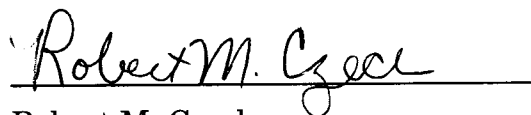




Re: Gladys Rodriguez

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  
OCTOBER 7, 2015

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a solid horizontal line.

Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Unit H  
P. O. Box 312  
Trenton, New Jersey 08625-0312

attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

(CONSOLIDATED)

**GLADYS RODRIGUEZ,**

Petitioner,

v.

**BERGEN COUNTY LAW AND PUBLIC**

**SAFETY INSTITUTE,**

Respondent.

OAL DKT. NO. PTC 16173-13

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**IN THE MATTER OF GLADYS RODRIGUEZ,**

**CITY OF EAST ORANGE POLICE**

**DEPARTMENT.**

OAL DKT. NO. CSV 05826-14

AGENCY DKT. NO. 2014-994

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**Gladys Rodriguez**, petitioner/appellant, pro se

**Adam S. Abramson-Schneider**, Esq., for respondent Bergen County Law and Public Safety Institute (Cleary, Giacobbe, Alfieri & Jacobs, attorneys)

**Marlin G. Townes III**, Assistant Corporation Counsel, for respondent City of East Orange (Khalifah L. Shabazz, Corporation Counsel)

Record Closed: May 18, 2015

Decided: June 10, 2015

BEFORE **MARGARET M. MONACO**, ALJ:

**STATEMENT OF THE CASE**

In this consolidated proceeding, petitioner/appellant Gladys Rodriguez (petitioner) appeals her dismissal from the Bergen County Law and Public Safety Institute (the Academy). Petitioner further appeals her removal from employment with the City of East Orange Police Department (the Department) predicated on her inability to perform duties pursuant to N.J.A.C. 4A:2-2.3(a)(3).

**PROCEDURAL HISTORY**

On September 6, 2013, the Academy issued a Dismissal Notice to petitioner, which informed petitioner of her dismissal from the Academy for "Failure to fully and safely participate in the Functional Area 13, Physical Fitness." Petitioner filed an appeal and the Police Training Commission (the PTC) transmitted the matter to the Office of Administrative Law (OAL), where, on November 7, 2013, it was filed under OAL Dkt. No. PTC 16173-13 for determination as a contested case.

On September 6, 2013, the Department issued a Final Notice of Disciplinary Action providing for petitioner's removal from employment effective September 6, 2013, based on her inability to perform duties pursuant to N.J.A.C. 4A:2-2.3(a)(3), which, in turn, was based on petitioner's dismissal from the Academy pursuant to N.J.A.C. 13:1-7.2(a)(8). Petitioner filed an appeal and the Civil Service Commission transmitted the matter to the OAL, where, on May 13, 2014, it was filed under OAL Dkt. No. CSV 05826-14 for determination as a contested case.

On June 9, 2014, the undersigned entered an Order consolidating the matters and providing that the PTC had the predominant interest in this consolidated proceeding in accordance with N.J.A.C. 1:4A-17.1. The hearing scheduled for September 5 and 18, 2014, was adjourned in view of motions for summary decision filed on behalf of the Academy and the Department. Pursuant to telephone

conferences between the parties, petitioner's opposition to the motions was due by October 17, 2014, which was later extended until November 28, 2014. Thereafter, by letter dated April 24, 2015, I afforded petitioner a final opportunity to submit any opposition to the motions by May 18, 2015, and advised that the Academy's and the Department's motions would be deemed unopposed should no response be received by that date. Petitioner submitted no response to the motions by the required deadline, on which date the record was closed.

### **FINDINGS OF FACT**

In support of its motion, the Academy submitted certifications of Michael Devine (Devine Cert.) and Frank Carrafiello (Carrafiello Cert.), lieutenants in the Bergen County Police Department assigned to the Academy. The Department supported its motion with a certification of William Robinson (Robinson Cert.), the chief of the Department. Based upon a review of the certifications, which petitioner did not oppose, I **FIND** the following undisputed **FACTS**:

The Academy and the Department are parties to an Inter-Agency Agreement dated May 31, 2013 (the Agreement) with respect to recruits enrolled in the Basic Police Training Course at the Academy. (Devine Cert. at ¶ 1; see Devine Cert. at Exhibit A.) The Agreement provides that "[t]he sending agency agrees to withdraw recruits who would otherwise be dismissed from the [Academy], when the sending agency recruit fails a functional area." (Devine Cert. at Exhibit A.) The Agreement further states that "[r]ecruits who fail to fully and safely participate in Functional Area 13, Physical Training, due to lack of fitness, shall be withdrawn by the sending agency after the recruit is reevaluated by the Physical Fitness training staff after the first physical fitness test battery." (Ibid.)

On or about June 3, 2013, the Department's chief of police, William Robinson, completed a Police Training Application on behalf of petitioner. (Devine Cert. at ¶ 4 and Exhibit B; Robinson Cert. at ¶ 2 and Exhibit A.) On July 9, 2013, petitioner participated in the Academy's pre-entry physical-fitness assessment. (Devine Cert. at

¶ 5; see Devine Cert. at Exhibit C.) Petitioner failed all five components of the assessment. (Ibid.) Despite petitioner's failing scores, she was granted entrance into the Academy because the PTC had not yet finalized standards for a pre-entry physical-fitness test for all prospective candidates. (Devine Cert. at ¶ 6.) Petitioner was a recruit in Basic Police Class #111 and Carrafiello was the officer in charge of the training program when petitioner attended the Academy. (Carrafiello Cert. at ¶¶ 1 and 8.)

The curriculum for the Basic Course for Police Officers is divided into thirteen functional areas. (Carrafiello Cert. at ¶ 4; Devine Cert at Exhibit J at i.) A functional area is a grouping of related instructional units designed to address the basic principles of a particular subject area. (Ibid.) Functional Area 13 is physical fitness. (Carrafiello Cert. at ¶ 5.) The Academy's physical-conditioning exercise program is designed to serve two purposes: to improve the recruit's ability to perform job-related physical tasks, and to instill the concept of maintaining lifetime fitness. (Carrafiello Cert. at ¶ 5; see Carrafiello Cert. at Exhibit 1 at 14.)

As outlined in the PTC's Physical Conditioning Training Manual, the physical-conditioning exercise program must meet the following requirements:

1. Each exercise session, including the warm-up and cool-down phases, shall not exceed 70 minutes in length. (An additional 10 minutes, however, will be allowed for more highly fit trainees undergoing exercise. Also, additional time is permitted for trainees who require rest during the performance of speed and agility exercises . . . .)
2. Exercise sessions shall be conducted at least three days per week. Depending on local needs and resources, schools may increase the number of one-hour sessions up to five per week, but no more than one per day. A five-day exercise program is recommended.
3. A minimum of 40 physical conditioning sessions shall be scheduled in a five-day program, and 20 physical conditioning sessions shall be scheduled in a three-day program. In addition, a trainee must fully participate in eighty-percent of the scheduled physical training sessions, and meet the standard which produces the higher number of sessions based upon the course schedule. Failure to fully

participate in eighty-percent of the total physical conditioning sessions shall be grounds for dismissal from the police academy.

4. Each exercise session shall consist of a warm-up phase, conditioning phase, and cool-down phase.

5. The conditioning phase shall consist of flexibility exercises, aerobic activities, calisthenics and strength exercises, and, on specified days, exercises geared to enhance speed and agility.

6. Academies may utilize training sites which are approved by the [PTC]. Whether outdoor, or indoor, approved sites may be utilized for physical fitness training . . . . When an academy utilizes a site located outside of their own academy property, the academy staff shall note this on the final course schedule.

7. Full participation shall be defined as participating continuously and without stopping in a twenty-minute run. Recruits shall demonstrate to staff their ability to engage in aerobic training running continuously for this period of time. Full participation in calisthenics and strength exercises shall be approved by the evaluation of physical training staff at each academy, on a recruit-by-recruit basis.

[Carrafiello Cert. at Exhibit 1 at 14–15 (emphasis added and in original); see also Carrafiello Cert. at ¶ 6.]

Based upon the standards outlined in the PTC's Physical Conditioning Training Manual, full participation is defined by a recruit having participated continuously and without stopping in a twenty-minute run. (Carrafiello Cert. at ¶ 7; see Carrafiello Cert. at Exhibit 1.) Further, whether a recruit has fully participated in calisthenics and strength exercises and achieved an acceptable level of proficiency is left to the determination of the instructor who teaches the applicable performance objectives and is evaluated on a recruit-by-recruit basis. (Carrafiello Cert. at ¶ 7; see Carrafiello Cert. at Exhibit 1; Devine Cert. at Exhibit J.) The PTC standards require that trainees participate in a minimum of 80 percent of the physical-conditioning sessions scheduled by the school, with participation in no less than forty sessions. (Devine Cert. at Exhibit J at iv.) Pursuant to the PTC Basic Course for Police Officers Trainee Manual, "[w]ith respect to

practical skills, the instructor teaching the applicable performance objectives shall determine the acceptable level of proficiency.” (ibid.)

During the course of petitioner’s Academy training from July 29, 2013, through September 6, 2013, petitioner failed to fully complete a single physical-fitness training session and showed a complete lack of physical fitness. (Devine Cert. at ¶ 7; Carrafiello Cert. at ¶ 9.) The standard for acceptable participation in physical conditioning set forth by the PTC is twenty minutes of continuous aerobic activity. (Carrafiello Cert. at ¶ 9; see Carrafiello Cert. at Exhibit 1.) Based upon the evaluation of the training staff, petitioner never met this standard. (Carrafiello Cert. at ¶ 9.) From the very first day of physical training on July 29, 2013, petitioner could not stay in formation and fell behind the class. (Carrafiello Cert. at ¶ 10.) In fact, she dropped out of formation within fifty-five seconds and was repeatedly observed walking by her instructors. (ibid.) At the completion of the run, petitioner was seven minutes and thirty-five seconds behind the class. (ibid.; see Devine Cert. at ¶ 8 and Exhibit E). Each time that petitioner failed to complete physical training, she was counseled by her training instructors and required to write a memorandum outlining her deficiencies to Carrafiello. (Devine Cert. at ¶ 7.) Petitioner drafted a total of twenty-four memoranda to Carrafiello from July 29, 2013, through September 6, 2013. (Devine Cert. at ¶ 8; see Devine Cert. at Exhibit F.)

A synopsis of petitioner’s performance during physical training, as set forth in Devine’s Certification (at ¶ 8), follows:

<b>Date</b>	<b>Run Drop Time<sup>1</sup></b>	<b>Time Behind Entire Class</b>	<b>Comments</b>
7/29/13	55 seconds	7 minutes and 35 seconds.	Recruit observed walking repeatedly by instructor.
7/30/13	31 seconds	11 minutes and 37 seconds.	Recruit observed by instructor walking several times during the light aerobic jog. The recruit did not participate in the morning floor routine because she was so far behind the class.

<sup>1</sup> As explained in the Academy’s brief, “run drop time” reflects the amount of time that elapsed before petitioner fell out of formation with the class.



7/31/13	43 seconds	11 minutes and 37 seconds.	
8/2/13			Completion of 1.5 mile run in 23 minutes and 41 seconds. Recruit was instructed several times to stop walking.
8/5/13	32 seconds	7 minutes and 10 seconds at the turn-around point. <sup>2</sup>	
8/7/13	2 seconds	7 minutes and 46 seconds at the turn-around point.	
8/9/13	10 seconds	7 minutes and 36 seconds at the turn-around point.	
8/14/13	3 seconds	7 minutes and 45 seconds at turn-around point; 5 minutes and 10 seconds at the completion of the run.	Rodriguez was not present for strength-training exercises.
8/16/13	16 seconds	6 minutes and 33 seconds at turn-around point; 5 minutes and 25 seconds at the completion of the run.	Rodriguez was not present for strength-training exercises.
8/19/13	25 seconds	6 minutes and 45 seconds at turn-around point; 9 minutes and 49 seconds at completion of the run.	Rodriguez was not present for strength-training exercises.
8/21/13	10 seconds	9 minutes and 45 seconds at turn-around point; 5 minutes and 10 seconds at completion of the run.	Rodriguez was not present for strength-training exercises.
8/23/13	10 seconds	8 minutes and 20 seconds behind at turn-around point.	Rodriguez was not present for strength-training exercises.

<sup>2</sup> The turn-around point is approximately one mile into the run. (Devine Cert. at ¶ 8, footnote 1.)

8/26/13	5 seconds	4 minutes and 7 seconds behind the entire class at the yellow gates. <sup>3</sup> Required to ride in the emergency vehicle because she was so far behind the class.	Rodriguez was not present for strength-training exercises.
8/28/13	8 seconds	2 minutes and 55 seconds behind the entire class at the yellow gates. Required to ride in emergency vehicle because she was so far behind the class.	Rodriguez was not present for strength-training exercises.
8/30/13	15 seconds	4 minutes and 29 seconds behind the entire class at the second yellow gate. Required to ride in emergency vehicle because she was so far behind the class.	Rodriguez was not present for strength-training exercises.
9/4/13	14 seconds	7 minutes and 20 seconds behind the entire class at the turn-around point; required to ride in the emergency vehicle because she was so far behind the class.	Rodriguez was not present for strength-training exercises.
9/6/13	15 seconds	7 minutes and 36 seconds behind the entire class at the turn-around point; required to ride in the emergency vehicle because she was so far behind the class.	Rodriguez was not present for strength-training exercises.

Despite repeated counseling sessions by her instructors, petitioner never fully and safely participated in physical training and failed to show any improvement during the course of training. (Devine Cert. at ¶ 9; see Exhibit D.) Of the approximately 100

<sup>3</sup> The "yellow gates" are approximately one-half mile into the run. (Devine Cert. at ¶ 8, footnote 2.)

recruits in the class, petitioner was consistently the worst performer. (Devine Cert. at ¶ 9). On August 21, 2013, petitioner fell behind the class by nine minutes and forty-five seconds at approximately one mile into the run. (Devine Cert. at ¶ 8.) Similarly, on August 23, 2013, petitioner fell over eight minutes behind the class during a run. (ibid.) Even after being in training for over a month, petitioner could never achieve an acceptable level of participation. (Carrafiello Cert. at ¶ 12.) For example, on September 4, 2013, petitioner fell out of formation with the class in fourteen seconds, and was so far behind the class at the turn-around point that she was required to ride in the emergency vehicle and was not present for strength-training exercises. (Carrafiello Cert. at ¶ 12; Devine Cert. at ¶ 8 and Exhibit F.)

The recruit-to-instructor ratio set forth by the PTC requires that there be one instructor for every twenty recruits. (Devine Cert. at ¶ 10.) Petitioner would repeatedly fall so behind the entire class that an instructor was forced to remain with her to supervise her individually, thereby preventing the class from receiving adequate supervision and instruction. (ibid.) Additionally, because petitioner could not keep pace with the class, the safety vehicle that follows the recruits during their runs was unable to follow petitioner and the rest of the recruits simultaneously, putting the safety of the entire class in jeopardy. (Devine Cert. at ¶¶ 11, 12.) On at least six different occasions (i.e., August 19, August 26, August 28, August 30, September 4, and September 6, 2013), petitioner was unable to finish the aerobic portion of the training and was transported in the safety vehicle. (Devine Cert. at ¶ 11.) Petitioner was often so far behind the class that she was forced to ride in the safety vehicle. (Carrafiello Cert. at ¶ 13.) As a result of petitioner's inability to keep pace with the class, she also was not present for and was unable to perform the requisite strength-training exercises on at least ten separate occasions. (Devine Cert. at ¶ 13; Carrafiello Cert. at ¶ 13.) On September 6, 2013, the last day petitioner participated in training, she fell out of formation with the class in fifteen seconds, was seven minutes and thirty-six seconds behind the class at the turn-around point, and again was required to ride in the safety vehicle and was not present for strength-training exercises. (Carrafiello Cert. at ¶ 12; Devine Cert. at ¶ 8.)

There was no improvement in petitioner's physical conditioning during the course of her Academy training. (Carrafiello Cert. at ¶ 13.) There was not a single run where petitioner did not fall out of formation with the class; she was regularly observed walking by her instructors; and even her best time was still several minutes behind the rest of the class at the end of a run. (ibid.) Based on petitioner's performance, Carrafiello determined that she had failed to demonstrate an acceptable level of participation in Functional Area 13 as defined by the PTC. (Id. at ¶ 14.) As a result of petitioner's failure to fully and safely participate in physical training, Carrafiello requested that the Department dismiss petitioner from the program in accordance with the Inter-Agency Agreement. (Devine Cert. at ¶ 14; see Devine Cert. at Exhibit D.) On September 6, 2013, petitioner was served with a Dismissal Notice from the Academy for failure to fully and safely participate in Functional Area 13, Physical Fitness. (Devine at ¶ 15; see Devine Cert. at Exhibit G.)

By letter dated September 6, 2013, Robinson was notified by the Academy that petitioner exhibited a poor performance in Functional Area 13. (Robinson Cert. at ¶ 3; see Robinson Cert. at Exhibit B.) The letter provided the chief with a summary of petitioner's failure to participate in physical-fitness training sessions and further requested that she be withdrawn from the Academy. (ibid.) On or about September 11, 2013, the Department served petitioner with a Final Notice of Disciplinary Action terminating her employment with the Department based on petitioner's inability to perform duties. (Robinson Cert. at ¶ 5; see Robinson Cert. at Exhibit D.)

## **LEGAL DISCUSSION AND CONCLUSIONS**

### **The Summary-Decision Standard**

Pursuant to N.J.A.C. 1:1-12.5(b), 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. See Judson v.

Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in deciding the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of Rule 4:46-2.

[Citations omitted.]

In evaluating the merits of the motion, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Judson, supra, 17 N.J. at 75. However, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C. 1:1-12.5(b).

In view of petitioner’s failure to respond to or oppose the within motions, I **CONCLUDE** that there is no genuine issue as to any material fact and the matter is ripe for summary decision.

### **Petitioner’s Dismissal from the Academy**

The Legislature has recognized the importance of police training through the creation of a compulsory educational and training program for persons who seek to become permanent law-enforcement officers. When enacting the Police Training Act, N.J.S.A. 52:17B-66, et seq., the Legislature stated:

The Legislature of New Jersey hereby finds and declares that a serious need for improvement in the administration of local and county law enforcement exists in order to better protect the health, safety and welfare of its citizens; that police work, a basic adjunct of law enforcement administration, is professional in nature, and requires proper educational and clinical training in a State whose population is increasing in relation to its physical area, and in a society where greater reliance on better law enforcement through higher standards of efficiency is of paramount need; that the present need for improvement can be substantially met by the creation of a compulsory educational and training program for persons who seek to become permanent law enforcement officers wherein such persons will be required, while serving in a probationary capacity prior to permanent appointment, to receive efficient training in this profession provided at facilities selected, approved and inspected by a commission created for such purpose; and that by qualifying and becoming proficient in the field of law enforcement such persons shall individually and collectively better insure the health, safety and welfare of the citizens of this State in their respective communities.

[N.J.S.A. 52:17B-66.]

Accordingly, by statute, "every municipality and county shall require that no person shall hereafter be given or accept a permanent appointment as a police officer unless such person has successfully completed a police training course at an approved school." N.J.S.A. 52:17B-68(a).

The PTC is vested with the power, responsibility and duty to oversee the certification of police training schools and their instructors, and "[t]o prescribe the curriculum, the minimum courses of study, attendance requirements, equipment and facilities, and standards of operations for such schools." N.J.S.A. 52:17B-71(a), (b), (c) and (d). The PTC is further responsible for certifying police officers who have satisfactorily completed the training programs. N.J.S.A. 52:17B-71(e). To accomplish its statutory mission, the Legislature has given the PTC the authority "[t]o make such rules and regulations as may be reasonably necessary or appropriate to accomplish the purposes and objectives of . . . [the] act." N.J.S.A. 52:17B-71(h).

The PTC has promulgated regulations “designed to facilitate the education and training of police officers.” N.J.A.C. 13:1-2.1; see N.J.A.C. 13:1-1.1 et seq. Pursuant to N.J.A.C. 13:1-6.1, the “curriculum issued by the [PTC] shall be the required curriculum at a Commission-approved school and shall constitute the minimum requirements for trainee certification.” Included in the curriculum is a physical-training program.

A recruit is eligible for certification by the PTC when the school director affirms that “[t]he trainee has achieved the minimum requirements set forth in the basic course applicable to his or her appointment and has demonstrated an acceptable degree of proficiency in the performance objectives contained in the particular basic course.” N.J.A.C. 13:1-5.1(a)(1). An entity, such as the Academy, is reposed with the power, responsibility and duty “[t]o implement the required curriculum” and “[t]o dismiss a trainee who has demonstrated that he or she will be ineligible for Commission certification, for unacceptable behavior or for other good cause.” N.J.A.C. 13:1-7.2(a)(2) and (8).

In Greenwood v. State Police Training Center, 127 N.J. 500 (1992), the New Jersey Supreme Court addressed the “good cause” requirement applicable to the dismissal of a recruit. The Court observed that, in the employment context, a provision permitting termination only for good cause “protects an employee from unreasonable or arbitrary termination.” Id. at 509. In this regard, good cause exists in an employment context when the employee’s dismissal is prompted by a legitimate business concern or poor job performance. Id. at 509–10. In contrast, good cause does not exist, and a termination would be arbitrary and unreasonable, if the employee’s dismissal is grounded on factors irrelevant to job performance. Id. at 510. The Court in Greenwood stated that, “although the good-cause standard eludes precise definition, courts ordinarily uphold findings of good cause when the employee’s performance is deficient or when the employee creates a risk of harm to himself or herself or others.” Id. at 510. “An employer must present substantial objective evidence to meet the good-cause standard.” Id. at 510–11. In situations involving a dismissal based on an employee’s physical limitation, good cause will be found to exist if “there is substantial evidence that

that limitation either prevents the employee from adequately performing the job or creates a substantial risk of serious injury to the employee or others.” Id. at 512.

In DeRogatis v. Jersey City Police Department, CSV 9557-95 and PTC 4576-95, Initial Decision (September 7, 2000), adopted, Merit Sys. Bd. (October 24, 2000), <<http://njlaw.rutgers.edu/collections/oal/>>, DeRogatis was hired as a police recruit by the Jersey City Police Department and required to participate in a physical-training course conducted by a PTC-approved school. An initial assessment during the second week of training indicated that DeRogatis could do only one pushup, zero pull-ups and six sit-ups. DeRogatis was also unable to keep up with the group during runs and would drop out of formation and walk for most of the twenty minutes. The results of a second assessment done in the ninth week of training indicated that DeRogatis could do zero pushups, zero pull-ups and three sit-ups, and he continued to fall out of formation during group runs and was unable to participate in calisthenic or other group exercises during later weeks of training. DeRogatis confirmed in memoranda to his commanding officers that he was unable to remain in his position during group runs and was unable to perform any chin-ups or pull-ups. In upholding DeRogatis’s dismissal from the Academy, Administrative Law Judge (ALJ) Jeffrey Gerson explained:

DeRogatis contends that he satisfactorily participated in the Physical Training Course. The word participation has not specifically been legislatively defined nor judicially defined. There [have] been no specific standards promulgated that would indicate whether a candidate has successfully established his physical proficiency. However, common knowledge, life experience, and most of all, common sense do not disappear in the absence of specificity. The facts in this case, few of which are in considerable dispute, do not support any reasonable concept of participation. Though specific standards may not be present, participation inherently means more than simply attending the Academy. Mandatory participation coupled with a power to suspend or dismiss implies that a minimal degree of proficiency must be established . . . . Several weeks into the training, DeRogatis was unable to do one pushup, one pull-up and entirely too few sit-ups. He could not start or complete a 20 minute aerobic exercise without falling behind his group. Though participation may at this point . . . be inadequately defined, it surely means at the very minimum scoring more than zeros



on significant tests of physical strength. . . . DeRogatis was given more than an adequate opportunity to establish his physical prowess. He failed miserably and was terminated appropriately . . . by the PTC.

In Martin v. Jersey City Police Academy, PTC 11501-06, Initial Decision (October 3, 2007), <<http://njlaw.rutgers.edu/collections/oal/>>, Martin appealed her dismissal from the Jersey City Police Academy for failure to safely, fully and satisfactorily participate in the Physical Conditioning Training Program. Martin's first physical-conditioning-training assessment test revealed that significant improvement was needed in aerobics and anaerobics, and that her ratings were below average, poor or very poor in five component areas of physical fitness. In the fifteen physical-conditioning-training sessions between Martin's first and second assessment tests, she failed to reach acceptable levels of proficiency based on the norms set forth in the Physical Conditioning Training Program Manual. Although between the first and second physical-conditioning-training assessment test Martin increased in the number of pushups completed and in running time, she was still unable to meet proficiency standards. Her second physical-conditioning-training assessment test revealed that her ratings were below the norm charts established in the Physical Conditioning Training Program Manual in five of eight testing categories; by the conclusion of this assessment test the training course was more than halfway complete and Martin was still receiving below-average, poor and very-poor ratings for each test category; and by the end of this testing Martin had not successfully participated in 80 percent of the physical-conditioning sessions and had not successfully met proficiency standards. Although the ALJ found that Martin participated in the physical-conditioning-training courses to the best of her ability, she concluded that Martin was unable to successfully complete training with acceptable proficiency-standard ratings and her dismissal from the Academy was appropriate for failure to safely, fully and satisfactorily participate in the Physical Conditioning Training Program and to meet standard proficiency requirements.

In Pantoliano v. Bergen County Police Academy, PTC 9806-02, Initial Decision (November 27, 2006), <<http://njlaw.rutgers.edu/collections/oal/>>, Pantoliano was dismissed from the basic police training course for failing to meet the minimum standards for physical fitness. Pantoliano was required to prepare failure-to-complete-

training memos when she experienced problems in the group run, and she prepared memoranda confirming that she experienced some problem during a group run on at least seventeen occasions. Pantoliano's problems included falling behind the group, walking, and even stopping the run. On occasion, the pack had to circle back to check on Pantoliano because she had fallen so far behind. The ALJ found that the substantial objective evidence convincingly showed that Pantoliano was unable to successfully participate in the required physical-conditioning program and that her failure to keep up with the pack in the group runs on at least seventeen occasions was indicative of a failure to fully and safely participate. See also Speziale v. City of Hackensack, CSV 5270-03 and PTC 11037-02, Initial Decision (July 30, 2004), adopted, Merit Sys. Bd. (February 8, 2005), <<http://njlaw.rutgers.edu/collections/oal/>>.

Turning to the within matter, the undisputed evidence supports the Academy's determination that petitioner failed to fully and safely participate in Functional Area 13, Physical Fitness, warranting her dismissal from the Academy. The record as a whole demonstrates that petitioner's performance at the Academy was inadequate, she failed to complete the required physical training, and she demonstrated a complete lack of physical fitness. Indeed, petitioner prepared twenty-four memoranda over the course of her training from July 29 through September 6, 2013, indicating her failure to achieve proficiency in physical training and attesting to her substandard performance. Despite repeated attempts at counseling by her instructors, petitioner failed to fully complete a single physical-training session and failed to show any improvement while at the Academy. Petitioner was given ample opportunity to establish physical-fitness proficiency and, despite repeated attempts, she simply was unable to do so. Throughout her six weeks of training, not once did petitioner stay in formation with her class during a run and, even at her best time, she was still several minutes behind the entire class upon completion of a run. In fact, petitioner was often so far behind the entire class that she had to ride in the safety vehicle. She was unable to finish the aerobic portion of the training and had to be transported in the safety vehicle on at least six separate occasions, and she was unable to participate in any strength-training exercises on at least ten occasions.

Plainly, “[p]olice work is not a sedentary occupation,” and it “cannot only be extremely dangerous but at times can be confrontational and physically challenging.” DeRogatis, supra, CSV 9557-95 and PTC 4576-95, Initial Decision (September 7, 2000), <<http://njlaw.rutgers.edu/collections/oal/>>. “An officer that cannot physically respond to a crisis is a danger to himself and others.” Schmeltz v. Bergen Cnty. Police Acad., 93 N.J.A.R.2d 15, 24. As recognized in Pantoliano:

The various police academies throughout the state have a significant responsibility to the law enforcement agencies and to the general public. They are responsible to properly and thoroughly train candidates who will be asked to protect and serve the general public. The responsibility placed on a law enforcement officer is one of the most awesome responsibilities that can be imposed. That responsibility requires the academies to provide rigorous and demanding training to prepare the prospective officer to confront often life and death situations. The candidate must be expected to withstand the rigors and demands of the training program.

[Pantoliano, supra, PTC 9806-02, Initial Decision (November 27, 2006), <<http://njlaw.rutgers.edu/collections/oal/>>.]

In short, the record amply demonstrates that petitioner woefully failed to withstand the rigors and demands of the Academy’s training program.

Based upon the totality of the evidence, I **CONCLUDE** that petitioner was unable to effectively participate, and petitioner failed to fully and safely participate, in the physical-conditioning training program. I further **CONCLUDE** that, pursuant to N.J.A.C. 13:1-7.2(a)(8), the Academy had good cause to dismiss petitioner from the basic training course for failure to fully and safely participate in Functional Area 13, Physical Fitness, and did not act in an arbitrary, capricious or unreasonable manner in dismissing petitioner. I **CONCLUDE** that the Academy’s action in dismissing petitioner from the basic training course is consistent with applicable law and appropriate under the circumstances.

### **Petitioner's Termination of Employment**

The Civil Service Act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. See N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined are whether the employee is guilty of the charges brought against her and, if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

An appointing authority may discipline an employee for, among other causes, an inability to perform duties. N.J.A.C. 4A:2-2.3(a)(3). The Department bears the burden of proving the charges against petitioner by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). In this matter, the Department terminated petitioner's employment predicated on her inability to perform duties, stemming from her failure to successfully complete the training course at the Academy.

The statutory scheme governing police training dictates that successful completion of a police training course at a PTC-approved school is a mandatory prerequisite to a permanent appointment as a police officer. N.J.S.A. 52:17B-68 instructs that "every municipality and county shall require that no person shall hereafter be given or accept a permanent appointment as a police officer unless such person has successfully completed a police training course at an approved school." In other words, the training laws apply to all police officers and establish a classification of temporary or probationary employment for police officers until successful completion of the mandatory program of training. Borger v. Borough of Stone Harbor, 178 N.J. Super. 296, 301-02 (Ch. Div. 1981); see N.J.S.A. 52:17B-68, -69.

The Merit System Board has previously upheld the authority of a public employer to terminate an individual's employment for failure to complete the mandatory training

requirements applicable to the employee's position. As stated In Gottlieb v. Monmouth County Sheriff's Office, 95 N.J.A.R.2d (CSV) 573, 574:

The controlling statute, N.J.S.A. 52:17B-68.1, leaves no room for discretion. Before permanent appointment, there must be completion of the basic Police Training Commission course for correction officers, among others. In like fashion, civil service rules do not anticipate continued employment of law enforcement officers who do not complete the Police Training Commission course, if so required . . . . The appointing authority, the New Jersey Department of Personnel and the Merit System Board may only look to the fact, or not, of course completion. Here, there was none. For that reason, with a threshold condition unmet, the appointment must cease.

Similarly, in Raymond v. County of Hudson, CSV 1224-05, Initial Decision, (November 7, 2005), adopted, Merit Sys. Bd. (February 9, 2006), <<http://njlaw.rutgers.edu/collections/oal/>>, the ALJ observed that the "[r]eported administrative cases treat failure to complete the statutory training requirement as leaving 'no room for discretion' on the part of the appointing authority." In In re Shariff, CSV 9684-98 and PTC 5608-99, Final Decision (October 1, 2001), <<http://njlaw.rutgers.edu/collections/oal/>>, the Merit System Board upheld the appointing authority's action removing Shariff from his position as a sheriff's officer following his dismissal from the police academy. In so ruling, the Merit System Board explained:

In its Final Decision . . . the PTC affirmed the ALJ's determination that the appellant's dismissal from the police academy was appropriate. Accordingly, the Board must determine whether the appellant's subsequent removal from employment was proper. In this regard, it is clear that the ALJ's determination is correct. A requirement under the Police Training Act to be a Sheriff's Officer is successful completion of a police training course at an approved school. See N.J.S.A. 52:17B-67 and N.J.S.A. 52:17B-68. Since the appellant did not fulfill that requirement, he was not qualified to be employed by Essex County as a Sheriff's Officer. Accordingly, the Board affirms the ALJ's determination that the appellant's removal from employment was appropriate.

See also McGorty v. Cnty. of Hudson, CSV 9567-05, Initial Decision (March 14, 2006), adopted, Merit Sys. Bd. (May 12, 2006), <<http://njlaw.rutgers.edu/collections/oal/>>; Speziale, supra, CSV 5270-03 and PTC 11037-02, Initial Decision (July 30, 2004), adopted, Merit Sys. Bd. (February 8, 2005), <<http://njlaw.rutgers.edu/collections/oal/>>; Manley v. Monmouth Cnty. Police Acad., PTC 2241-01 and CSV 2867-01, Initial Decision (April 9, 2002), adopted, Merit Sys. Bd. (November 7, 2002), <<http://njlaw.rutgers.edu/collections/oal/>>; DeRogatis, supra, CSV 9557-95 and PTC 4576-95, Initial Decision (September 7, 2000), <<http://njlaw.rutgers.edu/collections/oal/>>; Jackson v. Office of the Sheriff, Camden Cnty., 95 N.J.A.R.2d (CSV) 162; Schmeltz v. Bergen Cnty. Sheriff's Dep't, 93 N.J.A.R.2d (CSV) 297.

The rationale espoused in the above cases applies with equal force to the within matter. Pursuant to N.J.S.A. 52:17B-68, a mandatory prerequisite to a permanent appointment as a police officer is successful completion of a police-training course at a school approved by the PTC. The failure to complete this training is clearly grounds for termination of employment. Simply put, as a result of petitioner's dismissal from the Academy, petitioner could not perform the essential duties of her position. Accordingly, I **CONCLUDE** that the Department's determination to terminate petitioner's employment for failure to complete the Academy, a sine qua non to a permanent appointment, was within the scope of its authority and cannot be said to be arbitrary, capricious or unreasonable under the circumstances.

### **ORDER**

I **ORDER** that the action of the Bergen County Law and Public Safety Institute dismissing petitioner from the Academy be and hereby is **AFFIRMED** and petitioner's appeal be and hereby is **DISMISSED**.

I further **ORDER** that the action of the East Orange Police Department terminating petitioner's employment effective September 6, 2013, be and hereby is

**AFFIRMED**, that petitioner be and hereby is removed from her position as of that date, and that petitioner's appeal from the Final Notice of Disciplinary Action dated September 6, 2013, be and hereby is **DISMISSED**.

I hereby **FILE** this Initial Decision with the **POLICE TRAINING COMMISSION**.

This recommended decision may be adopted, modified or rejected by the **POLICE TRAINING COMMISSION**, which by law is authorized to make the final decision on all issues within the scope of its predominant interest. If the Police Training Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision on all of the issues within the scope of predominant interest shall become a final decision in accordance with N.J.S.A. 52:14B-10.

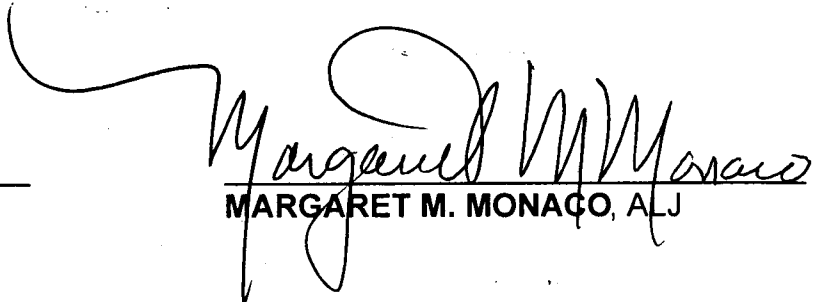
Pursuant to N.J.A.C. 1:1-17.8, upon rendering its final decision the **POLICE TRAINING COMMISSION** shall forward the record, including this recommended decision and its final decision, to the **CIVIL SERVICE COMMISSION**, which may subsequently render a final decision on any remaining issues and consider any specific remedies that may be within its statutory grant of authority.

Upon transmitting the record, the **POLICE TRAINING COMMISSION** shall, pursuant to N.J.A.C. 1:1-17.8(c), request an extension to permit the rendering of a final decision by the **CIVIL SERVICE COMMISSION** within forty-five days of the predominant-agency decision. If the **CIVIL SERVICE COMMISSION** does not render a final decision within the extended time, this recommended decision on the remaining issues and remedies shall become the final decision.


Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **POLICE TRAINING COMMISSION**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 10, 2015

DATE

  
MARGARET M. MONACO, ALJ

Date Received at Police Training Commission:

June 10, 2015  


Date Mailed to Parties:

**JUN 11 2015**

DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

jb



# MEMORANDUM

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**DATE:** September 30, 2015

**TO:** Civil Service Commission

**FROM:** Henry Maurer, Director  
Division of Appeals and Regulatory Affairs

**SUBJECT:** Initial Decision on the Appeal of Gladys Rodriguez A-7 (Consolidated)

Gladys Rodriguez, Police Officer, City of East Orange, Police Department, removal effective September 6, 2013, on charges of inability to perform duties.

The appointing authority asserted that the appellant was dismissed from the City of East Orange Police Academy for “failure to fully and safely participate in the Functional Area 13, Physical Fitness”.

It is noted that the Police Training Commission (PTC) had the predominant interest in this consolidated appeal between the CSC and the PTC. In the PTC’s final decision, it affirmed the ALJ’s determination to uphold the appellant’s dismissal from the Police Academy. The matter of the appellant’s removal from employment is now before the Commission for a final determination.

**Recommendation of the Administrative Law Judge – Uphold the removal.**

**The following materials are provided for your review in order that you may render your final decision at the next Civil Service Commission meeting on October 7, 2015.**

Initial Decision rendered by ALJ Margaret M. Monaco, dated June 10, 2015.

Final decision rendered by PTC dated August 5, 2015.



*State of New Jersey*  
 OFFICE OF THE ATTORNEY GENERAL  
 DEPARTMENT OF LAW AND PUBLIC SAFETY  
 DIVISION OF CRIMINAL JUSTICE  
 POLICE TRAINING COMMISSION  
 PO Box 085  
 TRENTON, NJ 08625-0085  
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CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lieutenant Governor*

JOHN J. HOFFMAN  
*Acting Attorney General*

ELIE HONIG  
*Director*

GLADYS RODRIGUEZ,  
 Petitioner

v.

BERGEN COUNTY LAW AND PUBLIC  
 SAFETY INSTITUTE  
 Respondent

FINAL DECISION

OAL Docket No. PTC 16173-13

IN THE MATTER OF GLADYS RODRIGUEZ,  
 CITY OF EAST ORANGE POLICE  
 DEPARTMENT

OAL Docket No. CVS 05826-14,  
 AGENCY DKT. NO. 2014-994  
 (CONSOLIDATED)

The Police Training Commission received an Initial Decision in this matter on June 10, 2015. This final decision was rendered within the time limits prescribed by N.J.A.C. 1:1-18.6, and included one extension until September 8, 2015.

Petitioner Gladys Rodriguez was enrolled in a basic training course for police officers which began on July 26, 2013. Petitioner was dismissed from the basic course on September 6, 2013 for Physical Training Failure.


On June 10, 2015, ALJ Margaret M. Monaco concluded that Ms. Rodriguez was unable to effectively participate, and she failed to fully and safely participate in the physical-conditioning training program. ALJ Monaco further concluded that the Academy's action in dismissing petitioner from the basic training course is consistent with applicable law and appropriate under the circumstances. The Judge affirmed the Bergen County Law and Public Safety Institute's dismissal of the petitioner and dismissed Rodriguez's appeal. Finally, the East Orange Police Department's termination of petitioner's employment was upheld.



On Wednesday, August 5, 2015, at a regular meeting of the Police Training Commission, the commissioners reviewed the Initial Decision rendered by Judge Monaco. The commissioners voted to adopt the finding of fact and conclusions of law contained in the Initial Decision as the **FINAL DECISION**.

Therefore, the petitioner's dismissal is upheld, and the appeal is dismissed.

POLICE TRAINING COMMISSION

By:   
Lawrence Evans - Acting Chairman