



STATE OF NEW JERSEY

In the Matter of Mario Fucci,
Salem County

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

CSC Docket No. 2022-2798

Request for Enforcement

ISSUED: JULY 25, 2022 (JET)

Mario Fucci, represented by Wolodymyr P. Tyshchenko, Esq., requests enforcement of the Civil Service Commission decision in *In the Matter of Mario Fucci* (CSC, decided March 23, 2022).

As background, in the prior decision, the appointing authority alleged that Fucci, a Sheriff’s Officer Sergeant, damaged a drone while serving in the drone unit, and that he did not properly report the damaged drone to the appointing authority. The appointing authority issued an October 20, 2021 Preliminary Notice of Disciplinary Action (PNDA), recommending a 25-day suspension and the appellant’s demotion to Sheriff’s Officer. The appointing authority did not conduct a departmental hearing, but rather, it conducted a limited purpose hearing on February 3, 2022, pursuant to *N.J.A.C.* 4A:2-2.5(a), and it determined that the appellant’s lack of candor was sufficient to demote him to Sheriff’s Officer. Fucci petitioned for interim relief to the Civil Service Commission (Commission), arguing that, despite his requests, a departmental hearing was not conducted, and that his demotion should be rescinded until such time the departmental hearing could be conducted. In its March 23, 2022 decision, Commission found that Fucci was improperly demoted, as *N.J.A.C.* 4A:2-2.5(a)1 does not provide any information indicating that employees may be immediately demoted prior to a departmental hearing. The Commission stated that there is no Civil Service law, rule or standard that permits an “immediate demotion.” Rather, the Commission stated that the rules only provide that employees may be immediately suspended prior to a

departmental hearing under certain circumstances. *See N.J.A.C. 4A:2-2.5(a)*. The Commission explained that limited purpose hearings are only conducted when it is necessary to address if an immediate suspension is necessary, and that the appointing authority improperly substituted the limited purpose hearing for the departmental hearing with respect to Fucci's disciplinary charges. Moreover, the Commission determined that Fucci did not waive his right to a departmental hearing, and as such, he was entitled to a departmental hearing. Accordingly, the Commission ordered that, as a result of the procedurally deficient immediate demotion, Fucci was entitled to differential back pay, benefits and seniority as of the first date of his demotion to the date a Final Notice of Disciplinary Action (FNDA) was issued, his demotion be rescinded, and that the appointing authority was to conduct the departmental hearing based on the administrative charges as soon as possible.

In the instant request, Fucci states that, despite the Commission's March 23, 2022 decision, he has neither received an award of back pay and benefits that he would have earned while serving as a Sheriff's Officer Sergeant, nor a departmental hearing with respect to the administrative charges. As such, Fucci requests enforcement of the Commission's March 23, 2022 decision.

Despite being provided with the opportunity, the appointing authority did not provide a response. It is noted that, by e-mail dated June 22, 2022, counsel for the appointing authority, Joseph DiNicola, Esq., indicated that it would not be submitting any further arguments or information in this matter, as it planned to settle the matter. By e-mail dated July 11, 2022, petitioner's counsel indicated that the matter was not settled.¹

CONCLUSION

In this matter, the record reflects that the Commission previously ordered the appointing authority to conduct a departmental hearing based on the administrative charges against Fucci as soon as possible, that Fucci's demotion be rescinded, and that he be awarded back pay, benefits and seniority until such time an FNDA could be issued. Fucci argues in this matter that the appointing authority has not complied with the Commission's March 23, 2022 decision and order, which the appointing authority has not refuted. The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989)*. Therefore, Salem County is ordered to pay differential back pay, benefits and seniority to Fucci within 30 days of the issuance of this decision and rescind the demotional action. Salem County, absent consent for a different timeframe, must

¹ This decision does not foreclose the parties from settling this matter.

also begin the departmental hearing no later than 30 days from the date of this decision.² If, at any time, Salem County does not adhere to the directives as noted above, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

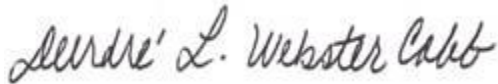
ORDER

Therefore, it is ordered that this petition be granted and Salem County award the petitioner with differential back pay, benefits and seniority, and rescind his demotion within 30 days of the issuance of this decision. It is also ordered to begin the departmental hearing no later than 30 days from the date of this decision.

If, at any time, Salem County does not adhere to the timeframes pertaining to the actions as noted above, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

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 20TH DAY OF JULY 2022



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² It is noted that, should Fucci waive his departmental hearing, Salem County would then be required to immediately issue an FNDA, from which Fucci could appeal to the Commission and receive a hearing at the Office of Administrative Law.