

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF JUNE, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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Deputy Director
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. CSR 01267-22

AGENCY DKT. NO. N/A

2022-1809

L [REDACTED] H [REDACTED] -P [REDACTED],

Appellant,

v.

NEW JERSEY STATE

PAROLE BOARD,

Respondent.

Stuart J. Alterman,¹ Esq., for appellant (Alterman & Associates, LLC, attorneys)

Kathryn B. Moynihan, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: April 18, 2024

Decided: May 6, 2024

BEFORE TRICIA M. CALIGUIRE, ALJ:

STATEMENT OF THE CASE

Appellant **L [REDACTED] H [REDACTED] -P [REDACTED]** appeals the decision of respondent, the New Jersey State Parole Board (NJSPB), to remove her from her job as a senior parole officer

¹ Prior to April 18, 2024, this matter was handled by Arthur J. Murray, Esq., formerly of Alterman & Associates, LLC.

for violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violation of NJSPB Table of Offenses and Disciplinary Sanctions, Section B10, inability to discharge one's duty. Alternately, H [REDACTED]-P [REDACTED] moves to have this matter placed on the inactive list pending a decision on her pending application for ordinary disability retirement (ODR) benefits.

PROCEDURAL HISTORY

On July 7, 2021, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) to H [REDACTED]-P [REDACTED], charging her with a violation of N.J.A.C. 4A:2-2.3(12), other sufficient cause, specifically, a violation of Section B10 of the NJSPB Table of Offenses and Disciplinary Sanctions, inability to discharge one's duty. H [REDACTED]-P [REDACTED] requested a departmental hearing, which was held on January 10, 2022. On January 28, 2022, respondent issued the Final Notice of Disciplinary Action (FNDA) to H [REDACTED]-P [REDACTED] sustaining all charges and imposing the discipline of removal from her position as a senior parole officer, effective immediately.

H [REDACTED]-P [REDACTED] timely appealed the FNDA and on February 16, 2022, this matter was filed at the Office of Administrative Law (OAL) for a hearing pursuant to N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -13, and was assigned to the Honorable David Fritch, ALJ. On March 29, 2022, appellant through counsel waived the requirement that a final decision on this matter be issued no later than 180 days after filing, pursuant to N.J.A.C. 4A:2-2.13(g). Prior to hearing this matter, Judge Fritch was appointed to the Superior Court of New Jersey and this matter was reassigned to me.

On February 3, 2023, H [REDACTED]-P [REDACTED] moved for an order of inactivity because she had made an application to the Board of Trustees of the Police and Firemen's Retirement System (PFRS) for ODR benefits. The PFRS denied her application and on March 23, 2023, H [REDACTED]-P [REDACTED] filed an appeal with the PFRS. On March 30, 2023, she withdrew her motion for an order of inactivity, and the hearing was scheduled for December 4, 2023, a date by which the PFRS presumably would have ruled on her ODR application appeal.

On August 21, 2023, a Consent, Confidentiality and Protective Order was entered to protect from public disclosure confidential information that may be disclosed in this matter, including “protected health information” as such is defined in the Health Information Portability and Accountability Act, 42 U.S.C. § 1320d et seq., and the regulations promulgated thereto, 45 C.F.R. §§ 160, 164.512(e).

On September 18, 2023, respondent moved for summary decision in its favor. On November 22, 2023, appellant filed a cross-motion for summary decision and, alternatively, a motion to place this matter on the inactive list. The December 4, 2024, hearing was adjourned to permit time to consider the motions. On February 28, 2024, respondent filed its reply, but review of the motions was delayed for ongoing settlement discussions. On April 5, 2024, the parties reported that settlement discussions were unsuccessful, and the cross-motions are now ripe for review.

FACTUAL DISCUSSION AND FINDINGS

Based on the papers filed by the parties in this case, including the certifications of Tamara Rudow Steinberg, chief of the Employee Relations Unit and ethics liaison officer, NJSPB; Kathryn B. Moynihan, deputy attorney general; and Arthur J. Murray, Esq., counsel for appellant,² and attached exhibits, I **FIND** the following undisputed **FACTS**:

H [REDACTED]-P [REDACTED] was hired by respondent on July 23, 2016, in the position of parole officer. (Certification of Tamara Rudow Steinberg (September 7, 2023) (Steinberg Cert.), Ex. A.)

In January and February 2020, H [REDACTED]-P [REDACTED] made formal allegations to the NJSPB Office of Professional Standards regarding suspicious behavior of her colleagues at work, including that one or more of them: put foreign substances into her coffee,

² Respondent objects to that portion of appellant’s statement of undisputed facts that is not supported by citations to the record. (Ltr. Br. of Resp’t in Reply to Appellant’s Cross-Motion for Summary Decision (February 28, 2024) (Reply Br.), at 7.) Only those statements made by counsel and based on his personal knowledge and/or supported by the record were included here. See Pressler & Verniero, NJ Court Rules, cmt. on R. 1:6-6 (2024) (Affidavits by attorneys of facts not based on their “personal knowledge but related to them by and within the primary knowledge of their clients” and/or including argument, factual and legal conclusions are objectionable hearsay.).

making her sick; sprayed a substance into her cubicle, causing her eyes and mouth to burn; threw paper at her that negatively impacted the air around her; put something in her orange juice, causing her to become dizzy; and put something in her breakfast, which made her sick. She also alleged that she was uneasy as a passenger in cars with certain colleagues. (Steinberg Cert., Ex. B.) Respondent interviewed appellant and twenty-one witnesses but found no evidence supporting these allegations. (Ibid.) Respondent took possession of appellant's duty weapon. (Ibid.)

On February 21, 2020, respondent sent appellant to Dr. Sandra Ackerman Sinclair for a fitness-for-duty examination (FFDE). (Id., Ex. E; Certification of Arthur J. Murray, Esq. (November 21, 2023) (Murray Cert.), ¶ 3.) Dr. Sinclair concluded that appellant was "psychologically unfit for duty" and that "service and personal weapons should not be returned" to her. (Steinberg Cert., Ex. E at 79–80.)

Dr. Sinclair recommended a course of psychotherapy, a psychotropic medication evaluation and compliance regimen, and that appellant report to respondent as to her attendance at regular treatment sessions, her involvement in treatment, and/or the progress she was making through treatment. (Id., Ex. E at 80.)

On June 9 and 10, 2021, appellant returned to Dr. Sinclair for a second FFDE. (Steinberg Cert., Ex. F; Murray Cert, ¶ 5.) In her report of the FFDE, Dr. Sinclair stated:

[H██████-P██████'s] past and current providers all hold serious concerns about her return to full duty. No provider feels comfortable with her carrying a weapon. Among four different providers, the subject has failed to fully engage in treatment, forcing each provider to dig for details around her original referral for treatment and making it challenging to support her recovery. Given that her mental condition is not improved since her previous FFDE, she is seen as no longer able to perform the duties of a parole officer.

[Steinberg Cert., Ex. F at 90 (emphasis added); Murray Cert., ¶ 5.]

Respondent issued the PNDA to appellant on July 10, 2021, after she had been out of work for more than one year. Appellant retained counsel to assist her in responding

to the PNDA. (Murray Cert., ¶ 7.) Counsel and appellant discussed her options, including retirement, an application for disability retirement, and appealing the PNDA. (Id., ¶ 8.)

On July 14, 2021, Eleonora L. Narbone, Ph.D., LPC, LCADC, provided counsel for H█████-P█████ with a one-paragraph letter stating that she was “currently in treatment . . . [and] should be considered ready to go back to work.” (Murray Cert., Ex. A.) Despite the contrary recommendations of counsel and her union president, H█████-P█████ chose to fight the PNDA, so that she could return to work. (Id., ¶ 13.) A departmental hearing was held on January 10, 2022, and on January 28, 2022, the FNDA was issued.

With the assistance of counsel, H█████-P█████ obtained the opinions of two independent psychologists, both of whom concurred with Dr. Sinclair. (Murray Cert., ¶¶ 19–24.)

Rhonda E. Greenberg, Psy. D., the second independent psychologist who saw H█████-P█████, issued a report on November 22, 2022, diagnosing her with delusional disorders, paranoid personality disorder, and specific trauma and stressor-related disorders. (Id., Ex. B at 24.) Dr. Greenberg concluded that appellant is “**not recommended for rehire as a parole officer.**” (Ibid.) After receipt of this report, H█████-P█████ agreed to apply for ODR benefits, and made that application on December 30, 2022. (Murray Cert., ¶¶ 25, 28.)

On January 23, 2023, the Division of Pensions & Benefits notified H█████-P█████ that her application for ODR was not accepted as she was no longer “in service” as required under N.J.S.A. 43:16A-7. (Certification of Kathryn B. Moynihan (February 28, 2024), Ex. L.) H█████-P█████ submitted a timely appeal and by letter of April 11, 2023, the Board notified her that her appeal would not be considered until after this matter was “settled.” (Ltr. from Stuart J. Alterman, Esq., Supplementing the Record (April 18, 2024), Ex. B.)

POSITIONS OF THE PARTIES

Respondent contends that summary decision is appropriate as there is no dispute that H█████-P█████ was, as of the date of the PNDA, psychologically unfit for duty and, therefore, respondent was authorized by the applicable statute to seek her removal. Specifically, H█████-P█████'s job as a senior parole officer required her "to maintain cooperative working relationships with other parole officers, her supervisors, [and] parolees[.]" to carry a firearm, and to be qualified to use a firearm. (Ltr. Br. in Support of Respondent's Motion for Summary Decision (September 14, 2023) (Resp't's Br.), at 9.) The undisputed medical evidence is that appellant's "severe mental health condition" prevents her from performing the job of a senior parole officer. (Id. at 10.)

H█████-P█████ makes two arguments: first, that the FNDA became moot when she filed an application for ODR. The original issue here, whether appellant could be removed from employment, is no longer in dispute, as she has left employment voluntarily and applied for disability benefits on the grounds that she is totally and permanently disabled from performing the job of senior parole officer due to "psychological impairments." (Br. of Appellant in Opposition to Motion and in Support of Cross-Motion (November 21, 2023) (Appellant's Br.) at 3.)

Second, appellant argues that the attempt of the parties to settle was blocked by respondent's demand that appellant sign an irrevocable letter of resignation. The statute authorizing disability retirement, N.J.S.A. 43:16A-8(2), provides for the Board "to reevaluate disability claims after a disability retirement is granted (up through the age of 55) and to order [the] return to active service" if the member is no longer disabled. (Appellant's Br. at 5.) If appellant were to have signed an irrevocable letter of resignation, her application for ODR could not be processed.

By her alternative motion for an order of inactivity, H█████-P█████ contends that should the FDNA be upheld here, the practical effect would be to prevent her from receiving ODR benefits, as the Division of Pensions & Benefits will only process a disability pension application if the member is in good standing, is on an approved leave of absence, or is fighting to remain in good standing. (Appellant's Br. at 4–5.) Hernandez-

Pagan has the third option available to her now and, therefore, moves for an order of inactivity pending a decision on her ODR application. (Id. at 7.)

In reply, respondent argues that appellant failed to specify any issues sufficient to defeat a motion for summary decision. (Reply Br. at 4.) Further, the basis for appellant's motion for an order of inactivity is moot, as the PFRS has already decided that at the time of her ODR application, appellant was "not considered to be 'in service' under N.J.S.A. 43:16A-7. (Reply Br. at 6.)³

LEGAL ANALYSIS AND CONCLUSIONS

Standards for Summary Decision

Summary decision is a well-recognized administrative procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute. By applying the applicable law and standard of proof to the undisputed facts, a decision may be reached in a case without the necessity of a hearing at which evidence is presented and testimony taken. The procedure is equally applicable in judicial as well as executive branch administrative proceedings. N.J.A.C. 1:1-12.5.

The regulations provide that the decision sought by the movant "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). Here, the parties agree that the absence of disputed facts makes summary decision appropriate.

The standards for determining motions for summary judgment are found in Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74–75 (1954), and later in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). A motion for summary decision may only be granted where the moving party sustains the burden of proving "the absence of a genuine issue of material fact," and all inferences of doubt are drawn against the movant. Judson, 17

³ Respondent erroneously states that H [REDACTED]-P [REDACTED] did not appeal this decision, as discussed further in n. 4, below.

N.J. at 74–75. Summary decision is appropriate when “the evidence ‘is so one-sided that one party must prevail as a matter of law.’” Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). In reviewing the proffered evidence to determine the motion, the judge must be guided by the applicable evidentiary standard of proof that would apply at trial on the merits.

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 (Act), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, are designed in part “to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance.” N.J.S.A. 11A:1-2(c). An employee may be subject to discipline for several reasons, including other sufficient cause, which may include violations of the rules and regulations of the employer. N.J.A.C.4A:2-2.3(a)(12). Major discipline for such an infraction may include removal. N.J.A.C. 4A:2-2.2(a). In an appeal of major disciplinary action, such as involved here, the burden is on the appointing authority to establish by a preponderance of the credible evidence that the employee is guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962).

Respondent has charged appellant, as a result of her being found psychologically unfit for duty twice, prior to and following being out of work for more than one year, with other sufficient cause for discipline pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically violation of NJSPB Table of Offenses and Disciplinary Sanctions (NJSPB Table), Section B10, inability to discharge one’s duty. The sanctions appropriate for this offense are “demotion/removal.” (NJSPB Table at 4/13.)

There is no definition in the New Jersey Administrative Code for other sufficient cause; it is generally defined as all other offenses caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when “[r]espondent has not given any substance to the allegation.” Simmons v. City of Newark, initial decision, 2006 N.J. AGEN LEXIS 68 (Feb. 22, 2006), adopted, Merit Sys. Bd. (April 5, 2006), <https://njlaw.rutgers.edu/collections/oal/final/csv9122-99.pdf>.

Respondent determined that sufficient cause charges are attributable to appellant for her alleged violation of NJSPB Table of Offenses and Disciplinary Sanctions, Section B10. Considering the facts stated above in the light most favorable to appellant, there is no dispute that she was deemed psychologically unfit for duty by a psychologist retained by the NJSPB on February 21, 2020, and on July 10, 2021, and that two independent psychologists came to the same conclusion, most recently on November 22, 2022.

Appellant's Claim that the Proposed Discipline is Moot

H██████████-P██████████ argues that respondent's discipline became moot when she filed an application for ODR. The issue raised by her appeal of the FNDA, whether she could be removed from employment, is no longer in dispute as she has left employment voluntarily and then applied for disability benefits due to "psychological impairments," the same condition that prevented her from performing the job of a senior parole officer and which then led to her removal. (Appellant's Br. at 3.)

Respondent counters that the ODR application was made after the removal action began and it does not change that appellant has been unable to work—and has not reported for work—for more than one year, making disciplinary removal appropriate. Further, the PFRS rejected H██████████-P██████████'s ODR application "on the grounds that she was not 'in service' when she applied." (Reply Br. at 4.) As was shown in appellant's supplemental filing,⁴ H██████████-P██████████ appealed the denial of her ODR application, but the PFRS will not act on the appeal pending resolution of this action.

An action is moot when the decision sought "can have no practical effect on the existing controversy." Redd v. Bowman, 223 N.J. 87, 104 (2015). For reasons of judicial economy and restraint, it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976). Consequently, if a party "still suffers from the adverse consequences to [him]

⁴ It is unclear why neither party seemed to have knowledge of the PFRS letter of April 11, 2023, until I specifically asked for proof that H██████████-P██████████ had appealed the January 23, 2023, denial of her ODR application.

caused by [a] proceeding,” an appeal is not moot. Div. of Youth & Family Servs. v. G.M., 398 N.J. Super. 21, 51 (App. Div. 2008), aff’d as modified on other grounds, 198 N.J. 382 (2009).

Appellant failed to support her claim of mootness by citing to any cases in which the CSC or a reviewing court reversed the action of an employer who had terminated an employee before the employee had applied for disability retirement. There is case law to support employees when the effective date of disability retirement precedes the effective date of the proposed termination. See In re Jewell, initial decision, 2010 N.J. AGEN LEXIS 297 (July 2, 2010), adopted, 2010 N.J. CSC LEXIS 926 (Aug. 9, 2010); In re Acevedo, initial decision, 2008 N.J. AGEN LEXIS 987 (Dec. 15, 2008), adopted, 2009 N.J. AGEN LEXIS 795 (Feb. 11, 2009). In both of these cases, the disciplinary action was deemed moot because the employee had already retired on disability benefits prior to the effective date of the discipline. When an employee retires prior to discipline being issued, the discipline can have no effect; the matter is moot. Cf. In re Dunson, initial decision, 2010 N.J. AGEN LEXIS 241 (May 6, 2010), adopted, 2010 N.J. AGEN LEXIS 902 (June 10, 2010) (discipline upheld when police officer was approved for disability retirement after issuance of FNDA).

Here, appellant did not retire before the effective date of the discipline; she refused to retire until almost a year after the FNDA was issued. I **CONCLUDE** that the discipline issued by respondent to H██████-P██████ is not moot.

Appellant’s Claim that Respondent Prevented Settlement

H██████-P██████ argues that the attempt of the parties to settle was blocked by respondent’s demand that appellant sign an irrevocable letter of resignation. (Appellant’s Br. at 3.) Had she agreed to do so, the PFRS would have refused to process H██████-P██████’s ODR application on the strength of a recent case in which the Appellate Division found that voluntary resignation from employment prevented an employee from then applying for disability retirement benefits. Cardinale v. Bd. of Trs., 458 N.J. Super. 260 (App. Div. 2019). Typically, discussion of settlement negotiations is improper as such are confidential and not part of the administrative record, but both parties have waived that

rule. (See Moynihan Cert, ¶ 3, Ex. K.) Even so, I disagree with appellant's claim for two reasons.

First, as respondent argues, the last proposal for settlement which it offered to H█████-P█████ did not include a provision regarding "irrevocable resignation." (Ibid.) Second, Cardinale can be distinguished from this matter in that the employee's alleged disability was not the reason he resigned. Cardinale, 458 N.J. Super. at 273 (police officer who irrevocably resigned in settlement of pending drug-related disciplinary charges could not file for ODR benefits). But cf. Rooth v. Bd. of Trs., Pub. Emps.' Ret. Sys., 472 N.J. Super. 357, 370 (App. Div. 2022)⁵ (school bus driver who was charged with driving while intoxicated with children on the bus separated from employment pursuant to a "[s]ettlement agreement . . . reached due to pending administrative or criminal charges" could not apply for ODR because the underlying charges did not relate to her alleged disability).

Respondent notes that H█████-P█████ did not explain the relief she seeks with respect to her allegations regarding settlement discussions. (Reply Br. at 5.) I agree and **CONCLUDE** that notwithstanding her unsubstantiated allegations regarding settlement discussions, the issue of whether H█████-P█████ is eligible for ODR benefits is not before me.

Appellant's Alternate Motion for an Order of Inactivity

By her alternative motion for an order of inactivity, H█████-P█████ contends that should the FDNA be upheld here, the practical effect would be to also decide her application for ODR benefits. The Division of Pensions & Benefits will only process a disability pension application if the member is in good standing, is on an approved leave of absence, or is fighting to remain in good standing and, should she be removed from her position at the NJSPB, H█████-P█████ will not be able to maintain her ODR

⁵ Cardinale involved the PFRS, as does the present matter, and Rooth involved the Public Employees' Retirement System (PERS). Comparisons of the various pension schemes is "particularly appropriate" and has been conducted by the Supreme Court of New Jersey. M.R. v. Bd. of Trs., 2020 N.J. Super. Unpub. LEXIS 615, at *5 (App. Div. Apr. 6, 2020) (citations omitted).

application. (Appellant's Br. at 4–5.) Even though the Board of the PFRS already denied her ODR application on the grounds that she is “not in service,” (Moynihan Cert., Ex. L), H█████-P█████ has appealed that decision and is therefore, “fighting to remain in good standing.” H█████-P█████ argues that fairness and the need to conserve judicial resources compels me to hold off on a decision and simply place this matter on the inactive list until her ODR appeal is decided.

The argument made by H█████-P█████ would be compelling except that the PFRS has also stated that they will not consider her appeal until and unless this matter is resolved. In other words, if I were to place this matter on the inactive list, it would only serve to delay both appeals of H█████-P█████, and neither would be able to proceed because the other would not be decided.

The NJSPB issued the FNDA and removed H█████-P█████ from employment on January 28, 2022. This appeal was filed by H█████-P█████ on or about February 16, 2022. H█████-P█████ did not file her application for ODR benefits until December 30, 2022, at which time the PFRS Board found that she was no longer “in service.” As the Board has stated clearly: they will not consider her eligibility for ODR benefits unless and until this matter is resolved. I **CONCLUDE** that there is no basis for an order of inactivity.

Specific Charges Supporting Discipline

As stated above, it is undisputed that appellant is psychologically unfit to perform the duties of a full, active-duty senior parole officer and I so **CONCLUDE**. I further **CONCLUDE** that respondent has met its burden of proof by a preponderance of the evidence that appellant violated N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, in that she is unable to discharge the duties of her position, in violation of the NJSPB Table of Offenses and Disciplinary Sanctions, Section B10.

Penalty

The Act protects classified employees from arbitrary dismissal and other onerous sanctions. See In re Shavers-Johnson, initial decision, 2014 N.J. AGEN LEXIS 439 (July 30, 2014), adopted, 2014 N.J. AGEN LEXIS 1049 (Sept. 3, 2014); Investigators Ass'n v. Hudson Cty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). The Civil Service Commission's review of a proposed penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. "The evidence presented, and the credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained; or whether there are mitigating circumstances, which . . . must be taken into consideration when determining whether there is just cause for the penalty imposed." Shavers-Johnson, initial decision, 2014 N.J. AGEN LEXIS 439 at *44. Depending upon the incident complained of and the employee's past record, major discipline may include suspension or removal. See West New York v. Bock, 38 N.J. 500, 519 (1962) (describing progressive discipline); N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

There is no dispute that H█████-P█████ is not psychologically fit for duty. At the same time, and notwithstanding that H█████-P█████ has been somewhat uncooperative in the treatment recommended for her psychological conditions, I recognize that a "disciplinary penalty is unduly harsh when the employee can no longer function in his or her position because of a medical condition, not due to misconduct, or a deliberate or intentional action." In re Dunson, initial decision, 2010 N.J. AGEN LEXIS 241 at *13 (citing Verdell v. N.J. State Dep't of Military & Veterans' Affairs, No. A-0497-04T5 (App. Div. 2006)). Further, there was no evidence presented (by either party) of earlier discipline that may have been imposed on H█████z-P█████ by the NJSPB, making it reasonable to presume that her prior disciplinary record is clean.

As respondent argues, law enforcement officers must be held to a high standard in their job performance and in the context of disciplinary removals. H [REDACTED]-P [REDACTED] is not fit to serve as a senior parole officer due to her ongoing psychological conditions, but these same conditions have contributed to her reluctance to cooperate with her counsel, her union president, and her treating psychologists. I recommend for the reasons described above, that the penalty sought in this matter be modified to a resignation in good standing by which appellant shall be deemed to have resigned, effective January 28, 2022.

ORDER

I hereby **ORDER** that the motion of respondent, New Jersey State Parole Board, for summary decision in its favor is **GRANTED** and the motions of appellant L [REDACTED] H [REDACTED]-P [REDACTED] for summary decision in her favor and, alternately, for an order of inactivity, are **DENIED**. I **ORDER** that appellant's appeal of the Final Notice of Disciplinary Action issued by respondent on December 7, 2021, is hereby **DISMISSED**. Finally, I **ORDER** that appellant shall be recorded as having resigned in good standing, effective January 28, 2022.

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 in accordance with N.J.S.A. 40A:14-204.

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.

May 6, 2024
DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: May 6, 2024

Date Mailed to Parties: May 6, 2024

TMC/ld