



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of R.W., Union Beach

CSC Docket No. 2024-819

Request for Interim Relief

**ISSUED:** December 20, 2023 (JET)

R.W., a Police Officer with Union Beach, represented by Christopher A. Gray, Esq., petitions the Civil Service Commission (Commission) for interim relief of his indefinite suspension without pay.

By way of background, on September 22, 2022, the petitioner began inpatient therapy for Post Traumatic Stress Disorder due to mental health concerns. The appointing authority removed the petitioner’s weapons and placed him on paid administrative leave so that he could undergo such therapy. In October 2022, the appointing authority ordered the petitioner to undergo a fitness for duty evaluation at the Institute of Forensic Psychology. In the October 28, 2022 report, Dr. Lewis Schlosser advised the appointing authority that the petitioner, who had benefitted from therapy, intended to continue with therapy. Dr. Schlosser also found the petitioner fit to return to duty and be re-armed.

However, due to its concerns pertaining to the petitioner’s treatment, the appointing authority contacted the Monmouth County Prosecutor’s Office for advice and continued the petitioner’s paid administrative leave. By letter dated March 17, 2023, the Monmouth County Prosecutor’s Office issued a conditional re-arming order/directive to the appointing authority, indicating that the petitioner was “conditionally re-armed” subject to his compliance with several conditions. The conditions included, in relevant part, that the petitioner was conditionally re-armed for a period of one year and that during that time: the petitioner was required to leave his duty weapon at the police department and check it out prior to, and on completion of, his shift; he was prohibited from taking his duty weapon home and

his personal weapons would not be returned to him until he has completed a course of therapy with his therapist, or continued a course of treatment the therapist. as recommended in the fitness for duty report until medically discharged from treatment and provide written documentation of successful completion of treatment. Additionally, any internal affairs complaint or other disciplinary issue involving the petitioner must be immediately reported to the Monmouth County Prosecutor's Office so it could evaluate whether to reconsider his conditional re-arming or take any additional action, and that the police department should not take any investigative actions until the Prosecutor's Office had been notified of the incident and had the opportunity to review it. By letter dated March 21, 2023, the appointing authority notified the petitioner about the above noted conditions, including that the petitioner was to provide written documentation that he had either completed therapy, or that he was continuing therapy and that he would continue with such until medically discharged, and provide proof that the therapist was authorized to notify the Chief of the completion of said therapy and any prognosis, issues or recommendations arising from such treatment. On March 22, 2023, the appointing authority reinstated and armed the petitioner for duty.

Thereafter, on May 25, 2023, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) to the petitioner, recommending a 30 working day suspension on charges related to his failure to comply with the conditions and specifications listed in the re-arming order.<sup>1</sup> The PNDA indicated that the petitioner had 10 days to request a departmental hearing. The petitioner did not request a hearing, and as such, on June 14, 2023, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) upholding the charges. It is noted that, neither the PNDA, FNDA, nor the County and Municipal Personnel System indicate the dates that the petitioner served the 30-working day suspension. In this regard, the PNDA and the FNDA indicate that the "dates are to be determined." However, the appointing authority explains that the petitioner was suspended at the time the FNDA was issued, and the petitioner was advised that the start of the suspension was June 14, 2023, and that his anticipated return to duty on August 15, 2023, was contingent upon his supplying the specified documentation.

On June 19, 2023, the petitioner appealed the 30 working day suspension to the Commission, and the matter was transmitted to the Office of Administrative Law (OAL) for a hearing, which is still pending.

In his instant request, the petitioner argues, in pertinent part, that although he served the above noted suspension, the appointing authority has not reinstated him to employment pursuant to *N.J.A.C. 4A:2-2.5*. As such, the petitioner maintains that the appointing authority has improperly placed him on an "indefinite" suspension. Moreover, the petitioner contends that, although the

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<sup>1</sup> The PNDA initially recommended the petitioner's removal, but was subsequently amended on June 14, 2023, recommending a 30 working day suspension.

October 28, 2022, from Dr. Scholsser found him fit to be reinstated to employment without restriction, the appointing authority continues to require him to complete therapy. Additionally, the petitioner argues that the appointing authority discriminated against him, as it failed to disclose Dr. Schlosser's report to him, despite that it indicated that he was cleared to return to duty. In this regard, the petitioner asserts that under the Attorney General Guidelines, appointing authorities are prohibited from discriminating against Police Officers who participate in mental health treatment. The petitioner states that he remains out of work with no pay, despite that he complied with the appointing authority's requirements. The petitioner adds that the Monmouth County Prosecutor and the appointing authority are seeking a last chance agreement, despite that there is no pending discipline against him. Accordingly, the petitioner requests the Commission to reinstate him from the inappropriate indefinite suspension.

Additionally, the petitioner explains that he provided the relevant documentation in response to the above noted orders, including treatment records and two fitness for duty evaluations. The petitioner adds that, contrary to the appointing authority's claims, the Commission has the authority to reinstate him to duty in this matter. The petitioner argues that, since the 30 working day suspension was completed, and the appointing authority has not issued any additional charges, he should be reinstated without being compelled to continue with therapy. The petitioner contends that, after the October 2022 fitness for duty evaluation was issued, the appointing authority did not notify him until March 2023, that he was expected to continue therapy. Further, the petitioner maintains that he could not get his therapist to complete the documentation required by the appointing authority, as she had left the provider group. The petitioner explains that, as a result, he began treatment with a different therapist who sent a letter to the appointing authority, confirming that the petitioner began therapy with him. The petitioner contends that, although that therapist treated him on March 30, 2023, he could not provide any opinions, diagnoses, prognoses, or recommendations pertaining to the petitioner's therapy, as such treatment had just begun. The petitioner adds that he provided billing records to the appointing authority pertaining to his therapy sessions, as it had required that his therapist confirm that he continued with therapy. The petitioner explains that, although his therapist sent an April 4, 2023, correspondence to the appointing authority, it did not respond to that correspondence. Moreover, the petitioner explains that he had several problems with finding a therapist to continue his therapy.<sup>2</sup>

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<sup>2</sup> For example, the petitioner notes that his second therapist also left the network, and as such, he sought a different therapist, who notified the appointing authority that the requested information was outside of her expertise and that a forensic psychologist would be required. The petitioner attempted to return to Dr. Schlosser's treatment, but he would not see the petitioner unless the appointing authority scheduled the treatment. The petitioner then saw another doctor, who performed the psychological evaluation as required by the appointing authority.

Finally, the petitioner explains that the appointing authority's failure to reinstate him has caused him to experience financial harm, and he contends that the public interest will be served by reinstating him to duty. Further, the petitioner maintains that, based on the above, he has a clear likelihood of success of being reinstated and being awarded back pay.

In response, the appointing authority, represented by Bernard M. Reilly, Esq., asserts that the petitioner, prior to his suspension, did not comply with the re-arming orders issued by the Monmouth County Prosecutor's Office and the appointing authority. The appointing authority asserts that, when weapons are removed from Police Officers due to mental health issues, the Monmouth County Prosecutor, as the Chief Law Enforcement official, determines when it is appropriate to rearm the officers. *See Gramiccione v. Dept. of Law and Public Safety*, 243 N.J. 154 (2020) (instructive as to that authority with respect to the importance of the County Prosecutor's exercise of that authority in the interest of public safety). In this regard, the appointing authority asserts that, although the petitioner was notified about such conditions, he did not provide the required documentation to satisfy such conditions. In this regard, the appointing authority asserts that, although the petitioner submitted billing records and treatment forms to show that he attended therapy, such information was essentially confusing and did not satisfy the conditions in the re-arming orders. In addition, the appointing authority explains that, with respect to petitioner's conditional re-arming, his work performance, disciplinary history, fitness for duty evaluation and recommendations were considered, but it could not reinstate him as he did not satisfy the conditions set forth in the re-arming orders. Moreover, the appointing authority states that it must abide by the conditions set forth in the re-arming order from the Monmouth County Prosecutor, and it does not have the authority to alter such conditions. *See Gramiccione, supra*. The appointing authority adds that that the Commission also does not have the authority to change such conditions.

The appointing authority argues that the facts in this matter are similar to those that occurred in *In the Matter of Zygmunt Krawczyk, Juvenile Justice Commission* (CSC, decided April 23, 2014). The appointing authority states that, in that matter, the appellant was an armed Correction Officer who surrendered his service weapon due to being charged with Domestic Violence and Drunk Driving. The appointing authority explains that, in that matter, a fitness for duty evaluation recommended that the appellant be referred for outpatient counseling for approximately three months prior to having his service weapon being returned, and the agency head directed him to be referred for outpatient treatment for about three months. The appointing authority adds that the appellant in that matter was advised that "after you have completed therapy, you are asked to provide this office with a letter from your therapist stating you have successfully completed your sessions so that you can be sent for a fitness for duty evaluation." The appointing authority asserts that the appellant in that matter failed to attend therapy or

provide the required therapy documentation, and as a result, the appellant was served with an FNDA, seeking his removal. At OAL, the Administrative Law Judge in that matter upheld the charge of insubordination, and the removal was modified to a 120-day suspension, which was affirmed. In this matter, the appointing authority maintains that the petitioner has demonstrated the same type of insubordinate behavior as demonstrated in *Krawczyk*, by refusing to comply with the therapy requirements and conditions. As such, the appointing authority maintains that there is no basis for interim relief, and it requests the matter be dismissed.

In response, the petitioner asserts that he was not involved with any adverse incidents at work, and no complaints were issued against him regarding his work performance. In this regard, the petitioner maintains that he voluntarily sought out mental health treatment and had voluntarily surrendered his weapons. The petitioner states that, contrary to the appointing authority's claims, the underlying matter is distinguishable to those that occurred in *Krawczyk, supra*. The petitioner explains that the appellant in that matter was involved in domestic violence, DUI and other legal infractions, and that a fitness for duty evaluator ordered that he complete therapy. The petitioner explains that, in this matter, he was not provided with Dr. Schlosser's report, and that he was not notified before March 2023 that he was required to continue with therapy. He notes that he had no domestic violence or DUI charges pending. The petitioner maintains that the appointing authority ignored Dr. Schlosser's report, and that he was compliant with therapy as required. Further, the petitioner states that the appointing authority's action in refusing to disclose Dr. Schlosser's report was against the recommendations listed in the Attorney General Guidelines.

## 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.

Initially, it is not necessary to address the underlying merits of the charges against the petitioner with respect to the underlying 30 working day suspension, as that matter is still pending at OAL. Rather, as will be discussed more fully below, the issue to be determined is whether it was proper for the appointing authority to fail to reinstate the petitioner after serving the 30 working day suspension. The appointing authority argues that it cannot reinstate the petitioner to duty, as he has not satisfied the above noted conditions as set forth by the Monmouth County

Prosecutor's Office. It also argues that, based on such conditions, the Commission does not have the authority to address this matter. The Commission disagrees. The Commission, in reviewing this matter, is not bound by the conditions as set forth by the Monmouth County Prosecutor's Office. Rather, the Commission has jurisdiction to address the instant matter based on Civil Service law and rules as set forth in Title 4A of the New Jersey Administrative Code, and Title 11A of the New Jersey Statutes. In this regard, while the Prosecutor's direction is apparently required to be followed by the appointing authority, it would thereafter, still be required to follow the proper Civil Service law and rules in implementing that direction, whether the result being the imposition of further disciplinary action or maintenance of the petitioner on some type of paid leave. Moreover, the arguments with respect to *Krawczyk, supra*, are misplaced, as the underlying issue to be decided in this matter is whether the petitioner was subjected to an inappropriate suspension, not whether his actions were sufficient to warrant the underlying penalty.<sup>3</sup>

In this matter, the record reflects that petitioner received a June 14, 2023, FNDA imposing a 30 working day suspension. The appointing authority explains that the petitioner's suspension began on the June 14, 2023, and was to be completed on August 15, 2023, if he provided the information requested and required by the Prosecutor. It maintains that since the petitioner did not provide the requested information, it cannot reinstate him. However, there is no indication in the record that any new administrative charges have been issued against the petitioner for the claimed failure to provide the documentation.

In this regard, there is no provision in Civil Service law or rules that allows an appointing authority to lengthen a suspension as outlined in an FNDA, after it has been issued, without going through the disciplinary process again on any new charges that may, as here, subsequently stem from any conditions, actions or misconduct based on that FNDA.<sup>4</sup> Therefore, based on the foregoing, as there is no

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<sup>3</sup> In fact, the Commission finds it ironic that the appointing authority relies on *Krawczyk, supra*. In that matter, the employer initially *properly* followed the proper disciplinary procedures in bringing forth charges for Krawczyk's non-compliance, exactly what the Commission is finding did not occur in this matter.

<sup>4</sup> The petitioner contends that he has been "indefinitely" suspended. However, pursuant to *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.7*, an indefinite suspension may only be imposed when an individual has a criminal complaint or indictment pending. Further, *N.J.S.A. 11A:2-13* provides, in pertinent part, that where a suspension is based on a crime of the first, second, or third degree, or a crime of the fourth degree if committed on the job or directly related to the job, the suspension may be immediate and continue until a disposition of the charge. In this matter, the record reflects that, at the time the petitioner was suspended, he did not have any criminal charges as defined above pending, nor do the administrative charges constitute crimes of the first, second, or third degree, nor a crime of the fourth degree committed on the job or directly related to the job, and therefore, an imposition of an "indefinite" suspension, or any suspension absent newly proffered charges, would be inappropriate.

indication in the record that the appointing authority has initiated a new disciplinary action against the petitioner for the alleged continued failure to provide the requested documentation, or for any other infractions or misconduct, the Commission finds that the petitioner is entitled to back pay, benefits and seniority from the conclusion of his 30 working day suspension, until either a new PNDA is issued with new administrative charges or the petitioner is reinstated to duty.<sup>5</sup> Finally, the appointing authority is cautioned that, in the future, it strictly follow the provisions of *N.J.A.C. 4A:2-2.1, et seq.*, in imposing future disciplinary actions.

### ORDER

The Civil Service Commission orders the appointing authority, within 10 days of the issuance of this decision, either issue new administrative charges or immediately reinstate the petitioner. Moreover, if new administrative charges are pursued, it is ordered that the appointing authority immediately schedule a departmental hearing on this matter, which shall commence no later than 30 days from the issuance of this decision, unless otherwise agreed to by the parties.

It is also ordered that the petitioner be granted back pay, benefits, and seniority from the conclusion of his 30 working day suspension, until the date that either the petitioner is reinstated or a new PNDA is issued.

In the event that this Order is not fully complied with within 30 days of issuance of this decision, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100 per day beginning on the 31<sup>ST</sup> day from the issuance of this decision and continuing for each day of continued violation, up to a maximum of \$10,000.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 20<sup>TH</sup> DAY OF DECEMBER, 2023

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

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<sup>5</sup> Should the petitioner be successful in his appeal of the 30 working day suspension currently pending at the OAL, he would be entitled to any additional remedies as ordered in that matter.

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and  
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