

*In the Matter of T.N., Atlantic City*

CSC Docket No. 2013-3050

**(Civil Service Commission, decided June 26, 2013)**

T.N., a Recreation Program Specialist with Atlantic City, represented by Robert O'Brien, Esq., requests a hearing for his 253 calendar day suspension effective August 16, 2012.

By way of background, the appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) dated August 16, 2012 indefinitely suspending him on that same date. Specifically, the appointing authority asserted that the appellant was arrested on August 8, 2012 and charged with possession of a Controlled Dangerous Substance [marijuana] and use or possession with intent to use. Among the charges were conduct unbecoming a public employee, other sufficient cause and violation of Atlantic City policy. The appellant did not request a hearing and the appointing authority did not initially issue the appellant a Final Notice of Disciplinary Action (FNDA) as required under *N.J.A.C.* 4A:2-2.7(a)1 and (a)3 indicating an indefinite suspension would be imposed pending disposition of the criminal complaint. Subsequently, on April 25, 2013, the appointing authority issued an FNDA indicating that on October 17, 2012, the appellant was granted a Conditional Discharge, which was received by the appointing authority on April 22, 2013. Therefore, the FNDA indicated that a 253 calendar day suspension had been imposed on the appellant beginning August 16, 2012 and ending on April 25, 2013 based on the underlying arrest and charges. Upon receipt of this FNDA, the appellant filed a timely appeal of his suspension with the Civil Service Commission (Commission) and requested a hearing.

### **CONCLUSION**

*N.J.S.A.* 11A:2-13 provides, in pertinent part, that where a suspension is based on a crime of the first, second, or third degree, or a crime of the fourth degree if committed on the job or directly related to the job, the suspension may be immediate and continue until a disposition of the charge. The [Commission] shall establish, by rule, procedures for hearings and suspensions with or without pay. *N.J.A.C.* 4A:2-2.7(a)2 states that the appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in *N.J.A.C.* 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment. *N.J.A.C.* 4A:2-2.7(a)3 states that where the

appointing authority determines that an indefinite suspension should be imposed, an FNDA shall be issued stating that the employee has been indefinitely suspended pending disposition of the criminal complaint or indictment.

*N.J.A.C.* 4A:2-2.10(c)1 states, in pertinent part, that an employee suspended based on a pending criminal complaint or indictment, following disposition of the charges, shall not be awarded back pay benefits and seniority when the complaint is disposed of through Conditional Discharge. *N.J.A.C.* 4A:2-2.10(c)2 states that where disciplinary action has been taken following the disposition of the complaint, the disciplinary suspension shall be applied against the period of indefinite suspension. *N.J.S.A.* 11A:2-20 and *N.J.A.C.* 4A:2-2.4(a) provide, in pertinent part, that an appointing authority may not impose a suspension or fine greater than six months.

In the present matter, the record indicates that the appellant was indefinitely suspended on August 16, 2012 pending criminal charges. Although the appellant did not request a hearing concerning his indefinite suspension in August 2012, the appointing authority was still obligated to issue an FNDA stating that the appellant had been indefinitely suspended pending disposition of the criminal complaint or indictment. *See N.J.A.C.* 4A:2-2.7(a)3. In other words, the appellant should have been issued an FNDA sometime in August or early September 2012 upholding the indefinite suspension. This did not occur. Rather, upon receipt of the appellant's Conditional Discharge, the appointing authority issued a FNDA, more than eight months after it issued the PNDA, and imposed a 253 calendar day suspension. However, since the indefinite suspension was disposed of via the appellant's Conditional Discharge and the appellant was returned to work, the FNDA can only be considered to be upholding the administrative charges on the original PNDA. Stated differently, the record indicates that the only action the appointing authority is currently taking and the only action the appellant is challenging is the 253 calendar day suspension on the charges of conduct unbecoming a public employee, other sufficient cause, and violation of Atlantic City policy.

However, pursuant to *N.J.S.A.* 11A:2-20 and *N.J.A.C.* 4A:2-2.4(a), no finite suspension can span more than six months. In this matter, the appellant's suspension spans more than eight months. Accordingly, the period of his suspension beyond February 15, 2013 is improper. Therefore, due to the above noted procedural errors, the appellant's County and Municipal Personnel Record (CAMPS) record is to be revised to indicate that he has been suspended for a period of six months, from August 16, 2012 to February 15, 2013. Pursuant to *N.J.A.C.* 4A:2-2.10(c)1, since back pay, benefits, and seniority are not awarded when a complaint or

indictment is disposed of through Conditional Discharge, the appellant cannot be awarded these remedies for the period of February 16, 2013 to April 25, 2013. Accordingly, the period between February 16, 2013 and April 25, 2013 is to be recorded in the appellant's CAMPS record as an approved unpaid leave of absence. Finally, the appointing authority is reminded that it should strictly follow the regulatory requirements of *N.J.A.C. 4A:2-2.7* regarding indefinite suspensions in the future. However, since the Commission has cured the procedural defects in this matter and the appellant will be awarded appropriate remedies should he be successful in challenging his six-month suspension, no other action is warranted.

Therefore, the Commission refers this matter to the Office of Administrative Law for a hearing concerning the appellant's six-month suspension from employment from August 16, 2012 to February 15, 2013.

### **ORDER**

The Civil Service Commission orders that this matter be referred to the Office of Administrative Law for a hearing as set forth above.