



STATE OF NEW JERSEY

In the Matter of Mina Ekladious,
Jersey City, Department of Public
Safety

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

CSC Docket No. 2023-922

Reconsideration and Stay

ISSUED: March 29, 2023 (SLK)

Jersey City, represented by Arthur R. Thibault, Jr., Esq. and Kyle J. Trent, Esq., requests reconsideration of *In the Matter of Mina Ekladious* (CSC, decided September 21, 2022). In the alternative, Jersey City requests that this matter be stayed pending an appeal to the Appellate Division.

By way of background, Ekladious was removed as a Jersey City Fire Fighter, effective December 24, 2019, for failing the physical performance test at the Morris County Safety Training Academy Career Firefighter Program. Ekladious appealed his removal, and the matter was transmitted to the Office of Administrative Law (OAL) as a contested case. The Administrative Law Judge (ALJ) found that Ekladious' witnesses were more credible than Jersey City's witnesses, and, therefore, Jersey City had not proven that Ekladious failed the Academy's physical assessment. Accordingly, in the ALJ's initial decision, she recommended that the charges against Ekladious be dismissed, his removal be reversed, and he be enrolled in the next available firefighter class at a different academy. The Civil Service Commission (Commission), at its September 21, 2022, meeting, affirmed the ALJ's initial decision. Additionally, the Commission ordered mitigated back for the remainder of his working test period, reasonable counsel fees, and that he complete the remainder of his working test period, which would include his re-enrollment into a different fire academy.

In Jersey City's request, it argues that the Commission should reconsider its decision as it was based upon clear, material error. It asserts that the ALJ's determination that Ekladius was wrongfully dismissed from the Academy was based on a finding that Academy staff did not treat him properly. Jersey City notes that the ALJ found that the Academy staff treated Ekladius poorly due to his weight, and that criticism came primarily from Captain Hamilton, the person holding the stopwatch. This was based on Ekladius's and Dominick Ciccarelli's, another Academy testimony. Ciccarelli partially supported Ekladius' statements regarding his performance and confirmed Ekladius' poor treatment by Academy instructors. Jersey City presents case law that indicates that in the absence of evidence of disparate treatment based upon membership in a protected class, an employee cannot avoid discipline based on "unfairness" compared to others.

Jersey City states that it is undisputed that on Ekladius' first opportunity to complete the 300-meter dash, he scored 72 seconds when 70.1 seconds was passing. However, it contends that the ALJ mistakenly found that Ekladius' ability to run was hindered by him having to wear wrongly sized gear provided to him when the record indicates that he did not have to wear this gear during the Academy's physical assessments. Further, Jersey City presents that a review of the record reveals that Ekladius scored 76 seconds on his second attempt to complete the 300-meter dash. It provides that only the people who finished ahead of him on the second test passed, and while he may have believed that he did better, the preponderance of the evidence was that he failed the 300-meter dash. Moreover, even Ciccarelli testified that while Ekladius did most physical things he could not do all the physical things. It emphasizes that the purported "meanness" and perceived unfairness was an insufficient and legally flawed basis for the ALJ to find that Ekladius was wrongfully dismissed from the Academy.

Jersey City also argues that if the Commission does not reconsider its decision, it must remand the matter to the OAL to reconstruct the record because the hearing transcript does not have Ciccarelli's testimony. It states that the ALJ's initial decision indicates that her decision was largely predicated on Ciccarelli's testimony regarding Ekladius' performance on the assessments and his poor treatment. It believes that Ciccarelli's testimony does not support the ALJ's conclusion because he acknowledged that Ekladius was not in the best shape and that he could only do "most," but not all things required by the Academy. Therefore, Jersey City contends that the absence of Ciccarelli's testimony in the transcript left it impossible for the Commission to analyze his testimony and will prejudice it on appeal to the Appellate Division if his full testimony is not in the record.

Alternatively, Jersey City argues that the Commission should stay this matter pending an appeal to the Appellate Division. Jersey City cites case law to indicate that the court may place less emphasis on one of the factors for a stay if another stay factor greatly requires the issuance of a stay. It claims that it is likely to succeed on

the merits since the ALJ's findings and conclusions are unsupported and contrary to the law regarding disparate treatment and "unfairness" in disciplinary actions. Further, it asserts that the Commission committed clear, material error in adopting the initial decision where significant portions of the hearing testimony were missing. Jersey City contends that if the Commission does not remand the matter to the OAL to reconstruct the missing transcript, it will likely succeed on appeal to the Appellate Division because the transcript is of "crucial importance" for meaningful review. It asserts that a stay is necessary to prevent it from irreparable harm. It presents that the Commission ordered that Ekladius be immediately reinstated and enrolled in the next available non-Morris County Fire Academy when a fire academy under the Department of Community Affairs already determined that he could not meet the requirements. Therefore, it argues that enrolling Ekladius in such a fire academy takes a spot from another potential candidate and requires Jersey City to invest time and money into him where there would be no redress if it succeeds on appeal or if Ekladius fails the fire academy again. In contrast, Jersey City contends that if its stay request is granted, Ekladius suffers no significant harm as merely the status quo continues.

Ekladius, represented by Michael L. Prigoff, Esq., states that the Commission did not commit clear, material error in its final decision. It asserts that Jersey City is seeking a third attempt to justify his termination as the ALJ and then the Commission have already rejected this action. He emphasizes that Jersey City has the burden of establishing by the preponderance of credible evidence that he failed to successfully complete Academy training. However, the ALJ, who is the trier of fact, found Ekladius and Ciccarelli to be more credible than Jersey City's witnesses. Further, the ALJ found Ekladius more credible than Captain Hamilton who led the "relentless" criticism of Ekladius and was "the only person holding a stopwatch." Therefore, the ALJ found that Jersey City failed to sustain its burden by the preponderance of credible evidence regarding the charges against Ekladius.

Ekladius presents that while Jersey City claims that there was clear, material error in the decision because the findings were premised on Ekladius not being treated fairly, it notes that the bias only indicated why his performance was not accurately recorded at the Academy. Further, he reiterates that it was not his burden to demonstrate that he was unfairly disciplined as it was Jersey City's burden to demonstrate his termination for lack of performance at the Academy was justified. Ekladius states that based on the totality of the evidence, including disparities between Jersey City's witnesses and the multiple discrepancies between his clear recollections of statements and Jersey City's witnesses, the ALJ found that Jersey City failed to meet its burden. Further, the Commission properly gave deference to the ALJ's credibility determinations as she was in the best position to make such determinations.

Additionally, Ekladius asserts that there is no need to re-open and reconstruct the record as Jersey City did not raise the issue of Ciccarelli's testimony not being included in the transcript with its exceptions and, therefore, this claim does not meet the standard for reconsideration. Regardless, Ekladius highlights that Ciccarelli only testified for a few minutes and the ALJ accurately summarized his testimony in the initial decision. Therefore, he contends that the ALJ's re-hearing and re-observing Ciccarelli's testimony will not change the ALJ's or the Commission's conclusions. Similarly, Ekladius argues that there is no basis to stay this matter pending an appeal by Jersey City to the Appellate Division as it unlikely to prevail on the merits since no clear, material error has been established. Further, he believes that if the stay is not granted, Jersey City is not harmed as it did not meet its burden that he failed the Academy. Also, if he does fail to complete the course at the new academy, this will not harm Jersey City or the public. However, Ekladius provides if the stay is granted, he is being harmed as his career as a Fire Fighter will continue to be delayed as he was appointed on October 7, 2019 and was terminated on December 26, 2019, which has now been more than three years. Moreover, a stay pending an appeal to the Appellate Division will rob him of an additional year or more of time of a physically demanding career.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for stay 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.

In this matter, the Commission finds that Jersey City has not met the standard for reconsideration. Concerning Jersey City's claim that the Commission made clear, material error, when reviewing the excerpt that Jersey City highlights in its request, Ekladius testified that he did not understand how he could have done worse on the second test for the 300-meter dash when he was improving in his performance. Additionally, when reviewing the initial decision, Ciccarelli testified that the

Academy staff treated Ekladius poorly since day one and made multiple derogatory remarks towards him. The ALJ found Ekladius and Ciccarelli to be credible witnesses. Further, the ALJ found that Captain Hamilton had called Ekladius “fatty” and other derogatory names. Also, the ALJ found that Ekladius had been written up for not shaving, yet he was clean shaven every day. Moreover, Captain Hamilton was the only one timing Ekladius or observing the stopwatch when he found Ekladius to have failed the 300-meter dash. Most importantly, the ALJ found that Ekladius’ witnesses’ testimonies were more credible than Jersey City’s witnesses’ testimony. Therefore, the ALJ found the Jersey City could not credibly meet its burden to show that Ekladius failed the Academy. Consequently, the Commission did not make clear, material error when it relied on the evidence in the record, *i.e.* the credibility determinations of the ALJ, who is the trier of fact and was in the best position to determine credibility, when it adopted the ALJ’s recommendation to reverse the removal since Jersey City failed to meet its burden of proof. In other words, the Commission did not reverse Ekladius’ removal due to the Academy’s “meanness” or “unfairness” as Jersey City contends. Instead, the Commission reversed the removal because Jersey City did not meet its burden to prove that the determination that Ekladius did not meet the Academy’s physical assessment standards was reliably accurate based on the credible testimony in the record.

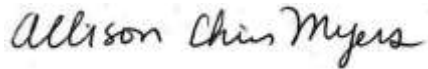
Referring to Jersey City’s request to re-open and remand the matter to the ALJ because Ciccarelli’s testimony is not in the transcript, as the information was known, or should have been known at the time Jersey City filed its exceptions and it did not make this argument at that time, this request does not meet the standard for reconsideration under *N.J.A.C. 4A:2-1.6(b)1*. Regardless, the Commission finds that the ALJ included a summary of Ciccarelli’s testimony in her initial decision, which was sufficient for the Commission to make its determination in this matter. As such, the Commission finds that there is no need for the ALJ to reconstruct Ciccarelli’s testimony as this would provide no value. Similarly, the Commission finds that there is no basis to stay this matter pending Jersey City’s appeal to the Appellate Division. As stated above, the record supports that Jersey City has not met its burden of proof, therefore, it is unlikely to succeed on the merits. Moreover, it is Ekladius who is suffering immediate or irreparable harm as he was wrongfully terminated, and he continues to suffer substantial injury as Jersey City has not reinstated him despite the Commission’s order. Finally, it is in the public’s best interest for the Commission’s orders to be followed.

ORDER

Therefore, it is ordered that these requests 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 29TH DAY OF MARCH, 2023



Allison Chris Myers
Acting 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: James B. Johnston, Assistant Corporation Counsel
Arthur R. Thibault, Jr., Esq.
Kyle J. Trent, Esq.
Mina Ekladius
Michael L. Prigoff, Esq.
Division of Agency Services
Records Center