



STATE OF NEW JERSEY

In the Matter of Peter Chirico  
City of Newark,  
Police Department

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**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2016-1413  
OAL DKT. NO. CSV 00321-16

ISSUED: **JUL 28 2017** BW

The appeal of Peter Chirico, Police Officer, City of Newark, Police Department, 9 working day suspension, on charges, was heard by Administrative Law Judge Jeffrey A. Gerson, who rendered his initial decision on June 29, 2017. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on July 26, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Peter Chirico.

Re: Peter Chirico

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  
JULY 26, 2017



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Robert M. Czedh, Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
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**

**GRANTING SUMMARY DECISION**

OAL DKT. NO. CSV 00321-16

AGENCY DKT NO. 2016-1413

**IN THE MATTER OF PETER CHIRICO,  
CITY OF NEWARK POLICE DEPARTMENT.**

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**Shay Shailesh Deshpande**, Esq., for petitioner Peter Chirico (Fusco & Macaluso, LLC, attorneys)

**Joyce Clayborne**, Esq, Assistant Corporation Counsel for respondent, City of Newark Police Department (Willie L. Parker, Corporation Counsel, attorney)

Record Closed: May 24, 2017

Decided: June 29, 2017

BEFORE: **JEFFREY A. GERSON**, ALJ t/a:

**STATEMENT OF THE CASE**

Peter Chirico, a Police Officer of the City of Newark, contested a 9 working day suspension pursuant to a Final Notice of Disciplinary Action dated September 18, 2015.

On or about September 28, 2015, Police Officer Chirico filed his major disciplinary appeal form resulting in the matter being transferred to the Office of Administrative Law on or about December 28, 2015 for a hearing.

On or about December 9, 2016, a brief was filed by the Newark Police Department requesting a dismissal of Officer Chirico's appeal contending that his 9 day suspension was as a result of a temporary restraining order entered as a result of a domestic violence complaint which required Officer Chirico to surrender his weapon.

On or about December 15, 2016, Chirico responded to the Motion/application contending that the Newark Police Department wrongfully suspended him prior to a hearing.

### **FINDINGS OF FACT**

As a result of the stipulated and undisputed facts submitted by both sides, I **FIND** the following to be the uncontested **FACTS** of this matter.

In the early morning hours of September 8, 2015, Officer Chirico and his girlfriend, Carla Goncalves, got into a domestic dispute which resulted in Goncalves' filing of a Domestic Violence complaint with the City of Newark Police Department. Concurrently with the filing of the Domestic Violence complaint against Officer Chirico by Goncalves, she in addition requested a Temporary Restraining Order against Officer Chirico which was granted by a municipal court judge.

The Temporary Restraining Order prohibited Officer Chirico from possessing any weapons. Officer Chirico was served and signed for the TRO on September 8<sup>th</sup> at 8:50 p.m.

As a result of the TRO, the Newark Police Department issued an immediate suspension notice determining that Officer Chirico was unfit for duty as a result of the

weapon prohibition issued by the Municipal Court Judge. The immediate suspension notice was signed for by Officer Chirico in the evening hours of September 8, 2015. A Preliminary Notice of Disciplinary Action was prepared and served on Officer Chirico on that same date, September 8, 2015. The PNDA contained two charges and an immediate suspension, indefinitely, without pay.

Officer Chirico requested a hearing which was conducted at the local level on September 18, 2015. This hearing resulted in a lifting of the indefinite suspension and the reinstatement of Officer Chirico to a modified set of duties. The Final Notice of Disciplinary Action dated September 18, 2015 imposed the 9 day suspension which proceeded Officer Chirico's reinstatement to modified duty. It is that 9 day suspension which Officer Chirico now contests.

### THE LAW

N.J.A.C. 4A:2-2.5 provides:

- (a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and afforded the opportunity for a hearing prior to the imposition of major discipline (which, under N.J.A.C. 4A:2-2.2(a)), includes removal and suspension for more than 5 days), except:
  1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty . . .

In The Matter of Lanier v. The City of Jersey City, OAL DKT. No. CSV 7649-97 (April 29, 1998) a 10 day suspension on charges of inability to perform was sustained by an Administrative Law Judge. There, like here, the police officer was the subject of a TRO that required him to surrender his weapon. In granting the unopposed summary judgment motion of the Appointing Authority, the ALJ found:

“The ability to carry a firearm is prerequisite for a uniformed police officer, according to the New Jersey Department of Civil Service, Division of County and Municipal Government Services “class specifications for a police officer”, as well as the description of a police officer promulgated by the Department of Personnel, Division of Personnel Management . . .

The Appointing Authority is not obligated to provide alternative assignments to its officers”.

### DISCUSSION

As a result of the TRO and the Preliminary Notice of Disciplinary Action, Officer Chirico was immediately suspended, a suspension which was without pay until September 18, 2015 when the City of Newark Police Department after a hearing, placed Chirico on modified duty and reinstated his pay.

It was the TRO which rendered Chirico unfit for duty since he was deprived of his weapon. Though the Preliminary Notice of Disciplinary Action also imposed an immediate suspension as a result of the pending criminal charges, it is the domestic violence TRO judicial Order which was served and acknowledged by Chirico which provides for the immediate suspension.

Though Chirico acknowledges that N.J.A.C. 4A:2-2.5(a)(1) provides for the immediate suspension if there is a finding that an officer is unfit for duty. He goes on to argue as follows:

“It is undisputed on 9/18/16 Officer Chirico was placed on modified duty even though he could not carry his service weapon while the restraining order proceedings were going on.

Eventually, the TRO was dismissed. However, it is unclear how in one instance Officer Chirico was deemed to be unfit for duty and then placed on modified duty even though he could not carry his weapon.

The position taken by Newark Police Department is completely inconsistent. If an officer is unfit because he cannot carry a weapon then how can he be placed on modified duty even though he still cannot carry his weapon and the restraining order procedure was still going on.”

Based on the above, Chirico contends that he could not be unfit for duty as a result of the TRO if he was able to be placed on modified duty and be reinstated with pay.

There is no legal citation nor legal support for Chirico's argument. A police officer deprived of his weapon cannot fulfill the complete duties of his position. The police Department of the City of Newark was within its authority to modify Chirico's duties assigning him administrative work not requiring the use or possession of a weapon. If Chirico's argument is that by placing him in a modified position allowing him to return to work was an inconsistent disposition of his charges, then the result would not be a dismissal as a result of the inconsistency, but rather a re-imposition of the suspension since the modification would not be in affect and Chirico would not have a weapon.

Nonetheless, the police department, though not required to do so, reinstated Chirico to modified duty despite his inability to fulfill his responsibilities fully due to lack of a weapon. The modified duties allowed Chirico to start receiving salary, but did not reinstate him to former status as an armed police officer. He was, therefore, still unfit for duty as a police officer due to the lack of a weapon, but not unfit for the modified duties.

Inconsistency, as contended by Chirico in the police departments treatment, even if it existed, which is far from proven, would still not lead to a legal argument recapturing lost pay. Since he was unfit for to carry out the full responsibilities of a

police officer by virtue of the judicially ordered TRO, he suffered a 9 day suspension without pay which was statutorily supported and procedurally and legally warranted.

**ORDER**

It is **ORDERED** that Peter Chirico's appeal of his 9 day suspension is **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

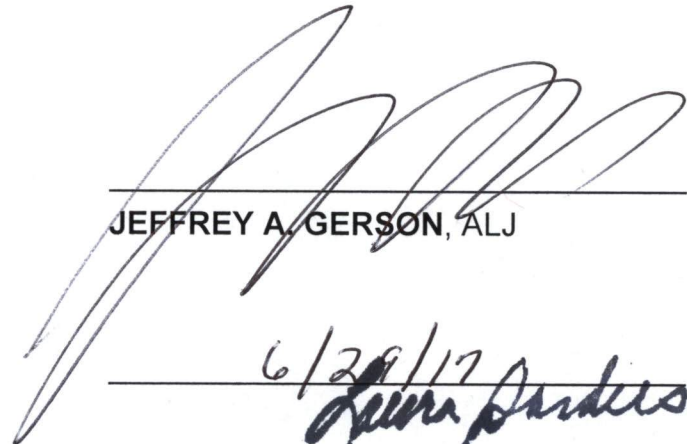


Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

6/29/17  
DATE

Date Received at Agency:

Date Mailed to Parties:  
sej

  
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JEFFREY A. GERSON, ALJ

JUN 30 2017

6/29/17  
  
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DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE