

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 24TH DAY OF MAY, 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
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



DATE

MATTHEW MILLER, ALJ

Date Received at Agency:

April 25, 2023

Date Mailed to Parties:

April 25, 2023

sej