



STATE OF NEW JERSEY

In the Matter of Timothy Vreeland,
West Milford, Department of Public
Works

CSC DKT. NO. 2023-811
OAL DKT. NO. CSV 09397-22

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

ISSUED: OCTOBER 11, 2023

The appeal of Timothy Vreeland, Sewer Repairer 1, West Milford, Department of Public Works, removal, effective September 22, 2022, on charges, was before Administrative Law Judge Matthew G. Miller (ALJ), who rendered his initial decision on September 15, 2023. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of October 11, 2023, accepted the recommendation to grant the appointing authority's motion to dismiss the appellant's appeal as contained in the attached ALJ's initial decision.

ORDER

The Civil Service Commission dismisses the appeal of Timothy Vreeland with prejudice.

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 11TH DAY OF OCTOBER, 2023

A handwritten signature in cursive script that reads "Allison Chris Myers".

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

GRANTING MOTION TO DISMISS

OAL DKT. NO. CSV 09397-22

AGENCY DKT. NO. 2023-811

**IN THE MATTER OF TIMOTHY VREELAND,
TOWNSHIP OF WEST MILFORD, DEPARTMENT
OF PUBLIC WORKS.**

Evan L. Goldman, Esq., for petitioner (Goldman, Davis, Krumholz & Dillon,
attorneys)

Michael Oppici, Esq., for respondent (DeCotiis, Fitzpatrick, Cole & Giblin, L.L.P.,
attorneys)

Record Closed: August 16, 2023

Decided: September 15, 2023

BEFORE: **MATTHEW G. MILLER, ALJ**

STATEMENT OF THE CASE

On or about September 3, 2020, petitioner, Timothy Vreeland, was employed by the Township of West Milford as a Sewer Repairer I. Following the issuance of a Preliminary Notice of Disciplinary Action ("PNDA") on September 4, 2020, Mr. Vreeland was suspended effective immediately.

Thereafter, he participated in three days of hearings before failing to appear for the completion of same. Then, on September 22, 2022, a Final Notice of Disciplinary Action ("FNDA") was issued, in which charges of incompetence, insubordination, conduct unbecoming a public employee, neglect of duty, misuse of public property and other sufficient cause were sustained. As a result of those findings, he was removed from his position.

PROCEDURAL HISTORY

On September 4, 2020, respondent forwarded a PNDA to Mr. Vreeland. Initially, Mr. Vreeland and counsel appeared for three days of a departmental hearing in May – June, 2021. However, after he purportedly failed to agree to another hearing date, an FNDA was served upon him on or about September 22, 2022, terminating his employment with respondent effective immediately.

On or about October 9, 2022, Mr. Vreeland mailed a Petition for Appeal to the Civil Service Commission and the Office of Administrative Law ("OAL"). That appeal was transmitted to the OAL on October 18, 2022 for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

An initial conference was held on December 6, 2022, which was followed by additional conferences on January 31, 2023, and February 27, 2023. Throughout this time period, there were discussions with petitioner's counsel that he may seek to be relieved as counsel. A briefing schedule for the filing of a Motion to be Relieved as Counsel was set and later extended. On April 5, 2023, petitioner's counsel advised the Court that Mr. Vreeland was aware that he would no longer be representing him, but Mr. Vreeland did not indicate to him whether he would be willing to execute a substitution of attorney.

On July 19, 2023, the Court communicated with counsel requesting an electronic copy of the Motion to Dismiss, advising counsel that he was still counsel of record and

setting a briefing schedule. Mr. Vreeland was copied on this email. On July 26, 2023, Mr. Vreeland, through counsel, sent an email "requesting an extension on my case, due to lack of council (sic). I have not been able to get in touch with Mr. Goldman. The last time we had any contact, with him was in March 2023, despite my numerous..."

The Motion to Dismiss was served by respondent on July 31, 2023 and since then, there has been no contact from petitioner or petitioner's counsel, while a "reply" brief was filed by respondent on August 14, 2023.

Having given petitioner's counsel sufficient time in which to file a Motion to be Relieved and petitioner sufficient time to contact the Court (neither of which occurred), the record was closed on September 15, 2023.

FNDA

The FNDA described the incident in question as follows:

On September 3, 2020, while in the course of employment, employee was assigned to the District 2 station where he was assigned street sweeper activities. Upon competition (sic) of his street sweeping activities, without permission, consent or even notification to supervisors that he was removing the street sweeper from District 2 to the Upper Greenwood Lake District, employee improperly transported said vehicle.

Employee then commenced clearing the sweeper and dumping its debris into Upper Greenwood Lake, through the improper use of a boat launch. This violated all protocol, polluted a public boating/swimming facility. Investigation is continuing and if it is determined that said incident constitutes a criminal act, this FNDA shall be amended to reflect same. This dumping activity was documented by photos and is in the possession of the Township's Administration.

It has been determined that an immediate unpaid suspension is warranted due to the fact that the employee is unfit for duty and is a hazard to any person if permitted to remain on the job. Immediate suspension is (sic) also necessary to maintain safety, health, order, and effective direction of public services.

Ultimately, he was found guilty of the following violations:

- a. N.J.A.C. 4A:2-2.3(a)(1), incompetence;
- b. N.J.A.C. 4A:2-2.3(a)(2), insubordination;
- c. N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee;
- d. N.J.A.C. 4A:2-2.3(a)(7), neglect of duty;
- e. N.J.A.C. 4A:2-2.3(a)(8), misuse of public property;
- f. N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

APPEAL

Mr. Vreeland authored his own appeal of the FNDA. In same, he made the following claims:

- a. The FNDA was improperly and untimely served.
- b. He and his attorney were advised that there would be no resolution of these charges until pending criminal charges were resolved.
- c. He had done nothing wrong and was wrongfully terminated.
- d. He was told by his supervisor to get his assigned truck (which he picked up from District 4) and go to District 2 and operate the street sweeper throughout the town.
- e. After completing his task, he proceeded to draft water from Upper Greenwood Lake "as I have done in the past as all street sweepers...have".
- f. As he did that (at the direction of his supervisor), "the door to the sweeper, which has been improperly maintained by the West Milford...mechanics department, opened up and released debris."
- g. That the door malfunctioned, "as in order to control that door you need to be inside the sweeper, which (he) was not."

- h. He was not certified to operate the machine, but was directed to by his supervisor.
- i. He was doing the same thing as other workers had been doing for years and he "was just the unfortunate worker on the job when the (duct taped door) opened erroneously".

MOTION

Respondent filed a Motion to Dismiss, arguing that neither the petitioner nor his attorney has responded to its December 21, 2022 discovery request, which consisted of both interrogatories and a Notice to Produce.

Given petitioner's acknowledgment that discovery replies have not been supplied, the failure of both counsel and Mr. Vreeland to comply with the Court's directives concerning the representation issues despite being afforded numerous extensions, respondent concludes that:

Vreeland's ongoing refusal to comply with Your Honor's orders with respect to legal representation and his failure to comply with discovery requirements is unreasonable and warrants the sanction of dismissal under N.J.A.C. 1:14.4 and 1:10.5.

Neither Mr. Vreeland nor counsel have opposed the Motion.

LAW AND ANALYSIS

In the OAL, the exchange of written discovery is dictated by N.J.A.C. 1:1-10.4, which reads as follows:

- (a) The parties in any contested case shall commence immediately to exchange information voluntarily, to seek access as provided by law to public documents and to exhaust other informal means of obtaining discoverable material.
- (b) Parties shall immediately serve discovery requests.

- (c) No later than 15 days from receipt of a notice requesting discovery, the receiving party shall provide the requested information, material or access or offer a schedule for reasonable compliance with the notice; or, in the case of a notice requesting admissions, each matter therein shall be admitted unless within the 15 days the receiving party answers, admits or denies the request or objects to it pursuant to N.J.A.C. 1:1-10.4(d).
- (d) A party who wishes to object to a discovery request or to compel discovery shall, prior to the filing of any motion regarding discovery, place a telephone conference call to the judge and to all other parties no later than 10 days of receipt of the discovery request or the response to a discovery request. If a party fails without good reason to place a timely telephone call, the judge may deny that party's objection or decline to compel the discovery.
- (e) The parties shall complete all discovery no later than 10 days before the first scheduled evidentiary hearing or by such date ordered by the judge.

The potential for sanctions for failure to comply with discovery obligations is detailed in N.J.A.C. 1:1-10.5.

By motion of a party or on his or her own motion, a judge may impose sanctions pursuant to N.J.A.C. 1:1-14.14 and 14.15 for failure to comply with the requirements of this subchapter. Before imposing sanctions, the judge shall provide an opportunity to be heard.

Those sanctions can include the dismissal or suppression of a claim, the exclusion of evidence, an order for costs and/or expenses and "other appropriate case-related action". N.J.A.C. 1:1-14.14.

While there is little case law concerning the dismissal of actions due to discovery violations, it is clearly permitted. The primary case addressing this issue is J.G. v. Paramus Bd. of Educ., 2008 U.S. Dist. LEXIS 30030 (D.N.J. April 11, 2008). There, in a case brought under the IDEA, the court reviewed the ALJ's decision to dismiss plaintiff's claim for failure to provide timely discovery. It held that:

ALJ's may dismiss a petition for a party's failure to comply with procedural requirements under N.J.A.C. 1:1-14.14(a)(1). While dismissal should be used sparingly in discovery rule violation cases, it is appropriate where a party's "ability to defend his case is seriously impaired." *Zaccardi v. Becker*, 88 N.J. 245, 253, 440 A.2d 1329 (1982).

Id. at 9.

The Court was clear that dismissal was most appropriate in cases where there were repeated and/or deliberate violations of the discovery rules, but also noted that these dismissals are discretionary. Id. at 10-11, cit. Savoia v. F. W. Woolworth Co., 88 N.J. Super. 153, 160 (App. Div. 1965), Interchemical Corp. v. Uncas Printing and Finishing Co., 39 N.J. Super. 318, 321-26 (1956).

The District Court's logic was followed by the OAL most recently in B.K. and S.K. on behalf of W.K. v. Roselle Borough Bd. of Educ., 2022 N.J. Agen LEXIS 367 (May 24, 2022). In that case, petitioners ignored discovery demands (including a vital executed HIPPA-complaint medical authorization form). Despite being provided with an extension of time to provide same and to respond to the Motion to Dismiss, the discovery was never provided, and an extension of time never requested. Id. at 2-3.

The Court found that the withheld information compromised respondent's ability to defend the case and with the "unwarranted noncompliance" with the discovery demands, dismissal with prejudice was appropriate. Id. at 4.

Here, the discovery requests served upon petitioner are specific to the case and the allegations made by Mr. Vreeland regarding the condition of the street sweeper, the event itself and information concerning his supervisors and their alleged knowledge of the facts and circumstances surrounding the event. It is clear that respondent's ability to defend the case is significantly compromised by the lengthy failure of petitioner to reply to its discovery demands.

Petitioner and counsel have both been given ample time and opportunity to comply with respondent's requests. The original demands were propounded on December 21, 2022, and a follow-up request was sent on January 20, 2023. The matter was then discussed during the January 31, 2023 and February 27, 2023 conferences without resolution.

Following the conferences, there was more follow-up, with an April 5, 2023 letter from respondent, a letter from the Court later that day, letters from respondent and the Court on April 19, 2023 and finally the previously noted communications of July 19, 2023 and July 26, 2023.

In reviewing the totality of the circumstances, there was clearly a problem brewing back before the filing of the appeal which brought this matter to the OAL and as far back as January 31, 2023, it was known that counsel was at least entertaining seeking to be relieved. After months of delay and after having been provided with specific instructions as to what needed to be done and when, other than an incomplete email from Mr. Vreeland that was forwarded by counsel almost seven weeks ago, communication with petitioner has ceased. No Motion to be Relieved has been filed and no discovery responses have been forthcoming.

At this point, every courtesy has been extended to both petitioner and petitioner's counsel and neither has accepted same. Discovery is still overdue and there is no indication that it will ever be forthcoming.

Given the above, I **FIND** that there has been a clear, continuous failure to abide by the direction of the Court and comply with the discovery rules and that this failure has significantly compromised respondent's ability to defend the case. Ultimately, I **CONCLUDE** that given the petitioner's ongoing failure to comply with his discovery obligations, the appropriate sanction is the dismissal of petitioner's appeal with prejudice per the dictates of N.J.A.C. 1:1-14.4 and N.J.A.C. 1:1-10.5.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's Motion to Dismiss be and is hereby **GRANTED** and;

It is further **ORDERED** that petitioner's appeal be and is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration. This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, Civil Service Commission, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



September 15, 2023

DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency:

September 15, 2023

Date Mailed to Parties:
sej

September 15, 2023

APPENDIX

EXHIBITS

FOR PETITIONER:

None

FOR RESPONDENT:

- R-A September 4, 2020 PNDA
- R-B September 22, 2022 FNDA
- R-C October, 2022 Appeal
- R-D November 1, 2022 Notice for December 6, 2022 Conference
- R-E December 21, 2022 Discovery Request to Petitioner by Respondent
- R-F January 20, 2023 "Good Faith" letter to Petitioner from Respondent
- R-G December 7, 2022 Notice for January 31, 2023 Conference
- R-H February 1, 2023 Notice for February 27, 2023 Conference
- R-I April 5, 2023 Letter to Court from Respondent
- R-J April 5, 2023 Letter from Court to Petitioner's counsel
- R-K April 5, 2023 Email chain supplied by Petitioner's counsel
- R-L April 19, 2023 Letter and Email to Court from Respondent requesting permission to file a Motion to Dismiss
- R-M April 28, 2023 Email to Court from Respondent
- R-N July 19, 2023 Email from the Court to the parties
- R-O July 26, 2023 Email chain