



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Matthew Radecky,
Pohatcong, Police Department

CSC Docket No. 2025-1903

Request for Reconsideration
Request for Stay

ISSUED: July 23, 2025 (HS)

Pohatcong, represented by Robert J. Merryman, Esq., petitions the Civil Service Commission (Commission) for reconsideration of *In the Matter of Matthew Radecky, Pohatcong, Police Department* (CSC, decided February 5, 2025), which reversed Matthew Radecky's demotion and removal. In the alternative, Pohatcong petitions for a stay of that decision, which is incorporated herein by reference.

As background, the petitioner presented Radecky, a Police Sergeant, with a Preliminary Notice of Disciplinary Action (PNDA) and, subsequently, a Final Notice of Disciplinary Action (FNDA) that demoted him, effective December 28, 2023, on a charge of insubordination. Specifically, the petitioner asserted that Radecky did not return signed orders on August 31, 2023. The petitioner also presented Radecky with a PNDA and, subsequently, an FNDA that removed him, effective May 2, 2024, on charges of insubordination and other sufficient cause, absent without leave/tardiness. Specifically, the petitioner asserted that Radecky was five minutes late for a December 28, 2023 meeting with Scott Robb, Police Chief, and was disrespectful toward Robb at that meeting.

Upon Radecky's appeals, the matters were transmitted to the Office of Administrative Law as contested cases and consolidated. After the hearing, the Administrative Law Judge (ALJ) determined that the petitioner had not met its burden of proof with regard to the charges and recommended in her initial decision that the demotion and removal be reversed. Concerning the demotion:

In September 2023, Radecky was being reinstated to his position after more than two years away from the job. The [Commission] only ordered a fitness-for-duty evaluation. [See *In the Matter of Matthew Radecky, Pohatcong, Police Department* (CSC, decided May 3, 2023).] Robb . . . is responsible for the safety of the department and the people of Pohatcong. As such, Robb has the authority to issue any additional orders to ensure all officers are current on their training. Robb notified Radecky of these additional orders and told him in the meeting that he could appeal the orders to the [Police Benevolent Association (PBA)]. Instead of signing the orders, Radecky insisted that he wanted to consult with his attorney. Radecky took the orders and left the office. Robb did not insist that the orders be signed at that moment. Instead, Robb told Radecky to return the signed orders before September 1, 2023, at 7:00 p.m. Radecky returned the signed orders by email on September 1, 2023, at 6:56 p.m. Even though he wrote on the orders that he signed them under protest, he did sign and return the orders to Robb prior to the deadline, and Robb accepted them. Radecky reported for duty a few days later. There was no further mention of a refusal to sign the orders until Radecky was contacted by [Ryan] Barsony[, Police Sergeant and Internal Affairs investigator].

Concerning the removal, the ALJ concluded the petitioner did not meet its burden to support a charge of other sufficient cause, absent without leave/tardiness. The petitioner also did not meet its burden to support the insubordination charge:

[The petitioner] is also charging Radecky with insubordination because he raised his voice and used his hands in a disrespectful manner to [Robb]. The only witnesses who testified to the hand gestures were Radecky and Robb. Radecky could not recall whether he made any hand gestures. Robb demonstrated the hand gesture as a shoving motion. Robb was behind his desk, and Radecky was sitting in a chair near the door. Robb and Radecky were several feet apart. The hand gesture was not directly in Robb's personal space or even close to it. McGuinness testified that Radecky spoke in a loud tone and that he could not really hear [James] Vernon[, PBA representative] or Robb. Robb testified that Radecky was loud and the words in and of themselves were disrespectful. Radecky testified that he was not being disrespectful to Robb; he was frustrated with the discipline charges and did not think his voice was loud. Vernon was not interviewed. While Radecky's actions could be seen as somewhat disrespectful, it does not rise to the level of insubordination. Radecky did not fail to obey a lawful order. He may have been loud and gestured with his hands, but there were no orders given that Radecky refused to obey.

The petitioner filed exceptions to the initial decision where it, among other things, pointed to specific points in the testimony where it believed Robb gave an explicit order to sign at that time. In his reply to exceptions, Radecky, among other things, maintained that the only time a definitive deadline was provided from Robb to Radecky was in Robb's e-mail dated September 1, 2023:

Since yesterday you refused to sign my order as directed, I will need that order signed and emailed back to me before 7:00pm tonight, September 1, 2023. You also took the entire packet of directives and pitman time sheets.

Those will also need to be signed and returned to me before 7:00pm tonight, September 1, 2023. You must return all to me via email since I am not in the office. Once I receive them you will be given further instructions to when and how you return. (Radecky's emphasis)

Upon its *de novo* review of the record, the Commission accepted the ALJ's recommendation to reverse the demotion and removal. It indicated, among other things, that the parties were to make a good faith effort to resolve any dispute as to the amount of back pay or counsel fees. However, under no circumstances was Radecky's reinstatement to be delayed pending resolution of any potential back pay or counsel fees dispute.

In its request for reconsideration, the petitioner asks the Commission to revisit and consider the same relevant portions of sworn testimony that, it argues, shows that Robb indeed gave an explicit order to sign at the August 31, 2023 meeting. Specifically, Radecky testified:

Q: Okay. Did you tell . . . Robb at that meeting that you would like to review this with your attorney?

A: Yes.

Q: Okay. And what did he say?

A: He said "No, this is not a negotiation between us and attorneys. **This is what I'm telling you you need to sign.**" (petitioner's emphases)

Radecky testified as follows on cross-examination:

Q: So you were obligated to sign that order, correct?

A: **He said sign it.** I said, “I want to speak to my attorney.”
He said “No.”

Q: Okay.

A: **So I didn’t sign it.** (petitioner’s emphases)

Robb testified:

Q: And then what happened at the end of that meeting?

A: [Radecky] walked out.

Q: Okay.

A: Without signing the order and then -- but he took the order and rest of the papers and walked out of the building

Robb testified as follows on cross-examination:

Q: So, number eight [R-8] was the only one that was discussed during the meeting?

A: Yep, yes.

Q: Was that the only one **that you told him to sign during the meeting?**

A: Yes, because it’s the only one we went over and then he took the entire packet and he walked out.

Q: Okay, so, then on September 1, 2023, he sends you the orders signed and with that paragraph that specifically states, “I do not agree with these orders as they are forcing me to relinquish my rights. However, I am signing these orders because of the fear of discipline for failing to do so.” And you received all those, correct?

A: I did, at 6:56.

Q: Okay, which is still in compliance with your order to send them by 7:00 p.m.?

A: The third order, yes.

Q: Okay. What was the second order?

A: **When we were in the office, I told him twice to sign it.**

Q: Okay. **So, there were two orders to sign it twice?**

A: **Correct.** (petitioner's emphases)

Robb further testified:

Q: He was demoted as a result of the alleg -- **failing to sign an order at that meeting on August 31, 2023, correct?**

A: Yes (petitioner's emphases)

The petitioner insists that consistent testimony from both Radecky and Robb confirms that Radecky fully understood that his refusal to follow Robb's direct order to sign the return-to-work order could expose him to discipline and that Robb made it clear that he was giving him a direct order that Radecky had to follow. Concerning the December 28, 2023 meeting, the petitioner stresses that Radecky was charged with insubordination based on his disrespectful behavior toward Robb, not an allegation that he refused to obey a lawful order. The petitioner notes that in the prior decision, the Commission agreed that while Radecky may have been somewhat disrespectful, it could not ascribe misconduct to those actions, especially given the circumstances. The petitioner complains that the Commission did not further explain what "circumstances" would allow a subordinate officer to act in a disrespectful manner to his Police Chief in front of other individuals. And as to Radecky's lateness for the meeting, the petitioner complains that the Commission "determined that it should micromanage the police department by deciding what is the appropriate discipline for an officer who fails to appear for a meeting ordered by his chief of police."

In the alternative, the petitioner asks the Commission to stay its prior decision pending the final administrative action and its appeal to the Appellate Division. In this regard, it maintains that it has a high likelihood of succeeding on the merits based upon the preceding points underscoring the incorrect bases for the ALJ's initial decision adopted by the Commission. In addition, given Radecky's egregious conduct and his position as a supervisor, ignoring such misconduct on the part of a police supervisor will cause the police department to suffer both immediate and irreparable harm. Specifically, such result would significantly harm department morale by sending a message to members that one can be insubordinate and disrespectful to superiors. Efficiency would suffer as police officers in the department would no longer be required to abide by the lawful orders given by superior officers. It would be impossible for a police department, as a paramilitary organization, to function if officers, including superior officers themselves, can openly disregard orders. The

petitioner further posits that there would be no substantial injuries to Radecky if the stay is granted, and it would be in the public's interest for Radecky to not yet be reinstated pending the final outcome of this matter given the severity and egregiousness of his conduct.

In response, Radecky, represented by Frank C. Cioffi, Esq., contends that the petitioner is simply rearguing the position it put forth in both its closing brief as well as its exceptions to the ALJ's decision. The petitioner is submitting these arguments again hoping that "the third time is a charm." Concerning the August 31, 2023 meeting, Radecky highlights that one of the reasons he wanted to have his attorney review the order was that he believed that Robb's orders were unlawful. Specifically, he notes that he had testified, "The HIPAA violation I thought could be unlawful, yes." Radecky insists that the ALJ did not ignore critical facts and evidence with respect to the August 31, 2023 meeting. In fact, the petitioner misrepresents critical facts and evidence. In this regard, the petitioner fails to mention the fact that the purpose of the August 31, 2023 meeting was for his reinstatement from a 180-day suspension. He respectfully requested to review Robb's reinstatement conditions to see if they were consistent with the reinstatement conditions that the Commission decision ordered earlier that year. Concerning his demeanor during the December 28, 2023 meeting, Radecky proffers that the inconsistent testimony the petitioner offered fails to demonstrate that he acted disrespectfully during the meeting. The one witness who could have confirmed his alleged conduct, Vernon, was not called by the petitioner to provide a statement as part of the Internal Affairs investigation.

In addition, Radecky maintains that there is no basis for a stay. In this regard, although the petitioner raises some "far-fetched hypotheticals" to argue that irreparable harm will be caused by his reinstatement, the Commission upheld the dismissal of all charges. Additionally, the Appellate Division would review the Commission's decision deferentially. Radecky posits that the petitioner "positions [its] argument as if [Radecky] had the charges upheld by the Commission and it is he who is appealing to have his termination overturned. [The petitioner] lost" Radecky argues that it is he who will sustain harm if the petitioner fails to reinstate him to his position. He also maintains that he should be awarded his back pay and counsel fees as ordered in the Commission's prior decision. The petitioner "fails to mention that [he] has already had his pay reinstated. [The petitioner] is now seeking to have [him] placed on unpaid leave" He notes that should the petitioner prevail on appeal and have the Commission's decision reversed, it could seek repayment of his back pay and counsel fees.

In reply, the petitioner reiterates that the Commission must reconsider the prior decision or, in the alternative, stay it.

In reply, Radecky reiterates that the petitioner is not entitled to reconsideration or a stay, and he should be awarded the relief ordered in the Commission's prior decision.

CONCLUSION

Request for Reconsideration

N.J.A.C. 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or the petitioner's representative and must show the following: (1) the new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or (2) that a clear material error has occurred. A review of the record reveals that reconsideration is not justified.

Concerning the events of August 31, 2023, in the prior decision, the Commission observed that had Robb issued a direct order to sign the documents at the meeting and the appellant refused, the fact that he signed the orders at a later allowed time would not necessarily absolve him of failing to follow a direct order. However, the Commission rejected the appointing authority's contentions, acknowledging that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear, and the Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. In its review, the Commission found no persuasive evidence in the appointing authority's exceptions or the record to demonstrate that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission found those determinations worthy of due deference, and the Commission adopted the findings and conclusions made therefrom. In this matter, the petitioner asks the Commission to revisit the same information that was previously presented in its exceptions to the ALJ's initial decision and which the Commission already determined to be unpersuasive. As such, nothing in the record alters the prior conclusion that Radecky was not insubordinate at the August 31, 2023 meeting.

Concerning the events of December 28, 2023, in the prior decision, the Commission noted that the institution of discipline on the basis of Radecky's tardiness for the meeting appeared to be the epitome of form over substance, as it questioned an attempt to sanction an employee for lateness where that lateness is a mere five minutes and the record indicated that reasons were proffered for that lateness. While the petitioner may believe that this was an instance of

“micromanage[ment],” this is not a persuasive basis to revisit the Commission’s conclusion on the tardiness charge. In the prior decision, the Commission also noted that it could not ascribe misconduct to Radecky’s actions in the meeting, especially given the circumstances. The petitioner complains here that those “circumstances” went unexplained. However, the circumstances were specified in the ALJ’s findings. Specifically, Radecky and Robb were the only witnesses who testified to Radecky’s hand gestures, and they gave inconsistent testimony on that point. Further, Robb and Radecky were several feet apart, and any hand gesture would not have been directly in Robb’s personal space or even close to it. McGuinness testified that Radecky spoke in a loud tone. Robb testified that Radecky was loud and the words in and of themselves were disrespectful. Radecky testified that he was not being disrespectful to Robb; he was frustrated with the discipline charges and did not think his voice was loud. Vernon, who was present for the meeting, was never interviewed. Under those circumstances, the ALJ soundly concluded that the charge was not adequately supported, and there is no persuasive basis here to revisit that conclusion.

Accordingly, the petitioner has not met the standard for reconsideration as it has not shown that a clear material error has occurred or presented new information that would change the outcome.

Request for Stay

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition 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. *See also, N.J. Court Rules 2:9-7.*

Since the Commission’s prior decision has not yet become a final administrative decision due to outstanding issues of back pay and counsel fees and an appeal has yet to be filed with the Appellate Division, Pohatcong’s request for a stay is technically premature at this juncture. Nevertheless, even if the request had been timely filed, there would be no basis for a stay as discussed below.

Initially, there does not appear to be a clear likelihood of success on the merits of an appeal before the Appellate Division. It is well settled that an appellate court will reverse the final decision of an administrative agency only if it is arbitrary,

capricious or unreasonable or if it is not supported by substantial credible evidence in the record as a whole, or if it violates legislative policy expressed or fairly to be implied in the statutory scheme administered by the agency. *See Karins v. City of Atlantic City*, 152 N.J. 532, 540 (1998); *Henry v. Rahway State Prison*, 81 N.J. 571, 579-80 (1980); *Mayflower Securities v. Bureau of Securities*, 64 N.J. 85, 92-93 (1973); *Campbell v. Civil Service Department*, 39 N.J. 556, 562 (1963).


In the present matter, the petitioner argues that it has a clear likelihood of succeeding on the merits based upon the points it made in its reconsideration request, which it maintains underscore the incorrect bases for the ALJ's initial decision adopted by the Commission. However, that does not establish that there is a clear likelihood that the petitioner will be successful in its appeal. In this regard, the petitioner's arguments were addressed in the prior decision and have been addressed again in the reconsideration request. Furthermore, the petitioner has not shown that it is in danger of immediate or irreparable harm if this request is not granted. In this regard, its claims of the harms it would suffer are speculative. Accordingly, the petitioner has failed to demonstrate any basis for a stay of the Commission's decision.

The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Jersey City*, Docket No. A-4347-87T3 (App. Div. February 2, 1989). Therefore, the petitioner is ordered to immediately reinstate Radecky. If, however, the petitioner has not done so within 30 days of the issuance of this decision, it shall be assessed a fine of \$100 per day, beginning on the 31st day following the issuance of this decision, for each day of continued violation up to a maximum of \$10,000.

ORDER

Therefore, it is ordered that Pohatcong's requests for reconsideration or, in the alternative, a stay be denied. The Civil Service Commission also orders that Pohatcong immediately reinstate Matthew Radecky. If Pohatcong has not done so within 30 days of the issuance of this decision, it shall be assessed a fine of \$100 per day, beginning on the 31st day following the issuance of this decision, for each day of continued violation up to a maximum of \$10,000.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF JULY, 2025



Allison Chris Myers
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