



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Equina Taylor, :  
Vineland Developmental Center, :  
Department of Human Services :

Request for Interim Relief

CSC Docket No. 2018-1037

**ISSUED: APRIL 2, 2018**

**(SLK)**

Equina Taylor, a Cottage Training Technician with the Vineland Developmental Center (VDC), Department of Human Services, represented by Joseph Waite Jr., Field Organizer, AFSCME, petitions the Civil Service Commission (Commission) for interim relief regarding her indefinite suspension.

By way of background, on August 9, 2013, the petitioner was issued a Preliminary Notice of Disciplinary Action (PNDA) suspending her with pay for various administrative charges related to an incident on or about February 26, 2010 where the petitioner allegedly accessed confidential VDC consumer information and then used this information to apply for and receive a \$4,047.51 tax refund intended for one consumer and acquired more than \$4,500 in money and goods using another consumer’s personal account. Thereafter, a pre-termination hearing was held that resulted in the charges being upheld and the VDC issuing a second PNDA suspending the petitioner without pay effective August 13, 2013 pending the outcome of the investigation. On September 8, 2017, Mr. Waite contacted Bernadette Musiwa, VDC’s Employee Relations Coordinator, requesting an administrative hearing. Thereafter, in a submission postmarked October 2, 2017, the petitioner requested interim relief.

In support of her request for interim relief, the petitioner presents that except where criminal charges are pending, no suspension or fine shall exceed six months. However, the petitioner highlights that no criminal charges have been issued against her and she has been suspended for over four years. Further, the

petitioner requested an expedited hearing at the pre-termination hearing in August 2013; yet, the VDC has not responded to that request. Additionally, the petitioner asserts that an employee may only be immediately suspended prior to a hearing where it is determined that the employee is unfit for duty or a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public service. However, since the VDC has not taken any action since August 13, 2013, the petitioner asserts that the VDC has not proven that an immediate suspension is warranted. Moreover, the petitioner indicates that a departmental hearing shall be held within 30 days of the PNDA unless waived by the employee and, not only did she not waive her right to a hearing, but she requested an expedited hearing. The petitioner contends that she will suffer irreparable harm if her request is not granted, she will likely prevail on the merits of the case, the legal right for her claim is settled and the equities and interests of the parties as balanced warrant her request. The petitioner requests back pay effective August 13, 2013 and to be restored to VDC's payroll.

In response, the VDC states that the reason that the petitioner was suspended without pay on August 13, 2013 was that it was informed that the petitioner was the subject of a federal investigation related to theft of and use of client identities from the VDC, theft of government funds, tax fraud, mail fraud and conspiracy to commit same. Further, the VDC indicates that it has not held a departmental hearing because the federal investigation is currently active. It represents that the Detective who testified at the pre-termination hearing cannot provide any documentation relating to the case at this time as the investigation is active. The VDC states that although it does not know when the investigation shall be concluded, it has been advised that it should be completed in the upcoming months. The VDC asserts that the petitioner is unlikely to succeed on the merits of the case as it has been provided information that links her to the aforementioned charges, there is no immediate or irreparable harm to the petitioner to continue her suspension as she will learn the results of the investigation immediately upon its conclusion, that there would be substantial injury to other parties to allow someone who committed crimes against VDC clients to continue in employment, and the public interest is best served to not conduct a departmental hearing until the federal investigation is complete.

## 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.

In reviewing this matter, it is not necessary to address the merits of the charges against the petitioner. Rather, the issues to be determined are whether the appointing authority presented a valid basis to immediately and indefinitely suspend the petitioner and whether the appointing authority was justified in delaying the departmental hearing.

*N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 and 2 provide that an employee may be suspended immediately and prior to a hearing when the employee has been formally charged with certain crimes or where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. *N.J.A.C.* 4A:2-2.4(a) provides that no suspension or fine shall exceed six months except for suspension pending criminal complaint or indictment. *N.J.A.C.* 4A:2-2.5(d) provides that a departmental hearing, if requested, shall be held within 30 days of a PNDA unless waived by the employee or a later date as agreed by the parties.

*N.J.A.C.* 4A:2-1.1(b) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

In the instant matter, the Commission finds that the VDC's decision to initially immediately suspend the petitioner was valid as it had information that the petitioner may have stolen the identity of two VDC consumers and used that information to steal from those consumers. Therefore, the petitioner's immediate suspension was clearly necessary to maintain the effective direction of public service. With respect to a departmental hearing, the VDC presents that because there is a federal investigation, the Detective cannot provide any documentation relating to this case. Further, it indicates that the investigation shall be concluded in the upcoming months and then it will hold a departmental hearing as soon as it can. However, the VDC's reasoning for not holding the departmental hearing as required under *N.J.A.C.* 4A:2-2.5(d) is not persuasive. The appointing authority was under no legal obligation to postpone the administrative proceedings pending the results of an external investigation. See *In the Matter of Egberto Colon* (CSC, decided November 18, 2015); *In the Matter of Kenneth Poole* (MSB, decided May 18, 2005); *In the Matter of Francis Salensky* (MSB, decided April 6, 2005). Further, the VDC's decision to suspend the petitioner indefinitely pending the outcome of the **investigation** is also not valid. Under *N.J.A.C.* 4A:2-2.4(a), there are no grounds to suspend the petitioner for more than six months without a criminal charge pending. Accordingly, as Civil Service rules mandate that a hearing be held, the continued suspension of the petitioner cannot be sustained. Therefore, the Commission orders the VDC to hold a departmental hearing within 30 days of receipt of this decision.

The Commission notes that the standard of proof in administrative proceedings is guilt by a preponderance of the evidence, not the stricter criminal standard of proof beyond a reasonable doubt. The Commission further notes that in its submissions the VDC indicates that it has information it believes links the petitioner to the alleged misconduct. Such are the proofs required to sustain administrative charges. Proof of criminal culpability is not required. After the hearing, the VDC shall either issue a Final Notice of Disciplinary Action removing the petitioner on administrative charges or shall restore the petitioner to employment. Further, if the petitioner is restored to employment and then is criminally charged, the VDC can issue a PNDA immediately and indefinitely suspending her at that time.

However, the petitioner's request for back pay and to be immediately added to the VDC's payroll is denied, as her request is untimely. The petitioner was issued a PNDA, which indicated that she was indefinitely suspended without pay effective August 13, 2013. Further, as of September 2013, the petitioner knew that the VDC was not holding a departmental hearing in the required timeframe. Moreover, the petitioner's suspension exceeded six months sometime in early 2014. However, it was not until September 8, 2017 that she followed up with the VDC for a hearing and it was not until October 2, 2017 that the petitioner requested interim relief. In other words, the petitioner waited over four years before petitioning the Commission to enforce her Civil Service rights for a departmental hearing and over three years after her suspension exceeded six months. If the petitioner had challenged this matter in a timely fashion, the Commission could have taken corrective action at that time. However, the petitioner cannot sit on her rights while not working for over four years and expect to receive back pay for that time-period. However, the Commission strongly cautions the VDC to strictly adhere to the disciplinary rules in the future. Its failure to do so may subject it to future fines or penalties pursuant to *N.J.A.C. 4A:10-1.1*.

### ORDER

Therefore, it is ordered that the petitioner's request be granted in part and the Commission orders the VDC to hold a departmental hearing within 30 days of receipt of this decision. The petitioner's request for back pay and to be immediately restored to the VDC's payroll is denied.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 27<sup>th</sup> DAY OF MARCH, 2018



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