



B-71

**STATE OF NEW JERSEY**

**DECISION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Tomory Boyer, New  
Jersey State Parole Board

CSC Docket No. 2015-1560

Request for Reconsideration

ISSUED: **FEB - 5 2015** (CSM)

Tomory Boyer, a Parole Officer Recruit with the New Jersey State Parole Board, represented by John Anello, Esq., requests reconsideration of the decision rendered on November 6, 2014 which denied his request for interim relief regarding his suspension without pay effective February 25, 2014.

By way of background, the appellant was dismissed from the Basic Course for Investigators and in a Preliminary Notice of Disciplinary Action (PNDA) dated February 18, 2014 was charged with other sufficient cause, namely, failure of a Parole Officer Recruit to complete Police Academy (Division of Criminal Justice Academy) requirements. The appellant appealed the matter of his dismissal from the Division of Criminal Justice Academy to the Police Training Commission (PTC) and that matter is pending at the Office of Administrative Law (OAL). However, the appellant's departmental hearing regarding the disciplinary charges brought against him by the appointing authority has been held in abeyance pending the outcome of his appeal to the PTC. As such, the appellant has not filed an appeal of the pending disciplinary action by the appointing authority to the Civil Service Commission (Commission) because he never had a departmental hearing and a Final Notice of Disciplinary Action (FNDA) has not been issued. The appellant petitioned the Commission for interim relief, arguing that since his suspension had exceeded six months, he was entitled to be placed back on the appointing authority's active payroll. In denying the petition, the Commission found that, as the parties agreed to hold the matter of the appellant's departmental hearing in abeyance until the matter of the appeal of his dismissal by the academy to the PTC was resolved, the appellant was not entitled to any remedial relief.

On reconsideration, the appellant states that since he completed the Basic Course for State Correction Officers in December 2008, which is a police academy approved by the PTC, he meets the statutory requirements to carry out the duties of a Parole Officer Recruit. The appellant explains that he did not file this information with his petition for interim relief because the attorney who filed that petition only requested relief in regard to the length of his suspension. Therefore, since a Senior Parole Officer requires satisfactory completion of a training course approved by the PTC, he already meets the requirements of the position. In this regard, the appellant emphasizes that *N.J.S.A. 2A:154-4* states, in pertinent part, that all correction officers, shall, by virtue of such appointment, be empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against the law. As such, since this information was not filed with his initial petition for interim relief, in conjunction with the fact that he is permitted to perform the duties of a peace officer, the appellant maintains that he is entitled to be placed back on the active payroll.

In response, the appointing authority states that it advised the appellant's former counsel by letter dated February 26, 2014 that all Parole Officer Recruits are advised during the interview process before they are hired that they must attend and successfully complete the Basic Course for Investigators. It explained that the only time an individual is sent to the Modified Basic Course for Investigators is when it hires an individual who has completed the Basic Course for Police Officers. Regardless, the appointing authority argues that appellant's argument that he was required to attend the academy is untimely, as he should have contested it before he was hired in January 2014. Further, the appointing authority notes that all of the individuals it has hired who are former Correction Officers are required to attend this training in order to ensure that they properly perform the duties of a Parole Officer. Finally, the appointing authority emphasizes that the appellant does not have the legal authority to determine what training its employees need, as that issue is vested within the State Parole Board. Thus, since the State Parole Board's judgment on that issue is entitled to a presumption of correctness, there is no basis on which to grant the appellant's request.

### CONCLUSION

*N.J.A.C. 4A:2-1.6(b)* sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In the instant matter, the appellant has not met the standard for reconsideration. As correctly noted by the appointing authority, the appellant, for the first time on reconsideration, raises the issue that he was not required to attend

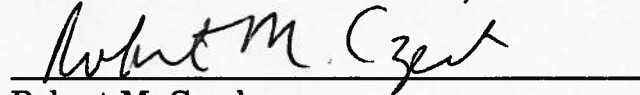
the Basic Course for Investigators. Essentially, the appellant posits that he should not be removed from employment since he never should have been required to attend the Basic Course for Investigators. The Commission disagrees. Even assuming that there was a sufficient reason to accept the additional information regarding the appellant's prior training that was not presented at the original proceeding, which there is not, it would not change the outcome of the case.

Initially, the appellant should have challenged the requirement that he attend the Basic Course for Investigators when he was hired in January 2014, *not* after he was dismissed from the course in February 2014. That being said, as noted by the appointing authority, its judgment on the issue of required employee training is entitled to a presumption of correctness. In this regard, administrative agencies have wide discretion in selecting the means to fulfill the duties the Legislature has delegated to them. Further, deference is normally given to an agency's choice in organizing its functions, considering its expertise, so long as the selection was responsive to the purpose and function of the agency. *See In the Matter of Gloria Iachio*, Docket No. A-3216-89T3 (App. Div., Jan. 10, 1992). Thus, 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 PTC approved course. Given this deference, it is of no moment that the job specifications for Parole Officer Recruit or Senior Parole Officer do not specify a particular course which the appointee must complete, as the only requirement in the job specifications is that the course be approved by the PTC. The appointing authority has complied with this requirement.

### ORDER

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 4<sup>TH</sup> DAY OF FEBRUARY, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

**Inquiries  
and  
Correspondence**

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

**Attachment**

**c: Tomory Boyer  
John Anello, Esq.  
Joseph P. Horan, II  
Lise-Kirsten S. Higgins  
Joseph Gambino**



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Tomory  
Boyer, New Jersey State  
Parole Board

Request for Interim Relief

CSC Docket No. 2015-519

ISSUED: **NOV - 7 2014** (CSM)

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Tomory Boyer, a Parole Officer Recruit with the New Jersey State Parole Board, represented by John Anello, Esq., requests interim relief for his suspension without pay effective February 25, 2014.

By way of background, the appellant was served with 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 (Division of Criminal Justice Academy) requirements. Specifically, it was asserted that on February 14, 2014 the appellant failed to report to Police Academy training on time and that he failed to follow written procedures regarding notification of emergent circumstances and for reporting back to the Academy. Therefore, the appellant was dismissed from the Division of Criminal Justice Academy effective February 14, 2014. 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 that matter is pending at the Office of Administrative Law (OAL). However, the appellant's departmental hearing regarding the disciplinary charges brought against him by the appointing authority has been held in abeyance pending the outcome of his appeal to the PTC. As such, the appellant has not filed an appeal of the pending disciplinary action by the appointing authority to the Civil Service Commission (Commission) because he never had a departmental hearing and a Final Notice of Disciplinary Action (FNDA) has not been issued.

In his petition for interim relief, the appellant requests that he be restored to the appointing authority's active payroll effective August 17, 2014. Specifically, he

argues that *N.J.A.C.* 4A:2-2.4(a) provides that, except where criminal charges are pending, no suspension or fine shall exceed six months. Further, he contends that *N.J.A.C.* 4A:2-2.13(h) generally provides that the Civil Service Commission shall render a final administrative determination of an appeal of a law enforcement officer's removal, unless tolled for a number of reasons, within 180 days of the filing of the appeal. Thus, since the appellant appealed his suspension on February 20, 2014 and he has not sought to adjourn or delay any proceeding relating to the instant appeal, he maintains that he should be restored to the New Jersey State Parole Board's active payroll as of August 17, 2014.

In response, the appointing authority presents that the appellant was dismissed from the Division of Criminal Justice Academy effective February 14, 2014 and it timely served him with a PNDA on February 18, 2014 suspending him without pay. However, when the appellant's former counsel was contacted to schedule his departmental hearing, the appointing authority was advised that the appellant wanted the matter held in abeyance pending the outcome of his appeal to the PTC regarding his dismissal from the Academy. Subsequently, he changed counsel and the appointing authority was advised that the appellant wanted to pursue his departmental hearing within a month. Similarly, when the appointing authority contacted the appellant's new counsel scheduling the departmental hearing for September 25, 2014, it was advised by letter dated August 19, 2014 that the appellant desired that the hearing be held in abeyance until his appeal to the PTC was resolved. As such, the appointing authority states that the provisions governing the maximum amount of time an employee may be suspended without pay has essentially been tolled. Therefore, the appointing authority requests that the provisions regarding a maximum six month suspension be relaxed and the appellant's request be denied.

### CONCLUSION

Initially, the issue before the Commission in a petition for interim relief of this nature is to determine if the appointing authority presented a valid basis to suspend the appellant pursuant to *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5. The record indicates that the appointing authority had a valid basis to immediately suspend the appellant based on his dismissal from the Academy. *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 provide that an employee may be suspended immediately without a hearing if the appointing authority determines that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. Clearly, the appellant's dismissal from the Division of Criminal Justice Academy renders the appellant unfit for duty as a Parole Officer Recruit. Indeed, the job specification for Parole Officer Recruit specifically indicates that an incumbent receives training while attending a PTC certified training program in order to qualify as a peace officer for the detection, apprehension, arrest,

and conviction of offenders and assists Senior Parole Officers in the performance of duties. Thus, if the appellant is unable to receive the required training because of his dismissal from the Academy, he cannot perform the duties required in the job specification for Parole Officer Recruit. Further, the Commission is mindful that, like a Correction Officer or municipal Police Officer, a Parole Officer Recruit is a law enforcement officer, and as such, is held to a higher standard than other public employees. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). Thus, based on the nature of the charges against him, the Commission finds that the appointing authority possessed a valid basis for imposing an immediate suspension.

While the appointing authority had a valid basis to immediately suspend the appellant, the issues in this case are the length of the appellant's suspension and the fact that he has not yet had a departmental hearing. Pursuant to N.J.S.A. 11A:2-13 and N.J.A.C. 4A:2-2.5(d), a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or a *later date as agreed to by the parties*. Further, N.J.A.C. 4A:2-2.13(a)1 defines a law enforcement officer as "an individual employed as a *permanent*, full-time member of a State, county, or municipal law enforcement agency who is statutorily . . . required to successfully complete a training course approved by, or certified as substantially equivalent to such an approved course, by the Police Training Commission" (emphasis added). As the appellant had not yet completed his Academy training or working test period, he is not considered a permanent employee. Thus, N.J.A.C. 4A:2-2.13 does not apply. Even assuming, *arguendo*, that it did apply to the appellant, N.J.A.C. 4A:2-2.13(h)2 tolls the application of base salary for any "period of agreed-upon adjournment of a departmental hearing." In this case, the appellant was issued two PNDA's on February 18, 2014, one suspending him with pay effective February 14, 2014 and the second suspending him without pay effective February 25, 2014. In the process of scheduling a departmental hearing in March 2014, the appointing authority was advised on March 19, 2014 by the appellant's former counsel that the matter should be held in abeyance until his appeal to the PTC regarding his dismissal from the academy was finalized. Subsequently, on August 13, 2014, the appellant contacted the appointing authority via e-mail requesting to have his pay and health benefits restored as he had been suspended at that point for more than six months in violation of N.J.S.A. 11A:2-20 and N.J.A.C. 4A:2-2.4(a). The appointing authority responded that his departmental hearing was being held in abeyance at the direction of his counsel, to which the appellant replied that he had new counsel. Accordingly, the appointing authority scheduled a departmental hearing for September 25, 2014. However, in correspondence dated August 19, 2014, the appellant's new counsel requested that the appointing authority hold the departmental hearing in abeyance until the matter regarding his appeal to the PTC was completed. Despite being provided an opportunity on two occasions, the appellant agreed to postpone his departmental

hearing until such time as the matter of his dismissal from the academy was resolved.

In this case, all of the evidence indicates that the appointing authority attempted to schedule the appellant's departmental hearing in a timely manner. On March 19, 2014, which is within 30 days of the appellant's suspension without pay, the appointing authority was advised by the appellant's former counsel that he wanted his departmental hearing held in abeyance. Similarly, in August 2014, the appointing authority again attempted to schedule a departmental hearing, only to be advised by the appellant's new counsel that he desired to have the hearing held in abeyance. Stated differently, in compliance with *N.J.S.A. 11A:2-13*, both parties consented to an adjournment of the departmental hearing to a later date. The appellant cannot request that the appointing authority continue to hold the matter of his departmental hearing in abeyance pending the results of the PTC proceeding, and then, after six months elapses, argue that the appointing authority constructively suspended him for more than six months in violation of *N.J.S.A. 11A:2-20* and *N.J.A.C. 4A:2-2.4(a)*. Indeed, *N.J.S.A. 11A:2-13*, *N.J.A.C. 4A:2-2.5(d)* and *N.J.A.C. 4A:2-2.13(b)2* all permit the parties to agree to an adjournment of the departmental hearing to a later date. Thus, while these rules do not specify a time limit for such agreed upon adjournments, any time period where the parties agreed to adjourn the departmental hearing is essentially similar to an agreed upon leave of absence without pay as the appellant would not be entitled to any back pay for this time period. See *N.J.A.C. 4A:2-2.10(d)8* and *N.J.A.C. 4A:2-2.13(h)*. See also, *In the Matter of Bruce Cornish*, Docket No. A-4051-08T3 (App. Div. July 22, 2010). Accordingly, as the parties agreed to hold the matter of the appellant's departmental hearing in abeyance until the matter of the appeal of his dismissal by the academy to the PTC is resolved, the appellant is not entitled to any remedial relief.

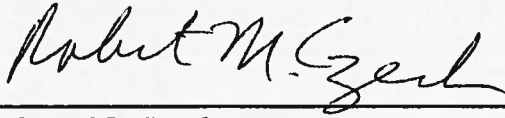
One final comment is warranted. While the appointing authority has apparently consented to the adjournment of the departmental hearing in this matter, it is under no obligation to do so. If it chose to deny the appellant's requests for adjournments, it could have proceeded with the departmental hearing. If the appellant did not appear, the appointing authority could then have upheld the charges and issued a Final Notice of Disciplinary Action.

#### ORDER

Therefore, it is ordered that this request be denied.



**DECISION RENDERED BY  
THE CIVIL SERVICE COMMISSION ON  
THE 6<sup>TH</sup> DAY OF NOVEMBER, 2014**



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**Robert M. Czech  
Chairperson  
Civil Service Commission**

**Inquiries  
and  
Correspondence**

**Henry Maurer  
Director  
Division of Appeals  
and Regulatory Affairs  
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