



STATE OF NEW JERSEY

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

In the Matter of Antoine Buggs, East
Orange

CSC Docket No. 2023-581

Interim Relief

ISSUED: July 19, 2023 (EG)

Antoine Buggs, a Police Officer with the City of East Orange, represented by Paul W. Tyshchenko, Esq., petitions the Civil Service Commission (Commission) for interim relief of his immediate and indefinite suspension.

As background, the record indicates that the petitioner was hired as a Police Officer in January 2008.¹ The petitioner was issued a Preliminary Notice of Disciplinary Action (PNDA) dated August 15, 2022, charging him with conduct unbecoming a public employee and actions involving criminal matters. The appointing authority indicated that it learned on August 11 2022, that the petitioner was being charged with a 4th degree criminal charge along with a disorderly persons offense stemming from an incident at his residence on July 23, 2022. Specifically, the petitioner was charged with advertising a “Pop-up Party” with alcohol being sold on social media and selling alcohol to an undercover officer. A pre-termination, Loudermill² hearing was held on August 18, 2022, and the petitioner’s immediate and indefinite suspension was upheld.

In the instant matter, the petitioner claims that he is likely to prevail on the merits because his rights were violated when he was deprived meaningful opportunity to review the charges and evidence against him prior to his removal from

¹ The record indicates that the petitioner was initial hired in January 2008 and was laid off in February 2011. He was subsequently appointed from a Special Reemployment list effective September 2011.

² See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), and *N.J.A.C. 4A:2-2.5(b)*

the payroll and because there was no lawful basis to suspend him. He contends that his Loudermill rights were violated because he was serviced with his PNDA and notice of suspension at the same time. Thus, he was not able to review the charges and provide a meaningful response before being suspended. The petitioner also asserts that if the Commission were to find that the appointing authority cured this violation by holding a Loudermill hearing on August 18, 2022, he is still entitled to back pay from August 15 to August 23, the date the hearing officer's decision was issued. Further, the petitioner argues that 4th degree criminal charges and disorderly persons offense charge are not sufficient to warrant his immediate and indefinite suspension. He contends that pursuant Attorney General Guidelines and *N.J.S.A.* 11A:2-13, and *N.J.A.C.* 4A:2-2.5(a)2 persons charged with crimes of the 4th degree can only be suspended if the crime occurred on the job or is related to the job. In this regard, the petitioner asserts that his alleged offense did not occur at work and does not involve his employment.

In addition, the petitioner argues that he is suffering danger of irreparable harm if his request is not granted because his livelihood is being taken away due to the appointing authority's failure to adhere to Attorney General Guidelines, statutes and regulations. Further, he contends that the appointing authority would not suffer any hardship by acting in conformity with the administrative code, statute, and Attorney General Guidelines. Finally, the petitioner asserts that the public interest would be served with the appointing authority following the proper laws and regulations.

In reply, the appointing authority, represented by Javonna C. Baker, Assistant Corporation Counsel, maintains that that the petitioner was provided due process by being given a letter dated August 15, 2022, informing him of his Weingarten³ and Loudermill rights and afforded him a Loudermill hearing which was held on August 18, 2022. It adds that the petitioner was also properly immediately suspended. The immediate suspension was not dependent on the criminal charges and could be imposed upon its determination that the petitioner was unfit for duty. Additionally, it argues that the conduct that led to the petitioner's criminal charges displays intention to violate the law and goes against the moral turpitude on the part of an officer that is sworn to uphold the law. In this regard, the appointing authority asserts that the imposition of an immediate and indefinite suspension was appropriate as the alleged criminal activity directly related to the petitioner's employment as a Police Officer.

Further, the appointing authority contends that the petitioner will not suffer irreparable harm if his request is not granted because any harm was foreseeable by the petitioner as he was charged by the Somerset County Prosecutor's Office on or about July 23, 2022. It asserts that the petitioner had been made aware that he would be violating ordinances by a North Plainfield Police Sergeant approximately

³ See *N.L.R.B. v. Weingarten, Inc.*, 420 U.S. 251 (1975)

one-month prior to the petitioner being charged. The appointing authority also argues that it would be unreasonable for it to compensate Police Officers that have allegedly blatantly disregarded the same laws they are sworn to protect. Finally, it claims that paying a Police Officer that advertised alcoholic beverages for sale and who did actually sell alcohol, would erode the public's confidence in civil servants.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions 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.

In addition, *N.J.A.C.* 4A:2-2.7(a)2 provided that an appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in *N.J.A.C.* 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment. *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a) provide that an employee may be suspended immediately and prior to a hearing when the employee has been formally charged with certain crimes or 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.

In the instant matter, the petitioner was immediately and indefinitely suspended on August 15, 2022, due to being charged with a 4th degree criminal charge along with a disorderly persons offense for an incident on July 23, 2022. The incident involved the petitioner advertising a "Pop-up Party" with alcohol being sold on social media and selling alcohol to an undercover officer. The petitioner claims that his Loudermill rights were violated because he was suspended at the same time he received the PNDA and was immediately suspended. The Commission is not persuaded by this argument. The petitioner was given a PNDA with specifications, a letter outlining his Weingarten and Loudermill rights which provided the reasons for his suspension, and received a Loudermill hearing three days later. These steps clearly indicate that the petitioner had adequate notice of the charges against him and an opportunity to respond. Additionally, the petitioner claims that he should not have been suspended because the charges against him were for a crime of the 4th degree which he claims did not occur on the job and that did not touch upon his employment. The appointing authority asserts that the conduct that led to the petitioner's criminal charges displays intention to violate the law and goes against the moral turpitude on the part of an officer that is sworn to uphold the law. The Commission agrees. As a law enforcement officer, the petitioner has sworn to uphold

the law. Here, it is alleged that the petitioner advertised that he was going to break the law and then did on fact break the law. Such alleged actions are clearly related to the petitioner's job as his job is to enforce and uphold laws. His alleged actions are a blatant disregard of his duty a law enforcement officer. Therefore, the petitioner has not shown a clear likelihood of success on the merits in this matter.

Similarly, the petitioner has failed to show the he would be irreparably harmed by his immediate and indefinite suspension, that an absence of substantial injury to other parties exists, or that the public interest would be served with him prevailing in this matter. Accordingly, under these circumstances, the record does not demonstrate a basis for granting interim relief.

One final note is required, proper procedure would have been for the appointing authority to issue a Final Notice of Disciplinary Action after the Loudermill hearing upholding the immediate and indefinite suspension. *See N.J.A.C. 4A:2-2.7(a)3*. Regardless, this procedural violation is deemed cured as the petitioner has been afforded his right to challenge his indefinite suspension via the subject petition. Moreover, given that the basis for the indefinite suspension was appropriate, that procedural violation would not otherwise afford the petitioner any remedy. The appointing authority is advised to strictly adhere to the rules in imposing any similar future suspensions.

ORDER

Therefore, it is ordered that the petition for interim relief 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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