



STATE OF NEW JERSEY

In the Matter of Fernando Noblecilla,  
Township of Hillside

DECISION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-2455

Request for Interim Relief

ISSUED: JULY 5, 2022 (ABR)

Fernando Noblecilla, a Police Officer with the Township of Hillside, represented by Ben Weathers, Esq., petitions the Civil Service Commission (Commission) for interim relief in relation to his immediate suspension without pay, effective March 11, 2022.

By way of background, on September 15, 2021, the petitioner received a letter from the appointing authority’s Chief of Police informing him that he was immediately suspended with pay, pending the outcome of an investigation by the New Jersey Division of Criminal Justice. On March 8, 2022, the petitioner’s legal counsel received a letter from the Office of the Attorney General, which stated that the petitioner was the target of a State Grand Jury investigation into allegations of official misconduct and related offenses. On March 11, 2022, the petitioner received another letter from the appointing authority’s Chief of Police, informing the petitioner that he had been made aware of the Office of the Attorney General’s March 8, 2022 letter about the petitioner being under pre-indictment for official misconduct and related offenses and that “based on the severity of the offenses the petitioner was under pre-indictment for and that they touche[d] upon [the petitioner’s] office as a police officer it [was] determined that a suspension *without pay* [was] warranted in accordance with the law, [the appointing authority’s] general order, *Internal Affairs*” and New Jersey Attorney General Internal Affairs Policy and Procedures 5.2.1 (emphasis in original). On May 24, 2022, the Office of the Attorney General advised the appointing authority that the Office of Public Integrity and Accountability had

formally charged the petitioner with second degree conspiracy to commit official misconduct, third degree hindering of the prosecution of another, third degree computer theft, third degree hindering one's own prosecution, and third degree unlawful access and disclosure.<sup>1</sup> Specifically, it was alleged that the petitioner attempted to warn a member of the Almighty Latin King and Queen Nation (ALKQN) that a law enforcement operation was or was about to be executed at his home. The petitioner is also alleged to have used a law enforcement database to obtain information for another individual associated with the ALKQN.

The petitioner argues that the instant matter satisfies the requirements for interim relief. In this regard, he avers that he can show a clear likelihood of success on the merits due to the appointing authority's complete disregard for due process. In particular, he maintains that the appointing authority's September 15, 2021 letter imposing his immediate suspension did not provide any general evidence to support that action in accordance with *N.J.A.C. 4A:2-2.5* and that the appointing authority's March 11, 2022 letter similarly failed to provide disciplinary charges or general evidence to support any potential charges before imposing his suspension without pay. Additionally, the petitioner avers that there is a danger of immediate or irreparable harm if his request is not granted, as he has been stripped of his livelihood without any reasonable justification and there is an irreparable harm that cannot be compensated for, even through monetary relief, when a government agency deliberately refuses to comply with Civil Service law and rules. He contends that the appointing authority would not suffer any hardship by being required to act in conformity with Civil Service law and rules. Moreover, the petitioner argues that the public interest is best served by protecting his rights, as a civil servant, under the law. Accordingly, the petitioner contends that the Commission must order the appointing authority to rescind its suspension of the petitioner without pay, provide retroactive back pay and benefits for the relevant timeframe and comply with the provisions of *N.J.A.C. 4A:2-2.5*.

The appointing authority, represented by Scott D. Salmon, Esq., submits that its March 11, 2022 letter referenced the contents of the March 8, 2022 letter as the cause of the change of his suspension to one without pay and notes that the subject line referenced a *Loudermill* hearing in its subject line. It states that the petitioner did not ever request a *Loudermill* hearing. The appointing authority avers that the petitioner cannot demonstrate any likelihood of success on the merits because he did not appeal his suspension prior to the instant request for relief and because it followed all relevant protocols. It further contends that because the petitioner appears to be seeking relief for his suspension now being without pay, monetary

---

<sup>1</sup> The petitioner was criminally charged on May 20, 2022. See Press Release, State of New Jersey Dep't of Law and Pub. Safety, Acting AG Platkin Announces Charges Against a Hillside Police Officer for Allegedly Conspiring with Gang Member to Commit Official Misconduct (May 24, 2022), <https://www.njoag.gov/acting-ag-platkin-announces-charges-against-a-hillside-police-officer-for-allegedly-conspiring-with-gang-member-to-commit-official-misconduct/>.

damages are what is truly at issue. As such, it cannot be said that there is a risk of irreparable harm which supports interim relief. Additionally, the appointing authority asserts the public interest weighs heavily against reinstating the petitioner given the nature of the criminal charges against him.

## 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.

However, 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.

In the instant matter, it is noted that it was appropriate for the appointing authority to immediately suspend the petitioner without pay on March 11, 2022. However, the appointing authority did not serve him with a PNDA within five days of imposing his immediate suspension, as mandated by *N.J.A.C.* 4A:2-2.5(a)1. While such a procedural deficiency does not warrant a dismissal of the charges, it is appropriate to institute a remedy for the appointing authority's failure to serve the PNDA within the prescribed timeframes or to provide him with a pre-termination

hearing. *See e.g., In the Matter of Kenneth F. Hixenbaugh* (MSB, decided February 24, 1998).

Pursuant to *N.J.A.C.* 4A:2-2.5(d), a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or at a later date as agreed to by the parties. An appointing authority's unilateral delay in holding a departmental hearing does not warrant a dismissal of the charges. *See Goodman v. Department of Corrections*, 367 *N.J. Super.* 591 (App. Div. 2004). However, the petitioner is entitled to some form of relief for such a delay. *See In the Matter of Patrick Dunican*, Docket No. A-5937T-99T1 (App. Div. November 9, 1999); *In the Matter of Kenneth Hixenbaugh, supra*. Further, it is observed that as the petitioner was not yet criminally charged at the time of his suspension without pay on March 11, 2022, he could not have been indefinitely suspended pursuant to *N.J.A.C.* 4A:2-2.7, as a criminal investigation is insufficient to impose an indefinite suspension. As such, if the appointing authority intends to indefinitely suspend the petitioner based on the criminal charges brought against him on May 20, 2022, it must do so in accordance with the procedures outlined in *N.J.A.C.* 4A:2-2.7.

However, as to the issue of back pay and benefits, 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 the petitioner's actions constituted wrongful conduct warranting discipline. The Commission will not attempt to determine such a disciplinary appeal on the written record absent conclusive outcomes of the pending criminal charges. Further, the harm that the petitioner is suffering while awaiting the outcome of the criminal proceedings is financial in nature, and as such, can be remedied by the granting of back pay should he ultimately prevail. This is true even if the outcome of the criminal proceedings are delayed due to the current pandemic. Additionally, given the serious nature of the disciplinary charges at issue, the public interest is best served by not having the petitioner on the job pending the outcome of any such charges.

### **ORDER**

Therefore, it is ordered that Fernando Noblecilla's request for interim relief be granted, in part. Further, should he be reinstated or not ultimately removed from employment, he shall be entitled to back pay, benefits and seniority pursuant to *N.J.A.C.* 4A:2-2.10(c)2.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 29<sup>TH</sup> DAY OF JUNE 2022

*Deirdre L. Webster Cobb*

---

Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

c: Fernando Noblecilla  
Ben Weathers, Esq.  
Dahlia O. Vertreese  
Scott D. Salmon, Esq.  
Division of Agency Services  
Records Center