone. On April 7, 2022, the appointing authority returned the petitioner's service weapon to the petitioner and placed him back on its payroll.

In support of his request for interim relief, the petitioner argues that he meets the standard for interim relief set forth in *N.J.A.C. 4A:2-1.2(c)*. In this regard, he contends that a clear likelihood of success on the merits is present in this matter, as *N.J.A.C. 4A:2-2.7(a)(2)* permits an indefinite suspension where an employee is subject to criminal charges, but not beyond the time of the dismissal of a criminal complaint or indictment and the appointing authority failed to return him to the payroll upon the dismissal of the criminal charges against him or serve him with administrative charges, as required. He further contends that because a hearing was not held until 10 days after his suspension, he is entitled to an award of back pay from January 9, 2022, to January 19, 2022, in addition to back pay between when he requested to be restored to the appointing authority's payroll on March 17, 2022 and when his restoration came on April 7, 2022. The petitioner also argues that the appointing authority failed to show any good reason as to why he could not have served in an administrative capacity between March 17, 2022 and April 7, 2022. Accordingly, the petitioner contends that he has demonstrated a clear likelihood of success on the merits. The petitioner avers that the appointing authority's needless and unreasonable withholding of his livelihood demonstrates immediate or irreparable harm, particularly as the appointing authority's refusal to comply with the applicable Civil Service law and rules represents an irreparable harm that cannot be compensated for, even through monetary damages. Further, the petitioner contends that the appointing authority would not be subject to any substantial injury by being required to act in conformity with the Civil Service law and rules. Finally, the petitioner asserts that the public interest is served by enforcing the Civil Service law and rules and giving meaning to the rights of civil servants under the law.

In response, the appointing authority, represented by Armando V. Riccio, Esq., argues that the petition at issue does not meet the standards required for interim relief and that it is moot because the petitioner was reinstated and had his service weapon returned to him after a fitness for duty evaluation. In this regard, it asserts that the petitioner was properly removed from service based upon a criminal assault charge which resulted in the seizure of his weapon, he cannot demonstrate a clear likelihood of success on the merits. Further, given that the petitioner was charged with punching his romantic partner in the face, engaged in a prior comparable

incident of domestic violence against her and was arrested, the substantial risk of injury to others and the public interest demanded that the appointing authority suspend him pending the outcome of the charges and clear him through a fitness for duty evaluation before returning petitioner's service weapon, as would be required to perform the duties of a police officer. Moreover, the appointing authority maintains that the petitioner's claims strictly amount to monetary losses, meaning that they can be remedied through a back pay award. Finally, the appointing authority submits that because the appointing authority has completed its internal affairs investigation and on April 18, 2022, it served the petitioner with an amended PNDA, dated April 13, 2022, the petitioner can pursue such a remedy through the disciplinary hearing process. As such, the appointing authority maintains that there is no irreparable harm in this matter.

It is noted that the penalty proposed in the April 13, 2022 PNDA is a 90 working day suspension, effective January 9, 2022.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides that 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 this matter, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. In reviewing this matter, it is not necessary to address the merits of the charges against the petitioner. Rather, the issue to be determined is whether the appointing authority presented a valid basis to immediately suspend the petitioner. *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. *N.J.A.C.* 4A:2-2.5(a)1 further provides that, when an appointing authority suspends an employee prior to a hearing, a PNDA with an opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension. *N.J.A.C.* 4A:2-2.5(b) provides that, prior to the imposition of an immediate suspension, the employee must be apprised either orally or in writing of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with a sufficient opportunity to review the charges and evidence in order to respond to the charges before a representative of the appointing authority. *N.J.A.C.* 4A:2-2.5(b) further provides that the employee's response may be

either oral or in writing, at the discretion of the appointing authority. *N.J.A.C.* 4A:2-2.5(d) provides that a departmental hearing, if requested, shall be held within 30 days of a PNDA unless waived by the employee or a later date as agreed by the parties.

Here, it was appropriate for the appointing authority to immediately and indefinitely suspend the petitioner on January 9, 2022, pending the disposition of criminal charges. The appointing authority complied with the requirements in serving him with a PNDA on January 9, 2022, which apprised him of why his suspension was sought, the charges and general evidence in support of the charges and provided him with a sufficient opportunity to review the charges and evidence.

However, the record indicates that on March 17, 2022, the appointing authority received notice that the charges against the petitioner that were the basis of his indefinite suspension were dismissed. 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, the employee 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, decide December 17, 2018); *In the Matter of James Shanks* (MSB, decided May 7, 2003). To determine otherwise would be contrary to *N.J.A.C.* 4A:2-2.7(a)2, which purpose is to keep public employees from being held in limbo indefinitely even after being exonerated in a criminal proceeding. Concerning the appointing authority's argument that it needed additional time to conduct an internal investigation before it issued the amended April 13, 2022 PNDA, the record indicates that the appointing authority had enough information to issue a PNDA on March 17, 2022. Thus, while it was not prohibited from further investigation, it could not keep the petitioner out of work without pay absent actually issuing new charges.

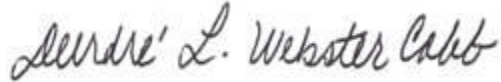
Nevertheless, procedural deficiencies at the departmental level which are not significantly prejudicial to an appellant are deemed cured through the *de novo* hearing received at the Office of Administrative Law (OAL). *See Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995); *In re Darcy*, 114 *N.J. Super.* 454 (App. Div. 1971). Accordingly, even if such procedural deficiencies exist as alleged in this matter by the petitioner, since the appointing authority reinstated the appellant, effective April 7, 2022, and issued new charges in the April 13, 2022 PNDA, should the petitioner be successful at the departmental level or upon further appeal to the Commission after a FNDA is issued, he would be entitled to back pay. Thus, any harm he may have been subject to can be fully remedied. Finally, while the Commission does not excuse any procedural violations in this matter, and cautions the appointing authority to strictly adhere to the rules underlying taking such discipline in the future, since a critical issue is

whether or not the petitioner's actions constituted wrongful conduct warranting the proposed 90 working day penalty which may be imposed after a departmental hearing, the Commission will not attempt to determine such a disciplinary appeal on the written record without both a final departmental-level determination and a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Therefore, based upon the foregoing, the petitioner has not met the standard for interim relief.

ORDER

Therefore, it is ordered that M.E.'s request for interim relief be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 29TH DAY OF JUNE 2022



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