

In the Matter of Fabian Arroyo, Hoboken, Department of Transportation and Parking

CSC DKT. NO. 2023-1353 OAL DKT. NO. CSV 00215-23 DECISION OF THE CIVIL SERVICE COMMISSION

ISSUED: MAY 24, 2023

The appeal of Fabian Arroyo, Laborer 1, Hoboken, Department of Transportation and Parking, 30 working day suspension, on charges, was before Administrative Law Judge Matthew G. Miller (ALJ), who rendered his initial decision on April 25, 2023. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of May 24, 2023, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision and his recommendation to reverse the suspension.

Since the suspension has been reversed, the appellant is entitled to be 30 working days of back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10(d)3, as well as reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning counsel fees are finally resolved.

### **ORDER**

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Fabian Arroyo. The Commission further orders that the appellant receive 30 working days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in N.J.A.C. 4A:2-2.10(d)3. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission also orders reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12. An affidavit in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to N.J.A.C. 4A:2-2.12, the parties shall make a good faith effort to resolve any dispute as to the amount of counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON THE  $24^{TH}$  DAY OF MAY, 2023

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Acting Chairperson Civil Service Commission

Inquiries and Correspondence Nicholas F. Angiulo

Director

Division of Appeals and Regulatory Affairs

Civil Service Commission

P. O. Box 312

Trenton, New Jersey 08625-0312

Attachment



# State of New Jersey OFFICE OF ADMINISTRATIVE LAW

### **INITIAL DECISION**

OAL DKT. NO. CSV 00215-23 AGENCY DKT. NO. 2023-1353

IN THE MATTER OF FABIAN ARROYO, CITY OF HOBOKEN, DEPARTMENT OF TRANSPORTATION AND PARKING,

Marcia J. Mitolo, Esq., for petitioner, (Limsky Mitolo, attorneys)

**Brian J. Aloia**, Esq., Corporation Counsel, for respondent appearing pursuant to N.J.A.C. 1:1-5.4(a)8

Record Closed: April 24, 2023

Decided: April 25, 2023

## BEFORE **MATTHEW G. MILLER**, ALJ:

Petitioner appeals the determination by respondent, City of Hoboken, Department of Transportation and Parking to impose a thirty working day suspension effective September 12, 2023, for a violations of N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee) and N.J.A.C. 4A:2-2.3(A)(12) (other sufficient cause).

The matter was transmitted to the Office of Administrative Law ("OAL") on January 9, 2023, for determination as a contested case. A telephone prehearing conference was

held on February 6, 2023 and the parties were notified that the hearing would be scheduled for April 24, 2023 at 9:30 a.m.

On the morning of April 24, 2023, counsel for both petitioner and respondent appeared, as did petitioner himself. However, after confirming on the afternoon of Friday, April 21, 2023 that they would be appearing for the hearing via Zoom, both of Hoboken's witnesses failed to appear for the hearing on Monday. Counsel for Hoboken reached out to the witnesses both via email and through multiple telephone numbers on Monday morning with no response. Neither of the witnesses are employees of the City of Hoboken.

At approximately 10:34 a.m., the witnesses' absence was acknowledged on the record and petitioner conceded that without their testimony, it would be unable to prove its case by a preponderance of the credible evidence.

The matter was held open for twenty-four hours in case the witnesses were involved in an emergency and/or that there were demonstrated extraordinary circumstances that prevented their appearance. In those twenty-four hours, the witnesses did not contact either counsel or the Court.

Accordingly, I **FIND** that the City of Hoboken has failed to prove the allegations of N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee) and N.J.A.C. 4A:2-2.3(A)(12) (other sufficient cause) by a preponderance of the credible evidence and that its decision should be overturned.

### ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's findings of guilt made against petitioner, Fabian Arroyo, as delineated in the November 30, 2022 Final Notice of Disciplinary Action be and are hereby **REVERSED**.

It is further **ORDERED** that the thirty-day working suspension which has previously been served by Mr. Arroyo be and is hereby **REVERSED** and that he shall all requisite backpay and benefits that were lost as a result of that suspension.

I hereby FILE my initial decision with the CIVIL SERVICE COMMISSION for consideration.

This recommended decision may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 25, 2023	Mattellen
DATE	MATTHEW MILLER, ALJ
Date Received at Agency:	April 25, 2023
Date Mailed to Parties:	April 25, 2023

M. Han.