



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of S.J., Boonton

CSC Docket No. 2025-86

Request for Interim Relief

ISSUED: October 16, 2024 (HS)

S.J., a Police Captain with Boonton, represented by Matthew A. Peluso, Esq., petitions the Civil Service Commission (Commission) for interim relief of his indefinite suspension.

As background, on October 18, 2022, the appointing authority immediately suspended the petitioner with pay and presented him with a Preliminary Notice of Disciplinary Action (PNDA) indicating administrative charges of insubordination; conduct unbecoming a public employee; neglect of duty; other sufficient cause; misconduct, *N.J.S.A. 40A:14-147*; violating police department rules and regulations; and violating duty assignment and overtime procedures. On February 8, 2023, the petitioner was criminally charged with computer criminal activity, *N.J.S.A. 2C:20-25e*; theft by unlawful taking or disposition, *N.J.S.A. 2C:20-3a*; tampering with public records or information, *N.J.S.A. 2C:28-7a(3)*; and falsifying or tampering with records, *N.J.S.A. 2C:21-4a*, crimes of the second, third, or fourth degrees. Thus, on February 10, 2023, the appointing authority immediately suspended the petitioner without pay and presented the petitioner with another PNDA proposing an indefinite suspension. On that same date, the appointing authority also issued the petitioner the following correspondence:

As you are aware, you were previously suspended with pay on October 18, 2022 in response to the PNDA dated October 18, 2022. However, this memorandum puts you on notice that your suspension is being modified to a suspension without pay in response to being charged with

crimes of the 2nd, 3rd and 4th degree. Specifically, on February 8, 2023 you were charged with *N.J.S.A. 2C:20-25e*, *N.J.S.A. 2C:20-3a*, *N.J.S.A. 2C:28-7a(3)*, and *N.J.S.A. 2C:21-4a*. Your continued suspension is necessary to maintain safety, health, order, and effective direction of public services and you are unfit for duty. This notice shall also serve as written notification of why the suspension is sought in compliance with *N.J.A.C. 4A:2-2.5(b)*. This suspension shall be indefinite pending the disposition of your criminal charges.

The petitioner did not request a hearing on the February 10, 2023 PNDA. On February 21, 2023, the appointing authority presented the petitioner with a Final Notice of Disciplinary Action imposing an indefinite suspension pending criminal charges, effective February 10, 2023. On May 30, 2024, the court dismissed the criminal charges without prejudice and further ordered that pursuant to *N.J.S.A. 2C:52-6*, an order of expungement shall be granted pursuant to this dismissal for “all records and information related to the arrest.” On June 5, 2024, the Attorney General’s Office of Public Integrity and Accountability (OPIA) indicated that it “fully intend[ed] to proceed with criminal charges against [the petitioner].” On June 14, 2024, the appointing authority issued correspondence stating that the petitioner would “remain[] suspended without pay pending additional criminal charges. Additionally, [the petitioner] no longer possesses his [law enforcement] license as it has been suspended [by the Police Training Commission (PTC)].”

In his request for interim relief, the petitioner contests his continued suspension without pay given that the criminal charges were dismissed and no new charges were filed.

In response, the appointing authority, represented by Adam S. Abramson-Schneider, Esq., contends that the instant interim relief request must be denied. It proffers that the October 18, 2022 PNDA was put on hold pending the criminal matter. The appointing authority states that it is prepared to move forward with a hearing on that PNDA as soon as the criminal charges are fully resolved. In that regard, it maintains that the criminal charges are not fully resolved at this point since the OPIA has expressed its intent to refile the charges. Thus, per the appointing authority, although the criminal charges against the petitioner were dismissed, they are expected to be refiled and brought before a grand jury in the near future. Even assuming, *arguendo*, the criminal charges are not refiled, the appointing authority will proceed with an additional notice of disciplinary action seeking the petitioner’s removal based on the conduct that gave rise to the criminal complaint, which would similarly subject him to an unpaid suspension. The appointing authority also highlights the PTC’s suspension of the petitioner’s law enforcement license and argues that per *N.J.S.A. 52:17B-67.1*, it would be impermissible and illegal for it to reinstate the petitioner to any active position within the Police Department. In fact, in the appointing authority’s view, even a suspension with pay pending the outcome

of all pending matters would not be permitted as the petitioner does not have a valid law enforcement license, which is required to provide law enforcement services within the State.

In reply, the petitioner argues that the appointing authority never sought any stay of the October 18, 2022 PNDA, and there was no automatic stay of that PNDA. Further, he certifies that on June 3, 2024, the appointing authority received notice that the court had dismissed the criminal complaint. Yet, rather than reinstating him pursuant to his request, the appointing authority wrongfully denied his request on the false and legally frivolous assertion that there are or could be additional criminal charges against him and his law enforcement license is suspended. However, per the petitioner, it is undisputed that there are no existing or pending criminal charges against him. He also highlights that the appointing authority's February 10, 2023 correspondence states that the indefinite suspension without pay would only continue pending the criminal charges, which are now dismissed in their entirety. In addition, he proffers that his law enforcement license was suspended by and at the request of the appointing authority solely as the result of the criminal complaint, which has now been dismissed. Therefore, he contends, the appointing authority can and should be ordered to take all steps necessary to activating his law enforcement license as expeditiously as possible. The petitioner maintains that he is facing a dire financial situation and seeks the following remedies: (1) immediate reinstatement of his law enforcement license; (2) immediate reinstatement to active employment; (3) reinstatement of his pre-suspension salary and benefits, plus any salary increases and lost overtime; and (4) payment of all his back pay and benefits from February 10, 2023 to the present.

CONCLUSION

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

N.J.A.C. 4A:2-2.5(a)2 provides that an employee may be suspended immediately when the employee is formally charged with a crime of the first, second, or third degree, or a crime of the fourth degree on the job or directly related to the job.

N.J.A.C. 4A:2-2.7(a)2 provides that the appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to

criminal charges as set forth in *N.J.A.C.* 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

N.J.A.C. 4A:2-2.7(b)1 provides that if the criminal action does not result in an order of forfeiture issued by the court pursuant to *N.J.S.A.* 2C:51-2, the appointing authority shall issue a second PNDA specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under *N.J.A.C.* 4A:2-2.5 and 2.6.

Initially, it is noted that it was appropriate for the appointing authority to immediately and indefinitely suspend the petitioner on February 10, 2023 pending the disposition of criminal charges. However, the record reflects that on June 3, 2024, the appointing authority received notice that the court had dismissed the criminal complaint that was the basis for the petitioner's indefinite suspension. Upon dismissal of the criminal charges, an employee is entitled to immediate reinstatement to employment following an indefinite suspension or prompt service of any remaining administrative charges upon which the appointing authority wishes to base disciplinary action. *See N.J.A.C.* 4A:2-2.7(b)1. Even when an employee is ultimately removed on administrative disciplinary charges, the employee may be awarded back pay for any undue delay on the appointing authority's part for the period between dismissal of the criminal charges and service of a PNDA setting forth any remaining administrative charges. *See In the Matter of Stanford Harris* (CSC, decided December 17, 2008); *In the Matter of James Shanks* (MSB, decided May 7, 2003). To determine otherwise would be contrary to *N.J.A.C.* 4A:2-2.7(a)2, which purpose is to keep public employees from being held in limbo indefinitely even after being exonerated in a criminal proceeding.

In light of the foregoing, it is unconvincing for the appointing authority to maintain that the October 18, 2022, PNDA which had been served over one year and seven months prior to the dismissal of the criminal complaint – essentially remained in effect but that it would move forward with a hearing on that PNDA only after the OPIA had rendered a decision whether to refile the criminal charges. *See Harris, supra*, and *N.J.A.C.* 4A:2-2.7(b)1. To allow the appointing authority to leave an employee in limbo in this manner would be patently unfair. *See Harris; Shanks, supra*. Also unconvincing is the appointing authority's contention that it may continue the indefinite suspension without pay because the court dismissed the criminal complaint without prejudice and the OPIA indicated its intent to proceed with criminal charges against the petitioner. The fact remains that the court did dismiss the criminal complaint. The OPIA's letter reflects an expectancy of criminal charges, not criminal charges to which the petitioner is actually subject that would support continuing the indefinite suspension without pay. Further, the Commission is not persuaded that the suspension of the petitioner's law enforcement license precludes the limited award of back pay, discussed above, which is provided to redress the identified procedural issue. Specifically, the appointing authority has not cited

to clear authority for that proposition. The appointing authority does cite *N.J.S.A. 52:17B-67.1*, which provides:

A person shall not be employed as a law enforcement officer, as defined in section 2 of P.L.1961, c.56 (C.52:17B-67), in this State unless the person holds a valid, active license as a law enforcement officer issued in accordance with P.L.2022, c.65 (C.52:17B-71a et al.). A person shall not act as a law enforcement officer, as defined in section 2 of P.L.1961, c.56 (C.52:17B-67), in this State beyond the scope of the authorization provided pursuant to any designations to the license approved by the Police Training Commission.

However, as discussed above, the appointing authority is not strictly being ordered to reinstate the petitioner to active law enforcement duties in that it is free to reissue the October 22, 2022, PNDA and covert the immediate suspension with pay to an immediate suspension without pay, if applicable, or issue a new immediate suspension/PNDA setting forth any and all remaining administrative charges. However, its inaction from June 3, 2024, to the present is improper and thus, merits a remedy of back pay from that date until any action set forth above is implemented.

Turning to the petitioner's request for reinstatement of his law enforcement license, as the Commission is without authority to order such relief, he may wish to avail himself of any procedures available under PTC law and rules. Further, given the procedural posture of this case and this decision, consideration of a more extensive back pay award as sought by the petitioner is premature.

ORDER

Therefore, it is ordered that the petition for interim relief be granted in part and the petitioner receive back pay from June 3, 2024 until he is either reinstated or action is taken as detailed above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF OCTOBER, 2024



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