



B-49

STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Raul Mier, North Hudson Regional Fire and Rescue

Grant a Hearing

CSC Docket No. 2015-2796

ISSUED: OCT 12 2015 (HS)

Raul Mier, a Fire Fighter with North Hudson Regional Fire and Rescue, represented by Clayton Giles, Esq., requests a hearing on his suspension.

By way of background, on July 17, 2013 a Preliminary Notice of Disciplinary Action (PNDA) was issued to the appellant charging him with chronic or excessive absenteeism or lateness, conduct unbecoming a public employee, other sufficient cause and violations of departmental policies. Specifically, the appointing authority asserted that from 2009 through 2013, the appellant's sick leave usage has continually exceeded the departmental standards and/or demonstrated a clear pattern of abuse. A departmental hearing on the charges was held on November 25, 2014. A Final Notice of Disciplinary Action (FNDA) was personally served upon the appellant on April 10, 2015, upholding the charges and suspending him for five 24-hour working days. On April 16, 2015, the appellant filed the instant appeal with the Civil Service Commission (Commission).

On appeal, the appellant asserts that a five working day suspension amounts to a suspension of 120 hours as his work schedule consists of 24 hours on duty followed by 72 hours off duty. The appellant contends that a suspension of five 24-hour days, totaling 120 hours, constitutes major discipline under Civil Service law and rules.

In response, the appointing authority, represented by Ramon E. Rivera, Esq., initially argues that pursuant to Civil Service law and rules, a five-day suspension is considered minor discipline. Moreover, it argues that the final determination to

impose a suspension of five 24-hour shifts was soundly based upon the recommendation of the hearing officer and the evidence presented at the departmental hearing. It further contends that even assuming that this matter should be reviewed as a major disciplinary action, there is no merit to substantiate the appellant's appeal.

In reply, the appellant reiterates that he received major discipline. Specifically, he argues that a "working day" must be deemed an 8-hour day for purposes of disciplinary matters and imposing penalties. Therefore, he contends that he is entitled to all rights, including a hearing, attaching to a major disciplinary action.

CONCLUSION

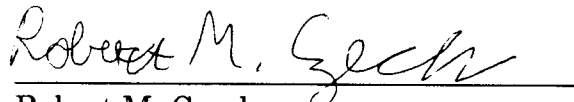
In this matter, the threshold issue before the Commission is whether the five working-day penalty for the appellant's infractions is a major or a minor discipline and the consequences that follow from such determination. *N.J.S.A.* 11A:2-15 and *N.J.A.C.* 4A:2-2.9 provide for appeal rights to the Commission when the penalty imposed is major discipline. *N.J.S.A.* 11A:2-16 provides for appeals of minor discipline, but only of employees in State service. County or municipal employees may pursue minor disciplinary action under standards and procedures established by the appointing authority or through a negotiated collective bargaining agreement or by seeking relief through the Law Division of the New Jersey Superior Court. See *Romanowski v. Brick Township*, 185 *N.J. Super.* 197 (App. Div. 1982).

Based on the facts presented, the Commission finds that the appellant received a major discipline. Specifically, the Commission addressed this particular matter in *In the Matter of William Brennan* (MSB, decided July 7, 1998). In *Brennan*, the Merit System Board (the predecessor to the Commission) determined that a five-day standard has been interpreted to refer to five working days of not more than 40 hours of pay. Therefore, the appellant is entitled to a hearing at the Office of Administrative Law (OAL). The Commission takes no position regarding the merits of the appellant's appeal. Any arguments as to the merits are best addressed at the OAL.

ORDER

Therefore, the appellant's request for a hearing is granted. Further, it is ordered that this matter be referred to the Office of Administrative Law for a hearing.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 7TH DAY OF OCTOBER, 2015



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