



In the Matter of Kimberly Mitchell,
Cumberland County, Sheriff's
Department

CSC Docket Nos. 2025-1538 and
2025-1875

STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

Reconsideration, Enforcement, and
Back Pay

ISSUED: September 24, 2025 (SLK)

Cumberland County (County), represented by Theodore E. Baker, Assistant County Counsel, requests reconsideration of *In the Matter of Kimberly Mitchell* (CSC, decided January 15, 2025). Kimberly Mitchell, represented by Herbert J. Stayton, Jr., Esq. requests enforcement and back pay pursuant to *In the Matter of Kimberly Mitchell* (CSC, decided January 15, 2025). These appeals have been consolidated due to common issues presented.

By way of background, Mitchell, a Keyboarding Clerk 1, was on Family Medical Leave Act (FMLA) leave which was approved until September 7, 2015. However, after the County's doctors indicated that Mitchell could return to work, on August 18, 2015, the County advised her that she needed to report to her position immediately or be subject to disciplinary action for job abandonment. Thereafter, when she did not report to work, the County removed her, effective August 25, 2015, based on insubordination, other sufficient cause, and absence without leave for five consecutive days. Mitchell appealed her removal to the Civil Service Commission (Commission), and the matter was transmitted to the Office of Administrative Law as a contested case. After a hearing, the Administrative Law Judge (ALJ) recommended sustaining the charges and the removal. The Commission also sustained the charges. However, it modified the removal to a 30 working day suspension based on her lack of a prior disciplinary history, and there had been no issues concerning her work performance in the record. Additionally, the Commission found that notwithstanding the final doctors' opinions finding that Mitchell was clear to work, her mistaken belief that she

was entitled to remain on her already approved FMLA leave until the original expiration further mitigated against removal. Therefore, the Commission ordered that Mitchell be granted back pay, benefits, and seniority from 30 working days after the first date of separation without pay to the actual date of reinstatement.

On appeal, the County argues that the Commission erred as while Mitchell was charged with several infractions, insubordination, excessive absenteeism, and other sufficient cause, she was only tried on one, failure to report to duty for five consecutive business days without just cause, which is a charge that is not subject to progressive discipline. The County presents that under *N.J.A.C. 4A:2-6.2(c)*, an employee that has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. It asserts that after the two doctors opined that Mitchell could return to work, there was no just cause to continue her FMLA leave, and she simply refused to return to work. Additionally, it emphasizes that the County advised her that if she did not return to work, she would be subject to disciplinary action for job abandonment. The County reiterates that the other charges, which are subject to progressive discipline, are not the issue as the matter was solely tried on job abandonment, which is not subject to progressive discipline, as per the regulation, it constitutes a resignation by default.

In reply, Mitchell asserts that the record does not support a modification to the Commission's penalty determination. She states that there were no findings of facts or conclusions of law regarding the County's compliance with federal and State FMLA laws. Mitchell contends that the County circumvented FMLA. It notes that after the County ordered Mitchell back to work, the Undersheriff had a conversation with Mitchell in which he said that he would "get back" to her, but he never did. Mitchell indicates that the doctors' opinion that formed the foundation for the County ordering her back to work did not testify during the hearing, which did not allow her to cross-examine them. Additionally, she states that during the hearing, the two doctors were not qualified as medical experts, their field of expertise was not identified by them or the County, and their professional qualifications were not admitted into evidence and subject to cross-examination. Therefore, Mitchell argues that the record does not contain any competent medical expert proof to support the opinions and the County did not carry its burden of proof.

In response, the County asserts that Mitchell tacitly concedes two principal issues. It asserts that the first issue is that a loss of one's position due to failure to report to work for five business days without just cause, under *N.J.A.C. 4A:2-6.2*, is a resignation, not a removal, which does not appear to be contested. Additionally, the County believes that Mitchell does not seem to contest that the principal issues tried before the ALJ was whether she had just cause for refusing to obey an order to return to work. The County states that pursuant to *N.J.A.C. 4A:2-6.2(c)*, resignation appears to be automatic. Further, it reiterates that Mitchell was notified several

times that her failure to return to work would have consequences. The County claims that to not hold that Mitchell resigned would signify that an employee would have to engage in a pattern of job abandonment, and resignation would not be effective until multiple instances occurred. It contends that *N.J.S.A. 40A:14-122*¹ and *N.J.A.C. 4A:2-6.2* are virtually the same in the terms of repercussions of a willful refusal to report to work for five consecutive days or more. Moreover, the County states that Mitchell has the burden to show just cause for her refusal to return to work, and she is unable to do so.

Concerning Mitchell's dispute regarding the propriety of the FMLA process, the County states that this was not an issue from the ALJ's or the Commission's decision. It reiterates that the County received opinions from two doctors that substantiated that Mitchell could perform her regular duties, and she refused to report, which led to her automatic termination. Further, the County states that the regulations require an opinion, not a report. It provides that there is no requirement for an expert's report as that would be an undue burden on human resources departments. The County states that it complied with the FMLA. Moreover, the County argues that its doctors' opinions were admissible under *N.J.A.C. 1-1-15.5* because they are corroborative of witness testimony that problems with Mitchell's work performance were not apparent. Also, her claim that she could not write is belied by her own August 12, 2015, handwritten note.

Referring to Mitchell's request for back pay, Mitchell states that despite her request for documentation and information from the County, she has not received anything. In support of her request for back pay, she presents her gross wages, gross earnings, and the difference, from October 5, 2015, 30 days after the original separation, through 2024. She indicates that calculated lost income was \$102,621.05. She notes that she received \$7,083.00 in State unemployment benefits in 2016, gross wages included increases based on the collective negotiations agreement (CNA), and her gross wages were based on her tax returns. Additionally, Mitchell presents that she is entitled to \$73,781.12 for 383 days of lost vacation (190 days), sick days (160 days), and personal days (33 days). She indicates that the calculation was based on her per diem rate of \$192.64 based on her 2025 salary. Further, Mitchell provides that personal days not used in the current calendar year will be converted to sick days and she used five sick days and five vacation days in 2015. Moreover, she states that she is entitled to \$3,700 in longevity pay. Therefore, Mitchell calculates the total that she is due, including a \$690 contractual adjustment is \$180,792.17. She also

¹ *N.J.S.A. 40A:14-122* provides that except as otherwise provided by law, any permanent member or officer of such police department and force who shall be absent from duty without just cause or leave of absence, for a continuous period of 5 days, shall cease to be a member of such police department and force. However, this statute is for municipal police departments and only pertains to officers and members of the police force, not civilian employees. The subject matter involves a civilian County's Sheriff's Department employee and is not applicable.

claims that the County needs to pay for her health, dental, and vision insurance, her personal insurance, and pension contributions.

Regarding Mitchell's search for employment since her removal, she presents that in 2015, she searched Indeed.com and went to the One Stop Career Center located at the Cumberland County College. In 2016, she indicates that she worked part-time for a law firm and rented space at a mall to sell items on consignment, and interviewed for positions but could not gain employment after explaining why she left the County. Thereafter, from January 2017 through August 2022, Mitchell provides that she was employed in Customer Service for South Jersey Water Conditioning. Further, Mitchell indicates that since August 2022 to the present, she has been employed by Eastern Lift Truck as a Billing Administrator.

Mitchell highlights that the Commission's decision indicates that she is to be reinstated and such reinstatement should not be delayed pending resolution of the back pay. However, her good faith efforts to be reinstated have been unsuccessful.

In reply to Mitchell's request for reinstatement and back pay, the County asserts that its motion for reconsideration should be decided first by the Commission. Thereafter, the Commission can decide if further proceedings are necessary. It claims that Mitchell is not entitled to automatic reinstatement nor back pay because the Commission has yet to issue a final decision. It notes that when the Commission issued its decision, the County was willing to discuss returning her to provisional employment, pending an appeal, if that was agreed to between the parties. However, the County states that it then decided that the most expeditious way to proceed would be to move for reconsideration. It presents that Mitchell applied for reemployment, but she has not provided information that the Sheriff's Office requested. However, the County's preference would be to take no action until the reconsideration matter is determined so that it can determine whether an appeal should be taken. It indicates that it raised the possibility of provisional employment pending appeal and had asked Mitchell for wage information to calculate against back pay and benefits to expedite the matter should she prevail upon reconsideration. The County argues that Mitchell's application be dismissed or held in abeyance.

Additionally, the County reiterates its position that the Commission made a clear material error as it believes that the Commission made a determination that excessive use of sick time was either the primary issue or was argued before the Office of Administrative Law. It states that that this charge was never proven because it granted her provisional FMLA leave until it was demonstrated that she could perform her job. However, once the doctors determined she could perform her job, she was ordered to return to work, and she refused to do so. Further, the County presents that more than five business days elapsed, and she was told that if she did not return to work, she would be deemed resigned. Thereafter, it indicates that she was charged with insubordination for violating a direct order and willful abandonment of her

issues and no other issues were tried below. The County states that the ALJ found that the County's position was warranted based on "other sufficient cause," and recommended that Mitchell's claims should be dismissed, which is the correct result.

Referring to back pay, the County attaches a salary guide from 2015 to the present. It notes that longevity pay was discontinued after 2017. The County notes that as a civilian employee, Mitchell would not be expected to perform significant overtime and its records indicate that the total amount of overtime she spent from 2008 to 2015 was 99.25 hours. Further, it states that there are no other benefits such as uniform and equipment allowances.

The County states that between October 16, 2012, until April 15, 2016, Mitchell received temporary disability benefits. It indicates that it cannot locate this information based on the time elapsed. However, the County believes that Mitchell can provide this information. If not, it may have to perform an offsite search for this information.

The County highlights that it wanted transcripts from the hearing before the ALJ on April 29, 2024, which was a second application to reopen the proceedings to allow Mitchell to testify a second time after the matter had been closed and the reason why that was made on the record. Unfortunately, the County states that the Court inadvertently did not record it. It feels that this transcript would be very important because it clarifies and emphasizes the basis on which the underlying action before the ALJ was heard. The County presents that during that discussion, Mitchell raised an issue about a resignation in good standing, *N.J.A.C. 4A:2-6.2*, being dishonorable services under *N.J.S.A. 43:1-3*. In response, it provides that it indicated that resignation not in good standing due to job abandonment is markedly different from dishonorable services. The County presents that it is enclosing a copy of its position that it provided the Court and opposing counsel in May 2024 since the transcript is not available as well as County's Counsel's certification as to the recollection of the matter. It reiterates that the only two issues before the ALJ were insubordination and job abandonment and not abuse of sick time. Therefore, the County argues that there is no issue present with respect to progressive discipline. It characterizes Mitchell as having voluntarily resigned because she disagreed with assessment of her physical condition that she could return to work. The County notes that Mitchell has been able to work, including at a higher salary, since she left the Sheriff's Office. It states that it will provide other information as required, but it believes that the reconsideration should be decided before the back pay issue.

In reply to Mitchell's attorney's certification, the County states that opposing counsel seems to imply that the County has not been cooperative with respect to providing income or wage information, which it refutes. It indicates that it advised that it would address back pay and reinstatement once the reconsideration motion was decided, but it felt it was inappropriate to do so before that time. In reply,

Mitchell filed the back pay and enforcement request. Regarding reinstatement, the County presents that the Sheriff's Office took the preliminary process that it would ordinarily require from a new hire or someone who has been absent from the office as long as Mitchell has, but she refuses to do so as demonstrated by her certification in her most recent submission. Nevertheless, the County's Counsel states that it advised the Sheriff's Office that it should await the outcome of its application for reconsideration.

The County states that its records reveal that from late 2015 until early 2016, Mitchell received temporary disability benefits. It asserts that this requires clarification because if she were seeking unemployment then she would have to certify that she was willing to accept new employment, whereas temporary disability benefits would be granted if she was unable to work. The County claims that if Mitchell received unemployment benefits, this claim would be inconsistent with her assertion that she was unable to work. Additionally, the County contends that Mitchell's certification is incorrect because she certified that she was terminated, when she resigned due to a willful failure to return to work without good cause. Moreover, although Mitchell states that she searched for employment opportunities after her employment with the County, the County indicates that she did not give an indication as to where, with what agencies, or what type of work. Additionally, the County notes that Mitchell posted publicly that she was the owner of "Forgotten Treasures" as well as an Administrative Assistant at Truxton Realty; however, there is no mention of her employment at Truxton Realty in her certification. Therefore, the County requests a clarification of her wages there and the duration of that employment.

In further reply, Mitchell clarifies that after her removal, she received regular unemployment benefits and not unemployment disability benefits. She states that this information was on her 2016 tax returns and included as such in her Affidavit of Proof of Wages and Benefits. Mitchell explains that she inadvertently did not include her employment with Truxton Realty although the County was aware of it. She indicates that she was hired by Truxton Realty because the Police Chief's wife was a realtor there, and she states that she worked there for no more than eight weeks between 15 and 20 hours per week. Mitchell provides that she received a W-2 representing the income she earned at Truxton Realty which was included in her tax returns and included as such in mitigation of lost earning in her Affidavit of Proof of Wages and Benefits.

Additionally, Mitchell presents that on January 16, 2025, her counsel contacted the County regarding her reinstatement and on January 21, 2025, Mitchell contacted the County's human resources department concerning her reinstatement. Thereafter, on January 27, 2025, human resources contacted Mitchell regarding her request. Further, on January 27, 2025, the County filed for reconsideration. Also, on January 29, 2025, she indicates that the application process for reinstatement began.

Mitchell provides that the County is implying that its request for reconsideration predated her request for reinstatement, which is not true. More significantly, she asserts that the County never sought permission from the Commission to hold its order in abeyance pending its request for reconsideration. Therefore, Mitchell contends that the County intentionally disregarded the Commission's order and is in noncompliance. Concerning the County's statement that she refused to provide information which the Sheriff's Office would normally require upon reinstatement, she claims that the County has failed to delineate what specific information she refused to provide. She asserts that the County's actions regarding her reinstatement are harassment, not in good faith, and are in disregard of the Commission's order.

Concerning termination versus resignation, Mitchell states that it has always been her position that the FMLA process used by the County was materially flawed, intentionally, evidentially and otherwise, to form the basis of the "return to work" order as there were no findings of fact or conclusions of law concerning the FMLA process and the evidential weight given to the documents, *i.e.* net opinions, of the County's expert medical personnel. Mitchell provides that the County is now posturing Mitchell's "removal" as a resignation for its benefit. She highlights that the Preliminary Notice of Disciplinary Action called for "removal" and the Departmental Hearing Officer found in favor of "removal," and it was only in the Final Notice of Disciplinary Action that indicated that she "resigned."

Referring to her employment history, Mitchell provides that *N.J.A.C. 4A:2-2.10* requires mitigation in the form of income during the relevant period. She states that the income information for the relevant period of time provided by her on two occasions was taken from a review of her tax returns and provided by a Certified Public Accountant. Mitchell claims that the issue raised as to her employers is irrelevant as the issue of income has been addressed.

Regarding why Mitchell requested in April 2024 that the hearing before the ALJ be reopened, she indicates that this request was to allow her to testify regarding damages as indicated in the email to the ALJ that she submits. Mitchell asserts that the conference with the ALJ was not "inadvertently not recorded by the Court." She provides that in response, the ALJ indicated that the matter of damages would be addressed by the Commission. Thereafter, Mitchell indicates that it was agreed that she would not testify and supplement the record on the issue of damages. She emphasizes that there was no transcript because all that took place was a conference among counsel and the ALJ which is not part of the hearing record.

In further response, concerning the April 2024 conference/motion before the ALJ, the County states that when it inquired about what type of damages that Mitchell wanted to testify about, she indicated that she was concerned about her pension rights if she was determined to have not resigned in not good standing. The County replied that this was vastly different from the dishonorable service

requirement that could adversely affect her pension rights. The County emphasizes that this indicates that Mitchell was concerned about an adverse finding based upon a resignation not in good standing resulting from the abandonment of her duties. It contends that this underscores that the principal issues tried below were with respect to the grant of FMLA and whether, upon a finding of two qualified medical providers that Mitchell was able to go back to work without restrictions, that she had a reasonable basis to refuse to return to work when directed to do so. The County submits that she had no just cause to refuse to return to work, and she voluntarily abandoned her position.

Concerning the initial letter granting FMLA, the County states that it appears that Mitchell is relying upon the initial grant of FMLA to her, which was explored in the record based on testimony. It provides that in all cases where a properly filled out application for FMLA benefits is accompanied by an opinion of a qualified medical provider, the leave must be granted unless a second and/or third opinion is obtained from qualified medical providers that FMLA leave is not warranted, which is what occurred. The County asserts that any suggestion that the initial grant of FMLA precludes the employer from seeking a second opinion is belied by regulations and would not subserve the interests of either the employer or the employee to ensure that their request for leave is to be treated liberally. In this case, it notes that Mitchell was out on provisional leave for over two months before two opinions were obtained indicating that she had no restrictions and could return to work.

The County contends that Mitchell's counsel is conceding that the issue below had nothing to do with abuse of sick time or excessive use of sick time. Rather, it asserts that the proceeding below primarily dealt with the issue of whether FMLA was granted, whether the procedures were followed, and once a determination was made, whether Mitchell had just good cause to refuse to turn to work. The County argues that the record indicates that she did not and should be deemed to have resigned not in good standing.

CONCLUSION

N.J.A.C. 4A:2-1.6(a) provides that within 45 days of receipt of a decision, a party to the appeal may petition the Commission for reconsideration. *N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred, or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

N.J.A.C. 4A:2-2.9(a) and (b) provides, in pertinent part, that the Commission may adopt, reject, or modify the ALJ's recommended report and decision, and it may reverse or modify the action of the appointing authority.

N.J.A.C. 4A:2-6.2(c) provides that when an employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for an extension of leave shall not be unreasonably denied.

N.J.A.C. 4A:2-6.2(f) provides that the appointing authority or the Commission may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.

Initially, concerning the County's argument that Mitchell abandoned her position and, therefore, she should automatically be determined to have resigned not in good standing, which is not subject to progressive discipline, the Commission notes that under *N.J.A.C. 4A:2-6(f)*, it may modify the resignation not in good standing to an appropriate penalty. Similarly, the Commission may modify the ALJ's recommendation and the appointing authority's action under *N.J.A.C. 4A:2-2.9(a)* and (b).

In this matter, the Commission finds that the County has met the standard for reconsideration. Specifically, one of the main reasons that the Commission modified Mitchell's removal to a 30 working day suspension was based on her "mistaken belief" that she was entitled to remain on her already approved FMLA leave until its original expiration date. However, in reviewing the ALJ's initial decision, the record indicates that the County scheduled Mitchell for two medical reviews, which she agreed to attend, and neither of which found that Mitchell had physical ailments that would preclude her from duties. Subsequently, the Undersheriff had a conversation with Mitchell ordering her to report back to work, which she refused. Further, the County's Director of Personnel telephoned Mitchell on August 14, 2015, and directed her to report to work on August 17, 2015. Additionally, on August 18, 2015, human resources sent a letter to Mitchell, which she received on August 22, 2015, advising her to report to immediately or be subject to disciplinary action for job abandonment. However, Mitchell did not report on August 17, 2015, or thereafter. Consequently, based on two doctor's opinions that indicated that she could perform her duties immediately without restrictions, the Undersheriff's order that Mitchell needed to return to work, and multiple communications from the County's human resources department that she needed to immediately report back to work, and if she refused, she would be disciplined for job abandonment, the Commission erred when it used Mitchell's "mistaken belief" that she could remain out on leave until September 7, 2015, which was the end of the time that her FMLA was initially approved, to mitigate the penalty. Further in this regard, it is noted that there is nothing in the

record that indicates that Mitchell attempted to return after September 7, 2015, or otherwise made plans to return after September 7, 2015, which further supports that Mitchell did not have a “mistaken belief” as to when she was entitled to return, but rather, never had any intention of returning.

Concerning Mitchell’s arguments that the County’s FMLA process was flawed as well her arguments concerning “net opinions,” as indicated in the Commission’s January 15, 2025, decision, the Commission is not persuaded as the credible evidence in the record indicated that Mitchell was not medically restricted from performing the duties of her position after being cleared by Dr. Bernardini, and as such, the County was not required to grant such leave thereafter.

Accordingly, based on the Commission’s findings as presented, it finds no reason to modify the discipline imposed to a 30 working day suspension. Rather, given the circumstances, removal in this matter is appropriate. Further, given this determination, Mitchell’s requests for back pay and enforcement are considered moot.

ORDER

Therefore, the Civil Service Commission orders that Cumberland County’s request for reconsideration is granted and the Commission upholds the removal of Kimberly Mitchell, effective August 25, 2015. Kimberly Mitchell’s requests for enforcement and back pay are denied. To the extent that Kimberly Mitchell is requesting reconsideration, that request is also 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 24TH DAY OF SEPTEMBER, 2025



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