



STATE OF NEW JERSEY

In the Matter of Rudolph Beu,
Vineland Police Department

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2024-1843

Request for Back Pay and Counsel
Fees

ISSUED: September 25, 2024 (SLD)

Rudolph Beu, a Deputy Chief with the Vineland Police Department (Vineland), represented by Colin G. Bell, Esq., petitions the Civil Service Commission (Commission) to determine back pay, benefits and counsel fees in accordance with its decision rendered on January 17, 2024.

By way of background, the appointing authority issued a Final Notice of Disciplinary Action removing the petitioner, effective October 21, 2022. Upon the petitioner's appeal to the Commission, the matter was transmitted to the Office of Administrative Law for a hearing. Following a hearing and the Commission's *de novo* review, the Commission found that the petitioner's removal was not justified and ordered his immediate reinstatement. The Commission also ordered mitigated back pay, benefits and seniority from the first date of separation to his reinstatement. Finally, the Commission ordered that the petitioner was entitled to counsel fees as all charges were dismissed.

In the instant matter, the petitioner maintains that he is entitled to \$86,222.83 (\$107,126.83 in gross pay, minus \$20,904 in mitigation) in back pay. Additionally, the petitioner argues that at the time of his termination, his salary was \$148,173, but that effective, January 1, 2023, the salary for Deputy Chief was increased to

\$175,000.¹ However, his salary was not set at \$175,000 upon his reinstatement. Therefore, he argues that he is also entitled to the difference (\$73.50 per day) between the two salaries, from his reinstatement until his salary is corrected. Accordingly, the petitioner claims that he is entitled to the following amounts:

Dates	Gross Amounts
October 21, 2022- December 31, 2022	\$28,822.45
January 1, 2023 – April 30,2023 ²	\$57,062.88
May 1, 2023 – December 31, 2023	\$18,081
January 1, 2024 – February 12, 2024	\$3,160.50
Total Gross	\$107,126.83

Petitioner contends that he did make reasonable efforts to find alternate employment during the time between October 21, 2022 and January 17, 2024. In support, he provides images from an Indeed profile, a resume, and signed statements that he applied to several job postings, and that he participated in the New Jersey Department of Labor and Workforce Development Re-Employment and Eligibility Assessment. He further avers that pursuant to *N.J.A.C. 4A:2-2.10(d)4(v)*, the burden of proof is on the appointing authority to prove that the petitioner did not make a reasonable effort to find alternative employment prior to January 17, 2024.³

With regard to counsel fees, the petitioner provides a certification of services from Bell. Specifically, he requests \$74,172 for 353.20 hours of work performed by Bell, at a rate of \$210 per hour; and \$945 for 4.5 hours of work at a rate of \$210 per hour for preparation of the fee application. Bell argues that under *N.J.A.C. 4A:2-2.12(e)* he is entitled to a fee of \$210 per hour. In this regard, Bell notes that he entered into the practice of law in 2005, and his legal practice is concentrated in employment law. Bell further contends that the matter involved significant complexity, as evidenced by the 12 days of trial in the Office of Administrative Law and several interlocutory appeals.

¹ In support, he submits an agreement between the “City of Vineland and Deputy Police Chief.” This agreement specifically states:

This agreement dated January 11,2023, shall be in accordance with *N.J.A.C. 4A:4-1.6 (b)3*, by and between the City of Vineland . . . and Steven Triantos, the City of Vineland Deputy Chief of Police, hereinafter referred to as the “Deputy Chief.”

² Pursuant to *N.J.S.A. 40A:14-201*, the petitioner was reinstated to pay status, effective April 30, 2023, as the 180 calendar day limit ran from October 31, 2022 to April 29, 2023.

³ Although the petitioner claims that he is entitled to a prorated portion of his 2021 uniform allowance for the period of time he was at work in 2021, the Commission notes that it does not have jurisdiction to decide this, as the monies requested predate his removal, and were thus not part of the benefits awarded in its previous decision.

Finally, the petitioner requests \$6,471.32 for out-of-pocket expenses including: travel expenses (\$254.16), payment of the filing fee to the Commission (\$40), Westlaw research (\$641.54), mailing fees (\$99.83) and the cost for transcripts (\$5,435.79).

In response, the appointing authority, represented by William F. Cook Esq., asserts that the petitioner is not entitled to back pay because the petitioner failed to make a reasonable effort to mitigate between October 21, 2022 and April 30, 2023. The appointing authority contends that if the petitioner had truly made a genuine effort to mitigate, that he would have saved the applications in order to document his efforts. The appointing authority further argues that the petitioner's Indeed.com profile is not detailed, that he has provided no documentary support for the positions he applied for, and that he has made unsubstantiated claims that positions were unavailable to him because he did not resign in good standing and that his termination hampered his mitigation efforts. Furthermore, the appointing authority argues that the petitioner made no effort to mitigate after April 30, 2023 until his reinstatement.

The appointing authority further argues that even if the petitioner was eligible for back pay, there are three different scenarios that could be used to calculate the amount of back pay owed. It provides details on those scenarios.⁴

As to counsel fees, the appointing authority avers that despite the claims of the petitioner's attorney to the contrary, the petitioner did not incur any legal fees and that the FOP Legal Defense Plan (Plan) has paid Bell in full. The appointing authority further asserts that Bell is not entitled to increase the amount of fees greater than those set forth in the agreement. *See N.J.A.C. 4A:2-2.12(d)*. The appointing authority further asserts that Bell should not recover any fees connected with Appellate Division proceedings, including interlocutory appeals. It contends that *N.J.A.C. 4A:2-2.12* only permits fees of services in the departmental hearing and before the Commission and that legal services rendered on appeal are generally made by the Appellant Division.⁵ Finally, the appointing authority proffers that any in-state travel expenses are not awardable under *N.J.A.C. 4A:2-12(g)*.

In response, the petitioner argues that despite the Plan bearing the counsel fees for the petitioner, he is still required to seek fees and costs to reimburse the Plan for the said counsel fees under section 18C of the Plan. In addition, the petitioner argues that pursuant to *N.J.A.C. 4A:2-2.12(e)*, the Commission has the discretion to assess fees based on the circumstances of the particular manner, and therefore, he should be reimbursed at a rate of \$210 per hour.

⁴ Details of these scenarios are not germane as the Commission will appropriately determine the amount of back pay later in this decision.

⁵ It is noted that the appointing authority did not provide any specific dates that are listed in Bell's certification that should not be reimbursed.

CONCLUSION

Back Pay

N.J.A.C. 4A:2-2.10(a) provides that where a disciplinary penalty has been reversed, the Commission shall award back pay, benefits, seniority, or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified. Pursuant to *N.J.A.C.* 4A:2-2.10(d), an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain their health insurance coverage during the period of improper suspension or removal. *N.J.A.C.* 4A:2-2.10(d)3 provides that an award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received, subject to any applicable limitations set forth in (d)4.

Further, *N.J.A.C.* 4A:2-2.10(d)4 states that where a removal or a suspension for more than 30 working days has been reversed or modified and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts. “Reasonable efforts” may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or online job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; networking with other people; and distributing resumes. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee’s public employment; the employee’s skills, education, and experience; the job market; the existence of advertised suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment. *N.J.A.C.* 4A:2-2.10(d)4. Finally, *N.J.A.C.* 4A:2-2.10(d)7 states that earning from other employment held at the time of the adverse action shall not be deducted unless the employee increased his or her hours at that employment during the period of separation.

Importantly, the appointing authority argues that the petitioner failed to sufficiently mitigate during the applicable period. Under *N.J.A.C.* 4A:2-2.10(d), the determination of whether the employee has made reasonable efforts to find suitable employment will consider all relevant circumstances, including the disciplinary

action taken, the nature of the employee's public employment, their skills, education, experience, the job market, available suitable job opportunities, common job-seeking methods, and any other pertinent factors. The burden of proof shall be on the employer to establish that the employee has not made a reasonable effort to find suitable employment. Here, the employer has failed to demonstrate that the petitioner failed to make reasonable efforts to find suitable employment. Specifically, other than the appointing authority's claim that the petitioner's mitigation efforts were insufficient, it has failed to present any evidence that there were available positions that the petitioner was qualified for and could have applied for, but he did not.

The Commission finds that pursuant to *N.J.A.C.* 4A:2-2.10, the petitioner is entitled to back pay for the period between his immediate suspension effective October 21, 2022, and his reinstatement effective March 16, 2024. *N.J.S.A.* 40A:14-179 requires that a deputy chief be paid more than "the highest base salary of the ranking police officer next in command below the chief of police or deputy chief of police as appropriate." Accordingly, the Commission finds that the petitioner is entitled to an award of one dollar more than the highest base salary of the ranking police officer next in command below the Chief of Police or Deputy Chief of Police as appropriate.⁶ Under this analysis for the back pay amounts, the gross amount owed to the petitioner is \$25,645.33 for the time-period of October 21, 2022 through December 31, 2022, \$53,107.04 for the time-period of January 1, 2023 through April 30, 2023, \$3,631.58 (\$100,515.12, less \$96,883.54 for amounts already paid) for the time-period of May 1, 2023 through December 31, 2023, and \$2,750.54 (\$37,640.54, less \$34,890 for amounts already paid) for the time-period of January 1, 2024 to March 16, 2024. The total gross amount of back pay is \$85,134.49. Accordingly, the total amount of back pay owed to the petitioner is \$64,230.45⁷ (\$85,134.49 gross back pay, less \$20,904.00 mitigation for unemployment benefits).

Counsel Fees and Costs

N.J.A.C. 4A:2-2.12(a) provides that the Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission. *N.J.A.C.* 4A:2-2.12 states that, subject to the provisions of *N.J.A.C.* 4A:2-2.12(c) and (d), the following fee ranges shall apply in determining counsel fees: 1. Associate in a law firm: \$ 100.00 to \$ 150.00 per hour; 2. Partner or equivalent in a law firm with fewer than 15 years of experience in the practice of law: \$ 150.00 to \$ 175.00 per hour; or 3. Partner or equivalent in a law firm with 15 or more years of experience in the practice

⁶ The appointing authority provides that Adam Austino was the highest-paid Captain for the years of 2023 and 2024. Austino was reinstated, effective March 20, 2024.

⁷ The Commission notes that this amount is subject to normal deductions pursuant to *N.J.A.C.* 4A:2-2.10(d)2.

of law, or, notwithstanding the number of years of experience, with a practice concentrated in employment or labor law: \$ 175.00 to \$ 200.00 per hour. However, if an attorney has signed a specific fee agreement with the employee or employee's negotiations representative, the attorney shall disclose the agreement to the appointing authority. The fee ranges set forth in (c) above may be adjusted if the attorney has signed such an agreement, provided that the attorney shall not be entitled to a greater rate than that set forth in the agreement.

N.J.A.C. 4A:2-2.12(e) provides that a fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors (*see* the Rules of Professional Conduct of the New Jersey Court Rules, at RPC 1.5(a)) shall be considered: 1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2. The fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated; 3. The nature and length of the professional relationship with the employee; and 4. The experience, reputation and ability of the attorney performing the services.

In the instant matter, the Plan sets counsel fees at a rate of \$125 per hour. The petitioner argues that despite the Plan paying the counsel fees for the petitioner, the petitioner is still required to seek fees and costs to reimburse the Plan for the said counsel fees under section 18C of the Plan. In addition, the petitioner argues that pursuant to *N.J.A.C.* 4A:2-2.12(e), the Commission has the discretion to assess fees based on the circumstances of the particular manner, and therefore, the counsel fees should instead be reimbursed at a rate of \$210 per hour, instead of the \$125 as provided for under the Plan. While this assertion that the Commission can assess fees based on circumstances is correct, the petitioner has not presented any compelling reason why the Commission should award him an hourly rate higher than the rate prescribed by the Plan. In this regard, while the record in this matter was voluminous, it did not involve any novel legal issues that warrant a higher fee. Therefore, based on the foregoing, the Commission finds that the rate that Bell is entitled to be reimbursed at in this matter is the \$125.00 hourly rate as indicated in the Plan. Thus, the petitioner should be reimbursed for \$44,712.50 (357.7 total hours multiplied by \$125).

Finally, the petitioner requests \$6,471.32 for out-of-pocket expenses including: travel expenses (\$254.16), payment of the filing fee to the Commission (\$40), Westlaw research (\$641.54), mailing fees (\$99.83) and the cost for transcripts (\$5,435.79). *N.J.A.C.* 4A:2-2.12(g) provides that reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and subpoena fees and out-of-State travel expenses. However, costs associated with normal office overhead shall not be awarded. Additionally, the costs associated with reproduction and copying and the transmittal of documents through the use of FedEx or messenger services are considered normal office expenses that, per *N.J.A.C.* 4A:2-2.12(g), are not subject to

reimbursement. Further, pursuant to *N.J.A.C. 4A:2-1.8(a)*, the Commission's appeal fee is a processing fee which is not reimbursable. *See also In the Matter of Vincent Fiscella, Jr.* (CSC, decided March 27, 2018). However, the remaining expense requested by the petitioner's attorney for transcripts are reimbursable expenses pursuant to *N.J.A.C. 4A:2-2.12(g)*. Therefore, the petitioner is entitled to an award of \$5,435.79 for costs for transcripts (\$6,471.32 less \$254.16 for in-state travel expenses, \$40 filing fees, \$641.54 Westlaw research and less \$99.83 for transmittal of documents).

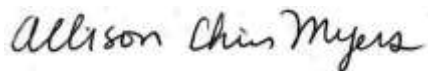
Therefore, the Commission finds that the petitioner is entitled to reimbursement for \$44,712.50 counsel fees and \$5,435.79 in costs.

ORDER

Therefore, it is ordered that Rudolph Beu be awarded gross back pay in the amount of \$64,230.45 as set forth above within 30 days of the issuance of this decision. Additionally, it is ordered that the appointing authority pay the petitioner's attorney \$44,712.50 in counsel fees, plus costs in the amount of \$5,435.79 within 30 days of the issuance of this decision.

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 25TH DAY OF SEPTEMBER, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas 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: Rudolph Beu
Colin G. Bell Esq.
William F. Cook Esq.
Anthony Fanucci
Division of Agency Services
Records Center