



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Tanerra Durham, Union County

CSC Docket No. 2017-88

Administrative Appeal

ISSUED: APR 11 2017 (CSM)

Tanerra Durham, a former Juvenile Detention Officer with Union County, represented by Michael A. Bukosky, Esq., requests a hearing with respect to her resignation in good standing effective June 29, 2016.

By way of background, in a Preliminary Notice of Disciplinary Action (PNDA) dated February 29, 2016, the appointing authority sought the petitioner's removal on charges of inability to perform duties, neglect of duty, and inability to perform the required duties of a Juvenile Detention Officer with or without accommodations. Thereafter, the petitioner and the appointing authority entered into a settlement agreement wherein the petitioner would seek physical therapy at her own expense related to a knee injury.1 The agreement also provided, in pertinent part:

3. Subsequent to the physical therapy, but no later than June 13, 2016, Employee will report for a fitness for duty evaluation, with a physician of the County's choosing, at the County's expense.

4. The parties agree that if the fitness for duty evaluation concludes that she has permanent restrictions, Employee will resign from her employment with the County, effective immediately. Said resignation will be considered to be in good standing and the Charges issued on February 29, 2016 will be withdrawn.

1 At the time of the settlement, the parties did not petition the Civil Service Commission to acknowledge the agreement for compliance with Civil Service law and rule.

6. The parties agree that if the fitness for duty evaluation determines that she is not fit for duty at the time of the exam, but sets for a definitive treatment schedule and date for full recovery, the parties will discuss Employees work status and the disposition of the Charges dated February 29, 2016.

10. Employee shall not institute any appeal or any other action with respect to this matter.

On June 21, 2016, the petitioner was evaluated by the appointing authority's physician, Gregory S. Gallick, M.D. After conducting his evaluation and reviewing the job specification for Juvenile Detention Officer, Dr. Gallick indicated that he considered the appellant "to be at maximum medical benefits from treatment" and "would not find her able to perform all the activities on this job description." Based on the settlement agreement, in a Final Notice of Disciplinary Action (FNDA) dated June 30, 2016, the appointing authority withdrew the charges against the petitioner and she was resigned in good standing effective June 29, 2016. The appellant appealed her resignation in good standing to the Civil Service Commission (Commission) on July 7, 2016. However, by letter dated August 29, 2016, staff of the Division of Appeals and Regulatory Affairs (DARA) advised the petitioner that it could not transmit her appeal for a hearing since she agreed to a resignation in good standing and not to institute any appeal or other action with respect to the matter,

In her request to the Civil Service Commission (Commission), the petitioner states that her settlement was a "contingent" agreement and that she was to possibly resign if she had permanent restrictions. Further, she contests the fact that she has permanent restrictions and maintains that the fitness for duty examination returned her to duty. In support of her contentions, the petitioner sought out and received an evaluation by an independent physician, David E. Rojer, M.D. Dr. Rojer evaluated the petitioner on July 6, 2016 and indicated that she "can go back to work full duty, no restrictions." Therefore, the petitioner maintains that her request for a hearing should be granted since the contingencies of the agreement which would have allowed for a resignation in good standing should not have been triggered.

In response, the appointing authority, represented by Rachel M. Caruso, Esq., presents that the petitioner, who had the benefit of representation when she executed the settlement agreement, agreed to undergo a fitness for duty evaluation with a physician of its choosing and to resign immediately if that evaluation concluded she had permanent restrictions. Although the petitioner claims that the settlement is contingent in that she agreed "possibly to resign," the agreement is devoid of any such language. In this case, Dr. Gallick found that the petitioner could not perform the duties of a Juvenile Detention Officer and the settlement

required her to resign. Further, even if a dispute existed, no reasonable accommodation could be made that would permit her to fulfill the required duties of her job. Indeed, the appointing authority states that it does not have permanent light duty and the essential functions of the petitioner's position are restraining inmates and other forceful activities. Therefore, the appointing maintains that the petitioner's request should be dismissed.

### CONCLUSION

*N.J.A.C.* 4A:2-6.1(d) provides that where it is alleged that a resignation was the result of duration or coercion, an appeal may be made to the Commission under *N.J.A.C.* 4A:2-1.1.

As noted earlier, there is no record that the Commission ever acknowledged the settlement between the petitioner and Union County with regard to fitness for duty. The Commission acknowledges settlement agreements to allow for the resolution of matters properly before it. The Commission also reviews settlement agreements to ensure compliance with Civil Service law and rules. If a term of the agreement is later violated by either party, the Commission has jurisdiction to enforce the term. *See e.g., In the Matter of Donald Hickerson* (MSB, decided September 10, 2002). *See also, In the Matter of Police Officer and Superior Officer, Essex County* (1991 Layoffs), Docket No. A-5755-94T5 (App. Div. April 22, 1996). The matter of the petitioner's previously pending disciplinary action could not be properly before the Commission as major disciplinary action had not yet been imposed.

Nevertheless, the policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 *N.J.* 465 (1990); *Honeywell v. Bubb*, 130 *N.J. Super.* 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 *N.J. Super.* 472 (App. Div. 1961), *cert. denied*, 35 *N.J.* 61 (1961). This policy is equally applicable in the administrative area. Moreover, the terms of a settlement agreement should be implemented where a party has competent representation of his or her choosing and entered into the agreement knowingly and voluntarily.

In the present matter, even assuming, *arguendo*, that the Commission could enforce this settlement, there would be no basis on which to grant the petitioner's request for a hearing. The plain language of the agreement indicates that if the fitness for duty evaluation concluded that she had permanent restrictions, the petitioner would immediately resign in good standing. The parties also agreed that the physician would be of the appointing authority's choosing. Dr. Gallick, who was authorized in accordance with the agreement to conduct the fitness for duty examination, indicated that he considered her "to be at maximum medical benefits from treatment" and "would not find her able to perform all the activities on this job description." As such, since the petitioner was found not to be able to perform

all of the duties of a Juvenile Detention Officer and she was at maximum medical improvement, she had permanent work restrictions. Moreover, the fact that she obtained an independent evaluation that found that she was fit for duty is irrelevant, as the settlement does not indicate that the petitioner could obtain another opinion in order to challenge the findings of the appointing authority's physician. Additionally, the appointing authority could not reasonably accommodate the petitioner given that the essential duties of a Juvenile Detention Officer include calming disruptive juvenile residents in a potentially dangerous situation and physically restraining them to prevent them from endangering their health/safety or the health/safety of others. *See In the Matter of Jerry Duckworth*, Docket No. A-6007-07T1 (App. Division January 14, 2010).


Finally, while the Commission can and does review resignation in good standing appeals under *N.J.A.C. 4A:2-6.1(d)*, in this case, there is absolutely no evidence in the record that the appellant's resignation pursuant to the terms of the settlement agreement was the result of duress or coercion.<sup>2</sup>

ORDER

Therefore, it is ordered that this request be denied.

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  
THE 5<sup>th</sup> DAY OF APRIL, 2017



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<sup>2</sup> The Commission also notes that appeals brought pursuant to *N.J.A.C. 4A:2-6.1(d)* are generally decided on the written record.

c: Tanerra Durham  
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