



**STATE OF NEW JERSEY**

In the Matter of Carolyn Whitehead

CSC Docket Nos. 2024-2129 & 2024-2436

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

Stay and Enforcement

**ISSUED:** September 4, 2024 (EG)

East Orange, represented by Arthur L. Margeotes, Esq., petitions the Civil Service Commission (Commission) for a stay of its decision in *In the Matter of Carolyn Whitehead* (CSC, decided February 28, 2024) in which the Commission reversed the removal of Carolyn Whitehead. Additionally, Whitehead petitions the Commission for enforcement. These matters have been consolidated herein.

As background, Whitehead, an Assistant Zoning Officer, was removed and resigned not in good standing effective July 23, 2020. The matter was originally decided by the Commission on October 6, 2021, when the Commission affirmed the recommendation of the ALJ at that time granting East Orange's motion for summary decision. Whitehead appealed that determination to the Superior Court, Appellate Division which remanded the matter back to the Commission for further proceedings. Upon remand, the Commission transmitted the matter back to the Office of Administrative Law for further proceedings as indicated by the Appellate Division. In that matter, the ALJ found that Whitehead testified credibly and established that due to her sincerely held religious beliefs, she objected to having to take a Covid-19 test prior to returning to work and requested to be able to work from home as an accommodation. Further, the ALJ found that East Orange presented no evidence that Whitehead's requested accommodation for her religious beliefs posed an undue hardship. Therefore, the ALJ found the charges against Whitehead could not be upheld. Upon its *de novo* review of the entire record, including the exceptions which were found to be unpersuasive, the Commission accepted and adopted the ALJ's

Findings of Fact and Conclusions and his recommendation to reverse the removal. The Commission order that Whitehead be reinstated, receive mitigated back pay, benefits, and seniority.

In its request for a stay, East Orange claims that it has a clear likelihood of success on appeal as the Commission's decision was based on giving undue deference to the ALJ's findings of credibility which was the ALJ's basis for his determination. It argues that the record was replete with contrary testimony and admissions by Whitehead. It claims that the exceptions it filed were persuasive in demonstrating the ALJ's credibility determinations, or his findings and conclusions based on those determinations were arbitrary, capricious, or unreasonable. Additionally, East Oranges contends that there is a danger of immediate of irreparable harm if the stay petition is not granted as Whitehead has been out of work for four years and it does not want to return her to her prior position. Further, it argues that there is an absence of injury or harm to Whitehead as she has earned a six-figure income during the period of separation and that she would be entitled to back pay if she is ultimately returned to work. Finally, East Orange asserts that granting the request is in the public interest as issued orders must be based on a fair and accurate assessment of evidence presented, and it would also be harmful to return Whitehead to her position now when she may be removed again later after its legal rights are adjudicated.

In reply, Whitehead argues that as the issue for back pay has not resolved, the Commission's decision is not considered final, and East Orange cannot file a request for a stay. Additionally, she contends that there is not a likelihood of success for East Orange. She claims that this matter has already been reviewed by the Appellate Division resulting in the remand to the Commission for further proceedings. Further, Whitehead asserts that East Orange has not shown a danger of immediate of irreparable harm or that the public interest would be negatively impacted if the stay petition is not granted. Moreover, she claims that there is harm to her for continued separation from her position as she and her household continue to suffer from her lost wages. She adds that she has had to accept employment with a significantly lower salary and has lost benefits. Additionally, Whitehead requests enforcement of the Commission's prior decision which indicated she be reinstated, and receive mitigated back pay, benefits, and seniority. She adds that she timely provided East Orange proof of income earned and an affidavit of mitigation as required. Whitehead contends that to date; she has not been returned to work or received any back pay.

## CONCLUSION

The following factors are provided by *N.J.A.C.* 4A:2-1.2(c) 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.

Also, *N.J.A.C.* 4A:2-1.2(f) allows a party, after receiving a final administrative decision by the Commission and upon filing an appeal to the Appellate Division, to petition the Commission for a stay pending the decision of the Appellate Division.<sup>1</sup> *See also N.J. Court Rules* 2:9-7.

In the instant matter, East Orange reiterates its prior contentions raised in its exceptions to the Commission's prior decision. As the Commission indicated in its prior decision, East Orange's exceptions were reviewed and considered but found to be unpersuasive. The Commission found no reason to question the ALJ's credibility determinations or the findings and conclusions made therefrom. In this matter, East Orange has presented no persuasive evidence that the ALJ's credibility determination, or the Commission's affirmance of those determinations, were arbitrary, capricious, unreasonable or otherwise in error. As such, East Orange has failed to present a clear likelihood of success on the merits of its appeal. Further, the Commission rejects East Orange's claim that it would suffer irreparable harm if a stay were not granted. The mere fact that it does not wish to reinstate Whitehead does not demonstrate irreparable harm. Moreover, it would be in the public's best interest for East Orange to follow the Commission's order and reinstate Whitehead to her position. Accordingly, the Commission denies the request for a stay. As such, the Commission orders that Whitehead's request for enforcement be granted and she immediately be reinstated. East Orange's failure to make a good faith effort to reinstate Whitehead within 30 days of the issuance of this decision will result in the imposition of fines. *See N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-2.1. Moreover, the parties are ordered to make a good faith effort to resolve the back pay issue. If such a resolution is unsuccessful, either party may petition the Commission for a determination of the *actual amount* of back pay owed. *See N.J.A.C.* 4A:2-2.10(g).

## ORDER

Therefore, it is ordered that East Orange's petition for a stay be denied and Carolyn Whitehead's petition for enforcement be granted. East Orange is ordered to immediately reinstate Carolyn Whitehead to her position with mitigated back pay, benefits, and seniority as previously directed. In the event that East Orange 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 East Orange in

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<sup>1</sup> East Orange filed an appeal in the Appellate Division in March 2024. However, that matter was considered premature by the Court and was, apparently, withdrawn. East Orange filed again on June 6, 2024, and was again informed by the Court that as the issue of back pay had not been resolved, the appeal was premature, since the decision being appealed was not considered a final decision. In response, East Orange filed a motion for leave to appeal with the Appellate Division, seeking interlocutory review, while the back pay matter remains pending. That request was denied on August 30, 2024. As such, the Commission will entertain East Orange's current petition.

the amount of \$100 per day, beginning on the 31<sup>ST</sup> 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 4<sup>TH</sup> DAY OF SEPTEMBER, 2024



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