



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of P.L., Trenton

CSC Docket No. 2023-1569

Request for Interim Relief

**ISSUED: May 24, 2023 (HS)**

P.L., a Police Officer with Trenton, represented by Frank C. Cioffi, Esq., petitions the Civil Service Commission (Commission) for interim relief of her immediate suspension without pay, effective November 30, 2022.

As background, on November 29, 2022, the appointing authority presented the petitioner with an Immediate Suspension Notice and Preliminary Notice of Disciplinary Action (PNDA). These documents indicated that the petitioner was unfit for duty and would be immediately suspended, effective November 30, 2022, on charges of incompetency, inefficiency, or failure to perform duties and inability to perform duties. Specifically, the appointing authority asserted that a November 4, 2022 administrative report described the petitioner’s inability to perform her duties; indicated that she had reached maximum medical improvement (MMI); and indicated that during the course of a Functional Capacity Evaluation (FCE), the petitioner gave a substantial sub-maximum effort.

The referenced administrative report recounted the hand injury that the petitioner had sustained in July 2021; subsequent treatment received; and diagnosis of a partial tear of her finger flexor tendon. The report further stated that because the petitioner had been placed at MMI and still had limited range of motion and strength, an FCE was ordered for the petitioner. The FCE occurred October 27, 2022. The FCE report noted that the petitioner complained of difficulty with hand gripping tasks and stated that she “[hadn’t] really tried to do too much” and that kinematic

analysis reflected residual functional deficit of her wrist and fingers. The report further stated:

The [petitioner] demonstrated significant sub-maximum effort in relevant FCE event protocols. Coefficient of variation results are compatible with a strong symptom magnification component to the [petitioner]’s complaints and/or a conscious [petitioner] effort to portray work ability below actual ability. Work recommendations reflect the [petitioner]’s work capacity demonstrated during the FCE. Due to the [petitioner]’s substantial sub-maximum effort, FCE results cannot guarantee to represent the [petitioner]’s maximum functional work ability.

...

This FCE is of limited value in determining true residual functional deficit due to the [petitioner]’s self limiting movement and strength effort. Recommendations below are based purely on the [petitioner]’s self limiting effort.

...

The [petitioner]’s recommended maximum work capacity category is currently: Light

A *Loudermill*<sup>1</sup> hearing was held on December 13, 2022. On December 19, 2022, the Hearing Officer upheld the petitioner’s immediate suspension without pay, effective November 30, 2022.

In her request for interim relief, the petitioner contends that the standard for an immediate suspension under *N.J.A.C. 4A:2-2.5(a)*<sup>1</sup> was not met because the appointing authority’s sole witness testified that the FCE report does not include a determination as to whether the petitioner is fit or unfit and that a determination about her abilities could not be reached. In other words, according to the petitioner, the report was inconclusive. Thus, the petitioner maintains that she should be reinstated to paid status until the conclusion of this case. In support, the petitioner submits copies of the PNDA; Immediate Suspension Notice; the November 4, 2022 administrative report; FCE report; audio recording of the *Loudermill* hearing; and Hearing Officer decision.

In response, the appointing authority, represented by Palmer J. Richardson, Assistant City Attorney, acknowledges that the FCE results were determined inconclusive but argues that it is equally clear that such determination was predicated upon the petitioner’s sub-optimal effort. The appointing authority

---

<sup>1</sup> *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

emphasizes that while the results did not expressly declare the petitioner unfit, they equally did not declare her *fit*. It contends that an inconclusive result must be perceived more determinative of *unfitness* rather than fitness because such finding is in keeping with the duty, per Attorney General Directives, to ensure that officers are fit to perform the duties of their profession. The alternate finding would, according to the appointing authority, necessitate sending a possibly unfit officer into the field. The appointing authority argues that the standard under *N.J.A.C. 4A:2-2.5(a)* cannot be that anything short of a determination expressly declaring the examinee unfit should be evaluated as insufficient to merit a finding of unfitness.

In reply, the petitioner reiterates her contention that there was no evidence to support her immediate suspension without pay. In support, she submits a transcript of the *Loudermill* hearing.

### CONCLUSION

*N.J.A.C. 4A:2-1.2(c)* provides the following factors for consideration in evaluating a petition for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

Initially, it must be emphasized that the role of the Commission at this stage in the proceedings is not to adjudicate the merits of the charges against the petitioner. Rather, the sole issue before the Commission at this juncture is whether the appointing authority presented a valid basis to immediately suspend the petitioner pursuant to *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(a)1*.

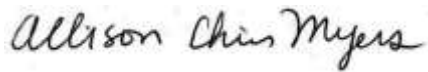
*N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(a)1*, in turn, provide that an employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. The appointing authority in this matter possessed a valid basis to impose an immediate suspension, pursuant to *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(a)1*. Specifically, the appointing authority presented an FCE report that did not indicate that the petitioner could perform the full duties of a Police Officer. The petitioner emphasizes that the report does not explicitly state that she was unfit and that it was inconclusive as to whether she was fit or unfit. The appointing authority counters that the report did not find her fit and that the inconclusive nature of the report stemmed from the petitioner's own sub-optimal effort. The disagreement between the parties demonstrates, at best, that there are material fact issues in the case, not that the appointing authority lacked any valid

basis to impose an immediate suspension or that the petitioner has shown a clear likelihood of success at this juncture in having the administrative charges dismissed. Moreover, the petitioner has not satisfied any other prongs of *N.J.A.C.* 4A:2-1.2 since the harm she is suffering is monetary in nature, and can be remedied, and it is clearly potentially harmful to the appointing authority and the public if an employee who is alleged to be unfit is allowed to remain on the job. Thus, the petitioner's immediate suspension without pay on November 30, 2022 was proper and imposed in accordance with Civil Service laws and regulations.

**ORDER**

Therefore, it is ordered that the petitioner's request for interim relief be denied.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 24<sup>TH</sup> 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  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: P.L.  
Frank C. Cioffi, Esq.  
Adam E. Cruz  
Palmer J. Richardson, Assistant City Attorney  
Division of Agency Services  
Records Center