



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of J.I., City of Passaic

CSC Docket No. 2026-1283

Hearing Granted

ISSUED: July 22, 2026 (HS)

J.I. requests relief with respect to his employment as a Fire Fighter with the City of Passaic.

As background, the appellant, a non-veteran, appeared on the eligible list for Fire Fighter (M2455F), City of Passaic, which promulgated on May 9, 2025 and expires on May 8, 2027. The appellant's name was certified to the appointing authority on June 12, 2025 (OL250711), and the appellant received a regular appointment, effective September 15, 2025, at which time his 12-month working test period commenced. *See N.J.A.C. 4A:4-5.2(d).*

On appeal to the Civil Service Commission (Commission), the appellant states:

I was enrolled in the Passaic [County] Fire Academy as a [Fire Fighter] recruit when I sustained an injury during official physical training. While performing a physical training exercise, I stepped into a pothole and sprained my ankle. Due to this injury, I was unable to participate in the physical aspects of the academy and was instructed by the training staff to remain home until cleared by a doctor.

I sought medical clearance as soon as possible; however, I was unable to obtain a timely appointment and missed three days of training as a result. Upon returning, I was informed that I was being removed from the academy because of the days I missed.

My injury occurred during authorized academy training, and I was following instructions to recover and await medical clearance before returning. I am fully committed to continuing my training once medically cleared and respectfully request to be reinstated or considered for the next available academy class.

I believe my removal was not disciplinary in nature but the result of a temporary, on-duty injury beyond my control. I am filing this appeal to request a review and reconsideration of my removal.

In response, the appointing authority, represented by Joseph P. Horan, II, Esq., explains that its records, for the appellant's dismissal for failure to complete the fire academy, show that while he was running at the academy on September 22, 2025, he "stepped in a pothole and twisted [his left] ankle." The appellant informed the academy staff that "he heard a 'popping + cracking' of his left ankle." The academy staff told the appellant to return to the Passaic Fire Department for a medical doctor to evaluate his condition and approve a return to the academy. The appellant did not return to the academy because he missed too many days of training/"absenteeism." Thus, the academy informed the appointing authority that the appellant was being dismissed from the rolls of the 2025 class as of September 26, 2025. The appellant received medical treatment, including physical therapy, and he remained on medical restrictions until November 4, 2025, when he was finally found not to require further medical treatment. The appointing authority took action to remove the appellant from its payroll on or about October 16, 2025, with an effective date of September 26, 2025.¹ The appointing authority highlights that per the Civil Service job specification for Fire Fighter:

Appointees must complete a firefighting training program approved by the New Jersey Department of Community Affairs, Division of Fire Safety, within the timeframe specified by the Appointing Authority. Appointees are not permitted to participate in firefighting activities prior to completion of this training.

The appointing authority requests that, prior to the appellant's being returned to the eligible list, the appellant be required to retake the Physical Performance Test to show that he has healed and is fit to reenter a fire academy. It further argues that if the appellant is returned to the list, it should be clear he is subject to all testing for the position prior to his being sent to another fire academy.²

¹ The appellant's separation from employment with the appointing authority has not been entered into the County and Municipal Personnel System.

² The appointing authority also argues, among other things, that an eligible's name on an eligible list creates no property interest or automatic entitlement to being hired and that the appellant has the burden of proof to demonstrate that his rejection was improper and the remedy, in the event of a successful challenge, is simply to be placed back onto the list, where he is still subject to its use of the "Rule of Three."

In support, the appointing authority provides, among other documents, a “Request for Permission to Take Personnel Action,” which reflects that the appellant’s “[t]ermination,” effective September 26, 2025, was approved on or about October 16, 2025.

CONCLUSION

N.J.A.C. 4A:4-5.2(d) provides, in pertinent part, that a person appointed to an entry level firefighter title shall serve a 12-month working test period.

N.J.A.C. 4A:2-2.1(a) provides, in pertinent part, that *N.J.A.C.* 4A:2-2 (major discipline) applies to a person serving a working test period.

N.J.A.C. 4A:2-2.2(a)1 provides that major discipline includes removal.

N.J.A.C. 4A:2-2.5(a)1 provides that an employee must be served with a Preliminary Notice of Disciplinary Action (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(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 a Final Notice of Disciplinary Action (FNDA).

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:2-2.9(b) provides, in pertinent part, that major discipline hearings will be referred to the Office of Administrative Law (OAL) for hearing.

N.J.A.C. 4A:2-1.4(a) provides that in appeals concerning major disciplinary actions, *N.J.A.C.* 4A:2-2, the burden of proof shall be on the appointing authority.

At the outset, the Commission cannot agree with the appointing authority's apparent framing of this matter as merely a list removal case because the appellant in fact received a regular appointment. Specifically, agency records indicate that he was appointed as a Fire Fighter, effective September 15, 2025. Upon the appellant's removal from the fire academy due to an injury, the appointing authority could have kept the appellant on its payroll and "recycled" him by sending him to a subsequent academy, but it chose not to do so. Instead, it approved the appellant's removal from its payroll on or about October 16, 2025. Thus, the threshold issue is whether the appointing authority could involuntarily terminate the appellant's employment, as reflected in the record, without following the procedures required under *N.J.A.C.* 4A:2-2 (major discipline). Specifically, these procedures require that where an employee is to be removed from employment, the employee shall be provided with notice and an opportunity for a departmental hearing under *N.J.A.C.* 4A:2-2.5 and an FNDA and a right to appeal to the Commission under *N.J.A.C.* 4A:2-2.8. As such, the appointing authority should have provided the appellant with a PNDA, a departmental hearing if requested, an FNDA, and rights to appeal to the Commission, but there is no evidence in the record of these steps being taken. As such, since the appointing authority did not issue an FNDA, the Commission must consider whether the appellant filed his appeal with the Commission in a timely manner. The Commission finds that the appellant appealed his removal to the Commission in a reasonable amount of time. *N.J.A.C.* 4A:2-2.8 provides that when an appointing authority fails to give the employee an FNDA, the employee may appeal directly to the Commission within a reasonable time. As noted previously, the petitioner was not served with an FNDA or even a PNDA. The appointing authority approved the appellant's termination from employment on or about October 16, 2025, and the appellant filed his appeal with the Commission on November 23, 2025, 38 days later, which was reasonable. Further, to the extent any procedural defects may have occurred at the departmental level, they are addressed and corrected during the *de novo* hearing received at the OAL. 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). Accordingly, it is appropriate to grant a hearing with respect to the appellant's removal at the OAL.

Finally, the Commission reminds the appointing authority of its obligation under Civil Service law and rules to adhere to the proper procedures when seeking to remove employees. Future failures on the part of the appointing authority to comply with the law and rules involved in seeking to remove an employee may cause the Commission to impose fines or take other appropriate action pursuant to *N.J.A.C.* 4A:10-2.1. The Commission also reminds the appointing authority that it is responsible for ensuring that personnel changes are entered into CAMPS on a timely basis.

ORDER

Therefore, it is ordered that the matter of the appellant's removal from employment be transmitted to the Office of Administrative Law for a hearing as a contested case.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22ND DAY OF JULY, 2026



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