



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Chase Potocny,  
Bordentown Police Department

CSC Docket No. 2024-2598

Request for Interim Relief

**ISSUED: January 15, 2025 (JET)**

Chase Potocny, a Police Officer with the Bordentown Police Department, represented by Zinovia H. Stone, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his immediate suspension without pay.

By way of background, on May 14, 2024, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) to the petitioner, suspending him without pay, effective May 15, 2024, and seeking his removal. Specifically, he was charged with conduct unbecoming; violations of rules and regulations; misconduct; and other sufficient cause. The specifications indicated, in relevant part that:

On March 26, 2024, you were informed that a complainant/victim requested to speak with a higher-ranking officer which led to you speaking with the complainant/victim. When your name was requested by the complainant/victim you offered to provide your badge number instead and then provided the badge number of another officer representing it to the complainant/victim as your own. You consciously provided an alternate form of identification instead of providing your name and knowingly provided another officer's badge number so as to avoid identifying yourself. When interviewed by internal affairs approximately nine days after your exchange with the complainant/victim, you misrepresented that you could not recall whether you were asked for your name and stated the reason for providing another officer's badge number was his status as the case

officer. You did not inform the citizen/victim that the badge number provided was not your own or that you were providing the badge number of the case officer.

The record reflects that a departmental hearing was initially scheduled for June 4, 2024, but the petitioner requested an adjournment, which was granted, and the hearing was rescheduled for June 27, 2024. However, on June 26, 2024, the petitioner again requested an adjournment, which was granted. During the pendency of the instant matter, a departmental hearing was conducted at which the petitioner failed to appear, and on October 17, 2024, a Final Notice of Disciplinary Action (FNDA) was issued indicating a removal, effective May 15, 2024.<sup>1</sup>

In his request for interim relief, the petitioner argues after requesting a *Loudermill* hearing,<sup>2</sup> “written submissions were submitted to a hearing officer chosen by the Township, and the hearing officer issued his decision upholding Officer Potocny’s unpaid suspension on May 23, 2024 . . . Although he was ultimately given an opportunity to be heard pursuant to *Loudermill*, it was illegal for the Township to remove him from the payroll prior to receiving that opportunity.” The petitioner also asserts that he was not provided with sufficient opportunity to review the charges and evidence in support of them which is in violation of *N.J.A.C.* 4A:2-2.5(b) and his *Loudermill* rights. Further, the petitioner refers to *N.J.S.A.* 40A:14-191.1 and *Herzog v. Township of Fairfield*, 349 *N.J. Super.* 602 (App. Div. 2002), for the proposition that “an officer that is accused of dishonesty should not be removed from the payroll unless his alleged conduct is equivalent to ‘the most serious of crimes involving moral turpitude or dishonesty’ and this allegation can be supported.” The petitioner argues that the underlying charges against him neither constitute a crime, nor can “be compared to the ‘most serious of crimes’ with respect to dishonesty.” The petitioner further argues that “it cannot under any stretch of the imagination be said that the ‘non-criminal’ allegations at issue here . . . could form the basis for an immediate unpaid suspension pursuant to the provisions of *N.J.A.C.* 4A:2-2.5, as well as . . . the New Jersey Attorney General Internal Affairs policies and procedures.” Additionally, the petitioner maintains that his “alleged conduct is probably not even prohibited by . . . the Department’s rules and regulations . . .”<sup>3</sup> The petitioner refers to *Kim v. N.J. Inst. of Tech.*, Docket No. A-1055-20 (App. Div. June 21, 2023), which he asserts provides that “all law enforcement officers are entitled to hearings and an opportunity to be heard prior to being sanctioned. This opportunity to be heard

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<sup>1</sup> The petitioner filed a timely appeal of his removal which has been transmitted to the Office of Administrative Law (OAL) for a hearing.

<sup>2</sup> See *Cleveland Board of Education v. Loudermill*, 470 *U.S.* 532 (1985).

<sup>3</sup> Specifically, the petitioner refers to Rule 11, which prohibits infractions pertaining to dishonesty and untruthfulness, and maintains that his actions do not violate any of the examples provided under that rule. The petitioner argues that his “alleged conduct amounts to, at worst, a violation of Section J of Chapter IV of the Rules and Regulations” but “does not constitute conduct ‘equivalent to the most serious crimes involving moral turpitude or dishonesty.’”

should be meaningful.” The petitioner contends that “it cannot be said that the Department gave Officer Potocny any meaningful opportunity to be heard as to his suspension without pay.” Finally, the petitioner asserts that if his request is not granted, he will suffer irreparable harm as “his livelihood has been taken away without appropriate notice and a meaningful opportunity to be heard on the issue of his pay status.” The petitioner adds that there is no danger to the public or the appointing authority if he is reinstated with backpay and benefits, and the public interest is best served by returning him to duty. Accordingly, the petitioner requests “back pay dating back to the date of his suspension without pay, immediate restoration to the payroll, declaratory relief that the underlying offense is not serious enough to warrant suspension without pay pending the outcome of the departmental charges, and any other relief the [C]ommission deems equitable and just.”

In response, the appointing authority, represented by Armando V. Riccio, Esq., asserts that when the PNDA was issued, the petitioner was given the option of having a *Loudermill* hearing within five days, he was provided with a complete copy of the internal affairs report and supporting evidence on May 15, 2024, and that on May 20, 2024, the immediate suspension pending the departmental hearing was upheld by the hearing officer. Additionally, the appointing authority maintains that it was appropriate to immediately suspend the petitioner pursuant to *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(a)*. The appointing authority argues that “allowing [the] Petitioner to continue to work after being charged with dishonesty would have an adverse effect on the effective direction of . . . public services since it jeopardizes criminal investigations the Petitioner plays a role in.” In this regard, appointing authority also refers to the disclosure requirements under the “*Brady* rule”<sup>4</sup> and argues that the administrative charges against petitioner would have to be disclosed in any matter in either municipal or superior court in which the petitioner participated as a witness or investigator, which effectively renders him unable to perform his duties as a law enforcement officer. As such, the appointing authority argues that it is clear that the “Petitioner is charged with an offense so severe, it is antithetical to the obligations, duty and expectations of a person holding the position of police officer.” The appointing authority notes that, although the petitioner relies on *Herzog, supra*, the Commission has found that a suspension without pay is permissible when a Police Officer is charged with dishonesty which adversely affects his or her ability to perform his or her duties. *See In the Matter of Keith Aiello* (CSC, decided February 12, 2020). Furthermore, the appointing authority contends that the petitioner does not have a clear likelihood of success in this matter, as there is evidence, body camera footage, and recordings which demonstrate that he committed the alleged infractions. The appointing authority adds that there is no danger of irreparable harm, since he will be entitled to reinstatement, backpay and benefits if he is successful in any future appeals of the underlying disciplinary matter.

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<sup>4</sup> Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), disclosure of exculpatory evidence to the defense in criminal cases, is required, including material evidence affecting the credibility of a government witness.

## CONCLUSION

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 must be emphasized that the role of the Commission at this stage in the proceedings is not to adjudicate the merits of the charges against the petitioner. Rather, the sole issue before the Commission at this juncture is whether the appointing authority presented a valid basis to immediately suspend the petitioner pursuant to *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1, which provide that an employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. The appointing authority in this matter validly imposed an immediate suspension, pursuant to *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1, to maintain order and the effective direction of public services. In this regard, the information and arguments provided in support of the instant petition do not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether or not the petitioner has actually committed the alleged infractions. In the instant matter, the Commission notes that the charges against the petitioner involve serious allegations regarding untruthfulness and conduct unbecoming a public employee. Based on the circumstances involved in the petitioner's alleged conduct, it would be potentially harmful to the appointing authority, as well as the public at large, to allow a law enforcement officer facing such serious disciplinary charges to be returned to employment. Moreover, the public is best served when a law enforcement employee facing such serious charges is kept out of the workplace pending adjudication of the charges. Clearly, the charges alleged, if true, would certainly affect the petitioner's ability to successfully perform his duties, as well as impact his credibility and authority.

Regarding the petitioner's claim that he was not provided with sufficient opportunity to review the charges and evidence in support of them in violation of *N.J.A.C.* 4A:2-2.5(b) and his *Loudermill* rights, the record reflects that the petitioner was apprised in writing via the May 14, 2024, PNDA that he was immediately suspended, and was provided with a basis for the suspension. Additionally, the appointing authority attached specifications to the PNDA, specifically indicating his

alleged misconduct. The specifications as indicated in the PNDA are considered the general evidence supporting the charges. Further, the appointing authority indicates that the petitioner was provided with a complete copy of the internal affairs report and supporting evidence on May 15, 2024. Moreover, the PNDA was served within the proper timeframe and, thus, no procedural violations occurred. Accordingly, the requirements of *N.J.A.C.* 4A:2-2.5(b) and *Loudermill* were met.

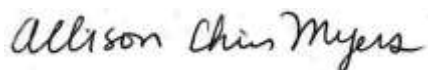
In this matter, the record reflects that the appointing authority attempted to schedule a hearing within 30 days of the issuance of the PNDA. See *N.J.A.C.* 4A:2-2.5(d). However, the petitioner requested two postponements of the hearing and ultimately, failed to appear for the departmental hearing and the removal was upheld. As the petitioner was responsible for the delay in holding the departmental hearing, he has not established that the failure to hold the departmental hearing within 30 days was in violation of *N.J.A.C.* 4A:2-2.5(d). Even assuming, *arguendo*, that procedural violations occurred, procedural deficiencies at the departmental level which are not significantly prejudicial to a petitioner are deemed cured through the *de novo* hearing received at the OAL. See *Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995); *In re Darcy*, 114 *N.J. Super.* 454 (App. Div. 1971). As such, the petitioner has not established that he is entitled to any relief.

Finally, with respect to any harm that he is experiencing while awaiting his OAL hearing for the removal, his situation is ultimately financial in nature, and as such, can be remedied by the granting of back pay, benefits and seniority should he prevail in his appeal.

### ORDER

Therefore, it is ordered that the petition for interim relief be denied.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 15<sup>TH</sup> DAY OF JANUARY, 2025



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