



STATE OF NEW JERSEY

In the Matter of Marcos Ossandon,
Passaic County, Sheriff's Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2024-1118
OAL Docket No. CSV 13266-23

ISSUED: SEPTEMBER 25, 2024

The appeal of Marcos Ossandon, County Correctional Police Officer,¹ Passaic County, Sheriff's Department, 25 working day suspension, on charges, was heard by Administrative Law Judge Jude-Anthony Tiscornia (ALJ), who rendered his initial decision on August 30, 2024. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent, *de novo* evaluation of the record, the Civil Service Commission (Commission), at its meeting on September 25, 2024, adopted the Findings of Fact and Conclusions of Law as contained in the initial decision and the ALJ's recommendation to modify the 25 working day suspension to a five working day suspension.

Since the suspension has been modified, the appellant is entitled to 20 working days of back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10*. However, he is not entitled to counsel fees. *N.J.A.C. 4A:2-2.12(a)* provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 *N.J. Super.* 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and discipline was imposed. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12*, counsel fees must be denied.

¹ The ALJ incorrectly identified that appellant as a Sheriff's Officer.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. However, it modifies the suspension to a five working day suspension. The Commission further orders that the appellant be granted 20 working days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced as provided for in *N.J.A.C. 4A:2-2.10(d)3*. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied.

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 25TH DAY OF SEPTEMBER, 2024



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

OAL DKT. NO. CSV 13266-23

AGENCY DKT. NO. 2024-1118

**MARCOS OSSANDON, PASSAIC COUNTY
SHERIFF'S DEPARTMENT.**

Frank C. Cioffi, Esq., for appellant Marcos Ossandon (Sciarra and Catrambone,
attorneys)

Nadege D. Allwaters, Esq.¹, for respondent Passaic County (First assistant,
Office of the Passaic County Counsel)

Record Closed: August 1, 2024

Decided: August 30, 2024

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Passaic County Sheriff's Officer Marcos Ossandon (appellant or Ossandon) appeals a 25-day working suspension, effective November 01, 2023, due to Ossandon's alleged chronic absenteeism.

¹ Attorney Leslie S. Park, Esq., appeared at the hearing for the respondent.

PROCEDURAL HISTORY

In October 23, 2023, Ossandon was served with a Final Notice of Disciplinary Action, which made three (3) charges against him and imposed a twenty-five (25) working day suspension, effective November 1, 2023, and expiring December 7, 2023. The charges were as follows: N.J.S.A. 4A:2-2.3(a): (4) chronic absenteeism; (12) Other sufficient cause- PCSO charge 11:72 excessive absenteeism or lateness; and (12) other sufficient cause – PCSO charge 11:15- Repeated violations. Appellant appealed the twenty-five (25) working day suspension. The matter was transmitted to the Office of Administrative law on November 21, 2023. A hearing was conducted by the undersigned on March 21, 2024, and Final submissions were received on August 1, 2024, at which point the record was closed.

FACTUAL DISCUSSION AND FINDINGS OF FACT

I **FIND** all witnesses to have testified credibly. Based on the testimony and evidence presented, I **FIND** the following facts:

Appellant, Marcos Ossandon has been employed by the Passaic County Sheriff's Office for thirteen years. As a correctional officer, appellant is represented by PBA Local 286(A) Superior Officers Association. According to the Union's Collective Bargaining Agreement, sick time accrues at a rate of one and one quarter (1.25) days per month. Thus, Ossandon has an allotted fifteen (15) days of sick leave per year.

In September 2022, Ossandon's Shift Commander, Captain Meehan (Meehan) was instructed by the Warden to conduct an audit on all first shift correctional officer's sick time utilization from January 1, 2022, to September 16, 2022. Per Meehan's instruction, Sergeant Batson (Batson) conducted the audit utilizing the Department's scheduling software, which denotes total usage of sick leave per officer for the designated time period.

The audit revealed that, between the months of January 1, 2022, to September 16, 2022, appellant used eight-teen (18) sick days-fourteen (14) of which appeared to fall in conjunction with regular days off, vacation, personal or suspension days, which could be deemed patterned sick time. The applicable policies and procedures define patterned sick leave as, "excessive sick leave as defined or patterns of abuse that may also be determined by the timing of the use of sick time (e.g., calling in sick the day before or the day after an approved leave time, such as a scheduled vacation).

The audit further revealed that ten (10) of the eighteen (18) sick days used were sick days without pay. Sick leave without pay occurs when an officer has used up all their allotment of paid sick leave that is given to them through the Union's Collective Bargaining Agreement. Here, from January 1, 2022, to September 16, 2022, appellant used a total of ten (10) sick days without pay.

Appellant was absent from August 11, 2022, to August 20, 2022, due to authorized COVID-19 executive leave. See R-2. This meant appellant presented a positive COVID-19 test to the PCSO and, as a result, was granted authorized paid time off, with no impact on his accrued sick, vacation or personal time.

Seven (7) of the ten (10) aforementioned sick days without pay occurring between September 5, 2022, to September 13, 2022, Ossandon alleges, were related to this prior authorized COVID-19 executive leave from August. He asserts he never fully recovered from the COVID-19 he contracted in August and thus, could not return to work less risk exposing others to the virus.

The department argues that this aforementioned September period of unpaid sick time was unauthorized, and thus, should carry with it a disciplinary penalty. At that time, (September 2022) the County's COVID-19 policy required employees to present a positive COVID-19 test to be afforded COVID-19 related leave. The department asserts that Ossandon never presented a positive COVID-19 test to the PCSO, for the dates in question, therefore validating the protocols for COVID-19 executive

leave. In accordance with the County's sick leave policy, he was charged sick leave without pay. Though the department's COVID-19 executive leave policy was modified periodically throughout the period of pandemic, The applicable COVID-19 policy read in relevant part at the time in question:

If an employee tests positive for COVID-19 he/she is required to inform the County Department of Human resources immediately upon receipt of positive results.

Any employee who tests positive for COVID-19 and complies with this policy will not be required to use accrued benefit time for this absence. In no event shall the COVID leave time exceed 10 days from the testing date.

If any employee continues to feel ill or experience illness secondary to having had the virus, he/she may use sick or other accrued time in accordance with County policy.

See Exhibit R-6.

As noted, appellant asserts his use of sick leave without pay from September 5, 2022, up until September 13, 2022 was due to continued COVID-19 illness relating to appellant's absence from August 11, 2022 to August 20, 2022, which was an authorized COVID-19 executive leave. Thus, under the rule as stated above, appellant presented a positive COVID-19 test to the PCSO, resulting in his being granted authorized paid time off, with no impact on his accrued sick, vacation or personal time.

I **FIND** that Ossandon failed to properly document the sick time at the heart of this matter. I further **FIND** that his failure to properly document his sick leave was partially due to the he COVID-19 pandemic, which was an unprecedented time in history, and the related policies and procedures, which changed from time to time, regarding documenting sick time.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2. The burden of persuasion is on the agency in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super 331, 341 (*App. Div.* 1987).

The appointing agency must prove its case by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). The evidence presented must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958). The term preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47, 49 (1975). Credibility must not only proceed from the mouth of a credible witness, but it must be credible in itself as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

In the case at bar, the County asserts Ossandon was chronically and/or excessively absent, repeated over the course of several months, in violation of applicable rules. I **CONCLUDE** that, while Ossandon failed to properly document all his sick leave during the period in question, his transgression is mitigated by the fact that the COVID-19 pandemic was occurring at all relevant times, which brought fourth an unprecedented scenario wherein procedures and protocols regarding and requesting sick leave would periodically change. This coupled with the fact that the discipline was brought in the form of a PNDA one year after the transgression occurred leads me to **CONCLUDE** that the twenty-five (25) day working suspension should be reduced to a five (5) day working suspension.

ORDER

Accordingly, it is **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary Action of the Passaic County Sheriff's Department imposing a twenty-five (25) day suspension against Marcos Ossandon is hereby **AMMENDED AND REDUCED** to a five (5) day suspension.

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.

August 30, 2024

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

8/30/24

Mailed to Parties:

8/30/24

id

APPENDIX

LIST OF WITNESSES

For Appellant:

Marcos Ossandon

For Respondent:

Daniel Meehan

John Arturi

EXHIBITS

Joint:

- J-1 Preliminary Notice of Disciplinary Action dated October 12, 2023.
- J-2 Preliminary Notice of Disciplinary Action dated October 19, 2022
- J-3 Final Notice of Disciplinary Action dated October 23, 2023

For Appellant

- A-1 (P-1) Pertinent Portions of the Collective Negotiations Between the PBA Local No.: 197 and Passaic County
- A-2 (P-2) Weekly Schedule for Marcos Ossandon – January 1, 2022 through December 31, 2022
- A-3 (P-3) Passaic County Sheriff's Office Policy and Procedures Re. Sick/Absentee/Leave/Accruals Policy
- A-4 (P-4) Leave Hours Detail By Employee

For Respondent:

- R-1 Employee Disciplinary Report
- R-2 Leave Hours Detail by Employee Report
- R-3 Passaic County Sheriff's Office Policies and Procedures

- R-4 Employee Weekly Schedule dated, December 26, 2021-December 31, 2022
- R-5 Notice of Minor Disciplinary Action
- R-6 COVID-19 Absence and Return to work policy
- R-7 Signatures Summary (Sick Absent Request) dated, December 30, 2021
- R-8 Signatures Summary (Sick Absent Request) dated, October 31, 2016, and February 23, 2021