

Moreover, the appellant is entitled to reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Richard Camel. The Commission further orders that the appellant be granted 35 working days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for the appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 14TH DAY OF AUGUST, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 04328-21

AGENCY DKT NO. 2021-1517

**IN THE MATTER OF RICHARD CAMEL,
PASSAIC COUNTY SHERIFF'S DEPARTMENT.**

Leonard C. Schiro, Esq., for petitioner Richard Camel, (Mets, Schiro & McGovern, LLP, attorneys)

Leslie S. Park, Deputy County Counsel, for respondent Passaic County Sheriff's Department (Nadege D. Allwaters, County Counsel)

Record Closed: April 2, 2024

Decided: July 3, 2024

BEFORE PATRICE E. HOBBS, ALJ:

STATEMENT OF THE CASE

Passaic County Sheriff's Department (Sheriff's Department) issued a Final Notice of Disciplinary Action to petitioner, Richard Camel, imposing a thirty-five day working suspension for excessive absenteeism because he quarantined for fourteen days after being in close contact with his mother who was positive for Covid-19. Did the Sheriff's Department sustain their burden of proof by a preponderance of the evidence that Camel should be suspended for thirty-five days? No. The appointing authority bears the burden of proving its case based on a preponderance of the evidence under N.J.A.C. 4A:4-6.3.

PROCEDURAL HISTORY

On December 8, 2020, the Sheriff's Department issued a Preliminary Notice of Disciplinary Action to Camel charging him with violations of N.J.A.C. 4A:2-2.3(a)(4) (Chronic or excessive absenteeism or instances), N.J.A.C. 4A:2-2.3(a)(6) (Conduct unbecoming a public employee), N.J.A.C. 4A:2-2.3 (a)(7) (Neglect of duty), N.J.A.C. 4A:2-2.3 (a)(12) (Other sufficient cause – 11.15 repeated violations of rules and regulations), N.J.A.C. 4A:2-2.3(a)(12) (Other sufficient cause – 11.22 lying), N.J.A.C. 4A:2-2.3(a)(12) (Other sufficient cause 11.29 failure to comply with the Sheriff's orders, directive, regulation, etc. Covid Directive), N.J.A.C. 4A:2-2.3(a)(12) (Other sufficient cause 11.44 failure to be at home without a legitimate reason after reporting sick), N.J.A.C. 4A:2-2.3(a)(12) (Other sufficient cause violation of County sick time policy).

On April 5, 2021, the Sheriff's Department issued a Final Notice of Disciplinary Action sustaining some of the charges. Specifically, the Sheriff's Department charged Camel with violations of N.J.A.C. 4A:2-2.3(a)(4) (Chronic or excessive absenteeism or instances), N.J.A.C. 4A:2-2.3(a)(6) (Conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3 (a)(7) (Neglect of duty), N.J.A.C. 4A:2-2.3 (a)(12) (Other sufficient cause – 11.15 repeated violations of rules and regulations), N.J.A.C. 4A:2-2.3(a)(12) (Other sufficient cause 11.29 failure to comply with the Sheriff's orders, directive, regulation, etc. Covid Directive). On April 9, 2021, Camel filed an appeal.

On May 12, 2021, the case was transmitted from the Civil Service Commission to the Office of Administrative Law (OAL) for a hearing as a contested case under N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to-13. Several prehearing telephone conferences were held. On January 24, 2024, the case was transferred from Judge Scollo to me because of his retirement. On February 16, 2024, a status conference was held, and the case was scheduled for a hearing. On April 2, 2024, I held the hearing. On July 1, 2024, post-hearing submissions were filed, and on that date, I closed the record.

FINDINGS OF FACT

Based upon the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

Camel has been employed as a Sherriff's Officer for over twenty years. On October 13, 2020, Camel was off duty and was visiting his eighty-four-year-old mother who was in the hospital. His mother was being discharged from the hospital to a subacute care facility. The subacute facility required his presence and signatures for his mother's admission because he is his mother's only next of kin and is responsible for her care. On October 14, 2020, Camel was notified that his mother had tested positive for the Covid-19 virus.

In October of 2020, the State of New Jersey was in a state of emergency because of the Covid-19 pandemic. At this time, there was insufficient scientific information about the spread of Covid-19 and there was no vaccine. Masks were required everywhere. Covid-19 had started to spike again.

The Center for Disease Control (CDC) required that all state entities enact Covid-19 policies. The Sheriff's Department's Covid-19 policy dated March 24, 2020, required that any employee who was exposed to the virus by direct contact or because they were caring for a loved one must obtain a doctor's note and quarantine for fourteen days. (R-4.) This policy was on the Sheriff's Department letterhead. All policies of the Sheriff's Department are placed in the DMS system, and every employee must sign and acknowledge receipt of the policies. Camel acknowledged receipt of the March 24, 2020, Covid-19 policy on May 31, 2020. (R-14.) Based on this policy, Camel obtained a note from Dr. Hassanien stating that Camel had been exposed to Covid-19 and testing was in progress. (R-1.) Camel stated that he forwarded this note to the Sheriff's Department and was asked for a more specific note. On October 15, 2020, Camel obtained a letter from the Passaic County Department of Health stating that he was in close contact with someone who tested positive for Covid-19 and was required to quarantine from October 13, 2020, to October 27, 2020. (R-2.) Camel forwarded this note to the Sheriff's

Department. Camel had no other communication with the Sheriff's Department after sending the second note.

Undersheriff Daryl Walton (Walton) was the person assigned to the Covid-19 task force to ensure compliance with the Covid-19 policies by the entire Sheriff's Department. Walton testified that the policy for Covid-19 changed in June 2020. (R-3.) The letterhead for this policy is from the Sheriff's Department. The new policy instituted a seven-day quarantine. As a result of the change in the policy, the Sheriff's Department adopted a new form, Covid-19 First Responder/Essential Personnel Medical Form (Covid-19 Form). (R-5.) This form was on the Sheriff's Department letterhead. It would be used to confirm employees' exposure to Covid-19 by requiring the release of employees' Covid-19 medical records to the department. This form, which was adopted from Preakness Hospital, a nursing home facility, was supposed to have been put on the Sheriff's Department letterhead, but it was not. In fact, it wasn't even on any type of letterhead. It was not dated and applied solely to persons who tested for Covid-19. Moreover, it did not address those who were in close contact with someone who tested positive for Covid-19. Camel confirmed that he had no knowledge of the June 2020 policy and in fact, it was not acknowledged as received by Camel until January 2023. (R-15.)

On October 1, 2020, Camel submitted an FMLA Leave Request Form. (R-8.) The Covid-19 Forms along with the FMLA form were concerning Walton, and he wanted to obtain more information as to the nature of Camel's exposure to Covid-19. Walton contacted the Special Investigations Division (SID), Detective Miguel Soto (Soto), to deliver the Covid-19 Form to Camel and obtain a signed proof of delivery. (R-6.) Walton did not contact the union representative for Camel, nor did he try to contact Camel directly via email or telephone. Walton could not recall how many times they had sent SID to employees with Covid-19 Forms but knows there was at least one other occasion. Soto could not confirm how many times he has delivered these forms.

Camel visited his mother on October 16, 2020, because she had Covid-19 and Covid-19 was particularly dangerous to the elderly. Therefore, Camel was not home when Soto went to his home to deliver the Covid-19 Form. Camel returned to work on October

28, 2020, the day after his fourteen-day quarantine. He was not contacted by Walton or his union representative when he returned to work.

On November 24, 2020, Camel was notified that his request for intermittent FMLA was denied. (R-9.) He had requested this leave to care for his mother. Interestingly, Soto noted in his November 20, 2020, report that Camel's FMLA had been denied, but notification had not been sent to Camel until four days later.

Camel worked his regular schedule from October 28, 2020, to December 8, 2020, when he was served with the Preliminary Notice of Disciplinary Action charging him with various violations including excessive absenteeism for the quarantine period, October 13, 2020 - October 27, 2020. (R-10.) The Sheriff's Department sought a ninety-day suspension. This was his first and only notification that there was an issue with his October absence. On April 6, 2021, he was served with the Final Notice of Disciplinary Action sustaining some of the charges in the Preliminary Notice of Disciplinary Action and imposing a thirty-five-day suspension. (R-12.) Camel appealed the suspension; however, the matter could not be heard before his retirement in July 2023. Camel served the thirty-five-day suspension.

CONCLUSIONS OF LAW

Any suspension greater than five working days is considered a major disciplinary action, and the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980).

The only Covid-19 policy that Camel received was the March 2020, policy requiring a doctor's note and a fourteen-day quarantine. When the policy changed, the Sheriff's Department made no effort to ensure that all employees were made aware of the change. In fact, Walton knew that Camel had not acknowledged receipt of the new policy. Notably, the new policy was not on formal letterhead. It was not dated and does not state that it replaces the March 2020 policy. The policy does not address exposure to Covid-19

without a positive test result. However, the Passaic County Health Department issued its October 15, 2020, letter to Camel imposing a fourteen-day quarantine. It is clear, that even the County was unsure what the quarantine requirements were for Covid-19. During his absence, Camel visited his mother, who had Covid-19. Visiting his mother, who had Covid-19, while he was in quarantine, was not violative of any department rule. Walton could have called or emailed Camel after seven days to inquire as to why he had not returned to work. Instead, Walton sent the SID to his home with new policy forms with no explanation.

Camel, through no fault of his own, was quarantined for fourteen days, according to the Sheriff's Department and the Passaic County Department of Health. Camel's absence from work was solely because of his exposure to Covid-19, and he was complying with not only the policy in place, but also the instructions he received from the Passaic County Department of Health. He was absent for exactly fourteen days and no more. I **CONCLUDE** that Camel's fourteen-day absence because of direct exposure to Covid-19 during the height of the pandemic is not excessive absenteeism in violation of N.J.A.C. 4A:2-2.3(a)(4) (Chronic or excessive absenteeism or instances), N.J.A.C. 4A:2-2.3(a)(6) (Conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3 (a)(7) (Neglect of duty), N.J.A.C. 4A:2-2.3 (a)(12) (Other sufficient cause – 11.15 repeated violations of rules and regulations), or N.J.A.C. 4A:2-2.3(a)(12) (Other sufficient cause 11.29 failure to comply with the Sheriff's orders, directive, regulation, etc. Covid Directive).

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the charges contained in the Final Notice of Disciplinary Action dated April 6, 2021, are hereby **DISMISSED**.

I further **ORDER** that Camel be reinstated with all due back pay, seniority, and pension benefits from the effective date of his suspension with the Sheriff's Department.

Finally, I **ORDER** that Camel be **AWARDED** all reasonable counsel fees incurred in this proceeding under N.J.A.C. 4A:2-2.12.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision under N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



July 3, 2024
DATE

PATRICE E. HOBBS, ALJ

Date Received at Agency:

July 3, 2024

Date Mailed to Parties:

July 3, 2024

APPENDIX

WITNESSES

For Petitioner:

Richard Camel

For Respondent:

Undersheriff Daryl Walton

Sgt. Miguel Soto

EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 Covid-19 Prescription Form dated 10/14/20
- R-2 Covid-19 Quarantine Note dated 10/15/20
- R-3 County Covid-19 Absence and Return to Work
- R-4 PCSO Sheriff's Directive on Staffing During Covid-19 dated 3/24/20
- R-5 PCSO Covid-19 First Responder/Essential Personnel Medical Form
- R-6 Email from US Walton to SID dated 10/16/20
- R-7 In Time Bank Detail by Employees Report for Cpl. Camel
- R-8 Cpl. Camel Request for Intermittent Leave dated 10/1/20
- R-9 Letter from County HR to Cpl. Camel re: FMLA dated 11/24/20
- R-10 PNDA 31-A for Cpl. Camel dated 12/8/20
- R-11 Cpl. Camel Disciplinary History
- R-12 FNDA 31-B for Cpl. Camel dated 4/6/21
- R-13 Report by Det. Miguel Soto, SID NCF 20-115 dated 11/20/20
- R-14 Power DMS Report of Signature for Covid-19 Directive 3/24/20
- R-15 Power DMS Report of Signature for Covid-19 Absence and Return to Work Policy