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STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Shena Grimes, City
of East Orange

Request for a Stay and Interim Relief

CSC Docket No. 2014-2876

ISSUED: **DEC 22 2014** (WR)

Shena Grimes, a Police Lieutenant with the City of East Orange Police Department, represented by Timothy Smith, Esq., petitions the Civil Service Commission (Commission) for a stay of her removal, effective April 28, 2014, pending the outcome of her 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 she was removed, effective April 28, 2014, on charges of chronic or excessive absenteeism. Specifically, the appointing authority indicated that despite being allocated 20 sick days per year, the petitioner was absent for 40.32 days in 2010 and 2011, 17 days in 2012 and 40.62 days from January 2013 through October 2013. Additionally, the appointing authority asserted that a review of the appellant's 2013 absences revealed nine separate occurrences of her calling out sick immediately before or after previously-approved time off. The petitioner appealed her removal to the Commission and that matter has been transmitted to the OAL for a hearing.

In the instant matter, the petitioner requests a stay and interim relief of her removal pending the outcome of the OAL hearing. Initially, the petitioner maintains that there is a clear likelihood that she will succeed on the merits. In this regard, she argues that she did not violate the appointing authority's sick time policy because she properly applied and was approved for leave under the Family and Medical Leave Act (FMLA). As her FMLA leave was approved, the petitioner asserts that the appointing authority illegally revoked it and terminated her without just cause and in violation of her Collective Bargaining Agreement and New Jersey law.

Moreover, the petitioner argues that she will suffer irreparable harm if her removal is not stayed as her salary with the appointing authority is her sole source of income. The petitioner maintains that as a result of her loss of income, she could lose her home. The petitioner further argues that because she suffers from a chronic illness, she will suffer irreparable harm because she will no longer have health insurance and will be unable to access health care for her chronic condition. Furthermore, the petitioner contends that there is no harm to the appointing authority in continuing to pay her, since she is merely requesting that the *status quo* be maintained and her salary constitutes a miniscule portion of its budget. Finally, the petitioner argues that the public interest is served in reinstating her, since she has demonstrated the likelihood of success on the merits and irreparable harm to herself.

In response, the appointing authority, represented by Marlin Townes, Assistant Corporation Counsel, argues that the petitioner's request for a stay and interim relief should be denied. Initially, it asserts that she has failed to establish a reasonable probability of success on the merits. It notes that prior to 2011, the petitioner was absent for 44 days in 2009 and 57 days in 2010.¹ After her 40.32 absences in 2011, the appointing authority states that it notified her she could apply for FMLA leave, which she did and it approved her request on September 10, 2013. However, on September 16, 2013, the appointing authority states that it requested that the petitioner obtain a second medical opinion and informed her that her FMLA leave would be revoked if she failed to do so. Thus, the appointing authority argues that it properly revoked the petitioner's FMLA because she did not appear for nor did she reschedule the required second medical opinion.

Moreover, the appointing authority states that since any injury to the petitioner can be cured by a monetary award, she is not entitled to interim relief. In this regard, it argues that if her removal is determined to be improper, then she is entitled to an award of back pay and benefits. Therefore, since there is an avenue of redress for any injury, she cannot be considered to be irreparably harmed. Finally, the appointing authority claims that there is no public interest in granting the petitioner's application for interim relief. It claims that to reinstate her to active duty would damage the public interest of preserving a positive image of law enforcement officers and negatively impact morale by allowing an officer who failed to follow agency rules to face no repercussion.

¹ The record evidences that the appellant received a 180 day suspension as a result. The appellant appealed and the matter was transmitted to the OAL as a contested case. It is noted that the matter is still pending.

CONCLUSION

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

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.

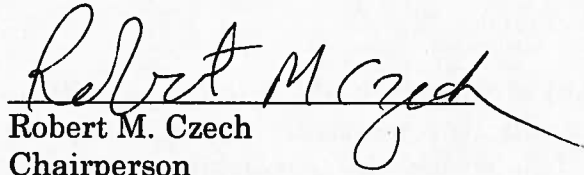
The petitioner has failed to present any evidence to show that she will be successful on the merits of the charges. Initially, the petitioner asserts that she properly applied and was approved for FMLA, which the appointing authority thereafter illegally revoked and terminated her without just cause. However, the appointing authority argues that it revoked her FMLA leave because she failed to seek a second medical opinion, which it is allowed to request. Where, as here, there is a dispute regarding material facts, the Commission will not attempt to determine the sufficiency and credibility of the evidence based on an incomplete written record. Rather, a full plenary hearing is needed before an Administrative Law Judge (ALJ) who will hear live testimony, assess the credibility of witnesses, and weigh all of the evidence in the record before making an initial decision.

In addition, the petitioner has not shown that she is in danger of immediate or irreparable harm if this request is not granted. While the Commission sympathizes with her financial situation, the harm that she is suffering while awaiting her hearing is purely financial in nature, and as such, can be remedied by the granting of back pay should she prevail in her appeal. It is also noted that if the matter is not concluded within the time period prescribed in *N.J.A.C.* 4A:2-2.13(g), the petitioner will be entitled to begin receiving her regular pay pursuant to *N.J.A.C.* 4A:2-2.13(h). Moreover, the petitioner contends that the public interest would not be adversely affected by granting a stay and interim relief since it would merely be continuing the *status quo*. However, the Commission does not find this argument persuasive. Whether or not the *status quo* is continued is not at issue in determining whether staying the petitioner's removal is harmful to the appointing authority. It is certainly harmful to the appointing authority to allow an individual alleged to have been absent for some 40 days, from January 2013 through October 2013, to remain on duty until after the hearing at the OAL. Moreover, the petitioner is alleged to have failed to appear for a required medical examination. Such allegations against a high-ranking law enforcement officer cannot be casually disregarded by the Commission. 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 she is entitled to a stay and interim relief of her removal 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 17TH DAY OF, DECEMBER 2014**


Robert M. Czech
Chairperson
Civil Service Commission

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and
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