



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Mark Kieffer III,
Trenton

CSC Docket No. 2025-251

Request for Interim Relief

ISSUED: October 16, 2024 (HS)

Mark Kieffer III, a Police Officer with Trenton, represented by Stuart J. Alterman, Esq., petitions the Civil Service Commission (Commission) for interim relief of his immediate suspension.

As background, via a May 31, 2024 suspension notice from the internal affairs unit, the appointing authority immediately suspended the petitioner without pay on the basis that such suspension was necessary to maintain safety, health, order or effective direction of public services with the suspension being made retroactive to May 2, 2024. The *Loudermill*¹ hearing officer presented the following factual discussion in his June 7, 2024 opinion: An allegation was made by the petitioner's colleague that another officer committed sexual harassment by exposing himself to her in the gym, and the allegation resulted in an internal affairs investigation. The allegation was known among other officers in the Police Department. During the investigation, a video created by the petitioner using the television show *Seinfeld*² as a reference started to circulate among other officers in the department. The video included the names of the officers involved in the incident and others believed to have knowledge of the incident. While disputed, it was represented that the petitioner had no knowledge of any ongoing internal investigations related to the incident when he released the video and that he made the video in a jovial nature. Despite his intention, the video caused the complainant to become upset, and the information

¹ *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

² Specifically the episode where a date exposes himself to the character Elaine Benes, who later remarks that "he took it out."

was forwarded to the person responsible for investigating the previous incident. While the *Loudermill* hearing officer found that a suspension was supportable, he determined that only a suspension *with pay* would be consistent with State law. The appointing authority disagreed and maintained the suspension *without pay*. Specifically, in a June 10, 2024 e-mail on which the Police Director was copied, the Law Director indicated the following:

The city will not consider a recommendation regarding what to do with an employee pending a final recommendation of discipline. The status of an employee pending a final recommendation of discipline is in the employer's sole discretion. [The petitioner] will remain suspended without pay until the final hearing.

In his request for interim relief, the petitioner contests his continued suspension without pay. He maintains that his rights are well settled under *N.J.S.A. 40A:14-149.1*. And in interpreting that provision, the Appellate Division stated that “suspensions without pay are precluded for officers charged solely with violations of departmental rules or regulations, except where conduct equivalent to the most serious of crimes involving moral turpitude or dishonesty is supportably alleged.” *Herzog v. Twp. of Fairfield*, 349 *N.J. Super.* 602, 608 (App. Div. 2002). The petitioner maintains that he created a satirical *Seinfeld* meme relating to an inappropriate event that allegedly happened at his department. In the meme, the *Seinfeld* characters were labeled as people involved in the alleged exposure incident. The petitioner also made a joke about the incident to a colleague Police Officer and showed her the meme. Although the petitioner states that he thought his colleague would find the meme funny, the colleague, unbeknownst to the petitioner, was very upset about the alleged incident because it involved one of her good friends. The petitioner indicates that he was not involved in the alleged inappropriate event whatsoever, and there are no allegations to the contrary. He simply made a video as a form of joking around with his colleagues. He has not been indicted or charged with a high misdemeanor. Indeed, the investigation report filed in this matter listed only “Rules and Regulations” that the petitioner allegedly violated. As such, in order for him to be suspended without pay, the alleged conduct would need to be “equivalent to the most serious of crimes involving moral turpitude or dishonesty” per *Herzog*. The petitioner argues that is indisputably not the case here, and the *Loudermill* hearing officer properly concluded the same.

Moreover, notes the petitioner, the Police Director is the “head” of the Police Department. See Local Ordinance, Chapter 2, Article XII, § 2-56. To this point, the Police Director is charged with the responsibility of being the “Appropriate Authority” in the department. In this case, the Law Director made a unilateral decision to disregard the *Loudermill* hearing officer’s opinion. Per the petitioner, the Law Director had no such authority.

Finally, the petitioner argues that he is being irreparably harmed as his suspension without pay impacts his health insurance and his ability to care for his two young children.

In response, the appointing authority, represented by Palmer J. Richardson, Assistant City Attorney, contends that the instant interim relief request must be denied. It proffers that “moral turpitude” is defined as “an act or behavior that gravely violates the sentiment or accepted standard of the community.” Merriam-Webster.com, <https://www.merriam-webster.com/legal/moral%20turpitude>. The appointing authority maintains that the petitioner’s behavior of circulating the mocking video, particularly one targeting a serious and sensitive issue like sexual harassment, constitutes moral turpitude. His actions not only demonstrated a disregard for the dignity of his colleagues but also undermined the seriousness of internal investigations. The circulation of mocking videos during ongoing investigations not only disrupts the workplace but also compromises the Police Department’s ability to effectively address serious issues. The appointing authority asserts that the petitioner’s action has served to erode trust within the department and, if not properly treated, could ultimately lead to a loss of public confidence in the police force. His actions are a perversion of core departmental rules, specifically those that are essential to maintaining integrity and trust in the force. His actions are an affront to important departmental tenets, those of professionalism, respect, and confidentiality. Such actions are incompatible with the role of a Police Officer and undermine the department’s ability to enforce discipline.

Additionally, the appointing authority notes that in *Herzog, supra*, the court stated with respect to *N.J.S.A. 40A:14-149.1* that “the intention of the drafters was to protect a police officer from the loss of income and other benefits while the charges pended unless they were of special gravity.” 349 *N.J. Super.* at 607. The appointing authority argues that in considering this exception for actions that are of “special gravity,” actions that place the department and, vicariously, an entire city, at risk of legal and financial jeopardy must be included. By mocking officers involved in a sexual harassment investigation, the appointing authority proffers, the petitioner has exposed the department to significant legal and financial risks. An officer mocked in the petitioner’s video has already filed a civil suit and is relying upon the petitioner’s video as evidence in support of her complaint. If the civil suit is deemed meritorious, the city will endure immense financial loss. Such loss will have a detrimental impact on its resources and therefore serve as a direct harm to its citizens – the same citizens the petitioner took an oath to serve and protect.

The appointing authority concludes that *Herzog* provides strong support for the petitioner’s continued suspension without pay. In its view, the case underscores that when an officer’s behavior involves moral turpitude, disrupts departmental integrity, and places the welfare of a city and its residents in jeopardy, more severe disciplinary measures are justified. Given these principles, it is clear that the

petitioner's suspension without pay is both appropriate and necessary to maintain the standards and integrity of the Police Department.

CONCLUSION

N.J.S.A. 11A:2-13 provides, in pertinent part, that except as otherwise provided herein, before any disciplinary action in subsection a.(1), (2) and (3) of *N.J.S.A.* 11A:2-6 is taken against a permanent employee in the career service or a person serving a working test period, the employee shall be notified in writing and shall have the opportunity for a hearing before the appointing authority or its designated representative. The hearing shall be held within 30 days of the notice of disciplinary action unless waived by the employee. Both parties may consent to an adjournment to a later date. This section shall not prohibit the immediate suspension of an employee 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.

N.J.S.A. 40A:14-147 provides, in pertinent part, that except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. The complaint shall be filed in the office of the body, officer, or officers having charge of the department or force wherein the complaint is made and a copy shall be served upon the member or officer so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint.

N.J.S.A. 40A:14-149.1 provides that notwithstanding any other law to the contrary, whenever any municipal police officer is charged under the law of this State, another state, or the United States, with an offense, said police officer may be suspended from performing his duties, with pay, until the case against said officer is disposed of at trial, until the complaint is dismissed, or until the prosecution is terminated; provided, however, that if a grand jury returns an indictment against said officer, or said officer is charged with an offense which is a high misdemeanor or which involves moral turpitude or dishonesty, said officer may be suspended from his duties, without pay, until the case against him is disposed of at trial, until the complaint is dismissed or until the prosecution is terminated.

N.J.A.C. 4A:2-2.4(b) provides that in local service, the appointing authority may provide that a suspension be with or without pay.

N.J.A.C. 4A:2-2.5(a) provides, in pertinent part, that an employee must be served with a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except: (1) An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services . . . However, a PNDA with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

N.J.A.C. 4A:2-2.5(b) provides, in pertinent part, that where suspension is immediate under (a)1 above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

N.J.A.C. 4A:2-2.5(c) provides that the employee may request a departmental hearing within five days of receipt of the PNDA. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action (FNDA).

N.J.A.C. 4A:2-2.5(d) provides that 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.

N.J.A.C. 4A:2-2.6(d) provides that within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with an FNDA. *See N.J.A.C. 4A:2-2.13* for the issuance of a Final Notice in removal appeals by certain law enforcement officers and firefighters.

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.

Initially, it is noted that the petitioner's immediate suspension under *N.J.A.C.* 4A:2-2.5(a)1 was warranted. Clearly, the alleged conduct involving the petitioner's creation of a video that made light of a serious matter – a claim of sexual harassment – establishes that his immediate suspension was necessary to maintain safety, health, order, or effective direction of public services. In this regard, the Commission is mindful that the petitioner, as a law enforcement officer, is held to a higher standard than are 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). Further, under *N.J.A.C.* 4A:2-2.4(b), the appointing authority had the option to suspend the petitioner without pay. Regarding the petitioner's argument that his suspension without pay was inappropriate under *Herzog*, *supra*, that matter involved a Police Officer reading a confidential internal affairs document and disseminating it to the newspaper, which led to charges solely for violating departmental rules and regulations. The court found Herzog's conduct did not rise to the level of "moral turpitude or dishonesty" as required under *N.J.S.A.* 40A:14-149.1 to support a Police Officer being suspended without pay. Therefore, it ordered back pay from the period of suspension. However, this matter is distinguishable as the alleged conduct has the potential to impugn the integrity of the Police Department and therefore involved "moral turpitude," warranting a suspension without pay.

The Commission is not persuaded that the Law Director acted unilaterally to reject the *Loudermill* hearing officer's opinion on June 10, 2024 as the petitioner contends. In this regard, the petitioner had previously already been suspended without pay, and the Law Director's June 10, 2024 e-mail maintains that action. Further, the e-mail speaks in terms of "[t]he city" and "the employer," and the Police Director is copied on the e-mail. It may also be noted that the Law Director is "the legal advisor to the Mayor, the Council and all departments" and "shall prosecute and defend actions and proceedings by and against the City and every department thereof." See Local Ordinance, Chapter 2, Article VI, § 2-23. There is no substantive evidence in the record that the Law Director acted "unilaterally" to reject the *Loudermill* hearing officer's opinion.

Further, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether or not the petitioner's actions constituted wrongful conduct warranting discipline. The Commission will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Therefore, since the petitioner has not conclusively demonstrated that he will succeed in having any administrative charges dismissed, he has not shown a clear likelihood

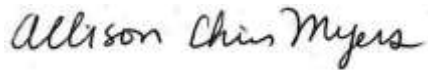
of success on the merits. Further, while the Commission is cognizant of his financial situation, the harm that he is suffering while awaiting the outcome of the administrative proceedings is financial in nature, and as such, can be remedied by the granting of back pay should he ultimately prevail. Additionally, given the serious nature of the alleged conduct, the public interest is best served by not having the petitioner on the job pending the outcome of any charges.

Finally, the appointing authority, if it has not already done so, must proceed expeditiously with a departmental hearing.

ORDER

Therefore, it is ordered that this petition for interim relief be denied.

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



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Mark Kieffer III
Stuart J. Alterman, Esq.
Maria Richardson
Palmer J. Richardson, Assistant City Attorney
Division of Agency Services
Records Center