

**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of John Arrington,  
Department of Corrections

CSC Docket No. 2020-2549

Interim Relief

**ISSUED: JUNE 19, 2020 (SLK)**

John Arrington, a Senior Correctional Police Officer at Edna Mahan Correctional Facility for Women, Department of Corrections, represented by Luretha Stribling, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his pending disciplinary action.

By way of background, Arrington was served with a Preliminary Notice of Disciplinary Action (PNDA) on April 6, 2020, charging him with conduct unbecoming a public employee and other sufficient cause as well as violating certain departmental rules and regulations. The charges specified that an investigation received on March 30, 2020, revealed that Arrington admitted that he used his cell phone while on his assigned post at the Edna Mahan Correction Facility for Women between October 2019 and January 2020. Further, Arrington admitted that he was aware of the department’s policy prohibiting the use of cell phones while on duty.

In his request, Arrington presents that he is a 20-year employee and asserts that he has an unblemished record and had not previously been subjected to disciplinary action. He states that the PNDA indicates that on January 3, 2020, a Confidential Informant (CI) informed the appointing authority that he used his cell phone at work. On January 16, 2020, the appointing authority sent Arrington’s cell phone company a subpoena to obtain his cell phone records. Thereafter, the records were received on April 6, 2020 and he was served with the PNDA on that same date seeking his removal.

Arrington states that the investigation initiated on January 3, 2020 as this was the date that the CI informed the appointing authority of the alleged violations.

He presents that under *N.J.S.A. 40A:14-147*, Police Officers are to have a departmental hearing no less than 10 days from the complaint and no more than 30 days from the date of service of the complaint. Further, a complaint charging a violation of internal rules and regulations shall be filed no longer than the 45th day on which the person filing the complaint obtained sufficient information to file such a complaint. However, the 45-day limit does not apply if the investigation into violations of internal rules and regulations includes a concurrent criminal investigation. Instead, the 45-day time limit starts after the disposition of the criminal investigation. Moreover, a failure to comply with this statute requires that the complaint be dismissed. Arrington asserts that since the investigation started on January 3, 2020, under *N.J.S.A. 40A:14-147*, he needed to be served the PNDA within 45 days, which was February 17, 2020. However, as the PNDA was served 93 days after the investigation was initiated, he argues that the complaint needs to be dismissed.

In response, the appointing authority, represented by Sean P. Havern, Deputy Attorney General, states that on April 2, 2020<sup>1</sup>, Arrington received the PNDA seeking his removal based on charges stemming from an investigation received by the appointing authority on March 30, 2020. In that investigation, Arrington admitted to using his cell phone during his shift at his assigned post and admitted that he understood this was prohibited conduct. In response to the PNDA, Arrington requested a departmental hearing. As of this submission, the departmental hearing has not been completed as he filed the present request for interim relief.

The appointing authority argues that Arrington does not have a strong likelihood of success on the merits as he has not made any arguments in that regard and admitted to using his cell phone during the investigation. Additionally, he is not suffering irreparable harm if the disciplinary process were to continue because if he is successful on appeal, he will receive back pay. Moreover, it is the appointing authority who is to suffer substantial injury if his request is granted as his actions interfere with its mandate to provide a safe and orderly correctional facility. Finally, it argues that it is in the public's best interest to remove Arrington from his position until he can prevail on the merits.

Concerning his immediate suspension, the appointing authority asserts that Arrington's use of his cell phone while on duty distracted from his duties and put others within the correctional facility at risk. Therefore, it argues that his immediate suspension was warranted. With respect to the 45-day rule, the appointing authority states that the time period does not start until the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. It presents that although the appointing authority initially became aware of Arrington's conduct on January 3, 2020, the investigation to confirm the report and interview all subjects involved was not concluded until March 30, 2020. Therefore,

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<sup>1</sup> While the PNDA is dated April 2, 2020, the date of personal service on the PNDA is blank,

the serving of the PNDA to Arrington on April 2, 2020 was well within the required time frame. Regardless, it contends that the 45-day rule does not apply because it only applies to violations of internal rules and regulations and Arrington has been charged with violations of Civil Service regulations in addition to internal rule violations.

## CONCLUSION

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;  
and
4. The public interest.

*N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 provides that an employee may be suspended immediately and prior to a hearing 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.

Initially, Arrington cites *N.J.S.A.* 40A:14-147, which provides, in pertinent part, that a departmental hearing for Police Officer who has been issued disciplinary charges shall have a departmental hearing not less than 10 nor more than 30 days from date of service of the complaint. A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint. However, this statute only applies to **municipal** Police Officers.

Nevertheless, *N.J.S.A.* 30:4-3.11a provides, in pertinent part, that a State Correctional Police Officer shall not be disciplined for a violation of the internal rules and regulations, unless a complaint is filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. A failure to comply with this section shall require a dismissal of the complaint.

Given the nature of the charges and the standards of *N.J.A.C.* 4A:2-2.5(a)1, there was a basis for an immediate suspension. Further, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether the petitioner's

actions constituted wrongful conduct warranting discipline. The Commission will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Likewise, the Commission cannot make a determination on whether Arrington's ultimate removal is appropriate without the benefit of a full hearing record before it. Since he has not conclusively demonstrated that he will succeed in having the underlying charges dismissed as there are material issues of fact present in the case, he has not shown a clear likelihood of success on the merits. Further, Arrington is not in danger of suffering immediate or irreparable harm or substantial injury if his request is not granted as he will be entitled to a departmental hearing and, subsequently, a hearing at the Office of Administrative Law, if necessary. Moreover, his current harm is monetary in nature which can be fully remedied by an award of back pay should he be successful at any stage of the disciplinary process.

Concerning the alleged procedural violations by the appointing authority, the record indicates that on March 30, 2020, the appointing authority completed its investigation. Therefore, as Arrington acknowledges that he was served the PNDA on April 6, 2020, his service was well within 45 days from when the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. Further, it is noted that the 45-day rule does not apply to the charges filed under Civil Service regulations. *See e.g., Hendricks v. Venettone*, Docket No. A-1245-91T5 (App. Div. October 29, 1992); *In the Matter of Bruce McGarvey v. Township of Moorestown*, Docket No. A-684-98T1 (App. Div. June 22, 2000). *See e.g., McElwee V. Borough of Fieldsboro*, 400 N.J. Super. 388 (App. Div. 2008). *See also, In the Matter of Christopher Mercardo* (CSC, decided April 18, 2012); *In the Matter of Claudy Augustin* (MSB, decided April 23, 2008). *See also, In the Matter of James Cassidy* (MSB, decided August 12, 2003); *In the Matter of Steven Palamara* (MSB, decided April 10, 2002). Accordingly, Arrington has failed to show that he is entitled to interim relief.

### **ORDER**

Therefore, it is ordered that that this petition 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  
17<sup>TH</sup> DAY OF JUNE, 2020

*Deirdre' L. Webster Cobb*

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