



STATE OF NEW JERSEY

In the Matter of Joseph Wysocki,
Pennsauken

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

CSC Docket No. 2022-3284

Request for Interim Relief

ISSUED: August 23, 2023 (SLK)

Joseph Wysocki, a former Fire Fighter with Pennsauken, represented by Daniel E. Rybeck, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his removal.

By way of background, Wysocki had been a Fire Fighter with Voorhees where he satisfactorily completed his working test period ending on January 21, 2021. Thereafter, pursuant to an intergovernmental transfer, Wysocki was appointed as a Pennsauken Fire Fighter, effective June 7, 2021. Subsequently, Pennsauken removed Wysocki, effective June 3, 2022, due to an unsatisfactory employee performance evaluation, which was alleged to be a termination at the end of his working test period.

In his request, Wysocki states that since he already completed his working test period with Voorhees, there should not have been a second working test period with Pennsauken. He asserts that as the intergovernmental transfer form indicated that he resigned from permanent status, Pennsauken knew at the time it offered him employment that a working test period was not a condition of its offer. Similarly, Wysocki presents that Pennsauken never advised him that he would be subject to a working test period and there are no documents in his personnel file indicating such a condition. Further, he indicates that the progress reports that are required during a working test period under Civil Service rules were never completed by Pennsauken or provided to him. Therefore, Wysocki argues that his removal was executed by

Pennsauken without affording him any Civil Service due process rights such as receiving a Preliminary Notice of Disciplinary Action (PNDA) or a Final Notice of Disciplinary Action (FNDA). Therefore, he requests that his removal be reversed.

In response, Pennsauken, represented by Michael J. DiPiero, Esq. and José A. Calves, Esq., argues that Wysocki's request must be dismissed for lack of prosecution. It presents that when Wysocki first filed his request for interim relief, he did not provide his request to it until several months after he filed the request. Further, this agency requested on numerous occasions for him to provide updates on this matter, but he did not respond. Additionally, Pennsauken provides that Wysocki has gained other employment and it not likely to return as a Pennsauken Fire Fighter as he is considering filing a civil lawsuit against it for different, but related grounds. It indicates that its last conversation with his counsel was several months ago where he indicated that he was interested in exploring settlement possibilities. However, Pennsauken provides that Wysocki's counsel has not replied to its latest settlement offer to accept or reject it. Therefore, as this matter has dragged on for over a year, where Wysocki has not expressed any interest in any potential available remedies, and he admits that he has only delayed this matter due to some perceived advantage in a potential future lawsuit, Pennsauken argues that his claim should be considered abandoned.

Concerning the merits, Pennsauken presents that Wysocki accrued several disciplines and documented counseling sessions, which it describes in more detail. It asserts that he does not have a clear likelihood of success on the merits since he does not deny any of the underlying disciplines or poor behavior alleged in his performance review. Instead, he is solely arguing that Pennsauken failed to use the proper process. Pennsauken argues that even if it is found to have failed to use the proper process, the remedy would be to allow it to issue a PNDA and pursue removal based on disciplinary proceedings. Further, Wysocki cannot demonstrate immediate or irreparable harm since his damages are strictly monetarily which can be cured by the receipt of mitigated back pay. Moreover, his lack of pursuit of this matter indicates that there is no urgency in this matter. Finally, it contends to force it to reinstate him based on his employment record would be against the public interest.

In reply, Wysocki reiterates that Pennsauken does not deny that it failed to issue a PNDA or FNDA in this matter or afford him an opportunity for a hearing. Therefore, Wysocki argues that he has met all the criteria for interim relief, and his termination should be voided.

CONCLUSION

N.J.A.C. 4A:2-2.5(a) provides, in pertinent part, that an employee must be served with 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.

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:2-2.6(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 either by personal service or certified mail with a Final Notice of Disciplinary Action (FNDA). *See N.J.A.C.* 4A:2-2.13 for the issuance of a FNDA in removal appeals by certain law enforcement officers and firefighters.

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.

Initially, it is noted that after Wysocki was advised by this agency that if he failed to respond, his appeal would be closed, he did respond. Therefore, the Commission finds that he did not abandon his claim. Further, as Wysocki had already completed his working test period with Voorhees and was a permanent employee when he intergovernmentally transferred to Pennsauken, he was not subject to a second working test period. As such, his separation from Pennsauken, effective June 3, 2022¹, for failing to properly complete his working period was improper.

However, the record indicates that although Pennsauken failed to use the proper procedure, on June 3, 2022, Wysocki received a memorandum indicating that he was being removed for unsatisfactory employee performance. Therefore, although it was not the proper form, the Commission finds that this notice essentially acted as the PNDA that Wysocki was entitled to receive under *N.J.A.C.* 4A:2-2.5(a). Thereafter, under *N.J.A.C.* 4A:2-2.5(d), Wysocki should have been afforded the right to a departmental hearing within 30 calendar days of June 3, 2022. Further, under

¹ Personnel records indicate that Wysocki resigned in good standing, effective, June 3, 2022.

N.J.A.C. 4A:2-2.6(d), Wysocki should have been issued a FNDA within 20 calendar days of the departmental hearing. However, Pennsauken has indicated that Wysocki has already received other employment and he has no desire to return to employment with Pennsauken, and Wysocki has not disputed this claim. Therefore, the Commission finds that there is no current need for Pennsauken to issue the proper notices and afford Wysocki the right to a departmental hearing. Instead, since the maximum time to complete the departmental hearing process is 50 calendar days, the Commission finds that Wysocki is entitled to 50 calendar days of back pay from June 4, 2022, to July 24, 2022. Additionally, his separation date in personnel records shall be changed from June 3, 2022, to a resignation in good standing, effective July 24, 2022.

ORDER

Therefore, it is ordered that Joseph Wysocki's petition for interim relief is granted in part. Wysocki shall receive 50 calendar days of back pay to be paid within 30 days of this decision. Further, his personnel record shall be modified to indicate that he resigned in good standing, effective July 24, 2022.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF AUGUST, 2023

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