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STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Marshawn Love, Asbury Park

Request for Stay

CSC Docket No. 2017-1805

ISSUED: FEB 08 2017 (WR)

Marshawn Love, a Police Captain with Asbury Park, represented by Richard Incremona, Esq., petitions the Civil Service Commission (Commission) for a stay of his demotion, pending the outcome of his hearing at the Office of Administrative Law (OAL).

By way of background, the appointing authority presented the petitioner with a Final Notice of Disciplinary Action (FNDA) which indicated that he received a 120 working day suspension and was demoted to Police Sergeant, effective November 21, 2016, on charges of incompetency, inefficiency or failure to perform duties; conduct unbecoming a public employee; neglect of duty and other sufficient cause.¹ Specifically, the appointing authority indicated that the petitioner "failed to effectively communicate vital information to other police officers upon their arrival" on the scene of an active shooter. It further alleged that, as the highest ranking officer on the scene, he "failed to assume command and control of the scene, and also left the scene of the active shooter before the scene and active shooter was under control." The petitioner appealed his suspension and demotion to the Commission and those matters have been transmitted to the OAL for a hearing.

In the instant matter, the petitioner requests a stay of his demotion pending the outcome of the OAL hearing. Initially, the petitioner maintains that there is a clear likelihood that he will succeed on the merits. In this regard, he argues that there were numerous procedural deficiencies at his departmental hearing, including hearsay rule violations, a violation of the 45-day rule and a failure to supply

¹ The 120 working day suspension was held in abeyance pending the final outcome of his appeal.

complete discovery. He also argues that there is a clear likelihood of his success because the facts underlying the departmental charges which were dismissed at his hearing are the same facts underlying the charges at issue. Furthermore, he indicates that the charges against him are based on the appointing authority's "Rapid Response to an Active Shooter" policy, but argues that he never received any training on the policy. Additionally, he claims that the policy is contradictory and the charges based on the policy ignore "the discretion created by the very wording of the policy itself."

The petitioner further claims that he will suffer irreparable harm if his request is not granted. First, he claims that the demotion will cause him and his family financial hardship, as his compensation will decrease and he alone supports his wife and four children. Second, he claims he will lose access to his Department-issued vehicle and will have to use his own personal vehicle; be responsible for paying for his own gas and his insurance premium will increase. He further argues that he will have to purchase new uniforms and identification. Third, he contends that he will suffer because he will lose the opportunity for promotion to Deputy Chief or Chief. Finally, the petitioner claims that the demotion will cause him to lose the respect of his peers. The petitioner contends that there will be no substantial injury to the Asbury Park Police Department in staying his demotion because he continued to serve, without incident, at the rank of Police Captain for over a year after the incident. Thus, he claims, there is no need to immediately demote him. Finally, the petitioner argues that the public interest is served in staying his demotion in light of his record of public service.

In response, the appointing authority, represented by Steven Glickman, Esq., argues that the petitioner's request for a stay should be denied. It argues that the procedural defects that the petitioner complains about can be remedied by the Commission's *de novo* review. Additionally, it contends that the petitioner's statement of facts regarding the circumstances underlying this matter is inaccurate and contradict a statement he previously gave to the Monmouth County Prosecutor's Office. The appointing authority also argues that the petitioner will not suffer irreparable harm if his request is denied because any harm that might come to him can be adequately redressed by monetary damages. By contrast, the appointing authority claims that it will experience hardship in trying to "maintain proper environment for the remainder of the Police Department with respect to disciplinary actions and leadership" if the petitioner's claim is granted. It elaborates that keeping the petitioner in a leadership position would "send the wrong signal" to others in the Police Department and could place other officers in precarious positions if a similar situation were to occur in the future.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition for a stay:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

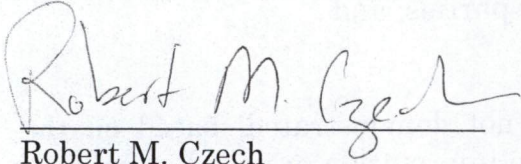
In the instant matter, the petitioner has not demonstrated, based on the standards above, that he is entitled to a stay. The information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. Initially, the petitioner argues that numerous procedural deficiencies prevented his success at his departmental hearing. However, procedural deficiencies at the departmental level which are not significantly prejudicial to an appellant are deemed cured through the *de novo* hearing received at the OAL. See *Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995); *In re Darcy*, 114 *N.J. Super.* 454 (App. Div. 1971). Regarding the petitioner's other claims concerning his success on the merits, the Commission observes that it does not have the benefit of a full hearing record, where evidence and arguments can be fully presented, and credibility determinations made. Accordingly, the petitioner's guilt or innocence of the charges cannot be clearly determined on the written record.

Additionally, the petitioner has not shown that he is in danger of immediate or irreparable harm if his request is not granted. The harm to the petitioner while awaiting his hearing is purely financial in nature, and as such, can be remedied by the granting of back pay should he prevail in his appeal. Further, he will be restored to the title of Police Captain if successful on appeal. Moreover, although the petitioner claims that the harm to his reputation cannot be cured monetarily and it may impact future promotional opportunities, the Commission does not agree. If the charges against the petitioner are ultimately dismissed, the disciplinary actions taken will be removed from his record and it cannot be used as a reason to not appoint the petitioner at the time of a future promotional opportunity. Finally, it cannot be ignored that the charges against the petitioner are very serious in nature. In this regard, a law enforcement officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966); *In re Phillips*, 117 *N.J.* 567 (1990). Accordingly, the petitioner has failed to show that he is entitled to a stay of his demotion in this matter.

ORDER

Therefore, it is ordered that this request for a stay be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 8th DAY OF FEBRUARY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Marshawn Love
Richard Incremona, Esq.
Steven Glickman, Esq.
Michael Capabianco
Record Center