

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 See, also, Historical Notes at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 5, 13, 16 and 23; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 16 and 23; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapter 16.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.

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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. Mes- tres 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.);

9. Grievances (N.J.A.C. 4A:2-3.1 et seq.);
10. Layoffs (N.J.A.C. 4A:8-2.6);
11. Overtime in State service (N.J.A.C. 4A:3-5.10 et seq.);
12. Performance Assessment Review in State service (N.J.A.C. 4A:6-5.3);
13. Reprisals (N.J.A.C. 4A:2-5.1 et seq.);
14. Resignations (N.J.A.C. 4A:2-6.1 et seq.);
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).

Case Notes

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).

SUBCHAPTER 2. MAJOR DISCIPLINE

4A:2-2.1 Employees covered

(a) This subchapter applies only to permanent employees in the career service or a person serving a working test period.

(b) Appointing authorities may establish major discipline procedures for other employees.

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.

4A:2-2.2 Types of discipline

(a) Major discipline shall include:

1. Removal;

2. Disciplinary demotion;
3. Suspension or fine for more than five working days at any one time;
4. Suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more;
5. The last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year.

Case Notes

Employee suspended for 10 days from position as account clerk for failure to deposit money (\$700,000) within 48-hour period required by N.J.S.A. 40A:5-15 and late deposit by mail of \$355,000; 10-day suspension upheld and \$500 fine imposed. Kennedy v. City of Burlington, 11 N.J.A.R. 20 (1988).

4A:2-2.3 General causes

(a) An employee may be subject to discipline for:

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
4. Chronic or excessive absenteeism or lateness;
5. Conviction of a crime;
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; and
11. 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.

Case Notes

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. *Ayers 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. *Ayers 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).

Termination; physical abuse of client. *Willingham v. Ancora Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 708.

Termination; disclosure of confidential information from taxpayers' file. *Petrasek v. New Jersey Department of the Treasury*, 94 N.J.A.R.2d (CSV) 679.

Termination; of chronic and excessive absenteeism. *Mindillo v. New Jersey State Prison*, 94 N.J.A.R.2d (CSV) 673.

Suspension; taking sick leave time to drive fiancée to doctor. *Markel v. Burlington County Dept. of Buildings and Grounds*, 94 N.J.A.R.2d (CSV) 662.

Leaving pager unattended and not responding to emergency; termination. *Hamilton v. Monroe Municipal Utilities Authority*, 94 N.J.A.R.2d (CSV) 657.

Conduct during license suspension subject to thirty working day suspension. *Carroll v. Ocean County Department of Roads*, 94 N.J.A.R.2d (CSV) 654.

Nurse; opportunity to successfully complete training course; termination. *Welch v. Preakness Hospital*, 94 N.J.A.R.2d (CSV) 651.

Assault of co-worker; suspension. *Vereen v. Trenton State College*, 94 N.J.A.R.2d (CSV) 645.

Testing positive for controlled substances; terminated. *Tanner v. New Jersey Training School*, 94 N.J.A.R.2d (CSV) 642.

Termination; abuse of client. *Wilson v. North Princeton Developmental Center*, 94 N.J.A.R.2d (CSV) 639.

Employee terminated; drug addiction. *Lu Sane v. Union County Board of Social Services*, 94 N.J.A.R.2d (CSV) 637.

Termination; abuse of client. *Camilo v. North Princeton Developmental Center*, 94 N.J.A.R.2d (CSV) 633.

Removal; employee unable to perform his duties due to medical condition. *Bell v. Hudson County Department of Public Resources*, 94 N.J.A.R.2d (CSV) 631.

Suspension of employee was not justified. *Arroyo v. Department of Public Safety, Hudson County*, 94 N.J.A.R.2d (CSV) 629.

Suspension of prison nurse; guilty of falsification, insubordination and possession of mace on state property. *Headen v. East Jersey State Prison*, 94 N.J.A.R.2d (CSV) 623.

Employee removed; abuse of client. *Stocks v. Department of Human Services*, 94 N.J.A.R.2d (CSV) 621.

Suspension and removal; refusal to obey orders of superior, using vulgar and disrespectful language, and threatening fellow employee. *Green v. City of Trenton*, 94 N.J.A.R.2d (CSV) 594.

Suspension for sleeping on the job was justified. *Allgood v. New Jersey Training School, Jamesburg*, 94 N.J.A.R.2d (CSV) 592.

Termination of public employee with drinking problem was not justified. *Monroe v. Camden County Board of Social Services*, 94 N.J.A.R.2d (CSV) 590.

Rehabilitation according to terms of settlement agreement; reinstatement. *Credle v. Marlboro Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 585.

Insubordination and vulgar language; suspension. *Ellis v. Essex County Department of Citizen Services*, 94 N.J.A.R.2d (CSV) 580.

Failure to ensure that client was properly received at destination; dismissal. *Clark v. North Princeton Development Center*, 94 N.J.A.R.2d (CSV) 576.

Unbecoming conduct toward a superior and insubordination; penalties. *Cioffi v. City of Long Branch*, 94 N.J.A.R.2d (CSV) 573.

Dismissal of employee was not justified; drug rehabilitation program. *Ogburn v. East Orange Housing Authority*, 94 N.J.A.R.2d (CSV) 567.

Ten day suspension of employee was justified. *Ward v. Greystone Park Psychiatric Hospital, Department of Human Services*, 94 N.J.A.R.2d (CSV) 565.

Dismissal of employee; justified. *Simmons v. New Jersey State Prison, State Department of Corrections*, 94 N.J.A.R.2d (CSV) 561.

Dismissal; employee was justified when employee failed to return to work after leave of absence. *Mercado v. Human Services Department, Commission for the Blind and Visually Impaired*, 94 N.J.A.R.2d (CSV) 557.

Suspension of youth worker not justified. *Bright v. Department of Human Services, Arthur Brisbane Child Treatment Center*, 94 N.J.A.R.2d (CSV) 542.

Suspension of nurse for insubordination was justified. *Fleming v. Edna Mahan Correctional Facility*, 94 N.J.A.R.2d (CSV) 537.

Suspension of prison employee for thirty (30) days for insubordination was justified. *Balkaran v. Department of Correction, Northern State Prison*, 94 N.J.A.R.2d (CSV) 534.

Fine imposed on police officer who was involved in car accident was excessive. *Durham v. City of Camden, Police Department*, 94 N.J.A.R.2d (CSV) 531.

Suspension was proper; perusing private files. *Rambo v. Rowan College of New Jersey*, 94 N.J.A.R.2d (CSV) 517.

Termination; job performance consistently substandard. *Bryant v. Passaic County Superior Court*, 94 N.J.A.R.2d (CSV) 512.

Termination; employee repeatedly and excessively absent. *Jones v. Buttonwood Hospital*, 94 N.J.A.R.2d (CSV) 504.

Suspension was proper; removing a gun from security without permission, failing to report the loss of gun, and violating administrative regulations relative to safety and security. *Jehn v. Monmouth County Correctional Institution*, 94 N.J.A.R.2d (CSV) 502.

Termination; drug use. *Bryant v. New Jersey Fire Department*, 94 N.J.A.R.2d (CSV) 497.

Termination for assaulting a patient was justified. *Bennett v. Forensic Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 494.

Sixty-day suspension and completion of sensitivity training program was proper. *Grimaldi v. Vineland Developmental Center*, 94 N.J.A.R.2d (CSV) 491.

Termination; abuse of a client. *Harris v. North Jersey Developmental Center*, 94 N.J.A.R.2d (CSV) 483.

Termination; employee not able to fulfill his job requirements. *Brown v. Freehold Township Department of Public Utilities*, 94 N.J.A.R.2d (CSV) 481.

Two-day suspension was proper when firefighter called in sick in order to work for another employer. *Shoemaker v. South Orange Village Department of Public Safety*, 94 N.J.A.R.2d (CSV) 472.

Suspension; escape of three inmates. *Mayer v. New Jersey Training School*, 94 N.J.A.R.2d (CSV) 469.

Termination of nurse; mitigating factors existed. *Lockett v. Trenton Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 454.

Termination of correction officer for conduct unbecoming a public employee was proper. *Yannuzzi v. East Jersey State Prison*, 94 N.J.A.R.2d (CSV) 448.

Termination of regional staff nurse was appropriate. *Spector Estate v. DMAHS*, 94 N.J.A.R.2d (CSV) 445.

Equal suspensions; responsibility for fighting or creating a disturbance. *Smith v. Vineland Developmental Center*, 94 N.J.A.R.2d (CSV) 441.

Suspension for conduct unbecoming a public employee was appropriate. *Rinnier v. Department of Transportation*, 94 N.J.A.R.2d (CSV) 440.

Termination; insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. *Ricchezza v. Maple Shade Township*, 94 N.J.A.R.2d (CSV) 437.

Termination of truck driver; working test period. *Moheban v. Teaneck Township Department of Public Works*, 94 N.J.A.R.2d (CSV) 434.

Termination; procedure regarding extended leave. *Hiteshew v. Buttonwood Hospital*, 94 N.J.A.R.2d (CSV) 430.

Suspension for conduct unbecoming a public employee was appropriate. *Brown v. Department of Labor*, 94 N.J.A.R.2d (CSV) 428.

Termination for physical abuse of a patient was proper. *Strozier v. Forensic Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 423.

Suspension of clerk-typist for conduct unbecoming a public employee was appropriate sanction. *Selph v. Newark Housing Authority*, 94 N.J.A.R.2d (CSV) 420.

Police officer did not neglect his duty by failing to respond to a stabbing. *Lewis v. Jersey City Police Department*, 94 N.J.A.R.2d (CSV) 407.

Termination of cottage training technician was appropriate. *Childs v. Vineland Developmental Center*, 94 N.J.A.R.2d (CSV) 405.

Suspension of police officer; absent from work without authorization. *Ward v. Atlantic City Police Department*, 94 N.J.A.R.2d (CSV) 399.

Custodian was properly terminated; excessive absenteeism. In the Matter of the Tenure Hearing of *Derrick Exum*, 94 N.J.A.R.2d (EDU) 390.

Providing residents of juvenile corrections facility with screwdriver; youth worker's removal. *Treat v. Ocean Residential Group*, 94 N.J.A.R.2d (CSV) 384.

Removal; testing positive for drug use. *Damion v. Lacey Township Department of Public Works*, 94 N.J.A.R.2d (CSV) 379.

Suspension; verbal and mental abuse. *Cooper v. Warran County Welfare Board*, 94 N.J.A.R.2d (CSV) 373.

Absenteeism; termination. *Carmichael v. Mercer County Youth Detention Center*, 94 N.J.A.R.2d (CSV) 371.

Spanking of child of welfare client constituted conduct unbecoming a public employee; suspension. *Bryant v. Cumberland County Welfare Agency*, 94 N.J.A.R.2d (CSV) 369.

Suspension; disruptive behavior. *Brooks v. Brisbane Child Treatment Center*, 94 N.J.A.R.2d (CSV) 361.

Security guard's use of derogatory language towards police captain was not conduct unbecoming a public employee; suspension not justified. *Belfiore v. Union County Department of Public Safety*, 94 N.J.A.R.2d (CSV) 356.

Unexcused absence; removal. *Thomas v. Camden County Sheriff's Department*, 94 N.J.A.R.2d (CSV) 354.

Failure to file tardiness slip upon late arrival was justified precluding suspension. *Silverman v. Adult Diagnostic and Treatment Center*, 94 N.J.A.R.2d (CSV) 351.

Neglect of duty warranted removal. *Hall v. Department of Human Services*, 94 N.J.A.R.2d (CSV) 339.

Training technician created disturbance on state property; suspension. *Duncan v. New Lisbon Developmental Center*, 94 N.J.A.R.2d (CSV) 336.

Psychiatric hospital employee's suspension was reasonable; common decency. *Cochrane v. Greystone Park Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 334.

Psychiatric hospital employee properly removed; physical abuse. *Butler v. Marlboro Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 328.

Threatening retaliation for suspension constituted conduct unbecoming a public employee; removal. *Brown v. Department of Corrections*, 94 N.J.A.R.2d (CSV) 324.

Leaving clients unsupervised was neglect of duty; suspension. *Boyd v. Vineland Developmental Center*, 94 N.J.A.R.2d (CSV) 322.

Assistant comptroller's demotion to senior account clerk for incomplete or inaccurate accounting procedures was not justified. *Berg v. Bergen County Sheriff's Department*, 94 N.J.A.R.2d (CSV) 305.

Removal of case worker not justified; alleged failure to diligently supervise a client. *Minor v. New Lisbon Development Center*, 94 N.J.A.R.2d (CSV) 282.

Demotion from police sergeant to police officer was warranted. *Lloyd v. Atlantic City Police Department*, 94 N.J.A.R.2d (CSV) 277.

Juvenile inmate's escape was not solely result of youth worker's neglect; suspension. *Ingrum v. Southern Regional Group Center*, 94 N.J.A.R.2d (CSV) 275.

Thirty-day suspension of cottage training technician for neglect of duty was not justified. *Rudolph v. New Lisbon Developmental Center*, 94 N.J.A.R.2d (CSV) 252.

Neglect of assigned post; dismissal of senior corrections officer. *Rodriguez v. Adult Diagnostic and Treatment Center*, 94 N.J.A.R.2d (CSV) 248.

Drowning death of client; negligence warranting dismissal. *McGhee v. New Lisbon Developmental Center*, 94 N.J.A.R.2d (CSV) 224.

Developmental center training technician was not negligent. *Lloyd v. New Lisbon Developmental Center*, 94 N.J.A.R.2d (CSV) 202.

Equipment operator could safely perform job duties despite neurological injuries. *James v. Department of Transportation*, 94 N.J.A.R.2d (CSV) 197.

Suspension; refusal of mandatory overtime and neglect of duty. *Gloster v. Ramapo College*, 94 N.J.A.R.2d (CSV) 193.

Reinstatement of developmental center employee was warranted. *Emmons v. New Lisbon Developmental Center*, 94 N.J.A.R.2d (CSV) 186.

Drivers' license suspension; termination without accommodation. *Dean v. Treasure Department*, 94 N.J.A.R.2d (CSV) 177.

Accidental drowning involved no negligence. *Castillo v. New Lisbon Developmental Center*, 94 N.J.A.R.2d (CSV) 150.

Termination; negligence in accidental death. *Bozzarello v. North Princeton Developmental Center*, 94 N.J.A.R.2d (CSV) 147.

Prior work history justified reduction of suspension. *Ball v. Woodbridge Developmental Center*, 94 N.J.A.R.2d (CSV) 145.

Drug use; dismissal. *Ayers v. New Jersey Training School*, 94 N.J.A.R.2d (CSV) 141.

Dismissal; excessive absenteeism. *Webb v. Camden County Health Services*, 94 N.J.A.R.2d (CSV) 140.

Assault and conduct unbecoming a public employee warranted dismissal. *Jolcoeur v. Morris View Nursing Home*, 94 N.J.A.R.2d (CSV) 132.

Heroin addiction not a mitigating factor; conditional reinstatement following suspension. *Fisher v. Union County Division of Social Services*, 94 N.J.A.R.2d (CSV) 125.

Conditional reinstatement following suspension of firefighter was proper penalty. *Ward v. Elizabeth City Fire Department*, 94 N.J.A.R.2d (CSV) 122.

Dismissal of residential living specialist was justified. *Johnson v. North Princeton Developmental Center*, 94 N.J.A.R.2d (CSV) 119.

Termination of sanitation worker for neglect of duties, chronic or excessive absenteeism, and inability to perform duties was justified. *Jurkiewicz v. Sayreville Borough Road and Sanitation Department*, 94 N.J.A.R.2d (CSV) 114.

Termination of correction officer for conduct unbecoming a public employee was justified. *Calzaretta v. East Jersey State Prison*, 94 N.J.A.R.2d (CSV) 106.

Termination of chronically absent or late laborer was justified. *Bonham v. Brick Township Public Works Department*, 94 N.J.A.R.2d (CSV) 103.

Termination of employee was justified when employee assaulted co-employee. *Bogon v. Woodbine Developmental Center*, 94 N.J.A.R.2d (CSV) 101.

Termination of correction officer for insubordination, assaulting or resisting authority, disrespect or use of insulting or abusive language to a supervisor, and conduct unbecoming a public employee was justified. *Bayan v. Garden State Reception and Youth Correctional Facility*, 94 N.J.A.R.2d (CSV) 98.

Suspension of building maintenance worker for neglect of duties, insubordination, and conduct unbecoming a public employee was justified. *Richards v. Camden County Health Services Center*, 94 N.J.A.R.2d (CSV) 90.

Termination of hospital attendant was justified. *Halpin v. Bergen Pines County Hospital*, 94 N.J.A.R.2d (CSV) 83.

Indefinite suspension of pharmacist without pay pending disposition of criminal charges was appropriate. *Grillo v. Bergen Pines County Hospital*, 94 N.J.A.R.2d (CSV) 81.

Neglect of duty, insubordination and conduct unbecoming a public employee; removal. *Donnelly v. Hudson County Department of Public Safety*, 94 N.J.A.R.2d (CSV) 75.

Termination of correction officer for conduct unbecoming a public employee, neglect of duty, insubordination, and attendance violations was justified. *Donnelly v. Hudson County Department of Public Safety*, 94 N.J.A.R.2d (CSV) 75.

Termination of security guard was justified. *Babbs v. Newark Board of Education*, 94 N.J.A.R.2d (CSV) 71.

Illegal entry; insubordination; maximum suspension penalty. *Babbs v. Newark Board of Education*, 94 N.J.A.R.2d (CSV) 71.

Neglect of duty and improper performance established good cause for removal. *Jackson Township v. McKenna*, 94 N.J.A.R.2d (CAF) 69.

Thirty-day suspension of correction officer was reasonable. *Taylor v. Adult Diagnostic and Treatment Center*, 94 N.J.A.R.2d (CSV) 62.

Termination of sheriff's officer for neglect of duty was justified. *McClellan v. Passaic County Sheriff's Department*, 94 N.J.A.R.2d (CSV) 59.

Termination of institutional attendant for conduct unbecoming a public employee was justified. *Marcelus v. Geraldine L. Thompson Medical Home*, 94 N.J.A.R.2d (CSV) 57.

Termination of heavy laborer was justified. *Hommel v. Woodbridge Township Public Works Department*, 94 N.J.A.R.2d (CSV) 52.

Correction officer was properly removed from position for conduct unbecoming a public employee. *Harrison v. Northern State Prison*, 94 N.J.A.R.2d (CSV) 51.

Termination of building maintenance worker was justified. *Hammond v. Hunterdon County Department of Building and Maintenance*, 94 N.J.A.R.2d (CSV) 47.

Thirty-day suspension without pay of gardener charged with conduct unbecoming a public employee was justified. *Duckworth v. Lawrence Township Department of Public Works*, 94 N.J.A.R.2d (CSV) 45.

Termination of licensed practical nurse for conduct unbecoming a public employee was justified. *Brown v. Trenton Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 41.

Termination of garbage truck driver was justified. *Brewington v. Ridgewood Village*, 94 N.J.A.R.2d (CSV) 39.

Reinstatement following four-month suspension upon completion of an alcohol rehabilitation program was appropriate sanction. *McGill v. Essex County Public Safety Department*, 94 N.J.A.R.2d (CSV) 31.

Conviction of simple assault; insufficient to support senior correction officer's termination. *Ross v. Riverfront State Prison*, 94 N.J.A.R.2d (CSV) 27.

Suspension; insubordination, conduct unbecoming a public employee, and neglect of duty. *Lipski v. Meadowview Hospital*, 94 N.J.A.R.2d (CSV) 17.

Termination not justified; insubordination, conduct unbecoming a public employee, conduct unbecoming to a public official, and neglect of duty. *Olivo v. Town of Newton*, 94 N.J.A.R.2d (CSV) 7.

Tax collector's refusal to comply with new business hours; cause for suspension without pay. *Newfield Borough v. Moynihan*, 94 N.J.A.R.2d (CAF) 2.

Termination; use of unjustified and excessive force on a prisoner. *Division of State Police v. Jiras*, 94 N.J.A.R.2d (POL) 1.

Employee of psychiatric hospital was properly suspended for neglect of duty. *Scott v. Trenton Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 777.

Removal of employee for inability to perform his duties was justified. *Nagy v. Bergen County Utilities Authority*, 93 N.J.A.R.2d (CSV) 773.

Removal of maintenance worker was warranted for conduct unbecoming a public employee. *Dixon v. Newark Housing Authority*, 93 N.J.A.R.2d (CSV) 771.

Removal of Housing Authority security chief was warranted. *Dietrich v. Newark Housing Authority*, 93 N.J.A.R.2d (CSV) 767.

Termination of sheriff's officer was warranted. *Davenport v. Passaic County Sheriff's Office*, 93 N.J.A.R.2d (CSV) 763.

Fifteen-day, rather than twenty-day, suspension of hospital ward clerk was justified. *Ravello v. Meadowview Hospital*, 93 N.J.A.R.2d (CSV) 761.

Removal of veterans' home employee was justified. *Pryce v. Veterans' Memorial Home*, 93 N.J.A.R.2d (CSV) 759.

Tenured chief school custodian was guilty of charges of neglect, insubordination, and inappropriate behavior. *Paterson School District v. Cox*, 93 N.J.A.R.2d (EDU) 748.

Evidence failed to show that police lieutenant obtained favors by reason of his position. *Grasso v. Sea Isle City*, 93 N.J.A.R.2d (CSV) 747.

Prison employee's possession of controlled substance justified his termination. *Williams v. Wagner Youth Correctional Center*, 93 N.J.A.R.2d (CSV) 745.

Force used by human services technician against patient was not unreasonable. *Love v. Marlboro Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 738.

Termination of employee was warranted. *James v. Department of Human Services, North Princeton Development Center*, 93 N.J.A.R.2d (CSV) 734.

Termination of food service worker was warranted. *Goins v. New Jersey Veterans' Memorial Home*, 93 N.J.A.R.2d (CSV) 732.

County employee was properly suspended for unauthorized absence. *Gfroehrer v. Meadowview Hospital*, 93 N.J.A.R.2d (CSV) 727.

Nurse was properly terminated for incompetency, inefficiency, failure to perform duties, and neglect of duty. *Caldwell v. B.S. Pollak Hospital*, 93 N.J.A.R.2d (CSV) 722.

Removal of nurse warranted. *Caldwell v. U.S. Pollak Hospital*, 93 N.J.A.R.2d (CSV) 722.

Use, possession, or sale of controlled substance warranted the sanction of removal. *Troutman v. East Jersey State Prison*, 93 N.J.A.R.2d (CSV) 710.

Termination for absenteeism. *Williams v. Bergen Pines County Hospital*, 93 N.J.A.R.2d (CSV) 700.

Religious slur constituted conduct unbecoming public employee; 15-day suspension. *Tress v. Burlington County Department of Health*, 93 N.J.A.R.2d (CSV) 698.

Maintenance worker properly removed for conduct unbecoming a public employee. *Shetter v. Burlington County Department of Buildings and Grounds*, 93 N.J.A.R.2d (CSV) 696.

Conservation officer was properly suspended for conduct unbecoming a state employee. *Oates v. Division of Fish, Game, and Wildlife*, 93 N.J.A.R.2d (CSV) 686.

Abuse of patients warranted employee's removal. *Moore v. New Jersey Veterans Memorial Home*, 93 N.J.A.R.2d (CSV) 680.

Employee properly removed for conduct unbecoming a public employee and insubordination. *McCorry v. Hudson County*, 93 N.J.A.R.2d (CSV) 677.

Six-month suspension appropriate for abuse of nursing home patient. *Lyw v. Morris View Nursing Home*, 93 N.J.A.R.2d (CSV) 673.

Police officer guilty of chronic or excessive absenteeism. *Gugliotta v. Newark Police Department*, 93 N.J.A.R.2d (CSV) 667.

Six-month suspension appropriate for insubordination. *Grant v. Vineland Developmental Center*, 93 N.J.A.R.2d (CSV) 663.

Accident occurred, not an intentional infliction of harm to a resident; removal not justified. *Dozier v. Woodbine Developmental Center*, 93 N.J.A.R.2d (CSV) 660.

Removal of truck driver; absenteeism. *Cottrell v. North Brunswick Township Department of Public Works*, 93 N.J.A.R.2d (CSV) 659.

Three-month suspension was appropriate penalty for hospital employee's inattention to duties. *Bland v. Buttonwood Hospital*, 93 N.J.A.R.2d (CSV) 611.

Thirty-day suspension of correction officer was warranted. *Abercrombie v. New Jersey Training School*, 93 N.J.A.R.2d (CSV) 608.

Cook properly suspended for failing to secure and account for knives. *Gonshor v. Edna Mahan Correctional Facility*, 93 N.J.A.R.2d (CSV) 603.

Twenty-day suspension of correction officer; unsatisfactory attendance. *Epps v. Burlington County Jail*, 93 N.J.A.R.2d (CSV) 601.

Removal of social service aid was warranted. *Wright v. Passaic County Board of Social Services*, 93 N.J.A.R.2d (CSV) 596.

Removal of court clerk was warranted. *Marshall v. City of Millville*, 93 N.J.A.R.2d (CSV) 590.

Removal of psychiatric hospital employee; beating patient. *Edmonds v. Ancora Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 582.

Six-month suspension; failure to follow orders. *Bolden v. Hudson County Office on Aging*, 93 N.J.A.R.2d (CSV) 574.

Conduct unbecoming an officer and a gentleman warranted a 30-day suspension. *Biernacki v. Harrison Police Department*, 93 N.J.A.R.2d (CSV) 567.

Removal of school custodian justified. In the Matter of the Tenure Hearing of *Gwinnett*, 93 N.J.A.R.2d (EDU) 563.

Refusal to remain in presence of superior officer for purpose of investigating inferior officer's intoxication; termination. *Snyder v. Atlantic County Sheriff's Office*, 93 N.J.A.R.2d (CSV) 551.

Removal warranted for leaving client without supervision or permission. *Scott v. Trenton Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 549.

Employee properly removed; threatening harm to supervisor. *Liddle v. Morristown Department of Public Works*, 93 N.J.A.R.2d (CSV) 536.

Physical and verbal abuse justified removal. *Forman v. Woodbine Developmental Center*, 93 N.J.A.R.2d (CSV) 525.

Six-month suspension; hitting client with shoe. *Bates v. Vineland Developmental Center*, 93 N.J.A.R.2d (CSV) 507.

Removal of police officer warranted; warrants against his girlfriend. *Williams v. Camden Police Department*, 93 N.J.A.R.2d (CSV) 497.

Ten-day suspension was appropriate penalty for conduct unbecoming officer. *Shoudt v. Mountainview Youth Correctional Facility*, 93 N.J.A.R.2d (CSV) 491.

Suspension was appropriate sanction for failure to timely submit medical documentation. *Long v. Wagner Correctional Facility*, 93 N.J.A.R.2d (CSV) 477.

Corrections captain divulged confidential information without authority. *Johnson v. Wagner Correctional Facility*, 93 N.J.A.R.2d (CSV) 474.

File clerk was improperly suspended for insubordination for expressing concerns about transfer. *DeRois v. Burlington County Prosecutor's Office*, 93 N.J.A.R.2d (CSV) 472.

Termination not excessive for habitual tardiness and absenteeism. *Davenport v. Bergen County Pines Hospital*, 93 N.J.A.R.2d (CSV) 469.

Removal of firefighter warranted. *Corbin v. City of Asbury Park*, 93 N.J.A.R.2d (CSV) 466.

Corrections officer at youth facility removed. *Bazemore v. Wagner Youth Correctional Facility*, 93 N.J.A.R.2d (CSV) 461.

Six-day suspension warranted for time card violation. *Pinkerton v. Burlington County Department of Buildings and Grounds*, 93 N.J.A.R.2d (CSV) 455.

Carelessness in bathing client warranted official reprimand rather than suspension. *Taylor v. Vineland Developmental Center*, 93 N.J.A.R.2d (CSV) 450.

Neglect of duty and violation of policy regarding key accountability warranted a six-day suspension. *Rudrow v. Burlington County Juvenile Detention Center*, 93 N.J.A.R.2d (CSV) 447.

Correction lieutenant committed conduct unbecoming a public employee; 20-day suspension. *Heaney v. Edna Mahan Correctional Facility*, 93 N.J.A.R.2d (CSV) 444.

Removal warranted for act of neglect of duty resulting in serious injury and for intentional misstatement in connection with investigation. *Jones v. Monmouth County Personnel Department*, 93 N.J.A.R.2d (CSV) 436.

Fifteen-day suspension was warranted for failing to report to work after the end of prior suspension. *Finn v. Burlington County Jail*, 93 N.J.A.R.2d (CSV) 430.

Unauthorized absence warranted removal. *Carr v. East Jersey State Prison*, 93 N.J.A.R.2d (CSV) 426.

Verbal abuse of client did not warrant suspension; training of staff of the institution ordered. *Onaiwa v. Green Brook Regional Center*, 93 N.J.A.R.2d (CSV) 423.

Detention center; 20-second confrontation; neglect of duty. N.J.S.A. 11A:2-21. *Singletary v. Passaic County Juvenile Detention Center*, 93 N.J.A.R.2d (CSV) 418.

Officer's conduct was not neglect of duty. *Singletary v. Passaic County Juvenile Detention Center*, 93 N.J.A.R.2d (CSV) 418.

Suspension of motor broom laborer for conduct unbecoming a public employee was justified. *Grant v. Department of Engineering, City of Newark*, 93 N.J.A.R.2d (CSV) 415.

Conduct unbecoming public employee warranted a 20-day suspension. *Grant v. Newark Department of Engineering*, 93 N.J.A.R.2d (CSV) 415.

Removal of fire alarm operator was justified. *Docherty v. Fire Dept., City of Paterson*, 93 N.J.A.R.2d (CSV) 403.

Failure to perform duties, insubordination, conduct unbecoming public employee, and neglect of duty warranted removal. *Docherty v. Paterson Fire Department*, 93 N.J.A.R.2d (CSV) 403.

Medical unfitness warranted removal of correction officer trainee. *Abreu v. Passaic County Sheriff's Department*, 93 N.J.A.R.2d (CSV) 377.

School custodial worker's conduct constituted sexual harassment warranting removal. *Williams v. Newark Board of Education*, 93 N.J.A.R.2d (CSV) 371.

School custodial worker was properly removed. *Spencer v. Newark Board of Education*, 93 N.J.A.R.2d (CSV) 368.

Removal of municipal employee warranted. *Larkin v. Atlantic City*, 93 N.J.A.R.2d (CSV) 362.

Removal of correction officers warranted. *Higgins v. Department of Corrections*, 93 N.J.A.R.2d (CSV) 358.

Evidence did not show physical abuse of client; removal not warranted. *Gadson v. Ancora Developmental Center*, 93 N.J.A.R.2d (CSV) 354.

Absence from work and delay in producing doctor's note did not justify disciplinary action. *Davis v. Hudson County*, 93 N.J.A.R.2d (CSV) 352.

Removal of female correction officer was warranted. *Barksdale v. Mahan Correctional Facility*, 93 N.J.A.R.2d (CSV) 347.

Removal of nurse was warranted for neglect of duty. *Thompson v. Hunterdon Developmental Center*, 93 N.J.A.R.2d (CSV) 342.

Fighting and creating disturbance on state property, and insubordination, warranted removal. *Holmes v. North Princeton Development Center*, 93 N.J.A.R.2d (CSV) 335.

Absenteeism warranted removal. *Christian v. Newark Board of Education*, 93 N.J.A.R.2d (CSV) 326.

City public housing manager's failure to enforce regulation warranted removal. *Young v. Camden Housing Authority*, 93 N.J.A.R.2d (CSV) 322.

Abuse of patient warranted removal. *Williams v. Marlboro Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 320.

Failure to provide medical documentation for absences warranted removal. *Junna v. Atlantic County Department of Public Works*, 93 N.J.A.R.2d (CSV) 310.

Lateness, sleeping on duty, and neglect of duty warranted removal. *Washington v. Camden Police Department*, 93 N.J.A.R.2d (CSV) 306.

Failure to obey supervisor warranted written reprimand. *Senape v. Middlesex County Adult Corrections*, 93 N.J.A.R.2d (CSV) 305.

Failure to cooperate with an investigation warranted suspension. *Simmons v. Essex County Jail*, 93 N.J.A.R.2d (CSV) 300.

Failure to complete training course warranted removal of county correction officer. *Schmeltz v. Bergen County Sheriff's Department*, 93 N.J.A.R.2d (CSV) 297.

Absenteeism warranted removal of hospital worker. *Scarborough v. Bergen Pines County Hospital*, 93 N.J.A.R.2d (CSV) 295.

Removal of correction officer warranted. *Reed v. Department of Adult Corrections*, 93 N.J.A.R.2d (CSV) 293.

Removal of incapacitated correction officer unable to discharge his duties. *Pittman v. Mid-State Correctional Facility*, 93 N.J.A.R.2d (CSV) 291.

Physical contact with client, even if improper, did not warrant termination of youth worker. *Blair v. Arthur Brisbane Child Treatment Center*, 93 N.J.A.R.2d (CSV) 285.

Dismissal of corrections officer unable to complete training course was unreasonable and arbitrary. *Abate v. Passaic County Sheriff's Department*, 93 N.J.A.R.2d (CSV) 283.

Corrections officer not shown to have violated video camera policy; suspension was unwarranted. *Reynolds v. Albert C. Wagner Youth Correctional Facility*, 93 N.J.A.R.2d (CSV) 278.

Conduct unbecoming a public employee, insubordination, and neglect of duty warranted twenty-day suspension. *Grimsley v. Newark Board of Education*, 93 N.J.A.R.2d (CSV) 276.

Fifteen-day suspension was warranted for bus attendant's failure to discover child left on assigned bus. *Utsey v. Newark Board of Education*, 93 N.J.A.R.2d (CSV) 265.

Leave without pay and reinstatement subject to random drug testing appropriate for admitted drug use followed by completion of rehabilitation program. *Sims v. Garden State Reception and Youth Correctional Facility*, 93 N.J.A.R.2d (CSV) 262.

Neglect of duty warranted thirty-day suspension. *Billington v. Department of Corrections*, 93 N.J.A.R.2d (CSV) 259.

Fifteen-day suspension appropriate for police officer's interference with paramedic. *Villane v. Aberdeen Township Police Department*, 93 N.J.A.R.2d (CSV) 255.

Absenteeism warranted removal. *Smith v. John L. Montgomery Medical Home*, 93 N.J.A.R.2d (CSV) 253.

Termination for argument was not warranted. *Johnson v. Vineland Developmental Center*, 93 N.J.A.R.2d (CSV) 250.

Twenty-day suspension of correction officer warranted for insubordination. *Jackson v. New Jersey State Prison*, 93 N.J.A.R.2d (CSV) 247.

Suspension warranted for obscenities and refusing order. *Felton v. Department of Environmental Protection and Energy*, 93 N.J.A.R.2d (CSV) 244.

Removal warranted for purchase and possession of cocaine. *Cottan v. Paterson Public Works Department*, 93 N.J.A.R.2d (CSV) 239.

Twenty-day suspension warranted; unauthorized absences. *Richardson v. North Princeton Developmental Center*, 93 N.J.A.R.2d (CSV) 217.

Removal was warranted for insubordination and for incapability of performing duties. *McTernan v. Belmar Borough Municipal Court*, 93 N.J.A.R.2d (CSV) 203.

Removal of human services assistant was warranted. *Jackson v. E.R. Johnstone Training and Research Center*, 93 N.J.A.R.2d (CSV) 195.

Use of state vehicle could not be characterized as unauthorized. *Fritze v. State Department of Health*, 93 N.J.A.R.2d (CSV) 191.

Removal of institutional attendant was warranted. *Baker v. Cumberland County*, 93 N.J.A.R.2d (CSV) 189.

Three-day suspension of private plan hearing officer was justified. *Morley v. New Jersey Department of Labor*, 93 N.J.A.R.2d (CSV) 174.

Removal of hospital employees was justified. *Ellis v. B.S. Pollak Hospital*, 93 N.J.A.R.2d (CSV) 170.

Twenty-day suspension of Division of Motor Vehicles supervisor was warranted. *Carluccio v. Division of Motor Vehicles*, 93 N.J.A.R.2d (CSV) 167.

Physical abuse of client warranted suspension. *Ruzicka v. Hunterdon Developmental Center*, 93 N.J.A.R.2d (CSV) 160.

Removal warranted for driving public vehicle without permission when driver's license was suspended. *Bailey v. Montclair State College*, 93 N.J.A.R.2d (CSV) 158.

Removal of correction officer was warranted. *Tyre v. Passaic County Jail*, 93 N.J.A.R.2d (CSV) 155.

Four-month suspension; insubordination. *Ramos v. Preakness Hospital*, 93 N.J.A.R.2d (CSV) 152.

Patient abuse warranted removal. *Felthoff v. New Lisbon Developmental Center*, 93 N.J.A.R.2d (CSV) 149.

Absence warranted suspension. *McHugh v. Maurice River Board of Education*, 93 N.J.A.R.2d (CSV) 145.

Removal warranted for absenteeism. *Davis v. Jersey City School District*, 93 N.J.A.R.2d (CSV) 135.

Negotiating pay check twice warranted removal. *Costello v. Ocean County Board of Social Security*, 93 N.J.A.R.2d (CSV) 129.

Suspension was warranted for theft of public property. *Christian v. Newark Housing Authority*, 93 N.J.A.R.2d (CSV) 124.

Repeated tardiness warranted removal. *Brooks v. Woodbine Developmental Center*, 93 N.J.A.R.2d (CSV) 123.

Demotion following a six-month suspension was appropriate penalty. *Brogel v. Mercer County Department of Public Works*, 93 N.J.A.R.2d (CSV) 117.

Sleeping on duty warranted thirty-day suspension. *Allison v. New Jersey State Prison*, 93 N.J.A.R.2d (CSV) 114.

Indefinite suspension appropriate for purchase of controlled substance. *Mecouch v. Rowan College of New Jersey*, 93 N.J.A.R.2d (CSV) 106.

Written reprimand and counseling was appropriate for failure to timely appear at hearing. *Scrutchins v. Division of Youth and Family Services*, 93 N.J.A.R.2d (CSV) 89.

Patient abuse warranted four-month suspension. *Milton v. Trenton Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 87.

Termination warranted. *Sapp v. Department of Corrections*, 93 N.J.A.R.2d (CSV) 79.

Suspension warranted for drug offense. *Rakus v. Department of Public Works*, 93 N.J.A.R.2d (CSV) 75.

Suspension warranted for fighting. *Perez v. City of Newark*, 93 N.J.A.R.2d (CSV) 73.

Ten-day suspension warranted. *Herman v. City of Trenton*, 93 N.J.A.R.2d (CSV) 70.

Removal of employee warranted for insubordination. *Green v. Paramus New Jersey Veterans' Memorial Home*, 93 N.J.A.R.2d (CSV) 66.

Psychiatric hospital failed to prove abuse of patient. *Carter v. Ancora Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 58.

Patient abuse warranted removal. *Boone v. North Princeton Developmental Center*, 93 N.J.A.R.2d (CSV) 52.

State trooper dismissed for drug violations and violations of regulations relating to use of troop transportation, consumption of alcoholic beverages and solicitation of funds. *Division of State Police v. Hall*, 93 N.J.A.R.2d (POL) 33.

Alleged violation of domestic restraining order did not constitute conduct unbecoming a public employee. *Boston v. Southern State Correctional Facility*, 93 N.J.A.R.2d (CSV) 26.

State trooper suspended for six months. *Division of State Police v. Buhan*, 93 N.J.A.R.2d (POL) 23.

Discipline warranted for conduct at the work site during suspension. *Scott v. City of Newark, Department of General Services*, 93 N.J.A.R.2d (CSV) 21.

Removal was warranted for failure to perform duties and insubordination. *Mixon v. Cumberland Manor, Cumberland County*, 93 N.J.A.R.2d (CSV) 19.

Demotion of clerk was warranted. *Davion v. Middlesex County Board of Social Services*, 93 N.J.A.R.2d (CSV) 13.

Demotion was improper for violation of sick leave policy where officer submitted proof of his illness when asked for proof. *Beiker v. Camden County Sheriff's Office*, 93 N.J.A.R.2d (CSV) 5.

Suspension was appropriate sanction for failure to notify employer of absence from work. *Miller v. State Department of Health*, 93 N.J.A.R.2d (CSV) 1.

Removal; sleeping on duty. *Tindall v. New Lisbon Developmental Center*, 92 N.J.A.R.2d (CSV) 830.

Removal; excessive use of sick time. *Slaughter v. Southern State Correctional Facility*, 92 N.J.A.R.2d (CSV) 814.

Performance assessment review; not racially motivated. *Sallie v. New Jersey Department of Transportation*, 92 N.J.A.R.2d (CSV) 811.

Removal; abuse of a patient. *Ruiz v. Greystone Park Psychiatric Hospital*, 92 N.J.A.R.2d (CSV) 808.

Twenty-day subsequent removal; insubordination. *Newark Board of Education v. Khalifa*, 92 N.J.A.R.2d (CSV) 804.

Removal; missing eight days without permission. *Johnson v. East Jersey State Prison*, 92 N.J.A.R.2d (CSV) 800.

Random drug testing; constitutional rights. *Delli Santi v. Fire Department, City of New York*, 92 N.J.A.R.2d (CSV) 785.

Conduct did not constitute physical abuse of a client; removal not justified. *Allen v. Woodbine Developmental Center*, 92 N.J.A.R.2d (CSV) 776.

Eight-day suspension; violations of sick leave policy. *Gugliotta v. Newark Police Department*, 92 N.J.A.R.2d (CSV) 772.

Six-day suspension of county correction officer was warranted. *Smith v. Burlington County Jail*, 92 N.J.A.R.2d (CSV) 766.

Removal; improper or unauthorized contact with inmate. *Fariello v. New Jersey State Prison*, 92 N.J.A.R.2d (CSV) 755.

Removal; excessive absenteeism and lateness. *Terrell v. Newark Housing Authority*, 92 N.J.A.R.2d (CSV) 750.

Removal of correction officer was warranted. *Edwards v. East Jersey State Prison, Department of Corrections*, 92 N.J.A.R.2d (CSV) 734.

Fine of 15 days' pay; failure to deliver medications. *Dye v. Union County Division of Youth Services*, 92 N.J.A.R.2d (CSV) 729.

Six-month suspension; poor attendance. *Dukes v. Buttonwood Hospital, Burlington County*, 92 N.J.A.R.2d (CSV) 726.

Removal; testing positive for marijuana and cocaine. *Drake v. Essex County Jail*, 92 N.J.A.R.2d (CSV) 724.

Removal; threatening, intimidating, and verbally abusing supervisor. *Chester v. Department of Human Services*, 92 N.J.A.R.2d (CSV) 720.

Removal; falsification of records and excessive absenteeism. *Ascione v. North Bergen Housing Authority*, 92 N.J.A.R.2d (CSV) 716.

Removal; absence without leave. *Abdul v. City of Newark Board of Education*, 92 N.J.A.R.2d (CSV) 714.

Refusal to answer questions during interrogation was not insubordination. *Zitzman v. Mountainview Youth Correctional Facility*, 92 N.J.A.R.2d (CSV) 711.

Removal; criminal sexual assault. *Slater v. Bergen County Sheriff's Office*, 92 N.J.A.R.2d (CSV) 699.

Corrections officer who voluntarily sought treatment would not be removed. *Register v. Lloyd McCorkle Training School*, 92 N.J.A.R.2d (CSV) 697.

Removal warranted; shattering window of city vehicle. *Murtha v. Bayonne Engineering Department*, 92 N.J.A.R.2d (CSV) 694.

Suspension rather than removal; neglect of duties. *Lowe v. E.R. Johnstone Training and Research Center*, 92 N.J.A.R.2d (CSV) 688.

Ten-day suspension; absence from work. *Love v. Marlboro Psychiatric Hospital*, 92 N.J.A.R.2d (CSV) 686.

City was not justified in removing accrued vacation. *Kredatus v. City of Clifton*, 92 N.J.A.R.2d (CSV) 682.

Twenty-one day suspension; sleeping on duty. *Dukich v. East Jersey State Prison*, 92 N.J.A.R.2d (CSV) 671.

Thirty-day suspension; negligent inattentiveness to duties. *Curtis v. Riverfront State Prison*, 92 N.J.A.R.2d (CSV) 669.

Removal of correction officer recruit; testing positive for cocaine. *Bethea v. Department of Corrections*, 92 N.J.A.R.2d (CSV) 655.

Thirty-day suspension; striking inmate. *Abercrombie v. Department of Corrections*, 92 N.J.A.R.2d (CSV) 652.

Dismissal of police officer trainee; insubordination and a positive drug test. *Holmes v. Passaic County Police Academy and William Paterson College*, 92 N.J.A.R.2d (CSV) 647.

Removal warranted; repeated inmate abuse. *Signorile v. East Jersey State Prison*, 92 N.J.A.R.2d (CSV) 623.

Misconduct of youth worker; removal justified. *Sapp v. Department of Corrections*, 92 N.J.A.R.2d (CSV) 611.

Police officer's intoxication while on duty; removal justified. *Rutkowski v. Police Department, Borough of Elmwood Park*, 92 N.J.A.R.2d (CSV) 605.

Insubordination; neglect of duty; 60-day suspension justified. *Henry v. Preakness Hospital, Passaic County*, 92 N.J.A.R.2d (CSV) 600.

Removal warranted for insubordination. *Davis v. Edna Mahan Correctional Facility*, 92 N.J.A.R.2d (CSV) 590.

Removal for second failure to make required call-in unwarranted. *Boayue v. New Jersey State Prison*, 92 N.J.A.R.2d (CSV) 586.

Improper dismissal on basis of job abandonment. *Victor v. North Princeton Developmental Center*, 92 N.J.A.R.2d (CSV) 584.

Suspension of officer warranted for improper outbursts. *Nance v. City of Newark Police Department*, 92 N.J.A.R.2d (CSV) 577.

Suspension of developmental center employee was not justified. *Corin v. New Lisbon Developmental Center*, 92 N.J.A.R.2d (CSV) 575.

Removal warranted for insubordination. Benjamin v. Hudson County Probation Department, 92 N.J.A.R.2d (CSV) 572.

Six-month suspension for reporting for duty while impaired by alcohol; removal because of revocation of driving privilege. Tyrrell v. State Department of Transportation, 92 N.J.A.R.2d (CSV) 565.

Removal warranted; falsification of time sheets and unauthorized absence. Pue v. New Jersey State Department of Human Services, 92 N.J.A.R.2d (CSV) 561.

Removal of part-time supervisor of emergency medical technicians for police department was warranted. Kroll v. Police Department, City of Passaic, 92 N.J.A.R.2d (CSV) 555.

Departmental employee chasing and throwing shoes at an easily agitated client warranted a suspension for 15 days. Davis-Jones v. North Princeton Developmental Center, 92 N.J.A.R.2d (CSV) 552.

Removal of correction officer was warranted. Bennett v. Department of Corrections, East Jersey State Prison, 92 N.J.A.R.2d (CSV) 549.

Veterans' home failed to establish that employee was physically incapable of performing her duties as a human services assistant, and removal was not justified. Negron v. New Jersey Veterans' Memorial Home, 92 N.J.A.R.2d (CSV) 544.

Removal of maintenance worker was warranted for a fifth offense of absence without authorization. Wilson v. Department of Transportation, 92 N.J.A.R.2d (CSV) 541.

Ten-day suspension, rather than 30-day suspension, was appropriate punishment for jail employee's neglect of duty. Harris v. Burlington County Jail, 92 N.J.A.R.2d (CSV) 522.

Police officer engaged in use of excessive force and violated rules regarding conduct in public and private and suspension of officer was appropriate. Gonzalez v. Police Department, City of Newark, 92 N.J.A.R.2d (CSV) 518.

Suspension and removal of family service worker was warranted. Behl v. Essex County Welfare Board, 92 N.J.A.R.2d (CSV) 507.

Written reprimand, rather than a fine of 15 days' pay, was appropriate punishment for a police officer's neglect of duty. Lamb v. City of Camden, 92 N.J.A.R.2d (CSV) 505.

Six-week suspension of prison storekeeper, rather than termination, was appropriate for intentionally misusing or abusing his position. Wilson v. East Jersey State Prison, 92 N.J.A.R.2d (CSV) 500.

Thirty-day suspension of correction officer was warranted for paying inmate with alcoholic beverages. Johnson v. East Jersey State Prison, 92 N.J.A.R.2d (CSV) 495.

Psychiatric hospital failed to prove that employee physically abused a client. Hasty v. Ancora Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 493.

Five-day suspension of police officer, rather than nine-day suspension, was warranted. Elbertson v. Dept. of Public Safety, City of Trenton, 92 N.J.A.R.2d (CSV) 485.

Removal of township employee was warranted. Carnoval v. Florence Township Water and Sewer Department, 92 N.J.A.R.2d (CSV) 483.

Removal of computer operator was warranted for allowing acquisition of access codes. Timpone v. Glassboro State College, 92 N.J.A.R.2d (CSV) 477.

Suspension of developmental center employee was warranted. Artemus v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 474.

Senior medical security officer of Department of Human Services was properly suspended for ten days for being absent from work. Slaughter v. Department of Human Services, Forensic Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 472.

Thirty-day suspension, rather than four-month suspension of Motor Vehicles Safety Specialist, was warranted. Thomas v. Division of Motor Vehicles, 92 N.J.A.R.2d (CSV) 469.

Supervisor of Division of Motor Vehicles was properly suspended for ten days. Hall v. Division of Motor Vehicles, 92 N.J.A.R.2d (CSV) 465.

Developmental center employee was properly suspended for 20 days without pay. Price v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 463.

Police sergeant's demotion was warranted for his failure to perform his assigned duties, engaging in conduct unbecoming a public employee, and neglect of duty. Marasco v. Berkeley Township Police Department, 92 N.J.A.R.2d (CSV) 458.

Mechanic's driving privilege suspension constituted conduct unbecoming an employee in public service and warranted removal. Holman v. Newark Board of Education, 92 N.J.A.R.2d (CSV) 454.

Suspension and demotion of a police sergeant was warranted. Fagan v. Point Pleasant Beach Police Department, 92 N.J.A.R.2d (CSV) 445.

Correction officer was guilty of conduct unbecoming a public employee and removal was warranted. Cherry v. Monmouth County Personnel Department, 92 N.J.A.R.2d (CSV) 438.

Removal of fire fighter was warranted for violation of departmental order regarding sick leave and for insubordination. Butler v. Fire Department, City of Jersey City, 92 N.J.A.R.2d (CSV) 434.

Removal of developmental center employee was warranted. Williams v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 427.

Removal of correction officer was warranted. Valentine v. Northern State Prison, 92 N.J.A.R.2d (CSV) 424.

Removal of maintenance worker was warranted after his driver's license was suspended. Smith v. Department of Transportation, 92 N.J.A.R.2d (CSV) 422.

Termination of police officer was warranted for working outside employment. Kline v. Department of Law and Public Safety, 92 N.J.A.R.2d (CSV) 414.

Training school failed to prove that suspension of correction officer was unwarranted. Wilson v. Lloyd McCorkle Training School, 92 N.J.A.R.2d (CSV) 408.

Excessive absenteeism warranted removal. Williams v. Department of Public Works, Winslow Twp., 92 N.J.A.R.2d (CSV) 405.

Correction officer's failure constituted neglect of duty warranting ten-day suspension. Rodriguez v. Edna Mahon Correctional Facility, 92 N.J.A.R.2d (CSV) 391.

Removal of building maintenance worker was warranted. Miller v. Cape May County, 92 N.J.A.R.2d (CSV) 387.

Urinalysis warranted removal of police officer. Jersey City Police Dept. v. Torres, 92 N.J.A.R.2d (CSV) 383.

Evidence failed to establish that removal of developmental center employee was justified. Jackson v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 381.

Ten-day suspension of shop steward was justified for insubordination and neglect of duty. Carroll v. Camden County Health Services Center, 92 N.J.A.R.2d (CSV) 369.

Removal of correction officer justified by his failure to meet the probationary drug rehabilitation terms. Rivera v. Essex County Jail, 92 N.J.A.R.2d (CSV) 365.

Suspension; improper food handling. Flowers v. Buttonwood Hospital, 92 N.J.A.R.2d (CSV) 351.

Suspension; unlawful "tapping" of student. Essex Day Training Center v. Dugger, 92 N.J.A.R.2d (CSV) 349.

Suspension; verbal abuse of client. Caine v. New Jersey Department of Human Services, 92 N.J.A.R.2d (CSV) 347.

Unexcused absences and failure to call in warranted removal. Taylor v. Forensic Psychiatric Hospital, 93 N.J.A.R.2d (CSV) 342.

Suspension; misstatement in medical history when applying for employment. *Nobles v. Police Department, City of Camden*, 92 N.J.A.R.2d (CSV) 336.

Removal; selling drugs to inmates. *Clark v. Mid-State Correctional Facility*, 92 N.J.A.R.2d (CSV) 326.

Removal; intercourse with a patient. *Johnson v. Camden County*, 92 N.J.A.R.2d (CSV) 321.

Removal; scheme to defraud Housing Authority. *Willis v. Newark Housing Authority*, 92 N.J.A.R.2d (CSV) 312.

Suspensions and removal; insubordination, neglect of duty and conduct unbecoming public employee. *Ranjbaran v. Ramapo College of New Jersey*, 92 N.J.A.R.2d (CSV) 304.

Removal; insubordination. *Polhamus v. Southern State Correctional Facility*, 92 N.J.A.R.2d (CSV) 298.

Suspension; unauthorized use of physical and chemical restraints. *Kelly v. Burlington County Buttonwood Hospital*, 92 N.J.A.R.2d (CSV) 294.

Removal; use of cocaine. *Clark v. Albert C. Wagner Youth Correctional Facility*, 92 N.J.A.R.2d (CSV) 284.

Suspension; insubordination. *Barksdale v. Edna Mahon Correctional Facility*, 92 N.J.A.R.2d (CSV) 280.

Suspension; passing a marked state police vehicle at excessive rate of speed and causing chase to ensue and failing to identify himself when stopped. *Fuller v. Newark Police Department*, 92 N.J.A.R.2d (CSV) 277.

Suspension; gambling with inmates and paying off debts with cigarettes. *Bowden v. Bayside State Prison*, 92 N.J.A.R.2d (CSV) 273.

Removal; absenteeism. *Hester v. Evergreen Manor, Camden County*, 92 N.J.A.R.2d (CSV) 259.

Suspension; neglect of duty, conduct unbecoming a public employee and insubordination. *Gallo v. Township of Berkeley*, 92 N.J.A.R.2d (CSV) 256.

Suspension; permitting client's continued self-abuse. *Forde v. Hunterdon Developmental Center*, 92 N.J.A.R.2d (CSV) 251.

Removal; selling cocaine. *Cameron v. Preakness Hospital, Passaic County*, 92 N.J.A.R.2d (CSV) 247.

Insubordination; suspension without pay. *Ramos v. Preakness Hospital, Passaic County*, 92 N.J.A.R.2d (CSV) 244.

Officer medically unfit to perform his duties; resignation in good standing. *Muller v. Public Safety, Atlantic County*, 92 N.J.A.R.2d (CSV) 242.

Resignation in good standing; employee medically unfit to fully perform his duties. *Hall v. Ocean County Road Department*, 92 N.J.A.R.2d (CSV) 240.

Suspension; improper touching of clients. *Warrelmann v. North Princeton Developmental Center*, 92 N.J.A.R.2d (CSV) 225.

Suspension; neglect of duty. *Van Buskirk v. New Jersey State Prison*, 92 N.J.A.R.2d (CSV) 220.

Suspension; failure to respond to a burglary alarm. *Ruggiero v. Jackson Township Department of Law and Public Safety*, 92 N.J.A.R.2d (CSV) 214.

Removal; incompetency and inefficiency. *Kistner v. Department of Transportation*, 92 N.J.A.R.2d (CSV) 207.

Removal; insubordination; incidental duties. *Junna v. Department of Parks and Recreation, Atlantic County*, 92 N.J.A.R.2d (CSV) 205.

Suspension; hitting client in face with wet washcloth. *Hunterdon Developmental Center v. Isak*, 92 N.J.A.R.2d (CSV) 203.

Removal for malingering. *Hudak v. Department of Treasury, Div. of General Services*, 92 N.J.A.R.2d (CSV) 201.

Removal; physical inability to perform duties. *Hanna v. Township of South Orange Village*, 92 N.J.A.R.2d (CSV) 198.

Removal not justified; nephrotic syndrome condition. *Crews v. Ancora Psychiatric Hospital*, 92 N.J.A.R.2d (CSV) 188.

Patient abuse; removal. *Buratt v. Marlboro Psychiatric Hospital, State Department of Human Services*, 92 N.J.A.R.2d (CSV) 184.

Fine; conduct subversive to good order and discipline and failure to submit timely, properly written report. *Bollettieri v. Camden Police Department*, 92 N.J.A.R.2d (CSV) 181.

Suspension; call-in procedures for absences. *Wewer v. Burlington County*, 92 N.J.A.R.2d (CSV) 174.

Suspension; rough treatment of patient. *McFadden v. John L. Montgomery Medical Center*, 92 N.J.A.R.2d (CSV) 171.

Discharge; assaulting inmate and filing false report. *Gant v. Salem County Jail*, 92 N.J.A.R.2d (CSV) 168.

Developmental center worker slapped patient; dismissal. *Peters v. North Princeton Developmental Center*, 92 N.J.A.R.2d (CSV) 149.

Employee was guilty of conduct unbecoming a state employee; suspension. *Lawson v. Department of Human Services, Ancora Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 145.

Human services assistant was guilty of physically and verbally abusing a patient; removal. *Goldsboro v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 143.

Bridge repairer engaged in conduct unbecoming an employee in public service; removal. *Fox v. Monmouth County Bridge Dept.*, 92 N.J.A.R.2d (CSV) 137.

Truck driver was not physically unable to perform job duties; demotion was not warranted. *DeLorenzo v. Camden County*, 92 N.J.A.R.2d (CSV) 134.

Corrections officer was not guilty of neglect of duty. *Casey v. Mountainview Youth Correctional Facility*, 92 N.J.A.R.2d (CSV) 129.

Employee late for work twice; suspended from employment for six months. *Carter v. Riverfront State Prison*, 92 N.J.A.R.2d (CSV) 126.

Chronic and excessive absenteeism and tardiness; removal. *Boone v. Camden County Health Services Center*, 92 N.J.A.R.2d (CSV) 125.

Removal; tardiness on two occasions. N.J.S.A. 18A:2-6, 11:2A-6. *Borja v. Newark Board of Educ.*, 92 N.J.A.R.2d (CSV) 114.

Physical restraint of a patient did not constitute abuse of a patient. N.J.S.A. 11A:1-1 et seq., 11A:1-2, 11A:2-6, 11A:2-20. *Summers v. Marlboro Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 113.

Officer late two days in a row properly removed from employment. *Shareef v. Northern State Prison*, 92 N.J.A.R.2d (CSV) 108.

Worker would be suspended for six months rather than removed from employment. *Russ v. Arthur Bresbain Child Treatment Center*, 92 N.J.A.R.2d (CSV) 105.

Employee was guilty of harassment and intimidation, conduct unbecoming a public employee, justifying removal. *Muhammad v. State Dept. of Corrections*, 92 N.J.A.R.2d (CSV) 103.

Conduct unbecoming a public employee; suspension. *Borchester v. Public Works of Lacey Township*, 92 N.J.A.R.2d (CSV) 89.

Proper use of defense maneuver on patient; removal not justified. *Blair v. Ancora Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 87.

Use of word "nigger"; removal. *Graziano v. Monmouth County Sheriff's Dept.*, 92 N.J.A.R.2d (CSV) 73.

Theft of two dollars of public funds; removal. *Carter v. Cumberland County Welfare*, 92 N.J.A.R.2d (CSV) 71.

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

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

Striking client on head; suspension. *Cobb v. Woodbridge Development Center*, 92 N.J.A.R.2d (CSV) 43.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4A:2-2.4 Limitations on suspensions and fines

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

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

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

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

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

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

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

1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

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

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

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

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

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

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

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

Added new (e).

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

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

Revised (a).

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

4A:2-2.6 Hearings before the appointing authority

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

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

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

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

Case Notes

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

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

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

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

4A:2-2.7 Actions involving criminal matters

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

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services.

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

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

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

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

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

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

Revised (a).

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4A:2-2.8 Appeals to Merit System Board

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

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

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

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

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

Case Notes

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

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

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

4A:2-2.9 Board hearings

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

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

(b) Where a municipal police officer has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the officer shall receive back pay, benefits and seniority pursuant to N.J.S.A. 40A:14-149.1 et seq.

(c) Where an employee, other than a municipal police officer, has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the employee shall receive back pay, benefits and seniority if the employee is found not guilty at trial, the complaint or indictment is dismissed, or the prosecution is terminated.

1. Such items shall not be awarded when the complaint or indictment is disposed of through Conditional Discharge, N.J.S.A. 2C:36A-1, or Pre-Trial Intervention (PTI), N.J.S.A. 2C:43-12 et seq.

2. Where disciplinary action has been taken following disposition of the complaint or indictment, such items shall not be awarded in case of removal. In case of suspension, where the employee has already been suspended for more than six months pending disposition of the complaint or indictment, the disciplinary suspension shall be applied against the period of indefinite suspension. The employee shall receive back pay for the period of suspension beyond six months, but the appointing authority may for good cause deny back pay for the period beyond the disciplinary suspension up to a maximum of six months.

(d) Back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

1. Back pay shall not include items such as overtime pay and holiday premium pay.

2. The award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld.

3. The award of back pay shall be reduced by the amount of money which was actually earned or could have been earned during the separation. If an employee also held other employment at the time of the adverse action, the earnings from such other employment shall not be deducted from the back pay. However, if the employee increased his or her work hours at the other employment during the back pay period, earnings from such additional hours shall be subtracted from the back pay award.

4. Funds that must be repaid by the employee shall not be considered when calculating back pay.

(e) Unless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective

date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll.

(f) When the Board awards back pay and benefits, determination of the actual amounts shall be settled by the parties whenever possible.

(g) If settlement on an amount cannot be reached, either party may request, in writing, Board review of the outstanding issue. In a Board review:

1. The appointing authority shall submit information on the salary the employee was earning at the time of the adverse action, plus increments and across-the-board adjustments that the employee would have received during the separation period; and

2. The employee shall submit an affidavit setting forth all income received during the separation.

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

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

Redesignated part of existing text in (a) to (d); added new (b)-(c); redesignated existing (b)-(d) to (e)-(g).

Case Notes

Merit System Board's adoption of rules regarding back pay for police officers during periods of nondisciplinary suspension requires public notice of anticipated action. *DelRossi v. Department of Human Services (Police)*, 256 N.J.Super. 286, 606 A.2d 1128 (A.D.1992).

Police officer was not entitled to back pay and benefits during period of nondisciplinary suspension resulting from criminal charges. *DelRossi v. Department of Human Services (Police)*, 256 N.J.Super. 286, 606 A.2d 1128 (A.D.1992).

Merit System Board must exercise power to award back pay for periods of nondisciplinary suspension through rule making. *DelRossi v. Department of Human Services (Police)*, 256 N.J.Super. 286, 606 A.2d 1128 (A.D.1992).

Merit System Board's role in determining whether to award back pay for periods of disciplinary suspension is adjudicatory. *DelRossi v. Department of Human Services (Police)*, 256 N.J.Super. 286, 606 A.2d 1128 (A.D.1992).

Corrections officers who were dismissed for violation of mandatory drug test order were not entitled to award of back pay as remedy for due process violations at pretermination hearings. *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.

Where discharge of employee was in error, back pay could be awarded (citing former N.J.A.C. 4:1-5.5). In the *Matter of Williams*, 198 N.J.Super. 75, 486 A.2d 858 (App.Div.1984).

Determination of back pay—prior disciplinary record not a consideration (citing former N.J.A.C. 4:1-5.17). *Steinal v. City of Jersey City*, 193 N.J.Super. 629, 475 A.2d 640 (App.Div.1984) affirmed 99 N.J. 1, 489 A.2d 1145 (1985).

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 Merit System Board shall award partial or full reasonable counsel fees where an employee has prevailed on all or substantially all of the primary issues.

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

(c) In determining the amount of counsel fees, the following factors should be considered:

1. The time and labor required; and
2. The customary hourly rate.

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

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

Case Notes

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).

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.

(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:

1. Minor discipline appeals of permanent employees in the career service or persons serving a working test period. Appointing authorities may establish procedures for other employees.

2. Grievance appeals of any employees in the career or unclassified services.

(f) Grievance procedures shall not be used to address any matter for which there is another specific type of appeal to the Commissioner or Board.

(g) These rules shall not be utilized to review a matter exclusively covered by a negotiated labor agreement.

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 (c) and relettered old (c)-(f) as (d)-(g), with no change in text.

4A:2-3.2 Minor discipline appeal to appointing authority: State service

(a) Where departmental minor discipline appeal procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) Employees not covered by a negotiated agreement or covered by an agreement that does not address a minor discipline appeal process shall request a departmental hearing within five days of receipt of a notice of discipline or such additional time as may be agreed to by the appointing authority.

1. The departmental hearing shall be conducted within 30 days of such request unless adjourned by the consent of the parties.
2. The burden of proof shall be on the appointing authority.
3. The department shall make a final written disposition of the charges within 20 days of the hearing on Appeal of Minor Discipline Action form, unless the parties have consented to a time extension. The lack of response by the department within this period shall be considered a denial of the appeal.

(c) See N.J.A.C. 4A:2-3.6 for conduct and scheduling and 4A:2-3.7 for appeal to the Board.

4A:2-3.3 Grievance appeal to appointing authority: State service

(a) Where departmental grievance procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) An employee not covered by a negotiated agreement or covered by an agreement that does not address a grievance appeal process shall utilize the appeal procedures in this subchapter.

(c) When a grievance directly concerns and is shared by more than one grievant, the grievants may appeal as a group to the first level of supervision common to the grievants.

(d) A department may consolidate two or more grievances on the same issue and process them as a group grievance. All grievants shall be promptly notified of this action.

(e) An employee may amend a grievance during the initial step at which it is processed. Such amendment may only be made for the purpose of clarification and shall not be utilized to change the nature of the grievance or to include additional items.

(f) The burden of proof shall be on the employee.

4A:2-3.4 Grievance procedure: Step One: State service

(a) A grievance shall be presented in writing on the Department of Personnel grievance form to the office or individual designated by the department to process the matter. It must be filed within 30 calendar days from either the date on which the alleged act occurred or the date on which the grievant should reasonably have known of its occurrence. Efforts should be made to resolve the matter informally.

(b) All grievances shall:

1. Specify the particular act or circumstance being grieved;
2. State the requested remedy; and
3. Indicate whether the employee is representing himself or herself or the name of the employee's counsel or agent.

(c) The office or individual receiving the grievance shall notify the employee of the scheduled hearing or grievance meeting date within seven days of receipt of the grievance. Such hearing or grievance meeting shall be conducted within 30 days of receipt of the grievance, unless an additional time period is agreed to by the parties.

(d) A written decision shall be rendered within 14 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a negative response.

4A:2-3.5 Grievance procedure: Step Two

(a) A grievant may appeal to the Department head or his or her designee within 10 calendar days of:

1. Receipt of the written decision at Step One; or
2. A lack of timely response by the department. See N.J.A.C. 4A:2-3.4(e).

(b) The appeal shall be accompanied by material presented at Step One and any written records or decisions from Step One.

(c) The department shall notify the employee of the scheduled hearing or grievance meeting date within 10 days of receipt of the grievance.

(d) A written decision shall be rendered within 21 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a denial of the grievance appeal.

4A:2-3.6 Conduct and scheduling of hearings and grievance meetings: State service

(a) A grievant shall be entitled to at least one hearing on a grievance prior to the conclusion of Step Two, unless the grievance is satisfactorily resolved at Step One. In addition, a department, at its option, may also schedule a grievance meeting at either Step One or Step Two of the grievance process.

(b) A department may advance a grievance to Step Two of the grievance process. Timely notice of this action shall be supplied to the grievant.

(c) The following shall apply during a hearing at the department level:

1. An employee may be represented by legal counsel, an authorized union representative or appear on his or her own behalf. An employee may also be represented by such other agent as agreed to by the appointing authority. In a group grievance, a member of the group may be designated as the group representative;

2. Permission for a reasonable number of relevant witnesses shall be granted upon the request of the employee or his or her representative or agent;

3. The employee or his or her representative or agent shall act as a spokesperson for the grievant and one person shall act as a spokesperson for the department; and

4. The spokesperson for either party shall have the right to present evidence and examine witnesses.

(d) Any grievance meeting shall be attended only by a designated supervisor, a spokesperson for the department, the grievant, or a spokesperson in a group grievance situation, and the grievant's representative. The department may also permit the attendance of resource persons possessing direct information important to the clarification of the matter.

(e) Departmental management shall schedule minor discipline and grievance hearings or grievance meetings during the employee's regular work hours as far as possible.

(f) The employee or employee agent, if applicable, and witnesses shall be given time off with pay from their regular work duties to participate in hearings or grievance meetings. Such time off shall include reasonable travel time and shall not extend to any time necessary for the preparation of a grievance.

4A:2-3.7 Appeals from appointing authority decisions: State service

(a) Minor discipline may be appealed to the Board under a negotiated labor agreement or within 20 days of the conclusion of departmental proceedings under this subchapter, provided any further appeal rights to mechanisms under the agreement are waived.

1. The Commissioner shall review the appeal upon a written record or such other proceeding as the Commissioner directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed and the commissioner's decision will be a final administrative decision.

2. Where such issues or evidence under (a)1 above are presented, the Board will render a final administrative decision upon a written record or such other proceeding as the Board directs.

(b) Grievances may be appealed to the Commissioner within 20 days of the conclusion of Step Two procedures under these rules or the conclusion of departmental procedures under a negotiated agreement.

1. The Commissioner shall review the appeal on a written record or such other proceeding as the Commissioner directs and render the final administrative decision.

2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy.

(c) Appeals shall include:

1. A copy of the Appeal of Minor Discipline Action form or Department of Personnel grievances form and all written records and decisions established during departmental reviews; and

2. Written argument and documentation.

(d) A copy of all material submitted to the Department of Personnel must be served on the employee's appointing authority.

(e) Failure to submit the material specified in (c) above may result in dismissal.

(f) In Commissioner or Board reviews, the employee shall present issues of general applicability in the interpretation of law, rule or policy (see (a)1 and (b)2 above). If that standard is met:

1. In grievance matters, the employee shall have the burden of proof.

2. In minor disciplinary matters, the appointing authority shall have the burden of proof.

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

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

In (f): Revised text to specify employee's responsibilities in presenting issues in appeals.

Added 1. and 2. regarding burden of proof.

SUBCHAPTER 4. TERMINATION AT END OF WORKING TEST PERIOD

4A:2-4.1 Notice of termination

(a) An employee terminated from service or returned to his or her former permanent title at the conclusion of a working test period due to unsatisfactory performance shall be given written notice in person or by certified mail by the appointing authority.

(b) The notice shall inform the employee of the right to request a hearing before the Board within 20 days of receipt of the notice.

(c) The notice shall be served not more than five working days prior to or five working days following the last day of the working test period. A notice served after this period shall create a presumption that the employee has attained permanent status.

Amended by R.1992 d.414, effective October 19, 1992.
 See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
 Revised (c).
 Administrative Correction to (c).
 See: 25 N.J.R. 686(a).

Case Notes

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. 4:1-13.7). *Davis v. Newark Public Library*, 9 N.J.A.R. 84 (1987).

4A:2-4.2 Time for appeal

(a) An appeal shall be made in writing to the Board no later than 20 days from the employee's receipt of written notification from the appointing authority of the termination from service or return to a former permanent title.

(b) If the appointing authority fails to provide the notice as specified in N.J.A.C. 4A:2-4.1, an appeal must be filed within a reasonable time.

Case Notes

Failure to appeal failure of second working test period precluded appeal from decision in first working test period. *Sansalone v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 22.

4A:2-4.3 Board hearing

(a) An appeal to the Board shall be processed in accordance with N.J.A.C. 4A:2-2.9 et seq.

(b) The employee has the burden of proof to establish that the action was in bad faith.

(c) If bad faith is found by the Board, the employee shall be entitled to a new full or shortened working test period and other appropriate remedies. See N.J.A.C. 4A:2-1.5.

SUBCHAPTER 5. EMPLOYEE PROTECTION AGAINST REPRISALS OR POLITICAL COERCION

4A:2-5.1 General provisions

(a) An appointing authority shall not take or threaten to take any reprisal action against an employee in the career, senior executive or unclassified service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority.

(b) An appointing authority shall not take or threaten to take any action against an employee in the career service or an employee in the senior executive service with career status based on the employee's permissible political activities or affiliations. This subchapter shall also apply to State service employees in the unclassified service who do not serve in policy-making or confidential positions.

Case Notes

Layoff; proof of political motivation. *Pikolycky v. Department of Military and Veterans' Affairs*, 94 N.J.A.R.2d (CSV) 685.

Layoff of supervisor; not based on retaliation or political retribution. 94 N.J.A.R.2d (CSV) 569.

"Whistleblower" medical director justifiably dismissed. *Mendoza v. Wagner Youth Correctional Facility*, 94 N.J.A.R.2d (CSV) 135.

Agency employee voluntarily resigned from his position. *Sandell v. Department of Law and Public Safety*, 93 N.J.A.R.2d (CSV) 705.

4A:2-5.2 Appeals

(a) An employee may appeal a reprisal or political coercion action to the Board within 20 days of the action or the date on which the employee should reasonably have known of its occurrence.

(b) The appeal must be in writing and specify the basis for appeal.

(c) The Commissioner shall review the appeal and request any additional information, or conduct any necessary investigation.

(d) The Board shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate.

(e) Where improper reprisal or political coercion is established, the Board shall provide appropriate protections and remedies to the employee.

Case Notes

Acts of reprisal for public disclosure of information on abusive use of State cars. *Cryan v. Human Services Department*, 92 N.J.A.R.2d (CSV) 275.

SUBCHAPTER 6. RESIGNATIONS**4A:2-6.1 Resignation in good standing**

(a) Any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days' written or verbal notice, unless the appointing authority consents to a shorter notice.

(b) The resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.

(c) A request to rescind the resignation prior to its effective date may be consented to by the appointing authority.

(d) Where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the Board under N.J.A.C. 4A:2-1.1.

Case Notes

Resignation may be rescinded prior to effective date upon appointing authority's approval (citing former N.J.A.C. 4:1-16.12). *Manusco v. No. Arlington Boro.*, 203 N.J.Super. 427, 497 A.2d 238 (App.Div.1985).

Public employee who was convicted of offense involving theft from employer forfeited her position. *Gurenlian v. Ancora Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 599.

Failure to return to duty for five consecutive business days following leave of absence; resignation in good standing. *Apoldite v. Dept. of Treasury*, 93 N.J.A.R.2d (CSV) 459.

Unapproved absence was justified; resignation in good standing. *DeBlasio v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (CSV) 398.

Discharge would be classified as having resigned in good standing. *DeBlasio v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (CSV) 398.

Appeal of resignation not in good standing was moot. *Scott v. Department of Human Resources*, 93 N.J.A.R.2d (CSV) 339.

Removal modified to resignation in good standing. *Harwell v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 679.

Removal modified to resignation in good standing. *Ensslin v. Township of North Bergen*, 92 N.J.A.R.2d (CSV) 674.

Resignation considered as one in good standing. *Swinney v. Sheriff's Department, Camden County*, 92 N.J.A.R.2d (CSV) 614.

Settlement agreement; technician allowed to resign in good standing. *Di Lard v. Ancora Psychiatric Hospital*, 92 N.J.A.R.2d (CSV) 159.

Employee was not entitled to rescind his resignation. *Schaan v. Gloucester County Bd. of Social Services*, 92 N.J.A.R.2d (CSV) 152.

Sanitary inspector resigned under distress and refusal to allow him to rescind his resignation was unreasonable. *Manzo v. Jersey City Div. of Health*, 92 N.J.A.R.2d (CSV) 117.

Attempt to change resignation to a medical leave of absence; resignation would be changed from not-in-good standing to good standing. *Cheeseman v. Bayside State Prison*, 92 N.J.A.R.2d (CSV) 41.

Merit Service Board had no jurisdiction to hear an appeal from employee who voluntarily resigned her position. *Tatum v. John L. Montgomery Medical Home*, 91 N.J.A.R.2d (CSV) 45.

4A:2-6.2 Resignation not in good standing

(a) If an employee resigns without complying with the required notice in N.J.A.C. 4A:2-6.1, he or she shall be held as having resigned not in good standing.

(b) Any employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. Approval of the absence shall not be unreasonably denied.

(c) An employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for extension of leave shall not be unreasonably denied.

(d) Where an employee is resigned not in good standing under (a), (b), or (c), the employee shall be provided with notice and an opportunity for a departmental hearing under N.J.A.C. 4A:2-2.5, and Final Notice and a right to appeal to the Board under N.J.A.C. 4A:2-2.8. An employee shall be in unpaid status pending the departmental decision. Should an employee seek to return to employment pending the departmental decision, a review under N.J.A.C. 4A:2-2.5(b) shall be conducted prior to continuation of the unpaid status.

(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

Conduct while on disability leave; not abandonment of employment. *Boisvert v. Sea Isle City*, 94 N.J.A.R.2d (CSV) 571.

Termination was proper when employee failed to report to work for more than five days without approval from his supervisor. *Randall v. City of Newark Housing Authority*, 94 N.J.A.R.2d (CSV) 477.

Employee abandoned his position and resigned not in good standing. *Goel v. Newark Department of Engineering*, 94 N.J.A.R.2d (CSV) 546.

Resignation in good standing of correction officer was proper. *Bogdan v. Garden State Reception and Youth Correctional Facility*, 94 N.J.A.R.2d (CSV) 426.

Termination of maintenance worker based on resignation not in good standing was justified. *LaBenz v. Cape May County Department of Facilities and Services*, 94 N.J.A.R.2d (CSV) 88.

Clerical employee was properly deemed to have resigned not in good standing based on her absence without authorization. *Wilkins v. Bergen County Board of Social Services*, 93 N.J.A.R.2d (CSV) 780.

Suspension rather than removal was justified for long-term employee's absence. *McNeil v. Department of Transportation*, 93 N.J.A.R.2d (CSV) 742.

Employee was properly resigned not in good standing for absence following denial of medical leave. *Williams v. Northern States Prison*, 93 N.J.A.R.2d (CSV) 701.

Forced resignation not in good standing was not warranted for failure to return to duty for five consecutive days following an approved leave of absence. *Singley v. Woodbridge Developmental Center*, 93 N.J.A.R.2d (CSV) 606.

County employee's conduct constituted abandonment of his position. *Lee v. Monmouth County Department of Public Works*, 93 N.J.A.R.2d (CSV) 452.

Resignation not in good standing; chronic and unauthorized absences. *Boston v. Woodbridge Developmental Center, State Dept. of Human Services*, 93 N.J.A.R.2d (CSV) 413.

Resigning nurse not in good standing was justified. *Boston v. Woodbridge Developmental Center*, 93 N.J.A.R.2d (CSV) 413.

Absence for more than five days without giving notice resulted in abandonment of employment. *Randall v. Newark Housing Authority*, 93 N.J.A.R.2d (CSV) 185.

Absence from position for five or more consecutive days constituted an abandonment of position; resignation not in good standing. *Key v. New Lisbon Developmental Center*, 93 N.J.A.R.2d (CSV) 138.

Resignation not in good standing was justified. *Green v. Gloucester County Board of Social Services*, 93 N.J.A.R.2d (CSV) 36.

Resignation not in good standing was warranted. *Lick v. Trenton Public Works Department*, 92 N.J.A.R.2d (CSV) 765.

Resignation would be considered rescinded and employee would be reinstated. *Cooke v. Monmouth County Board of Social Service*, 92 N.J.A.R.2d (CSV) 666.

Removal of park ranger with work related disability modified to resignation in good standing. *Reardon v. Monmouth County*, 92 N.J.A.R.2d (CSV) 583.

Abandonment of position would be treated as resignation not in good standing. *Miller v. Crest Haven Nursing Home, Cape May County*, 92 N.J.A.R.2d (CSV) 560.

Security guard resigned not in good standing because of unauthorized absence. *Turner v. Newark Housing Authority*, 92 N.J.A.R.2d (CSV) 403.

Failure to establish that employee refused to obey reasonable order. *Drakeford v. North Jersey Development Center*, 92 N.J.A.R.2d (CSV) 333.

Correction officer did not abandon her position; work-related injuries entitled her to sick leave. *Thomas v. Northern State Prison*, 92 N.J.A.R.2d (CSV) 329.

Employee properly resigned not in good standing. *Powell v. North Princeton Developmental Center*, 92 N.J.A.R.2d (CSV) 301.

Resignation in good standing; failure to report to work in timely manner following end of medical leave. *Estate of Hoffman v. State Dept. of Corrections*, 92 N.J.A.R.2d (CSV) 286.

Suspension; failure to follow proper procedures to extend a leave of absence. *Tierney v. State Department of the Treasury*, 92 N.J.A.R.2d (CSV) 229.

Officer resigned not in good standing; proper. *Mason v. Cumberland County*, 92 N.J.A.R.2d (CSV) 210.

Resignation not in good standing; unauthorized absences. *Carvale v. Department of Public Works, City of Trenton*, 92 N.J.A.R.2d (CSV) 187.

Resigning employee not in good standing; justified. *Martin v. Forensic Psychiatric Hospital*, 92 N.J.A.R.2d (CSV) 179.

Public employee resigned not in good standing. *Eigenmann v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 136.

Removal of corrections officer would be modified to resignation not in good standing. N.J.S.A. 11A:1-1 et seq. *Moore v. Central Transp., New Jersey Dept. of Corrections*, 92 N.J.A.R.2d (CSV) 98.

Refusal to submit to blood and urine test constituted resignation not in good standing. U.S.C.A. Const. Amend. 4, N.J.S.A. Const. Arts. 1, 7. *Johnson v. City of Camden Police Dept.*, 91 N.J.A.R.2d (CSV) 13.

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*.