

In reply, Paterson, represented by Nicole M. DeMuro, Esq., requests that the Commission's September 21, 2022, order directing that Meadows be reinstated be stayed pending its appeal to the Appellate Division. It states that Meadows' condition of being legally blind makes him unable to perform the functions of a Principal Planner. Paterson contends that the sole issue is what, if any, accommodation it was required to provide Meadows. It asserts that the only accommodation that could have assisted Meadow in performing the essential functions of his job was for it to hire another full-time employee solely for the purpose of assisting him, which it asserts would be an undue burden and is not reasonable. Paterson highlights its budgetary issues as demonstrated by the fact that it receives transitional aid from the State and notes that the Department of Community Affairs would have to approve such hiring. It describes his job duties as reviewing plans, reviewing documents, meeting with the public, writing and reviewing documents and reviewing ordinances and the City's master plan. Additionally, he would also be required to review site plans which contain architectural and engineering dimensions, show elevations, and show utility lines. Paterson presents that Meadows' doctor indicated that he could work if he could be accommodated for "reading, writing, clerical work, and transportation," while its doctor found that Meadows was unemployable. It presents that Meadows did not have his own dedicated clerical assistant as his Division consisted of the Director, Meadows, a Clerk, and a Zoning Officer. Paterson emphasizes its Director's testimony that a layman, such as a clerical staff member, could not read, interpret or evaluate plans. Therefore, it argues that it is likely to succeed on the merits of the case as it would need to hire another Planner to accommodate Meadows, which is not reasonable and would be an undue burden based on its finances. Further, it asserts that if its stay is granted, Meadows would not suffer any irreparable harm since any harm could be satisfied with back pay. Additionally, Paterson contends that it would be harmed if it is required to reinstate Meadows as it reiterates its position that Meadows cannot perform his duties without it hiring another full-time planner which would be both a financial burden to Paterson and taxpayers. Moreover, it indicates that Paterson residents should be able to trust that its Principal Planner can perform the position's required duties. Similarly, Paterson argues that it would be in the public interest to not reinstate Meadows pending its appeal as there is a serious question as to his fitness to perform duties and its best that the status quo be maintained as the Appellate Division may rule in favor of termination.

In response, Meadows argues that Paterson is unlikely to succeed on the merits. He presents that Paterson will need to prove that he could not be reasonably accommodated by providing him clerical assistance for reading, typing and accompanying him to the occasional site visit and the standard is whether the Commission's decision was "arbitrary, capricious or unreasonable." However, Meadows asserts that Paterson has not demonstrated how the Commission's decision was arbitrary, capricious or unreasonable. He states that the record is devoid of any evidence or finding that he requested a personal assistant dedicated to him or that a new position was required. Instead, Meadows provides that he only requested

assistance with reading and writing and Paterson's only witness was not involved with his request for accommodations. Rather, he submits that Paterson's witness' testimony revealed that no accommodations were offered to him. Additionally, Meadows argues that Paterson will not be harmed if he is reinstated, as other than unsupported statements, it has not provided any evidence to support its claims. However, he argues that if the stay is granted, he will be suffering substantial injury as he has not been paid since September 2018 when he went on leave, and his career, as well as the value that he provides to Paterson, have suffered during this time. Moreover, Meadows argues that the public interest is best served by having Paterson comply with the Commission's decision.

Meadows also submits an affidavit concerning his income and benefits. He states that during the separation period, he did not seek or accept any employment. Meadows affirms that he did not earn any income during the separation period. He presents that he did receive Temporary Disability from the State in the amount of \$16,900 for the period March 8, 2019 until August 2022. Meadows explains that he did not seek employment during the separation period because it was his understanding that his separation was under review and not final until September 21, 2022.

Paterson, in further response, presents his salary during the separation period.¹ It submits job postings for some Planner positions throughout the State that are currently available and believes similar positions were available throughout the separation period.

CONCLUSION

N.J.A.C. 4A:2-2.10(a) provides that where a disciplinary penalty has been reversed, the Commission shall award back pay, benefits, seniority or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified.

N.J.A.C. 4A:2-2.10(d)4 provides that where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed, and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts.

¹ Paterson presents that Meadows' salary at separation was \$93,846.74, his salary from July 1, 2019, through June 30, 2020, was \$95,723.80, his salary from July 1, 2020, through December 31, 2020, was \$97,638.27, his salary from January 1, 2021 through December 31, 2021, was \$99,591.04, and his salary from July 1, 2022 through the present was \$101,582.86.

N.J.A.C. 4A:2-2.10(d)5 provides that an employee shall not be required to mitigate back pay for any period between the issue date of a Civil Service Commission decision reversing or modifying a removal or reversing an indefinite suspension and the date of actual reinstatement. The award of back pay for this time period shall be reduced only by the amount of money that was actually earned during that period, including any unemployment insurance benefits received.

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, in its September 21, 2022, decision, the Commission reversed Meadows' removal as a Principal Planner. Therefore, it ordered his immediate reinstatement with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from the first date of separation until the date of reinstatement. However, a review of the record indicates that Meadows made no effort to mitigate his back pay during the separation period. Although Meadows was not necessarily required to obtain employment during the separation period, he was required to make reasonable efforts to seek employment under *N.J.A.C.* 4A:2-2.10(d)4. Therefore, the Commission finds that he is not entitled to any back pay during the separation period prior to the Commission's September 21, 2022, decision. However, the Commission finds that the Meadows is entitled to back pay from September 22, 2022, until his reinstatement as there is no duty to mitigate after the Commission issued its decision ordering his reinstatement. See *N.J.A.C.* 4A:2-2.10(d)5 and *In the Matter of William Able* (CSC, decided September 1, 2021). That back pay amount shall be based on Meadows' \$101,582.86 2022 salary and whatever his 2023 salary is from January 1, 2023, until reinstatement, and is subject to reduction only by any money actually earned after September 21, 2022, and any normal amounts withheld pursuant to *N.J.A.C.* 4A:2-2.10(d)2.

Concerning Paterson's request to stay Meadows' reinstatement and back pay award pending its appeal to the Appellate Division, based on the reasons as set forth in the ALJ's initial decision, which were affirmed by the Commission, the Commission denies this request as Paterson is unlikely to succeed on the merits. Further, it is Meadows, who has not been reinstated and who has been without pay despite the Commission's order, who would be harmed if Paterson's request is granted. Moreover, it is in the public's best interest that the Commission's orders are followed. Finally, as the outstanding back pay issues have now been resolved, the Commission warns Paterson that any further delay in Meadows' reinstatement or back pay award

may result in the imposition of fines up to \$10,000 pursuant to *N.J.A.C. 4A:10-1.1(b)* and *N.J.A.C. 4A:10-2.1(a)*.

ORDER

Therefore, it is ordered that this request for enforcement is granted in part and Paterson shall immediately reinstate George Meadows. Paterson's request for a stay is denied.

Additionally, the Commission denies Meadows' request for back pay prior to September 21, 2022. Back pay after that date is granted and shall be based on his \$101,582.86 2022 salary and whatever his 2023 salary is from January 1, 2023, until reinstatement and subject to reduction pursuant to *N.J.A.C. 4A:2-2.10(d)2* and *N.J.A.C. 4A:2-2.10(d)5*.

Paterson shall make a good faith effort to comply with all aspects of this decision within 30 days of the receipt of this decision. Failure to comply may subject it to fines up to \$10,000 pursuant to *N.J.A.C. 4A:10-1.1(b)* and *N.J.A.C. 4A:10-2.1(a)*.

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: George Meadows
Seth Gollin, Staff Attorney
Kathleen Long
Nicole M. DeMuro, Esq.
Division of Agency Services
Records Center