



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Christian Colon,
Passaic County Sheriff's Office

CSC Docket No. 2024-1486

Request for Interim Relief

ISSUED: March 20, 2024 (HS)

Christian Colon, a County Correctional Police Officer with the Passaic County Sheriff's Office, represented by Frank C. Cioffi, Esq., petitions the Civil Service Commission (Commission) for interim relief of his immediate suspension without pay, effective January 5, 2024.

As background, on November 16, 2023, the appointing authority presented the petitioner with a Preliminary Notice of Disciplinary Action (PNDA) indicating charges of conduct unbecoming a public employee; other sufficient cause (lying); other sufficient cause (conduct subversive of good order and discipline of the department); and other sufficient cause (failure to comply with orders, directive, regulations, *etc.*). Specifically, the appointing authority asserted:

- On June 28, 2021, the petitioner was arrested for violation of the domestic violence laws and indicted in 2022. The petitioner failed to notify administration of said arrest and indictment. The petitioner also lied during the course of the internal affairs investigation.

On December 12, 2023, the appointing authority presented the petitioner with an amended PNDA. There was no change to the charges and specifications, but the petitioner was now suspended with pay, effective December 12, 2023.

On January 3, 2024, the appointing authority presented the petitioner with a notice of immediate suspension and second amended PNDA. These documents indicated that to maintain order and the effective direction of public services, the

petitioner would be immediately suspended without pay, effective January 5, 2024, on charges of conduct unbecoming a public employee; inability to perform duties; other sufficient cause (lying); other sufficient cause (conduct subversive of good order and discipline of the department); other sufficient cause (failure to comply with orders, directive, regulations, *etc.*); and other sufficient cause (currently unlicensed by the Police Training Commission (PTC)). Specifically, the appointing authority asserted:

- On June 28, 2021, the petitioner was arrested for violation of the domestic violence laws and indicted in 2022. The petitioner failed to notify administration of said arrest and indictment. The petitioner also lied during the course of the internal affairs investigation.
- On or about January 1, 2024, the PTC notified the appointing authority that it would not be awarding the petitioner a license pursuant to its authority under *N.J.S.A. 52:17B-67.1* based on the adverse licensing actions noted above. As such, the petitioner was not currently authorized to act as a law enforcement officer.

The petitioner was also provided with the opportunity to submit to the appointing authority a statement of opposition to the immediate suspension without pay, and he availed himself of that opportunity.

On January 10, 2024, the appointing authority informed the petitioner that the PTC had previously made a mistake and had now issued the petitioner a license. The appointing authority then voluntarily dismissed those charges related to PTC licensure, *i.e.*, inability to perform duties and other sufficient cause (currently unlicensed by the PTC). However, the appointing authority maintained all other charges and the petitioner's immediate suspension without pay.

In his request for interim relief, the petitioner contends that in light of the PTC's issuance of his license and the appointing authority's dismissal of the related charges, he must be reinstated to paid status with back pay. He also maintains that his domestic violence indictment was dismissed, and he maintains his innocence on the administrative charges.

In response, the appointing authority, represented by Leslie S. Park, Deputy County Counsel, retorts that the petitioner's immediate suspension without pay was based not only on the PTC's failure to issue the petitioner a license but also on the evidence in the internal affairs investigation into his arrest related to domestic violence. Per the appointing authority, the investigation concluded that the petitioner had also lied during the course of the internal affairs investigation. It maintains that it is contrary to the effective running of a law enforcement agency to permit an employee with these charges to remain at work. Further, the appointing authority insists that it had been its intention to change the petitioner's suspension to being without pay irrespective of the PTC's erroneously withholding the

petitioner's license. By January 5, 2024, according to the appointing authority, the petitioner was aware of all charges as well as supporting evidence since all discovery had been served. The appointing authority argues that to the extent the petitioner thinks that the appointing authority had an obligation to continue him on a paid suspension because it did not immediately move to take away his pay, there is no support for that proposition in the New Jersey Administrative Code and the petitioner fails to cite any support. The appointing authority adds that there is no threat of irreparable harm here because issues of pay may be remedied in due course with back pay and that both it and the public interest would be prejudiced if the appointing authority had to continue the petitioner in paid status while he, a law enforcement officer, faces the charges at issue. It insists that the petitioner is being afforded all due process.¹

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition for interim relief:

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.

Initially, it must be emphasized that the role of the Commission at this stage in the proceedings is not to adjudicate the merits of the charges against the petitioner. Rather, the sole issue before the Commission at this juncture is whether the appointing authority presented a valid basis to immediately suspend the petitioner pursuant to *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1.

N.J.S.A. 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1, in turn, provide that an employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. The appointing authority in this matter validly imposed an immediate suspension, pursuant to *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1, to maintain order and the effective direction of public services. In this regard, the charges involve the petitioner's arrest for violation of the domestic violence laws and indictment; his failure to notify administration of said arrest and indictment; and his lying during the course of the internal affairs investigation. Even assuming that the indictment was dismissed, the charges are serious as they involve a law enforcement officer's alleged failure to provide his appointing authority with notice of a domestic violence arrest and indictment and lying in an internal affairs

¹ At the time of writing, the appointing authority indicated that a departmental hearing had been scheduled for January 17, 2024, but it was being rescheduled due to counsels' schedules.

investigation. In any event, the appointing authority would not be required to prove criminal culpability as the standard of proof in administrative proceedings is guilt by a preponderance of the evidence, not the stricter criminal standard of proof beyond a reasonable doubt. Further, the appointing authority was not precluded from converting the petitioner's immediate suspension with pay to one without pay. There is no support for the notion that the appointing authority in this case relinquished its discretion to effect an immediate suspension without pay merely because the suspension commenced as a paid one. Moreover, the petitioner has not satisfied any other prongs of *N.J.A.C. 4A:2-1.2* since the harm he is suffering is monetary in nature and can be remedied, and it is clearly potentially harmful to the appointing authority and the public if a law enforcement employee facing these charges is allowed to remain in paid status. Thus, the petitioner's immediate suspension without pay on January 5, 2024 was proper and imposed in accordance with Civil Service laws and regulations, notwithstanding that the petitioner's PTC licensure is no longer at issue.

ORDER

Therefore, it is ordered that this petition for interim relief be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF MARCH, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

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