



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Na’asha Brown,  
Mercer County

CSC Docket Nos. 2023-1511 and  
2023-2581

Interim Relief

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**ISSUED: July 19, 2023 (ABR)**

Na’asha Brown, a County Correctional Police Officer with Mercer County, represented by Stuart J. Alterman, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding her immediate suspensions, effective March 2, 2022, and February 15, 2023. Because these matters involve similar issues, they have been consolidated herein.

March 2022 Suspension

By way of background, on March 2, 2022, Mercer County issued a Preliminary Notice of Disciplinary Action (PNDA) to Brown, immediately suspending her and seeking her removal, alleging that she had engaged in an inappropriate communication with an inmate during the inmate’s incarceration at the Mercer County Correction Center.

In her January 6, 2023, request for interim relief, Brown presented that on June 7, 2022, she had a hearing before a hearing officer provided by Mercer County and that on September 7, 2022, the hearing officer issued his initial decision, which recommended a 15 working day suspension. She states that as of the date of her request for interim relief, she had not received a Final Notice of Disciplinary Action (FNDA) from Mercer County despite multiple oral and written requests from her attorney and the President of PBA Local 167.

The petitioner argues that she is likely to succeed on the merits because *N.J.A.C. 4A:2-2.6(d)* requires that within 20 days of a departmental hearing “or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a Final Notice of Disciplinary Action” and she never agreed to an extension beyond the 20-day timeframe, which would have expired on or about September 27, 2022.

In response, Mercer County, represented by Michael A. Amantia, Esq., Assistant County Counsel, states it issued a FNDA for this matter on or about February 13, 2023, which provided a penalty of a 15 working day suspension. It contends that the issuance of the foregoing FNDA resolves the March 2, 2022 PNDA. It adds that on or about February 13, 2023, it notified the petitioner that it intended to conduct another *Loudermill* hearing based on new charges and that on February 15, 2023, it conducted such a hearing and rendered a decision immediately suspending the petitioner. Mercer County further states that on or about February 15, 2023, it issued a second PNDA, which it served on February 15, 2023. In support, it submits copies of the February 13, 2023, FNDA and February 15, 2023, notices issued to the petitioner.

In reply, the petitioner argues that the February 2023 notices and her second immediate suspension do not change the fact that the appointing authority took more than four months to issue an FNDA after the hearing officer’s September 7, 2022, initial decision. Further, the petitioner avers that even if the Commission were to disagree that the appointing authority had only 20 days from that date to issue the FNDA, she is entitled to back pay from the FNDA date up through the date of her subsequent immediate suspension.

#### February 2023 Suspension

As noted above, on February 15, 2023, the appointing authority again immediately suspended the petitioner after giving her notice and an informal hearing. The appointing authority asserted that, pursuant to *N.J.A.C. 4A:2-2.5(a)*, an immediate suspension was deemed necessary to maintain safety, health, order or effective direction of public services. In support, the appointing authority cited an internal affairs investigation, which found that during an approximately 14-month period, the petitioner had provided a controlled dangerous substance to an inmate for a fee. It also found that the petitioner had provided the same inmate with a cell phone. Moreover, the appointing authority maintained that a search of the same inmate’s cell revealed documents that were purportedly handwritten by the petitioner. On February 15, 2023, the appointing authority issued a PNDA to the petitioner seeking her removal based upon the foregoing allegations. On March 21, 2022, the petitioner, through counsel, requested a hearing on the merits of the February 15, 2023,

disciplinary action. On April 17, 2023, the appointing authority issued an amended PNDA in this matter.

In support of her May 19, 2023, petition, the petitioner argues that she meets the standard for interim relief. In this regard, she asserts that the courts have held that even severe personal inconvenience can constitute irreparable injury justifying the issuance of injunctive relief and that her suspension without pay dating to March 9, 2022, is a severe inconvenience and also directly contradicts the requirement in *N.J.A.C. 4A:2-2.5(d)* that a departmental hearing be held within 30 days of the issuance of a PNDA. She avers that because *N.J.A.C. 4A:2-2.5(d)* establishes the said timeline, her rights are well established. The petitioner maintains that the underlying facts are undisputed and that she has a reasonable probability of success on the merits. Finally, the petitioner argues that she is the only one facing harm in this matter, as she is not being paid, returned to employment, returned to payroll or being given her departmental hearing.

In response, the appointing authority argues that the petitioner does not meet the standard for interim relief because she does not come before this the Commission with clean hands and, based on the allegations of the April 17, 2023, amended PNDA, has no probability of success on the merits. Finally, the appointing authority states that the petitioner's suspension without pay related to the February 15, 2023, PNDA, only dates to February 15, 2023. In this regard, the appointing authority notes that the charges related to the petitioner's March 2022 suspension without pay have been resolved through its issuance of the February 12, 2023, FNDA. The appointing authority submits a certification from the Chief of its Internal Affairs Office in support of its claims.

## CONCLUSION

*N.J.A.C. 4A:2-2.4(a)* provides that no suspension or fine shall exceed six months except for suspensions pending criminal complaint or indictment.

*N.J.A.C. 4A:2-2.5(a)1* provides, in pertinent part, that an employee must be served a PNDA setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except, an employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is necessary to maintain safety, health, order or effective direction of public services.

*N.J.A.C. 4A:2-2.5(d)* provides that a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or a later date as agreed to by the parties.

*N.J.A.C.* 4A:2-2.5(e) provides that appeals concerning violations of this section may be presented to the Commission through a petition for interim relief. *See N.J.A.C.* 4A:2-1.2.

*N.J.A.C.* 4A:2-2.6(d) provides that within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee by personal service or certified mail with a FNDA.

*N.J.A.C.* 4A:2-1.2(a) provides that upon filing of an appeal, a party to the appeal may petition the Commission for a stay or other relief pending final decision of the matter.

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief 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.

### March 2022 Suspension

Initially, it is noted that Brown's March 2022 immediate suspension under *N.J.A.C.* 4A:2-2.5(a)1 was warranted, as Mercer County's allegation that she had engaged in an inappropriate communication with an inmate during the inmate's incarceration at the Mercer County Correction Center supported a determination that an immediate suspension was necessary to maintain safety, health, order or effective direction of public services.

Nevertheless, in the instant matter, the appointing authority did not adhere to proper procedures following the petitioner's immediate suspension, effective March 2, 2022. Specifically, pursuant to *N.J.A.C.* 4A:2-2.5(a)1, *N.J.A.C.* 4A:2-2.5(d) and *N.J.A.C.* 4A:2-2.6(d), an immediate suspension can only generally span 55 days from its inception, allowing for the maximum time for the departmental hearing process to be completed. In this case, the record reflects that on February 13, 2023, the appointing authority issued a FNDA, which imposed a penalty of a 15 working day suspension. In light of the foregoing, it is appropriate that the petitioner be granted relief in the form of back pay from 15 working days after the first date of her immediate suspension, March 2, 2022, through the February 15, 2023, effective date of the new immediate suspension imposed by the appointing authority.

### February 2023 Suspension

As to the petitioner's suspension, effective February 13, 2023, initially, it is noted that that suspension under *N.J.A.C.* 4A:2-2.5(a)1 was warranted. Clearly, the alleged charges of providing controlled dangerous substances, access to a cell phone and documents to an inmate support the appointing authority's determination that the petitioner's immediate suspension were necessary to maintain the health, order, and effective direction of the Mercer County Correction Center. In this regard, the Commission is mindful that Brown, as a law enforcement officer, is held to a higher standard than other public employees. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J.* 567 (1990).

The petitioner has not shown that she is in danger of immediate or irreparable harm if her petition for interim relief stemming from her February 2023 suspension is not granted. Regarding the petitioner's arguments concerning the timing of a departmental hearing, such a delay does not change the outcome of this matter. Even if procedural violations occurred, any procedural defects which may occur at the departmental level are deemed cured by the granting of a *de novo* hearing at the Office of Administrative Law. *See Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995); *In re Darcy* 114 *N.J. Super.* 454 (App. Div. 1971). Accordingly, even if such procedural deficiencies exist as alleged in this matter by the petitioner, since the harm that the petitioner is citing is purely financial in nature, it can be remedied by the granting of back pay if the petitioner is successful at the departmental level or upon further appeal to the Commission after a FNDA is issued. Nevertheless, the Commission orders the appointing authority, if it has not already done so, to conduct and complete the departmental hearing as soon as practicable and issue a timely FNDA thereafter.

Finally, while the Commission does not excuse any procedural violations in this matter, and cautions the appointing authority to strictly adhere to the rules underlying taking such discipline in the future, since a critical issue is whether or not the petitioner's actions constituted wrongful conduct warranting the proposed penalty of removal which may be imposed after a departmental hearing, the Commission will not attempt to determine such a disciplinary appeal on the written record without both a final departmental-level determination and a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Therefore, based upon the foregoing, the petitioner has not met the standard for interim relief with respect to her February 2023 suspension.

**ORDER**

Therefore, it is ordered that Na'asha Brown's petition for interim relief be granted, in part, and the petitioner be awarded back pay 15 working days from March 2, 2022, through February 15, 2023. It is further ordered that Brown's petition for interim relief related to her February 15, 2023 immediate suspension be denied.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 19<sup>TH</sup> DAY OF JULY, 2023

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
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