



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Ryan Hickman,
Borough of Stanhope

CSC Docket No. 2024-1846

Request for Interim Relief
Hearing Granted

ISSUED: May 22, 2024 (HS)

Ryan Hickman, a Police Sergeant with the Borough of Stanhope, represented by Frank C. Cioffi, Esq., petitions the Civil Service Commission (Commission) for interim relief of his indefinite suspension.

As background, effective February 28, 2024, the appointing authority immediately suspended the petitioner with pay and issued him a Preliminary Notice of Disciplinary Action (PNDA), noting the following administrative charges: incompetency, inefficiency, or failure to perform duties; insubordination; conduct unbecoming a public employee; neglect of duty; misuse of public property; and other sufficient cause. *See N.J.A.C. 4A:2-2.3(a)*. Specifically, it was alleged that the petitioner had been provided with an Internal Affairs Complaint Notification by the Sussex County Prosecutor's Office (Prosecutor) for conduct occurring between February 25, 2023 and February 11, 2024 related to repeated falsification of time records with the Police Department. The PNDA noted the petitioner's immediate suspension as being necessary to maintain safety, health, order, or effective direction of public services; proposed a penalty of an indefinite suspension pending criminal charges but also noted that the appointing authority was seeking removal; and afforded the petitioner the opportunity for a departmental hearing. In a Final Notice of Disciplinary Action (FNDA) dated March 5, 2024, the appointing authority sustained the charges; imposed, effective March 6, 2024, an indefinite suspension pending criminal charges; and repeated that it was seeking removal. The FNDA indicated that the petitioner did not request a departmental hearing.

In his request, the petitioner complains that he has been suspended indefinitely without having been served with criminal charges. He asks that a hearing be set at the Office of Administrative Law (OAL).

In response, the appointing authority, represented by Ursula H. Leo, Esq., states that criminal charges are expected to be served. It maintains that it has validly suspended the petitioner both immediately and indefinitely, and there is no harm to the petitioner as to loss of salary at this time because he has been suspended with pay.

In reply, the petitioner contends that the appointing authority has taken the position that he is guilty of the allegations, and therefore, will undoubtedly be terminated. He argues that the appointing authority's position completely disregards the due process he is afforded under *N.J.A.C.* 4A:2-2.5(a)2. The petitioner maintains that with the appointing authority admitting that the criminal charges against him are only pending, its decision to suspend him is based on allegations that are still under investigation by the Prosecutor. As these are just allegations, the appointing authority, in the petitioner's view, has no evidence to support its claim that his immediate suspension is required to maintain the safety, health, order, or effective direction of public services. Therefore, the petitioner asks that he be reinstated to his position.

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.

It must initially be emphasized that the role of the Commission at this stage in the proceedings is not to adjudicate the merits of the administrative charges. It is also unnecessary to discuss in detail whether the petitioner's immediate suspension was valid. It is sufficient to note that *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. Here, the petitioner's immediate suspension was necessary to maintain safety, health, order, or effective direction of public services. In this regard, the charges are serious as they involve a law enforcement officer's alleged falsification of records over a nearly one-year period. As such, the immediate suspension was justified.

However, at issue is whether the appointing authority could “indefinitely” suspend the petitioner, pending the Prosecutor’s investigation and when no criminal charges had yet been brought. The Commission finds that it could not. *N.J.A.C.* 4A:2-2.7(a)2 provides that an employee may be indefinitely suspended beyond six months where 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. *See also N.J.A.C.* 4A:2-2.5(a)2. There are no grounds under Civil Service regulations to suspend an employee indefinitely without a criminal charge pending. Since the petitioner was not criminally charged, the appointing authority could not indefinitely suspend him.

Nevertheless, the Commission takes note that as the petitioner has been suspended since February 28, 2024 and waived his departmental hearing, he has already been subjected to major discipline. *See N.J.A.C.* 4A:2-2.2(a)3. As such, it is appropriate to refer this matter to the OAL for a hearing on the administrative charges. The actual disciplinary penalty may be determined there. Further, it is noted that if the petitioner is later criminally charged, the appointing authority may then bring forth those charges via a new PNDA. Finally, the Commission cautions the appointing authority to adhere to the disciplinary regulations in the future. Its failure to do so may subject it to fines or penalties pursuant to *N.J.A.C.* 4A:10-1.1.

The Commission will, however, decline the petitioner’s request for reinstatement at this time. As already discussed, the petitioner’s *immediate* suspension was appropriate. Moreover, since the petitioner has not conclusively demonstrated that he will succeed in having the administrative charges dismissed as there are material issues of fact, he has not shown a clear likelihood of success on the merits. The petitioner has also not shown that he is in danger of immediate or irreparable harm if he is not reinstated as he has been suspended with pay. Further, based on the nature of the charges at issue, it would be potentially detrimental to the public interest to compel the appointing authority to return the petitioner to employment.

ORDER

Therefore, the indefinite suspension imposed by the appointing authority is not upheld. Further, the petitioner’s immediate suspension is upheld. Finally, it is ordered that this matter be transmitted to the Office of Administrative Law for a hearing as set forth above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22ND DAY OF MAY, 2024

Allison Chris Myers

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Chairperson
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