



STATE OF NEW JERSEY

In the Matter of Miguel Figueroa,
Middlesex County Sheriff's Office

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-1564

Interim Relief

ISSUED: March 15, 2023 (SLK)

Miguel Figueroa, a Sheriff's Officer with the Middlesex County Sheriff's Office (Sheriff's Office), represented by Peter B. Paris, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his immediate suspension.

By way of background, Figueroa was indefinitely suspended without pay on September 27, 2018, after being charged with Third Degree crimes relating to insurance fraud. Subsequently, the charges against Figueroa were downgraded to a petty disorderly persons offense on May 23, 2022. Thereafter, Figueroa was reinstated while the Sheriff's Office conducted an investigation. As a result of the investigation, the Sheriff's Office issued a December 7, 2022, Preliminary Notice of Disciplinary Action (PNDA) against Figueroa, which immediately suspended him and sought his removal effective that same date. The PNDA also indicated that if Figueroa was requesting a departmental hearing, it would be held on December 28, 2022. In response, on December 7, 2022, Figueroa's counsel sent the Sheriff's Office counsel a letter indicating that Figueroa was pleading not guilty, he was requesting a hearing, Figueroa's counsel was available on December 28, 2022, and after Figueroa's counsel reviewed discovery, Figueroa was likely to waive his right to a departmental hearing and appeal directly to the Commission. Subsequently, on January 10, 2023, Figueroa's counsel emailed the Sheriff's Office's counsel stating that Figueroa was entitled to a hearing within 30 days of his suspension and asking what the status was regarding the discovery. The Sheriff's Office's counsel responded on that same date indicating that the delay in providing discovery was because the

discovery was still being reviewed for redactions and date-stamps and it would try to get him the discovery by the end of the next week. The Sheriff's Office counsel also noted that Figueroa indicated that he would likely be waiving the local hearing. In reply, on the same date, Figueroa's counsel indicated that Figueroa did not waive his right to a hearing and he specifically indicated that he had been available on December 28, 2022, and it is the Sheriff's Office's obligation to be prepared within 30 days. In a January 13, 2023 letter, the Sheriff's Office's counsel mailed the discovery which was received by Figueroa's counsel on January 17, 2023.

In his request, Figueroa presents that the Sheriff's Office has failed to provide a hearing within 30 days of his immediate suspension as requested. Therefore, he requests back pay from his immediate suspension date until he receives a Final Notice of Disciplinary Action (FNDA), is exonerated, or is removed from employment after the departmental hearing. Figueroa cites Commission cases to demonstrate that even though the Commission cannot decide the merits of the case at this point, he is entitled to back pay for the appointing authority's failure to timely hold the departmental hearing. He notes that although he disagrees with his immediate suspension without pay prior to hearing, he is not contesting the Sheriff's Office's right to do so. Figueroa indicates that as of January 23, 2023, the Sheriff's Office has made no effort to schedule a hearing.

In response, the Sheriff's Office, represented by Christopher M. Kurek, Esq. presents that Figueroa indicated that he would likely waive the departmental hearing, but he wanted to review the discovery first. It presents that the discovery was voluminous, including 1,100 pages and audio files and that the delay in producing discovery was due to the redacting of personal information contained in these pages. The Sheriff's Office states that Figueroa's counsel's January 24, 2023, email was the first time after discovery was produced which asked about scheduling a hearing, which it notes was after the subject interim relief request was filed on January 23, 2023. It states that it is now prepared to move forward with a departmental hearing now that Figueroa has made it clear that he is not waiving it. The Sheriff's Office argues that since after it produced discovery, it did not hear from Figueroa about scheduling a departmental hearing until after he filed interim relief, he cannot now claim that the right to a hearing within 30 days was violated as his own conduct contributed to the delay. The Sheriff's Office also highlights that Figueroa will receive back pay if he is successful on appeal. However, it asserts that the public interest is best served if Figueroa is not returned to pay status pending the departmental hearing as he was charged with a crime and the fact that he pleaded guilty to a lesser offense does not impact its ability to bring charges against him.

In reply, Figueroa emphasizes the January 10, 2023, emails that requested the status of the hearing date and discovery. He asserts that the Sheriff's Office's claim that he waited until after his interim relief request was filed to request a departmental hearing is misleading because he requested a hearing on December 7, 2022, and he requested the status of the hearing on January 10, 2023. He states that

he was unaware of any obligation that he had to continually request a hearing after an immediate suspension because of the volume of discovery. Figueroa notes that he was initially reinstated on August 22, 2022, where he worked in a modified capacity during the investigation. On December 7, 2022, the Sheriff's Office immediately suspended him. Therefore, he presumes that the Sheriff's Office already had the evidence in support of its case. Further, Figueroa states that when the Sheriff's Office chose to suspend him on December 7, 2022, it knew he had the right to request that a departmental hearing be held within 30 days. Accordingly, he believes that the discovery should have been readily available when the charges were levied. He reiterates that although his counsel indicated on December 7, 2022, that he would likely waive his right to a hearing, he also indicated that he was available for a departmental hearing on December 28, 2022. Figueroa claims that the point of the letter was to spark urgency in producing discovery, and he did not expect that it would have the opposite effect. He states that he cannot fathom the Sheriff's Office's argument that because he said that he might waive the hearing, he somehow incurred an obligation to request a hearing a third time after it belatedly provided discovery.

CONCLUSION

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.

N.J.S.A. 11A:2-13, *N.J.A.C.* 4A:2-2.5(d), *N.J.A.C.* 4A:2-2.13(b) provide, in pertinent part, if a law enforcement officer requests a departmental hearing regarding his or her removal in accordance with *N.J.A.C.* 4A:2-2.5(d), the appointing authority shall conduct a hearing within 30 days of the removal effective date unless waived by the employee or a later date as agreed to by the parties.

In this matter, the record indicates that Figueroa was initially charged with criminal offenses and he subsequently pleaded guilty to disorderly conduct. Thereafter, on December 7, 2022, a PNDA was issued to Figueroa indicating that he was immediately suspended for his alleged involvement in insurance fraud. Figueroa acknowledges that the Sheriff's Office had the authority to immediately suspend him prior to a departmental hearing. *See N.J.A.C.* 4A:2-2.5(a)1. The PNDA indicated that if a departmental hearing was desired, it would be held on December 28, 2022. In response, on that same date, Figueroa's counsel requested a hearing and indicated that he was available on December 28, 2022. However, his counsel also stated, "However, after I review the discovery, it is likely that we will waive the departmental hearing and go straight to Civil Service. Please forward all discovery as soon as

possible so that I can make a final determination in that regard.” Based on the above statement, the Commission finds that it was not unreasonable for the Sheriff’s Office to interpret Figueroa’s counsel’s statement as only requesting a hearing after reviewing discovery and determining that he wanted one after the review.

The record also indicates that on January 10, 2023, Figueroa’s counsel emailed the Sheriff’s Office’s counsel stating, “My client is entitled to a hearing within 30 days of his suspension. What is the status of discovery?” The Sheriff’s Office’ counsel responded on that same date explaining that the delay was due to the large volume of discovery that had to be redacted and it planned on producing the discovery by the end of the next week. It also stated that it believed that Figueroa had indicated he was likely to waive the local hearing. In reply, Figueroa’s counsel reiterated that he did not waive the hearing, he had been available for a hearing on the date as indicated on the PNDA, that the Sheriff’s Office should have had the evidence in its possession at the time it issued the PNDA, and once it issued the PNDA, it should have been prepared to have a hearing within 30 days. The Commission finds that although Figueroa did not waive his right to a hearing, as Figueroa was still asking about the status of discovery, it was not unreasonable for the Sheriff’s Office’s counsel to interpret Figueroa’s counsel as still wanting to review discovery before determining if he was going to proceed with a hearing.

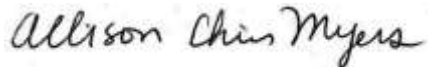
Additionally, the record indicates that the Sheriff’s Office’s counsel mailed the discovery to Figueroa’s counsel on January 13, 2022, and it was received on January 17, 2023. Further, on January 24, 2023, Figueroa’s counsel emailed the Sheriff’s Office’s counsel, stating, “Please let me know when we can schedule the departmental hearing.” In other words, at that time, Figueroa’s counsel clearly indicated that he wanted to schedule the departmental hearing. Therefore, the Commission finds that there is nothing in the record that indicates that the Sheriff’s Office was attempting to avoid or otherwise unreasonably delay the departmental hearing. Instead, the Sheriff’s Office’s counsel reasonably interpreted Figueroa’s counsel as wanting to make the decision as to whether to hold a departmental hearing until after he reviewed discovery. Further, the Sheriff’s Office’s counsel reasonably explained why it delayed in providing the discovery. While it took longer than 30 days to produce the discovery, the Commission does not find this delay purposeful or otherwise significantly prejudicial to Figueroa. Thus, it does not find this procedural violation warrants any remedial action. Moreover, the record indicates that the parties have now agreed to hold the departmental hearing on March 22, 2023, Therefore, the Commission finds that Figueroa has not met the standards for interim relief.

ORDER

Therefore, it is ordered that this petition 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 15TH DAY OF MARCH, 2023



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