



STATE OF NEW JERSEY

In the Matter of J.H., Department of
Corrections

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

CSC Docket No. 2024-114

Administrative Appeal

ISSUED: January 15, 2025 (SLD)

J.H., a Senior Investigator Parole and Secured Facilities, Department of Corrections (DOC), represented by David Beckett, Esq., appeals his reassignment.

By way of background, the appellant was assigned to the Professional Standards Unit (PSU), where he investigated allegations of corruption and other misconduct within all ranks of DOC. In April and May of 2022, it was alleged that the appellant sent anonymous emails containing confidential information regarding pending investigations to high-ranking officials at DOC. As part of the investigation, the appellant was temporarily reassigned to Mid-State Correctional Facility (Mid-State), effective June 13, 2022. The appellant acknowledged he sent the emails, apologized, and claimed that he sent them due to his struggle with Post-Traumatic Stress Disorder (PTSD). The Assistant Commissioner of DOC, reviewed the matter and determined that, as the appellant was apologetic, no formal discipline was required. However, due to the distrust among employees of the PSU the appellant's actions caused, the appellant's continued presence disrupted the effective operations of the PSU. As a result, the appellant's reassignment was made permanent. Thereafter, the appellant filed a grievance of his reassignment, but was unsuccessful at step one and step two of the grievance process. In particular, the appellant argued that his reassignment violated the procedures set forth in the relevant collective negotiation agreement between the New Jersey Investigators Association, FOP Lodge No. 174, and the DOC.

On appeal, the appellant argues that his reassignment was not done in good faith, and instead was a disguised disciplinary action. The appellant also argues that his reassignment violates the parties' collective negotiations agreement. Specifically, the appellant argues that a temporary reassignment may only last up to six months, otherwise it is determined to be permanent. The appellant also contends that a reassignment may only become permanent when seniority is considered and for a documented and listed operational reason. The appellant argues that his reassignment was to be temporary, during the pendency of an investigation. He maintains that, as the investigation did not result in discipline, his reassignment was involuntary and for a documented disciplinary reason, and as the DOC did not follow the proper disciplinary process, his reassignment was done in bad faith, and he must be returned to his previous location.

The appellant also argues that despite the DOC's "vague and self-serving generalized claims of operational needs," he was singled out and involuntarily reassigned, despite having greater seniority than other members of the PSU. In this regard, the appellant claims that the relevant negotiations agreement requires that, if there was a true operational need, the DOC was required to utilize seniority, and reassign the least senior member of the PSU, which would not have been him.

Finally, the appellant argues that the DOC's claim that the appellant's positive performance at Mid-State was an obvious effort to hide the fact that his reassignment was in fact due to disciplinary reasons. In this regard, the appellant claims that it is clear that the Hearing Officer in this matter provided neither a fair nor impartial hearing, and instead merely attempted to "rewrite" the DOC's actions. In support, he submits the May 23, 2023, hearing officer's grievance decision. In the decision, it is noted that the appellant was informed that, due to operational needs, he would be remaining at Mid-State as he was "doing such a great job" and that since his reassignment, the unit at Mid-State had been more productive since he was assigned there.

In response, the DOC, represented by Jana R. DiCosmo, Deputy Attorney General, maintains that on three separate occasions, the appellant sent anonymous emails containing confidential information regarding pending investigations to high-ranking officials at the DOC, who were outside of the chain of command for the PSU. The DOC notes that the appellant admitted to improperly releasing the information and claimed he did so because of his PTSD. As a result, it was determined that, as the appellant acknowledged and apologized for his mistake, no discipline was required. However, the appellant's actions had created distrust among the unit members, and so the appellant's reassignment was made permanent.¹

¹ The DOC also argues that the appellant's appeal should be dismissed, as forum shopping, since he failed to follow the full grievance procedure. However, the Commission disagrees, as *N.J.A.C. 4A:4-7.7* specifically allows a civil service employee to appeal his reassignment directly to the Commission.

Additionally, the DOC maintains that the appellant has failed to meet his burden of proof in this matter and establish that his reassignment was made in bad faith. In this regard, the DOC maintains that it is management's prerogative to place its investigators where they can most effectively perform their duties. Moreover, the appellant's interpretation that it can only involuntarily reassign the least senior member of a unit would mean that its prerogative to manage its workforce would be curtailed. In this matter, the DOC argues that it had the authority to exercise its managerial prerogative to reassign the appellant to another facility, and that when his new assignment resulted in increased output, and his former assignment became untenable as a result of his actions, it still had the managerial prerogative to make that reassignment permanent.

Furthermore, the DOC contends that although Civil Service law and rules do not permit the use of reassignments as part of a discipline in the absence of an opportunity for a hearing, the law is equally clear that this same provision cannot interfere with an employer's decision to reassign an employee when that decision is made in good faith. In this regard, it notes that *N.J.S.A. 11A:4-16* provides, in pertinent part, that "[n]othing herein shall prohibit transfers, reassignments, or lateral title changes made in good faith . . . [t]he burden of proof demonstrating lack of good faith shall be on the employee." Here, it argues that the appellant cannot meet his burden of proof. The DOC acknowledges that if it had used the reassignment as a means of discipline without first utilizing the established disciplinary proceedings, then the appellant would have an argument. However, that is not what occurred. Instead, the DOC maintains that while the appellant, self-admittedly, acted inappropriately, the permanent reassignment was not made in response to his misconduct. Rather, it was made in response to the effect of the misconduct, which was the loss of the trust in the PSU. The DOC maintains that it sought to "spare" the appellant from a negative mark on his employment record, as he had expressed contrition for his misbehavior and it reiterates that there was no bad faith in its actions. Instead, it exercised the most conservative approach possible to the situation by merely addressing the operational need, created by the appellant's release of confidential information, by reassigning him without unnecessarily disciplining him, especially in light of his apparent remorse.

In response, the appellant reiterates that his reassignment was in bad faith. In this regard, the appellant notes that although the DOC's claim that his reassignment was due to the "effect" of his conduct, rather than the conduct itself, that argument is a distinction without a difference. Moreover, the appellant maintains that the DOC's own argument establishes that his reassignment was a negative consequence, as the DOC notes that the PSU is deemed to have a higher level of trust, and thus, his reassignment to Mid-State was clearly a punishment, as it is considered a lower level position. Further, the appellant notes that the DOC

acknowledges that it “choose” not to discipline the appellant, even though it could, because it wanted to “correct” and not punish.

CONCLUSION

Initially, the Commission notes that it will not entertain any of the appellant’s arguments regarding his negotiated agreement as the Commission does not have jurisdiction over such claims. Regardless, for the reasons set forth below, his appeal regarding his reassignment is properly denied under Civil Service law and rules.

N.J.A.C. 4A:4-7.2 provides that a reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit. Further, *N.J.A.C.* 4A:4-7.7 provides that when an employee challenges the good faith of a reassignment, the burden of proof shall be on the employee. That section also provides that such an action shall not be utilized as part of a disciplinary action except when disciplinary procedures have been utilized. *See also, N.J.S.A.* 11A:4-16.

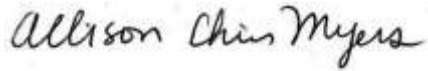
Reassignments are at the discretion of the DOC, but they must be made in good faith. Here, there is sufficient evidence in the record that the appellant’s reassignment was based on legitimate business and operational reasons. In this regard, the record evidences that the appellant’s initial reassignment, during the investigation, was appropriate. Subsequently, the appellant was told that he would remain at Mid-State due to an increase of his performance, and the performance of the unit while assigned there. Although the DOC indicates that it opted not to discipline the appellant for his behavior, the mere fact that it opted to retain the appellant at the new work location is also not evidence, in and of itself, of bad faith. Rather, the appellant appears to argue that, since his initial reassignment was due to an investigation that could have led to discipline, the DOC could not permanently reassign him to Mid-State for a documented operational need. However, the hearing officer noted that the appellant was informed that, due to his increased performance at Mid-State, his reassignment would be permanent. The DOC’s additional proffered reason regarding the negative effect on the PSU if the appellant were returned there is also sufficient justification for the reassignment as it pertains to its legitimate assessment of its operational needs and functions. Although the appellant complains that he is being punished for his performance, he has not established that the proffered reasons were not legitimate or served as a pretext to allow the DOC to reassign him for some other, invidious or impermissible reason. Therefore, the appellant has failed to establish by a preponderance of the evidence that his reassignment was made in bad faith.

ORDER

Therefore, the Commission orders that this appeal 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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