

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 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.

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.

#### 4A:2-1.6 Reconsideration of decisions

(a) Within 45 days of 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.

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), substituted "Within 45 days of" for "Upon the".

#### 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);
4. Discipline, minor (N.J.A.C. 4A:2-3);
5. Discrimination in State service (N.J.A.C. 4A:7-3.2 and 3.3);
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);
9. Grievances (N.J.A.C. 4A:2-3);
10. Layoffs (N.J.A.C. 4A:8-2.6);
11. Overtime in State service (N.J.A.C. 4A:3-5.10);
12. Performance Assessment Review in State service (N.J.A.C. 4A:6-5.3);
13. Reprisals (N.J.A.C. 4A:2-5);
14. Resignations (N.J.A.C. 4A:2-6);
15. Salary (job reevaluation) in state service (N.J.A.C. 4A:3-4.3);
16. Sick leave injury in State service (N.J.A.C. 4A:6-1.7); and
17. Supplemental compensation on retirement in State service (N.J.A.C. 4A:6-3.4).

(b) Any appeal not listed above must be filed in accordance with N.J.A.C. 4A:2-1.1.

Administrative correction to (a), with deletion of (a)11 and renumbering of old (a)12-18 to new (a)11-17.

See: 22 N.J.R. 165(a).

Amended by R.2006 d.271, effective July 17, 2006.

See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).

Deleted ", 1 et seq." following N.J.A.C. references throughout; in (a)5, substituted "and 3.3" for "through 4A:7-3.4"; and in (a)11, deleted "et seq." following N.J.A.C. reference.

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 sub-chapter 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 not result in dismissal of the appeal, but shall delay processing of the appeal until the required information is provided, and may result in a reduced back pay award pursuant to N.J.A.C. 4A:2-2.10(d)4.

(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.

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.

(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.** Your Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_ Telephone: ( ) - \_\_\_\_\_  
 (City) (State) (Zip Code)  
 Email: \_\_\_\_\_

**2.** Will you be represented by a lawyer or union representative at the hearing?  YES  NO  
 If yes, complete the following:  
 Representative Name: \_\_\_\_\_  
 Union or Law Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_ Telephone: ( ) - \_\_\_\_\_  
 (City) (State) (Zip Code)  
 Email: \_\_\_\_\_

**3.** 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: \_\_\_\_\_  
 \_\_\_\_\_ Telephone: ( ) - \_\_\_\_\_  
 (City) (State) (Zip Code)  
 Email: \_\_\_\_\_

**4.** Appointing Authority Representative for Appeal, if known  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 (City) (State) (Zip Code)  
 Telephone: ( ) - \_\_\_\_\_ Fax #: ( ) - \_\_\_\_\_  
 Email: \_\_\_\_\_

**5.** Attach the following:  
 Preliminary Notice of Disciplinary Action  
 Final Notice of Disciplinary Action

**6.**Date of incident subject to removal: \_\_\_\_\_  
Date employee served with Final Notice of Disciplinary Action: \_\_\_\_\_

**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.

**SIGNATURE****EMPLOYEE/EMPLOYEE REPRESENTATIVE****DATE**

**Mail to:** Office of Administrative Law  
33 Washington Street  
Newark, New Jersey 07102

**AND**

Civil Service Commission  
Attention Hearings Unit-Unit H  
P.O. Box 312  
Trenton, NJ 08625-0312

**Hand**

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

**AND**

Office of Administrative Law  
7<sup>th</sup> Floor  
33 Washington Street  
Newark, New Jersey

mmg

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.

APPENDIX

New Jersey Department of Personnel—Division of Merit System Practices and Labor Relations

MAJOR DISCIPLINARY APPEAL FORM

Use this form to submit an appeal of a major disciplinary action to the Merit System Board.

1. Your Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_ Daytime  
 Telephone: \_\_\_\_\_  
 \_\_\_\_\_  
 (City) (State) (Zip Code)

2. Will you be represented by a lawyer or union representative at the hearing?  Yes  No  
 If yes, complete Section 2.  
 Representative Name: \_\_\_\_\_  
 Union or Law Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_ Telephone: \_\_\_\_\_  
 (City) (State) (Zip Code)

3. Give a copy of this form and attachments to your Personnel Officer  
 Personnel Officer's Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_ Telephone: \_\_\_\_\_  
 (City) (State) (Zip Code)

4. \_\_\_\_\_ (Date)  
 (Your or your representative's signature)

NOTE: Your appeal will NOT be processed unless Sections 1-4 are completed and the first two documents listed in Section 5 are included. Failure to submit all required information within 20 days after you receive the Final Notice of Disciplinary Action may result in a reduced back pay award.

5. ATTACH the following to this form:
- Preliminary Notice of Disciplinary Action.
  - Final Notice of Disciplinary Action.
  - A statement of the reason(s) for the appeal and the requested relief (optional).

Mail to: Merit System Board  
 Department of Personnel  
 Hearings Unit—Unit H  
 PO Box 312  
 Trenton, NJ 08625-0312

Hand Delivery: 3 Station Plaza  
 44 South Clinton Avenue, Trenton

New Rule, R.1998 d.518, effective November 2, 1998.  
 See: 30 N.J.R. 2325(a), 30 N.J.R. 3935(a).

(b) A grievance is an employee complaint regarding any term or condition which is beyond the employee's control and is remedial by management.

(c) The causes for minor disciplinary actions shall be the same as for major disciplinary actions. See N.J.A.C. 4A:2-2.3.

(d) This subchapter shall not apply to local service, where an appointing authority may establish procedures for processing minor discipline and grievances.

(e) In State service, this subchapter shall only apply to:

SUBCHAPTER 3. MINOR DISCIPLINE AND GRIEVANCES

4A:2-3.1 General provisions

(a) Minor discipline is a formal written reprimand or a suspension or fine of five working days or less.