

A-4



STATE OF NEW JERSEY

In the Matter of Tyrone Moore
City of Newark
Police Department

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

CSC DKT. NO. 2013-3343
OAL DKT. NO. CSV 08368-13

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ISSUED: March 4, 2015 PM

The appeal of Tyrone Moore, a Police Officer with the City of Newark, Police Department, six month suspension, on charges, was heard by Administrative Law Judge James A. Geraghty, who rendered his initial decision on January 30, 2015. Exceptions were filed on behalf of the appellant.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on March 4, 2015 accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

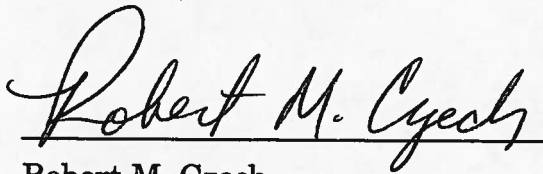
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Tyrone Moore.

Re: Tyrone Moore

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
MARCH 4, 2015

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 08368-13

AGENCY DKT. NO. 2013-3343

**IN THE MATTER OF TYRONE MOORE,
CITY OF NEWARK POLICE DEPARTMENT.**

Anthony Pope, Esq., for appellant Tyrone Moore (The Anthony Pope Law Firm,
attorneys)

Kenneth G. Calhoun, Assistant Corporation Counsel, for respondent City of
Newark (Karen Brown, Corporation Counsel)

Record Closed: September 17, 2014

Decided: January 30, 2015

BEFORE **JAMES A. GERAGHTY, ALJ**:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant police officer Tyrone Moore contests the City of Newark Police Department (NPD) Final Notice of Disciplinary Action (FNDA) dated May 31, 2013, imposing a six-month suspension from June 1, 2013, through November 29, 2013, for chronic inefficiency or incompetency by failing to perform duties contrary to New Jersey Civil Service Rule N.J.A.C. 4A:2-2.3(a)(4), and thirteen counts of disobedience of orders contrary to NPD Rules and Regulations Chapter 18:14 by failure to submit

doctor's notes after returning to work after having booked off. (R-11.) He requested a hearing, and the matter was transmitted to and filed with the Office of Administrative Law (OAL) on June 14, 2013. The hearing was held on August 7, 2014, and the record closed on September 17, 2014, after the OAL received post-hearing submissions. The Acting Director and Chief Administrative Law Judge extended the time for the issuance of this Initial Decision to December 18, 2014, and then to February 2, 2015.

STATEMENT OF THE ISSUE

The issue is whether the NPD has proven by a preponderance of the credible evidence that the appellant is guilty as charged and that a six-month suspension is sustainable.

FINDINGS OF FACT

Based on the testimony and documents of record, I **FIND**:

By Preliminary Notice of Disciplinary Action (PNDA) dated November 13, 2012, the NPD through the acting police director notified appellant that he would be indefinitely suspended on charges of chronic inefficiency or incompetency as well as failure to perform duties by abusing sick leave from April 19, 2012, through October 19, 2012, for "booking off" twenty-two days on thirteen occasions plus extending his days off by calling out on the first and last days of his tours of duty. Also, he was charged with disobedience of orders by failing to produce a written medical certification from his attending doctor upon returning to duty after booking off on thirteen occasions during that time while on medical certification contrary to General Order 94-4, requiring officers to produce a written medical certification when returning to duty. (R-1; R-2; R-3.) Medical certification is a list of officers who have been found to have exhibited a pattern of excessive sick-time abuse. They are required to submit a doctor's note verifying their illness or injury.

Moore testified on his own behalf. He contended that most of his absences were due to a shoulder injury sustained in the line of duty on March 4, 2012. He admitted to having been on medical certification since 2000. He adduced no evidence involving how long he was out on medical leave before returning, presumably, in April 2012. Most of his alleged "complications" involved episodes of pain. However, he never claimed to have been treated for pain management. Also, most of his complaints reflected in the belatedly submitted Concentra Medical Center reports involved a variety of subjective conditions difficult to corroborate. His testimony was not persuasive and lacked credibility.

NPD lieutenant Aurelio Silva investigated the charges specified against Moore and found a pattern of sick-time abuse from April 19, 2012, through October 19, 2012. (R-5.) The report stated that, at times pertinent, the appellant, on medical certification, extended his days off from work by calling out sick on his first and fourth day of tour six times. (R-6.) Also, he booked off thirteen times during this period for a total of twenty-two days, and did not submit doctor's notes from his attending physician attesting to the validity of his illness/injury. (R-6.)

Lieutenant Silva reported that Moore sustained an on-duty shoulder injury on March 4, 2012, while subduing a suspect during a domestic-violence incident. (P-2; P-3.) Moore reported that he did not receive adequate treatment for his injury and that he was unable to respond to the Concentra Medical Center in Newark for comprehensive orthopedic treatment. A Concentra representative stated that he offered appellant the opportunity to report for treatment when he was available on any day during his tour; no appointment would be necessary. (R-6.) Lieutenant Silva's report contains a list of the appellant's missed appointments at Concentra showing that of fifty appointments, appellant missed ten. (R-6.) Lieutenant Silva submitted appellant's "sick or injured leave record" showing twenty days in six months. The record characterizes the nature of the sickness or injuries as, among other things, diarrhea, dizziness, migraine headache, cold, and pain. (R-7.)

The Concentra therapy-appointment record shows numerous missed appointments. (R-8.) Appellant issued a report to Captain Quackenbush, commanding the 3rd Precinct, dated November 13, 2012, stating, "Mentally I had no reason to consider while in pain if it's my first or last day of work." Also, in his report, he complained that he did not belong on medical certification. (R-9.) Finally, Lieutenant Silva issued a Complaint Against Personnel dated November 13, 2012, specifying the charges in the PNDA and FNDA. (R-10.) The complaint also states that appellant has a prior record, specifically, that he was guilty of official inefficiency on June 6, 2010, for violation of the sick-leave policy. (Ibid.)

At the OAL hearing, appellant submitted a series of Concentra transcriptions reporting his various treatments from March 16, 2012, through January 9, 2013. These transcriptions enumerate the results of the Concentra visits to include shoulder strain, but no abnormalities, during the March 16, 2012, appointment. (P-1 collective.)

LEGAL AUTHORITY AND ANALYSIS

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4(a). The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, failure or inability to perform duties, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would be applied. W. New York v. Bock, 38 N.J. 500 (1962).

"Conduct unbecoming a public employee" is not defined in the New Jersey Administrative Code, but has been interpreted broadly to include conduct that adversely affects morale and efficiency or that has a tendency to destroy public respect for the agency or its employees. In re Emmons, 63 N.J. Super. 136 (App. Div. 1960); Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32 (App. Div. 1992). "Insubordination" is undefined in the New Jersey Administrative Code, but has been interpreted as a failure to obey a lawful order. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64 (App. Div.), certif. denied, 59 N.J. 269 (1971). "Neglect of duty" similarly is undefined in the New Jersey Administrative Code, but has been interpreted to apply to a failure to perform that which is required for the employment position. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564.

A police officer is guilty of chronic inefficiency and incompetency when it is shown that he is incapable or indisposed to do things required in a timely, satisfactory manner. Glenn v. Twp. of Irvington, CSV 5051-03, Initial Decision (February 25, 2005), modified and adopted, MSB (May 23, 2005), <<http://njlaw.rutgers.edu/collections/oal/>>. The NPD proved that there was a pattern of sick-time abuse, as Moore showed unwillingness or inability to work regularly as scheduled, thereby requiring other officers to take up his duties at public expense.

Moore was on medical certification for fourteen years. General Order 94-4 has been cited as authoritative in Grill v. City of Newark Police Department, CSV 1954-97 (December 21, 1998), modified and adopted, MSB (July 1, 1999), <<http://njlaw.rutgers.edu/collections/oal/>>; In re Town of Guttenberg, P.E.R.C. No. 2005-37 (Nov. 24, 2004), <<http://www.state.nj.us/perc/>>.

Moore was on medical certification since 2000 for excessive sick-time abuse or patterns of sick-leave abuses. NPD General Ordinance 94-4. (R-3.) Parties on medical certification must submit a written physical statement attesting to the validity of the alleged illness or injury. (Ibid.) Moore never bothered to comply with the ordinance.

In its post-hearing submission, the NPD notes that medical certification is not to punish, but rather to alert the officer that he is exhibiting a pattern of booking off that is perceived as a possible abuse of the sick-leave policy.

A party's prior discipline, or "priors," may be considered to determine the penalty in a particular case, but not to show that the party actually committed the involved violation. In re Hermann, 192 N.J. 19 (2007); In re Carter, 191 N.J. 474 (2007). Also, in a case of this type, progressive discipline is appropriate. West New York v. Bock, 38 N.J. 500 (1962). In addition to the two-day suspension discussed above, appellant was charged with official inefficiency and suspended for violating the sick-leave policy for two days in 2007, four days in 2008, and two days in 2010 for neglect of duty, and again for a total of five days in 2010. (R-4.) Placement on the medical-certification list reflected these prior offenses. In view of the totality of the circumstances, appellant's discipline history, and all of the documents of record, the six-month suspension is reasonable and appropriate.

CONCLUSION

Based on the foregoing findings of fact and legal authority, I **CONCLUDE** that the respondent has proven by a preponderance of the credible evidence that appellant abused sick leave as charged and failed to timely produce medical notes, and that a six-month suspension is eminently reasonable in these circumstances.

DISPOSITION AND ORDER

Based on the foregoing findings of fact and conclusion of law, I decide this matter in favor of the respondent, **ORDER** the charges sustained, and **ORDER** the appeal 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. 40A:14-204.

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, P.O. 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.

30 Jan '15
DATE

James A. Geraghty
JAMES A. GERAGHTY, ALJ

Date Received at Agency:

January 30, 2015

Date Mailed to Parties:

January 30, 2015

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APPENDIX

LIST OF WITNESSES

For Appellant:

Tyrone Moore, the appellant

For Respondent:

Lt. Aurelio Silva

LIST OF EXHIBITS

For Appellant:

- P-1 Collective, Concentra Medical Transcriptions
- P-2 Incident Report
- P-3 Continuation

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action dated November 13, 2012
- R-2 Newark Police Department Rules & Regulations
- R-3 Newark Police Department General Order 94-4
- R-4 Concise Officer Disciplinary History
- R-5 Newark Police Department Investigation of Personnel Report
- R-6 Investigative Submission by Lt. Aurelio Silva
- R-7 Sick or Injured Leave Record for 2012
- R-8 Concentra Medical Centers Therapy Appointment
- R-9 Administrative Submission by Officer Tyrone Moore dated November 13, 2012
- R-10 Newark Police Department Complaint Against Personnel
- R-11 Final Notice of Disciplinary Action dated May 8, 2012