



STATE OF NEW JERSEY

In the Matter of John McCarthy,
Parsippany-Troy Hills

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

CSC Docket No. 2024-1870

Interim Relief

ISSUED: January 15, 2025 (KMG)

John McCarthy, a Recreational Leader,¹ Parsippany-Troy Hills, represented by Gina Mendola Longarzo Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his immediate suspension without pay, effective August 9, 2023.

By way of background, on or about August 9, 2023, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) suspending petitioner with pay pending an investigation. The appointing authority sought an interview with petitioner on August 12, 2023, but petitioner's attorney sent a letter to the it stating that she would be unavailable until August 22, 2023, and to contact her office to schedule an interview with her client. On August 22, 2023 the appointing authority served petitioner with an amended PNDA charging him with incompetency, inefficiency or failure to perform duties; conduct unbecoming a public employee; neglect of duty; and other sufficient cause. Specifically, it was alleged that petitioner failed to provide an accounting of money received from The Knoll golf members as additional compensation; failed to distribute earned money to employees; that he held unregistered raffles during two member guest events; and failed to provide the appointing authority with any monies he acquired during the member guest events, summer camps or State open qualifier events. The amended PNDA also indicated that petitioner was suspended without pay, effective August 9, 2023, and provided

¹ The petitioner worked as a golf professional at the appointing authority's golf course (The Knoll).

petitioner with five days in which to request a departmental hearing. A Notice of Immediate Suspension was also served, which provided that:

You are being given an opportunity to respond to your immediate suspension without pay in writing. You are hereby advised that if you do not respond to [email redacted] in writing within five (5) working days of receipt of this notice, you will be waiving your right to respond to your immediate suspension without pay.

It is noted that petitioner acknowledged receipt of this notice on August 22, 2023.

On September 5, 2023, petitioner's attorney sent a letter to the appointing authority's counsel stating that it had violated petitioner's rights to a *Loudermill* hearing. Following the September 5, 2023 letter, petitioner and the appointing authority engaged in communications regarding petitioner's right to a *Loudermill* hearing, and petitioner's rights to discovery. Thereafter, on December 21, 2023 the parties agree to hold a departmental hearing. However, despite multiple attempts to schedule and conduct a hearing, no hearing took place. The appointing authority issued a Final Notice of Disciplinary Action (FNDA), via certified mail on April 19, 2024, removing the appellant, effective August 9, 2023.²

In his March 12, 2024, request to the Commission for interim relief, petitioner argues³ that the appointing authority failed to articulate any wrongdoing on his part and therefore the immediate suspension was not warranted. In this regard, he asserts that the allegation was a "minor infraction" that did not affect safety, health, order, or effective direction of public services. Rather, petitioner states that the amended PNDA merely implies that monies were taken but fails to specify exactly what monies were taken. Petitioner also states that interim relief is necessary to avoid immediate and irreparable harm to himself. Specifically, he claims that he has lost his ambassadorship, endorsements and his reputation as a PGA member has been destroyed. Finally, petitioner argues that it is in the public interest that the interim relief be granted as the appointing authority's unlawful activity of refusing to comply with the Commission's mandates, and the failure to uphold his procedural due process rights, are a harm to the public. He further argues that the appointing authority has not and will not suffer as a result of the granting of interim relief.

² The record indicates that petitioner filed the instant request on March 12, 2024. Thereafter, the appointing authority issued the FNDA, and also responded to this matter on April 22, 2024, indicating that the FNDA had been issued. In a May 31, 2024 response, petitioner requested that he be reinstated with back pay, that the FNDA be rescinded and a new PNDA be issued and for a departmental hearing to be held. However, to date, no appeal of the FNDA has been filed by petitioner with this agency.

³ Petitioner also argues that the New Jersey Attorney General's guidance on Internal Affairs Policy & Procedures (Guidelines) should be utilized in this matter. However, it must be noted that the Guidelines do not apply to the non-law enforcement positions, including the title of Recreation Leader, nor has the appointing authority adopted the Guidelines. Therefore, the Commission will not address these arguments.

Additionally, petitioner argues that the appointing authority has violated his legal right to a *Loudermill* hearing. Specifically, petitioner states that prior to his suspension, the appointing authority was required to first hold a *Loudermill* hearing, and that it repeatedly denied his request for a hearing. Petitioner proffers that he requested a *Loudermill* hearing on August 11, 2023, September 5, 2023, September 18, 2023, October 18, 2023, and December 7, 2023, through letters sent to the appointing authority's counsel and via email.

Further, petitioner argues that the appointing authority caused unnecessary delays in providing him with a departmental hearing within the required 30 days and has intentionally denied him his right to discovery. In this regard, he maintains that pursuant to *N.J.A.C. 4A:2-2.5*, he is entitled to a hearing setting forth the charges and statements of facts supporting those charges before the imposition of major discipline. However, the appointing authority has failed to provide one. Petitioner also contends that the appointing authority could only suspend him for 50 days from the date when a departmental hearing was requested (30 days to hold the departmental hearing and 20 days following said hearing to issue a decision). Petitioner claims that the appointing authority unduly delayed holding the departmental hearing as it was waiting for the Morris County Prosecutor to decide whether to bring criminal charges. Moreover, petitioner argues that in addition to not receiving a departmental hearing, he did not receive any discovery until February 20, 2024, and the appointing authority had not named a "suitable" hearing officer.⁴ However, petitioner maintains that as he has not asserted his "Fifth Amendment rights,"⁵ and he has not asked for any stay of the administrative proceedings, the appointing authority was required to schedule the departmental hearing within 30 days. Finally, petitioner maintains that since his immediate suspension has been more than 50 days, the appointing authority must immediately reinstate him and dismiss all charges with prejudice due to the inexcusable delays to conduct a departmental hearing.

In response, the appointing authority, represented by Ramon E. Rivera, Esq., argues that petitioner cannot show a clear likelihood of success on the merits. Here, the appointing authority argues that it complied with *N.J.A.C. 4A:2-2.5(a)* as the PNDA set for the charges, statements of facts supporting the charges, and afforded petitioner an opportunity to be heard prior to imposing a major discipline. Furthermore, since petitioner was suspended with pay as of the issuance of the original PNDA, *N.J.A.C. 4A:2-2.5(b)* does not apply. The appointing authority further argues that it has fulfilled its burden to provide petitioner an opportunity to request a hearing within the five days of both the original and amended PNDA as the opportunity is clearly indicated on the PNDA forms. However, petitioner did not timely request a hearing and therefore, it did not deprive him of his rights under *N.J.A.C. 4A:2-2.5*. In this regard the appointing authority argues that employees

⁴ A hearing officer was assigned but subsequently recused himself to due to a conflict of interest.

⁵ There are no such rights in administrative matters afforded under the United States Constitution.

subject to an immediate suspension may request a departmental hearing within five days of receipt of the PNDA and if no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived. *See N.J.A.C. 4A:2-2.5(c)*. The appointing authority argues that despite not being required to hold a hearing as petitioner did not timely request one, it did attempt to hold a departmental hearing. However, petitioner was responsible for all delays due to his excessive and inappropriate requests for discovery. In this regard, it maintains that pursuant to *N.J.A.C. 4A:2-2.6*, there are minimal requirements as to discovery and the conduct of a departmental hearing. Notably, it provides that the parties shall have the opportunity to review the evidence supporting the charges and to present and examine witnesses, and that the PNDA satisfies the minimal amount of discovery required to be provided.

Finally, the appointing authority argues that petitioner has shown no immediate or irreparable harm. Here, the appointing authority states that any harm caused to petitioner is purely financial and can be remedied by back pay, if applicable. The appointing authority further argues that petitioner fails to show that granting his request for interim relief would be a benefit to the public interest. Rather, it contends that as the charges fall under *N.J.A.C. 4A:2-2.3*, and as petitioner's position was entrusted with public funds, his actions have violated the public's trust.

CONCLUSION

Initially, *N.J.S.A. 11A:2-15* provides that appeals from major disciplinary matters must be made in writing to the Commission no later than 20 days from receipt of the final written determination of the appointing authority. *See also, N.J.A.C. 4A:2-2.8(a)*. This 20-day time limitation is jurisdictional and cannot be relaxed or waived. *See Borough of Park Ridge v. Salimone*, 21 *N.J.* 28, 46 (1956); *See also, Mesghali v. Bayside State Prison*, 334 *N.J. Super.* 617 (App. Div. 2000), *cert. denied*, 167 *N.J.* 630 (2001); *Murphy v. Department of Civil Service*, 155 *N.J. Super.* 491, 493 (App. Div. 1978).

Here, the appointing authority issued a FNDA on April 19, 2024, via certified mail. petitioner had 20 days from receipt of the FNDA to file an appeal of his removal. However, no such appeal was made. Rather, approximately 43 days after the FNDA was issued, on May 31, 2024, petitioner submitted a response in this matter and requested that FNDA be rescinded and a new PNDA be issued. The appointing authority also submitted a copy of the FNDA in this matter on April 22, 2024, notifying the Commission and petitioner that the FNDA had been served. As the petitioner has failed to timely file an appeal of his removal, any such appeal would now be outside of the statutory time frame defined in *N.J.S.A. 11A:2-15*. Moreover, the Commission notes that the 20-day period for filing an appeal of a major disciplinary action is established by statute and cannot be extended by the

Commission. *See Mesghali, supra*. Therefore, petitioner's removal from employment is considered final.⁶

Although petitioner's removal is considered final, the Commission will address petitioner's arguments in this matter, as procedural errors at the departmental level may afford a petitioner with entitlement to relief in the form of back pay. *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 petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

It must be underscored that the role of the Commission in reviewing a petition for interim relief is not to adjudicate the merits of the charges against petitioner. Rather, the sole issue to be determined is whether the nature and seriousness of the charges supported the necessity for an immediate suspension. *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(a)1* provide that an employee may be suspended immediately without a hearing if the appointing authority determines that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. A review of the instant matter reveals that an immediate suspension was justified.

In the instant matter, petitioner was charged with incompetency, inefficiency or failure to perform duties; conduct unbecoming a public employee; neglect of duty; and other sufficient cause. Specifically, it was alleged that petitioner failed to provide an accounting of money received from The Knoll golf members as additional compensation; failed to distribute earned money to employees; that he held unregistered raffles during two member guest events; and failed to provide the appointing authority with monies he acquired during the member guest events, summer camps and State open qualifier events. Given the serious nature and scope of these charges, the public interest would not have been served by allowing petitioner to be placed back on the job while awaiting the conclusion of the departmental process.

Moreover, although, petitioner states multiple times that his right to a *Loudermill* hearing were denied in order to effectively remove him from his position without providing cause or evidence, the Commission disagrees. In this regard, the

⁶ Moreover, any argument that the filing of this petition can suffice as an appeal of the FNDA is meritless. As specifically indicated in *N.J.A.C. 4A:2-2.8* and on the FNDA, an appeal of that notice and the disciplinary action taken therein must be made within 20 days of receipt. A request for interim relief made prior to the issuance of a FNDA cannot be substituted for an appeal of a FNDA.

record reflects that the appointing authority complied with the requirements of *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), and *N.J.A.C. 4A:2-2.5(b)*. In *In the Matter of Anthony Recine* (MSB, decided March 10, 1998), it was found that the Township of Hamilton did not provide a proper pretermination hearing since Recine was not made aware of the charges and the general evidence in support of the charges at the time of his suspension. By contrast, here, petitioner the received written charges against him and general evidence in support of the charges at the time of his suspension without pay. It is noted that the specification portion of the PNDA constitutes the general evidence in support of the charges. Moreover, petitioner was provided with sufficient opportunity to respond to the charges before the appointing authority. See *In the Matter of Robert Totten* (MSB, decided August 12, 2003); *In the Matter of Joseph Auer* (MSB, decided October 23, 2002).

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 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 a FNDA.

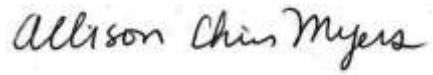
As noted above, petitioner failed to timely request a departmental hearing within five days of receipt of the PNDA and failed to show any reason for good cause to extend the timeframe of the request. At no point within the five days after the appointing authority served petitioner with the August 9, 2023, PNDA or the August 22, 2023, PNDA did petitioner or petitioner's attorney request a departmental hearing. Additionally, the August 22, 2023, Notice of Immediate Suspension also clearly stated that petitioner could request a departmental hearing before the appointing authority on the charges, and to notify the appointing authority within five days of receipt of the form. Regardless, the appointing authority and petitioner subsequently agreed to conduct a departmental hearing on December 21, 2023. *N.J.A.C. 4A:2-2.6(c)* states that the parties shall have the opportunity to review the evidence supporting the charges and present and examine witnesses. Also noted above, the specification in the amended PNDA constitute the minimal amount of evidence required to be provided to petitioner. Furthermore, the appointing authority did provide discovery to petitioner on February 20, 2024. Accordingly, as the Commission finds no procedural errors at the departmental level that require remedy, petitioner's request for interim relief is denied.

ORDER

Therefore, it is ordered that the petition be 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 15TH DAY OF JANUARY, 2025



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