

CHAPTER 2

APPEALS, DISCIPLINE AND SEPARATIONS

Authority

N.J.S.A. 2C:51-2, 11A:1-2(e), 11A:2-6, 11A:2-11(h), 11A:2-13 et seq., 11A:4-15(c), 11A:8-4 and 52:14B-10(c).

Source and Effective Date

R.1992 d.414, effective September 22, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Executive Order No. 66(1978) Expiration Date

Chapter 2, Appeals, Discipline and Separations, expires on September 22, 1997.

Chapter Historical Note

Chapter 2, Appeals, Discipline and Separations, was adopted as R.1987 d.407, effective October 5, 1987. See: 19 N.J.R. 1013(a), 19 N.J.R. 1827(a). See, also, Historical Notes at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 5, 13, 16 and 23; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 16 and 23; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapter 16. Pursuant to Executive Order No. 66(1978), Chapter 2 was readopted as R.1992 d.414. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. APPEALS

4A:2-1.1 Filing of appeals

(a) All appeals to the Commissioner or Board shall be in writing, signed by the person appealing (appellant) or his or her representative and must include the reason for the appeal and the specific relief requested.

(b) Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed.

(c) The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

(d) Except where a hearing is required by law or these rules, or where the Commissioner or Board finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. In written record appeals:

1. Each party must serve copies of all materials submitted on all other parties; and
2. A party may review the file at the Department of Personnel during business hours.

(e) A party in an appeal may be represented by an attorney, authorized union representative or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of Administrative Law.

Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Added new (d)1.-2.

Law Review and Journal Commentaries

Civil Service—Disability Retirement—Police Seniority. Judith Nal-
lin, 133 N.J.L.J. No. 13, 55 (1993).

Case Notes

Time in which fire fighter was required to appeal decision of
township board of fire commissioners classifying fire fighters com-
menced when fire fighter learned of representations. Matter of Tavani,
264 N.J.Super. 154, 624 A.2d 75 (A.D.1993).

Appeals to Department of Personnel (DOP) and Merit System Board
by police officer were timely. Matter of Allen, 262 N.J.Super. 438, 621
A.2d 87 (A.D.1993).

Removal of provisional juvenile detention officer from eligible list
was improper without hearing by Merit System Board to resolve good
faith factual disputes. Matter of Wiggins, 242 N.J.Super. 342, 576 A.2d
932 (A.D.1990).

Civil Service Comm'n acted within its discretionary powers to deny
hearing and only allow petitioner to submit additional facts for review
(citing former N.J.A.C. 4:1-5.1). Honachefsky v. New Jersey Civil
Service Comm'n, 174 N.J.Super. 539, 417 A.2d 67 (App.Div.1980).

No timely appeal to the Merit Systems Board. N.J.S.A. 11A:1-1 et
seq. Pryor v. Township of Morristown, 92 N.J.A.R.2d (CSV) 18.

Time limits for appeal construed to have been met when petitioner
was advised a letter sent prior to final notice of disciplinary action
would act to reinstate her appeal (citing former N.J.A.C. 4:1-5.3).
Clark v. New Jersey Dep't of Agriculture, 1 N.J.A.R. 315 (1980).

4A:2-1.2 Stay and interim relief requests

(a) Upon the filing of an appeal, a party to the appeal
may petition the Commissioner for a stay or other relief
pending final decision of the matter.

(b) A request for a stay or interim relief shall be in
writing, signed by the petitioner or his or her representative
and must include supporting information for the request.

(c) The following factors will be considered in reviewing
such requests:

1. Clear likelihood of success on the merits by the
petitioner;
2. Danger of immediate or irreparable harm if the
request is not granted;
3. Absence of substantial injury to other parties if the
request is granted; and
4. The public interest.

(d) The filing of a petition for interim relief will not stay
administrative proceedings or processes.

(e) Each party must serve copies of all materials submit-
ted on all other parties.

(f) Following a final administrative decision by the Com-
missioner or the Board, and upon the filing of an appeal
from that decision to the Appellate Division of Superior
Court, a party to the appeal may petition the Commissioner
for a stay or other relief pending a decision by the Court in
accordance with the procedures and standards in (b) and (c)
above. See N.J. Court Rules 2:9-7.

(g) See N.J.A.C. 1:1-12.6 for interim relief rules on mat-
ters pending before the Office of Administrative Law.

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

Changed title from "Interim relief."

Added new (f) and relettered old (f) as (g) with stylistic revisions.

4A:2-1.3 Adjournments

(a) Any party requesting an adjournment of a hearing or
other review must establish good and sufficient reason for
such request. Such reason may include, but is not limited
to:

1. Unavoidable appearance by an attorney for a party
in any state or federal court; or
2. Illness of a party evidenced by an affidavit and a
doctor's certificate.

(b) Where an adjournment is found not to be for good
and sufficient reason, the Commissioner or Board may
impose a fine or penalty.

(c) See N.J.A.C. 1:1-9.6 for Office of Administrative Law
adjournment rules.

Case Notes

Appeal dismissed due to retirement and resignation of employees
(citing former N.J.A.C. 4:1-5.9). Tyler et al. v. City of Paterson, 2
N.J.A.R. 272 (1979).

4A:2-1.4 Burden of proof

(a) In appeals concerning major disciplinary actions,
N.J.A.C. 4A:2-2.1 et seq., the burden of proof shall be on
the appointing authority.

(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

Proof; patient abuse. Rivera v. Woodbine Developmental Center,
94 N.J.A.R.2d (CSV) 705.

Appointing authority Proved that employee was incompetent, inefficient, failed to perform her duties and conducted herself in a manner unbecoming a public employee. *Janowski v. Bergen County Department of the Judiciary*, 94 N.J.A.R.2d (CSV) 550.

Employee was entitled to all reasonable inferences from his evidence that layoff was in bad faith. *Beattie v. Camden County Department of Buildings and Operations*, 94 N.J.A.R.2d (CSV) 529.

There was not sufficient proof that guard was sleeping on duty. *Webster v. Burlington County Jail*, 94 N.J.A.R.2d (CSV) 389.

Evidence insufficient; neglect of duty or conduct unbecoming public employee. *Karl v. New Brunswick Police Department*, 94 N.J.A.R.2d (CSV) 199.

Failure to prove that correction officer was guilty of missing a call-in. *Mowenn v. New Jersey State Prison*, 93 N.J.A.R.2d (CSV) 545.

Discrimination or harassment not shown to have caused unsatisfactory evaluation; termination at end of probationary period. *Amin v. Department of Transp.*, 93 N.J.A.R.2d (CSV) 406.

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.

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.

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

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.

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

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 Commissioner or Board or where the Board finds sufficient cause based on the particular case.

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.

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.

4A:2-1.6 Reconsideration of decisions

(a) Upon the receipt of a decision, a party to the appeal may petition the Commissioner or Board for reconsideration.

(b) A petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

(c) Each party must serve copies of all materials submitted on all other parties.

Case Notes

A motion for reconsideration of a final administrative decision must be made within the period provided for the taking of an appeal. *Matter of Hill*, 241 N.J.Super. 367, 575 A.2d 42 (A.D.1990).

Senior corrections officer was an employee on date when complaint which formed basis of harassment conviction was filed, for purposes of forfeiture statute. *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 (App.Div.1989) affirmed 119 N.J. 256, 574 A.2d 983.

4A:2-1.7 Specific appeals

(a) For specific appeal procedures see:

1. Awards in State service (N.J.A.C. 4A:6-6.10);
2. Classification (N.J.A.C. 4A:3-3.9);
3. Discipline, major (N.J.A.C. 4A:2-2.1 et seq.);
4. Discipline, minor (N.J.A.C. 4A:2-3.1 et seq.);
5. Discrimination in State service (N.J.A.C. 4A:7-3.2 through 4A:7-3.4);
6. Employment list removal for medical reasons (N.J.A.C. 4A:4-6.5);
7. Employment list removal for psychological reasons (N.J.A.C. 4A:4-6.5);
8. Examinations (N.J.A.C. 4A:4-6.1 et seq.);