



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>ST</sup> DAY OF DECEMBER, 2021



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris 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**

OAL DKT. NO. CSV 1000-21

AGENCY DKT. NO. 2021-866

**IN THE MATTER OF MARY PORTER,  
MIDDLESEX CO., SHERIFF'S DEPT.**

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**Mary Porter, pro se**

**Benjamin D. Leibowitz, Esq.** Senior Deputy County Counsel, for Middlesex  
County Counsel, Thomas F. Kelso, attorney, for respondent

Record Closed: September 22, 2021

Decided: November 4, 2021

**BEFORE JOSEPH A. ASCIONE, ALJ:**

**STATEMENT OF THE CASE**

Mary Porter (Porter) appeals her October 7, 2020, termination by the Middlesex County Sheriff's Department (MCSD) for her failure to meet the conditions of her employment, specifically, the failure to complete the Mercer County Police Academy class. The MCSD charged Porter with Inability to Perform Duties, N.J.A.C. 4A:2-2.3 (a)3, and Other Sufficient Cause, N.J.A.C. 4A:2-2.3(a)12. Porter disputes the charges and maintains she was improperly compelled to perform a physical activity (running) on astroturf in dress shoes. Petitioner broke her ankle on September 22, 2020, during an

exercise while attending the Police Academy. Her doctor found her unfit for work on September 24, 2020, and did not return her to full duty until January 22, 2021.

### PROCEDURAL HISTORY

The MCSD issued the Preliminary Notice of Disciplinary Action (PNDA), on October 7, 2020, and the Final Notice of Disciplinary Action (FNDA), on November 16, 2020, respectively, sustaining charges of violation of N.J.A.C. 4A:2-3(a)(3), Inability to Perform Duties and N.J.A.C. 4A:2-3(a)(12), Other Sufficient Cause. Specific charges included the dismissal from the Mercer County Police Academy for failure to attend more than ten (10%) of the academic requirements; and the July 6, 2020, conditional offer of employment requiring completion of an approved Police Training Academy (PTA).

On October 23, 2020, a formal hearing occurred which resulted in the issuance of the FNDA on November 16, 2020, terminating Porter effective October 7, 2020. Proof of service on Porter occurred on November 20, 2020. Porter filed a notice of appeal, the Civil Service Commission noted the postmark as December 2, 2020, and the CSC confirmed receipt of the filing fee, the CSC transmitted the matter on January 27, 2021, and it was filed with the Office of Administrative Law (OAL) on February 4, 2021, by the Civil Service Commission for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A related matter never before the OAL dealt with the appeal of the dismissal from the PTA, a final decision of that appeal resulted in an affirmance of the dismissal by the Police Training Commission on April 23, 2021.

Respondent moved for summary disposition on May 12, 2021, petitioner signed but did not affirm or acknowledge a response explaining the circumstances of the dismissal from the Police Academy. The appeal from the Police Academy dismissal resulted in an affirmance of the dismissal. Respondent moved for dismissal of the within matter based upon the timeliness of the appeal and the affirmance of the Police Academy dismissal, as well as her failure to meet the conditions of her employment engagement.

**FACTUAL DISCUSSION**

There are two violations charged here; inability to perform duties N.J.A.C. 4A:2-2.3(a)3, and other sufficient cause N.J.A.C. 4A:2-2.3(a)12. At the time of the violation, petitioner was medically unfit for duty.

**FINDINGS OF FACT**

As a result of the undisputed documentary evidence, I **FIND** the following **FACTS**:

1. Petitioner began employment with the MCSD under a conditional agreement of employment requiring the completion of Police Academy training.
2. Due to an injury at the Mercer County Police Academy petitioner failed to complete her necessary attendance. The Police Academy dismissed the petitioner and her appeal of the dismissal was sustained on appeal.
3. The MCSD upon learning of the dismissal brought these disciplinary charges seeking to remove petitioner as a result of her failure to comply with the condition of her employment. Specifically, completion of the Police Academy training program.
4. The reasons for the failure to complete the Police Academy training program is not before this tribunal, and is final.
5. Petitioner has failed to meet the requirements of her conditional employment contract.

### LEGAL ANALYSIS AND CONCLUSION

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). Such an employee may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a).

An appeal to the Civil Service Commission requires the OAL to conduct a de novo hearing to determine the employee's guilt or innocence, as well as the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987).

The burden of persuasion falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The appointing authority must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

MCSO has shown by a preponderance of the evidence that appellant violated N.J.A.C. 4A:2-3(a)(3), Failure to Perform Duties, and, N.J.A.C. 4A:2-3(a)(12), Other Sufficient Cause. Petitioner acknowledges she did not complete the Police Academy training, she attributes her injury to the actions of the Police Academy, however that appeal has been rejected by the appropriate authority.

Respondent also raises the issue of this tribunal's jurisdiction as it maintained the appeal had not been timely filed. The tribunal's review of the record supports that the petitioner filed her appeal timely and the issue of the jurisdiction is rejected.

I **CONCLUDE** that Porter did violate N.J.A.C. 4A:2-3(a)(3), Failure to Perform Duties, and N.J.A.C. 4A:2-3(a)(12), Other Sufficient Cause.

### **ORDER**

For the reasons stated above, I hereby **ORDER** that the removal imposed upon Porter by MCSO is **AFFIRMED**.

I further **ORDER** that Porter's petition be **DENIED**, and the petition **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service 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.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 8, 2021

DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency:

11/8/21

Date Mailed to Parties:

11/8/21

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**APPENDIX**  
**LIST OF WITNESSES**

**For Appellant:**

None

**For Respondent:**

None

**LIST OF EXHIBITS**

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**For Appellant:**

P-1 Opposition Correspondence of June 21, 2021 with attachments

**For Respondent:**

R-1 Moving Papers