

DECISION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2024-149
OAL Docket No. CSV 06875-23

ISSUED: FEBRUARY 26, 2025

In this matter the investigation by NPD continued along with the ECPO investigation except that NPD could not interview appellant until ECPO completed its investigation. ECPO declined to charge appellant and sent a declination letter to NPD on August 19, 2022. On August 19, 2022, the forty-five-day period began. NPD was notified that ECPO would not be perusing charges against Dopazo. All the investigation had been done in this matter except the interview of Dopazo, when NPD received the declination letter. Santiago had interviewed Officer Samuel Joseph, the citizen complainant and reviewed her medical records, the continuation and stop and incident reports as well as the body cam and car cam footage before August 19, 2022. There is no explanation by respondent why there was no action on this matter until Curtis was

reassigned this matter on February 1, 2023, over five months after NPD knew that criminal charges would not be filed against Dopazo. Further, there has been no explanation provided as to why there was an extensive delay in completing the investigation. I **CONCLUDE** that the charges of Dopazo violating NPD Rules and Regulations are dismissed for violation of the forty-five-day rule.

Based on the facts in the record as presented above, the Commission agrees. In this regard, while an appointing authority is permitted to conduct an investigation after a criminal investigation into the matter has concluded, it cannot prejudicially delay such investigation. *See e.g., In the Matter of Telina Hairston*, Docket No. A-3758-17T4 (App. Div., March 26, 2019). Here, the unexplained lengthy delay described above serves as sufficient basis to find that charges were not timely filed under the 45-day rule.

Moreover, notwithstanding that the appellant was also charged with violations of Title 4A, which are not subject to the 45-day rule, the ALJ's dismissal of those charges was appropriate. In this regard, it is settled that the 45 day time limitation contained in *N.J.S.A. 40A:14-147* only expressly applies to charges related to violations of departmental rules and regulations. *See e.g., Hendricks v. Venettone*, Docket No. A-1245-91T5 (App. Div. October 29, 1992); *In the Matter of Bruce McGarvey v. Township of Moorestown*, Docket No. A-684-98T1 (App. Div. June 22, 2000). *See e.g., McElwee V. Borough of Fieldsboro*, 400 *N.J. Super.* 388 (App. Div. 2008). However, on this issue, the ALJ found:

The City of Newark and the SOA have a settlement agreement which states in part:

"For purposes of administering the disciplinary process, where the City cites the New Jersey Administrative Code when charging an employee with a disciplinary infraction, the City agrees to continue to abide by the 45-day statute of limitations."

The settlement agreement provides for the forty-five-day rule to apply to violations of the New Jersey Administrative Code. In this matter NPD violated the forty-five-day statute of limitations as outlined above.

I **CONCLUDE** the charge of conduct unbecoming under *N.J.A.C. 4A:2-2.3(a)6* should be dismissed in accordance with the settlement agreement.

The Commission agrees with the ALJ. Where, as here, the record shows that the parties have contractually agreed to extend the statutory provisions of *N.J.S.A.* 40A:14-147 to apply to charges under Title 4A, it has reason to apply such agreement.

Since the suspension has been reversed, the appellant is entitled to 15 working days of back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10. Moreover, the appellant is entitled to reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning counsel fees are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified and reverses that action. The Commission further orders that the appellant be granted 15 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. The Commission also orders reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12(a). Proof of income earned, and an affidavit in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C.* 4A:2-2.12(b), the parties shall make a good faith effort to resolve any dispute as to the amount of counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 26TH DAY OF FEBRUARY, 2025



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

SUMMARY DECISION

OAL DKT.NO. CSV 06875-23

AGENCY DKT. NO. 2024-149

**IN THE MATTER OF JOSE DOPAZO,
CITY OF NEWARK, DEPARTMENT OF
PUBLIC SAFETY,**

John J. Chrystal, III, Advocate-President, on behalf of appellant (Newark Police
Superior Officers' Association)

Cheyne R. Scott, Esq., on behalf of respondent, City of Newark (Chasan
Lamparello Mallon & Cappuzzo)

Record Closed: December 17, 2024

Decided: January 15, 2025

BEFORE KIMBERLY A. MOSS, ALJ:

Dopazo is a sergeant with the Newark Police Department. A Final Notice of Disciplinary Action was served on him on June 20, 2023. Dopazo was found to have violated Newark Police Division Civilian Rules and Regulations Chapter 18:19 use of force, Newark Police Division Civilian Rules and Regulations 18:14 disobedience of orders, General Order 18-20 use of force, violation of Newark Police Division Civilian Rules and Regulations chapter 5:1.1 conduct, Civil Service Rule conduct unbecoming a

public employee and violation of Newark Police Division Civilian Rules and Regulations chapter 5:1.3 language. He was given a fifteen-day suspension

Appellant filed an appeal on June 20, 2023. The matter was filed with the Office of Administrative Law on August 1, 2023. Appellant filed a motion for summary decision on November 14, 2024. Respondent filed opposition to the summary decision on December 19, 2024. Appellant filed a reply to the opposition on December 17, 2024.

I FIND the Following FACTS:

Jose Dopazo is a Sergeant with the Newark Police Department (NPD). On May 12, 2022, a citizen complaint for excessive force was made against Dopazo. On May 13, 2022, Sergeant Edward Santiago (Santiago) of the NDP oversaw the investigation. At that time, Santiago contacted the Essex County Prosecutor's Office (ECPO) to notify them of an excessive force complaint against Dopazo.

On May 16, 2022, Santiago interviewed the complainant and obtained a recorded statement from her. He reviewed medical records of the complainant, the incident report, the arrest report, the stop report and several continuation reports. He also reviewed body camera footage of several officers and the in-car camera footage from Dopazo's patrol unit. On May 17, 2022, Sergeant Rafeal Rosa submitted a report that he responded to the scene of the incident.

On June 1, 2022, Santiago was contacted by ECPO Assistant Prosecutor Jessica Levinson Apostolou (Apostolou) to continue the investigation but not to speak to the target officer. On July 7, 2022, Santiago interviewed Officer Samuel Joseph and obtained a recorded statement regarding Dopazo's interactions with the complainant during her arrest.

On August 3, 2022, Apostolou contacted Santiago to schedule a case review for August 8, 2022. On August 19, 2022, ECPO issued a declination letter declining to press charges against Dopazo and advising NPD to continue with any investigation concerning

administrative charges. On August 19, 2022, Santiago was able to seek to speak to Dopazo.

On February 1, 2023, the investigation was reassigned to Sergeant Njeri Curtis (Curtis) for completion. On March 8, 2023, Dopazo along with his SOA representative Gary Vickers responded to be interviewed by Curtis.

On April 5, 2023, Curtis presented her interview to the Risk Analysis Unit of Force Review Board, who voted to sustain a complaint against Dopazo. On April 10, 2023, a Preliminary Notice of Disciplinary Action (PNDA) was issued against Dopazo. He was charged with the violation of NPD Rules and Regulations, Chapter 18:19, NPD Rules and Regulations Chapter 18:14 Disobedience of Orders, General Order 18-20, NPD Rules and Regulations Chapter 5:1.1 conduct and NPD Rules and Regulations Chapter 5:1.2 Language and violation of Civil Service Rule N.J.A.C. 4A: 2-2.3(a)6.

A Departmental hearing was scheduled to be held on June 20, 2023, at that time Dopazo waived his rights to a departmental hearing and was found guilty on all the charges listed in the PNDA. On June 20, 2023, a Final Notice of Disciplinary Action (FDNA) was issued to Dopazo listing the same charges that were listed in the PNDA. The matter was filed at OAL as a contested matter.

A hearing date was scheduled for September 30, 2024. At that time appellant requested that he be allowed to file a summary decision motion. I granted that motion and ordered a schedule for the motion briefs to be submitted. Appellant's motion was scheduled to be filed by November 15, 2024, and the opposition to appellant's motion be filed by December 13, 2024.

There is a settlement agreement between NPD and the Superior Officers Association (SOA) from 2000 which states in relevant part:

For purposes of administering the disciplinary process, where the City cites the New Jersey Administrative Code when charging an employee with a disciplinary infraction, the City agrees to continue to abide by the 45-day statute of limitations. The City further agrees that it will not seek to increase or compound disciplinary penalties to the employee for the same conduct or set of events, beyond what penalties it would have imposed before it began citing the New Jersey Administrative Code on Employee disciplinary charges.

LEGAL ANALYSIS

Appellant seeks to summarily dismiss petitioner's claim. The rules governing motions for summary decision in an OAL matter are embodied N.J.A.C. 1:1-12.5. These provisions mirror the language of Rule 4:46-2 and the New Jersey Supreme Court's decision in Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67 (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary judgment should be based on the papers presented as well as any affidavits, which may have been filed with the application. In order for the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 523 (1995), set the standard to be applied when deciding a motion for summary judgment. Therein the Court stated:

The determination whether there exists a genuine issue with respect to a material fact challenged requires the Motion Judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

There are no material issues of fact.

N.J.A.C. 1-12.5(a) provides:

(a) A party may move for summary decision upon all or any of the substantive issues in a contested case. Such motion must be filed no later

than 30 days prior to the first scheduled hearing date or by such date as ordered by the judge.

In this matter, I ordered the motion to be filed on November 15, 2024, and the opposition be filed on December 13, 2024. I **CONCLUDE** appellant's motion for summary decision was timely filed.

N.J.S.A. 40A: 14-147 provides:

Except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. The complaint shall be filed in the office of the body, officer or officers having charge of the department or force wherein the complaint is made, and a copy shall be served upon the member or officer so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint.

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The 45-day time limit shall not apply if an investigation of a law enforcement officer for a violation of the internal rules or regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State. The 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement of this paragraph for the filing of a complaint against an officer shall not apply to a filing of a complaint by a private individual.

A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint. The law enforcement officer may waive the right to a hearing and may appeal the charges directly to any available authority specified by law or regulation, or follow any other procedure recognized by a contract, as permitted by law.

Respondent cites Roberts v. Division of State Police 191 NJ 516 (2007). In that matter a state trooper has two different investigations done by the State Police. The court stated:

Ordinarily, because conducting a complete and thorough investigation into incidents that might give rise to disciplinary charges serves the interests of the particular trooper, the State Police, and the people of our State, timeliness of a charge is judged based upon when the Superintendent has received the report of the investigation. Therefore, had there been no intervening criminal investigation into the allegations that arose from the domestic violence incident, the disciplinary charges would have been timely if filed within forty-five days of the date when the Superintendent received sufficient information, in the form of an investigative report, to support the charges arising from Roberts's failure to self-report. ID at 554-555.

Here, there was only one investigation of Dopazo.

In this matter the investigation by NPD continued along with the ECPO investigation except that NPD could not interview appellant until ECPO completed its investigation. ECPO declined to charge appellant and sent a declination letter to NPD on August 19, 2022. On August 19, 2022, the forty-five-day period began. NPD was notified that ECPO would not be perusing charges against Dopazo. All the investigation had been done in this matter except the interview of Dopazo, when NPD received the declination letter. Santiago had interviewed Officer Samuel Joseph, the citizen complainant and reviewed her medical records, the continuation and stop and incident reports as well as the body cam and car cam footage before August 19, 2022. There is no explanation by respondent why there was no action on this matter until Curtis was reassigned this matter on February 1, 2023, over five months after NPD knew that criminal charges would not

be filed against Dopazo. Further, there has been no explanation provided as to why there was an extensive delay in completing the investigation. I **CONCLUDE** that the charges of Dopazo violating NPD Rules and Regulations are dismissed for violation of the forty-five-day rule.

The City of Newark and the SOA have a settlement agreement which states in part:

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The settlement agreement provides for the forty-five-day rule to apply to violations of the New Jersey Administrative Code. In this matter NPD violated the forty-five-day statute of limitations as outlined above.

I **CONCLUDE** the charge of conduct unbecoming under N.J.A.C. 4A: 2-2.3(a)6 should be dismissed in accordance with the settlement agreement.

ORDER

Accordingly, it is **ORDERED** that appellant's motion is **GRANTED** and all charges against appellant are 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.

January 15, 2025



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

January 15, 2025

Date Mailed to Parties:
ljb

January 15, 2025