



STATE OF NEW JERSEY

In the Matter of Stephen Hedberg,
Perth Amboy

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-2629

OAL Docket No. CSR 03146-22

ISSUED: JULY 2, 2025

The appeal of Stephen Hedberg, Police Officer, Perth Amboy, Police Department, removal, effective March 21, 2022, on charges, was before by Administrative Law Judge Dean J. Buono (ALJ), who rendered his initial summary decision on June 6, 2025. Exceptions were filed on behalf of the appointing authority and a reply was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, which do not merit extended discussion, the Civil Service Commission (Commission), at its meeting on July 2, 2025, adopted the ALJ's recommendation to dismiss the appeal as moot.

The Commission makes the following comment. The appointing authority, in its exceptions, makes various arguments as to why the disciplinary removal should not be considered moot. The Commission rejects these arguments as the record establishes that the appellant received an ordinary disability retirement with an *effective date* prior to the date of his removal from employment. The fact that the retirement was not actually granted until after the date of removal is of no moment. Moreover, as the appellant's removal was predicated on his inability to perform duties based on a work-related injury, there is no basis to supersede the finding of the Police and Firemen's Retirement System that he was considered disabled and entitled to a disability retirement prior to his removal on associated disciplinary charges.

ORDER

The Civil Service Commission dismisses the appeal of Stephen Hedberg as moot and orders that his record indicate an ordinary disability retirement, effective July 1, 2021.

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 2ND DAY OF JULY, 2025



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. CSR 03146-22

AGENCY DKT. NO. N/A

2022-2629

**IN THE MATTER OF STEPHEN HEDBERG,
CITY OF PERTH AMBOY.**

**Stuart J. Alterman, Esq., for appellant Stephen Hedberg (Alterman &
Associates, LLC, attorneys)**

**Robert J. Merryman, Esq., for respondent City of Perth Amboy (Apruzzese,
McDermott, Mastro & Murphy, PC, attorneys)**

Record Closed: April 22, 2025

Decided: June 6, 2025

BEFORE DEAN J. BUONO, ALJ:

STATEMENT OF THE CASE

Appellant Stephen Hedberg is challenging a disciplinary finding of "inability to perform duties" issued by respondent, the City of Perth Amboy (City), which resulted in the termination of his employment as a police officer for the Perth Amboy Police Department. The matter is on a motion for summary decision filed by the City as to whether the Petition of Appeal should be dismissed and the discipline and termination upheld. There are no issues of material fact, and therefore, summary decision is

appropriate; however, the proper action is not to dismiss the appeal, but to reverse the discipline and modify Hedberg's record to reflect his ordinary disability retirement.

PROCEDURAL HISTORY

The City issued Hedberg a Preliminary Notice of Disciplinary Action (PNDA) on March 21, 2022, charging a violation of N.J.A.C. 4A:2-2.3(a)(3), Inability to perform duties. Hedberg waived his right to a local hearing, and a Final Notice of Disciplinary Action (FNDA) was issued on April 7, 2022, removing him from employment effective March 21, 2022.

Hedberg appealed the FNDA, and the matter was filed with the Office of Administrative Law (OAL) on April 22, 2022, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The matter was put on hold pending the outcome of Hedberg's accidental disability retirement benefits appeal.

On March 31, 2025, the City moved for summary decision, dismissing the Petition of Appeal and upholding the charge and the penalty of removal. Hedberg opposed the motion but did not cross-move for summary decision. The record closed on April 22, 2025.

FINDINGS OF FACT

The following is not in dispute and I **FIND** it as **FACT**. Hedberg was a police officer with the Perth Amboy Police Department beginning in September 2011. He first injured his right hand on the job in September 2013, but after surgery, he was able to return to work with no restrictions. In May 2019, he severely injured his right hand again while making an arrest. He sought workers' compensation benefits and was placed on light duty. In February 2020, he was sent for a Functional Capacity Evaluation, which concluded that he could perform his duties but with restrictions to his ability to push and pull. (Exh. 2.) Because of these restrictions, he continued light duty.

Hedberg filed for accidental disability retirement in September 2020. (Exh. 3.) In January 2021, the Police Department informed Hedberg that his light duty would end on February 1, 2021, and that after that he would have to use accrued time off. (Exh. 4.) On July 12, 2021, the Board of Trustees of the Police and Fireman's Retirement System (PFRS) denied Hedberg's application for accidental disability. (Exh. 11A.) He appealed the denial. (Exh. 11B.)

On September 9, 2021, Hedberg was "strongly encourage[d]" to "address" his employment status because the City could not keep his position open indefinitely and it seemed apparent that he would not be returning to work. (Exh. 5.) On September 12, 2021, Hedberg's attorney contacted the City, writing that "even though we have appealed the determination of the Pension Board, Officer Hedberg has no choice but to indicate that he is ready, willing, and able to return to work." (Exh. 11.) On September 29, 2021, Hedberg personally reached out to Police Captain Eddie Padilla and requested to be put back on light duty. (Exh. 12.) By November 22, 2021, he had exhausted all his paid and unpaid leave for the year. (Exh. 5.) On December 27, 2021, he reached out again requesting to be put back on light duty. (Exh. 13.) Hedberg never returned to work, in either a light or full capacity, and he did not resign.

On January 1, 2022, Hedberg was credited with twelve sick days, two personal days, and fifteen vacation days for 2022. (Exh. 6.) He was sent for a second Functional Capacity Evaluation on January 5, 2022. (Exh. 7.) This Evaluation determined that Hedberg was only able to perform jobs in the sedentary physical demand category. (Id. at 1.) A police officer is classified within the medium physical demand category. (Ibid.) On January 10, 2022, the treating workers' compensation orthopedic physician determined that Hedberg was at maximum medical improvement with permanent restrictions. (Exh. 8.) Also in January 2022, another doctor's report was given to the City, stating that Hedberg was "to be considered totally and permanently disabled as a police officer for the Perth Amboy Police department." (Exh. 9 at 7.)

The City issued a PNDA on March 21, 2022, against Hedberg because of his inability to perform the duties of a police officer. (Exh. 10.) The PNDA listed only one charge.

Charges:

N.J.A.C. 4A:2-2.3(a)

3. Inability to perform duties

Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred

You have been unable to work and/or on restricted duty since suffering a work related injury in May 2019. The treating physician provided through the worker's compensation carrier has determined that you have reached maximum medical improvement. A January 5, 2022, Functional Capacity Evaluation determined that you are unable to meet the physical demands of your position. The consensus of medical professionals who have evaluated you is that you do not have the physical capacity and/or ability to perform the required duties of a police officer and that these restrictions are permanent.

[Ibid.]

Hedberg waived his right to a local hearing, and a Final Notice of Disciplinary Action (FNDA) was issued on April 7, 2022, removing him from employment effective March 21, 2022. (Exh. B.)

Hedberg appealed the FNDA, and the matter was filed with the OAL as a contested case. The matter was put on hold pending the outcome of Hedberg's accidental disability retirement benefits appeal. (Exh. C.) On May 24, 2024, Judge Caliguire affirmed the PFRS Board's denial of accidental disability but found that Hedberg was permanently and totally disabled from being a police officer and granted him ordinary disability retirement benefits. (Exh. D.) On July 9, 2024, the PFRS Board adopted Judge Caliguire's decision and affirmed that Hedberg was permanently and totally disabled from performing the duties of a police officer and that he was entitled to ordinary disability retirement benefits. (Exh. E.) The effective date of Hedberg's ordinary disability retirement is July 1, 2021. (Ibid.) Hedberg is currently appealing that decision in an attempt to receive accidental disability retirement, but even if he is

unsuccessful, there is no reason to believe that he will not continue to receive ordinary disability retirement benefits. (Pet. Opp. Br. at 2.) There is no evidence that Hedberg tried to return to work in any capacity after his disability retirement benefits were granted.

The City argues that summary decision in its favor is appropriate because there is no dispute that Hedberg is unable to perform the duties of a police officer, and therefore, the charge and discipline should be affirmed. Hedberg agrees that he is unable to perform the duties of a police officer but argues that since he was granted ordinary disability retirement benefits the matter should be dismissed or deemed moot.

LEGAL ARGUMENT AND CONCLUSION

Pursuant to N.J.A.C. 1:1-12.5(b), a summary decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. On a motion for summary judgment, a judge must “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.” Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). A judge’s task on a motion for summary judgment is not to weigh the evidence in order to determine the truth, but to determine whether there is a genuine issue for trial. Ibid.

Here, both parties agree that Hedberg is permanently and completely disabled from performing the duties of a police officer. Both parties agree that he was injured through no fault of his own. Hedberg is not seeking to get his job back. In its reply brief, the City tries to paint him in a negative light, but ultimately it does not allege any malfeasance or willful misconduct. Therefore, there are no genuine issues of any

material fact, and a decision on the law is appropriate. Brill, 142 N.J. 520. The legal issue presented is the impact of Hedberg's ordinary disability retirement benefits on his appeal from the termination of his employment.

Civil service employees' rights and duties are governed by the Civil Service Act and accompanying regulations. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1 et seq. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward employees. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to satisfactorily perform their duties. N.J.S.A. 11A:1-2(a). The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a).

The City brought only one charge against Hedberg, "inability to perform duties." N.J.A.C. 4A:2-2.3(a)(3). This charge is often brought when an employee is physically or psychologically unable to do their job. While it does fall under N.J.A.C. 4A:2-2's category of "major discipline," it is really "an inquiry into the physical condition of an employee concerning his ability to perform his duty" and "is not a disciplinary action as commonly understood." Newark v. Bellezza, 159 N.J. Super. 123, 128 (App. Div. 1978). Even though the forms and procedures used in an "inability to perform duties" case are the same as in other disciplinary matters, the nature of the inquiry is different because it is about whether or not the employee has the physical capacity to continue to do their job, not about whether they are guilty of any wrongdoing. In re Sisco, CSV 09732-01, Initial Decision (May 2, 2003), modified, Comm'n (Aug. 19, 2003), <http://njlaw.rutgers.edu/collections/oal/>.

The result of a successful "inability to perform duties" charge is termination from employment. However, when there is no willful misconduct, "the disciplinary penalty of removal is unduly harsh," and the proper remedy is to affirm the termination from employment but modify it to a resignation in good standing. Sisco, CVS 09732-01, Final Decision. Because of the nature of the charge, it is appropriate to modify "a disciplinary removal from employment to a resignation in good standing where it is indicated that, through no fault of his or her own, an employee is no longer medically or psychologically

fit to perform the job.” In re Kirchner, CSR 00789-16, Initial Decision (Sep. 20, 2016), rejected, Comm’n (Nov. 16, 2016), <http://njlaw.rutgers.edu/collections/oal/>, Final Decision at 2.¹

The analysis differs when such an employee is granted accidental or ordinary disability retirement benefits with an effective date preceding the effective date of the termination. Then, the discipline action is moot, and the employee’s record should be modified to remove the termination all together and reflect their disability retirement benefits. See In re Acevedo, CSV 11356-08, Initial Decision (Dec. 15, 2008), adopted, Comm’n (Feb. 13, 2009) <http://njlaw.rutgers.edu/collections/oal/>; In re O’Brien, CSV 08223-00, Initial Decision (Feb. 28, 2003), rejected, Comm’n (May 13, 2003), <http://njlaw.rutgers.edu/collections/oal/>; and In re Bowles, CSV 03256-09, Initial Decision (June 12, 2009), adopted, Comm’n (Aug. 11, 2009) <http://njlaw.rutgers.edu/collections/oal/>. In matters like this, the appeal itself is not moot because the employee has an interest in getting the discipline and termination removed from their record. Rather, it is the “actual imposition of the removal by the appointing authority that [is] moot,” and therefore, the discipline and termination should be “deleted from the appellant’s record.” O’Brien, CSV 08223-00, Final Decision at 2. Because such discipline is moot, an OAL hearing is not necessary. Bowles, CSV 3256-09.

The City argues that these three cases do not apply here because in those matters, the employees resigned or were granted disability retirement *before* the FNDA was issued. (Resp. Reply Br. at 3.) Here, Hedberg was not granted disability retirement until well *after* his FNDA was issued. However, a similar situation was presented in In re Jewell, CSV 07396-09, Initial Decision (July 2, 2010), adopted (Aug. 9, 2010), <http://njlaw.rutgers.edu/collections/oal/>. There, the administrative law judge

¹ For other examples of the Civil Service Commission affirming termination but modifying the disciplinary removal to a resignation in good standing, see: In re Treitsis, CSR 18651-17 and 05113-18 (Consolidated), Initial Decision (Mar. 12, 2020), modified, Comm’n (May 1, 2020), <http://njlaw.rutgers.edu/collections/oal/>; In re Davis-Smith, CSR 16665-16, Initial Decision (July 17, 2018), modified, Comm’n (Aug. 17, 2018), <http://njlaw.rutgers.edu/collections/oal/>; In re Duncan, CSV 09601-15, Initial Decision (Nov. 16, 2015), modified, Comm’n (Dec. 18, 2015), <http://njlaw.rutgers.edu/collections/oal/>; In re Abdelali, CSV 12994-11, Initial Decision (Apr. 26, 2012), modified, Comm’n (June 6, 2012), <http://njlaw.rutgers.edu/collections/oal/>; and In re Leonard, CSV 11651-07, Initial Decision (Dec. 14, 2009), adopted, Comm’n (Jan. 27, 2010), <http://njlaw.rutgers.edu/collections/oal/> (where the ALJ had already modified the discipline to a resignation in good standing).

(ALJ) applied Acevedo, Bowles, and O'Brien to a similar fact pattern of an employee being granted disability retirement benefits after an FNDA.

In Jewell, the employee was issued the same charge as Hedberg, "inability to perform duties" under N.J.A.C. 4A:2-2.3(a)(3). Jewell was issued a PNDA on February 14, 2008, applied for accidental disability in March 2008, and was then issued an FNDA on June 9, 2008, terminating him from employment. On June 8, 2009, the PFRS Board found Jewell totally and permanently disabled and granted him ordinary disability retirement benefits effective May 1, 2008. The ALJ, citing Acevedo, Bowles, and O'Brien, concluded that the discipline was moot. The ALJ found that Jewell's charge was predicated on the same medical conditions that formed the basis for his application for disability retirement benefits. Jewell, CSV 07396-09, Initial Decision. She reasoned that although "the PFRS Board did not render its determination until June 2009, Jewell was granted ordinary disability retirement benefits effective May 1, 2008. **In other words, he was retired on disability before the date of his termination on June 9, 2008.**" Ibid. (emphasis added). The ALJ concluded that a hearing on the matter was not necessary because the City's removal of Jewell was moot. Ibid. The Commission adopted the ALJ's opinion and modified Jewell's removal to an ordinary disability retirement. Id., Final Decision at 1. In sum, Jewell instructs that an "inability to perform duties" charge under N.J.A.C. 4A:2-2.3(a)(3) should be reversed and removed from the record once an employee is granted disability retirement benefits—no matter when they are granted—so long as they are found to be effective before the effective date of the termination.

Jewell is applicable here. Like Jewell, the singular charge against Hedberg was predicated on the same medical condition that formed the basis for his application for disability retirement benefits. Hedberg applied for disability retirement before his removal from employment. Although the PFRS Board initially denied him accidental disability retirement, it eventually granted him ordinary disability retirement benefits effective July 1, 2021, —well before the City brought charges. In other words, Hedberg was retired before the date of his termination. Jewell, CSV 07396-09. There was no willful misconduct. Sisco, CVS 09732-01. And the reason he was no longer fit to perform the job of a police officer was through no fault of his own. Kirchner, CSR

00789-16. Therefore, Hedberg's discipline is moot and should be reversed, and his record amended to reflect his ordinary disability retirement.

I **CONCLUDE** that the City of Perth Amboy's motion for summary decision dismissing the matter in its favor and upholding the discipline should be denied. However, a hearing on the merits is not necessary because there are no material facts at issue. The City's discipline of Hedberg is moot, and it should be reversed and deleted from his record. Hedberg's record should be amended to reflect his ordinary disability retirement.

ORDER

It is therefore hereby **ORDERED** that the City of Perth Amboy's motion for summary decision dismissing the matter in its favor and upholding the discipline is denied. It is **FURTHER ORDERED** that the City's discipline of Hedberg is moot, and it shall be reversed and deleted from his record. Hedberg's record shall be amended to reflect his ordinary disability retirement.


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. 40A:14-204.

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.

June 6, 2025

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

DJB/onl