



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Deanna Cardona-
Malatino, Camden County Police

CSC Docket No. 2018-1834

Request for Interim Relief

ISSUED: March 28, 2018 (JET)

Deanna Cardona-Malatino, a Property Clerk with the Camden County Police Department, represented by James Katz, Esq., petitions the Civil Service Commission (Commission) for interim relief of her immediate and indefinite suspension effective December 1, 2017.

By way of background, the appointing authority issued the petitioner a Preliminary Notice of Disciplinary Action (PNDA) on December 1, 2017, immediately and indefinitely suspending her without pay for actions involving criminal matters in violation of *N.J.A.C. 4A:2-2.7(a)5*. Specifically, the appointing authority asserted that, on November 25, 2017, the petitioner was charged with Operating a Motor Vehicle under the Influence of Alcohol in violation of *N.J.S.A. 39:4-50*, Refusal to Submit to Chemical Testing in violation of *N.J.S.A. 39:4-50.4(a)*, Possession of Under 50 Grams of Marijuana in violation of *N.J.S.A. 2C:35-10(a)(4)*, Possession of Drug Paraphernalia in violation of *N.J.S.A. 2C:36-2*, and Disorderly Conduct in violation of *N.J.S.A. 2C:33-2(a)*. After a limited purpose hearing conducted on December 12, 2017, the petitioner was served with a Final Notice of Disciplinary Action (FNDA), upholding the indefinite suspension.¹

In her request, the petitioner asserts that she has a clear likelihood of success on the merits, as her immediate suspension is unwarranted based on the charges from the November 25, 2017 incident. The petitioner contends that the

¹ It is noted that the FNDA was issued on December 22, 2017 despite being dated December 1, 2017.

offenses are limited to minor traffic law violations and disorderly person offenses and, as such, do not constitute first, second, third or fourth degree crimes. She adds that, as of the date she submitted the appeal, she was not found guilty of the charges. Further, the petitioner explains that, at the time of the limited purpose hearing, the appointing authority paraphrased a police report and failed to provide any information to demonstrate that she was unfit for duty, a hazard to any person, or that the immediate suspension was necessary to maintain safety, health, order or effective direction of public services. The petitioner states that the charges are unrelated to her employment, and since she was out of work on disability at the time of the suspension, she could not have posed a threat to anyone at work.² Moreover, the petitioner asserts that she is in danger of being irreparably harmed as she is the sole means of support for her son, cannot afford continued medical treatment without health insurance, and is in jeopardy of losing her home. As such, the petitioner requests immediate reinstatement, back pay, benefits, retroactive seniority, and counsel fees.³ In support, the appellant provides a certification dated December 28, 2017, copies of the charges against her, and a copy of the November 27, 2017 doctor's note.

In response, the appointing authority, represented by Matthew V. White, Assistant County Counsel, maintains that the petitioner has not demonstrated a clear likelihood of success or provided any evidence to show that she has sustained irreparable harm. Specifically, the appointing authority contends that, at the time of the November 25, 2017 incident, the petitioner refused to submit to a field sobriety test and the police found marijuana and a pipe containing marijuana residue in the petitioner's vehicle. The appointing authority explains that the petitioner became verbally abusive and unruly at the Cherry Hill Police Department, threw a pen at a Police Officer, and kicked a Police Officer in the leg. In addition, the appointing authority asserts that, in order to maintain the safety, order, and effective police services to the public, the petitioner's immediate and indefinite suspension was proper pending disposition of the charges.⁴ Moreover, the appointing authority states that the petitioner's behavior cannot be tolerated as it demonstrates a disrespect for the law.

In response, the petitioner reiterates many of the arguments that she presented above. Further, the petitioner maintains that the appointing authority has provided no evidence in support of its claim that her continued employment

² The petitioner explains that, on or about November 27, 2017, she forwarded a doctor's note to the appointing authority which indicated that she was authorized on disability from November 24, 2017 through December 27, 2017.

³ The petitioner requests to be reinstated with benefits and retroactive seniority as of December 1, 2017 and back pay retroactive as of December 27, 2017.

⁴ The appointing authority contends that the petitioner is a non-law enforcement employee who works in a network of other non-law enforcement employees, interacts with Police Officers, and conducts audits of body cameras. As such, the charges and her inappropriate behavior have a negative impact on providing police services to the public.

would adversely affect the employees and effective public services provided in that jurisdiction. Additionally, the petitioner explains that, except for the DUI and Refusal to Submit to Chemical Testing charges, the other charges against her were dismissed on January 24, 2018. The petitioner states that she immediately informed the appointing authority of the disposition of the charges and she again requested to be returned to duty. Rather than returning her to duty, the petitioner contends that the appointing authority instructed her to appear on January 29, 2018 at its Internal Affairs office for an internal investigation related to the charges against her. Moreover, the petitioner asserts that the appointing authority is engaging in an abuse of power by conducting the internal investigation since most of the charges against her have been dismissed.

CONCLUSION

Initially, in reviewing this matter, it is not necessary to address the merits of the underlying charges against the petitioner. Rather, the issue before the Commission in this matter is to determine if the appointing authority presented a valid basis to suspend the petitioner pursuant to *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5. Additionally, with respect to her arguments pertaining to the Internal Affairs investigation, the Commission does not, as of the issuance of this decision, have any control over the appointing authority's internal actions or any administrative charges it may issue as a result of the investigation.

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. Clearly, and contrary to the petitioner's arguments, her arrest and the charges, *inter alia*, of operating a vehicle while under the influence and possession of under 50 grams of marijuana support her immediate suspension.⁵ An appointing authority, especially a law enforcement agency, should not be required to keep an employee on the job who has such serious matters pending. In this regard, the Commission finds that the immediate suspension was necessary to maintain the health, order, and effective direction of the Police Department. Although the petitioner argues that the majority of the charges have been dismissed as of January 24, 2018, she has provided no substantive documentation of the disposition of the charges and she acknowledges

⁵ The Commission rejects the petitioner's argument that since the PNDA and FNDA did not contain administrative charges, that an immediate suspension is unwarranted. In this case, the Commission notes that the standard to impose an immediate suspension is, absent criminal charges, identical to those needed for an indefinite suspension. Moreover, the Commission has found that the alleged misconduct in this case satisfies that standard. *Compare, In the Matter of Dennis Mulligan* (CSC, decided March 25, 2009) (Commission found indefinite suspension improper and also found standard for immediate suspension not met). *See also, In the Matter of Russel Greco* (MSB, decided May 22, 2001).

that the DUI and Failure to Submit to Chemical Testing charges were not dismissed. As such, based on the nature of the charges against her, the Commission finds that the appointing authority possessed a valid basis for imposing an immediate suspension.

Additionally, it must be determined whether the charges support the necessity for an indefinite suspension, and if improper, what remedy is appropriate. Although the record reflects that the appointing authority had a valid basis to immediately suspend the petitioner based on the pending charges against her, the petitioner's indefinite suspension was not appropriate. Pursuant to *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.7, an indefinite suspension may *only* be imposed when an individual has a criminal complaint or indictment pending. Further, *N.J.S.A.* 11A:2-13 provides, in pertinent part, that where a suspension is based on a crime of the first, second, or third degree, or a crime of the fourth degree if committed on the job or directly related to the job, the suspension may be immediate and continue until a disposition of the charge. In this matter, the record reflects that, at the time the appellant was suspended, she did not have any criminal charges as defined above pending. While the charges against her - Operating a Motor Vehicle under the Influence of Alcohol, Refusal to Submit to Chemical Testing, Possession of Under 50 Grams of Marijuana, Possession of Drug Paraphernalia, and Disorderly Conduct are serious, the charges are not crimes of the first, second, or third degree, nor a crime of the fourth degree committed on the job or directly related to the job. Rather, the charges against the petitioner constitute violations of Title 39, Motor Vehicle and Traffic Control law, and Disorderly Persons Offenses for violations of Title 2C. Since the petitioner was not charged with a violation of the criminal law in the first, second, third, or fourth degree, the appointing authority's imposition of an indefinite suspension was inappropriate.

In this matter, the appointing authority issued the PNDA on December 1, 2017, which immediately suspended the petitioner. A limited purpose hearing was conducted and the FNDA was issued on December 22, 2017 upholding the immediate and indefinite suspension. The Commission notes that the imposition of the immediate suspension on December 1, 2017, without a pending criminal charge, could only generally be effected for up to 55 days and any period of suspension after 55 days, without actually sustaining a disciplinary charge, would be improper. In this regard, a PNDA is required to be issued within five days where an immediate suspension is sought and, thereafter, if a departmental hearing is requested, the full hearing should be held within 30 days of the date of the PNDA, and the FNDA should be issued by no later than 20 days from the date of the hearing. *See N.J.A.C.* 4A:2-2.5(a)1, 4A:2-2.5(d) and 4A:2-2.6(d). As such, upon receipt of this decision, the appointing authority is directed to immediately issue a new PNDA with any administrative charges listed as well as the specifications supporting such charges so that a full departmental hearing on those charges can be held. That hearing

should be scheduled as soon as possible. In the absence of the issuance of a new PNDA, the appointing authority should immediately reinstate the petitioner.

Based on the improper indefinite suspension, but in light of the fact that the immediate suspension was appropriate, the Commission finds that the petitioner is entitled to back pay and benefits as of January 25, 2018, which is 55 days after the imposed suspension, with the exception of any time that she was unable to work based on her disability status, to the date of her reinstatement or the issuance of a new FNDA based on the departmental hearing. In this regard, since the record reflects that the petitioner was out of work on disability status at certain times during her suspension, in order to receive an award of back pay, she must provide the appointing authority with additional substantive evidence indicating when she was unable to work during the time of her suspension.⁶ If the petitioner only produces documentation to show that she was unable to work on dates after January 25, 2018, the appointing authority is authorized to adjust the award accordingly. Additionally, with respect to the petitioner's request for reasonable counsel fees, pursuant to *N.J.S.A.* 11A:2-22 and *N.J.A.C.* 4A:2-2.12, reasonable counsel fees are awarded where an employee has prevailed on all or substantially all of the primary issues on appeal. In this regard, while it is clear that the appointing authority's imposition of the improper indefinite suspension was in violation of this agency's laws and rules and served to involuntarily separate the petitioner from employment without proper process, it is equally clear that there was a proper basis for her immediate suspension. Therefore, the petitioner did not prevail on all or substantially all of the primary issues of her petition. Accordingly, counsel fees are denied.

ORDER

The Civil Service Commission orders that the petitioner be granted back pay, benefits, and seniority from January 25, 2018 until the actual date the departmental hearing, if required, is conducted and completed and a new FNDA is issued. The amount of back pay awarded is to be reduced and mitigated to the extent of time that the petitioner was unable to work on disability status. Proof of the dates she was on disability status shall be submitted to the appointing authority within 30 days of this decision. Additionally, the Commission denies counsel fees.

⁶ For example, the current record indicates that the petitioner was unable to work from November 24, 2017 through December 27, 2017. *N.J.A.C.* 4A:2-2.10(c)9 prohibits back pay for any period of time an employee is disabled from work.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27th DAY OF MARCH, 2018

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