

Willfully and with intent performing duties in an inferior manner; suspension for 28 days. *Huesser v. Camden County Mun. Utility Authority*, 92 N.J.A.R.2d (CSV) 48.

Attempt to put arms around another employee; removal from employment. Fine v. Department of Public Property of Middlesex County, 92 N.J.A.R.2d (CSV) 45.

Striking client on head; suspension. *Cobb v. Woodbridge Development Center*, 92 N.J.A.R.2d (CSV) 34.

There was no inappropriate physical contact or mistreatment of a resident; suspension not justified. *Rease v. Division of Youth and Family Services*, 92 N.J.A.R.2d (CSV) 35.

Testing positive for drug use; conduct unbecoming a public employee; removal. *Hamilton v. Department of Corrections*, 92 N.J.A.R.2d (CSV) 31.

Testing positive for cocaine use; removal. *Brevard v. Training School for Boys*, 92 N.J.A.R.2d (CSV) 28.

Insubordination, conduct unbecoming a public employee, neglect of duty, and violation of township rules and regulations; removal. *Zara v. Township of Hamilton, Water Pollution Control*, 92 N.J.A.R.2d (CSV) 25.

Patient abuse and intentional misuse of authority justified suspension. *Williams v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 23.

Corrections officer properly suspended for 30 days. *Barksdale v. Edna M. Mahon Correctional Facility*, 92 N.J.A.R.2d (CSV) 3.

Officer tricked into smoking marijuana; not conduct unbecoming public employee. N.J.S.A. 2C:2-1. *Cox v. Bayside State Prison*, 92 N.J.A.R.2d (CSV) 1.

Reporting for work while intoxicated; suspension. *Rucinski v. Department of Fire & Emergency Services, City of Jersey City*, 91 N.J.A.R.2d (CSV) 97.

Suspension; insubordination based on refusal to take drug test. *Bryant v. Fire & Emergency Services Department, Jersey City*, 91 N.J.A.R.2d (CSV) 95.

Failing random drug test; removal. *Mitchell v. County of Camden, Sheriff's Department*, 91 N.J.A.R.2d (CSV) 89.

Conduct unbecoming public official; removal. N.J.S.A. 2C:35-10, 2C:51-1. *Jones v. Ancora Psychiatric Hospital*, 91 N.J.A.R.2d (CSV) 83.

Corrections officer was medically unfit to perform his job. *Gerace v. Adult Detention, Atlantic County*, 91 N.J.A.R.2d (CSV) 81.

Negligent conduct unbecoming a public employee; suspension. *Grier v. Department of Transportation*, 91 N.J.A.R.2d (CSV) 63.

Absence from work without notice; suspension without pay. *Dean v. Marlboro Psychiatric Hospital*, 91 N.J.A.R.2d (CSV) 57.

Officer was guilty of conduct unbecoming an employee and public service. N.J.S.A. 2a:156A-3. *Engi v. State Department of Corrections*, 91 N.J.A.R.2d (CSV) 53.

Ten-day suspension was too harsh given employee's long work history and lack of prior disciplinary record. *Thomas v. Vineland Developmental Center*, 91 N.J.A.R.2d (CSV) 47.

Removal; cocaine. *White v. Mercer County, Dept. of Public Care and Safety*, 91 N.J.A.R.2d (CSV) 25.

Neglect of duty and intentional misstatement of material facts; discharge. *Kinnard v. Mountainview Youth Correctional Facility*, 91 N.J.A.R.2d (CSV) 17.

Termination; unauthorized five-week leave of absence. *Harp v. Ancora Psychiatric Hosp.*, 91 N.J.A.R.2d (CSV) 11.

Employee was properly terminated for absenteeism and falsification of official records. *Goodman v. N. Jersey Dept. of Human Services*, 91 N.J.A.R.2d (CSV) 9.

Thirty-day suspension with no demotion was appropriate penalty. *Allegar v. Lacey Dept. of Public Works*, 91 N.J.A.R.2d (CSV) 1.

Appellant removed from position as drawbridge operator on disciplinary charges for possessing, consuming and being under the influence of an alcoholic beverage while on duty. *Varga v. Union Co. Dep't of Public Works*, 11 N.J.A.R. 546 (1989).

Removal of police officer from position for neglect of duty, serious breach of discipline and conduct unbecoming an employee in public service (citing former N.J.A.C. 4:1-16.9). *Simone v. Borough of Elmwood Park*, 7 N.J.A.R. 72 (1983).

Civil Service Commission has the authority to order removal based on term of the forfeiture statute. Forfeiture following the conviction of a crime of a third degree is automatic (citing former N.J.A.C. 4:1-16.9). *Dinkins v. Cape May Cty.*, 6 N.J.A.R. 202 (1983).

Discretion with regard to removal: the State is not precluded from using the normal regulatory removal machinery even though petitioner's forfeiture of office, as a consequence of conviction, was immediate and automatic (citing former N.J.A.C. 4:1-16.9). *Schonwald v. Dep't of Transportation*, 5 N.J.A.R. 473 (1982).

Suspension based on failure to dress in a manner appropriate to his position: insubordination (citing former N.J.A.C. 4:1-16.7). *Koehler v. Dep't of Community Affairs*, 5 N.J.A.R. 318 (1981).

4A:2-2.4 Limitations on suspensions and fines

(a) No suspension or fine shall exceed six months except for suspensions pending criminal complaint or indictment. See N.J.A.C. 4A:2-2.7.

(b) In local service, the appointing authority may provide that a suspension be with or without pay. In State service, suspensions shall be without pay unless directly authorized to be with pay by the department head.

(c) An appointing authority may only impose a fine as follows:

1. As a form of restitution;
2. In lieu of a suspension, when the appointing authority establishes that a suspension of the employee would be detrimental to the public health, safety or welfare; or
3. Where an employee has agreed to a fine as a disciplinary option.

(d) An employee may pay a fine of more than five days salary in a lump sum or through installments. Unless otherwise agreed to by the employee, an installment may not be more than five percent of the gross salary per pay for a fine under \$500.00; 10 percent of gross salary per pay period for a fine between \$500.00 and \$1,000; or 15 percent of gross salary per pay period for a fine over \$1,000.

4A:2-2.5 Opportunity for hearing before the appointing authority

(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

1. 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. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See N.J.A.C. 4A:2-2.7.

(b) Where suspension is immediate under (a)1 and (a)2 above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

(c) The employee may request a departmental hearing within five days of receipt of the Preliminary Notice. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action.

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date as agreed to by the parties.

(e) Appeals concerning violations of this section may be presented to the Commissioner through a petition for interim relief. See N.J.A.C. 4A:2-1.2.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

Added new (e).

Amended by R.1992 d.414, effective October 19, 1992.

See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Revised (a).

Law Review and Journal Commentaries

Discrimination—Collateral Estoppel—Police Officers. Judith Nallin, 138 N.J.L.J. No. 1, 49 (1994).

Case Notes

Adequate consideration given provisions of Law Against Discrimination. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied.

Procedural irregularities at departmental level; cured by hearing at agency level. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied.

Waiver of hearing. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied.

Departmental hearing required within thirty days of preliminary notice of disciplinary action. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied.

Due process rights of corrections officers who were dismissed for failure to comply with mandatory drug test order were violated. *Caldwell v. New Jersey Dept. of Corrections*, 250 N.J.Super. 592, 595 A.2d 1118 (A.D.1991), certification denied 127 N.J. 555, 606 A.2d 367.

Lack of entitlement to post termination hearing. *Grexa v. State*, 168 N.J.Super. 202, 402 A.2d 938 (App.Div.1978).

Due process: right to post termination hearing (statutory). *Nicoletta v. No. Jersey District Water Supply Commission*, 77 N.J. 145, 390 A.2d 90 (1978). Concurring and dissenting opinions.

Right to hearing. *Cunningham v. Dept. of Civil Service*, 69 N.J. 13, 350 A.2d 58 (1975).

Hearing de novo on appeal to Merit System Board corrected alleged inadequate notice. *Coley v. Rowan College*, 94 N.J.A.R.2d (CSV) 4.

Absence of timely hearing required dismissal of disciplinary charges. *Marjarum v. Hamilton Township Division of Police*, 93 N.J.A.R.2d (CSV) 143.

Failure to comply with appropriate regulations in seeking to discipline employee. *Hamilton v. Camden Housing Authority*, 93 N.J.A.R.2d (CSV) 85.

Failure to provide employee with notice of dismissal; acts following meeting were not void pursuant to N.J.S.A. 10:4-15. *McManus v. Housing Authority of the City of Englewood*, 92 N.J.A.R.2d (CSV) 747.

Preliminary notice of disciplinary action met minimum discovery requirements. N.J.S.A. 40A:14-147, 11A:2-13. *Gabbianelli v. Monroe Township Police Department*, 91 N.J.A.R.2d (CSV) 79.

4A:2-2.6 Hearings before the appointing authority

(a) The hearing shall be held before the appointing authority or its designated representative.

(b) The employee may be represented by an attorney or authorized union representative.

(c) The parties shall have the opportunity to review the evidence supporting the charges and present and examine witnesses. The employee shall not be required to testify, but an employee who does testify will be subject to cross-examination.

(d) Within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a Final Notice of Disciplinary Action.

Case Notes

Due process. *Carr v. Sharp, C.A.*, 454 F.2d 271 (1971).

Requirement of exhaustion of administrative remedies. *City of New Brunswick v. Speights*, 157 N.J.Super. 9, 384 A.2d 225 (Co.1978).

Res judicata: delay in hearing: limits on de novo hearing. In re *Darcy*, 114 N.J.Super. 454, 277 A.2d 226 (1971).

Public employee voluntarily and deliberately planned his nonappearance at hearing and was not entitled to further hearing. *Cue v. Camden County*, 92 N.J.A.R.2d (CSV) 131.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on a pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action. The notice should include a statement that N.J.S.A. 2C:51-2 may apply to the employee, and that the employee may choose to consult with an attorney concerning the provisions of that statute.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether 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.

2. The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in N.J.A.C. 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

3. Where the appointing authority determines that an indefinite suspension should be imposed, a Final Notice of Disciplinary Action shall be issued stating that the employee has been indefinitely suspended pending disposition of the criminal complaint or indictment.

(b) The appointing authority shall issue a second Preliminary Notice of Disciplinary Action specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under N.J.A.C. 4A:2-2.5 and 2.6.

(c) Where an employee has pled guilty or been convicted of a crime or offense which is cause for forfeiture of employment under N.J.S.A. 2C:51-2, the departmental hearing shall be limited to the issue of the applicability of N.J.S.A. 2C:51-2. If N.J.S.A. 2C:51-2 is found not applicable, related disciplinary charges, if any, may be addressed at the hearing.

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a)1: added text, "The standard . . . public services."
Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Revised (a).

Case Notes

Forfeiture of public office was not unconstitutional. *State v. Timoldi*, 277 N.J.Super. 297, 649 A.2d 872 (A.D.1994), certification denied.

Merit System Board of State Department of Personnel did not have exclusive jurisdiction for prosecution of forfeiture action against senior corrections officer. *State v. Lee*, 258 N.J.Super. 313, 609 A.2d 513 (A.D.1992).

Whether public employee's conviction involves or touches employment does not depend upon whether criminally proscribed acts took place within immediate confines of employment's daily routine. *Moore v. Youth Correctional Institute at Annandale*, 230 N.J.Super. 374, 553 A.2d 830 (A.D.1989), affirmed 119 N.J. 256, 574 A.2d 983.

Senior corrections officer's criminal conviction for harassing his immediate superior was one "involving or touching" his employment. *Moore v. Youth Correctional Institute at Annandale*, 230 N.J.Super. 374, 553 A.2d 830 (A.D.1989), affirmed 119 N.J. 256, 574 A.2d 983.

Suspension; pendency of criminal charges. *Abdunafi v. East Jersey State Prison*. 94 N.J.A.R.2d (CSV) 653.

Suspension and removal of public employee convicted of a crime was justified. *DeLeone v. Essex County*, 94 N.J.A.R.2d (CSV) 544.

Automatic forfeiture of employment upon conviction. *Hudson County v. Seinfeld*, 94 N.J.A.R.2d (CSV) 516.

Suspension pending disposition of criminal complaint was in the public's interest. *Lordi v. Woodbridge Township*, 94 N.J.A.R.2d (CSV) 540.

Automatic forfeiture of employment upon conviction. *City of Bayonne Department of Public Works v. Timoldi*, 94 N.J.A.R.2d (CSV) 511.

Indefinite suspension was justified pending disposition of criminal charges. *Gonzalez v. Essex County Welfare Board*, 94 N.J.A.R.2d (CSV) 451.

Conviction on federal drug-related charges effected a forfeiture of positions. *Roman v. Atlantic City Police Department*, 94 N.J.A.R.2d (CSV) 250.

Automatic forfeiture of public employment upon criminal conviction of the third degree under N.J.S.A. 2C:51-2. *Coxson v. Newark Board of Education*, 94 N.J.A.R.2d (CSV) 129.

Pharmacist suspended indefinitely without pay pending disposition of criminal charges. *Grillo v. Bergen Pines County Hospital*, 94 N.J.A.R.2d (CSV) 81.

Guilty plea; however consideration of mitigating factors warranted the maximum suspension rather than permanent removal. *Walcott v. City of Plainfield*, 94 N.J.A.R.2d (CSV) 65.

Suspension pending resolution of criminal charges was appropriate; however, termination was not justified. *Walcott v. City of Plainfield*, 94 N.J.A.R.2d (CSV) 65.

Indictment justified suspension of welfare supervisor. *Jersey City Welfare Board v. Miller*, 94 N.J.A.R.2d (CSV) 55.

Forfeit of public employment; conviction conviction of drug and alcohol-related offenses. *Greystone Park Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 14.

Termination; conduct unbecoming a public employee; physical attack by two employees on another employee. *Bryson v. Division of Motor Vehicles*, 94 N.J.A.R.2d (CSV) 1.

Acquitted school custodian was entitled to back pay but agreement with counsel for reimbursement of attorney fees was not binding on the school board. *Griffin v. Board of Education of the City of Paterson*, 93 N.J.A.R.2d (EDU) 882.

Hospital employee was entitled to back pay, seniority and benefits following dismissal of indictment. *Gillard v. Trenton Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 730.

Employee forfeited employment upon pleading guilty to criminal charges. *Martin v. North Princeton Developmental Center*, 93 N.J.A.R.2d (CSV) 675.

Police officer automatically forfeited position; criminal conviction. *Lehman v. Woodbridge Township Police Department*, 93 N.J.A.R.2d (CSV) 599.

Indefinite suspension pending disposition of sexual assault charges. *Vengenock v. Salem County*, 93 N.J.A.R.2d (CSV) 558.

Six-month suspension was warranted for conviction of a motor vehicle violation. *Turner v. Department of Higher Education*, 93 N.J.A.R.2d (CSV) 440.

Public employment; convictions of third-degree crimes. N.J.S.A. 2C:51-2. *Williams v. Marlboro Psychiatric Hosp.*, State Dept. of Human Services, 93 N.J.A.R.2d (CSV) 421.

Convictions forfeited public employment. *Williams v. Marlboro Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 421.

Suspended employee did not resign by failure to report dismissal of criminal charges. *McCray v. Department of the Treasury*, 93 N.J.A.R.2d (CSV) 363.

Possession of controlled dangerous substance warranted removal. *Hickman v. Marlboro Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 356.

Indefinite suspension of employee pending disposition of criminal charges was proper. *Simeone v. Woodbridge Township Department of Public Works*, 93 N.J.A.R.2d (CSV) 340.

Continuation of suspension of correction officer until disposition of criminal charges ordered. *Rivera v. New Jersey Training School for Boys—Jamesburg*, 93 N.J.A.R.2d (CSV) 219.

Guilty plea constituted a forfeiture of position. *Watkins v. Bergen Pines County Hospital*, 92 N.J.A.R.2d (CSV) 768.

Issue of whether suspension was in the public interest was rendered moot by resignation. *Coleman v. Dept. of Public Works, Borough of Ringwood*, 92 N.J.A.R.2d (CSV) 510.

Guard was properly suspended pending outcome of charges. *Alton v. Newark Board of Education*, 92 N.J.A.R.2d (CSV) 478.

Suspension of youth worker was warranted pending disposition of criminal charge. *Moore v. Division of Youth and Family Services*, 92 N.J.A.R.2d (CSV) 433.

County employee forfeited her office as a result of conviction. *Starling v. Essex County Citizen Services, Division of Welfare*, 92 N.J.A.R.2d (CSV) 431.

Indefinite suspension of police officer was warranted. *Beck v. City of Trenton*, 92 N.J.A.R.2d (CSV) 411.

Forfeit of position; criminal conviction. *Rivera v. City of Bridgeton*, 92 N.J.A.R.2d (CSV) 311.

Indefinite suspension; criminal charges. *Smith v. Essex County Judiciary*, 92 N.J.A.R.2d (CSV) 271.

Indefinite suspension; disposition of charges. *Naro v. The Fire Division of the Department of Public Safety of the City of Trenton*, 92 N.J.A.R.2d (CSV) 211.

4A:2-2.8 Appeals to Merit System Board

(a) An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee. Receipt of the Notice on a different date by the employee's attorney or union representative shall not affect this appeal period.

(b) If the appointing authority fails to provide the employee with a Final Notice of Disciplinary Action, an appeal may be made directly to the Board within a reasonable time.

Amended by R.1995 d.416, effective August 7, 1995.

See: 27 N.J.R. 1837(b), 27 N.J.R. 2884(b).

In (a), added the provision governing receipt of notice by the employee's attorney or union representative.

Case Notes

Remand to Commission for supplemental hearing. Dept. of Law and Public Safety v. Miller, 115 N.J.Super. 122, 278 A.2d 495 (App.Div. 1971).

Terminated employee did not file an objection to the employer's action in terminating her employment within reasonable period of time. *Gibbons v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 491.

Charges against psychiatric hospital worker would be dismissed where alleged victim left the state and could not be located. *Godwin v. Marlboro Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 96.

4A:2-2.9 Board hearings

(a) Requests for a Board hearing will be reviewed and determined by the Commissioner or Commissioner's designee.

(b) Major discipline hearings will be heard by the Board or referred to the Office of Administrative Law for hearing before an administrative law judge. See N.J.A.C. 1:1-1.1 et seq. for OAL hearing procedures.

(c) The Board may adopt, reject or modify the recommended report and decision of an administrative law judge. Copies of all Board decisions shall be served personally or by regular mail upon the parties.

(d) The Board may reverse or modify the action of the appointing authority, except that removal shall not be substituted for a lesser penalty.

Amended by R.1995 d.417, effective August 7, 1995.

See: 27 N.J.R. 1838(a), 27 N.J.R. 2885(a).

In (a), substituted the Commissioner or the Commissioner's designee for the Board as the party that does the review.

Case Notes

Civil Service Commission's duty to review findings of administrative law judge prior to acceptance or rejection of judge's recommendations (citing former rule N.J.A.C. 4:1-5.4). In the Matter of Morrison, 216 N.J.Super. 143, 523 A.2d 238 (App.Div.1987).

Removal hearing—employee service record must be in evidence (citing former N.J.A.C. 4:1-16.9). In the Matter of Parlow, 192 N.J.Super. 247, 469 A.2d 940 (App.Div.1983).

Entitlement to hearing as matter of fundamental fairness. *Cunningham v. Dept. of Civil Service*, 69 N.J. 13, 350 A.2d 58 (1975).

County sheriff's officer was required by settlement agreement to submit to psychiatric examinations. *Petescia v. County of Essex*, 92 N.J.A.R.2d (CSV) 388.

4A:2-2.10 Back pay, benefits and seniority

(a) Where a disciplinary penalty has been reversed, the Board shall award back pay, benefits, seniority or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified.