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**STATE OF NEW JERSEY**

In the Matter of Tomory Boyer,  
State Parole Board

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

CSC Docket No. 2014-3104

Grievance Appeal

**ISSUED: FEB 11 2015 (JET)**

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Tomory Boyer, a Parole Officer Recruit with the State Parole Board, appeals the determination of the State Parole Board that his grievance was not timely filed.

By way of background, the appellant completed the Basic Course for State Correction Officers on December 12, 2008 and served as a Correction Officer Recruit and Senior Correction Officer with the Department of Corrections (DOC) until he resigned to accept an appointment from an open competitive list as a Parole Officer Recruit with the State Parole Board effective January 25, 2014. Appointees to Parole Officer Recruit are required to satisfactorily complete a Parole Officer Recruit Training Program as part of the one year recruit training period. Thus, upon his appointment to Parole Officer Recruit, the appellant was enrolled in and required to successfully complete the Basic Course for Investigators, the training program currently utilized by the State Parole Board for Parole Officer Recruits. However, the appellant arrived to training late on February 14, 2014 and, as a result, was dismissed from training.<sup>1</sup> The appointing authority subsequently suspended the appellant and issued a Preliminary Notice of Disciplinary Action (PNDA) dated February 18, 2014, charging him with other sufficient cause, namely, failure of a Parole Officer Recruit to complete Police Academy requirements. Specifically, it was asserted that on February 14, 2014 the appellant failed to report to Police Academy training on time and he failed to follow written procedures regarding notification of emergent circumstances and for reporting back to the

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<sup>1</sup> It is noted that the appellant appealed the matter of his dismissal from the Division of Criminal Justice Academy to the Police Training Commission (PTC) and the matter is pending at the Office of Administrative Law (OAL).

Academy. It is noted that the appellant's departmental hearing has been held in abeyance pending the outcome of his appeal at the PTC. See *In the Matter of Tomory Boyer, New Jersey State Parole Board* (CSC, decided November 6, 2014).

The appellant filed a grievance on April 23, 2014, arguing that the Police Academies are not specifically designed to train Parole Officer Recruits. Further, the appellant stated that the appointing authority gave preferential treatment to employees with other law enforcement backgrounds<sup>2</sup> as it submitted waivers to the Police Training Commission so that those individuals would only have to take a modified Basic Course for Investigators. In this regard, the appellant explained that the appointing authority recently hired several employees from a Rice Bill list who were only required to complete the modified Basic Course for Investigators in order to qualify as a Parole Officer. The appellant asserted that the appointing authority discriminated against former Senior Correction Officers as it does not request waivers for employees like him who have completed the Basic Course for State Correction Officers. Additionally, the appellant explained that it would be redundant to repeat police training since he previously completed an approved Police Training Commission course in order to become a Senior Correction Officer. The appellant also argued that Correction Officers and Parole Officers perform similar work. Moreover, the appellant asserted that, pursuant to *N.J.A.C. 13:1-8.4*, the Police Training Commission may, in its discretion, waive all or portions of any required training for an individual who has successfully completed a course conducted by a Federal, State or other public or private agency which is substantially equivalent to the PTC course.

In response, the appointing authority determined that it would not address the appellant's grievance as it was not timely filed. Specifically, the appointing authority explained that the appellant's grievance should have been filed within 15 days from the date he was appointed as a Parole Officer Recruit pursuant to his collective bargaining agreement. Alternatively, the appointing authority asserted that the appellant should have filed the grievance within 15 days of the "Loudermill" hearing regarding his suspension without pay as a result of his failure to complete police training.

In reply, the appellant reiterated that he should have been allowed to attend the modified Basic Course for Investigators. Further, the appellant asserted that the appointing authority misunderstood the basis of his grievance as it relates to his reference regarding the Rice Bill List. In this regard, he explains that he indicated that the appointing authority hired officers from the Rice Bill List who were only required to complete the modified Basic Course for Investigators. The appellant adds that the modified course grants credits for classes that were previously taken at the Police Academy. Thus, the appellant argued that, since the waivers were not extended to all law enforcement personnel currently serving at the appointing

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<sup>2</sup> The appellant did not name these employees.

authority, the appointing authority's preferential treatment towards the officers appointed from the Rice Bill List constitutes discrimination.

On appeal to the Civil Service Commission (Commission), the appellant reiterates the arguments he presented to the appointing authority and asserts that he timely filed his grievance with the appointing authority. In this regard, the appellant contends that he filed a "non-contractual grievance for which he requests a resolution from the appointing authority." Further, he contends that the appointing authority unfairly denied him the opportunity for a hearing and has "distorted" the basis of his grievance. In addition, the appellant explains that he was not afforded the same opportunities that prior law enforcement personnel were provided, such as attending modified training. The appellant avers that he has already completed a 16-week Police Training Commission approved course to satisfy the definition in the job specification for Senior Parole Officer. He adds that the job specification does not list a specific Police Academy which is specifically designed to train Parole Officer Recruits. Therefore, the appellant requests that the Commission intervene in this matter as the State Parole Board is in direct violation of the job specification for Senior Parole Officer, which only requires completion of a training course approved by the Police Training Commission.

In response, the appointing authority maintains that the appellant did not timely file the grievance. Further, the appointing authority asserts that the appellant was dismissed from the Police Academy for failure to comply with various rules and regulations and was subsequently suspended without pay. The appellant did not provide any documentation to show that he should have been hired from a Rice Bill List and adds that the appellant was hired from an eligible list for Parole Officer Recruit. Therefore, even if the appellant's grievance was addressed, it would have been denied as the appellant's name did not appear on a Rice Bill List. Moreover, the appointing authority contends that the Commission cannot consider the appellant's grievance as the matter of his suspension is currently pending a departmental hearing.

### CONCLUSION

*N.J.A.C.* 4A:2-3.7(f)1 provides that, in grievance matters, the employee shall have the burden of proof. *N.J.A.C.* 4A:2-3.7(b) provides that grievances may be appealed to the [Commission]. The rule further provides:

1. The [Commission] shall review the appeal on a written record or such other proceeding as the [Commission] directs and render the final administrative decision.
2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy.

This standard is in keeping with the established grievance and minor disciplinary procedure policy that such actions should terminate at the departmental level.

Moreover, in considering grievance actions, the Commission generally defers to the judgment of the appointing authority as the responsibility for the development and implementation of performance standards, policies and procedures is entrusted by statute to the State Parole Board. Generally, the Commission will not disturb appointing authority determinations in grievance proceedings unless there is substantial credible evidence that such determinations were motivated by invidious discrimination considerations, such as age, race or gender bias, or were in conflict with Civil Service rules. A review of the record evidences no showing that either factor, which would warrant further Commission review, is present in this case.

The appellant argues that his grievance is not a "contractual" matter and it should have been addressed by the appointing authority since it was timely filed. The appointing authority notified the appellant that it would not address his grievance since it was not timely filed in compliance with his collective bargaining agreement. *N.J.A.C. 4A:2-3.3(b)* states in pertinent part that an employee covered by an agreement that does not address a grievance appeal process shall utilize the appeal procedures set forth in *N.J.A.C. 4A:2-3 et seq.* *N.J.A.C. 4A:2-3.4(a)*, in pertinent part, states that in a Step One grievance, the grievance shall be presented in writing to the office or individual designated by the department and must be filed within 30 calendar days from either the date on which the alleged act occurred or the date on which the grievant should reasonably have known of its occurrence. In this case, the appellant was appointed as a Parole Officer Recruit on January 25, 2014, was suspended with pay on February 14, 2014 and without pay effective February 25, 2014 due to failure to complete the required academy training, and filed his grievance on April 23, 2014. Thus, even assuming the appellant's situation could be grieved under Civil Service law and rules, rather than the collective bargaining agreement, it would clearly be untimely. Indeed, he was clearly aware of the fact that he was required to attend the Basic Course for Investigators at the time he was dismissed from the academy on February 14, 2014. However, the appellant did not file a grievance challenging the requirement that he attend the academy even though he completed the Basic Course for State Corrections Officers until 68 days after he was dismissed from the Basic Course for Investigators. Therefore, the appellant did not file a timely grievance with the appointing authority in accordance with Civil Service law and rules and this appeal can be dismissed on that basis alone.

Regardless, even assuming he filed a timely grievance, there is no basis on which the Commission could intervene. As stated above, the Commission generally defers to the judgment of the appointing authority as the responsibility for the

development and implementation of performance standards, policies and procedures is entrusted by statute to the State Parole Board. In this case, the State Parole Board has determined that Parole Officer Recruits must satisfactorily complete the Basic Course for Investigators. The Basic Course for Investigators is a Police Training Commission approved course. It is of no moment that the job specification for Senior Parole Officer does not specify a particular course which the appointee must complete as the only requirement is that the course be approved by the Police Training Commission. Further, the appellant was appointed to the Parole Officer Recruit, *not* the Senior Parole Officer title. More importantly, *N.J.A.C. 13:1-8.4(c)* specifies the criteria to be utilized by the Police Training Commission when reviewing requests for waivers of training submitted by law enforcement agencies and the types of waivers permitted. In this regard, *N.J.A.C. 13:1-8 Appendix* does not list completion of the Basic Course for State Correction Officers as being waiver eligible for the Modified Basic Course for Investigators. However, it does list completion of the Basic Course for Police Officers, of which completion would be required for a Police Officer or Sheriff's Officer to be placed on the Rice Bill List if laid off, as waiver eligible for the Modified Basic Course for Investigators. Thus, even assuming *arguendo* that the appointing authority submitted a waiver, it does not appear that completion of the Basic Course for State Correction Officers is waiver eligible. Therefore, the appellant has not established an abuse by the appointing authority of its discretion in this grievance case.

### ORDER

Therefore, it is ordered that this appeal be denied.

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  
THE 4<sup>th</sup> DAY OF FEBRUARY, 2015



Robert M. Czech

Chairperson

Civil Service Commission

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and  
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