(b) In appeals concerning minor disciplinary actions, see N.J.A.C. 4A:2-3.7(f) for burden of proof standards.

(c) In all other Commissioner and Board appeals, the burden of proof shall be on the appellant.

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 (b) and relettered old (b) as (c).

Case Notes

Initial Decision (2011 N.J. AGEN LEXIS 252) adopted, in which the ALJ found, on conflicting evidence, that a Senior Cottage Training Technician was properly removed for patient abuse after she left an agitated patient outside in the heat, peeled his hands from the door and refused to let him enter the building, thereby escalating the situation, and failed to check him after he fell; rather than stepping aside and letting the patient in, the technician used an "arms-up" defensive tactic that sent the patient back two steps, after which he fell. In re Narouski, OAL Dkt. No. CSV 00811-11, 2011 N.J. CSC LEXIS 1158, Final Decision (August 17, 2011).

Initial Decision (2009 N.J. AGEN LEXIS 1101) adopted, which found that a clerk typist was properly removed for her part in making false allegations that her supervisor made anti-Semitic remarks about a co-worker; credible evidence supported a finding that the typist and her co-worker agreed to make the false accusations in order to have their manager removed due to their unhappiness with how the department was being managed. In re Maltby, OAL Dkt. No. CSV 11902-08, 2010 N.J. CSC LEXIS 621, Final Decision (January 13, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1066) adopted, which found that a police officer committed conduct unbecoming a public employee by carrying an unauthorized duplicate shield while indefinitely suspended; however, the evidence did not clearly demonstrate that the officer "flashed" his badge at the scene of an accident in which he was involved, nor did the officer make a false representation that he was on duty. His conduct warranted a 3-day suspension. In re Furlow, OAL Dkt. No. CSV 11945-08, 2010 N.J. CSC LEXIS 613, Final Decision (January 13, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1061) adopted, which found that a public safety telecommunicator deserved a six-day suspension after slamming furniture and cursing at his supervisor when he was not allowed to leave early as he had anticipated. The telecommunicator acted in a manner unbecoming a public employee, but that there was no evidence that he neglected his duties. In re Lemay, OAL Dkt. No. CSV 9022-09, 2010 N.J. CSC LEXIS 614, Final Decision (January 13, 2010).

Senior correction officer was properly removed after she erroneously summoned an inmate to her post and, on discovering her error, permitted the inmate to remain in the area for an extended period of time and gave him a clothing pass without authorization, permitting the inmate to move freely around the facility without proper authorization and creating a very serious security risk. Notwithstanding the officer's long employment history, the egregiousness of her conduct, along with a 45-day suspension for similar misconduct just days prior to the most recent incident, demonstrated that removal was the appropriate penalty. In re Warren, OAL Dkt. No. CSV 1862-09, 2010 N.J. CSC LEXIS 461, Final Decision (December 16, 2009).

Appointing authority failed to present sufficient evidence that a police officer burglarized his estranged wife's home where the administrative law judge found, on conflicting evidence, that it was reasonable for the officer to believe that the wife wanted the officer to remove certain personal items from the garage; even if the officer violated the letter of a court order preventing him from being closer than curbside to the wife's home, no discipline was warranted. Additionally, the appointing authority failed to present evidence that the officer was involved in a motor vehicle chase that involved eluding the police. In re Sanger, OAL Dkt. No. CSV 11695-08, 2010 N.J. CSC LEXIS 459, Civil Service Comm'n Decision (December 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 765) adopted, which found that a City employee was properly removed for conduct unbecoming a public employee, misuse of public property, and other sufficient cause because of his fraudulent enrollment of his ex-wife on the health insurance plan paid for by the City. The employee failed to demonstrate that his ex-wife was his "dependent" from the time of their divorce in 1999 until the time he requested her removal from the policy in 2008. In re Peterson, OAL Dkt. No. CSV 01472-09, 2009 N.J. CSC LEXIS 1494, Final Decision (December 2, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 689) adopted, which found that although a youth worker completed a conditional discharge program resulting in the dismissal of criminal drug charges, her job required her to be a role model, a mentor, a "big sister" or even a "mother-figure" to troubled teens some of whom were gang members, or were emotionally or psychiatrically challenged, or who came from families with histories of drug or alcohol abuse; therefore, the worker's admission of drug possession by her guilty plea compromised her employment, warranting her removal. In re Contant, OAL Dkt. No. CSV 10626-08, 2009 N.J. CSC LEXIS 1555, Final Decision (November 18, 2009).

Correction sergeant properly received 20 working day suspension upon a finding that the officer used excessive force when he used oleoresin capsicum (OC) spray on a handcuffed inmate, who posed no immediate threat of physical harm, particularly where the officer was serving in a supervisory position and his unjustified use of the OC spray on the inmate had the potential to cause greater damage than it was aimed at preventing, including inciting other inmates in the area (adopting in part, rejecting in part 2009 N.J. AGEN LEXIS 504). In re Feldman, OAL Dkt. No. CSV 1477-09, 2009 N.J. CSC LEXIS 287, Final Decision (September 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 524) adopted, which found that the appointing authority properly removed an employee who pinched a patient's nipple. The sort of pinching described was not a playful or lesser offensive touching, but was aggressive behavior that served to intimidate, humiliate, and hurt the patient and to coerce the patient into cooperating with staff. In re Medina, OAL Dkt. No. CSV 08812-08, 2009 N.J. CSC LEXIS 295, Final Decision (September 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 322) adopted, which found that a police officer who refused to work the front desk after he temporarily lost his right to carry a firearm following an allegation of domestic violence and, instead "mouthed off" to his superiors, was guilty of insubordination, warranting a six month suspension; however, the evidence did not support a finding that the police officer was no longer fit for duty where a psychologist found no pathology, no diagnosable medical disorder, no psychological disorders, and nothing in the officer's background from a psychiatric perspective to deem him unfit. In re Venson, OAL Dkt. No. CSV 07545-07, 2009 N.J. AGEN LEXIS 964, Civil Service Comm'n Decision (August 5, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 449) adopted, which found that a county correction officer was properly suspended for ten days following her unexcused absence from work; the ALJ found that the officer's demeanor while testifying as to the reason for her absence evidenced a lack of confidence and, therefore, lacked credibility. In re Gregg, OAL Dkt. No. CSV 6712-08, 2009 N.J. AGEN LEXIS 1008, Final Decision (August 5, 2009).

University failed to satisfy its burden of proof that a security guard neglected his duty by failing to report to his post in accordance with his shift or that leaving the post for some period of time without authorization; the guard was exercising his discretion to patrol the hall grounds, gardens and buildings. Additionally, the university failed to prove that the security guard misused public property where the sole basis of this charge was that the mileage reported from his tour of duty that evening was five miles when the university believed it should have been closer to three or three-and-one half miles (adopting 2009 N.J. AGEN LEXIS 155). In re Cassidy, OAL Dkt. No. CSV 2852-08, 2009 N.J. AGEN LEXIS 906, Civil Service Comm'n Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 441) adopted, which found that a senior medical security officer was properly removed after physically abusing a patient when the officer removed a towel from the patient's head without there being an order or authorization to do so; the patient was not a danger to himself or others and often wore a towel around his head when on the unit and was not prohibited from doing so. In re Corker, OAL Dkt. No. CSV 236-09, 2009 N.J. AGEN LEXIS 976, Final Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 444) adopted, which found that a human services technician was improperly disciplined for neglect of duty and falsification of documents where the evidence clearly demonstrated that the technician was doing the job of three people and had no choice but to complete the forms; her actions were not voluntary and she did not attempt to intentionally make any misrepresentations. In re Cruz, OAL Dkt. No. CSV 4146-07, 2009 N.J. AGEN LEXIS 981, Civil Service Comm'n Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 67) adopted, which found that several police officers appropriately submitted an "open door" incident report regarding a possible burglarized apartment where the owner was not present, even after being advised by another victim that three men entered his apartment and pointed a gun in his face; the other victims were not cooperative and did not want to become involved and the officers specifically received authorization from their lieutenant to file such a report. In re Clarkin, OAL Dkt. No. CSV 01980-08; 01982-08; 01983-08; 01984-08 (Consolidated), 2009 N.J. AGEN LEXIS 959, Civil Service Comm'n Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 247) adopted, which found that the appointing authority failed to satisfy its burden of proof that a bus driver's positive drug screen warranted the extreme discipline of termination where the evidence showed that the isolated incident of personal marijuana use occurred off-duty and the driver had an exemplary employment history, took responsibility for the incident, and participated in a voluntary drug program; the appointing authority's own policy set forth that the ingestion of drugs or alcohol prior to an employee reporting to the worksite "shall result in disciplinary action," which, by its own terms, was not cause for automatic termination, but instead required that the type of disciplinary action should be informed by contextual and background factors. In re Deans, OAL Dkt. No. CSV 01134-09, 2009 N.J. AGEN LEXIS 957, Civil Service Comm'n Decision (June 10, 2009).

Appointing authority sustained its burden of proof regarding a court security guard's inability to perform his duties because the issue was not whether the appointing authority proved that the guard was a paranoid schizophrenic, but whether he was unable to perform his duties; the guard was quarrelsome, insubordinate, rude, obsessive, untruthful, chronically agitated, had difficulty controlling his impulses, and appeared to suffer from paranoid delusions about being monitored by the government. In re Patel, OAL Dkt. No. CSV 11119-07, 2009 N.J. AGEN LEXIS 793, Final Decision (June 10, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 232) adopted, which found that the City failed to prove that a public works employee was fit to return to work after an on-the-job injury, surgery, and therapy; the worker was under no obligation to sua sponte offer to return to work without documented medical clearance, nor did the conflicting evidence establish that he was, in fact, fit to return to work at the time alleged by the City. In re Pappas, OAL Dkt. No. CSV 09761-05, 2009 N.J. AGEN LEXIS 899, Civil Service Comm'n Decision (May 27, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 160) adopted, which found that a police lieutenant was properly suspended for 30 days when he failed to respond in a timely manner after being dispatched to a domestic violence event; the lieutenant could have and should have advised dispatch if he was delayed, not waited until his number was called again. That the matter resolved without further incident was of little comfort and of no moment to the expectation that a dispatched officer would respond when called; the reasons for following procedures were for the purpose of preventing what could have happened, and the failure to follow them was not mitigated by what did not. In re Slack, OAL Dkt. No. CSV 8826-08, 2009 N.J. AGEN LEXIS 967, Final Decision (April 29, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 71) adopted, which found that an engineering aide was properly suspended for 60 days after he shoved a coworker from behind while involved in an argument; however, because the aide was acting on the advice of counsel when he recorded a subsequent meeting with his supervisor, failure to turn off the tape recorder was not a deliberate disregard of a supervisor's direction. In re Dowd, OAL Dkt. No. CSV 05028-08, 2009 N.J. AGEN LEXIS 961, Final Decision (April 15, 2009).

Appointing authority failed to sustain its burden of proof regarding "double dipping" charges against a police officer who allegedly received payment for off-duty traffic and construction jobs while on duty and submitted overtime reports while working off-duty; similar situations existed when police officers worked part-time jobs as security officers or traffic control guards and covered for each other on the part-time job if an officer was called to testify in municipal court during part-time employment hours and the testimony from all witnesses was consistent regarding the accepted part-time-job routine and reporting requirements (adopting 2009 N.J. AGEN LEXIS 117). In re Bell, OAL Dkt. No. CSV 9013-07, 2009 N.J. AGEN LEXIS 810, Civil Service Comm'n Decision (April 15, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 986) adopted which found that a county correction officer was properly removed after submitting a falsified document as evidence to support her claim that the absence for which she had been docked and subsequently charged was FMLA related; the officer intentionally misstated a material fact in connection with her work and her conduct constituted conduct unbecoming a public employee. In re Moss, OAL Dkt. No. CSV 10398-07, 2009 N.J. AGEN LEXIS 787, Final Decision (March 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 120) adopted, which found that a driver of handicapped and elderly could no longer fulfill his duties after an expert evaluation of his medical condition revealed that he did not have the requisite back strength to help people who were unsteady or in wheelchairs; the County acted in good faith and properly removed the driver from his employment, however, where employees were found to be medically unfit and were not guilty of any kind of wrongdoing, there was precedent for changing their termination status to a resignation in good standing in order to avoid the harsh consequences of removal. In re LaCava, OAL Dkt. No. CSV 10401-07, 2009 N.J. AGEN LEXIS 788, Final Decision (March 25, 2009).

Where a county correction officer was actually injured, was authorized off-duty by a doctor, and prescribed Percocet, causing her to fall deeply asleep, resulting in a failure to answer the phone while sick, she should not have been disciplined for the first incident, but the officer was properly disciplined for a subsequent similar incident where she was well aware that she had to answer the phone, and was also aware that the Percocet strongly affected her; however, the officer's failure to be available for the phone call on the latter occasion was not so egregious as to warrant a 60 working day suspension and the infraction warranted a reduction in the penalty, regardless of the officer's disciplinary history, to a 10 working day suspension (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 39). In re Echevarria, OAL Dkt. No. CSV 6730-08, 2009 N.J. AGEN LEXIS 824, Civil Service Comm'n Decision (March 11, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 74) adopted, which found that a 5-day, rather than 11-day, suspension was warranted when a police officer was insubordinate by continuing to argue with a uniformed superior officer about the officer's transportation to his post; the officer did not act belligerently against his superior and his last infraction was 13 years ago had nothing to do with insubordination. In re Cirasella, OAL Dkt. No. CSV 09100-06, 2009 N.J. AGEN LEXIS 898, Final Decision (March 11, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 23) adopted, which found that, although the complaining patient was not capable of presenting clear testimony at a hearing regarding a cottage training technician's alleged abuse, the appointing authority presented credible evidence to

Failure to adhere to documenting requirements; urine testing. Riley v. Southern State Correctional Facility, 93 N.J.A.R.2d (CSV) 385.

Order to submit urine specimens for drug testing was not justified. Riley v. Southern State Correctional Facility, 93 N.J.A.R.2d (CSV) 385.

Evidence did not show failure to report client abuse. Grant v. North Princeton Developmental Center, 93 N.J.A.R.2d (CSV) 332.

Failure of proof that employee was guilty of client abuse. Locklear v. New Lisbon Developmental Center, 93 N.J.A.R.2d (CSV) 197.

Failure of proof that employee disobeyed order. Lott v. Woodbridge Developmental Center, 93 N.J.A.R.2d (CSV) 141.

Abuse of client not proven. Brent v. Vineland Developmental Center, 93 N.J.A.R.2d (CSV) 82.

There was failure of proof that employee sought compensation improperly. Cressinger v. Newark Board of Education, 93 N.J.A.R.2d (CSV) 63.

Absent showing that inspector passed noncomplying vehicle suspension was unwarranted. Inge v. Division of Motor Vehicles, 93 N.J.A.R.2d (CSV) 47.

Town failed to sustain burden of proof and removal was unwarranted. Corso v. West New York, 93 N.J.A.R.2d (CSV) 43.

Confession to drug use was not subject to independent corroboration and was cause for state trooper's dismissal. State Police v. Naranjo, 93 N.J.A.R.2d (POL) 17.

It was not shown that employee was guilty of client abuse. Hopkins v. New Jersey Department of Human Services, 93 N.J.A.R.2d (CSV) 17.

Evidence; sleeping while on duty; removal not warranted. Glenn v. Department of Corrections, 92 N.J.A.R.2d (CSV) 918.

Evidence; intention to steal sneakers from impounded car; removal not warranted. Walsh v. City of Vineland, 92 N.J.A.R.2d (CSV) 833.

Evidence; inappropriate physical contact with a client; suspension not warranted. Stewart v. Arthur Brisbane Child Treatment Center, 92 N.J.A.R.2d (CSV) 827.

Evidence; physical abuse of a client; removal not warranted. Mestres v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 823.

Failure of proof; layoff in bad faith; presumption that measures removing them were for reasons of economy. In the Matter of Layoffs of Certain Employees of Bergen Pines County Hospital, 92 N.J.A.R.2d (CSV) 779.

Proof failed to show that employee resigned under duress or that her employer acceded to her efforts to rescind. Torres v. Buttonwood Hospital, 92 N.J.A.R.2d (CSV) 753.

Psychiatric technician's medical condition and history was not sufficient to deprive her of employment. Smith v. Essex County Hospital Center, 92 N.J.A.R.2d (CSV) 702.

Failure to prove that employee engaged in an act of client abuse. Brooks v. Ancora Developmental Center, 92 N.J.A.R.2d (CSV) 664.

Failure to show that officer was improperly bypassed for promotion to police captain. Hannafey v. Middletownship, 92 N.J.A.R.2d (CSV) 594.

Failure to sustain disciplinary charge. Angiuoli v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 570.

Failure to obtain a second urine sample for retesting did not prevent removal of police officers. Higgins v. Department of Corrections, 92 N.J.A.R.2d (CSV) 525.

Evidence failed to establish abuse of client. Woolridge v. Ancora Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 316.

Failure to prove that employee stuck his finger in client's eye. Jones v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 291.

Failure to establish neglect of duty and/or conduct unbecoming a police officer. Ogonowski v. Police Department, Atlantic City, 92 N.J.A.R.2d (CSV) 264.

Failure of evidence to support charge of physical abuse of patient. Van Doimen v. Greystone Park, 92 N.J.A.R.2d (CSV) 223.

Failure to establish physical abuse of clients; removal not justified. Hannah v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 195.

Failure to sustain burden of proof; suspension. DeSantis v. New Jersey Training School, 92 N.J.A.R.2d (CSV) 193.

Evidence was sufficient to find employee guilty of coercion and intimidation of a co-worker; removal. Perrin v. N.J. Veteran's Memorial Home, Vineland, 92 N.J.A.R.2d (CSV) 148.

Evidence was insufficient to find that officer struck juvenile; removal not justified. Dorsey v. Department of Corrections, Atlantic City, 92 N.J.A.R.2d (CSV) 92.

Evidence was insufficient to find that nurse struck two patients. Baker v. North Princeton Developmental Center, State Dept. of Human Services, 92 N.J.A.R.2d (CSV) 84.

Evidence was insufficient to find that care worker slapped a patient; removal. N.J.S.A. 11A:2-21. Gholston v. North Jersey Developmental Center, 92 N.J.A.R.2d (CSV) 82.

Evidence established abuse of patient. Williams v. Marlborough Psychiatric Hosp., State Dept. of Human Services, 92 N.J.A.R.2d (CSV) 66.

Evidence was insufficient to find inappropriate physical contact with inmate. Sepulveda v. New Jersey Training School for Boys, Jamesburg, 92 N.J.A.R.2d (CSV) 65.

Evidence established that employee abused resident; removal. New Jersey Veterans' Memorial Home, Parimus v. Cotton, 92 N.J.A.R.2d (CSV) 60.

Release at end of working test period; failure to meet burden of establishing bad faith. N.J.S.A. 11A:4-15, 4A:2-4.1. Jackson v. Meadowview Hosp., Hudson County, 92 N.J.A.R.2d (CSV) 49.

Inconsistencies in record precluded finding as to making of false and misleading official statements. State Police v. Suarez, 92 N.J.A.R.2d (POL) 29.

Evidence was insufficient to justify removal. Robinson v. Salem County, 92 N.J.A.R.2d (CSV) 20.

Alleged misrepresentation of facts by police officer as to presence of radar unit in troop car was not substantiated. State Police v. McClelland, 92 N.J.A.R.2d (POL) 19.

Evidence was insufficient to find that human services assistant mentally or physically abused patient. Pierce v. Vineland Developmental Center, New Jersey Department of Human Services, 92 N.J.A.R.2d (CSV) 15.

Witness standoff left false statement charge unsubstantiated and required police officer's exoneration. State Police v. Crawford, 92 N.J.A.R.2d (POL) 9.

Evidence was sufficient to justify removal from employment. Bigley v. Hunterdon Developmental Center, 92 N.J.A.R.2d (CSV) 5.

False report charge was not substantiated and precluded dismissal of police officer. State Police v. McGovern, 92 N.J.A.R.2d (POL) 1.

Failure to prove that employee engaged in patient abuse. Walker v. Violend Developmental Center, 91 N.J.A.R.2d (CSV) 91.

Evidence was sufficient to find abuse of patient and threatening supervisor. Knight v. Trenton Psychiatric Hosp., 91 N.J.A.R.2d (CSV) 85.

Evidence was sufficient to find employee falsified his attendance record. Edmonds v. Ancora Psychiatric Hospital, 91 N.J.A.R.2d (CSV) 67.

Evidence was insufficient to support patient's allegation of physical abuse. Almedia v. Atlantic County Department of Health Institutions, 91 N.J.A.R.2d (CSV) 49.

Evidence established neglect of duty, willful violation of law, conduct unbecoming public employee and dishonest and immoral conduct. Smith v. Municipal Court of the Township of Hamilton, 91 N.J.A.R.2d (CSV) 37.

Release from position at end of extended working test period; failure to establish that employer acted in bad faith. Nardone v. New Jersey Commission for the Blind Visually Impaired, 91 N.J.A.R.2d (CSV) 35.

Evidence was sufficient to find that worker burned client with hot water and failed to fully report the injuries. Witcher v. New Lisbon Developmental Center, 91 N.J.A.R.2d (CSV) 31.

Evidence was sufficient to find technician punched a patient in the face. Willis v. Trenton Psychiatric Hosp., 91 N.J.A.R.2d (CSV) 27.

Discharge at end of working test period; failure to establish that employer acted in bad faith. O'Connor v. Health Services Center of Camden County, 91 N.J.A.R.2d (CSV) 23.

Evidence was sufficient to find neglect of duties, insubordination, and unbecoming conduct. McIver v. Newark Housing Authority, 91 N.J.A.R.2d (CSV) 19.

Evidence was sufficient to find absenteeism and tardiness and deliberate and material false misrepresentation on employment application. N.J.S.A. 11A:4-10. Essex County Jail v. Burchett, 91 N.J.A.R.2d (CSV) 5.

Evidence was sufficient to find chronic, excessive and abusive absenteeism and lateness. N.J.S.A. 4A:2-2.3. Daniels v. Evergreen Manor, Camden County, 91 N.J.A.R.2d (CSV) 3.

Appellant failed to show that employer (Newark Free Public Library) acted in bad faith in denying her a fair evaluation of her work performance and releasing her at the end of her working test period based on claim that her services were unsatisfactory (citing former N.J.A.C. 4:1-5.10). Davis v. Newark Public Library, 9 N.J.A.R. 84 (1987).

Burden of proof rests with employee challenging economic layoff (citing former N.J.A.C. (4:1-5.10). Tyler et al. v. City of Paterson, 2 N.J.A.R. 272 (1979).

In an appeal from a disciplinary action, the burden of proof is on the appointing authority (citing former N.J.A.C. 4:1-5.10). Clark v. New Jersey Dep't of Agriculture, 1 N.J.A.R. 315 (1980).

4A:2-1.5 Remedies

(a) Seniority credit may be awarded in any successful appeal.

(b) Back pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. See N.J.A.C. 4A:2-2.10. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Civil Service Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation.

Amended by R.2012 d.007, effective January 3, 2012.
See: 43 N.J.R. 2395(a), 44 N.J.R. 65(a).
In (b), substituted "Civil Service Commission or where the Commission" for "Commissioner or Board or where the Board", and inserted the last sentence.

Case Notes

A wrongfully discharged employee was entitled to both vacation leave and sick leave credits. Rule invalid (citing former N.J.A.C. 4:1-5.5(a)). Eaddy v. Dep't of Transp., 208 N.J.Super. 156, 505 A.2d 162 (App.Div.1986) appeal dismissed 105 N.J. 569, 523 A.2d 200.

Although the Commission found that a correction officer recruit was improperly removed following his working test period, the Commission did not find that he was entitled to a permanent appointment based on the successful completion of his working test period, only that he was simply entitled to a new six-month working test period. Therefore, sufficient cause was not demonstrated to award back pay and counsel fees. In re Salva, OAL Dkt. No. CSV 941-09, 2010 N.J. CSC LEXIS 616, Final Decision (January 13, 2010).

Even though an employee was entitled to a new working test period due to irregularities during the original working test period, the employee was not entitled to back pay and counsel fees because there was no determination that he successfully completed the working test period and was, therefore, entitled to a permanent appointment; rather, the employee was simply entitled to a new three-month working test period, during which time his performance would be evaluated. In re Bernal, OAL Dkt. No. CSV 3154-07, 2008 N.J. AGEN LEXIS 1054, Final Decision (October 22, 2008).

Although Department of Education Manager was found not to have violated the New Jersey State Policy Prohibiting Discrimination in the Workplace, N.J.A.C. 4A:7-3.1, he was not entitled to back pay or counsel fees; pursuant to N.J.A.C. 4A:2-1.5, the employee did not show that the actions of the appointing authority in finding a violation of the State Policy and terminating his unclassified position were made in bad faith (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 177). In re Hearn, OAL Dkt. No. CSV 04991-05, Final Decision (October 10, 2007).

Sufficient cause not demonstrated to award back pay where employee was not entitled to a permanent appointment based on successful completion of the working test period, but rather was simply entitled to a new four-month working test period. In re Afolo, OAL Dkt. No. CSV 4145-07, 2008 N.J. AGEN LEXIS 546, Final Decision (May 7, 2008).

Reinstated county correction officer was not entitled to recover counsel fees because the appointing authority did not unreasonably delay implementing the Board's order after the parties were unsuccessful in attempting to resolve the amount of back pay due; the record also failed to indicate that the appointing authority's actions were based on any improper motivation. In re Martin, OAL Dkt. No. CSV 6599-03 (CSV 8656-98 On Remand), 2005 N.J. AGEN LEXIS 1211, Final Decision (July 13, 2005).

Appellant suspended and subsequently removed from title of Senior Systems Analyst was reinstated to duties appropriate to his permanent title (citing former N.J.A.C. 4:1-5.5). Valluzzi v. Bergen County, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

of disputes involving a disciplinary action which would be otherwise appealable to the Board under N.J.A.C. 4A:2-2.8, of a permanent employee in the career service or a person serving a working test period, such procedure shall be the exclusive procedure for any appeal of such disciplinary action.

Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
Added (c) and (d).

Case Notes

Department of Energy was not equitably estopped from returning employee to his permanent position as senior engineer when promotional examination was not given between date of his provisional appointment and date of demotion (citing former N.J.A.C. 4:1-16.8). O'Malley v. Department of Energy, 109 N.J. 309, 537 A.2d 647 (1987).

Doctrine of equitable estoppel inapplicable to allow provisional employee to retain position (citing former N.J.A.C. 4:1-16.8). Omrod v. N.J. Dep't of Civil Service, 151 N.J.Super. 54, 376 A.2d 554 (App.Div.1977) certification denied 75 N.J. 534, 384 A.2d 513.

Ordinarily, permanent civil service employees can be discharged or demoted only for cause, and they have pre-termination appeal and hearing rights; however, provisional employees can be terminated at any time at the discretion of the employer. Melani v. County of Passaic, 345 A.2d 579.

Although employee was not permanent in the title of Supervisor, Traffic Maintenance, the employee's underlying permanent status in a career service title gave him the right to appeal a suspension; it was axiomatic that, in accepting a provisional appointment to a higher title, the employee did not relinquish the rights he had as a permanent employee. In re Agins, OAL Dkt. No. CSV 4062-06, 2007 N.J. AGEN LEXIS 1053, Merit System Board Remand Decision (July 25, 2007).

In the absence of permanent status in a career service title, the Board lacks jurisdiction to entertain major discipline appeals and there is no right to a hearing. In re Gooden, OAL Dkt. No. CSV 6905-05, 2006 N.J. AGEN LEXIS 630, Final Decision (May 24, 2006).

4A:2-2.2 Types of discipline

(a) Major discipline shall include:

1. Removal;

2. Disciplinary demotion; and

3. Suspension or fine for more than five working days at any one time.

(b) See N.J.A.C. 4A:2-2.9 for minor disciplinary matters that are subject to a hearing, and N.J.A.C. 4A:2-3 for all other minor disciplinary matters.

(c) The length of a suspension in a Final Notice of Disciplinary Action, a Board decision or a settlement, when expressed in "days," shall mean working days, unless otherwise stated.

Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
In (a)2, added "and" at the end; in (a)3, substituted a period for a semicolon at the end; deleted (a)4 and (a)5; and added (b) and (c).

Case Notes

Employee did not demonstrate that Department of Labor's request to reallocate career position of Director to SES was made in bad faith and without complying with statutory procedures governing disciplinary proceedings. Matter of Baykal, 707 A.2d 467, 309 N.J.Super. 424.

Ordinarily, permanent civil service employees can be discharged or demoted only for cause, and they have pre-termination appeal and hearing rights; however, provisional employees can be terminated at any time at the discretion of the employer. Melani v. County of Passaic, 345 A.2d 579.

Supervising laborer tested positive for cocaine, but there was no evidence of impairment at the workplace and removal under the appointing authority's "zero tolerance" policy was too harsh of a penalty. The Commission was not bound by the appointing authority's drug policy in determining the proper penalty and a six-month suspension was more appropriate where non-law enforcement employees were often provided a "second chance" in similar situations. In re Colombo, OAL Dkt. No. CSV 1324-11, 2011 N.J. CSC LEXIS 1186, Civil Service Comm'n Decision (September 23, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 250) adopted, in which the ALJ found, on conflicting evidence, that a Human Services Assistant was not sleeping while she was assigned one-to-one supervision of a patient who later escaped; instead, the assistant violated a policy of maintaining constant eye contact with the patient when she turned her back on the patient to wash her hands, effectively allowing the patient to elope. The penalty of removal was excessive, given the many years of service the assistant had provided, her reputation for being hard-working and helpful, and her particular history with this patient, who was known to be an eloper; thus, a 45-day suspension was appropriate. In re Smith, OAL Dkt. No. CSV 00024-10 and CSV 00985-10, 2011 N.J. CSC LEXIS 834, Civil Service Comm'n Decision (July 27, 2011).

Although a human services assistant may not have intended to cause a patient pain when pushing him, initiating any physical contact with a patient was extremely troublesome because it could have led to unnecessary escalation and agitation; the assistant was properly suspended for 90 days. In re Parker, OAL Dkt. No. CSV 10072-09, 2010 N.J. CSC LEXIS 502, Civil Service Comm'n Decision (January 27, 2010).

Human services assistant should have discovered injuries to a patient by more carefully observing the patient at a shift change when she assumed responsibility for him; however, no other person who was also responsible for checking on the patient noticed his injuries, including the prior shift worker. Under those circumstances, removal was too harsh of a penalty, but the assistant's failure to discover the injury at some time, either at the shift change or during the night was serious, warranting a 10 working day suspension. In re Matthews, OAL Dkt. No. CSV 10610-08, 2009 N.J. CSC LEXIS 1436, Civil Service Comm'n Decision (October 7, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 565) adopted, which found that, under the doctrine of progressive discipline, a hospital attendant properly received a 30-day suspension for continuous violation of the dress code and abuse of sick leave before and after holidays and weekend leave. The attendant had been warned on numerous occasions that she was not to wear a white lab coat to work because it caused confusion as to her position at the hospital, but the she persisted in doing so. In re Gallagher, OAL Dkt. No. CSV 10665-06, 2009 N.J. CSC LEXIS 1441, Final Decision (October 7, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 522) adopted, which found that a 45-day suspension of a senior correction officer was appropriate where the officer violated procedures by opening cell doors and abandoning her post without receiving permission or relief during a lockdown, resulting in a fight between two inmates from separate cells. In re Warren, OAL Dkt. No. CSV 00718-09, 2009 N.J. CSC LEXIS 296, Final Decision (September 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 443) adopted, which found that, although overwhelming evidence existed as to a sergeant's use of

indecent, profane and uncivil language directed toward a superior officer in response to a work-related comment by him amply supported the charges of insubordination, the sergeant was a 13-year employee of the Department with an unblemished record before the incident; although her conduct on that day was inexcusable, it reflected an aberration in her overall performance and, in view of the absence of any prior disciplinary actions, the appropriate penalty was 5 days' suspension, which constituted a minor disciplinary action. In re Brown, OAL Dkt. No. CSV 03395-09, 2009 N.J. AGEN LEXIS 890, Final Decision (August 19, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 438) adopted, which found that a 10-day suspension was justified where a payroll adviser failed to adjust an employee's base salary as directed; by intentionally disregarding an order given by a supervisor as well as by the mayor, she failed to perform her duties as a payroll clerk. In re Angermueller, OAL Dkt. No. CSV 11700-08, 2009 N.J. AGEN LEXIS 796, Final Decision (August 5, 2009).

Removal, rather than a six-month suspension, was appropriate where a correction officer was involved with an inmate in another facility and attempted to conceal the relationship; there was a danger of the officer's position being compromised if anyone learned of the relationship (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 440). In re Livingston, OAL Dkt. No. CSV 11903-08, 2009 N.J. AGEN LEXIS 440, Final Decision (August 5, 2009).

Ten-day, rather than five-day, suspension of a senior correction officer was appropriate upon a finding that the officer failed to conduct a complete inventory of tools utilized by inmates assigned to his supervision and did not notice that metal tongs were missing until approximately six hours after his shift started; the officer had previously received five official reprimands, four for attendance-related issues and one for being out of uniform, and, although no actual harm occurred to an individual or to property, the officer was charged with making a serious mistake due to carelessness which could have resulted in danger and/or injury to persons or property (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 327). In re Tripp, OAL Dkt. No. CSV 2837-08, 2009 N.J. AGEN LEXIS 977, Final Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 434) adopted, which found that a public works employee was properly removed for chronic and excessive absenteeism after he was a no call and no show after a morning lunch break; the employee had previously signed a last chance document with the City and failed to provide the appropriate documentation of his alleged illness. In re Garzarelli, OAL Dkt. No. CSV 411-09, 2009 N.J. AGEN LEXIS 818, Final Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 288) adopted which found that a senior correction officer was properly removed after the ALJ found, on conflicting evidence, that the officer had been facilitating sexual liaisons between inmates, participating in undue fraternization and providing contraband to inmates; her conduct was nothing short of disgraceful and an embarrassment to the institution and, although civil service law contemplated progressive discipline, nothing short of removal was an appropriate remedy. In re Davenport, OAL Dkt. No. CSV 10288-05, 2009 N.J. AGEN LEXIS 902, Final Decision (June 24, 2009).

Human services assistant was properly removed after a videotape showed that he attempted to intimidate one patient and that he grabbed another patient by the shoulder and pulled him back, which was in contrast to the assistant's testimony that he had to restrain the patient due to aggression; the assistant's argument that he was acting in a defensive manner was not persuasive since he was moving toward the patient while in a boxing stance. The assistant's actions were sufficiently egregious to warrant his removal even if he had a largely unblemished prior record. In re Santana, OAL Dkt. No. CSV 10607-08, 2009 N.J. AGEN LEXIS 789, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 248) adopted, which found that a truck driver was properly suspended for 180 days after he tested positive for cocaine on July 24, 2007 (for which he received a one-day suspension), and then tested positive again as the result of a return-to-work test on August 29, 2007; contrary to the driver's contention that the "return-to-work" test should not have been administered when he had not returned to work, a "return-to-work" test with a negative result is a precondition for an employee to return to work. In re Gourrier, OAL Dkt. No. CSV 03930-08, 2009 N.J. AGEN LEXIS 891, Final Decision (June 10, 2009).

Civil Service Commission had jurisdiction over a fire officer's disciplinary action because the imposed discipline was not a dispute over the North Hudson Regional Fire and Rescue's polices, e.g., application of the sick leave and modified duty, which would have required arbitration, but, rather, the officer's 15-day suspension was a major discipline from which he appealed before the Commission and he did not file a PERC claim (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 161). In re Woltmann, OAL Dkt. No. CSV 11286-07, 2009 N.J. AGEN LEXIS 794, Civil Service Comm'n Decision (June 10, 2009).

Where a superior court had already concluded that a child protective services worker "abused or neglected" her one-year old son by engaging in a car chase and a standoff situation while under the influence of marijuana in the presence of her son, a review of her employment record was unnecessary, as her actions were so severe that her separation from the Department of Children and Families was the only proper penalty. In re Hayman, OAL Dkt. No. CSV 10152-08, 2009 N.J. AGEN LEXIS 785, Final Decision (June 10, 2009).

County Correction Lieutenant was properly demoted to the position of County Correction Sergeant after the ALJ found, on conflicting evidence, that the lieutenant made disparaging sexual remarks to a subordinate officer on various dates based on her sexual preference; the lieutenant was in a leadership position and was sometimes in charge of the entire facility, and all employees were entitled to work in an environment free of unlawful discrimination and conduct which was harassing. Moreover, the demotion was an appropriate balancing of the lieutenant's prior work history and the utterly offensive and derogatory comments that he made based on the subordinate's sexual orientation (adopting 2009 N.J. AGEN LEXIS 154). In re Delgado, OAL Dkt. No. CSV 2735-08, 2009 N.J. AGEN LEXIS 813, Final Decision (June 10, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 253) adopted, which concluded that a custodian was properly suspended for 10 days after his refusal to obey legitimate orders to bring chairs to the gymnasium, his failure to report to the principal's office, and his calling his supervisor an obscene name, while the principal was attempting to have him carry out a legitimate order; the custodian's conduct was sufficiently egregious to permit the imposition of a suspension even in the absence of his prior disciplinary record. In re Stokley, OAL Dkt. No. CSV 11071-07, 2009 N.J. AGEN LEXIS 791, Final Decision (May 27, 2009).

Supervisor was properly demoted to the title of judicial clerk for chronic or excessive absenteeism where she exhausted her sick, vacation and administrative leave in each year from 2003 through 2006, was absent without pay for more than 40 days during the same period, exhausted all of her allotted sick, vacation and personal time for 2007 by October 2007 and continued to be absent without permission; the appointing authority's prior leniency was not a tacit approval of the appellant's conduct and while her absences may have been sick-related absences, her absences disrupted her unit and compromised the level of efficiency of the services provided to the public (adopting 2009 N.J. AGEN LEXIS 70). In re Lauffer, OAL Dkt. No. CSV 4293-08, 2009 N.J. AGEN LEXIS 984, Final Decision (April 29, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 118) adopted, which found that a licensed practical nurse was properly removed after the ALJ found, on conflicting evidence, that she left the facility for approximately three hours to get her nails done, leaving only one LPN in charge of all 58 residents. In re Reed, OAL Dkt. No. CSV 10239-08, 2009 N.J. AGEN LEXIS 900, Final Decision (April 15, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 75) adopted, which found that a 20-day, rather than 7-day suspension, was appropriate where a custodian engaged in a longstanding pattern of excessive absenteeism and lateness and had a history of comparable offenses for which he was

6. Conduct unbecoming a public employee;

7. Neglect of duty;

8. Misuse of public property, including motor vehicles;

9. Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment;

10. Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder;

11. Violation of New Jersey residency requirements as set forth in P.L. 2011, c. 70; and

12. Other sufficient cause.

Amended by R.1990 d.308, effective June 18, 1990.
See: 22 N.J.R. 1015(b), 22 N.J.R. 1915(a).
Added misuse of public property, including motor vehicles.
Amended by R.1994 d.618, effective December 19, 1994.
See: 26 N.J.R. 3507(a), 26 N.J.R. 5000(a).
Amended by R.1995 d.415, effective August 7, 1995.
See: 27 N.J.R. 1837(a), 27 N.J.R. 2884(a).
Added (a)10, and recodified former (a)10 as (a)11.
Amended by R.2012 d.056, effective March 5, 2012.
See: 43 N.J.R. 2691(a), 44 N.J.R. 576(a).
In (a)10, deleted "and" from the end; added new (a)11; and recodified former (a)11 as (a)12.

Case Notes

Appellate court's reversal of the Merit System Board's (MSB's) decision to remove a public employee from her job was in error as the appellate court impermissibly imposed its own judgment as to the proper penalty when the MSB's penalty was not illegal, unreasonable, nor shocking to any sense of fairness; the MSB's decision to remove the employee for waving a cigarette lighter retrieved from her purse in the face of a five-year-old child in a room containing oxygen tanks recognized legitimate public policy reasons for not retaining the employee since she lost the trust of her employer. In re Herrmann, 192 N.J. 19, 926 A.2d 350, 2007 N.J. LEXIS 721 (2007).

Appellate court erred by treating the principle of progressive discipline as a mandate of law and rejecting a Merit System Board's opinion terminating a police officer for sleeping on the job. In re Carter, 191 N.J. 474, 924 A.2d 525, 2007 N.J. LEXIS 702 (2007).

As a county employee, an accountant, had been proven incompetent, the Merit System Board erred in reversing his termination and in imposing a six-month suspension; an accountant who could not prepare a bank reconciliation was of no value to a county treasurer's office, and a suspension would not make him competent, since he always maintained that he performed his work properly. Klusaritz v. Cape May County, 387 N.J. Super. 305, 903 A.2d 1095, 2006 N.J. Super. LEXIS 231 (App.Div. 2006).

In circumstances where an employee cannot competently perform the work required of his position, termination rather than progressive discipline is the appropriate action. Klusaritz v. Cape May County, 387 N.J. Super. 305, 903 A.2d 1095, 2006 N.J. Super. LEXIS 231 (App.Div. 2006).

A public employee cannot be dismissed for failure to submit to a procedure violative of his state and federal constitutional rights. Reames v. Department of Public Works, City of Paterson, 310 N.J.Super. 71, 707 A.2d 1377 (A.D. 1998).

Off-duty firefighter's utterance of racial epithet at on-duty police officer during traffic stop constituted conduct unbecoming both firefighter and public employee. Karins v. City of Atlantic City, 706 A.2d 706, 152 N.J. 532 (N.J. 1998).

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).

Issue of forfeiture of public employment by turnpike utility worker did not have to be first addressed by administrative agency to determine whether there was any relationship between crimes committed and employment duties. State v. Baber, 256 N.J.Super. 240, 606 A.2d 891 (L.1992).

Turnpike utility worker's convictions for failure to deliver drugs to police and for simple assault upon two police officers were offenses "involving or touching" his job so as to justify forfeiture of employment. State v. Baber, 256 N.J.Super. 240, 606 A.2d 891 (L.1992).

Order directing forfeiture of public employment may be incorporated in sentence of criminal convictions. State v. Baber, 256 N.J.Super. 240, 606 A.2d 891 (L.1992).

Forfeiture of public employment, for conviction of failure to file gross income tax return was not a bill of attainder. Ayars v. New Jersey Dept. of Corrections, 251 N.J.Super. 223, 597 A.2d 1084 (A.D.1991).

Forfeiture of public employment for conviction for failure to file gross income tax return did not violate double jeopardy. Ayars v. New Jersey Dept. of Corrections, 251 N.J.Super. 223, 597 A.2d 1084 (A.D.1991).

Dismissal was appropriate sanction for refusal by correction officers to submit to mandatory drug testing. 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.

When public employee is convicted of petty disorderly persons offense, analysis of nexus between crime and employment is required to determine if there is sufficient relationship between the two to warrant harsh penalty of forfeiture. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

When public employee is convicted of petty disorderly persons offense, connection between conviction and employment will have to be examined initially by governmental department in which employee works, then by appropriate administrative agencies, and employee will retain right to appeal to appellate division. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Employees who are convicted of petty disorderly persons offense and recognize that their offense does touch and involve their employment can for good cause request county prosecutor or Attorney General to petition sentencing court for waiver of resultant forfeiture of public employment. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Even in cases in which public employee does not obtain formal waiver of forfeiture of public employment resulting from conviction of petty disorderly persons offense, department should consider whether punishment of forfeiture fits crime. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Inquiry into whether offense by public employee involves and touches on public employment to extent of meriting forfeiture of employment requires careful examination of facts and evaluation of various factors. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Offense committed by public employee would not be considered not to involve or touch employment, so as to support forfeiture of public employment, based on fact that offense does not take place during

employment hours or on employment grounds. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

Evidence supported determination that criminal conviction for harassing immediate superior warranted forfeiture of public employment. Moore v. Youth Correctional Institute at Annandale, 119 N.J. 256, 574 A.2d 983 (1990).

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 as a senior corrections officer. 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.

Department of Energy was not equitably estopped from returning employee to his permanent position as senior engineer when promotional examination was not given between date of his provisional appointment and date of demotion (citing former N.J.A.C. 4:1-1.1). O'Malley v. Department of Energy, 109 N.J. 309, 537 A.2d 647 (1987).

Tenure of public officer governed by Civil Service Commission; broad discretion conferred upon appointing authority regarding grounds for removal (citing former N.J.A.C. 4:1-6.9). State v. DeMarco, 107 N.J. 562, 527 A.2d 417 (1987).

Off-duty police officer, involved in fatal accident which was basis for his conviction of death by auto, disqualified from unemployment compensation effective the date of his suspension pending discharge (citing former N.J.A.C. 4:1-16.9). Connell v. Board of Review, 216 N.J.Super. 403, 523 A.2d 1099 (App.Div.1987).

County correction officer violated the prisoner intake process by not having another officer with him on his second trip to the changing room; there was no relaxation of the process simply because the prisoner was previously searched and the officer had to temporarily leave the room prior to completing the process due to an emergency. However, because the officer was unaware he was in violation of policy and there was no proof that the officer lied about what happened, the imposition of a seven-day suspension was unreasonable and was modified to a four-day suspension. In re Ugrina, OAL Dkt. No. CSV 01480-09, 2011 N.J. CSC LEXIS 872, Final Decision (June 15, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 405) adopted, which found that a senior correction officer was properly removed based on the extensive nature of her relationship with an inmate, the number of telephone calls exchanged with the inmate, the officer's lack of truthfulness with respect to the still-current nature of the relationship, and the officer's prior disciplinary record. Although the officer attempted to make a distinction based on the fact that the inmate was a county inmate and not under the jurisdiction of the Department of Corrections (DOC), the critical determination of the DOC's jurisdiction was the length of sentence, and the inmate, who received a sentence greater than one year, was under the jurisdiction of the DOC without regard to whether he was housed in a county facility or a state prison. In re Johnson, OAL Dkt. No. CSR 03938-10, 2010 N.J. CSC LEXIS 1034, Final Decision (September 21, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1099) adopted, which found that a police officer who was injured in the line of duty and later determined no longer mentally fit for duty should not have been subjected to disciplinary action because there was no evidence that the officer engaged in any behavior that adversely reflected upon the department or reflected negatively on the city. The appropriate remedy was a resignation in good standing. In re Leonard, OAL Dkt. No. CSV 11651-07, 2010 N.J. CSC LEXIS 501, Final Decision (January 27, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1068) adopted, which found that a cottage training technician was disqualified from employment as a matter of law because he was convicted in Pennsylvania of engaging in conduct that constituted simple assault in New Jersey. He pleaded guilty to disorderly conduct, including engaging in fighting and public drunkenness. In re Buscemi, OAL Dkt. No. CSV 04008-09, 2010 N.J. CSC LEXIS 619, Civil Service Comm'n Decision (January 13, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1074) adopted, which found that a boiler operator was properly suspended for 10 days after he abandoned his work location and, as a result, there was no heat at City Hall while the temperature outside was 14 degrees, placing inmates, staff, and the building in danger. The operator was also absent without leave on numerous prior dates. In re Thomas, OAL Dkt. No. CSV 9702-09, 2010 N.J. CSC LEXIS 617, Final Decision (January 13, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 1033) adopted, which found that a police officer was properly suspended for 20 days after the officer and his partner were rude and discourteous when approached by victims of a crime, ignoring them and treating them with indifference and refusing to take a report, and also submitting a false report as to their location. In re Casalinho, OAL Dkt. No. CSV 01890-08, 2009 N.J. CSC LEXIS 1390, Final Decision (December 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 830) adopted, which found that a police officer properly received a 10-day suspension when the officer, while acting in his capacity as a Jersey City police officer, while off duty, wrote a ticket in Bloomfield for a traffic offense that allegedly occurred in West Orange, in which the officer, as the driver in his own personal vehicle, was involved. Following the other vehicle, detaining the driver, and causing a traffic tie-up at the toll booth demonstrated shockingly poor judgment and an abuse of his position as a police officer. In re Russell, OAL Dkt. No. CSV 03529-05, 2009 N.J. CSC LEXIS 1490, Final Decision (December 2, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 526) adopted, which found that a correction officer recruit was properly removed after she failed to report to work on her first day of work, claiming to have been overcome by the news that her grandmother or great-grandmother was going to be removed from life support. The officer's testimony was not credible; rather, the sergeant to whom the officer reported gave credible testimony that the officer called and simply declared that she could not accept her assignment at New Jersey State Prison. In re Kinzer, OAL Dkt. No. CSV 930-09, 2009 N.J. CSC LEXIS 1557, Final Decision (November 18, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 717) adopted, which found that a human services technician was properly removed for patient abuse after a fellow worker testified that the technician scuffled with a patient and punched the patient several times, corroborating the patient's allegations. The technician's testimony that she was using a patient restraint technique was not credible. In re Berry, OAL Dkt. No. CSV 935-09, 2009 N.J. CSC LEXIS 1554, Final Decision (November 18, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 544) adopted, which found that two hospital attendants were properly removed after violating the hospital's policies and procedures regarding assaultive patients by failing to retreat from an obviously agitated patient and send for appropriate assistance to deal with the situation. In fact, they voluntarily entered into the patient's room when it was not even necessary and knowing that the patient was agitated, thereby placing themselves in a position of direct physical and psychological conflict with him. In re Okafor, OAL Dkt. No. CSV 1154-09 and CSV 1155-09, 2009 N.J. CSC LEXIS 1548, Final Decision (October 21, 2009).

Senior correction officer should not have received a 45-day suspension where the appointing authority failed to prove that the officer improperly handled and disposed of contraband, failed to secure gates, and failed to conduct tours of his unit. In the absence of evidence to the contrary, the officer's conduct in leaving gates unlocked during periods of inmate movement in and out of the unit was an acceptable practice, and his performing two to three tours during his shift satisfied the

requirements set forth in his post orders. In re Smith, OAL Dkt. No. CSV 10108-07, 2009 N.J. CSC LEXIS 1439, Civil Service Comm'n Decision (October 7, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 537) adopted, which found that a 10-day, rather than 30-day, suspension was warranted where a preponderance of the evidence showed that a communications system technician accepted a "dare" or "encouragement" and exposed her breasts to co-workers and then was dishonest about the incident. While the age of the incident, the lack of intent, and the lack of anyone actually being offended by the conduct did not serve as defenses to the charge, those factors were appropriately taken into account in determining the penalty. In re Tomes, OAL Dkt. No. CSV 10082-08, 2009 N.J. CSC LEXIS 289, Final Decision (September 16, 2009).

Where a county correction officer failed to effectively "pat search" an inmate, allowing the inmate to proceed to another floor with a wooden shank hidden in his waist band and thereby placing staff and inmates in mortal danger, serious discipline in the form of a 20 working day suspension was warranted (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 599). In re Dona, OAL Dkt. No. CSV 10782-08, 2009 N.J. CSC LEXIS 286, Final Decision (September 16, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 496) adopted, which found that a firefighter was properly removed after he repeatedly violated the motor vehicle laws by driving under the influence of alcohol and failed to report his violations to his employer; a firefighter who drove through public streets in a state of intoxication did not merit the trust and confidence of the community he served and his pattern of conduct reflected badly upon the reputation of the Department for employing someone with so little regard for the safety of the public. In re Alala, OAL Dkt. No. CSV 3399-09, 2009 N.J. AGEN LEXIS 978, Final Decision (August 19, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 325) adopted, which found that a city housing inspector was improperly removed after his driver's license had been suspended because, contrary to the appointing authority's contention, a driver's license was not necessary to perform a housing inspector's essential duties where the city was only 1.1 miles long and 3/4 mile wide and could have been traveled by foot, bicycle or otherwise. In re Fleming, OAL Dkt. No. CSV 53-09, 2009 N.J. AGEN LEXIS 989, Civil Service Comm'n Decision (July 22, 2009).

Where the evidence against a correction lieutenant consisted solely of a videotape and reports containing hearsay statements of various witnesses, the appointing authority failed in its burden of proving that the lieutenant mistreated or struck a resident; the video did not clearly reveal what happened and, notwithstanding the appointing authority's argument that the residents who claimed to have seen the incident were consistent with their interviews, their inconsistencies regarding such things as what hand was used to strike the alleged victim and what was said during the altercation were significant enough to undermine the admissibility of those statements (adopting 2009 N.J. AGEN LEXIS 250). In re Parker, OAL Dkt. No. CSV 2994-08, 2009 N.J. AGEN LEXIS 814, Civil Service Comm'n Decision (July 8, 2009).

Police officer's failure to report to his superiors that a threat was made against a fellow officer which may have resulted in harm to the officer and his family was so egregious and intolerable as to warrant the penalty of removal (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 286). In re Collins, OAL Dkt. No. CSV 3776-08 and CSV 5239-08, 2009 N.J. AGEN LEXIS 980, Final Decision (July 8, 2009).

In a disciplinary action against a police officer in which the appointing authority charged the officer with inability to perform duties and violation of departmental rules and regulations regarding mental and physical capability, the record did not evidence a sufficient basis to conclusively discredit the ALJ's determination that a police officer's psychologist was more persuasive than the appointing authority's psychologist (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 286). In re Collins, OAL Dkt. No. CSV 3776-08 and CSV 5239-08, 2009 N.J. AGEN LEXIS 980, Final Decision (July 8, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 320) adopted, which found that an institutional trade instructor was improperly suspended for 10 days upon charges that he failed to properly supervise the preparation of certain dietary foods for distribution to inmates where the delay in transporting the special meals was due, in part, to staffing shortages and prisoner intake demands; there was no evidence of disruption of the food service as a result of the short delay and the instructor was working to get all of the tasks properly completed, going above and beyond his normal duties. In re Bennett, OAL Dkt. No. CSV 8830-08, 2009 N.J. AGEN LEXIS 1000, Civil Service Comm'n Decision (July 8, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 292) adopted, which found that a supervisor with the city streets department was properly removed after he tested positive for cocaine where there was nothing that exempted a supervisor from being subjected to random drug screening; the supervisor was not only required to hold a commercial driver's license as a condition of his employment, but he also drove commercial motor vehicles in the course of that employment and was, therefore, subject to the random drug testing under the City's Impaired Employee Policy. In re Nazario, OAL Dkt. No. CSV 08815-08, 2009 N.J. AGEN LEXIS 966, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 291) adopted, which found that a former correction officer sergeant was properly suspended for 15 days after she needlessly placed two of her officers in harm's way in order to collect Styrofoam serving trays from an inmate's cell without first handcuffing or restraining the inmate; the sergeant had other means of accomplishing the task other than sending the officers into the cell of an inmate who was known to be aggressive and was on a psychiatric watch. In re Martin, OAL Dkt. No. CSV 6729-08, 2009 N.J. AGEN LEXIS 911, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 291) adopted, which found that a former correction officer sergeant was properly suspended for 20 days after she failed to immediately report an inmate's verbal abuse of a fellow officer and immediately transport the inmate to a pre-hearing detention facility; as a superior officer, she was held to a higher standard and her actions would only have emboldened the other inmates to similarly abuse the other officer or otherwise have served to undermine his authority as the officer running the tier. In re Martin, OAL Dkt. No. CSV 6729-08, 2009 N.J. AGEN LEXIS 911, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 291) adopted, which found that a former correction officer sergeant was properly suspended for 30 days after she accidentally locked two officers under her command in a weapons room; the sergeant should have stayed with the officers until the weapon exchange had been completed and then followed them out of the room to not only ensure that the room was secure, but also that the correct officer had the weapon and that both officers were reporting to their assigned duties. In re Martin, OAL Dkt. No. CSV 6729-08, 2009 N.J. AGEN LEXIS 911, Final Decision (June 24, 2009).

Although the appointing authority failed to show that a cottage training technician physically abused a client, it did demonstrate that the technician had inappropriate physical contact with the client, warranting a 60 working day suspension; even accepting the technician's testimony as credible that he had no intent to harm the client and that he had not been advised what specific prompts to use with the client, the technician's actions were clearly inappropriate where tapping or slapping a client was not taught as an approved physical prompt (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 251). In re Patel, OAL Dkt. No. CSV 10618-08, 2009 N.J. AGEN LEXIS 903, Civil Service Comm'n Decision (June 10, 2009).

Fire officer was improperly disciplined for neglect of duty where the department leave policy as to sick or injured employees was amended such that the officer was not required to notify the appointing authority whenever he left his residence, but was only required to remain in his residence on duty days; however, the officer misused his leave time when he was observed driving despite his physician's restrictions on doing so while being out on paid sick leave, warranting a five-day suspension (adopting in part and rejecting in part 2009 N.J. AGEN

LEXIS 161). In re Woltmann, OAL Dkt. No. CSV 11286-07, 2009 N.J. AGEN LEXIS 794, Civil Service Comm'n Decision (June 10, 2009).

Failure of the Internal Affairs Unit to supply a police sergeant with an advisement form was a procedural defect cured by a de novo hearing; it was clear that the charges against the sergeant did not stem from his failure to answer questions during an internal affairs investigation, but, rather, they were the result of his misconduct in filing a knowingly false Operations Report with respect to his outside employment that was exacerbated when he gave false testimony at his departmental hearing. In re Eisenhauer, OAL Dkt. No. CSV 5665-98; 5809-99; 9976-00, 2009 N.J. AGEN LEXIS 822, Final Decision (June 10, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 164) adopted, which held that a police officer was properly terminated from his conditional appointment after a medical exam determined that he was not medically fit to participate in the PTC Physical Conditioning Training program. In re Cordero, OAL Dkt. No. CSV 11944-08, 2009 N.J. AGEN LEXIS 802, Final Decision (May 13, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 72) adopted, which found that a county correction officer was properly suspended for 10 days after the officer was observed at a construction site at his mother-in-law's home while on "no-activity" status and receiving full pay for an on-the-job injury; however, the fact that the officer signed his mother-in-law's building permit as the contractor did not warrant a conclusion that the officer was engaged in outside employment. In re Sottilare, OAL Dkt. No. CSV 07148-07, 2009 N.J. AGEN LEXIS 895, Final Decision (April 29, 2009), aff'd per curiam, No. A-4761-08T3, 2010 N.J. Super. Unpub. LEXIS 1195 (App.Div. June 1, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 72) adopted, which found that a county correction officer should not have been disciplined for failing to appear at Internal Affairs meeting to discuss a matter involving another individual, who was then the subject of an IA investigation; the officer was on unpaid suspension at the time he was summoned and declined to appear because of the pending charges against him and it would have been incongruous to require an officer on unpaid suspension to appear for department business. In re Sottilare, OAL Dkt. No. CSV 07148-07, 2009 N.J. AGEN LEXIS 895, Final Decision (April 29, 2009), aff'd per curiam, No. A-4761-08T3, 2010 N.J. Super. Unpub. LEXIS 1195 (App.Div. June 1, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 72) adopted, which found that a correction officer was properly removed after he revealed both the existence and the nature of an Internal Affairs investigation to a fellow officer; the officer had a duty to "adhere strictly" to the Attorney General Guidelines of not disclosing confidential information and his conduct went to the heart of his ability to be trusted to function appropriately in his position. In re Sottilare, OAL Dkt. No. CSV 07148-07, 2009 N.J. AGEN LEXIS 895, Final Decision (April 29, 2009), aff'd per curiam, No. A-4761-08T3, 2010 N.J. Super. Unpub. LEXIS 1195 (App.Div. June 1, 2010).

Twenty-day suspension was warranted upon a finding that an off-duty police lieutenant pushed and cursed security personnel following an altercation at a concert; contrary to the lieutenant's argument, his position in law enforcement required that he act with dignity, even while off duty (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 119). In re Slack, OAL Dkt. No. CSV 10263-07, 2009 N.J. AGEN LEXIS 901, Civil Service Commission Decision (April 15, 2009).

Police officer's 60-day suspension was appropriate upon a finding that the officer used excessive profanity towards a civilian during an arrest out of frustration or emotion and not for the purpose of compelling cooperation through a "good cop-bad cop" scenario (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 37). In re DeMarzo, OAL Dkt. No. CSV 4930-07, 2009 N.J. AGEN LEXIS 821, Final Decision (March 11, 2009).

ALJ erred in finding that a police officer's failure to timely complete his reports should have been dismissed due to the absence of a written policy where the procedures for completing arrest or investigation reports in a timely fashion were communicated to all officers at roll call; moreover, the absence of a specific rule or procedure regarding the completion of reports did not absolve the officer of his responsibility to complete a basic and necessary duty of a police officer (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 37). In re DeMarzo, OAL Dkt. No. CSV 4930-07, 2009 N.J. AGEN LEXIS 821, Final Decision (March 11, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 873) adopted, which concluded that 12-year senior juvenile detention officer used excessive force against a 12-year-old juvenile detainee and was guilty of conduct unbecoming a public employee justifying removal from his position. It was readily apparent from viewing a surveillance video that the officer became angry and intended to enact some type of retribution against the juvenile for hitting him on the nose; the officer knew the floor of the "day room" was concrete yet he dangled the juvenile over it risking serious harm to him if he fell and hit his head, and he knew the juvenile suffered from ADHD and was "excitable" and yet persisted with his conduct that contributed to further agitation and fear. In re Heigler, OAL Dkt. No. CSV 4448-06, 2008 N.J. AGEN LEXIS 1057, Final Decision (December 17, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 796) adopted, which found that a correction lieutenant was properly removed from his position after testing positive for marijuana; there was no evidence that his urine sample had been tampered with or that the reading was flawed in any way, and the lieutenant's explanations for why the test was positive, including his mother's use of hemp seed oil in her cooking, was mere speculation. In re Glass, OAL Dkt. No. CSV 08807-07, Final Decision (December 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 613) adopted, which concluded on conflicting testimony that a township police officer was properly removed on charges that he unnecessarily engaged in a physical altercation in a bar, which he instigated, and subsequently engaged in conduct aimed at preventing his identification in the incident, such as shielding his license plate from view, leaving the premises before the authorities arrived, and ignoring a message from a superior officer regarding the incident. Moreover, it could not be ignored that the police officer was a relatively short-term employee, having been employed for approximately four years at the time of the incident. In re Hawkins, OAL Dkt. No. CSV 4469-05, 2008 N.J. AGEN LEXIS 1222, Final Decision (December 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 842) adopted, which concluded on conflicting testimony that conduct of an employee in forcefully grabbing patient around her neck and walking her down the hallway while striking her on her back was so egregious and unacceptable that the employee should be removed from her position as a human services assistant at a developmental center. In re Dempster, OAL Dkt. No. CSV 2356-08 (CSV 2944-07 On Remand), 2008 N.J. AGEN LEXIS 1211, Final Decision (November 6, 2008).

Correction sergeant at youth correctional facility was properly removed from office on charges that on three occasions, sergeant attended his township's council or board of education meetings while he reported on his timesheet and in the log books that he was at work for the entire shift, and he received compensation for the entire shift. Although the sergeant attempted to justify this egregious and dishonest behavior by suggesting that other employees were "covering for" him, the log books showed that the sergeant was on duty and, in the event of an emergency or unusual incident, superior officers would have had inaccurate information as to who was on duty; moreover, there was no evidence that the sergeant received any supervisory approval for these reciprocal arrangements on the dates in question. In re La Pierre, OAL Dkt. No. CSV 462-08, 2008 N.J. AGEN LEXIS 1224, Final Decision (October 22, 2008).

Correction sergeant at youth correctional facility was suspended from office for six months on charges that he was elected to his township's board of education, but he failed to notify his employer of his outside activity, as required by the appointing authority's code of ethics. Despite sergeant's contention that an April 2003 note from him to a personnel officer advised that he had been so elected, the sergeant did not testify as to the authenticity of this document, and there was no evidence presented to demonstrate that the document was actually created in 2003

and submitted to the appointing authority; without such testimony or evidence, this document was essentially meaningless, as it just as likely could have been created by the sergeant immediately in advance of the hearing. Moreover, even if genuine, such brief correspondence, on a one-time basis, did not fulfill the sergeant's obligations under the appointing authority's code of ethics or its policy regarding political activity. In re La Pierre, OAL Dkt. No. CSV 462-08, 2008 N.J. AGEN LEXIS 1224, Final Decision (October 22, 2008).

Correction sergeant at youth correctional facility was suspended from office for six months on charges that sergeant during his shift observed an abandoned vehicle in the staff parking area, and he failed to report this observation to the ranking correction lieutenant, the shift commander, or the correction sergeant who relieved him at the end of his shift. Although the sergeant's offense touched upon the security of the facility, and it should have been promptly reported and addressed, in light of his prior minor disciplinary record, a six-month suspension was sufficient. In re La Pierre, OAL Dkt. No. CSV 462-08, 2008 N.J. AGEN LEXIS 1224, Final Decision (October 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 797) adopted, which concluded that a 10-day suspension was warranted when a police officer spoke to his captain in a contentious, hostile, and disrespectful manner at an informal meeting; there was nothing in the ground rules for the meeting that would have allowed insubordinate or disrespectful conduct and the manner in which the officer spoke tended to undermine the captain's authority from the perspective of the other officers and generally brought discredit to the department. In re Danoys, OAL Dkt. No. CSV 11121-07, 2008 N.J. AGEN LEXIS 1086, Final Decision (October 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 820) adopted, which concluded that, even if a senior correction officer had time available under the Family and Medical Leave Act, the officer bore the responsibility of informing his supervisor and personnel officer of the reasons for his absence within two days of taking the time; removal was appropriate because there was nothing in the record to indicate that the officer met this obligation and his disciplinary record consisted solely of charges of chronic or excessive absence, demonstrating his failure to recognize the serious risks and effects his behavior caused within the facility. In re Mitchell, OAL Dkt. No. CSV 11727-07 and CSV 5416-08 (Consolidated), 2008 N.J. AGEN LEXIS 1087, Final Decision (October 22, 2008).

Forty-five-day time limitation contained in N.J.S.A. 40A:9-117.6a only applied to charges related to violations of departmental rules and regulations; where two sheriff's officers were also charged with conduct unbecoming a public employee, neglect of duty, misuse of public property, and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a), the statutory 45-day time limitation was inapplicable. In re Leach, OAL Dkt. No. CSV 6373-07 and CSV 6745-07 (Consolidated), 2008 N.J. AGEN LEXIS 1230, Civil Service Comm'n Decision (October 8, 2008).

While the Civil Service Commission cannot tolerate the continued employment of an employee who is in constant contact with a vulnerable population and who reports to duty while under the influence of alcohol, nevertheless the Commission is hesitant to deprive an employee of his property interest in his employment solely on the basis of a test that reflected a blood alcohol content (BAC) reading of .011%, which an expert testified equated to one-half of an alcoholic beverage, at 11:25 a.m., the time of the BAC test. The case was remanded to the OAL in order that the expert could present his expert opinion regarding what the employee's BAC would have been when he reported to duty at 6:25 a.m., and the employee was to be given the opportunity to cross-examine the expert regarding his opinion and to present testimony from his own expert on the extrapolation issue. In re Dare, OAL Dkt. No. CSV 548-08, 2008 N.J. AGEN LEXIS 1227, Remand Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 787) adopted, which concluded that a county correction officer was properly removed for falsely reporting that he had attended high school for four years and had received a GED; even though the misconduct occurred before his employment began, the fact that he lied in order to obtain his position constituted grounds for discipline since his false representation could have impacted those who reviewed his application and decided to hire him. In re Anderson, OAL Dkt. No. CSV 0638-07 (CSV 02101-05 and CSV 4698-04 On Remand), 2008 N.J. AGEN LEXIS 1205, Final Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 813) adopted, which concluded that a police officer was properly removed because, even though the appointing authority failed to present sufficient credible evidence to establish that the officer had actual knowledge of her brother's criminal activity out of her apartment, it was clear that the officer had a romantic association with a convicted felon, left an assigned post early and without authority, failed to properly report "off duty," failed to keep the Department aware of her current residence, and failed to completely answer her employment questionnaire by omitting the names and addresses of all of her siblings, including her brother. In re Decosey, OAL Dkt. No. CSV 3932-08, 2008 N.J. AGEN LEXIS 1056, Final Decision (October 8, 2008).

Removal of a city water worker for chronic or excessive absenteeism was improper; although the appointing authority requested that the employee submit a medical certification in support of his absences, his verbal notification of his son's illness was sufficient notice that he had rights under the Family and Medical Leave Act. Since the appointing authority acknowledged that it was aware that the worker's son's asthma might have been a qualifying illness, the burden shifted to it to inquire further and to request the necessary medical documentation and such documentation should have been applied retroactively (adopting 2008 N.J. AGEN LEXIS 483). In re Rivera, OAL Dkt. No. CSV 10109-07, 2008 N.J. AGEN LEXIS 1082, Final Decision (September 24, 2008).

Removal of a city water worker for chronic or excessive absenteeism was improper because 6 absences in a 90-day period were not, by themselves, chronic or excessive absenteeism; while such a determination was generally left to the discretion of the appointing authority, the ultimate decision rested with the Commission, which was not bound by the appointing authority's contractual provisions (adopting 2008 N.J. AGEN LEXIS 483). In re Rivera, OAL Dkt. No. CSV 10109-07, 2008 N.J. AGEN LEXIS 1082, Final Decision (September 24, 2008).

Correction officer was guilty of misconduct for driving on a suspended license due to unpaid parking tickets; a county correction officer is a law enforcement employee who must enforce and promote adherence to the law. In re Dickerson, OAL Dkt. No. CSV 11065-06, 2008 N.J. AGEN LEXIS 1084, Final Decision (September 10, 2008).

Correction officer was guilty of misconduct for failing to report, in writing, his outside employment activities, regardless of his supervisor's tacit approval. In re Dickerson, OAL Dkt. No. CSV 11065-06, 2008 N.J. AGEN LEXIS 1084, Final Decision (September 10, 2008).

County correction lieutenant was improperly removed on the charge of inability to perform duties due to being psychologically unfit where there was a lack of any evidence that the lieutenant had any difficulty fulfilling her job responsibilities upon her return to work. The testimony of the lieutenant's treating psychiatrist, who treated the lieutenant over the years and had constant interaction with her, was given more weight than the testimony of the appointing authority's psychiatrist, who evaluated the lieutenant for just over an hour. In re Moore, OAL Dkt. No. CSV 9778-07, 2008 N.J. AGEN LEXIS 1070, Civil Service Comm'n Decision (September 10, 2008).

Correction sergeant's use of the term "fag" in an argument with a fellow employee violated the State Policy as it was a demeaning term based on gender and sexual orientation, and a 10 working day suspension was appropriate. Although the sergeant had only one prior minor disciplinary suspension, her conduct was unacceptable and warranted major discipline. Her behavior was especially egregious given that she was a law enforcement superior officer; a correction sergeant, like a municipal police officer, holds a highly visible and sensitive position within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. In re Carter-Green, OAL Dkt. No. CSV 4272-07, 2008 N.J. AGEN LEXIS 1221, Final Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 361) adopted, which concluded that a correction officer committed no infraction by failing to submit written proof of her family emergency because the emergency was that the officer's young daughter was locked out of the house, a situation that would not generate written proof. In re Irizarry, OAL Dkt. No. CSV 03298-07, Final Decision (Aug. 27, 2008).

Senior correction officer at youth correctional facility who was found to have interfered with an escort team of correction officers attempting to remove an inmate from a scuffle was properly terminated from employment; the officer contended that the other officers were mistreating the inmate. The officer's interference and shouting of inflammatory remarks in the presence of other inmates could have incited the other prisoners in the area to riot and could have led to injuries to officers (adopting 2008 N.J. AGEN LEXIS 766). In re Lee, OAL Dkt. No. CSV 6814-07, 2008 N.J. AGEN LEXIS 1064, Final Decision (August 27, 2008).

Police officer was improperly disciplined for failing to answer questions during an Internal Affairs investigation because he was denied the right to counsel. The officer explicitly stated that he refused to answer the questions without consulting an attorney because he feared self-incrimination; even if there was no reasonable basis to perceive a criminal violation, the Department's own regulations (which incorporated non-conflicting Attorney General Guidelines) were not followed. In re Young, OAL Dkt. No. CSV 07809-07, 2008 N.J. AGEN LEXIS 618, Initial Decision (July 15, 2008), adopted (Civil Service Comm'n August 27, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 617) adopted, which found that where a senior food service handler was convicted for offensive touching following an incident in which he yelled, used profanity, and pushed a fellow coworker, he was disqualified from his position pursuant to N.J.S.A. 30:4-3.5(a)(1)(a), absent a finding that he affirmatively demonstrated to the Commissioner of Human Services clear and convincing evidence of his rehabilitation. In re Taylor, OAL Dkt. No. CSV 6837-05, 2008 N.J. AGEN LEXIS 617, Final Decision (August 27, 2008).

Forty-five-day rule set forth in N.J.S.A. 40A:14-147 only applies to charges relating to violations of internal rules or regulations; where an employee is also charged with conduct unbecoming a public employee and other sufficient cause in violation of N.J.A.C. 4A:2-2.3, the statutory 45-day time limitation is not applicable to all of the charges (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1427). In re Parham, OAL Dkt. No. CSV 5340-07, 2008 N.J. AGEN LEXIS 1414, Final Decision (June 25, 2008).

Police officer was properly removed after the ALJ found, based on the credible evidence and testimony presented, that the officer carried an unauthorized weapon and pointed it at a civilian whose sister was involved in an altercation with the daughter of the officer's girlfriend, and that he subsequently falsely told the investigator that he did not have a handgun on the date in question; in addition, the officer failed to return to work when medically authorized, and he neglected to comply with an order to attend a medical evaluation with the appointing authority's physician (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1427). In re Parham, OAL Dkt. No. CSV 5340-07, 2008 N.J. AGEN LEXIS 1414, Final Decision (June 25, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 314) adopted, which concluded, *inter alia*, that an employee charged with excessive absenteeism presented no basis to find that the appointing authority violated FMLA rights in connection with her absences to care for her son when he was suspended from school; the record did not contain sufficient evidence substantiating the suspensions, supporting the pediatrician's opinion, and relating the school suspensions to the son's psychological/emotional problems. In re Paolella, OAL Dkt. No. CSV 118-08, 2008 N.J. AGEN LEXIS 707, Final Decision (June 11, 2008).

Printing machine operator was properly suspended for 25 days for falsifying his time sheet; even though the operator was only 20 minutes late, any falsification of a record by a public employee could not be tolerated. The operator was properly suspended for 45 days for another incident, in which he returned late from an appointment without informing his supervisor. A 90-day suspension was appropriate for a third incident, in which the operator left work for a family emergency without informing the supervisor or another employee of the emergency. In re Middleton, OAL Dkt. No. CSV 10657-06 and CSV 10658-06 (Consolidated), 2008 N.J. AGEN LEXIS 704, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 317) adopted, which concluded that undisputed testimony established that a sanitation department laborer used reasonable force to defend himself when a co-worker pushed him; thus, the 10-day suspension of the laborer was not justified. In re Greene, OAL Dkt. No. CSV 5322-06, 2008 N.J. AGEN LEXIS 501, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 290) adopted, which concluded that dismissal was justified where an assistant water treatment plant operator failed a drug test, after having signed a last-chance agreement; the failure of a public employee to abide by the terms of a last-chance agreement constitutes sufficient cause for dismissal. In re McBride, OAL Dkt. No. CSV 10111-07, 2008 N.J. AGEN LEXIS 585, Final Decision (May 21, 2008).

Working day suspension of 120 days rather than removal was appropriate where a police officer's deficiencies, while serious, were in one area only, that of report preparation, and the officer was otherwise able to successfully execute the duties of police officer (adopting in part and modifying in part 2008 N.J. AGEN LEXIS 290). In re Linthicum, OAL Dkt. No. CSV 10251-07, 2008 N.J. AGEN LEXIS 703, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 61) adopted, which found that a police officer's off-duty arrests for domestic violence and abuse of alcoholic beverages amounted to unfitness for duty, criminal mischief, and conduct unbecoming a public employee, and that his removal was appropriate. In re Allen, OAL Dkt. No. CSV 09765-05, 2008 N.J. AGEN LEXIS 584, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 160) adopted, in which county employee was terminated for failing to submit to a medical examination and for missing 10 days of work without medical documentation. The submission was required as a result of the settlement of an earlier disciplinary action, which required the employee to submit to six random drug tests during a 15-month period. In re Walker, OAL Dkt. No. CSV 11068-06, 2008 N.J. AGEN LEXIS 589, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 219) adopted, which concluded that county policy mandated removal of an equipment operator who refused to provide a second sample during a drug test, considering his drug test record; the presence or absence of random selection for the testing in question had not been demonstrated with persuasive scientific evidence, and even if so found, absence of randomness would not, on the present record, have forestalled application of the rules directing termination. In re Riggins, OAL Dkt. No. CSV 4788-07, 2008 N.J. AGEN LEXIS 555, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 218) adopted, which concluded that city failed to meet its burden of proof that a police lieutenant, assigned as desk supervisor, neglected his duty by failing to maintain order and control over a subordinate officer when a detective entered the precinct in a disorderly manner looking for a relative who was under arrest; the lieutenant did all that he could to subdue the ranting and raving of the detective. In re Mercado, OAL Dkt. No. CSV 7901-07, 2008 N.J. AGEN LEXIS 518, Merit System Board Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 223) adopted, which found that conduct unbecoming a police officer included engaging in outside employment while on sick leave and failing to obtain approval for, and making a false statement to an Internal Affairs investigator about, the outside employment; removal was neither unduly harsh nor disproportionate. In re Howard, OAL Dkt. No. CSV 9338-06, 2008 N.J. AGEN LEXIS 627, Final Decision (May 7, 2008).

Matter remanded because an incident report completed to document an employee's refusal to submit to a drug screening and for the purpose of pursuing discipline was not a routine report admissible under N.J.R.E. 803(c)(6); the supervisor who completed the report did not testify. In re Richardson, OAL Dkt. No. CSV 5339-07, 2008 N.J. AGEN LEXIS 502, Merit System Board Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 192) adopted, which concluded that 10-day suspension for unbecoming conduct was proper where the ALJ found, on conflicting testimony, that a cook employee refused four direct orders from her supervisors and openly dared them to charge her with insubordination. In re Johnson-McCall, OAL Dkt. No. CSV 4825-07, 2008 N.J. AGEN LEXIS 560, Final Decision (April 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 106) adopted, which found that removal of a senior correction officer for conduct unbecoming an employee was appropriate after the officer was involved in a physical confrontation with the mother of his children, which resulted in serious injury to her facial area; the absence of a criminal conviction, whether by reason of non-prosecution or even acquittal, did not bar a finding of guilt for misconduct in office in the disciplinary proceedings. In re Baylor, OAL Dkt. No. CSV 2184-06, 2008 N.J. AGEN LEXIS 534, Final Decision (April 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 80) adopted, which found that termination of a police aide for failure to timely and satisfactorily respond to a 911 call was warranted where the aide neglected to refer and prioritize a domestic violence call to the dispatcher. In re Flagler, OAL Dkt. No. CSV 1302-06, 2008 N.J. AGEN LEXIS 527, Final Decision (April 9, 2008).

Police officer's forwarding of crime scene photograph to a civilian constituted conduct unbecoming a public employee; 30 days suspension. In re Curry, OAL Dkt. No. CSV 5512-06, 2008 N.J. AGEN LEXIS 505, Final Decision (April 9, 2008).

Removal of a truck driver following his positive drug test was too harsh of a penalty, given his unblemished disciplinary history and the fact that he was a non-law enforcement employee, who was not held to the stricter standard of conduct expected of law enforcement officers; the truck driver was entitled to a "second chance" and, therefore, his penalty was modified to a four-month suspension, with reinstatement subject to a return to work drug test and random monthly drug testing for a period of one year (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 2). In re Simpson, OAL Dkt. No. CSV 4498-07, 2008 N.J. AGEN LEXIS 552, Merit System Board Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 88) adopted, in which a police officer was removed for associating with criminals. The officer's husband was a gang member and she had answered in the negative when asked during the employment application process if she had associated with criminals or gang members. In addition, prior to the officer's removal, her husband had pleaded guilty to several felonies, amounting to safety concerns arising out of her possession of her service weapon and bullet proof vests in the home she shared with her husband. In re Griffin, OAL Dkt. No. CSV 11074-07, 2008 N.J. AGEN LEXIS 590, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 107) adopted, which found that a six-day suspension of a correction officer was appropriate where she neglected to provide a land line phone number and where she had a disciplinary history that included a 60-day suspension for incompetence. In re Gaines, OAL Dkt. No. CSV 4265-07, 2008 N.J. AGEN LEXIS 549, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 104) adopted, which concluded that termination was proper for a university cleaning employee who was found, on conflicting testimony, to have threatened another employee, while off-campus and off-duty, and to have made false charges against a supervisor; although the phrase "conduct unbecoming," is not defined in the New Jersey Statutes or in the New Jersey Administrative Code, as noted by the New Jersey Supreme Court, the phrase is an elastic one, and has been defined as "any conduct which adversely affects . . . morale or efficiency . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Ufomba, OAL Dkt. No. CSV 00440-06, 2008 N.J. AGEN LEXIS 572, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 58) adopted, which reversed police officer's 59-day suspension, as the officer's actions, in his capacity as a union representative, were within the bounds of allowable advocacy and therefore, were neither insubordinate nor unbecoming a police officer. An employer cannot condition a union representative's attendance at an interview on the representative's silence, and a shop steward may help an employee clarify an account; object to harassing, confusing, or misleading questions; and suggest additional witnesses. In re Rowe, OAL Dkt. No. CSV 07535-07, 2008 N.J. AGEN LEXIS 580, Merit System Board Decision (March 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 59) adopted, which concluded that a correction officer accused of sleeping had been inattentive, evidenced by his failure to stand when the superior entered the trailer, and that the appropriate punishment was a 15-day suspension. While punishment was necessary because harm to inmates could have resulted, the supervisor had failed to have a third party witness the incident and he had failed to mention in his report that the employee had fashioned a makeshift pillow. In re Melendez, OAL Dkt. No. CSV 7822-07 (CSV 11302-06 On Remand), 2008 N.J. AGEN LEXIS 592, Merit System Board Decision (February 13, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 87) adopted, which found that municipal police officer's removal was warranted for the officer's participation in a multi-jurisdictional high-speed chase without authorization from either the initiating police agencies or his own superiors; the officer had a history of suspensions during his employment. In re Jasiecki, OAL Dkt. No. CSV 09659-02, Final Decision (February 11, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 800) adopted, which found that the language a police officer used in a report was disrespectful and insubordinate, justifying a 15-day suspension; instead of explaining his behavior regarding his use of the term "ghetto" over the police scanner, the officer took the opportunity to berate and criticize his superior. In re Montalvo, OAL Dkt. No. CSV 9869-02, 2008 N.J. AGEN LEXIS 628, Final Decision (January 16, 2008).

City health officer who used paid sick time while out under the Family and Medical Leave Act, but engaged in and was compensated for secondary employment, was guilty of conduct unbecoming a public employee; however, an official written reprimand and a fine of an amount equivalent to the number of hours of sick leave she received while performing work for another municipality, rather than removal, was the appropriate penalty based on the officer's record of no prior major ***discipline. In re*** Warwas, OAL Dkt. No. CSV 11781-06, 2008 N.J. AGEN LEXIS 594, Merit System Board Decision (January 16, 2008).

Reversal of disciplinary action against a county correction officer was required where neither a videotape of the officer's conduct nor the testimonial evidence demonstrated that the officer was publicly intoxicated, ordered and consumed food without the intent to pay, or brought the police department into disrepute; additionally, the effect of the officer's "last chance agreement" was irrelevant, since the officer did not engage in any misconduct (adopting 2007 N.J. AGEN LEXIS 733). In re Keegan, OAL Dkt. No. CSV 2777-07, 2008 N.J. AGEN LEXIS 537, Merit System Board Decision (January 16, 2008).

Senior investigator with the state prison was properly removed where the evidence demonstrated that the officer falsified his investigation report regarding the escape and subsequent apprehension of an inmate, failed to advise the Fugitive Unit of the specific time and place of the apprehension, and was improperly equipped to execute the apprehension; the officer neglected his duty and violated safety and security rules in failing to contact the appropriate personnel and safeguard the public and himself with the appropriate back-up personnel and equipment (adopting as modified 2007 N.J. AGEN LEXIS 710). In re Cesare, OAL Dkt. No. CSV 6511-06 and CSV 6645-06 (Consolidated), 2008 N.J. AGEN LEXIS 514, Final Decision (January 16, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 616) adopted, which found that removal of a correction sergeant for having tested positive for cocaine was inappropriate, because he was taking several prescription drugs and had informed an investigator of his use of prescription drugs, but no additional action was taken by the investigator prior to submission of the officer's sample for testing. In re Jordan, OAL Dkt. No. CSV 9979-06, 2007 N.J. AGEN LEXIS 1036, Merit System Board Decision (December 19, 2007).

Police sergeant was properly charged with neglect of duty and other sufficient cause after failing to timely report to duty, leaving the communication center without supervision for approximately 4½ hours; the officer's argument that the six-day suspension did not comport with progressive discipline failed, and there was insufficient information on other employees' disciplinary history to support allegations of disparate treatment. In re Michelson, OAL Dkt. No. CSV 05839-06, 2007 N.J. AGEN LEXIS 827, Initial Decision (December 18, 2007), adopted (Merit System Board February 13, 2008), aff'd per curiam, No. A-3523-07T3, 2009 N.J. Super. Unpub. LEXIS 1953 (App.Div. July 28, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 437) adopted, which concluded that two police sergeants were properly disciplined after the non-arrest of a person for whom an arrest warrant had been issued; the evidence demonstrated that one of the sergeants ordered a police officer not to arrest the man as a courtesy because of the holiday and the other sergeant's investigation into the matter was perfunctory and deficient. In re Whitaker, OAL Dkt. No. CSV 8669-03 and CSV 2881-04 (Consolidated), 2007 N.J. AGEN LEXIS 1165, Final Decision (December 5, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 676) adopted, which found that a communications operator's voicemail to the union representative in which he threatened bodily harm to the Human Resources Director, even when considered apart from tardiness and falsification charges, warranted his removal; in addition, suspensions were appropriate for the operator's failure to dispatch emergency assistance to repair a ship channel bridge and to remove debris from a highway. In re Jackson, OAL Dkt. No. CSV 11933-05 and CSV 04971-06 (Consolidated), 2007 N.J. AGEN LEXIS 1078, Final Decision (December 5, 2007).

Employee's medical condition made resignation in good standing, and not removal based on "inability to perform duties," appropriate. In re Gore-Bell, OAL Dkt. No. CSV 3975-06, 2007 N.J. AGEN LEXIS 1024, Final Decision (December 5, 2007).

Removal was warranted after a plumbing official urinated out of a window of a building under construction, in front of a representative of the construction company, while he was performing official duties; the public expects its servants to conduct its business in a manner that does not offend publicly accepted standards of decency (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 769). In re Malayter, OAL Dkt. No. CSV 2188-06, 2007 N.J. AGEN LEXIS 1019, Final Decision (December 5, 2007).

Corrections officer was removed after incident in which an inmate remained in the cell block control area and engaged in a sexual act with another officer. In re Clark, OAL Dkt. No. CSV 11305-06, 2007 N.J. AGEN LEXIS 712, Initial Decision (November 8, 2007), adopted (Merit System Board Dec. 19, 2007).

Appointing authority was not justified in removing a corrections lieutenant following his positive drug screen for opiates where the ALJ found, on conflicting evidence, that the positive result was caused by the ingestion of poppy seed bagels; the ALJ was within its right to give more weight to the officer's expert witness than to the appointing authority's expert because the officer's expert's analysis comported with scientific articles on the record, including those offered by the appointing authority's expert, whereas the appointing authority's expert focused mostly on anecdotal situations and did not explain discrepancies between his analysis and the scientific articles (adopting 2007 N.J. AGEN LEXIS 435). In re Bennett, OAL Dkt. No. CSV 4576-05, 2007 N.J. AGEN LEXIS 1130, Final Decision (October 24, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 617) adopted, in which a housing authority maintenance worker was removed while incarcerated. The worker had failed to reveal his status as a registered sex offender, subsequent conviction for failure to register as a sex offender, and his status as a Tier 2 Sex Offender. In re Brown, OAL Dkt. No. CSV 10483-06, 2007 N.J. AGEN LEXIS 1059, Final Decision (October 24, 2007).

Where the nature and extent of a county clerk's mental condition and accompanying alarming behavior precluded her from successfully performing her job, the appointing authority was not precluded from pursuing termination (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 574). In re Wilson, OAL Dkt. No. CSV 9640-04, 2007 N.J. AGEN LEXIS 1180, Final Decision (October 10, 2007), aff'd per curiam, No. A-1291-07T1, 2009 N.J. Super. Unpub. LEXIS 1055 (App.Div. May 5, 2009).

Charges against a Youth Worker for excessive use of force against a resident of a youth detention center were properly dismissed where a videotape of the event and testimony revealed that the officer acted in an appropriate manner when faced with an unruly resident who was inciting other residents to misbehave and disregard the officer's directives; the resident made a number of threats of physical violence toward the officer that appeared to be genuine, causing the officer to call for assistance and use a minimal amount of force to defuse an escalating situation (adopting 2007 N.J. AGEN LEXIS 568). In re Zorn, OAL Dkt. No. CSV 2685-06 (CSV 8501-05 On Remand), 2007 N.J. AGEN LEXIS 1104, Merit System Board Decision (October 10, 2007).

Police officer did not violate any statutory provision, administrative regulation, departmental rule, or collective bargaining agreement when he took time off to work an off-duty job and on some of the days would have to appear in municipal court and be paid overtime; the officer testified, and the evidence corroborated, that he always found someone to cover for him at the off-duty job when he had to appear in court, that he always paid that person the hours the person worked from the check he received from the off-duty job, and that he received payment from the off-duty job only for the hours he worked and payment from the city only for the overtime he worked. Charges were dismissed; if the appointing authority wished to prevent similar circumstances in the future, it needed to adopt clear policies, with adequate documentation requirements, regarding overtime and off-duty work (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 610). In re Lewis, OAL Dkt. No. CSV 5245-07, 2007 N.J. AGEN LEXIS 1135, Merit System Board Decision (October 10, 2007).

Human Services Assistant's lack of intent to cause harm was irrelevant in determining whether he was guilty of a serious mistake due to carelessness and mistreatment of a patient (adopting 2007 N.J. AGEN LEXIS 577). In re Clarke, OAL Dkt. No. CSV 6364-04, 2007 N.J. AGEN LEXIS 1146, Final Decision (September 26, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 606) adopted, which concluded that, notwithstanding the conceded claims of illness, sickness, and caregiving, a correction officer still had the duty to confirm her leave status; additionally, there was an urgency of staffing shortages and the officer's use of sick time was already highly excessive during her short career. In re Burnett, OAL Dkt. No. CSV 6374-05, 2007 N.J. AGEN LEXIS 963, Final Decision (September 26, 2007).

City failed to satisfy its burden of proof demonstrating that a police officer was psychologically unfit for duty, in view of the inconsistent and conflicting psychological evaluations presented; removal reversed contingent on the officer's successful completion of a psychological fitness for duty examination (adopting in part and modifying in part 2007 N.J. AGEN LEXIS 581). In re Harris, OAL Dkt. No. CSV 11388-03, 2007 N.J. AGEN LEXIS 1075, Merit System Board Decision (September 26, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 571) adopted, which concluded that a licensed practical nurse was properly removed after she failed to assist a resident in taking her medication and then later threatened retaliation against a coworker who reported the conduct; instead of helping the resident sit up so that she could swallow the pills, the nurse told the resident that she was too busy to help her, and would record that the resident refused to take her medication. In re Johnson, OAL Dkt. No. CSV 920-06, 2007 N.J. AGEN LEXIS 1179, Final Decision (September 12, 2007).

Termination of county correction officer for her second disciplinary action for fraternizing with an inmate was appropriate. The officer had received several telephone calls from the inmate to her home, had acknowledged that she knew that the calls were inappropriate, and had offered no notes on the contents of the conversations with the inmate. In re David, OAL Dkt. No. CSV 12027-06, 2007 N.J. AGEN LEXIS 619, Initial Decision (September 6, 2007), adopted (Merit System Board Oct. 10, 2007).

Merit System Board adopted ALJ finding that two officers who allegedly performed an unauthorized strip search of a person not under arrest were not subject to discipline for the underlying incident because their agency had not produced the suspect to testify. The officers had contended that their drug possession suspect had lowered his pants voluntarily. However, agency-imposed suspensions against the officers were warranted for failing to properly report the incident; suspensions were reduced from eight-day loss of vacation time in lieu of suspension to three days lost (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 470). In re Peralta, OAL Dkt. No. CSV 9980-06 and CSV 10452-06 (Consolidated), 2007 N.J. AGEN LEXIS 1073, Final Decision (August 29, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 467) adopted, which found, on conflicting testimony, that a police officer assaulted and threatened his girlfriend, which constituted conduct unbecoming a public employee; the officer's acquittal on criminal charges was not dispositive. Given the egregious nature of the conduct and the officer's disciplinary history, significant suspension was warranted; since the City determined that 123 days suspension was appropriate, the penalty, although insufficient, was not increased. In re DeLeon, OAL Dkt. No. CSV 05466-05, 2007 N.J. AGEN LEXIS 1137, Final Decision (August 15, 2007).

Thirty working day suspension was warranted where a police officer used her cellular phone while on duty for 278 hours in a two-year period, even though there was no direct departmental prohibition against personal cell phone usage while on duty; a public employee who is sworn to protect and serve the public is prohibited from excessive personal telephone calls while on duty because it constitutes a distraction from those duties (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 378). In re Butler, OAL Dkt. No. CSV 13065-05, 2007 N.J. AGEN LEXIS 1091, Merit System Board Decision (August 15, 2007).

Approval of intermittent leave under the Family and Medical Leave Act does not preclude an appointing authority from disciplining an employee for chronic or excessive absenteeism, when that employee has not established that the absence was due to the FMLA reason; 10-day suspension was warranted for correction officer and Merit System Board recommended that appointing authority investigate altered note purporting to be from physician (adopting 2007 N.J. AGEN LEXIS 200). In re Moss, OAL Dkt. No. CSV 06050-06, 2007 N.J. AGEN LEXIS 1143, Final Decision (July 11, 2007).

Ninety-day suspension, rather than removal, was the appropriate penalty for a county correction officer who violated the county's inmate visitation regulation when she visited an acquaintance at a state prison on three separate occasions. The evidence was clear that there was no "fraternization" or "undue familiarity"; rather, it appeared as though the officer was doing a favor for the inmate's aunt by providing transportation to the facility (adopting as modified 2007 N.J. AGEN LEXIS 372). In re Brown, OAL Dkt. No. CSV 7960-06 and CSV 7962-06, Merit System Board Decision (July 11, 2007).

Municipal police officer who was injured during Police Academy mandatory physical training and dismissed from the Academy indefinitely was awarded back-due sick pay for the period after his injury until he was cleared to return to the Academy, and back-due pay for the period after he was cleared to return to the Academy but before he was actually allowed to return to duty because he had a doctor's excuse for missed time and a doctor's permission to return to training shortly after his injury, and his suspension from duty for lack of physical ability was dismissed in a final agency action. In re Rankin, OAL Dkt. No. CSV 09983-06, 2007 N.J. AGEN LEXIS 471, Initial Decision (July 10, 2007), adopted (Merit System Board August 29, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 375) adopted, which found that removal of police recruit from the Police Academy and his duties for personal website containing objectionable statements was appropriate because recruit had updated website after entering the Academy. In re Harb, OAL Dkt. No. CSV 09640-06, Final Decision (June 20, 2007).

Senior correction officer's arrest and conviction for driving while intoxicated, which resulted in a 90-day jail sentence, served as a basis for his removal; the officer held a highly visible and sensitive position within the community and was subject to a higher standard of conduct and responsibility than what was required of other public employees (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 114). In re Greenfield, OAL Dkt. No. CSV 4473-05, 2007 N.J. AGEN LEXIS 1127, Final Decision (May 23, 2007), aff'd per curiam, No. A-0713-07T1, 2009 N.J. Super. Unpub. LEXIS 148 (App.Div. February 19, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 275) adopted, which concluded that county corrections officer's failure to call the county to report an absence did not rise to the level of "conduct unbecoming" since it was not an activity that would destroy public confidence in governmental services. In re Novielli, OAL Dkt. No. CSV 03981-06,

Final Decision (June 20, 2007), aff'd per curiam, No. A-5890-06T2, 2009 N.J. Super. Unpub. LEXIS 350 (App.Div. February 24, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 175) adopted, which found that a police officer was properly terminated for conduct unbecoming a police officer after he was convicted of driving under the influence of alcohol; the officer was not rehabilitated and his advertising his ability to drink beer on MySpace.com was conduct that diminished respect for the office. In re Larkin, OAL Dkt. No. CSV 225-06, 2007 N.J. AGEN LEXIS 1087, Final Decision (June 20, 2007).

Three-day suspension, rather than 10-day suspension, was the appropriate penalty after a correction officer was insubordinate for failing to immediately following her supervisor's order that she return to her post; the officer was required to comply with the order, even if she believed it to be improper or contrary to established rules and regulations (adopting 2007 N.J. AGEN LEXIS 243). In re Faasen, OAL Dkt. No. CSV 2617-06, 2007 N.J. AGEN LEXIS 1103, Merit System Board Decision (June 20, 2007).

Contrary to the Administrative Law Judge's finding, a correction officer may have been eligible for time off to care for sick family members under New Jersey's Family Leave Act and the federal Family ***Medical Leave Act***, had she applied. However, the officer was properly suspended for chronic and excessive absenteeism, as the ALJ found, contrary to the officer's testimony, that she was given notice of those rights (adopting as modified 2007 N.J. AGEN LEXIS 176). In re Stokes, OAL Dkt. No. CSV 4327-05 and CSV 8116-06 (Consolidated), 2007 N.J. AGEN LEXIS 1111, Final Decision (May 9, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 144) adopted, which concluded that a school bus inspector was properly suspended for seven days after falsifying documents to indicate that the buses' brakes were in approved working order when he never performed the inspections; the inspector's prior reprimand for neglect of duty based on his failure to actually perform the required inspections did not prevent a later finding that he falsified documents pertaining to the phantom inspections and, therefore, the inspector was not punished twice for the same offense. In re Leaty, OAL Dkt. No. CSV 5351-06, 2007 N.J. AGEN LEXIS 1136, Final Decision (April 25, 2007).

Correction officer was properly suspended for 35 days for incompetency, inefficiency, and failure to perform her duties for an incident in which the officer's inattentiveness to an inmate resulted in the inmate's attempted sexual assault of a nurse; it was the officer's primary duty to maintain the safety of individuals in the medical unit and it was undisputed that she did not see the inmate get up and walk down the corridor because the officer was busy filling out paperwork. In re George, OAL Dkt. No. CSV 752-06, 2007 N.J. AGEN LEXIS 1167, Final Decision (April 25, 2007).

In a disciplinary action against a correction officer for neglect of duty based on his alleged knowledge of a missing weapon and his failure to report it, evidence was lacking that the officer was actually aware that the gun was missing; instead, his failure to notice that the gun was missing was a "mere oversight." However, had the appointing authority charged the officer with neglect of duty for his failure to discover the missing weapon during an inventory search, the evidence would have supported his 30-day suspension (adopting with comment 2007 N.J. AGEN LEXIS 112) In re O'Donnell, OAL Dkt. No. CSV 4331-05, 2007 N.J. AGEN LEXIS 1123, Merit System Board Decision (April 11, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 116) adopted, which concluded that a hospital attendant was properly suspended for 90 days for neglect of duty despite his testimony that he was not asleep; the attendant admitted that he had not noticed an employee pass him during a surprise inspection, and the environment required the constant monitoring of psychiatric patients. In re Okafor, OAL Dkt. No. CSV 09551-02, 2007 N.J. AGEN LEXIS 1089, Final Decision (April 11, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 117) adopted, which found that County Correction Lieutenant who had allowed 16 corrections officers to leave after roll call had not violated the common practice of supervisors allowing officers claiming illness to leave, even though there was testimony that supervisors could have required officers claiming sickness to see the county doctor or visit the infirmary. In re Condito, OAL Dkt. No. CSV 09638-04, 2007 N.J. AGEN LEXIS 1096, Merit System Board Decision (April 11, 2007).

Where an employee believed that he was being asked to perform duties outside of his job title, he should have sought an audit of the position to determine whether re-classification was warranted; but until such time as an audit could be performed and a final determination made, the employee was required to continue to perform the duties assigned by management. In refusing to perform the disputed duties, the employee engaged in conduct of insubordination because "insubordination" refers not only to affirmative acts of disobedience, but also acts of non-compliance and non-cooperation, including any conduct that constitutes a refusal to submit to supervisory authority (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 57). In re Hatcher, OAL Dkt. No. CSV 2123-06, 2007 N.J. AGEN LEXIS 352, Final Decision (March 28, 2007).

Initial Decision rejected, in which ALJ concluded that psychiatric hospital employee's removal for sleeping on duty was erroneous. Merit System Board found that the employee's testimony that he was merely relaxing and resting his eyes had not been credible, and the testimony of a supervisor that the employee was sleeping was credible despite some prior animus between the supervisor and the employee. In re Wilson, OAL Dkt. No. CSV 10082-05, 2007 N.J. AGEN LEXIS 346, Final Decision (March 14, 2007).

Appointing authority's use of a firefighter's medical records as a basis for ordering him to submit to a drug test was proper because the records were received for the explicit purpose of confirming the firefighter's prior illness and determining his fitness to return to work (adopting 2006 N.J. AGEN LEXIS 1033). In re Gonzalez, OAL Dkt. No. CSV 7558-02, 2007 N.J. AGEN LEXIS 964, Final Decision (January 31, 2007), aff'd per curiam, A-4847-06T3, 2009 N.J. Super. Unpub. LEXIS 70 (App.Div. January 15, 2009).

Public works employee was properly assessed a 15-day suspension on charges of conduct unbecoming a public employee after he used a township vehicle to transport cases of beer while on duty and also transported bricks for a home improvement project; the employee's 3- and 5-day suspensions in 2002 were properly considered in fashioning his penalty under the concept of progressive discipline (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 48). In re Stefani, OAL Dkt. No. CSV 1849-06, Final Decision (January 23, 2007).

Suspension of 10 days was warranted, where there was no dispute that the county employee served on the advisory board of a community group that was seeking county approval of a proposed redevelopment project on county property; despite repeated warnings by supervisors, the employee continued to make contact with other public and private officials in his capacity as a Senior Planner with the county in an attempt to further the goals of the community group. The employee's activities constituted conduct unbecoming a public employee, misuse of county property, and violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22.5. In re Reid, OAL Dkt. No. CSV 2045-06, 2007 N.J. AGEN LEXIS 1044, Final Decision (January 17, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 994) adopted, which found that a 90-day suspension of a corrections officer was appropriate based on his failure to work mandatory overtime; the officer failed to comply with a direct order to stay on his post (given after he had e-timed out), and instead left the premises. In re Ballon, OAL Dkt. No. CSV 3974-06, 2007 N.J. AGEN LEXIS 92, Final Decision (January 17, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 969) adopted, which concluded that removal was proper of a correction officer found to have forcibly resisted arrest after a domestic altercation, engaged in excessive absenteeism, and failed to report suspensions of his driver's license. In re Marshall, OAL Dkt. No. CSV 12097-05, 2007 N.J. AGEN LEXIS 91, Final Decision (January 7, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 996) adopted. Code enforcement officer who refused to wear standard uniform and authored and distributed a slanderous document during business hours was suspended a total of 120 days for insubordination and conduct unbecoming a public employee; such conduct was not protected speech. In re Gaines, OAL Dkt. No. CSV 9427-04 and CSV 12279-05 (Consolidated), 2006 N.J. AGEN LEXIS 1103, Final Decision (December 6, 2006).

Corrections officer was properly suspended for 30 days after he submitted a letter on behalf of a former inmate, seeking leniency for the inmate and relying upon his experience as a corrections officer in support of that request; the officer had been counseling the former inmate as a pastor but violated the rules and regulations by not obtaining permission from competent authority to submit a letter on behalf of the former inmate, who was about to be incarcerated. The officer's actions undermined the Department of Corrections by offering personal opinions under the guise of the Department and while wearing components of current or past official uniform clothing, without any official permission by competent authority. In re Leek, OAL Dkt. No. CSV 452-05, 2006 N.J. AGEN LEXIS 826, Initial Decision (October 16, 2006), adopted (Merit System Board November 15, 2006), aff'd per curiam, No. A-2350-06T3, 2008 N.J. Super. Unpub. LEXIS 596 (App.Div. May 14, 2008).

Where a police officer was arrested on charges of cocaine possession, the appointing authority had reasonable suspicion to believe that the officer was under the influence of drugs; therefore, his refusal to submit to timely drug testing at the authority's request was insubordination warranting removal from his position. In re Hosten, OAL Dkt. No. CSV 3269-04, 2006 N.J. AGEN LEXIS 829, Initial Decision (October 13, 2006), adopted (Merit System Board November 15, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 705) adopted, which concluded that police officer was unable to perform required duties and properly removed, as he had been determined unfit to carry a firearm following a domestic matter. In re Love, OAL Dkt. No. CSV 05457-04, 2006 N.J. AGEN LEXIS 856, Final Decision (October 4, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 739) adopted, which concluded that removal of senior correction officer for testing positive for cocaine in a random drug test was warranted. The officer had contended that his urine sample should have been transferred to the state laboratory within one day, but storing the sample in a limited-access refrigerator for transport as soon as possible was not a violation of agency policy, and he had not presented any evidence of over-the-counter medications that could have caused his positive result. In re Romine, OAL Dkt. No. CSV 10246-04, 2006 N.J. AGEN LEXIS 857, Final Decision (October 4, 2006).

Removal of correction officer trainee was warranted after charges were proven that she had opened her towel to reveal her nude body, that she had invited another officer to move her bed next to her own, and that she had made sexually explicit comments and gestures (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 408). In re Williams, OAL Dkt. No. CSV 12210-04, 2006 N.J. AGEN LEXIS 858, Final Decision (September 20, 2006), aff'd per curiam, No. A-2114-06T1, 2008 N.J. Super. Unpub. LEXIS 2136 (App.Div. April 25, 2008).

Department of Transportation employee was improperly removed because his departure from the workplace was not a refusal to submit to drug and alcohol testing where he had, in fact, made three unsuccessful attempts to provide a sufficient sample beyond the three-hour time limitation in the federal regulations; the appointing authority's unilateral decision to extend his testing time, coupled with its failure to notify him of his opportunity to provide a medical excuse for his inability to provide a sufficient sample, deprived him of any opportunity to avoid disciplinary charges and substantively impacted his rights (adopting 2006 N.J. AGEN LEXIS 704). In re Johnson, OAL Dkt. No. CSV 4572-05, 2006 N.J. AGEN LEXIS 868, Merit System Board Decision (September 6, 2006).

Police officer was guilty of conduct unbecoming a police officer when he refused to answer questions during a criminal investigation into the abuse of overtime; while the officer's attorneys' advice did not invalidate the charges against him, the officer had no prior major discipline in 17 years and his misplaced reliance on his attorneys' advice mitigated the penalty of removal to a 6-month suspension. In re Sandifer, OAL Dkt. No. CSV 5096-05, 2006 N.J. AGEN LEXIS 869, Merit System Board Decision (September 6, 2006), aff'd per curiam, No. A-1992-06T2, 2008 N.J. Super. Unpub. LEXIS 2892 (App.Div. July 18, 2008).

Correction officer was improperly disciplined for his alleged failure to cooperate in an investigation of a fellow officer; even if the officer displayed a defiant attitude in asserting his right to counsel, the investigators had suggested that he "think about his family," remarked that he was "leaving himself as a target" of the investigation, refused to permit the officer's union representative to enter the room with him after the suggestion was made that he had become a target of the investigation, and persisted in attempting to question him over two days, despite his repeated requests to consult with his attorney and his assurance that he would cooperate following his consultation (adopting 2006 N.J. AGEN LEXIS 363). In re Ricchiuti, OAL Dkt. No. CSV 4992-04, 2006 N.J. AGEN LEXIS 773, Merit System Board Decision (August 9, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 434) adopted, in which a city employee was terminated for insubordination after failing to return a grant check to be used for the purchase of a home in her city of employment after the closing had failed. The employee had been advised that she was required to return the check and reapply for another grant if she wished to purchase a qualifying home in the future. In re Woods, OAL Dkt. No. CSV 11186-02 (CSV 3010-02 On Remand), 2006 N.J. AGEN LEXIS 767, Final Decision (August 9, 2006).

County building maintenance worker who had spoken to her supervisor in a loud voice was properly found to have been insubordinate and engaging in conduct unbecoming a public employee. ALJ had reduced the employee's penalty to a 15-day suspension, but the Merit System Board determined that a 20-day suspension was appropriate (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 433). In re Meyers, OAL Dkt. No. CSV 11120-04, 2006 N.J. AGEN LEXIS 766, Final Decision (July 19, 2006).

Thirty-day suspension of a Motor Vehicle Commission safety specialist for completing paperwork in an unprescribed manner was appropriate. Despite orders to the contrary, the specialist continued to use his own personal style of writing on official documents, including using Roman numerals where inappropriate and recording driver license numbers in an unapproved manner (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 366). In re Anton, OAL Dkt. No. CSV 12640-05, 2006 N.J. AGEN LEXIS 769, Final Decision (July 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 360) adopted, which found that a police officer was properly removed for conduct unbecoming an officer where she used her position as an officer to have a legally parked car towed and then lied about having the authority to release the car to the registered owner; either the officer was not candid about drugs being in the car, and only made the statement to have the vehicle towed, or knowing that there were drugs in her car, she was helping to have the vehicle released before it could be searched – either scenario represented a severe breach of public trust. In re Colon, OAL Dkt. No. CSV 2853-05 (CSV 4989-04 On Remand), 2006 N.J. AGEN LEXIS 532, Final Decision (July 19, 2006).

Fifteen-day suspension of a correction officer was appropriate where the officer pushed his way into an agitated crowd of inmates in order to restrain an inmate without seeking authorization and without following the established procedures regarding use of force; such behavior compromised the safety and security of the institution and had the dangerous potential to subvert prison order (adopting 2006 N.J. AGEN LEXIS 292). In re Ricigliano, OAL Dkt. No. CSV 4326-05, 2006 N.J. AGEN LEXIS 534, Final Decision (June 7, 2006).

Where a cottage training technician pleaded guilty to a weapons possession charge following a domestic dispute in which he allegedly pointed a pellet gun at his wife, the appointing authority was within its right to discipline the technician for conduct unbecoming a public em-

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.

(e) An appointing authority may impose a suspension on the record when the appointing authority and the employee, or, where the employee is covered by a collective negotiations agreement, the employee's majority representative, agree in writing that, for purposes of progressive discipline, the employee will receive a suspension on the record and that it will have the same force and effect for purposes of future disciplinary actions as a suspension actually served by the employee.

Petition for Rulemaking.
See: 30 N.J.R. 3103(a), 30 N.J.R. 3552(a).
Petition for Rulemaking: Notice of Receipt; General Rules and Department Organization Appeals, Discipline and Separations Suspensions on the Record.
See: 38 N.J.R. 1085(a).
Amended by R.2006 d.386, effective November 6, 2006.
See: 38 N.J.R. 2773(a), 38 N.J.R. 4690(a).
In (b), inserted the last sentence; and added (e).

Case Notes

Dismissal of police officer was supported by officer's intentional avoidance of communication with police chief prior to taking unauthorized vacation; officer's conduct was so egregious as to warrant suspension of greater than six months, and civil service rules require dismissal of employee whose offense dictates such suspension. Cosme v. Borough of East Newark Tp. Committee, 304 N.J.Super. 191, 698 A.2d 1287 (A.D. 1997).

Contrary to the ALJ's determination, an appointing authority could not have issued a fine in place of the 120-working day suspension where there was no showing that the correction officer's specific suspension would have created a public health, safety, or welfare emergency (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1028). In re Copling, OAL Dkt. No. CSV 4275-07, 2009 N.J. AGEN LEXIS 983, Final Decision (February 11, 2009).

Where a county correction officer was charged with chronic and excessive absenteeism, the appointing authority failed to demonstrate that the officer's specific suspension created a public health, safety or welfare emergency which would have justified imposing fines in lieu of suspensions; rather, the appointing authority made it a policy to impose fines rather than suspensions to address staffing shortages, which was improper and could not be used as a routine form of discipline (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 981). In re Cliver, OAL Dkt. No. CSV 919-08, 2009 N.J. AGEN LEXIS 1002, Final Decision (January 14, 2009).

Correction officer was properly fined in lieu of suspension because his attendance was so critical to the operation of the correction center that a disciplinary suspension could not have been imposed without creating a risk to public health, safety, or welfare; absenteeism had already caused reduction of staff, involuntary overtime, and morale problems and the officer's suspension would have caused further disruption of the operations of the center, which would have been detrimental to public safety (adopting 2008 N.J. AGEN LEXIS 840). In re Di Memmo, OAL Dkt. No. CSV 920-08, 2008 N.J. AGEN LEXIS 1068, Final Decision (November 6, 2008).

Cottage training technician's failure to drive a state vehicle safely supported a charge of neglect of duty; since the technician's neglect caused property damage (in the amount of $1,700), the appropriate form of penalty should have been a fine, providing partial restitution for her actions. However, while the technician's actions caused significant property damage, they were not so egregious as to warrant a fine equivalent to either a 15-day suspension or $1,700; instead, the proper penalty was a fine equivalent to three days' pay. In re McCrary, OAL Dkt. No. CSV 4540-07, 2008 N.J. AGEN LEXIS 1223, Final Decision (October 8, 2008).

When an employee paid a fine in lieu of suspension, the employee was not separated from employment; a fine in lieu of suspension under N.J.A.C. 4A:2-2.4 was recorded in the employee's personnel record as "*x* number of days' pay fined in lieu of *x* number of days suspended." Consequently, the number of days' pay fined was the number to be considered for progressive disciplinary purposes since that was the actual disciplinary penalty imposed (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 406). In re Sims, OAL Dkt. No. CSV 4103-04, 2005 N.J. AGEN LEXIS 1258, Final Decision (September 7, 2005), aff'd per curiam, Docket No. A-4396-05T3, 2007 N.J. Super. Unpub. LEXIS 1514 (App.Div. November 27, 2007).

Traffic signal repairer removed for falsifying application for employment with regard to criminal convictions. Florenzo v. Bergen County Department of Public Works, 96 N.J.A.R.2d (CSV) 22.

Police officer who lost police radio through carelessness was appropriately fined. Przybyszewski v. Gloucester Township Police Department, 95 N.J.A.R.2d (CSV) 623.

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. An employee who has been appointed on or after September 1, 2011, who does not have a principal residence in New Jersey and who has not received a residency exemption in accordance with P.L. 2011, c. 70, within one year of appointment, is defined by that statute as illegally holding and unqualified for employment, and therefore subject to immediate suspension as unfit for duty. 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 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. See N.J.A.C. 4A:2-2.13 for hearings regarding removal appeals by certain law enforcement officers and firefighters.

(e) Appeals concerning violations of this section may be presented to the Civil Service Commission 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).
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
In (d), inserted the last sentence; and in (e), substituted "Civil Service Commission" for "Commissioner".
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.
Amended by R.2012 d.056, effective March 5, 2012.
See: 43 N.J.R. 2691(a), 44 N.J.R. 576(a).
In (a)1, inserted the second sentence; and in (b), substituted "2" for "(a)2".

Law Review and Journal Commentaries

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

Case Notes

Former city police officer's claim that the city and two officials violated the officer's procedural due process rights in disciplining the officer survived summary judgment in part given fact issues as to whether the final disciplinary decision was made by the person authorized to do so for purposes of N.J.A.C. 4A:2-2.5 and 4A:2-2.6; it was unclear whether the decision was made by the "appointing authority" under N.J.A.C. 4A:1-1.3. Reilly v. City of Atl. City, 427 F.Supp.2d 507, 2006 U.S. Dist. LEXIS 17208 (D.N.J. 2006).

The requirement of holding departmental hearing within 30 days of service of preliminary notice of disciplinary action against career service public employee was not jurisdictional, and thus, an appointing authority may proceed with disciplinary charges even if it fails to conduct a departmental hearing within the statutorily mandated period. Goodman v. Department of Corrections, 367 N.J.Super. 591, 844 A.2d 543.

Ordinarily, permanent civil service employees can be discharged or demoted only for cause, and they have pre-termination appeal and hearing rights; however, provisional employees can be terminated at any time at the discretion of the employer. Melani v. County of Passaic, 345 A.2d 579.

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 142 N.J. 446, 663 A.2d 1354.

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 142 N.J. 446, 663 A.2d 1354.

Waiver of hearing. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

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 142 N.J. 446, 663 A.2d 1354.

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).

Failure to hold a disciplinary hearing within 30 days, though a procedural irregularity, does not preclude an appointing authority from proceeding with the disciplinary process, since N.J.S.A. 11A:2-13 does not expressly indicate that the disciplinary charges are to be dismissed in the event that the appointing authority does not comply with the 30-day requirement. In re Leach, OAL Dkt. No. CSV 6373-07 and CSV 6745-07 (Consolidated), 2008 N.J. AGEN LEXIS 1230, Civil Service Comm'n Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 228) adopted, which concluded that the appointing authority had the right to impose an indefinite suspension without pay under N.J.A.C. 4A:2-2.5(a)2 on a correction officer until June 26, the date when the officer pleaded guilty to downgraded charges, rather than only until March 7, the date when the County Prosecutor chose to downgrade the indictable offense, as the downgrade was specifically conditioned on a guilty plea. In re Paris, OAL Dkt. No. CSV 12208-06, 2008 N.J. AGEN LEXIS 708, Final Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 51) adopted, which found that where the specifications in the appointing authority's complaint against a fire alarm operator included his absences, but not his failure to provide additional information regarding the pertinent doctor's notes, the latter could not be the basis of any discipline in light of the fact that it was not referenced in the specifications; an employee must be served with a Preliminary Notice setting forth the charges and a statement of facts supporting them and must be given an opportunity for hearing prior

to imposition of major discipline. In re Bugg, OAL Dkt. No. CSV 3975-05, 2008 N.J. AGEN LEXIS 542, Final Decision (February 27, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 963) adopted, which found that the appointing authority was authorized to suspend a senior correction officer indefinitely without pay pending the outcome of his criminal charges because it was alleged that the officer sold a cellular phone to an inmate for $300; if permitted to remain on the job, the officer's presence would have been a hazard, requiring an immediate suspension to maintain order and effective public service. In re Mangual, OAL Dkt. No. CSV 4032-06, 2006 N.J. AGEN LEXIS 1110, Final Decision (December 6, 2006).

Youth worker's immediate and indefinite suspension was appropriate pursuant to N.J.A.C. 4A:2-2.5 and 4A:2-2.7 after he was charged with a third-degree crime; however, because the worker's subsequent removal was unrelated to the criminal charges, he was still entitled to a determination as to whether he was owed back wages for the time between his immediate suspension and the resolution of the criminal charges against him (adopting result in 2006 N.J. AGEN LEXIS 828 on other grounds). In re Smith, OAL Dkt. No. CSV 2147-05, 2006 N.J. AGEN LEXIS 1100, Final Decision (November 15, 2006).

Forty-five day rule of N.J.S.A. 40A:14-147 did not apply where the appointing authority sought a police officer's removal on the basis of his inability to perform his duties; the appointing authority did not charge the officer with a violation of the internal rules and regulations established for the conduct of a law enforcement unit. In re Del Valle, OAL Dkt. No. CSV 2878-04, 2006 N.J. AGEN LEXIS 533, Final

Decision (February 8, 2006), aff'd per curiam, Docket No. A-3934-05T5, 2007 N.J. Super. Unpub. LEXIS 1121 (App.Div. February 8, 2007).

Appointing authority's failure to hold a police officer's departmental hearing within 30 days of service of the preliminary notice of disciplinary action (PNDA) did not require dismissal of the charge because the officer was not unduly prejudiced by having his departmental hearing occur 39 days after service of the PNDA; the 30-day provision is not an absolute and inflexible requirement, nor is it a jurisdictional requirement that prohibits an appointing authority from proceeding with bringing the charges even though it fails to conduct the hearing within the statutorily mandated period. In re Del Valle, OAL Dkt. No. CSV 2878-04, 2006 N.J. AGEN LEXIS 533, Final Decision (February 8, 2006), aff'd per curiam, Docket No. A-3934-05T5, 2007 N.J. Super. Unpub. LEXIS 1121 (App.Div. February 8, 2007).

When a building maintenance employee was sent home upon arriving late to work, it constituted an immediate suspension for which he was entitled to oral or written notice of the charges, an explanation of the employer's evidence, and an opportunity to review the charges and evidence and to respond; because the employer failed to comply with these requirements, the employee was entitled to back pay for the day he reported to work and was sent home. In re Wilson, OAL Dkt. No. CSV 2162-05, 2005 N.J. AGEN LEXIS 1046, Final Decision (December 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 337) adopted, which found that immediate suspension of a county correction sergeant was proper upon a finding that his suspension was necessary to maintain the safety and effective direction of the prison; the officer's actions as a supervisor and prison official in directing his subordinates to violate rules and procedures, and causing posts to be unmanned resulting in mandated inmate checks not being conducted, were putting the facility, staff, and inmates at risk. In re Matza, OAL Dkt. No. CSV 1967-01, 2005 N.J. AGEN LEXIS 1045, Final Decision (November 22, 2005), aff'd per curiam, No. A-2481-05T1, 2007 N.J. Super. Unpub. LEXIS 907 (App.Div. June 19, 2007).

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. See N.J.A.C. 4A:2-2.13 for the issuance of a Final Notice in removal appeals by certain law enforcement officers and firefighters.

Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
In (d), inserted the last sentence.
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.

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).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. Russ v. Human Services Department, 95 N.J.A.R.2d (CSV) 647.

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.

i. Where an employee who has been indefinitely suspended enters Pre-Trial Intervention (PTI) or has received a conditional discharge, the criminal complaint or indictment shall not be deemed disposed of until completion of PTI or until dismissal of the charges due to the employee's satisfaction of the conditions in a conditional discharge, as the case may be.

ii. An appointing authority may continue an indefinite suspension until completion of PTI or until satisfaction of the conditions imposed in a conditional discharge. If an appointing authority chooses not to continue an indefinite suspension during the PTI period or during the period of conditional discharge, it may restore the employee to employment or initiate disciplinary action against the employee.

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) When a court has entered an order of forfeiture pursuant to N.J.S.A. 2C:51-2, the appointing authority shall notify the employee in writing of the forfeiture and record the forfeiture in the employee's personnel records. The appointing authority shall also forward a copy of this notification to the Department of Personnel.

1. If the criminal action does not result in an order of forfeiture issued by the court pursuant to N.J.S.A. 2C:51-2, 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 but the court has not entered an order of forfeiture, the appointing authority may seek forfeiture by applying to the court for an order of forfeiture. The appointing authority shall not hold a departmental hearing regarding the issue of the applicability of N.J.S.A. 2C:51-2. If the court declines to enter an order of forfeiture in response to the appointing authority's application, the appointing authority may hold a departmental hearing regarding other disciplinary charges, if any, as provided in (b)1 above.

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).
Public Notice: Notice of Receipt of a Petition for Rulemaking.
See: 29 N.J.R. 5333(a).
Amended by R.2000 d.433, effective October 16, 2000.
See: 32 N.J.R. 2275(a), 32 N.J.R. 3870(a).
Rewrote (b) and (c).
Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
Added (a)2i and (a)2ii.

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 142 N.J. 449, 663 A.2d 1356.

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.

Initial Decision (2008 N.J. AGEN LEXIS 108) adopted, which concluded that a campus police officer was properly suspended upon allegations that he used university equipment to send numerous e-mails to a fellow employee whom he was pursuing romantically, e-mailed a confidential police report to her, and posted an offensive and menacing MySpace.com profile in her name after being rejected; the officer's misconduct involved, and directly touched upon, his employment. In re Mandi, OAL Dkt. No. CSV 4824-07, 2008 N.J. AGEN LEXIS 559, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 85) adopted, which concluded that a police officer was properly indefinitely suspended from his position pending the outcome of criminal charges against him after it was alleged that he was stealing items from impounded vehicles; the charges against him not only involved dishonesty but also a breach of the public trust by the very police officer whose duty it was to protect and preserve the property he allegedly appropriated for his own use. In re Halpern, OAL Dkt. No. CSV 7414-07, 2008 N.J. AGEN LEXIS 516, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 60) adopted, which dismissed a police officer's appeal from his indefinite suspension; the township appropriately suspended the officer indefinitely after he was charged with second-degree crimes and the case was inactive for years at the officer's request. In re Nemes, OAL Dkt. No. CSV 8464-00, 2008 N.J. AGEN LEXIS 522, Final Decision (February 27, 2008).

Employee's highly inappropriate comment advocating violence to a developmentally challenged student coupled with the employee's prior history of an alleged altercation with a fellow employee provided a sufficient basis for the appointing authority to order a fitness for duty psychological examination. However, the indefinite suspension of the employee for refusing to take the psychological examination was improper, as indefinite suspension is limited by N.J.A.C. 4A:2-2.7 to matters in which there is a pending criminal complaint or indictment (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 704). In re Veronelli, OAL Dkt. No. CSV 3881-07, 2007 N.J. AGEN LEXIS 1023, Merit System Board Decision (December 5, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 963) adopted, which found that the appointing authority was authorized to suspend a senior correction officer indefinitely without pay pending the outcome of his criminal charges; it was alleged that the officer sold a cellular phone to an inmate for $300 and the criminal charges were, therefore, directly related to his job. In re Mangual, OAL Dkt. No. CSV 4032-06, 2006 N.J. AGEN LEXIS 1110, Final Decision (December 6, 2006).

Youth worker's immediate and indefinite suspension was appropriate pursuant to N.J.A.C. 4A:2-2.5 and 4A:2-2.7 after he was charged with a

third-degree crime; however, because the worker's subsequent removal was unrelated to the criminal charges, he was still entitled to a determination as to whether he was owed back wages for the time between his immediate suspension and the resolution of the criminal charges against him (adopting result in 2006 N.J. AGEN LEXIS 828 on other grounds). In re Smith, OAL Dkt. No. CSV 2147-05, 2006 N.J. AGEN LEXIS 1100, Final Decision (November 15, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 72) adopted, which found that deceased motor vehicle employee's appeal was moot, and employee's indefinite suspension under N.J.A.C. 4A:2-2.7 would have been upheld; the employee's access to records in her daily functions aided her ability to perpetuate the crime and subverted the normal system for obtaining licenses and undermined the public trust in the Motor Vehicle Commission's ability to serve the public. In re Love, OAL Dkt. No. CSV 2232-04, 2006 N.J. AGEN LEXIS 1102, Final Decision (March 22, 2006).

Automatic termination of correction sergeant based on conviction for crime of dishonesty affirmed. Christian v. Department of Corrections, Northern State Prison, 97 N.J.A.R.2d (CSV) 636.

Arrest for possession of illegal drugs provides grounds for blood test and removal. Pickett v. Department of Corrections, 97 N.J.A.R.2d (CSV) 546.

Corrections officer's illegal purchase of ammunition justifies removal. Nelsen v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 347.

Corrections officer with drugs in car suffers removal even though criminal action acquits. Reinhardt v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 166.

School district employee removed for arrest on charges of possessing illegal drugs. Hargrove v. State Operated School District of Newark, 97 N.J.A.R.2d (CSV) 112.

Corrections officer was not entitled to back pay for period of suspension pending resolution of criminal charges. Auberzinsky v. Cumberland County Sheriff's Department, 96 N.J.A.R.2d (CSV) 372.

Public works truck driver dismissed after conviction for offense involving minor child. Furde v. Hamilton Township Department of Public Works, 96 N.J.A.R.2d (CSV) 262.

No entitlement to continued employment in sensitive position for employee facing criminal and narcotics charges. Spellman v. Township of Parsippany-Troy Hills Police Department, 96 N.J.A.R.2d (CSV) 214.

Where corrections officer's off-duty simple assault on supervisor related to on-duty events, assault constituted insubordination and conduct unbecoming a public employee and warranted dismissal. Melillo v. Department of Corrections, East Jersey State Prison, 96 N.J.A.R.2d (CSV) 184.

Corrections officer's conviction for obstruction of justice and driving while under the influence justifies 78-day suspension. Scott v. Burlington County Jail, 96 N.J.A.R.2d (CSV) 171.

Criminal convictions result in summary forfeiture of school custodian's position. Turner v. State-Operated School District of the City of Newark, 96 N.J.A.R.2d (CSV) 146.

State corrections officer terminated for firing gun during off-duty argument. Dunns v. Department of Corrections, 96 N.J.A.R.2d (CSV) 108.

Park maintenance worker forfeits position due to conviction for disorderly persons offense involving dishonesty. Alsheimer v. County of Middlesex, 96 N.J.A.R.2d (CSV) 7.

Conviction on plea of guilty to drug offense warranted correction officer's termination. Ricks v. Department of Corrections, 95 N.J.A.R.2d (CSV) 441.

Filing of criminal charges directly relating to employment warranted indefinite suspension of safety specialist. Washington v. Division of Motor Vehicles, 95 N.J.A.R.2d (CSV) 336.

Indefinite suspension of police officer pending disposition of criminal indictment was not warranted absent evidence that public interest would be served. Nagy v. Borough of Carteret, 95 N.J.A.R.2d (CSV) 224.

Correction officer's termination justified; shooting of companion with stun gun. Curry v. Burlington County Jail, 95 N.J.A.R.2d (CSV) 92.

Conviction on plea of guilty to charge of conspiring to sell a false document of age was cause for forfeiture of correction officer's public employment. State Department of Corrections v. Gomez, 95 N.J.A.R.2d (CSV) 77.

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 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.

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.

School bus driver disqualified from school employment due to drug offense. Kovalak v. New Jersey State Department of Education, 97 N.J.A.R.2d (EDU) 456.

School superintendent dismissed due to unbecoming conduct. In the Matter of the Tenure Hearing of Robert R. Vitacco, 97 N.J.A.R.2d (EDU) 449.

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.

4A:2-2.8 Appeals to Civil Service Commission

(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 Commission within a reasonable time.

(c) The appeal shall be substantially similar in format to the Major Disciplinary Appeal Form illustrated in the subchapter Appendix, incorporated herein by reference, and the employee shall provide a copy of the appeal to the appointing authority. The employee shall attach to the appeal a copy of the Preliminary Notice of Disciplinary Action and, unless (b) above is applicable, the Final Notice of Disciplinary Action. The appeal shall also include the following information:

1. The name, title, mailing address and telephone number of the appointing authority representative to whom the notices were provided;

2. The employee's name, mailing address and telephone number; and

3. The action that is being appealed.

(d) The employee should also include a statement of the reason(s) for the appeal and the requested relief.

(e) Failure of an employee to provide the information specified in (c) above shall delay processing of the appeal until the required information is provided, may result in a reduced back pay award pursuant to N.J.A.C. 4A:2-2.10(d)4, or may result in dismissal of the appeal after notice of and a reasonable opportunity to provide the missing information.

(f) See N.J.A.C. 4A:2-2.13 for removal appeals by certain law enforcement officers and firefighters.

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.
Amended by R.1998 d.518, effective November 2, 1998.
See: 30 N.J.R. 2325(a), 30 N.J.R. 3935(a).
Added (c) through (e).
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Section was "Appeals to Merit System Board". In (b), substituted "Commission" for "Board"; and added (f).
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.
Amended by R.2012 d.008, effective January 3, 2012.
See: 43 N.J.R. 2396(a), 44 N.J.R. 65(b).
Rewrote (e).

Case Notes

Director of county board of social services possessed final authority regarding the board's personnel and discipline decisions, as required for municipal liability under § 1983 based upon former county employee's First Amendment retaliation claims. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983; N.J.Admin. Code tit. 4A, §§ 2-2.8, 2-3.2. Marrero v. Camden County Board of Social Services, 164 F.Supp.2d 455 (D.N.J. 2001).

Administrative code section providing the receipt of Final Notice of Disciplinary Action on a different date by the employee's attorney or union representative shall not affect the appeal period did not conflict with the legislative intent of the Civil Service Act. Mesghali v. Bayside State Prison, 334 N.J.Super 617, 760 A.2d 805 (N.J.Super.A.D. 2000).

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).

Human Services Assistant's working test period appeal was moot because the assistant's separate appeal of her removal on disciplinary charges was untimely filed and therefore dismissed; the denial of a hearing due to the late filing was not subject to an appeal before the OAL but had to be appealed to the Superior Court, Appellate Division. In re Black, OAL Dkt. No. CSV 8953-06, 2007 N.J. AGEN LEXIS 1176, Final Decision (June 20, 2007).

Where an employee appealed from the appointing authority's decision to remove her from her position, but failed to appeal other disciplinary actions taken against her within 20 days, the Merit System Board had jurisdiction over the issue of whether the employee was properly removed, but did not have jurisdiction to render a decision on the other disciplinary actions (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 734). In re Small, OAL Dkt. No. CSV 3331-03, 2007 N.J. AGEN LEXIS 1106, Final Decision (January 17, 2007).

Administrative Law Judge may only review an employee's discipline if the matter is transmitted by the Merit System Board; an ALJ does not have the authority to determine whether an appeal has been filed (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 734). In re Small, OAL Dkt. No. CSV 3331-03, 2007 N.J. AGEN LEXIS 1106, Final Decision (January 17, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 991) adopted, which found that a cottage training technician's appeal from a disciplinary action in which he was removed from his employment was moot where the technician failed to timely appeal from a second disciplinary action that also resulted in his removal. In re Clarke, OAL Dkt. No. CSV 2040-06, 2006 N.J. AGEN LEXIS 1098, Final Decision (December 20, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 528) adopted, which concluded that a judiciary clerk's appeal from her removal was dismissed as untimely where neither the Merit System Board, the appointing authority, or the Office of Administrative Law received any notice of appeal. In re Keels, OAL Dkt. No. CSV 9883-03, 2005 N.J. AGEN LEXIS 1226, Final Decision (October 19, 2005).

Where an employee received pertinent disciplinary notices in which he was specifically advised of the applicable 20-day time period for appealing, but failed to do so, the appeal was dismissed; the applicable time limit is jurisdictional and mandatory. In re Floyd, OAL Dkt. No. CSV 5660-03, 2005 N.J. AGEN LEXIS 427, Initial Decision (August 19, 2005), adopted (Merit System Board September 21, 2005).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. Russ v. Human Services Department, 95 N.J.A.R.2d (CSV) 647.

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 Commission hearings

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

(b) Major discipline hearings will be heard by the Commission or referred to the Office of Administrative Law for hearing before an administrative law judge, except that an appeal by certain law enforcement officers or firefighters of a removal shall be heard as provided in N.J.A.C. 4A:2-2.13. Minor discipline matters will be heard by the Commission or referred to the Office of Administrative Law for a hearing before an administrative law judge for an employee's last suspension or fine for five working days or less where the aggregate number of days the employee has been suspended or fined in a calendar year, including the last suspension or fine, is 15 working days or more, or for an employee's last suspension or fine where the employee receives more than three suspensions or fines of five working days or less in a calendar year. See N.J.A.C. 1:1 for OAL hearing procedures.

1. Where an employee has pled guilty to or been convicted of a crime or offense which is cause for forfeiture of employment under N.J.S.A. 2C:51-2, but the court has not issued an order of forfeiture, the Commission shall not refer the employee's appeal for a hearing regarding the applicability of N.J.S.A. 2C:51-2 nor make a determination on that issue. See N.J.A.C. 4A:2-2.7.

2. Where a court has entered an order of forfeiture, and the appointing authority has so notified the employee, but the employee disputes whether an order of forfeiture was actually entered, the Commission may make a determination on the issue of whether the order was actually entered. See N.J.A.C. 4A:2-2.7.

3. Notwithstanding (b)1 and 2 above, the Commission may determine whether an individual must be discharged from a State or local government position due to a permanent disqualification from public employment based upon the prior conviction of a crime or offense involving or touching on a previously held public office or employment, provided, however, that the Attorney General or county prosecutor has not sought or received a court order waiving the disqualification provision. See N.J.S.A. 2C:51-2(d) and (e).

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

(d) The Commission 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.
Amended by R.2000 d.433, effective October 16, 2000.
See: 32 N.J.R. 2275(a), 32 N.J.R. 3870(a).
In (b), amended the N.J.A.C. reference in the introductory paragraph, and added 1 through 3.
Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
In (b), added the second sentence.
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Section was "Board hearings". Substituted "Commission" for "Board" throughout; in (a), substituted "Chairperson or the Chairperson's" for "Commissioner or Commissioner's"; and in the introductory paragraph of (b), inserted ", except that an appeal by certain law enforcement officers or firefighters of a removal shall be heard as provided in N.J.A.C. 4A:2-2.13".
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.

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).

While an Administrative Law Judge properly concluded that a correction officer did not verbally abuse inmates or other officers when, in a justifiably agitated condition, he randomly yelled in the presence of a fellow officer and inmates, and that such conduct constituted, at most, a disturbance on State property, the ALJ could not simply order that a 10-day suspension be modified to an oral reprimand. An oral reprimand was not minor discipline within the meaning of N.J.A.C. 4A:2-3.1(a); therefore, the Commission modified the officer's discipline to an official written reprimand (adopting in part and rejecting in part 2010 N.J. AGEN LEXIS 45). In re Desmond, OAL Dkt. No. CSV 8989-08, 2010 N.J. CSC LEXIS 584, Final Decision (March 10, 2010).

Although an employee may have acted in self-defense when physically provoked by her supervisor, the employee should not have continued with the physical exchange by pulling her supervisor's hair. Such conduct warranted major discipline; however, removal was too harsh a penalty given that the employee was not the instigator of the fight and had no prior disciplinary history in her 11 years of State service. A 30 working day suspension was appropriate under the circumstances. In re Owens, OAL Dkt. No. CSV 386-09S, 2009 N.J. CSC LEXIS 1435, Civil Service Comm'n Decision (October 7, 2009).

Five-day, rather than 10-day, suspension of a county correction officer was appropriate where the officer violated the appointing authority's rules by failing to ask for and secure the trailer keys from a fellow officer he was relieving; the officer was required to "maintain control of all equipment, keys, and logbook" and was guilty of incompetency, conduct unbecoming a public employee, and neglect of duty in failing to secure the proper equipment (rejecting 2009 N.J. AGEN LEXIS 290). In re Rosario, OAL Dkt. No. CSV 5829-08, 2009 N.J. AGEN LEXIS 1006, Final Decision (July 8, 2009).

Where an ALJ found, on conflicting evidence, that a former correction sergeant had a conversation with officers under his supervision in which he made sexually explicit comments towards one of them, the sergeant clearly violated of the New Jersey State Policy Prohibiting Discrimination in the Workplace; however, the sergeant had a 24-year career with the Department with only one minor discipline of an official reprimand in the 10 years prior to the incident, justifying a modification of the 10-day suspension imposed by the appointing authority to a 6-day suspension (adopting 2008 N.J. AGEN LEXIS 1258). In re Ross, OAL Dkt. No. CSV 8839-07, 2009 N.J. AGEN LEXIS 1001, Civil Service Comm'n Decision (April 15, 2009).

A police officer's presence in his police uniform while conducting personal business as a property manager may have coerced a resident into signing an agreement that she would not have necessarily signed; and the officer clearly conducted private business while on duty and even engaged other officers while pursing his personal interest. The officer was originally fined 15 days' pay relating to three specifications, but because only one of the specifications was upheld, the officer's penalty was modified to 5 days' pay. In re Sampson, OAL Dkt. No. CSV 126-08, 2009 N.J. AGEN LEXIS 968, Final Decision (February 25, 2009).

While a senior correction officer's conduct in refusing to provide the log book to a superior officer and making the statement that he would hand it over when he was "good and ready" were clearly insubordinate, the ALJ should not have modified his penalty from a 15-day suspension to a 120-day suspension where the alleged misconduct occurred in 2005 and the officer had been employed since May 1990, with his last disciplinary infraction occurring in 1995; the officer's actions, while inappropriate and insubordinate, were not so inherently egregious that they warranted an increase of the penalty in light of his long record of service and disciplinary history and the fact that the appointing authority chose a 15-day penalty (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1028). In re Copling, OAL Dkt. No. CSV 4275-07, 2009 N.J. AGEN LEXIS 983, Final Decision (February 11, 2009).

Deputy fire chief was entitled to appeal seven-day suspension as "major disciplinary action," notwithstanding appointing authority's argument that since deputy's normal work schedule was to work one 24-hour shift and then have three 24-hour tours off duty, with the 24-hour tour of duty being divided into two 12-hour shifts, therefore the deputy was effectively suspended for only two 24-hour tours of duty or a four-day suspension during the seven calendar day suspension. The five-day standard for major disciplinary action refers to five working days of not more than 40 hours of pay and since the deputy was suspended for 48 hours, his suspension was considered a major disciplinary action equal to six days and entitled him to a hearing on the discipline. In re Crowder, OAL Dkt. No. CSV 2998-08, 2008 N.J. AGEN LEXIS 1053, Final Decision (October 22, 2008).

Based on a library assistant's disciplinary record, including a recent 10-day suspension, and the nature of the incident, in which the assistant was argumentative and loud to the public information officer, resulting in the officer asking the assistant to leave her office five times before he finally left, a 30-day suspension, rather than 15 days as recommended by the ALJ, was the appropriate penalty. In re Daughtry, OAL Dkt. No. CSV 10171-06, 2008 N.J. AGEN LEXIS 586, Final Decision (May 7, 2008).

Although a prison cooking instructor had valid, substantiated excuses as to why she was absent from work one day and why she did not call her supervisor in a timely manner on another, she failed to present a convincing reason for failing to abide by the appointing authority's call-on and call-off policy for a third absence, even in light of the accommodations the instructor received under the FMLA; however, removal was not consistent with the principles of progressive discipline, considering that the instructor's prior record consisted of only minor discipline and her medical condition mitigated the offense. In re Debias, OAL Dkt. No. CSV 6114-07, 2008 N.J. AGEN LEXIS 508, Merit System Board Decision (May 7, 2008).

Removal of a high school security guard for chronic or excessive absenteeism and violation of Consent Order was modified to a resignation in good standing, where the employee's absences were due to her disability, domestic violence incidents, and/or child care concerns; although the employee may not have provided timely documentation for her absences, she did eventually present documentation. In re Sanders,

OAL Dkt. No. CSV 11115-07, 2008 N.J. AGEN LEXIS 591, Final Decision (April 23, 2008).

Removal modified to resignation in good standing for a nursing home Institutional Attendant whose medical condition rendered her incapable of performing the essential lifting functions of the position; in light of the fact that the employee's problems were not specifically performance related or based on misconduct, and were based instead on a documented medical condition, the disciplinary penalty of removal was unduly harsh. In re Clarke, OAL Dkt. No. CSV 4495-07, 2008 N.J. AGEN LEXIS 551, Final Decision (April 23, 2008).

Senior alcoholism counselor who failed to comply with repeated directives to complete the mandatory coursework required to obtain the proper license/certification for her position could not perform the essential functions of her job and separation from employment was required; however, in light of the fact that the counselor's problems were not specifically performance related or based on misconduct, but were based instead on a change in the qualifications needed to hold her title, the disciplinary penalty of removal was modified to a resignation in good standing. In re VanDerveer, OAL Dkt. No. CSV 6265-07, 2008 N.J. AGEN LEXIS 511, Final Decision (February 27, 2008).

Based on divergent testimony and a credibility determination regarding certain critical facts, Fire Alarm Operator (also known as a dispatcher) falsely represented himself as a firefighter to a police officer during a motor vehicle stop, constituting conduct unbecoming a public employee, and left his confinement during sick leave without first contacting his tour commander; Merit System Board increased 30-working day suspension to 120-working day suspension (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 3). In re McFadden, OAL Dkt. No. CSV 07267-07, 2008 N.J. AGEN LEXIS 579, Final Decision (February 13, 2008).

Penalty increased to a 45 working day suspension for a School Clerk who was found, on conflicting evidence, to have engaged in such conduct as leaving her post without authorization and making defiant and disrespectful comments to a supervisor. The employee's infractions were consistent with a prior pattern of similar misconduct and served as a significant disruption to the smooth functioning of the appointing authority, and the employee's apparent disrespectful attitude was especially a concern given the educational setting (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 735). In re Ramos, OAL Dkt. No. CSV 3883-07, 2008 N.J. AGEN LEXIS 541, Final Decision (February 13, 2008).

Where police officer was charged with violating order to attend a pistol range for weapons qualifications by failing to attend or notify his supervisor of his absence, ALJ's imposition of eight-day suspension (forfeiture of eight vacation days) was improper and penalty was increased to a 120 working day suspension. It was implausible that an experienced police officer could have mistakenly thought that the mandatory firearms training conducted twice per year under the guidelines of the State Attorney General would be optional for him, and in light of the officer's extensive disciplinary record, his actions were egregious and worthy of a severe sanction, placing him on notice that any future infraction might lead to his removal from employment. In re Martin, OAL Dkt. No. CSV 1303-06, 2008 N.J. AGEN LEXIS 528, Final Decision (January 16, 2008).

Eight-day suspension for unauthorized absences was not warranted where the evidence showed that supervisors condoned the practice of leaving work early upon completion of an inspection and the supervisors themselves received six and eight-day suspensions; nonetheless, the ALJ's recommendation of a one-day suspension was not sufficient, and a more appropriate penalty was a five-day suspension (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 732). In re Thompson,

Firefighter entitled to back pay for period of suspension while awaiting outcome of criminal indictment. Naro v. Trenton Fire Department, 96 N.J.A.R.2d (CSV) 234.

Reinstatement of guard at correctional facility was required when he did not intentionally trip or kick inmate. Finley v. Wagner Youth Correctional Facility, 95 N.J.A.R.2d (CSV) 676.

Agency awarding employee back pay was entitled to offset unemployment benefits as long as state was reimbursed. Bellamy v. Essex County Hospital, 95 N.J.A.R.2d (CSV) 652.

Public employee was entitled to back pay for period of indefinite suspension that was improper, incorrect and invalid. Gonzalez v. Essex County, 95 N.J.A.R.2d (CSV) 200.

Medical expenses to be paid after improper reduction in force action. Takakjian v. Fairview Borough Board of Education, 93 N.J.A.R.2d (EDU) 184.

Employee was entitled to back pay following acquittal. Scouler v. ***Housing Services*** and Code Enforcement, City of Camden, 93 N.J.A.R.2d (CSV) 40.

Employee not entitled to back pay for period of suspension even if she successfully completed intervention program. Amison v. New Jersey Department of Environmental Protection, 92 N.J.A.R.2d (CSV) 568.

Employee was entitled to back pay for period of suspension pending disposition of criminal charges. Kelly v. City of Camden, 92 N.J.A.R.2d (CSV) 537.

Initial suspension from employment violated due process; later valid removal; no entitlement to back pay. Brantley v. New Jersey State Prison, 92 N.J.A.R.2d (CSV) 37.

Employee entitled to reinstatement and back pay. N.J.S.A. 11A:1-1 et seq. Holmes v. Essex County, 91 N.J.A.R.2d (CSV) 65.

Appellant, removed from employment and later reinstated with back pay, denied counsel fees; appellant entitled to award of 30 vacation days (citing former N.J.A.C. 4:1-5.5). Harrington v. Dep't of Human Services, 11 N.J.A.R. 537 (1989).

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-16.14). Valluzzi v. Bergen County, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

4A:2-2.11 Interest

(a) When the Commissioner or Board makes an award of back pay, it may also award interest in the following situations:

1. When an appointing authority has unreasonably delayed compliance with an order of the Commissioner or Board; or

2. Where the Board finds sufficient cause based on the particular case.

(b) Where applicable, interest shall be at the annual rate as set forth in New Jersey court rules, R.4:42-11.

(c) Before interest is applied, an award of back pay shall be reduced in accordance with N.J.A.C. 4A:2-2.10(d)2 and 3.

Administrative Correction.
See: 26 N.J.R. 198(a).

4A:2-2.12 Counsel fees

(a) The Civil Service 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.

(b) When the Commission awards counsel fees, the actual amount shall be settled by the parties whenever possible.

(c) Subject to the provisions of (d) and (e) below, 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 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.

(d) 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.

(e) 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.

(f) Counsel fees incurred in matters at the departmental level that do not reach the Civil Service Commission on appeal or are incurred in furtherance of appellate court review shall not be awarded by the Commission.

(g) 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. Costs associated with normal office overhead shall not be awarded.

(h) The attorney shall submit an affidavit and any other documentation to the appointing authority.

(i) If settlement on an amount cannot be reached, either party may request, in writing, Commission review.

(j) See N.J.A.C. 4A:2-2.13 for situations in which certain law enforcement officers or firefighters have appealed a removal.

Amended by R.2001 d.424, effective November 19, 2001.
See: 33 N.J.R. 2725(a), 33 N.J.R. 3280(a), 33 N.J.R. 3895(a).
Rewrote (a) and (c); added new (d) through (g), and recodified existing (d) and (e) as (h) and (i).
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Substituted "Civil Service Commission" for "Merit System Board" and "Commission" for "Board" throughout; and added (j).
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.

Case Notes

After considering both N.J.A.C. 4A:2-2.12(e) and N.J. Ct. R. Prof. Conduct 1.5(a), counsel for an official at a mental health residential facility was entitled to an hourly fee of $250, given the complexity of the case and the amount of skill required to adequately represent his client, who was subject to discipline for failing to develop an intervention plan to deal with a patient's behavioral disorder, and that patient died, as counsel had to be alert to the potential implications for his client of the testimony put forth by each of the various witnesses; further, the court did not think it could seriously be disputed that attorneys of a similar background and experience as counsel herein would customarily charge an equivalent or greater amount for their services in this type of case. In re Malone, 381 N.J. Super. 344, 886 A.2d 181, 2005 N.J. Super. LEXIS 340 (App.Div. 2005).

Merit System Board had the statutory authority to make an award to township police officer for counsel fees incurred in connection with police department hearing which had preceded officer's appeal to the Merit System Board, regarding officer's claim for reinstatement; the departmental hearing was an integral part of the civil service process. Burris v. Police Department, Township of West Orange, 769 A.2d 1112 (2001).

Regulation mandating the award of counsel fees was intended to apply in cases where disciplinary charges did not arise out of employee's lawful exercise of powers in furtherance of official duties. Marjarum v. Township of Hamilton, 336 N.J.Super. 85 (A.D. 2001).

Statute and its accompanying regulation, allowing Merit System Board to award fees to employee who has prevailed on all or substantially all of the primary issues, authorized fee award to police officer. Oches v. Township of Middletown Police Dept., 155 N.J. 1, 713 A.2d 993 (N.J. 1998).

Municipal employee whose removal was mitigated to six-month suspension by Merit System Board was not entitled to award of counsel fees as prevailing party under regulation. Walcott v. City of Plainfield, 282 N.J.Super. 121, 659 A.2d 532 (A.D.1995).

Initial Decision (2008 N.J. AGEN LEXIS 613) adopted, which concluded that while the appointing authority had withdrawn some of the charges against a township police officer, the Merit System Board had sustained the other serious charges against the officer resulting in his removal from office, and the officer's request for counsel fees lacked merit since he had not prevailed on all or substantially all of the primary issues of his appeal. In re Hawkins, OAL Dkt. No. CSV 4469-05, 2008 N.J. AGEN LEXIS 1222, Final Decision (December 3, 2008).

Correction officer was not entitled to counsel fees although the penalty against the officer was modified from removal to a 60-day suspension; the officer did not prevail on all or substantially all of the primary issues in the appeal because two of the charges against the officer were sustained and major discipline was imposed. In re Pettiford, OAL Dkt. No. CSV 8801-07, 2008 N.J. AGEN LEXIS 719, Merit System Board Decision (May 21, 2008).

Employee was entitled to an award of partial counsel fees where she prevailed on one of two charges against her, including an allegation of conduct unbecoming a public employee; the remaining charge of neglect of duty for failure to place $5 in the proper place was not egregious. In re Payton, OAL Dkt. No. CSV 7740-05, 2007 N.J. AGEN LEXIS 1168, Merit System Board Decision (January 17, 2007).

Charge of possession of controlled, dangerous substance was not supported by credible evidence and required public employee's reinstatement after removal. Ramos v. Department of Corrections, 95 N.J.A.R.2d (CSV) 413.

Removal of plant operator not justified; charges against him were indefinite and inconsistent with job requirements. Onori v. City of Burlington Department of Public Works, 95 N.J.A.R.2d (CSV) 53.

Police officer was entitled to reimbursement of the expenses of his defense when allegations against the officer were dismissed. Black v. Lakehurst Borough Police Department, 94 N.J.A.R.2d (CSV) 35.

Reasonable and partial attorney fee award. Gill v. State Dept. of Health, 92 N.J.A.R.2d (CSV) 142.

Reprimand and ten days' suspension would be reversed and attorney fees would be awarded. Neal v. Police Dept., City of New Brunswick, 92 N.J.A.R.2d (CSV) 52.

Officer was entitled to unmitigated back pay but was not entitled to attorney fees or interest. N.J.S.A. 11A:11-5. Franklin v. City of Atlantic City, 91 N.J.A.R.2d (CSV) 71.

Appellant, removed from employment and later reinstated with back pay, denied counsel fees; appellant entitled to award of 30 vacation days (citing former N.J.A.C. 4:1-5.6). Harrington v. Dep't. of Human Services, 11 N.J.A.R. 537 (1989).

4A:2-2.13 Removal appeals of certain law enforcement officers and firefighters

(a) For purposes of this section:

1. "Law enforcement officer" or "officer" is defined as an individual employed as a permanent, full-time member of a State, county, or municipal law enforcement agency who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State and statutorily required to successfully complete a training course approved by, or certified as substantially equivalent to such an approved course, by the Police Training Commission. See N.J.S.A. 52:17B-66 et seq. With the exception of the Juvenile Justice Commission, which is covered by this definition, the Department of Law and Public Safety shall not be considered a law enforcement agency for purposes of this definition.

2. "Firefighter" is defined as a full-time, paid firefighter employed by a public fire department as provided in N.J.S.A. 40A:14-200.

3. "Appellant" refers to a "law enforcement officer" or "firefighter" as defined in (a)1 and 2 above.

4. "Removal," "removal date," "and "removal effective date" shall mean the first date on which the law enforcement officer or firefighter is separated from employment without pay.

(b) If the law enforcement officer or firefighter requests a departmental hearing regarding his or her removal in accordance with N.J.A.C. 4A:2-2.5, the appointing authority shall conduct a hearing within 30 days of the removal's effective date, unless:

1. The officer or firefighter agrees to waive his or her right to the hearing; or

2. The officer or firefighter and the appointing authority agree to an adjournment of the hearing to a later date.

(c) The appointing authority shall issue a Final Notice of Disciplinary Action within 20 days of the hearing and serve the Final Notice to the appellant either by personal service or certified mail. If the appointing authority does not hold a hearing as required in (b) above, the appointing authority shall issue a Final Notice within 30 days of the removal effective date.

(d) The officer or firefighter shall have 20 days from the date of receipt of the Final Notice to appeal the removal. Receipt of the Final Notice on a different date by the appellant's attorney or negotiations representative shall not affect this appeal period. If the appellant does not receive the Final Notice as required by (c) above, he or she shall file an appeal of removal within a reasonable time. The officer or firefighter shall file the appeal simultaneously with the Office of Administrative Law and the Civil Service Commission using the Law Enforcement Officer and Firefighter Removal Appeal Form in the Appendix to this section. If the appellant files an appeal within 20 days of receipt of the Final Notice with the Civil Service Commission but not with the Office of Administrative Law, or the appellant files an appeal within 20 days of receipt of the Final Notice with the Office of Administrative Law but not with the Commission, the appeal shall still be considered timely. However, if the appellant fails to submit the appeal within 20 days to either the Office of Administrative Law or the Commission, the appeal shall be considered untimely and the Commission shall dismiss the appeal. See N.J.A.C. 1:4B for processing of the appeal at the Office of Administrative Law.

1. If the appellant fails to provide the information and documents required by the Law Enforcement Officer and Firefighter Removal Appeal Form, after notice of and reasonable opportunity to correct the deficiency, the Commission may dismiss the appeal.

(e) Once the administrative law judge at the Office of Administrative Law who is presiding over an officer or firefighter's removal appeal renders an initial decision, the Office of Administrative Law shall immediately transmit the decision to the Commission for review.

(f) The Commission shall complete its review and issue its final administrative determination regarding the appellant's removal appeal within 45 days of the Commission's receipt of the administrative law judge's initial decision. If the Commission does not issue its final administrative determination within 45 days, the administrative law judge's initial decision shall be deemed the final administrative determination, except that the Commission may, at its discretion, extend its review period by no more than an additional 15 days. If the Commission does not issue a final administrative determination by the end of the additional 15-day period, the administrative law judge's initial decision shall be deemed the final administrative determination, unless, for good cause, the Chairperson of the Commission provides a signed order of extension to the Director of the Office of Administrative Law and serves copies on all affected parties.

(g) The Commission's final administrative determination shall be rendered within 180 calendar days from the date on which the officer or firefighter was initially suspended without pay, except that:

1. This 180-day limit shall not apply to disciplinary charges related to a pending criminal investigation, nor to disciplinary charges which allege conduct that would constitute a violation of criminal law and which seek removal from employment. See N.J.S.A. 40A:14-201(a).

(h) If the Commission fails to render a final administrative determination of an appeal of an officer's or firefighter's removal from employment within the required 180 days, the appellant shall begin receiving the base salary that he or she was receiving at the time of his or her removal and shall continue to receive such salary until the Commission renders a final administrative determination, provided, however, that the following days shall not be counted toward the 180-day period:

1. The period between the date of removal and the date on which the officer or firefighter requests a departmental hearing;

2. The period of agreed-upon adjournment of a departmental hearing;

3. The period between the date of removal and the date on which the appellant appeals a Final Notice of Disciplinary Action with the Office of Administrative Law and the Civil Service Commission;

4. If applicable, the gap in time between the date of timely filing of an appeal with the Office of Administrative Law and the date of filing of the appeal with the Civil Service Commission;

5. If applicable, the gap in time between the date of timely filing with the Civil Service Commission and the date of filing of the appeal with the Office of Administrative Law;

6. The period of time for which appellant or his or her attorney or negotiations representative requests and is granted postponement of a hearing or other delay;

7. The period of time during which the appellant or his or her attorney or negotiations representative causes by his or her actions a postponement, adjournment or delay of a hearing;

8. The period of time for which the appellant or his or her attorney or negotiations representative agrees with the appointing authority to a postponement or delay of a hearing;

9. The period of time during which the administrative law judge or the Civil Service Commission, for good cause, postpones or delays a hearing;

10. The period of time for which the administrative law judge has been granted an extension for filing an initial decision in accordance with N.J.A.C. 1:1-18.8; and

11. The period of time for which the Commission has extended its period of review of the administrative law judge's initial decision in accordance with (f) above.

(i) The following are special circumstances which may affect the receipt of the appealing officer's or firefighter's base salary after the 180-day period:

1. If the appellant or the appellant's representative requests and is granted, or otherwise causes by his or her actions, the postponement, adjournment, or delay of a hearing, the appellant shall not receive full pay during the period of postponement, adjournment, or delay of a hearing.

2. The appellant shall not continue to receive his or her base salary if the administrative law judge's initial decision recommends that the appellant's appeal be denied, unless and until such time as the Civil Service Commission renders a final administrative decision rejecting the administrative law judge's recommendation and ordering the appellant's reinstatement to employment.

3. If the administrative law judge's initial decision recommends reversal of the removal, or that the officer or firefighter receive discipline other than removal, the appellant shall receive his or her base salary on the date provided in the administrative law judge's initial decision, provided, however, that if the appellant is already receiving his or her base salary at the time of the administrative law judge's initial decision, the appellant shall continue to receive such base salary.

4. If the Civil Service Commission grants the officer's or firefighter's appeal, the appointing authority shall immediately reinstate the appellant to employment, and the appellant shall receive his or her base salary, as well as, within 60 days of the issuance of the Commission's decision, all back pay, benefits, seniority, and counsel fees that may be due in accordance with N.J.A.C. 4A:2-2.10 and 2.12.

5. If the officer or firefighter appeals a Civil Service Commission decision upholding his or her removal to the Superior Court, Appellate Division, the appellant shall not be entitled to receive his or her base salary.

6. If the appointing authority appeals the Civil Service Commission decision to the Superior Court, Appellate Division, the officer or firefighter shall continue to receive his or her base salary during the pendency of the appeal.

(j) The following relates to an officer's or firefighter's obligation to reimburse his or her base salary to the appointing authority:

1. If the Civil Service Commission denies the officer's or firefighter's appeal, the appellant shall reimburse the appointing authority all pay he or she has received during the period of appeal. If the officer or firefighter fails to do so, the appointing authority may have a lien for the amount owed on any and all property and income to which the appellant has or will have an interest in, in accordance with N.J.S.A. 40A:14-205(b).

2. If the appellate court affirms the appointing authority's removal of the officer or firefighter, the appellant shall reimburse the appointing authority for all pay he or she has received during the period of appeal. If the officer or firefighter fails to do so, the appointing authority may have a lien for the amount owed on any and all property and income to which the appellant has or will have an interest in, in accordance with N.J.S.A. 40A:14-206(b).

APPENDIX

OFFICE OF ADMINISTRATIVE LAW/CIVIL SERVICE COMMISSION

LAW ENFORCEMENT OFFICER & FIREFIGHTER REMOVAL APPEAL FORM

Use this form to submit an appeal of removal of a law enforcement officer or firefighter to the Office of Administrative Law and Civil Service Commission

1.

Employee Name: _____

Address: _____

_____

(City) (State) (Zip Code)

Telephone: (____) ____ - _____ Email: _____

2.

The following information **MUST** be provided:

Date of incident subject to removal: _____

Date employee served with Final Notice of Disciplinary Action: _____

3.

You **MUST** provide BOTH of the following:

Preliminary Notice of Disciplinary Action **and** Final Notice of Disciplinary Action

4.

Give a copy of this form and attachments to your Personnel Officer/Employer - Representative

Employing Agency Name: _____

Personnel Officer's/Employer Representative's Name: _____

Address: _____

_____

(City) (State) (Zip Code)

Telephone: (____) ____ - _____ Fax# (____) ____ - _____

Email: _____

5.

If you will be represented by a lawyer or union representative at the hearing, please complete:

Representative Name: _____

Union or Law Firm: _____

Address: _____

_____

(City) (State) (Zip Code)

Telephone: (____) ____ - _____ Fax# (____) ____ - _____

Email: _____

6. Appointing Authority Attorney for Appeal, if known:

Name: _____

Address: _____

_____

(City) (State) (Zip Code)

Telephone: (___) ___ - _____ Fax# (___) ___ - _____

Email: _____

Note: Your appeal will not be processed unless this appeal form **with attachments** is completed, signed and submitted to the Office of Administrative Law **and** the Civil Service Commission. A copy of this appeal **must** also be served upon the appointing authority (your employer). You **must** submit this appeal to both the Office of Administrative Law and the Civil Service Commission within twenty (20) days after you receive the Final Notice of Disciplinary Action. If your appeal is not submitted within twenty (20) days, it **will be dismissed.** You must seek alternate employment; failure to do so may reduce the back pay award.

Pursuant to N.J.S.A. 11A:4-1.1 there is a $20 fee for disciplinary appeals. The filing fee of $20 must be submitted to the Civil Service Commission along with the appeal form. Payment must be made by check or money order only, payable to NJCSC. Persons receiving public assistance pursuant to N.J.S.A. 44:8-107 et seq., N.J.S.A. 44:7-85 et seq., or N.J.S.A. 44:10-55 et seq., and veterans as defined by N.J.S.A. 11A:5-1 et seq., are exempt from this appeal fee.

SIGNATURE

_____ _____

EMPLOYEE/EMPLOYEE REPRESENTATIVE **DATE**

Mail to: Civil Service Commission
Attention: Hearings Unit-Unit H
PO Box 312
Trenton, NJ 08625-0312

AND

Office of Administrative Law
Attention: Clerk's Office
Direct Filing
33 Washington Street
Newark, New Jersey 07102

Hand Deliver: Civil Service Commission
3 Station Plaza
44 South Clinton Avenue
Trenton, NJ 08625

AND

Office of Administrative Law
Attention: Clerk's Office
Direct Filing
7th Floor
33 Washington Street
Newark, New Jersey 07102

Special new rule, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Readopted new rule, R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.

Amended by R.2012 d.008, effective January 3, 2012.
See: 43 N.J.R. 2396(a), 44 N.J.R. 65(b).
Added (d)1; and rewrote the appendix.

(e) Where the resignation is reversed, the employee shall be entitled to remedies under N.J.A.C. 4A:2-2.10.

(f) The appointing authority or the Board may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.

Public Notice on Resignation not in good standing.
See: 22 N.J.R. 3407(b).
Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Revised (b)-(c).

Case Notes

Although under certain circumstances a resignation not in good standing may be modified to a resignation in good standing when an employee, through no misconduct or fault of her own, could not perform her duties, an ALJ erred in so modifying an employee's penalty where the employee clearly engaged in misconduct and simply did not report to work as required for five business days; additionally, the ALJ applied the tenets of progressive discipline which were not usually considered when determining whether to modify a resignation not in good standing to a resignation in good standing (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 477). In re Jackson, OAL Dkt. No. CSV 10620-08, 2009 N.J. AGEN LEXIS 790, Final Decision (August 5, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 287) adopted, which found that a truck driver was properly resigned not in good standing for his unreported and unauthorized absences following a 45-day suspension; the driver was informed of and familiar with the call-in policy and procedure and he failed to provide his employer with information regarding the medical reason for his absences, information about when he would return to work, or which days he would be absent. In re White, OAL Dkt. No. CSV 060-09, 2009 N.J. AGEN LEXIS 962, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 114) adopted, which found that a secretary was properly resigned as not in good standing where she failed to report to work from the first week of October 2006 forward and did not contact her supervisors to advise them of her absence, to explain the reason for her failure to report to work or to seek approval for her month absence within the regulatory five-day period or at any time before the charges were issued against her; the secretary's contention that the appointing authority did not enforce its policy regarding the submission of leave of absence documentation as to her was not supported by the record. In re Bridges, OAL Dkt. No. CSV 7819-07, 2009 N.J. AGEN LEXIS 995, Final Decision (April 29, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 69) adopted, which found that a senior food services handler was deemed to have resigned not in good standing after she failed to appear at work for two months; although she claimed to have suffered from depression, there was no evidence that she would have been entitled to medical leave had she requested it, since her alleged condition was undocumented, she was not receiving medication, and she did not appear to have been under a physician's care. In re Montgomery, OAL Dkt. No. CSV 02307-08, 2009 N.J. AGEN LEXIS 889, Final Decision (March 11, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 38) adopted, which found that an assistant personnel director was properly resigned not in good standing after he had been granted multiple leave extensions and was examined by the County's physician and found fit to return to his position, but failed to do so. In re Simisak, OAL Dkt. No. CSV 6156-08, 2009 N.J. AGEN LEXIS 823, Final Decision (March 11, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 847) adopted, which concluded that a city laborer was deemed to have abandoned his position when he was absent for more than five consecutive business days, and his absenteeism and lateness was chronic and excessive; the laborer was absent from work 22 times, late to work 11 times, failed to call in to work 2 times, and was also absent more than 19 consecutive days when he was incarcerated in a drug rehabilitation program, but never informed anyone. In re Mickens, OAL Dkt. No. CSV 07248-08, 2008 N.J. AGEN LEXIS 1206, Final Decision (November 6, 2008).

While appointing authority met its burden in establishing that a secretarial assistant 1 (non-stenographic) failed to return to work for five or more consecutive days after an approved leave of absence following her carpal tunnel surgery, discipline of a resignation not in good standing was modified to a 15-day suspension where there was a complete breakdown of communication between the employee and the appointing authority. The employee's supervisor failed to return the employee's calls, did not contact the employee when she failed to return to work, and did not communicate to the employee that a light duty plan was developed for her. The employee failed to state her needs to her supervisor, failed to find out if light duty was available and the details of any such accommodation, and failed to be more diligent in contacting the appointing authority with her medical needs and requirements. In re Cannuli, OAL Dkt. No. CSV 4533-07, 2008 N.J. AGEN LEXIS 1059, Civil Service Comm'n Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 220) adopted, which concluded that a licensed practical nurse (LPN) was properly terminated under the designation of resignation not in good standing based on unauthorized absenteeism for five or more days, pursuant to N.J.A.C. 4A:2-6.2; the LPN had previously been disciplined numerous times for absenteeism, and in this instance the chronic absences critically affected the infirmary's ability to function. In re Uhland, OAL Dkt. No. CSV 08226-02, 2008 N.J. AGEN LEXIS 583, Final Decision (April 23, 2008).

Resignation not in good standing was the proper disciplinary action after an employee failed to report to work for four consecutive days due to his incarceration; the appointing authority was under no obligation to provide the employee with a leave for incarceration (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 52). In re Hidalgo, OAL Dkt. No. CSV 4029-07 (CSV 6712-06 On Remand), 2008 N.J. AGEN LEXIS 1433, Final Decision (March 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 82) adopted, which found that a Human Services Assistant was properly removed following his conviction for simple assault and failure to appear at work for five consecutive days. In re Hammie, OAL Dkt. No. CSV 4526-07, 2008 N.J. AGEN LEXIS 554, Final Decision (March 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 64) adopted, which concluded that "resignation not in good standing" of a sanitation truck driver was the proper disciplinary action under N.J.A.C. 4A:2-6.2(b) where the driver was absent without approval from his superior from July 25, 2005, to August 10, 2005, and there was no indication that he ever requested approval for the absences; the driver was not incarcerated during this period, and the stresses that he experienced due to a death in the family did not justify his failure to make a telephone call to his employer. In re Purkett, OAL Dkt. No. CSV 13063-05, 2008 N.J. AGEN LEXIS 529, Final Decision (March 12, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 666) adopted, which concluded that a psychiatric hospital employee's conduct fell within the definition of a resignation not in good standing under N.J.A.C. 4A:2-6.2(c) because whatever the employee believed about the length of her leave, she filed two sets of papers putting the end date prior to her return, did not go to the doctor until after the day she said she thought she was due back at work, and delayed several weeks in filing documentation that might have affected the hospital's willingness to take her back; however, balancing the need for adequate staffing in the facility with the employee's lack of prior discipline, a 90-day suspension rather than resignation was warranted. In re Bazile, OAL Dkt. No. CSV 00478-07, Final Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 374) adopted, which concluded that a sanitation employee who was familiar with the process of requesting a leave extension, having done so on two prior occasions, was properly removed. While the director approved the extension, it was clear that the director's approval was only the initial step in the approval process and that the ultimate approval was denied until the employee

supplied certain required documentation; the employee failed to provide such documentation as was clearly provided for in the notice and which was further required pursuant to a telephone conversation with the clerk. In re Braswell, OAL Dkt. No. CSV 09148-06, 2007 N.J. AGEN LEXIS 1178, Final Decision (August 15, 2007).

Employee was improperly determined to have resigned her employment with the appointing authority by failure to return to work after an authorized leave; the employee was receiving temporary disability benefits and it was unreasonable to demand that she return to work while collecting such benefits (adopting 2007 N.J. AGEN LEXIS 398). In re Johnson, OAL Dkt. No. CSV 750-06, 2007 N.J. AGEN LEXIS 1154, Merit System Board Decision (July 25, 2007), aff'd per curiam, No. A-0834-07T1, 2008 N.J. Super. Unpub. LEXIS 1729 (App.Div. November 28, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 275) adopted, which concluded that resignation not in good standing was warranted for a senior corrections officer who was absent for an extended time period in February after having exhausted sick leave; the ALJ found, based in part on credibility assessments, that the absences were without authorization. The officer had previous warnings and fines for excessive absenteeism. Given the dependence on manpower to maintain order and discipline at a correctional facility, it is imperative that correction officers be available for duty. In re Novielli, OAL Dkt. No. CSV 03981-06, Final Decision (May 7, 2007), aff'd per curiam, No. A-5890-06T2, 2009 N.J. Super. Unpub. LEXIS 350 (App.Div. February 24, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 43) adopted, which concluded that a laborer was improperly removed for unauthorized excessive absenteeism, including two incremental five working day consecutive periods, where the county failed to impose progressive discipline prior to termination. In re Porter, OAL Dkt. No. CSV 1146-06, 2007 N.J. AGEN LEXIS 347, Merit System Board Decision (March 16, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 995) adopted, which concluded that a Human Services Assistant did not abandon her position where she reasonably believed she had been approved for an extended leave of absence; the evidence revealed that she did not receive a letter from the appointing authority, indicating that it was missing the Certification of Health Care Provider form from her file. In re Dunmore, OAL Dkt. No. CSV 8687-05, 2007 N.J. AGEN LEXIS 1171, Merit System Board Decision (January 31, 2007).

Phrase "five or more consecutive business days" means consecutive business days in which an employee is scheduled to work, excluding scheduled time off, such as weekends and holidays. In re Pearn, OAL Dkt. No. CSV 7739-05, 2006 N.J. AGEN LEXIS 1124, Merit System Board Decision (December 6, 2006).

Where an employee provided evidence that he was suffering from and being treated for depression, the appointing authority unreasonably denied his request for medical leave and also failed to accommodate the employee's request for a change in his shift; the appointing authority offered no evidence that granting leave would have placed an undue burden on its operations nor did it show that any real attempt was made to accommodate the employee's change in shift request, which might have allowed him to return to work. In re Pearn, OAL Dkt. No. CSV 7739-05, 2006 N.J. AGEN LEXIS 1124, Merit System Board Decision (December 6, 2006).

Lifeguard abandoned his position pursuant to N.J.A.C. 4A:2-6.2(b), which was properly recorded as a resignation in good standing. Based on an assessment of the medical evidence, the ALJ rejected the employee's argument that his absence was justified because he did not have the physical capacity to return to work. In re Harris, OAL Dkt. No. CSV 03968-05, 2006 N.J. AGEN LEXIS 797, Initial Decision (September 25, 2006), adopted (Merit System Board November 11, 2006).

It was unreasonable for the appointing authority to deny the leave request of a correction officer in her working test period where there was no question that the officer was medically unable to work, and the appointing authority was aware of her situation before it terminated her; the appointing authority should have extended the officer's leave without pay, rather than taking action to remove her based on an unauthorized leave of absence. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

Employees in their working test period can be granted leaves of absence. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 921) adopted, which found that because the duties and responsibilities of a Human Services Assistant are of great public importance, the appointing authority was within its right to deny an assistant's request for an indefinite leave of absence; however, because the assistant's illness was what prevented him from returning to work after a temporary unpaid leave of absence, the harsh consequence of a resignation not in good standing, which would have precluded the assistant from seeking future public employment, was modified to a resignation in good standing from his position. In re Taylor, OAL Dkt. No. CSV 2842-05, 2006 N.J. AGEN LEXIS 102, Final Decision (January 11, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 680) adopted, which concluded that "resignation not in good standing" of a sanitation worker was the proper disciplinary action under N.J.A.C. 4A:2-6.2(b) because, although the worker was incarcerated, there was insufficient evidence that the worker or anyone designated by him informed the city of the reason for his failure to report to work for five consecutive days; the worker did not obtain authorization to be out of work and failed to take meaningful steps to ensure that the city was timely notified of his whereabouts in order to obtain approval for his absence. In re Amparbin, OAL Dkt. No. CSV 1547-03, 2005 N.J. AGEN LEXIS 1078, Final Decision (December 21, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 614) adopted, which found that a city employee subject to a Conditional Letter of Employment was properly penalized by a resignation not in good standing for repeated absences. The employee had not offered any documentation of his claim that he was receiving medical treatment and his absences had an adverse effect on his department. In re Hunt, OAL Dkt. No. CSV 11479-04, 2005 N.J. AGEN LEXIS 1248, Final Decision (November 22, 2005).

Probation officer's resignation not in good standing was modified to a resignation in good standing because, although the officer failed to report to work for five consecutive days after her request for a leave of absence was denied, the officer was unable to return to work for medical reasons (adopting as modified 2005 N.J. AGEN LEXIS 340). In re Sykes, OAL Dkt. No. CSV 4461-04, 2005 N.J. AGEN LEXIS 1195, Final Decision (September 7, 2005).

There was no showing that the appointing authority's denial of a leave of absence to a probation officer was unreasonable, and the employee was not eligible for leave under the Family and Medical Leave Act since she had not worked a minimum of 1,250 hours in the preceding 12 months. In addition, the appointing authority did not unreasonably deny the probation officer's request for an accommodation under the Americans with Disabilities Act to allow her to work from home and/or on a part-time basis, because the essential functions of the probation officer's position were performing site visits and intake services conferences, appearing in court, entering information into a centralized computer system, and assisting individuals who come into the office (adopting as modified 2005 N.J. AGEN LEXIS 340). In re Sykes, OAL Dkt. No. CSV 4461-04, 2005 N.J. AGEN LEXIS 1195, Final Decision (September 7, 2005).

Resignation pursuant to valid settlement agreement affirmed. Fuller v. New Jersey Department of Environmental Protection, 97 N.J.A.R.2d (CSV) 688.

Employee offering medical evidence for leave of absence defeats employer's resignation not in good standing action. Wright v. Burlington County Juvenile Detention Center, 97 N.J.A.R.2d (CSV) 555.

Storekeeper's abandonment of position justifies resignation not in good standing. Aikens v. Riverfront State Prison, 97 N.J.A.R.2d (CSV) 422.

Employee's unreliable work history and absence without approval justifies employer's resignation not in good standing. Roberts v. Thomas Edison State College, 97 N.J.A.R.2d (CSV) 382.

Progressive discipline supports suspension over resignation not in good standing when employee fails to report for duty. Hargis v. Forensic Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 335.

Unreasonable denial of medical leave precludes employer's removal action for abandoning position. Gilmore v. Veteran's Memorial Home, 97 N.J.A.R.2d (CSV) 332.

Practical nurse's resignation not in good standing for job abandonment modified to resignation in good standing. Miles v. Woodbridge Developmental Center, 97 N.J.A.R.2d (CSV) 222.

Resignation not in good standing for absence from duty modified to resignation in good standing. Bogar v. Department of Human Resources, 97 N.J.A.R.2d (CSV) 189.

Removal of laborer for abandonment of position modified to resignation in good standing. Niosi v. Department of Public Works, 97 N.J.A.R.2d (CSV) 161.

Nurse's refusal to work due to unsubstantiated knee injury justified implied resignation not in good standing. Gregg v. Woodbine Developmental Center, 96 N.J.A.R.2d (CSV) 594.

Clerk who failed to provide timely medical documentation for extension of medical leave resigned not in good standing. Littlejohn v. Division of Medical Assistance and Health Services, 96 N.J.A.R.2d (CSV) 471.