



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

In the Matter of Christopher Morris

CSC Docket No. 2016-1669

Request for Interim Relief

ISSUED **DEC 14 2016**
(EG)

Christopher Morris, a Hospital Attendant with the Essex County Hospital Center, represented by Luretha M. Stribling, Esq., petitions the Civil Service Commission (Commission) for interim relief of his immediate suspension and removal.

As background, the record indicates that the petitioner was hired as a Hospital Attendant in October 2010. The petitioner was issued a Preliminary Notice of Disciplinary Action (PNDA) dated May 4, 2015, charging him with failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty and violation of County policies and procedures, and indicating that a 90 working day suspension was being sought. Specifically, the appointing authority alleged that the petitioner was insubordinate towards a supervisor by failing to follow directions and responding inappropriately when spoken to about his actions. Additionally, it claimed that the petitioner failed to adequately perform his job duties and has been found sleeping at work. Thereafter, a supplemental PNDA was issued on August 24, 2015, indicating the same charges as the May 4, 2015 PNDA but immediately suspending the petitioner without pay effective August 25, 2015 and seeking a penalty of removal. The specifications indicated an additional infraction on August 5, 2015, alleging that the petitioner was involved in an altercation with a patient that rose to the level of patient abuse. A Final Notice of Disciplinary Action (FNDA) was issued May 19, 2016, indicating the petitioner's removal effective August 25, 2015.¹

¹ The petitioner filed an appeal of his removal which was transmitted to the Office of Administrative Law for a hearing.

In the instant matter, the petitioner argues that the allegations raised in the May 4, 2015 PNDA included alleged acts that occurred in 2012 and 2014. In this regard, the petitioner contends that the charges were not properly brought forth within 45 days or even within a reasonable time period. Additionally, the petitioner claims that the specifications failed to set forth specific details and the date and time of the alleged infractions as required by Civil Service regulations. With regard to the August 15, 2015 PNDA, the petitioner argues that there was no evidence of an assault on the video that was provided by the appointing authority nor was there any claim by the patient of an assault. The petitioner claims that the patient made it clear that he and the petitioner were just talking. Further, the petitioner claims that witness statements support his claim that he and the patient were just talking.

In reply, the appointing authority, represented by Courtney M. Gaccione, Essex County Counsel, maintains that the petitioner's contention that the charges in the May 4, 2015 PNDA had to be brought within 45 days is incorrect, as the "45-day rule" applies only to law enforcement. In addition, it argues that none of the charges were from 2012 and the charges in this matter were brought forth in a reasonable time. Further, the appointing authority contends that the PNDAs provided all the necessary information required to apprise the petitioner of the conduct for which he is being charged. Moreover, the appointing authority asserts that the video tape the petitioner references on appeal shows the petitioner entering the patient's room alone, which is not permitted, remaining there for a few minutes, and then the patient coming out and reporting an abrasion on his leg to nursing staff. The appointing authority argues that the assertions of patient abuse are supported by testimony and statements given by staff and patients.

The appointing authority also contends that the petitioner has not met the standards for interim relief set forth in *N.J.A.C.* 4A:2-1.2(c). In this regard, it argues that the petitioner has not shown a clear likelihood of success on the merits. Additionally, it asserts that the petitioner has not provided any argument that he will suffer immediate and irreparable harm. In this regard, the appointing authority claims that the petitioner was properly immediately suspended pursuant to *N.J.A.C.* 4A:2-2.5 as he was a hazard in the workplace and his suspension was necessary to maintain the safety of the hospital. The appointing authority notes that the petitioner has not requested to be returned to work. Finally, it contends that patient abuse is a serious violation and that it maintains a zero tolerance with regard to these acts.

In response, the petitioner argues that he has demonstrated a clear likelihood of success on the merits as one of the charges is from 2012 and another from 2014. The petitioner claims both are without merit, and should have been brought within 45 days of the infractions. He also contends that it was not brought within a reasonable time, which he asserts within the law is three months. With regard to the charge of sleeping on the job, the petitioner argues that employees working the night shift routinely sleep on the job with the blessing of management. The

petitioner also maintains that the charges of insubordination and neglect of duty are vague and fail to indicate when the infractions took place. Further, the petitioner reiterates that the video evidence and statements from the patient support his assertion that he just spoke with the patient. Moreover, the petitioner asserts that the evidence as to when the patient was treated for a leg injury is inconsistent. The petitioner claims that he has already been irreparably harmed as he was suspended from work without pay. Furthermore, the petitioner claims that the public is being harmed by the appointing authority not following Civil Service laws and regulations. Finally, the petitioner requests that he be returned to his position, with back pay, benefits and counsel fees.

CONCLUSION

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

Additionally, *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 provide that an employee may be suspended immediately without a hearing if the appointing authority determines that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. Given the allegations of patient abuse, it was appropriate for the appointing authority to immediately suspend the appellant to maintain the safety, health, order and effective direction of the facility.

Initially, the Commission notes that the petitioner's reliance on the "45-day rule" is misplaced. The "45-day rule" to file charges only applies to certain law enforcement personnel and firefighters as established by statute. *See e.g., N.J.S.A.* 40A:14-147, *N.J.S.A.* 30:8-18.2, *N.J.S.A.* 40A:9-117.6a, *N.J.S.A.* 40A:14-28.1 and *N.J.S.A.* 40A:14-106a. The petitioner, as a Hospital Attendant, is not covered by any of the "45 day-rules" provided by statute.

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 has actually committed the alleged infractions. In this regard, the petitioner claims that the video tape evidence and witness statements, including statements from the patient in

question, all indicate that there was no patient abuse. The petitioner also states that the other charges were either fabricated or procedurally deficient. The appointing authority contends that it has witnesses and ample evidence of patient abuse, as well as evidence to support the other charges. The Commission will not attempt to determine the charges based on an incomplete written record. Such disciplinary appeals need a full plenary hearing before an Administrative Law Judge (ALJ) who will hear live testimony, assess the credibility of witnesses and weigh all the evidence in the record before making an initial decision. At that point, the Commission will be in a position to decide the propriety of the charges and recommend a penalty should the charges against the petitioner be sustained. However, without the benefit of a full hearing record before it, the Commission cannot determine if the charges should be upheld or if the penalty imposed is appropriate.

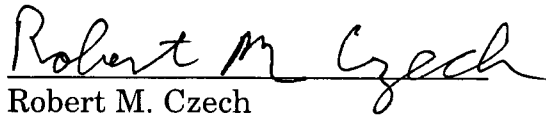
While the petitioner argues that the specifications are vague and do not indicate specific dates, the August 24, 2015 supplemental PNDA clearly indicates that on August 5, 2015 he was involved in an altercation with a patient that rose to the level of patient abuse. Therefore, based on the evidence in the record at this time, the petitioner has not been prejudiced in this matter as he is aware of the circumstances that led to the charges against him. *See N.J.A.C. 4A:2-2.5(a)*. However, even if there were procedural violations at the departmental level, they are deemed cured by the granting of a *de novo* hearing 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)*. Therefore, based on the foregoing, the petitioner has not shown a clear likelihood of success on the merits.

Moreover, the petitioner has failed to show the danger of immediate or irreparable harm or how the public interest would be served by granting his request. In this regard, there are available mechanisms for relief, such as back pay in appropriate cases pursuant to *N.J.A.C. 4A:2-2.10*, where the petitioner's termination is not sustained or modified. Accordingly, under these circumstances, the record does not demonstrate a basis for granting interim relief.

ORDER

Therefore, it is ordered that the petitioner's request for interim relief be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 7TH DAY OF DECEMBER, 2016



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