

and Regulatory Affairs received the petitioner's appeal as a request for interim relief and allowed the parties to submit additional information.

In response, the appointing authority, represented by Daniel W. Sexton, Assistant County Counsel, states that since the allegations against the petitioner set forth criminal conduct, the matter has been sent to the Hudson County Prosecutor (Prosecutor) for review. It states that the Prosecutor has not yet indicated how the matter will be handled. The appointing authority maintains that it cannot move forward until the Prosecutor has completed its review. It states that if the Prosecutor ends up referring the matter back for administrative handling, the Hearing Officer will issue a report "with [sic] a hearing," as the petitioner has waived her departmental hearing, and will then issue an FNDA.

CONCLUSION

It must initially be emphasized that the role of the Commission at this stage in the proceedings is not to adjudicate the merits of the administrative charges. It is also unnecessary to discuss in detail whether the petitioner's immediate suspension was valid. It is sufficient to note that *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. Here, the petitioner's immediate suspension was necessary to maintain safety and the effective direction of the correctional facility. The petitioner's alleged conduct in fraternizing with inmates constitutes a serious breach of rules and has the potential to subvert prison security and discipline. Moreover, the petitioner does not contest the validity of her immediate suspension. As such, the immediate suspension was justified.

However, at issue is whether the appointing authority could "indefinitely" suspend the petitioner, pending the Prosecutor's review of this matter and when no criminal charges had been brought. The Commission finds that it could not. *N.J.A.C.* 4A:2-2.7(a)2 provides that an employee may be indefinitely suspended beyond six months where the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. *See also N.J.A.C.* 4A:2-2.5(a)2. There are no grounds under Civil Service regulations to suspend an employee indefinitely without a criminal charge pending. Since the petitioner was not criminally charged, the appointing authority could not indefinitely suspend her. The Commission is not persuaded by the appointing authority's contention that it cannot move forward until the Prosecutor has completed its review. In this regard, 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. Proof of criminal culpability is not required.

Nevertheless, the Commission takes note that as the petitioner has been suspended since February 7, 2019 and waived her departmental hearing, she has already been subjected to major discipline. *See N.J.A.C. 4A:2-2.2(a)3*. As such, it is appropriate to refer this matter to the OAL for a hearing on the administrative charges. The actual disciplinary penalty may be determined there. Further, it is noted that if the petitioner is later criminally charged, the appointing authority may then bring forth those charges via a new PNDA. Finally, the Commission cautions the appointing authority to adhere to the disciplinary regulations in the future. Its failure to do so may subject it to fines or penalties pursuant to *N.J.A.C. 4A:10-1.1*.

ORDER

Therefore, the indefinite suspension imposed by the appointing authority is not upheld. Further, the petitioner's immediate suspension is upheld. Finally, it is ordered that this matter be transmitted to the Office of Administrative Law for a hearing as set forth above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF APRIL, 2019



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