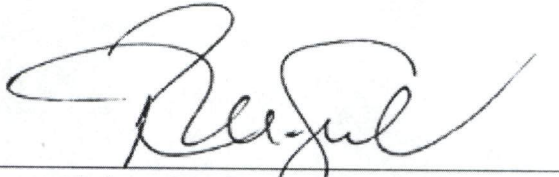




This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
JULY 26, 2017



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Robert M. Czedo, Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



*State of New Jersey*  
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION  
AND ORDER OF CONSOLIDATION  
AND PREDOMINANT INTEREST

OAL DKT. NO. PTC 16570-15  
AGENCY REF. NO. N/A

**YESMEAN DAMON,**

Petitioner,

v.

**JOHN H. STAMLER POLICE ACADEMY,**

Respondent.

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**IN THE MATTER OF YESMEAN DAMON,  
UNION COUNTY, DEPARTMENT OF  
PUBLIC SAFETY.**

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OAL DKT. NO. CSV 19739-15  
AGENCY DKT. NO. 2016-1578

**Mark A. Bailey, Esq.,** for petitioner Yesmean Damon (Law Offices of Mark  
A. Bailey, attorneys)

**Elizabeth Farley Murphy, Esq.,** for respondent John H. Stamler Police  
Academy (Bauch Zucker Hatfield, attorneys)

**Rachel M. Caruso, Esq.,** for respondent Union County (Roth D'Aquanni,  
attorneys)

Record Closed: February 10, 2017

Decided: March 16, 2017



BEFORE GAIL M. COOKSON, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

By Notice of Dismissal entered on or about August 27, 2015, the Police Training Commission (PTC) dismissed Yesmean Damon (petitioner) from her attendance at the John H. Stamler Police Academy (Academy) based on her failure to meet the minimum standards of the physical conditioning component of the Basic Course. On September 24, 2015, petitioner appealed and requested a hearing. On October 15, 2015, the appeal was transmitted to the Office of Administrative Law (OAL) where it was filed for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F1 to -13.<sup>1</sup>

I conducted case management discussions with the parties telephonically on December 16, 2015. Thereafter, petitioner obtained representation by counsel. Hearings were initially scheduled for February 24, 2016, but were adjourned at the request of petitioner's counsel. The hearing was re-scheduled for August 2016 but was also adjourned. The hearing took place on January 4, 2017. Post-hearing briefs were to be submitted no later than February 10, 2017, on which date the record closed.

**FACTUAL DISCUSSION AND FINDINGS OF FACT**

Detective Edward Hanewald was the sole witness at the plenary hearing. He is the Academy's Lead Physical Fitness Training Instructor. Detective Hanewald has been certified by the PTC and has served as an instructor for seventeen years. Petitioner began at the Academy in July 2015. That session was to extend approximately ninety-six (96) days through December 2015. On August 27, 2015, petitioner was dismissed for failing to meet the minimum standards of the physical conditioning component of the Academy. Detective Hanewald stated that the dismissal was predicated upon her failure to fully participate in twenty conditioning sessions,

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<sup>1</sup>As a result of her dismissal from the Academy, petitioner was also terminated from her position as a Sheriff's Officer with the Union County Sheriff's Department. A separately filed appeal from that employment action was docketed with the OAL as CSV 19739-15. County counsel requested that the employment action be stayed and placed on the inactive list until the determination of the within foundational decision. Under Administrative Procedure Rules and the predominant interest of the PTC, however, and in accordance with N.J.A.C. 1:1-17.1, I must consolidate the cases. It is so **ORDERED**.

which was more than twenty 20% percent of the total number of sessions there would have been for that class. The Academy requires recruits to fully participate in at least eighty (80%) percent of the sessions. A failure to perform in twenty of the sessions, even early in the class, mathematically precluded her from completing eighty (80%) percent and, therefore, mandated a dismissal from the Academy.

Specifically, the recruits are required to maintain a running pace during the running sessions, or they receive a Non-Participation in Physical Training Notice (Notice). They can fall back from the lead group but the failure to keep a non-walking pace is determined by an instructor walking behind or alongside the recruit. Detective Hanewald stated that if they cannot maintain a walking pace, they are given a Notice for that particular training session. Recruits will also receive a Notice if they stop during a run. In addition, there are calisthenics requirements and drills for which the recruits are coached on each aspect. If a recruit fails in any one component of the conditioning session, they receive a Notice for that entire morning. Damon received her twelfth Notice on August 17, 2015, and was counseled that she would be dismissed if she accumulated eight more. They do not allow a recruit to remain in the Academy if there is no chance of meeting the eighty (80%) percent requirement. When petitioner reached the twenty-notice mark, she was dismissed even though three months remained to the class.

Detective Hanewald testified that recruits are told during orientation what is required of them. Detective Hanewald was present during all or most of the physical conditioning sessions during this class and he did recall petitioner. He testified that she had a lot of difficulty with the runs as well as the exercises. Detective Hanewald explained that the Academy trainers documented through the Notices and videotapes of training sessions that petitioner failed to fully participate in scheduled activities on the following days. He identified the memos which were prepared, indicating petitioner had failed to fully participate on twenty separate occasions. (R-1 through R-20.)

1. July 28, 2015

2. July 29, 2015

3. July 30, 2015
4. August 3, 2015
5. August 5, 2015
6. August 7, 2015
7. August 10, 2015
8. August 11, 2015
9. August 12, 2015
10. August 13, 2015
11. August 14, 2015
12. August 17, 2015
13. August 18, 2015
14. August 19, 2015
15. August 20, 2015
16. August 21, 2015
17. August 24, 2015
18. August 25, 2015
19. August 26, 2015
20. August 27, 2015

I have reviewed these Notices and the corresponding video recordings.

On three occasions, petitioner was given Notices because she fell back to a walking pace, even though she tried to pump her arms to make herself look like she was running. On seven occasions, she failed at the running portion as well as some or all of the calisthenics or obstacle course portions. On ten occasions, petitioner was not feeling well and/or was not medically cleared to participate.



Detective Hanewald stated that the standards applied by all instructors are uniformly applied and objectively defined, albeit not with a minimum pace standard. He further explained that there were no excused absences due to illness or injury and each of those days would count as a non-participation. He considered this class to be unusually un-fit and remarked that nine of the recruits washed out.

On cross-examination, Detective Hanewald maintained that the requirements of the Academy with respect to physical conditioning are not dependent upon the type of position the recruit might fulfill once back at their local department. It is entirely irrelevant to petitioner's participation in the Academy that she may fill a sedentary position back at the Sheriff's Office. Furthermore, she was required to have been medically cleared before commencing the Academy class. The instructors guide the recruits and set the bar low at the beginning. They gradually build up the conditioning aspects but the program is not set up to accommodate those who are not physically fit to begin with.

I **FIND** based on these documented dates and the Detective's testimony that petitioner failed to fully participate in twenty sessions at the Academy.

### LEGAL DISCUSSION

#### Petitioner's Dismissal from the Academy

Academies are given the power to dismiss or otherwise discipline recruits by the Police Training Act, which mandates successful completion of a basic training course at a school approved by the Police Training Commission as a prerequisite to a permanent appointment as a parole officer. N.J.S.A. 52:17B-67, -68. The PTC is vested with the power, responsibility, and duty to prescribe standards for approval of police training schools and the minimum qualifications for their instructors, and "to prescribe the curriculum, the minimum courses of study, attendance requirements, equipment and facilities, and standards of operation for such schools." N.J.S.A. 52:17B-71(a)-(d). The PTC is also responsible for certifying correction officers that have satisfactorily completed training programs. N.J.S.A. 52:17B-71(e).

The Academy is an approved police training facility and is governed by the provisions of N.J.S.A. 52:17B-66, et seq. As such, it is vested with power, responsibility and duty --

[t]o issue and enforce rules consistent with Commission requirements which govern the conduct of trainees and the use of the school's facilities. Each trainee shall be furnished a printed copy of the rules at the commencement of the course . . . . These rules shall explicitly state which rule(s), the violation of which, may result in the trainee's suspension or dismissal from school.

[N.J.A.C. 13:1-7.2(a)(3).]

N.J.A.C. 13:1-7.2(a)(8) vests the Academy with the power

[t]o dismiss a trainee who has demonstrated that he or she will be ineligible for Commission certification, for unacceptable behavior or for other good cause.

As set forth in Greenwood v. State Police Training Center, 127 N.J. Super. 500, 510 (1992):

[A]lthough the good-cause standard eludes precise definition, courts ordinarily uphold findings of good cause when the employee's performance is deficient or when the employee creates a risk of harm to himself or herself or others.

Good cause refers to the conduct of an employee that would justify dismissal. The example of such conduct noted by the Court in Greenwood was deficient performance. The Greenwood Court noted that courts have found good cause for termination in cases in which the discharge is prompted by a legitimate business concern.

The issues in this matter are whether petitioner failed to fully participate in twenty training sessions; and whether this failure constituted "good cause" for her dismissal from the Academy. As outlined in the PTC's Physical Conditioning Training Manual, the physical-conditioning exercise program must meet the following requirements:



1. Each exercise session, including the warm-up and cool-down phases, shall not exceed 70 minutes in length. (An additional 10 minutes, however, will be allowed for more highly fit trainees undergoing exercise. Also, additional time is permitted for trainees who require rest during the performance of speed and agility exercises . . . .)
2. Exercise sessions shall be conducted at least three days per week. Depending on local needs and resources, schools may increase the number of one-hour sessions up to five per week, but no more than one per day. A five-day exercise program is recommended.
3. A minimum of 40 physical conditioning sessions shall be scheduled in a five-day program, and 20 physical conditioning sessions shall be scheduled in a three-day program. In addition, a trainee must fully participate in eighty-percent of the scheduled physical training sessions, and meet the standard which produces the higher number of sessions based upon the course schedule. Failure to fully participate in eighty-percent of the total physical conditioning sessions shall be grounds for dismissal from the police academy.
4. Each exercise session shall consist of a warm-up phase, conditioning phase, and cool-down phase.
5. The conditioning phase shall consist of flexibility exercises, aerobic activities, calisthenics and strength exercises, and, on specified days, exercises geared to enhance speed and agility.
6. Academies may utilize training sites which are approved by the [PTC]. Whether outdoor, or indoor, approved sites may be utilized for physical fitness training . . . . . When an academy utilizes a site located outside of their own academy property, the academy staff shall note this on the final course schedule.
7. Full participation shall be defined as participating continuously and without stopping in a twenty-minute run. Recruits shall demonstrate to staff their ability to engage in aerobic training running continuously for this period of time. Full participation in calisthenics and strength exercises shall be approved by the evaluation of physical training staff at each academy, on a recruit-by-recruit basis.

[P-1 (emphasis added).]

While petitioner argues that the "run" standard is too subjective because it is not based on a set metric such as pace per mile, it is clear from the findings above that petitioner's slow jog/walk was viewed as generously as possible by the instructors, who are trained to judge compliance. Moreover, petitioner also failed to fully participate in the callisthenic and obstacle portions of the physical fitness programs, and was also ill or injured on many occasions. There were only three dates when petitioner was judged to not have fully participated on the basis of just the running portion. In each instance of under-performance, it was clear on the videotapes that petitioner was not accomplishing the established exercise, whether it was running, push-ups, or scaling a wall. Here, petitioner was dismissed from the Academy due to her failure to fully participate in eighty (80%) percent of the required trainings sessions. Petitioner was advised of what was expected of her.

Having found that Damon failed to successfully complete twenty of the sessions just between July 28 and August 27, 2015, I **CONCLUDE** that she was dismissed from the Academy for "good cause." I **CONCLUDE** that respondent properly concluded that petitioner failed to meet the universal standards of the physical conditioning aspect of the PTC. Thus, it properly dismissed her from this class for good cause.

### **Petitioner's Termination of Employment**

The Civil Service Act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. See N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined are whether the employee is guilty of the charges brought against her and, if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

An appointing authority may discipline an employee for, among other causes, an inability to perform duties. N.J.A.C. 4A:2-2.3(a)(3). The Department bears the burden



of proving the charges against petitioner by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). In this matter, the Department terminated petitioner's employment predicated on her inability to perform duties, stemming from her failure to successfully complete the training course at the Academy.

The statutory scheme governing police training dictates that successful completion of a police training course at a PTC-approved school is a mandatory prerequisite to a permanent appointment as a police officer. N.J.S.A. 52:17B-68 instructs that "every municipality and county shall require that no person shall hereafter be given or accept a permanent appointment as a police officer unless such person has successfully completed a police training course at an approved school." In other words, the training laws apply to all police officers and establish a classification of temporary or probationary employment for police officers until successful completion of the mandatory program of training. Borger v. Borough of Stone Harbor, 178 N.J. Super. 296, 301-02 (Ch. Div. 1981); see N.J.S.A. 52:17B-68, -69.

Pursuant to N.J.S.A. 52:17B-68, a mandatory prerequisite to a permanent appointment as a police officer is successful completion of a police-training course at a school approved by the PTC. The failure to complete this training is clearly grounds for termination of employment. Simply put, as a result of petitioner's dismissal from the Academy, petitioner could not perform the essential duties of her position. Accordingly, I **CONCLUDE**, as a matter of law and on the basis of the findings of fact and conclusions of law set forth above, that the Union County Sheriff's Office's determination to terminate petitioner's employment for failure to complete the Academy, a sine qua non to a permanent appointment, was within the scope of its authority and cannot be said to be arbitrary, capricious or unreasonable under the circumstances. It is up to her former employer to determine if she should be allowed to re-enroll in an Academy. Unless and until it does, petitioner cannot fulfill the requirements of her position as a Sheriff's Officer.



**ORDER**

For the reasons stated above, it is hereby **ORDERED** that the action of respondent John H. Stamler Police Academy of dismissing petitioner from the basic training course for good cause is **AFFIRMED**.

I hereby **FILE** my initial decision with the **POLICE TRAINING COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **POLICE TRAINING COMMISSION**, which by law is authorized to make a final decision in this matter. If the Police Training 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.

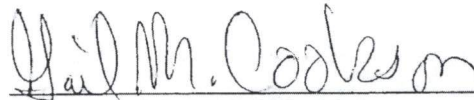
Pursuant to N.J.A.C. 1:1-17.8, upon rendering its final decision the **POLICE TRAINING COMMISSION** shall forward the record, including this recommended decision and its final decision, to the **CIVIL SERVICE COMMISSION**, which may subsequently render a final decision on any remaining issues and consider any specific remedies that may be within its statutory grant of authority.

Upon transmitting the record, the **POLICE TRAINING COMMISSION** shall, pursuant to N.J.A.C. 1:1-17.8(c), request an extension to permit the rendering of a final decision by the **CIVIL SERVICE COMMISSION** within forty-five days of the predominant-agency decision. If the **CIVIL SERVICE COMMISSION** does not render a final decision within the extended time, this recommended decision on the remaining issues and remedies shall become the final decision.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DEPUTY ATTORNEY GENERAL, POLICE TRAINING COMMISSION, Richard J. Hughes Justice Complex, PO Box 085, Trenton, New Jersey 08625-0085**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 16, 2017

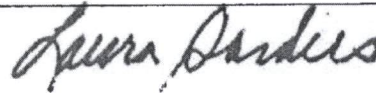
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DATE



\_\_\_\_\_  
GAIL M. COOKSON, ALJ

Date Received at Agency:

**POLICE TRAINING COMMISSION**



\_\_\_\_\_  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

Mailed to Parties:

MAR 20 2017

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

P-1 PTC's Physical Conditioning Training Manual

For Respondent:

Det. Edward Hanewald

EXHIBITS IN EVIDENCE

For Petitioner:

None.

For Respondent:

- R-1 Nonparticipation notice for July 28, 2015
- R-2 Nonparticipation notice for July 29, 2015
- R-3 Nonparticipation notice for July 30, 2015
- R-4 Nonparticipation notice for August 3, 2015
- R-5 Nonparticipation notice for August 5, 2015
- R-6 Nonparticipation notice for August 7, 2015
- R-7 Nonparticipation notice for August 10, 2015
- R-8 Nonparticipation notice for August 11, 2015
- R-9 Nonparticipation notice for August 12, 2015
- R-10 Nonparticipation notice for August 13, 2015
- R-11 Nonparticipation notice for August 14, 2015
- R-12 Nonparticipation notice for August 17, 2015
- R-13 Nonparticipation notice for August 18, 2015
- R-14 Nonparticipation notice for August 19, 2015



OAL DKT. NOS. PTC 16570-15 and CSV 19739-15

R-15 Nonparticipation notice for August 20, 2015

R-16 Nonparticipation notice for August 21, 2015

R-17 Nonparticipation notice for August 24, 2015

R-18 Nonparticipation notice for August 25, 2015

R-18 Nonparticipation notice for August 26, 2015

R-19 Nonparticipation notice for August 27, 2015

R-20 Counseling Notice dated August 17, 2015

R-21 Video disk for August 3, 2015

R-22 Video disk for August 5, 2015

R-23 Video disk for August 10, 2015

R-24 Video disk for August 19, 2015

R-25 Video disk for August 20, 2015

R-26 Video disk for August 21, 2015



CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lieutenant Governor*

*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE  
POLICE TRAINING COMMISSION  
PO Box 085  
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CHRISTOPHER S. PORRINO  
*Attorney General*

ELIE HONIG  
*Director*

YESMEAN DAMON,

Petitioner,

v.

JOHN H. STAMLER POLICE ACADEMY,

Respondent.

FINAL DECISION

OAL Docket No. PTC 16570-15

OAL Docket No. CSV 19739-15

(CONSOLIDATED)

The Police Training Commission received an Initial Decision in this matter on March 20, 2017. This Final Decision was rendered within the time limits prescribed by N.J.A.C. 1:1-18.6 and N.J.A.C. 1:1-18.8.

Petitioner Yesmean Damon was enrolled in a basic training course at the John H. Stamler Police Academy. Petitioner was dismissed from the basic course on August 27, 2015 for failure to meet the minimum standards of the physical conditioning component of the basic course. Damon filed an appeal with the Police Training Commission, which was referred to the Office of Administrative Law.

A plenary hearing on the merits of petitioner's appeal was conducted by Administrative Law Judge Gail M. Cookson, ALJ on January 4, 2017. At issue was whether petitioner was properly dismissed from the basic training course. The record was closed on February 10, 2017. On March 16, 2017, Judge Cookson issued a thirteen page Initial Opinion which reviewed and weighed all of the evidence in the case. Judge Cookson concluded that the dismissal of petitioner Yesmean Damon from the John H. Stamler Police Academy was warranted and Affirmed the decision to dismiss her from the Academy.



On Wednesday, June 7, 2017, at a regular meeting of the Police Training Commission, the commissioners reviewed the Initial Decision rendered by Judge Cookson. The commissioners voted to **ADOPT** the Initial Decision as the **FINAL DECISION**.

POLICE TRAINING COMMISSION

By: 

Joseph F. Walsh - Designated Chairman

