



STATE OF NEW JERSEY

In the Matter of Norhan Mansour

CSC Docket No. 2024-484

:
 : **FINAL ADMINISTRATIVE ACTION**
 : **OF THE**
 : **CIVIL SERVICE COMMISSION**
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Reconsideration and Enforcement

ISSUED: July 24, 2024 (EG)

Jersey City, represented by Arthur R. Thibault, Esq., petitions the Civil Service Commission (Commission) for reconsideration and a stay of its decision in *In the Matter of Norhan Mansour, Jersey City Police Department* (CSC, decided August 2, 2023) in which the Commission reversed the removal of Norhan Mansour. Additionally, Mansour, represented by Michael P. Rubas, Esq., petitions the Commission for enforcement.¹ These matters have been consolidated herein.

As background, the record indicates Mansour, a Police Officer, was issued a Preliminary Notice of Disciplinary Action (PNDA) on November 9, 2022, charging her with conduct unbecoming public employee and for violating internal rules and regulations concerning the use of narcotics. Specifically, Mansour had tested positive for cannabinoids after a random drug test on September 20, 2022. Mansour was immediately suspended upon issuance of the PNDA, and a penalty of removal was indicated. Thereafter, Mansour received a departmental hearing, and a Final Notice of Disciplinary Action (FNDA) was issued on March 23, 2023, upholding the charges and the penalty of removal, effective March 1, 2023. Subsequently, Mansour appealed to the Commission and her appeal was transmitted to the Office of Administrative Law (OAL).

¹ Mansour also petitioned for back pay and counsel fees to be determined by the Commission. However, the petition was not accepted as Mansour did not provide the required appeal fee.

The Administrative Law Judge (ALJ) in the matter determined that there were no material issues of fact in dispute. In this regard, the ALJ concluded that reversing the removal was proper under the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA). She further found that federal law did not preempt CREAMMA. The Commission adopted the ALJ's granting of summary decision reversing Mansour's removal. In that case, the Commission also agreed with the ALJ that federal law does not preempt CREAMMA; that Mansour could carry a service weapon without violating federal law; and that the facts of that matter demonstrated that the appellant's termination violated CREAMMA. Accordingly, the Commission ordered reversal of the removal and that Mansour be immediately reinstated with mitigated back pay, benefits, seniority, and reasonable counsel fees.

In the instant matter, the appointing authority claims that the Commission made a clear and material error in reversing Mansour's removal. It reiterates its prior arguments that it raised during a prior interim relief request, during the hearing at OAL, and in its exceptions to the ALJ's initial decision. In this regard, it argues that the Commission failed to address *Ortiz v. Department of Corrections*, 368 So. 3d 33 (Fla. Dist. Ct. App. 2023), in which the three judge appellate panel concluded that a correction officer who used prescription marijuana could not lawfully possess a firearm, which was an essential function of his job and that permitting him to remain employed in such function would not only require him to violate federal law, but also require his colleagues to violate federal law. The appointing authority argues that similarly, Mansour is prohibited by federal law from carrying a firearm. Additionally, the appointing authority asserts that in the event the Commission denies its request for reconsideration, it should grant a stay pending a final decision and appeal in this matter. It contends that it is likely to succeed on the merits and asserts that Mansour will not suffer any irreparable harm due to a stay as she could recover back pay should she ultimately prevail. However, the appointing authority claims it will suffer irreparable harm as its employees supplying Mansour with ammunition would be violating federal law and subject to criminal liability, fines, and imprisonment.

In reply, Mansour argues that the appointing authority's request for reconsideration should not be granted and it is merely reiterating arguments that it had previously made and had been rejected by the Commission. Additionally, she asserts that the stay request should be denied because the appointing authority has not offered a clear likelihood of success on the merits as it is relying on previously rejected arguments. Further, it would be in the public's best interest if the appointing authority follows the Commission's order and reinstate her to her position. In this regard, Mansour requests enforcement of the Commission's order reinstating her to her position. She contends that the appointing authority has purposefully failed to comply with the Commission's order. In this regard, Mansour asserts that in response to her requests to be reinstated, the appointing authority has stated,

“[s]uffice it to say, the City does not consider the issue of law enforcement cannabis use resolved by the Commission’s decision in Mansour and I expect further litigation” and “the City is not prepared to return her firearm or her active status at this time.” Mansour also argues that due to the appointing authority’s willful and wanton actions, the Commission should assess fines against the appointing authority.

In reply, the appointing authority argues that it properly exercised its right to seek reconsideration and a stay pending the final administrative action as permitted by law and that there is no basis for an order of compliance or penalties.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. Further, *N.J.A.C.* 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for a stay:

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.

In the instant matter, the appointing authority reiterates its prior arguments that Mansour is prohibited by federal law from carrying a weapon and the Commission’s adoption of the ALJ’s initial decision was in error. It also claims that the Commission failed to address *Ortiz, supra*, in which an appellate panel concluded that a corrections officer who used prescription marijuana could not lawfully possess a firearm under federal law. The Commission is not persuaded. The appointing authority previously made these same arguments, including *Ortiz*, and they were reviewed and rejected by the Commission. *Ortiz* is a Florida District Court decision, not interpreting New Jersey law. Further, this case does not serve as a mandatory precedent in this matter. The Commission has addressed the appointing authority’s argument several times in this and other matters and has concluded that federal law does not preempt CREAMMA; that Mansour could carry a service weapon without violating federal law; and that Mansour’s termination violated CREAMMA. This conclusion is further supported by 18 *U.S.C.* 925(a)(1) of the Gun Control Act, which expressly exempts from its proscriptions, firearms or ammunition “issued for the use of...any State or ... political subdivision thereof.” Courts have consistently interpreted Section 925(a)(1) to apply to firearms or ammunition used by local police departments. As Petitioner’s acquisition, possession, and use of firearms and ammunition in his capacity as a police officer fits squarely within the exemption

outlined in Section 925(a)(1), no conflict exists between the Gun Control Act and CREAMMA. Therefore, the appointing authority's claim of preemption fails. Accordingly, the appointing authority has not met its burden of proof and its request for reconsideration is denied.

As reconsideration is denied, the appointing authority's stay request is moot. The appointing authority has failed to present a clear likelihood of success on the merits of its appeal. As previously indicated, here the appointing authority relies on the same exact arguments that the Commission has repeatedly rejected. Further, the Commission rejects the appointing authority's claim that it would suffer irreparable harm if a stay is not granted. In this regard, it is noted that in CREAMMA, the New Jersey Legislature expressly directs law enforcement agencies in New Jersey not to cooperate with or assist the federal government in enforcing federal laws in conflict with CREAMMA. Moreover, it would be in the public's best interest for the appointing authority to follow the Commission's order and reinstate Mansour to her position.

In regard to Mansour's request for enforcement and assessment of fines, the Commission will only impose fines and penalties in such matters where an appointing authority has not made a good faith effort to comply with a Commission order. The Commission derives the power to assess such fines pursuant to *N.J.S.A. 11A:10-3*. *See also N.J.A.C. 4A:10-2.1*. Mansour has argued bad faith in the appointing authority's actions and has provided two quotes from the appointing authority in support of her contention. The appointing authority has argued that it was exercising its right to file for reconsideration and a stay, which factored into why it had not reinstated Mansour. In this regard, the Commission notes that a request for reconsideration and/or a stay does not relieve an appointing authority of its obligation to comply with a Commission order. Nevertheless, the Commission does not find bad faith on the part of the appointing authority. However, now that the Commission has denied its request for reconsideration and a stay, the Commission orders that Mansour immediately be reinstated. The appointing authority's failure to reinstate Mansour within 30 days of the issuance of this decision will result in fines. Mansour's request for enforcement is thus granted.

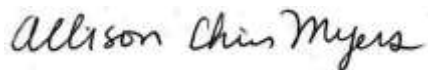
ORDER

Therefore, it is ordered that Jersey City's request for reconsideration be denied, it's request for a stay be dismissed as moot, and that Jersey City immediately reinstate Norhan Mansour to her position with mitigated back pay, benefits, seniority and reasonable counsel fees as previously directed. In the event that Jersey City has not made a good faith effort to comply with this decision within 30 days of issuance of this decision, the Commission orders that a fine be assessed against Jersey City in the amount of \$100 per day, beginning on the 31ST day from the issuance of this

decision, and continuing for each day of continued violation, up to a maximum of \$10,000.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF JULY, 2024



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