



STATE OF NEW JERSEY

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

In the Matter of Idesha Howard

CSC Docket No. 2023-1375

Reconsideration

ISSUED: July 19, 2023 (EG)

Idesha Howard, County Correctional Police Officer with Essex County, represented by Luretha M. Stribling, Esq., petitions the Civil Service Commission (Commission) for reconsideration of the final administrative decision, rendered on December 7, 2022, in which the Commission denied her request for interim relief of her immediate and indefinite suspension.

As background, the record indicates that the petitioner was issued a Preliminary Notice of Disciplinary Action (PNDA) dated March 3, 2022, indicating that she had been charged with two 3rd degree criminal charges. The Final Notice of Disciplinary Action (FNDA) was issued April 7, 2022, sustaining the charges and indefinitely suspending the petitioner pending the disposition of the criminal charges. The criminal charges were dismissed on July 12, 2022. A subsequent PNDA containing administrative charges was issued on August 31, 2022. In her request for interim relief, the petitioner argued that the administrative charges against her should be dismissed as the criminal charges against her were dismissed on July 12, 2022, and that she had not been returned to work as required by *N.J.S.A. 30:8-18.2*. Additionally, she contended that pursuant to *N.J.S.A. 30:8-18.2*, the charges were not properly brought forth within 45 days. Further, the petitioner claimed that pursuant *N.J.S.A. 40A:14-201(2)* she should have been returned to work on August 31, 2022, after 180 days of no charges being brought forth against her since her suspension on March 3, 2022. In response, the appointing authority maintained that on July 13, 2022, it was advised that the criminal charges against the petitioner had been

dismissed and Internal Affairs (IA) could begin its investigation. IA concluded its investigation on August 20, 2022, and forwarded its findings to the Office of the Director and the Disciplinary Unit. A PNDA was issued on August 31, 2022.

The Commission found that the petitioner's reliance on the "180-day rule" found in *N.J.S.A.* 40A:14-201(2) was misplaced as there was clearly a criminal investigation and criminal charges and as such, the 180-rule was not implicated as to the petitioner's indefinite suspension on March 3, 2022. Further, the Commission determined that the petitioner's reliance on the "45-day rule" was also misplaced. The "45-day rule" for county correctional police officers as provided for in *N.J.S.A.* 30:8-18.2 states that the complaint must be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The Commission found no indication in the statute that the passage "the 45-day limit shall begin on the day after the disposition of the criminal investigation" was meant to subvert an appointing authority's ability to conduct a proper investigation after the disposition of criminal charges and deprive the person filing the complaint from obtaining sufficient information to file the matter. Therefore, since the Director, the person filing the complaint, filed the PNDA only 11 days after receiving sufficient information to do so, there was no 45-day rule violation evident. Accordingly, the Commission denied the petitioner's request for dismissal of the charges.¹

In the present matter, the petitioner argues that the 180-day rule applies because the charges set forth in the March 3, 2022 PNDA stemmed from charges that occurred on August 28, 2018. She claims that she met with the appointing authority's Professional Standards Bureau in September 2018 and was told that charges from the August 28, 2018 incident were forthcoming. Thus, the petitioner argues that there was sufficient information to bring forth charges in September 2018, but the appointing authority waited over three years to charge her in March 2023. In this regard, the petitioner argues that it was ridiculous that she worked all that time but then suddenly in March 2023 she had to be immediately suspended because now she posed a risk. Further, the petitioner argues that a strict reading of *N.J.S.A.* 30:8-18.2 indicates that a new PNDA needed to have been issued immediately. She contends that no investigation period is indicated. In this regard, the petitioner asserts that an investigation had already been conducted for the issuance of the March 3, 2022 PNDA. Further, the petitioner argues that *Roberts v. State, Div. of State Police*, 191 *N.J.* 516 (2007), which was relied upon by the Commission in making its determination, is not relevant to the instant matter as it addressed a different statute.

The petitioner also argues that she should receive back pay from March 3, 2022, until the issuance of the new PNDA. She relies on *In the Matter of Clifton*

¹ However, the Commission did award back pay for the period of delay between the dismissal of the criminal charges and the issuance of the administrative charges.

Gauthier, Rockaway Township (CSC, decided March 27, 2018), in which the Commission addressed *N.J.S.A. 40A:14-149.2* which provides that suspended police officers that are not found guilty at trial, the charges are dismissed, or prosecution is terminated, shall be reinstated to their position and shall be entitled to recover all monies withheld during the period of suspension subject to any disciplinary proceedings or administrative action.

In response, the appointing authority, represented by Jeanne-Marie Scollo, Assistant County Counsel, contends that the petitioner has not presented any new evidence or additional arguments and she has not demonstrated that a clear material error has occurred. It asserts that the petitioner merely insists on her interpretation of the law and characterizes the Commission's findings as "the law not being applied as required." Additionally, the appointing authority argues that the roles played by the law enforcement agency investigating the criminal matter and the role of the correctional facility conducting an administrative investigation are distinct and two separate investigations.

In reply, the petitioner reiterates her argument that the investigation had been completed as of March 3, 2022. In this regard, the petitioner asserts that the individual who prepared the report that was used to issue the PNDA on August 31, 2022, testified during an internal hearing on February 27, 2023, that he did not further investigate this matter after the criminal charges had been dismissed. The petitioner contends that this is proof that the appointing authority's assertion that an investigation was conducted after the criminal charges were dismissed is false and the 45-day rule was violated. The petitioner also reiterates her arguments concerning the 180-day rule and arguments about her back pay dates.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In the instant matter, the petitioner contends that the 180-day rule applies because the charges set forth in the March 3, 2022 PNDA stemmed from charges that occurred on August 28, 2018. However, this argument was not made in the initial interim relief request. The petitioner provides no reasons why this argument was not previously made as that information was clearly available when the interim relief request was filed. Regardless, that rule only applies to administrative charges and not criminal charges. As the Commission stated in its prior decision, this matter

originally involved criminal charges.² The petitioner also claims that the Commission misapplied the applicable statutes and regulations concerning the application of the 45-day rule and the 180-day rule. Her arguments about these issues mostly consist of reiterating her arguments from her initial interim relief request. The Commission clearly explained how it reached its determination regarding those issues and nothing in the present request indicates a clear material error occurred. The petitioner argues that *Roberts*, which was relied upon by the Commission in its determination regarding the 45-day rule, was not relevant to the present matter because it involved a different Statute. This was addressed by the Commission in its prior decision when it said the following:

There is no indication in the statute that the passage “the 45-day limit shall begin on the day after the disposition of the criminal investigation” was meant to subvert an appointing authority’s ability to conduct a proper investigation and deprive the person filing the complaint from obtaining sufficient information to file the matter. In *Roberts v. State, Div. of State Police* 191 N.J. 516 (2007), the Supreme Court analyzed a similar statute to N.J.S.A. 30:8-18.2 and agreed with the Appellate Courts finding that “[i]t would be illogical for the Legislature to have provided the necessary investigative period to determine whether disciplinary charges should issue when no criminal conduct has been alleged, but to have shortened that period when potential criminal conduct is under investigation. We decline to infer an intent to achieve such an unreasonable result.”

Thus, the petitioner’s concerns about the reliance on *Roberts* has previously been addressed and the Commission finds the petitioner’s arguments in that regard unpersuasive.

The petitioner has also claimed that she should have received the back pay starting from her initial suspension on March 3, 2022, until the issuance of the new PNDA on August 31, 2022, rather than starting from the date of the dismissal of the criminal charges. She relies on *Gauthier* in which the Commission addressed N.J.S.A. 40A:14-149.2. However, the petitioner does not address the fact that N.J.S.A. 40A:14-149.2 specifically applies only to municipal police officers and does not provide any evidence of a similar statute for Correctional Police Officers. Finally, the petitioner claims that the testimony of an individual at a hearing in February 27, 2023, indicated that he did not conduct any further investigation between the

² Additionally, there is no evidence that the person authorized to bring administrative charges had sufficient knowledge to do so at any time prior to August 31, 2022. Thus, no violation of the 45-day rule is evident for that time period.

dismissal of the criminal charges and the issuance of the PNDA on August 31, 2022. The petitioner argues that this proves that the 45-day rule was violated as no investigation was conducted after the dismissal of the criminal charges, and that the charges against her should be dismissed. The Commission is not persuaded. Initially, the Commission notes that other than the here mere allegations, the petitioner provides no evidence to confirm that her claims of such testimony is accurate. Further, there is no evidence that another individual did not perform some investigation or, more importantly, that the person authorized to bring the charges had sufficient evidence to do so before being provided a complete investigation report. Finally, the Commission already remedied that delay in its prior decision by granting back pay for that period.

Accordingly, based on the foregoing, the petitioner has not presented any new evidence or persuasive arguments that the Commission erred in its prior decision and her request for reconsideration is denied.

ORDER

Therefore, it is ordered that the request for reconsideration be denied.

This is the final administrative action in the matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF JULY, 2023

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