



STATE OF NEW JERSEY

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

In the Matter of Shante Curry, Essex
County

CSC Docket No. 2021-6

Requests for Interim Relief

ISSUED: (SLK)

Shante Curry, a County Correctional Police Officer with Essex County, represented by Luretha Stribling, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding her pending disciplinary action.

By way of background, Curry was served with a Preliminary Notice of Disciplinary Action (PNDA) on April 13, 2020, charging her with conduct unbecoming a public employee and other sufficient cause as well as violating certain departmental rules and regulations. The charges specified that on February 27, 2020, Curry’s mother called at approximately 2150 hours to indicate that her daughter would be out using Sick – Family and Medical Leave Act (FMLA) time. Her mother indicated that Curry could not call herself as she was on a flight and had asked her to call on her daughter’s behalf. The appointing authority asserted that Curry’s use of FMLA time was fraudulent as she was on an airplane returning from vacation. Additionally, it indicated that the late reporting of her absence, after her shift already started, and her being on an airplane returning from vacation, violated department rules and regulations. Accordingly, the appointing authority sought Curry’s removal from employment.

In her request, Curry asserts that there has been no misuse of FMLA time, and she argues that the PNDA was served beyond the 45-day time proscribed in *N.J.S.A. 40A:14-147*. She explains that on February 27, 2020, she was experiencing poor phone service. As a result, she asked her mother to call to inform that she would be calling out sick. Curry explains that her mother said that she will be using “FLSA”

and the Officer who took the call said do you mean FMLA and she said “yes.” The Officer advised Curry’s mother that Curry was going to get into trouble for calling out late for work and her mother responded that her daughter was going to use compensation time. Thereafter, Internal Affairs contacted Curry requesting her flight and itinerary information. She indicated that she had traveled to New Orleans. On April 13, 2020, Curry presents that she was served a PNDA concerning the February 27, 2020 incident.

Curry states that under *N.J.S.A. 40A:14-147*, a Police Officer shall be charged with a violation of internal rules and regulations no later than 45 days after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. Further, a failure to comply with said provisions requires a dismissal of the complaint. She argues that the 45-day time frame began on February 27, 2020, as the Officer who took the phone call from her mother indicated that Curry was going to be in trouble for calling out late. Therefore, she believes that she needed to be served the PNDA no later than April 11, 2020 and the appointing authority’s failure to serve her by that date requires that the complaint be dismissed. Additionally, Curry asserts that it was the Officer who took the phone call from her mother who suggested that she use FMLA time and this was not volunteered by her mother who did not have an understanding as to what this meant.

In response, the appointing authority, represented by Jill Caffrey, Assistant County Counsel, asserts that Curry does not present a clear likelihood of success on the merits. It submits an Internal Affairs’ Investigation Report which indicates that Curry did not comply with the investigation as she did not supply her trip itinerary as requested until March 25, 2020, and the investigation did not conclude until April 2, 2020. Therefore, the appointing authority argues that the PNDA was served well within 45 days from the time it had sufficient information to file the charges. Additionally, it states that under *N.J.S.A. 30:8-18.2*, the 45-day rule only applies to violations of internal rules and does not apply to violations of Civil Service regulations. Therefore, even if the internal rules violations were dismissed, the conduct unbecoming a public employee charge would still remain. Concerning Curry’s argument that she did not misuse FMLA time, the appointing authority asserts that this is a dispute of material facts which needs to be determined at a disciplinary hearing where the parties can present witnesses and exhibits. Further, it notes that, if the charges are upheld after the departmental hearing, Curry has the right to appeal her discipline to the Civil Service Commission (Commission).

Moreover, it contends that Curry is not in danger of immediate or irreparable harm if her request is not granted as monetary damages are not considered irreparable and she is entitled to a departmental hearing, and if necessary, a hearing before an Administrative Law Judge. Additionally, the appointing authority asserts that since Curry is alleged to have committed FMLA fraud, it is the appointing

authority who will be substantially injured if this matter is dismissed prior to conducting a departmental hearing. Similarly, as a County Correctional Police Officer is a law enforcement officer who is held to a higher standard, it argues that it is in the public interest to allow the appointing authority to pursue its allegation that Curry committed FMLA fraud.

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.

Initially, Curry cites *N.J.S.A.* 40A:14-147. However, this statute only applies to **municipal** Police Officers. Nevertheless, *N.J.S.A.* 30:8-18.2 provides, in pertinent part, that a County 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.

Initially, 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 or not 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 Curry's ultimate removal is appropriate without the benefit of a full hearing record before it. Since she has not conclusively demonstrated that she will succeed in having the underlying charges dismissed as there are material issues of fact present in the case, she has not shown a clear likelihood of success on the merits. Further, Curry is not in danger of suffering immediate or irreparable harm or substantial injury if her request is not granted as she will be entitled to a departmental hearing and, subsequently, a hearing at the Office of Administrative Law, if necessary.

Concerning the alleged procedural violations by the appointing authority, a review of the appointing authority's investigation report indicates that a potential FMLA violation was referred to an Internal Affairs' investigator on March 4, 2020.

Thereafter, the investigation commenced with a review of phone records and sick call forms on March 4 and March 5, 2020. On March 16, 17 and 19, 2020, the investigator reached out to Curry to request her trip itinerary. On March 19, 2020, Curry indicated that she was trying to obtain her trip itinerary, and on March 25, 2020, her union representatives provided her flight itinerary. Subsequently, the investigator completed his report on April 2, 2020, indicating that the investigation sustained allegations that Curry violated departmental rules and regulations. Accordingly, as the investigation did not conclude until April 2, 2020, the appointing authority's issuing of the PNDA on April 13, 2020 was well within 45 days after the appointing authority had sufficient information to file the matter upon which the complaint is based. Accordingly, the Curry has failed to show that she is entitled to interim relief.

ORDER

Therefore, it is ordered 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 19TH DAY OF AUGUST 2020

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