



STATE OF NEW JERSEY

In the Matter of D.H., City of Orange
Township

**DECISION OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2026-2230

Request for Interim Relief

ISSUED: June 10, 2026 (HS)

D.H., a Police Officer with the City of Orange Township, represented by Gina Mendola Longarzo, Esq., requests interim relief regarding his immediate suspension.

As background, the appointing authority served the petitioner with a Preliminary Notice of Disciplinary Action (PNDA) on February 19, 2025 for a six working day suspension, containing the following specifications:

The undersigned Detective, along with D/Lt. Barbosa of the Internal Affairs Division responded to Saint Barnabas Hospital to Book [the petitioner] for being in the sick book. Upon arrival, D/Lt. Barbosa called [the petitioner] on his cell phone, but [the petitioner] did not pick up. After finally speaking to [the petitioner], he advised us that he . . . left Saint Barnabas Hospital about 25 minutes in the past and now is . . . in Newark. [The petitioner] never called the communications supervisor to let him know he had left the hospital.

The PNDA advised that if the petitioner desired a departmental hearing before the appointing authority, he was to notify it within five days of receipt of the PNDA, and the hearing would be held at 10am on February 28, 2025 in Orange. On February 25, 2025, the petitioner, then acting *pro se*, requested a departmental hearing. On March 13, 2025, the petitioner, now through counsel, “reconfirm[ed]” that he was invoking his right to a departmental hearing. On October 2, 2025, the petitioner requested discovery.

The appointing authority served the petitioner with a second PNDA on May 20, 2025 for a 10 working day suspension, containing the following specifications:

On or about April 6, 2025, [the petitioner] advised Lt. Rainforth that he injured his Achilles & needed to know how to request a light duty assignment. Lt. Rainforth instructed [the petitioner] to report Monday morning, April 7th to the OPD Personnel Division & provide medical documentation to be placed on light duty. [The petitioner] failed to report to the Personnel Division & did not attempt to call the Personnel Department. [The petitioner] called out sick that evening & when Internal Affairs reported to check on him approximately 50 minutes later, he was not at his place of recuperation. The [petitioner] did not report to the communications supervisor that he was leaving his place of recuperation in violation of OPD policy.

The PNDA advised that if the petitioner desired a departmental hearing before the appointing authority, he was to notify it within five days of receipt of the PNDA, and the hearing would be held at 10am on June 4, 2025 in Orange. Attached to this PNDA was a "Notice of Immediate Suspension" indicating, among other things:

PURSUANT TO N.J.A.C. 4A:2-2.5(b), YOU HAVE BEEN ADVISED OF THE CHARGES AND GENERAL EVIDENCE IN SUPPORT OF THE CHARGES AGAINST YOU. YOU ARE ENTITLED TO REVIEW THE CHARGES AND EVIDENCE AND RESPOND TO YOUR IMMEDIATE SUSPENSION WITHOUT PAY IN WRITING WITHIN FIVE (5) DAYS OF THIS NOTICE TO [THE BUSINESS ADMINISTRATOR].

On May 27, 2025, the petitioner requested a departmental hearing. On October 2, 2025, the petitioner requested discovery.

Later, the appointing authority served the petitioner with a third PNDA on October 10, 2025, containing the following specifications:

During a driver license check of all officers for the Police Training Commission [(PTC)], it was discovered that [the petitioner's] driver license was suspended from approximately July 13, 2025 until August 20, 2025, when [the petitioner] restored his driver license. [The petitioner] failed to notify any of his superiors that his driver license was suspended. [The petitioner] operated a City of Orange marked police vehicle without a valid driver license approximately [15] days and five consecutive weeks while his driver's license was suspended. When called to interview regarding these charges, [the petitioner] arrived late because he was working a construction job during the same time.

The PNDA advised that if the petitioner requested a departmental hearing before the appointing authority, it would be held on October 20, 2025. In conjunction with the PNDA, the petitioner was immediately suspended without pay. Specifically, the appointing authority also served a “Notice of Immediate Suspension” that stated, among other things, the following:

PURSUANT TO N.J.A.C. 4A:2-2.5(b), YOU HAVE BEEN ADVISED OF THE CHARGES AND GENERAL EVIDENCE IN SUPPORT OF THE CHARGES AGAINST YOU. YOU ARE ENTITLED TO REVIEW THE CHARGES AND EVIDENCE AND RESPOND TO YOUR IMMEDIATE SUSPENSION WITHOUT PAY IN WRITING WITHIN FIVE (5) DAYS OF THIS NOTICE TO [THE BUSINESS ADMINISTRATOR].

On October 14, 2025, the petitioner, through counsel, indicated, among other things, the following:

Please be advised that I am unavailable for the hearing scheduled on October 20, 2025. Moreover, the parties will need time for the exchange of discovery in this matter. We therefore hereby request that the matter be adjourned and waive any requirement for the hearing to be held within 30 days of the charges being served so that we may obtain proper discovery items. We would request that you kindly contact our office to reschedule the hearing for a mutually convenient time in the future to allow enough time for the parties to conduct discovery.

On October 21, 2025, the petitioner requested discovery. On December 1, 2025, the petitioner followed up. The record reflects that the appointing authority provided the petitioner discovery on April 1, 2026 and offered various dates in April 2026, including April 16, 2026, to hold a departmental hearing on the merits of the charges. The record further reflects that it was anticipated that said hearing would take place on April 30, 2026.

In the instant request for interim relief, filed March 24, 2026, the petitioner contends that he was deprived of a *Loudermill*¹ hearing and that the standard for an immediate suspension was not met, relying on, among other cases, *Herzog v. Twp. of Fairfield*, 349 N.J. Super. 602 (App. Div. 2002). He further maintains that he was denied his right to discovery and highlights that the New Jersey Attorney General Guidelines on Internal Affairs Policy and Procedures (Nov. 2022 ed.) (“IAPP”) mandate the right to discovery. Specifically, the IAPP provides the following as to discovery in the instant matter: “If administrative charges have been brought against an officer and a hearing will be held, a copy of all discoverable materials shall be provided to the officer and the hearing officer in advance of the hearing.” IAPP 9.6.1(a). He also maintains that he has been subjected to a prolonged, unpaid

¹ See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

suspension and denied a timely hearing on the charges. The petitioner insists that he is facing the danger of irreparable harm; that granting interim relief is in the public interest; and that there is an absence of substantial injury to the appointing authority in the granting of interim relief.

The petitioner requests an award of back pay from December 4, 2025, 55 days after the commencement of his immediate suspension, to May 6, 2026, the earliest date a Final Notice of Disciplinary Action (FNDA) could be produced assuming an April 16, 2026 hearing date, and counsel fees for the instant interim relief request.

Within his request, the petitioner also identifies and seeks relief with respect to the two earlier, separate disciplinary issues. First, the petitioner indicates that after service of the February 19, 2025 PNDA, the petitioner served the stated six working day suspension; thus, the appointing authority just imposed this discipline on him from the PNDA without ever affording him a hearing. Second, the appellant indicates that upon service of the May 20, 2025 PNDA, the petitioner served the stated suspension; thus, the appointing authority also just imposed this discipline on him from the PNDA without ever affording him a hearing. The petitioner indicates that he sent a follow-up to the appointing authority regarding the foregoing two disciplinary issues on December 1, 2025.

In response, the appointing authority, represented by John J.D. Burke, Esq., insists that the petitioner's objection that he was not provided with a *Loudermill* hearing is baseless as *N.J.A.C. 4A:2-2.5(b)* is clear that this requirement may be fulfilled in writing without a live hearing. It also highlights that per the specifications on the PNDA, the petitioner chose to hide the fact that his driver's license was suspended from the appointing authority and his superiors and drove a city police car without a license for over a month. Undoubtedly, per the appointing authority, if the petitioner continued to remain on duty while disciplinary charges seeking his removal were pending, it would have difficulty maintaining "safety, health, order or effective direction of public services."

The appointing authority further maintains that in the petitioner's correspondence of October 14, 2025, he requested to adjourn the departmental hearing that was already scheduled and explicitly, unilaterally, and in writing waived "any requirement for the hearing to be held within 30 days of the charges being served." On October 21, 2025, the petitioner requested discovery. On December 1, 2025, the petitioner sent a follow-up. Yet, the petitioner now argues that because the appointing authority did not conduct the hearing within 30 days of service of the PNDA, he should be awarded back pay and counsel fees pursuant to *N.J.S.A. 40A:14-149* and *N.J.A.C. 4A:2-2.5(d)*. The appointing authority insists that the petitioner should not be permitted to waive a procedural requirement when it suits him and then later—after the deadline has passed and without revoking that waiver in any way prior to the deadline—assert the same exact procedural requirement as an offensive weapon. However, the appointing authority adds that to the extent that the

Commission finds any procedural irregularities remain, the instant request should still be dismissed as any such concerns would be cured on eventual appeal to the Office of Administrative Law (OAL).

Concerning discovery, the appointing authority contends that none is required for a departmental hearing. Nevertheless, as a professional courtesy, it provided the petitioner with the entire internal affairs file relative to the October 10, 2025 PNDA consisting of 187 pages of documents and two audio recordings.

The appointing authority maintains that the petitioner is not in danger of immediate or irreparable harm. In this regard, he is only facing financial harm, and that harm will be fully remedied if he successfully proves the charges against him are without merit. Also, the appointing authority would be harmed if interim relief is granted because the petitioner is facing discipline for driving city vehicles without a valid driver's license and concealing that he lost said license until a PTC audit revealed it. Allowing such misconduct to go unanswered by prematurely awarding back pay would harm the appointing authority if its employees are encouraged to drive city vehicles without proper licenses or paperwork. Similarly, the appointing authority asserts that the public interest is best served by denying the instant petition. Specifically, permitting a law enforcement officer accused of driving without a license and concealing the loss of that license to remain on duty until after an OAL hearing would cost taxpayer dollars and undermine and degrade public services provided by the appointing authority.

Turning to the two earlier, separate disciplinary issues, the appointing authority contends that no relief is warranted. With respect to the February 19, 2025 PNDA, the appointing authority indicates that the petitioner waived the departmental hearing because he did not request one until February 25, 2025, six days later and thus outside the five-day timeframe. Similarly, with respect to the May 20, 2025 PNDA, the appointing authority indicates that the petitioner waived the departmental hearing because he did not request one until May 27, 2025, seven days later and thus also outside the five-day timeframe. Additionally, the appointing authority, citing *N.J.A.C. 4A:2-2.8(b)*, argues that the Commission lacks jurisdiction to entertain an appeal with respect to these earlier disciplines due to untimeliness. Specifically, the appointing authority highlights that the instant request, filed on March 24, 2026, over a year after the February 19, 2025 PNDA and 10 months after the May 20, 2025 PNDA, is the petitioner's first attempt to appeal those disciplines. It insists that the petitioner knew of the disciplines at the time they commenced as he was personally served with the PNDAs, and he made untimely requests for a hearing. Moreover, the petitioner states that he already served the suspensions for these disciplines. The appointing authority contends that the petitioner effectively ignored these two earlier disciplines until he realized, on August 26, 2025, that he was under investigation for the issue that led to the October 10, 2025 PNDA and urges the Commission not to entertain such gamesmanship.

CONCLUSION

N.J.A.C. 4A:2-2.5(a)1 provides that an employee must be served with a PNDA setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except 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. However, a PNDA with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

N.J.A.C. 4A:2-2.5(b) provides, in pertinent part, that where suspension is immediate under (a)1 above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

N.J.A.C. 4A:2-2.5(c) provides that the employee may request a departmental hearing within five days of receipt of the PNDA. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue an FNDA.

N.J.S.A. 40A:14-149 provides that if any member or officer of the police department or force shall be suspended pending a hearing as a result of charges made against him, such hearing, except as otherwise provided by law, shall be commenced within 30 days from the date of the service of the copy of the complaint upon him, in default of which the charges shall be dismissed and said member or officer may be returned to duty.

N.J.S.A. 40A:14-149.1 provides that notwithstanding any other law to the contrary, whenever any municipal police officer is charged under the law of this State, another state, or the United States, with an offense, said police officer may be suspended from performing his duties, with pay, until the case against said officer is disposed of at trial, until the complaint is dismissed, or until the prosecution is terminated; provided, however, that if a grand jury returns an indictment against said officer, or said officer is charged with an offense which is a high misdemeanor or which involves moral turpitude or dishonesty, said officer may be suspended from his duties, without pay, until the case against him is disposed of at trial, until the complaint is dismissed or until the prosecution is terminated.

N.J.A.C. 4A:2-2.5(d) provides that a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or a later date as agreed to by the parties.

N.J.S.A. 11A:2-15 and *N.J.A.C.* 4A:2-2.8(b) provide that if the appointing authority fails to provide the employee with an FNDA, an appeal may be made directly to the Commission within a reasonable time.

N.J.A.C. 4A:2-1.1(b) provides, in pertinent part, that an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

N.J.A.C. 4A:2-1.5(b) provides that back pay, benefits, and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. *See N.J.A.C.* 4A:2-2.10. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation.

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

Initially, it is noted that the petitioner's immediate suspension, effective October 10, 2025, under *N.J.A.C.* 4A:2-2.5(a)1 was warranted. It is alleged that the petitioner operated a city marked police vehicle without a valid driver's license from approximately July 13, 2025 until August 20, 2025 and failed to notify any of his superiors that his driver's license was suspended. Clearly, such allegations are serious and establish that the petitioner's immediate suspension was necessary to maintain safety, health, order, or the effective direction of public services. Moreover, the Commission is mindful that the petitioner, as a law enforcement officer, is held to a higher standard than are other public employees. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J.* 567 (1990). It is noted that *Herzog, supra*, cited by the petitioner, involved a Police Officer reading a confidential internal affairs document and disseminating it to the newspaper, which led to charges solely for violating departmental rules and regulations. The court found Herzog's conduct did not rise to the level of "moral turpitude or dishonesty" as required under *N.J.S.A.* 40A:14-149.1 to support a Police Officer being suspended without pay. Therefore, it ordered back

pay from the period of suspension. However, this matter is distinguishable as the alleged conduct is of a different nature, as described earlier, and has the potential to impugn the integrity of the police department and thus arguably involved “moral turpitude,” warranting a suspension without pay.

Moreover, the record reflects that the appointing authority complied with the requirements of *Loudermill, supra*, and *N.J.A.C. 4A:2-2.5(b)*. The petitioner received written charges against him and general evidence in support of the charges at the time of his immediate suspension. Specifically, the petitioner was served with a PNDA at the time he was immediately suspended, setting forth the charges and specifications for the charges. It is noted that the specification portion of the PNDA constitutes the general evidence in support of the charges. Moreover, the petitioner was provided with sufficient opportunity to respond to the charges before the appointing authority. *See In the Matter of Robert Totten* (MSB, decided August 12, 2003); *In the Matter of Joseph Auer* (MSB, decided October 23, 2002).

Concerning the appointing authority’s alleged procedural violation in not holding the departmental hearing within 30 days of the issuance of the PNDA contrary to *N.J.S.A. 40A:14-149* and *N.J.A.C. 4A:2-2.5(d)*, the record reflects that the appointing authority was prepared to go forward with said hearing on October 20, 2025, but the petitioner “request[ed] that the matter be adjourned and waive[d] any requirement for the hearing to be held within 30 days of the charges being served.” *See N.J.A.C. 4A:2-2.5(d)*. Further, there is no evidence of a danger of immediate or irreparable harm from not holding the hearing within 30 days where the instant interim relief request came over five months after the service of the PNDA. It is also worth noting here that the record reflects that the appointing authority has provided the petitioner with discovery and taken steps to schedule the departmental hearing. Additionally, to the extent any procedural defects may have occurred at the departmental level, they are addressed and corrected during the OAL hearing. *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, that the departmental hearing is being held beyond the 30-day timeframe provides no basis for a back pay award.

In addition, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether or not the petitioner’s actions constituted wrongful conduct warranting discipline. The Commission will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Therefore, since the petitioner has not conclusively demonstrated that he will succeed in having any administrative charges dismissed, he has not shown a clear likelihood of success on the merits. Further, while the Commission is cognizant of his financial situation, the harm that he is suffering while awaiting the outcome of the

administrative proceedings is financial in nature, and as such, can be remedied by the granting of back pay should he ultimately prevail. Additionally, given the serious nature of the alleged conduct, the public interest is best served by not having the petitioner on the job pending the outcome of any charges.

In sum, the petitioner's immediate suspension was appropriate and, since the petitioner waived the 30-day timeframe to hold the departmental hearing, no back pay is warranted for any procedural reasons. The record also does not support petitioner's restoration to the payroll at this time. Further, as explained above, the Commission declines to order the petitioner's reinstatement pending the proceedings in this matter.

Further, the Commission addresses the two earlier, separate disciplinary issues. With respect to the February 19, 2025 PNDA, the record reflects that the petitioner was personally served that date; he effectively waived the departmental hearing by making an untimely hearing request six days later, *see N.J.A.C. 4A:2-2.5(c)*; and he has already served the associated six working day suspension. With respect to the May 20, 2025 PNDA, the record reflects that the petitioner was personally served that date; he effectively waived the departmental hearing by making an untimely hearing request seven days later, *see N.J.A.C. 4A:2-2.5(c)*; and he has already served the associated 10 working day suspension. Yet, the instant matter was filed over one year after the February 19, 2025 PNDA and about 10 months after the May 20, 2025 PNDA. Neither can be considered a reasonable time within which to make an appeal to the Commission under *N.J.S.A. 11A:2-15* and *N.J.A.C. 4A:2-2.8(b)*. *See, e.g., In the Matter of Lauren Schwartz* (CSC, decided May 2, 2012), *aff'd* Docket No. A-5067-11T1 (App. Div. May 22, 2014) (court found that even assuming Schwartz never received the FNDA, her filing of her appeal 35 days after she knew of her removal found to be unreasonable). Alternatively, even if the Commission were to accept that the petitioner is seeking *interim* relief regarding these two earlier disciplines, it would still deny relief. In this regard, there is no evidence of a danger of immediate or irreparable harm where the instant matter was filed over one year after the February 19, 2025 PNDA and about 10 months after the May 20, 2025 PNDA. *See also, N.J.A.C. 4A:2-1.1(b)*.

Finally, in light of the foregoing, there is no basis for an award of counsel fees in this matter. *See N.J.A.C. 4A:2-1.5(b)*.

ORDER

Therefore, it is ordered that this request for interim relief be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 10TH DAY OF JUNE, 2026



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