

B59



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Nancy Zook,  
Department of Corrections

CSC Docket No. 2015-1232

Minor Discipline Appeal

ISSUED: **MAR 10 2015**

(SLD)

Nancy Zook, a Principal Investigator, Parole and Secured Facilities, with the Department of Corrections,<sup>1</sup> represented by Michael C. Mormando, Esq., appeals a five working-day suspension.

The record indicates that the appellant was served with notification of a five working-day suspension on charges of insubordination: intentional disobedience or refusal to accept an order, assaulting or resisting authority, disrespect or use of insulting or abusive language to a supervisor. Specifically, the appointing authority alleged that on May 7, 2014, the appellant was ordered by the Assistant Chief Investigator, Secured Facilities (Assistant Chief), to contact the Mercer County Prosecutor's Office and obtain an update on the status of a criminal review and report the content of that conversation to the Chief Investigator, Parole and Secured Facilities (Chief). On May 14, 2014, the Assistant Chief contacted the appellant to obtain an update; however, the appellant challenged the Assistant Chief's motives and lied about the Administrator wanting the program under investigation to remain closed. It was also alleged that the appellant refused to shake the Assistant Chief's hand and when told that her conduct was insubordinate, responded "just do me then." Following a departmental hearing, the Hearing Officer noted that although there was a discrepancy regarding the actual dates of the events, the appellant did acknowledge that the interactions had taken place. The Hearing Officer also noted that although the appellant claims the order given to her was

<sup>1</sup> Currently, the appellant is assigned to the Adult Diagnostic and Treatment Center. However, at the time of the instant charges, the appellant was assigned to New Jersey State Prison.

possibly unlawful, she did not effectively communicate her concerns to her superiors, and thus she had resisted authority. The Hearing Officer also found that the appellant's failure to acknowledge the authority of the hierarchy by providing the requested information, constituted refusal to accept an order and resisting authority. The Hearing Officer stated that although the appellant claimed that she was misquoted, and she actually stated "do what you have to do" to the Assistant Chief, was not relevant since the sentiment was inappropriate and evidenced disrespect to a supervisor. Finally, with regard to the appellant's comments to the Administrator, the Hearing Officer found that the appellant had engaged in insulting language to a supervisor. Accordingly, the Hearing Officer found that the appointing authority had met its burden of proof and established that the appellant had acted insubordinate and upheld the five working-day suspension.

On appeal to the Civil Service Commission (Commission), the appellant contends that the five working-day suspension should be dismissed. Alternatively, she requests a hearing on the matter. Substantively, the appellant argues that the Assistant Chief had ordered her to recommend that the program be "reopened" despite advice from the Mercer County Prosecutor's Office that the program remain closed during the investigation. The appellant maintains that to have done so would have been unethical and criminal, and that despite reporting the issues to the Assistant Chief in an e-mail, the Assistant Chief initiated the instant disciplinary action. The appellant asserts that substantial credible evidence establishes that the Hearing Officer's decision was motivated by and/or perpetuated invidious discrimination considerations or was in violation of Civil Service rules. Specifically, she asserts that the departmental hearing was not "fair" since: the appointing authority's representative was also a witness in the matter; the Hearing Officer would not allow the Deputy First Assistant Prosecutor involved to testify on the appellant's behalf; and the Hearing Officer repeatedly prevented cross examination of the appointing authority's witness that would have revealed relevant facts. The appellant maintains that the Assistant Chief's actions in this matter bring his credibility into question, and the Hearing Officer's failure to appropriately weigh his credibility divested her of a fair hearing. The appellant asserts that she did not make any derogatory comments as alleged and she had repeatedly made her concerns clear to the Assistant Chief, and thus, all charges against her should have been dismissed.

Despite an opportunity to do so, no response was received from the appointing authority.

## CONCLUSION

Initially, the appellant requests a hearing in this matter. Minor discipline appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b.* Hearings are granted in those limited instances where the Civil Service

Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented which would require a hearing. See *Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

*N.J.A.C. 4A:2-3.7(a)* provides that minor discipline may be appealed to the Commission. The rule further provides:

1. The [Commission] shall review the appeal upon a written record or such other proceeding . . . and determine if the appeal presents issues of general applicability in the interpretation of law, rule or policy. If such issues or evidence are not fully presented, the appeal may be dismissed and the [Commission's] decision will be a final administrative decision.
2. Where such issues or evidence under (a)1 above are presented, the [Commission] will render a final administrative decision upon a written record or such other proceeding as the [Commission] directs.

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

Moreover, in considering minor discipline 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 appointing authority. The Commission will also not disturb hearing officer credibility judgments in minor discipline proceedings unless there is substantial credible evidence that such judgments and conclusions were motivated by invidious discrimination considerations such as age, race or gender bias or were in violation of Civil Service rules. See *e.g., In the Matter of Oveston Cox* (CSC, decided February 24, 2010). A review of the record evidences no showing that either factor, which would warrant further Commission review, is present in this case. Although the appellant argues that the actions of the Hearing Officer were evidence of invidious motivation, she fails to provide any substantive evidence in support. For example, the appellant asserts that the Hearing Officer's determination that the Assistant Chief was credible was evidence of invidious motivation. However, other than the appellant's mere allegations, and blanket denials, she has presented no evidence to dispute the Hearing Officer's findings. In this regard, in reviewing these matters, this agency must rely on the experience and judgment of hearing officers to adequately summarize testimony and make reasonable and rational conclusions. Based on this record, the appellant has not established an abuse by the appointing authority of its discretion in this minor

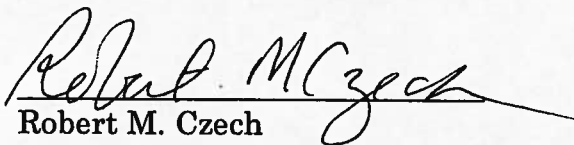
disciplinary case. Therefore, there is no basis to disturb the Hearing Officer's conclusion and no further review will be conducted by the Commission.

**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 4TH DAY OF MARCH, 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

c: Nancy Zook  
Michael C. Mormando, Esq.  
James Mulholland  
Donna Eberle  
Kenneth Connolly  
Joseph Gambino