

time that she had ever been written up. The petitioner further claims that charges against her were in retribution for her alleging that the Director of Transportation subjected her to workplace harassment. The petitioner also submits that she will be in danger of losing her home and that her family will become homeless if she is not working and being paid. Further, she states that her working will not harm anyone, and in fact, she is greatly needed at work as the appointing authority is short of drivers, thereby causing seniors to not receive groceries and miss medical appointments in her absence.

In response, the appointing authority, represented by Steven W. Kleinman, Esq., presents that the petitioner refused to testify or put on witnesses at the departmental hearing and now she is upset that the charges were upheld and a suspension was imposed. Regardless, it argues that the petitioner has failed to meet any part of the requirements for interim relief as she has only provided her unsworn allegations and her claim that the suspension will be an economic hardship. Specifically, the appointing authority represents that the petitioner has not demonstrated a clear likelihood of success on the merits as she has not provided any facts, but only her self-serving unsworn submission. On the contrary, it maintains that the FNDA describes how the petitioner violated County policy in using her County issued cell phone, lied to her supervisor when questioned about it, then filed a false claim of harassment against her supervisor, and further lied to the appointing authority during the investigation of her allegations. Further, it presents that a review of the petitioner's cell phone records show that she has regularly violated policy in her use of her County cell phone. As such, it argues that the imposition of discipline was not retaliatory. The appointing authority also asserts that the petitioner's assertion that she is immune from suspension unless it was her third write-up is incorrect as certain offenses are so egregious, they warrant a significant penalty. In this regard, it states that the appellant's actions represent severe misconduct and lying during an investigation cannot be tolerated. At minimum, the appointing authority represents that there is a substantial dispute of facts which, in the absence of a full plenary hearing before an Administrative Law Judge (ALJ), makes it impossible at this point for her to show a "clear likelihood of success" on the merits of the case. The appointing authority submits that the appellant is not facing immediate or irreparable harm if interim relief is not granted as, if she is successful in her appeal, she will receive back pay and benefits. Further, it notes that the petitioner has not submitted any evidence that she is in danger of losing her home if interim relief is not granted nor has she presented any evidence as to how she might deal with this short-term hardship. Further, granting the petitioner's request would force the Commission to become the trier of fact before the matter is ever heard by an ALJ. Moreover, the appointing authority states that it is fully prepared to deal with her absence and reassign her work.

In response, the petitioner reiterates her prior points.

CONCLUSION

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

Initially, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits as the petitioner has only submitted unsworn statements. A critical issue in any disciplinary appeal is whether or not the petitioner's actions constituted wrongful conduct warranting discipline. The Commission will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing before an ALJ who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Likewise, the Commission cannot make a determination on whether the petitioner's penalty of a 50 day suspension without pay was inappropriate without the benefit of a full hearing record before it. Since the petitioner has not conclusively demonstrated that she will succeed in having the underlying charges dismissed as there are material issues of fact present in the case, she has not shown a clear likelihood of success on the merits. Furthermore, while the Commission is cognizant of her financial situation, the harm that she is suffering while awaiting her OAL hearing is financial in nature, and as such, can be remedied by the granting of back pay should she prevail in her appeal. With respect to the petitioner's argument that her absence will cause substantial injury to other parties, the County has indicated that it regularly deals with employee absences and is fully prepared to reassign her duties as required. Finally, given the serious nature of the disciplinary charges at issue, the public interest is best served by not having the petitioner on the job pending the outcome of her appeal to the Civil Service Commission.

ORDER

Therefore, it is ordered that the petitioner's request for interim relief be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 3rd DAY OF DECEMBER, 2014



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