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

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

Case Notes

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

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

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

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

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

4A:2-2.2 Types of discipline

(a) Major discipline shall include:

1. Removal;

2. Disciplinary demotion; and

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

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

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

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

Case Notes

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

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

Although a correction sergeant violated the policies prohibiting employees from transferring materials between inmates, the officer's actions were mitigated by the fact that he was trying to meet the personal hygiene needs of an inmate; the officer's sole purpose was to provide an inmate with personal care items that were available to all other inmates in the reception area. Six-month suspension, rather than removal, was warranted (adopting 2011 N.J. AGEN LEXIS 441). In re Jones, OAL Dkt. No. CSR 3716-11, 2011 N.J. CSC LEXIS 1137, Civil Service Comm'n Decision (October 19, 2011).

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

Failure of a police officer to accurately report the events surrounding a hit-and-run accident and his attempt to shield a fellow firefighter tended to destroy public respect in the delivery of governmental services. Even in the face of an unblemished disciplinary record, removal was appropriate (adopting in part and rejecting in part 2011 N.J. AGEN LEXIS 356). In re Ferrarella, OAL Dkt. No. CSR 2552-11 and CSR 2781-11, 2011 N.J. CSC LEXIS 1187, Final Decision (September 21, 2011).

While it was evident that a police officer misrepresented the facts in his initial report to his superiors and during the internal affairs investigation, unlike his fellow officer, he tried to rectify his error by advising his superiors that he had misspoken in his first statement and later provided a truthful account. The officer was the newest officer on the force that evening, had a close, trusting relationship with his fellow officer, and relied on his fellow officer for direction as to how to proceed; the reliance on a more senior officer and his actions to rectify his error mitigated his culpability, warranting a six-month suspension as opposed to removal (adopting in part and rejecting in part 2011 N.J. AGEN LEXIS 356). In re Ferrarella, OAL Dkt. No. CSR 2552-11 and CSR 2781-11, 2011 N.J. CSC LEXIS 1187, Civil Service Comm'n Decision (September 21, 2011).

Senior correction officer's action of storing unauthorized contraband in his locker, which included a pipe cutter that could have been used as a weapon, clearly created a security risk to the prison. Removal, rather than a six-month suspension, was appropriate (adopting in part and rejecting in part 2011 N.J. AGEN LEXIS 401). In re Jones, OAL Dkt. No. CSR 13317-10, 2011 N.J. CSC LEXIS 1185, Final Decision (September 21, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 250) adopted, in which the ALJ found, on conflicting evidence, that a Human Services Assistant was not sleeping while she was assigned one-to-one supervision of a patient who later escaped; instead, the assistant violated a policy of maintaining constant eye contact with the patient when she turned her back on the patient to wash her hands, effectively allowing the patient to elope. The penalty of removal was excessive, given the many years of service the assistant had provided, her reputation for being hard-working and helpful, and her particular history with this patient, who was known to be an eloper; thus, a 45-day suspension was appropriate. In re Smith,

OAL Dkt. No. CSV 00024-10 and CSV 00985-10, 2011 N.J. CSC LEXIS 834, Civil Service Comm'n Decision (July 27, 2011).

Imposition of a 60-working-day suspension, a 90 working day suspension, and the removal of a county correction officer were justified after the officer failed to appear in court on two occasions to address a summons issued to her as well as corresponding warrants. Although the appointing authority sought removal due to the officer's excessive absenteeism, failure of a law enforcement officer to appear and remain in court could not be tolerated and was worthy of a severe sanction. In re Ocharo, OAL Dkt. No. CSR 6087-10, 2011 N.J. CSC LEXIS 107, Final Decision (March 18, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 22) adopted, which concluded that a six-month suspension, rather than removal, was the appropriate remedy for a correction officer's absenteeism; while her absences caused the appointing authority to pay overtime to employees who had to cover her position, disciplinary hearings regarding her absenteeism were so close in time that the officer did not get an opportunity to learn and improve from prior disciplines. Additionally, the officer did not have any disciplinary infractions in her five years of service. In re Hamilton, OAL Dkt. No. CSR 11919-10, 2011 N.J. CSC LEXIS 342, Civil Service Comm'n Decision (March 18, 2011).

Credible evidence supported the ALJ's conclusion that the appointing authority failed to prove that a senior correction officer provided an inmate with the personal address of a civilian without her consent; however, on finding that the officer had failed to obtain permission for secondary employment as a personal trainer, the ALJ erred in reducing the officer's penalty from removal to an oral reprimand. Notwithstanding the officer's benign disciplinary history and years of service, the imposition of a 60-working-day suspension was appropriate (adopting with modification 2010 N.J. AGEN LEXIS 576). In re Aziz, OAL Dkt. No. CSR 1749-10, 2011 N.J. CSC LEXIS 51, Civil Service Comm'n Decision (February 17, 2011).

Senior correction officer was properly removed for undue familiarity with an inmate after the officer discussed a fellow officer's tattoo with an inmate without that officer's knowledge, as well as shared information about his own tattoo, thus creating a risk to himself, the other officer, and the facility in general (adopting 2010 N.J. AGEN LEXIS 629). In re Hendershot, OAL Dkt. No. CSR 8155-10, 2011 N.J. CSC LEXIS 10, Final Decision (February 17, 2011).

Six-month suspension was appropriate where a police lieutenant who was on suspension from the police department and did not have the right to represent himself as an active lieutenant falsely implied he was an active member of the department by displaying his identification to airport personnel (adopting in part and rejecting in part 2010 N.J. AGEN LEXIS 526). In re Andriani, OAL Dkt. No. CSR 5436-10, 2011 N.J. CSC LEXIS 70, Civil Service Comm'n Decision (February 2, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 582) adopted, which found that a senior correction officer was properly removed for failing to promptly report an inmate's attempts to procure a cell phone through bribery. Although the officer clearly never intended to accept the bribe, his two-day delay in reporting the incident was a lapse of judgment that potentially endangered members of the public and other employees of the institution. In re Kobi, OAL Dkt. No. CSR 07084-10, 2011 N.J. CSC LEXIS 12, Final Decision (February 2, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 682) adopted, which found that a 30-day suspension, rather than removal, was the appropriate penalty for a police officer following a random drug screen that resulted in a positive test for the prescription drug Butalbital, for which the officer did not have a prescription. The ALJ found credible the officer's testimony that she unknowingly and mistakenly took her mother's Butalbital medication believing it was another tablet of her Acetaminophen with Codeine. In re Swinney, OAL Dkt. No. CSR 08976-10, 2011 N.J. CSC LEXIS 17, Civil Service Comm'n Decision (February 2, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 525) adopted, which found that a county correction officer was properly removed after he failed to complete prison rounds on seven occasions, on six different dates. Prison rounds, though boring at times, were essential to the integrity and competence of prison operations and the officer aggravated his inappropriate conduct by failing to resume rounds once undistracted, failing to notify a supervisor, and most egregiously, entering false information in the log. In re McKie, OAL Dkt. No. CSR 2815-10, 2011 N.J. CSC LEXIS 14, Final Decision (February 2, 2011).

Initial Decision (2010 N.J. AGEN LEXIS 591) adopted, which concluded that a senior correction officer was properly removed after attempting to bring his cellular telephone into the secured area of a youth facility, thereby jeopardizing the safety and well-being of not only himself but other staff, inmates, and the general public. In re Gilsenan, OAL Dkt. No. CSV 7785-10, 2011 N.J. CSC LEXIS 71, Final Decision (January 19, 2011).

Removal, rather than a six-month suspension, was warranted where a senior correction officer fabricated a story of an attempted escape in order to ensure that a particular inmate was subject to severe discipline following the inmate's failure to comply with an order to vacate an area of a loading dock when a truck was entering. The officer's story caused his superiors to call a "Code 22" lock-down, a rare event which significantly disrupted the prison's operations (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 1093). In re Gordon, OAL Dkt. No. CSR 11268-09, 2010 N.J. AGEN LEXIS 690, Final Decision (February 24, 2010).

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

Thirty-day, rather than a ten-day, suspension was warranted after a township employee engaged in a fist fight with his brother, who was a fellow township employee. The employee had numerous prior minor disciplinary actions and the fact that it was a "family disagreement" was immaterial given that the fight occurred between two township employees in full view of the public (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1254). In re Merola, OAL Dkt. No. CSV 2395-08, 2008 N.J. AGEN LEXIS 1214, Final Decision (October 8, 2008).

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

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

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

Initial Decision (2009 N.J. AGEN LEXIS 443) adopted, which found that, although overwhelming evidence existed as to a sergeant's use of indecent, profane and uncivil language directed toward a superior officer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Conduct unbecoming a public employee;

7. Neglect of duty;

8. Misuse of public property, including motor vehicles;

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

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

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

12. Other sufficient cause.

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

Dismissal was appropriate sanction for refusal by correction officers to submit to mandatory drug testing. Caldwell v. New Jersey Dept. of Corrections, 250 N.J.Super. 592, 595 A.2d 1118 (A.D.1991), certification denied 127 N.J. 555, 606 A.2d 367.

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

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

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

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

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

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

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

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

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

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

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

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

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

Initial Decision (2011 N.J. AGEN LEXIS 482) adopted, which found that a county correction officer engaged in conduct unbecoming of a public employee and neglected her duty when she bailed her girlfriend out of the jail where the officer was employed. The officer's conduct became more egregious when she gave false statements during an internal investigation in order to conceal her actions; while the officer feared losing her job and disclosing her sexual orientation, those excuses were merely self-serving and neither negated nor mitigated the gravity of her conduct. In re Ramos, OAL Dkt. No. CSR 1346-11, 2011 N.J. AGEN LEXIS 674, Final Decision (October 19, 2011).

Sheriff's officer's intent and his fellow employee's state of mind were irrelevant in determining whether the officer's conduct constituted harassment. Even though the complainant failed to appear at the officer's disciplinary hearing, the ALJ properly concluded that a reasonable woman would clearly regard the note as sexual harassment. In re Castillo, OAL Dkt. No. CSR 9396-10, 2011 N.J. CSC LEXIS 759, Final Decision (July 27, 2011).

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

Assistant district parole supervisor was properly removed where he had offensive items in his office, was heard making inappropriate comments, inappropriately used a State vehicle for personal use, failed to document his mileage correctly, and transported juveniles without another officer. The "45-day rule" did not apply to the supervisor (adopting as modified 2011 N.J. AGEN LEXIS 77). In re Dones, OAL Dkt. No. CSV 697-10 and CSR 9392-10, 2011 N.J. CSC LEXIS 391, Final Decision (April 6, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 30) adopted, which found that, although there was no evidence that a senior correction officer knew of or facilitated a relationship between an inmate and another officer, the officer's negligence in leaving a social worker's office unlocked allowed the inmate to have access to a telephone. Such negligence warranted a six-month suspension. In re Harkcom, OAL Dkt. No. CSR 7980-10, 2011 N.J. CSC LEXIS 343, Civil Service Comm'n Decision (March 18, 2011).

Initial Decision (2011 N.J. AGEN LEXIS 63) adopted, which found that while a county correction officer's testimony regarding his lack of drug use was credible, the fact remained that he tested positive for oxycodone and did not have a prescription for the drug. He was therefore properly removed. In re Debow, OAL Dkt. No. CSR 9077-10, 2011 N.J. CSC LEXIS 341, Final Decision (March 18, 2011).

County correction officer was properly removed after he failed to report a previous relationship with an inmate and engaged in personal contact and established a personal relationship with her, as an ex-inmate during the time of her parole supervision. Notwithstanding that the parolee was a long-time friend who was attempting to become a productive member of society, the officer's conduct could not be tolerated and was worthy of severe sanction (adopting 2010 N.J. AGEN LEXIS 499). In re Gliottone, OAL Dkt. No. CSR 2406-10, 2011 N.J. CSC LEXIS 9, Final Decision (February 17, 2011).

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

Initial Decision (2010 N.J. AGEN LEXIS 444) adopted, which found that a senior correction officer was properly removed as a result of an incident occurring at a bar where the officer was charged with stealing a purse, failed to report the charges to his employer in a timely fashion and, when he did file the report, made false statements concerning the events by stating he thought it was his girlfriend's purse. Removal was also appropriate as a result of a separate incident in which the officer allegedly altered a prescription for a controlled dangerous substance. In re Poole, OAL Dkt. No. CSR 6625-09 and CSR 2006-10 (Consolidated), 2010 N.J. CSC LEXIS 927, Final Decision (August 9, 2010).

Initial Decision (2010 N.J. AGEN LEXIS 537) adopted, which found that although a senior correction officer was properly removed for conduct unbecoming after she shoplifted on two occasions, the charge of criminal matters under N.J.A.C. 4A:2-2.7 was dismissed because there was no criminal conviction as of the date of the disciplinary proceedings. N.J.A.C. 4A:2-2.7 involved pre-conviction procedural actions including an indefinite suspension pending the disposition criminal case; the municipal court shoplifting charges were dismissed or downgraded to a municipal ordinance. In re Noseworthy, OAL Dkt. No. CSR 12158-09 and CSR 12159-09 (Consolidated), 2010 N.J. AGEN LEXIS 691, Final Decision (April 28, 2010).

Contrary to an Administrative Law Judge's findings, a senior correction officer subjected the correctional facility and the public to possible harm by bringing a cell phone into a secured facility and her failure to adhere to policy undermined her position, affecting the public's respect for public entities and public employees as a whole; therefore, the officer's conduct was unbecoming and the charge of conduct unbecoming a public employee was sustained (adopting in part

and rejecting in part 2010 N.J. AGEN LEXIS 109). In re Griffin, OAL Dkt. No. CSR 6681-09, 2010 N.J. AGEN LEXIS 694, Final Decision (April 28, 2010).

Initial Decision (2010 N.J. AGEN LEXIS 71) adopted, which found that a mechanical equipment specialist was properly disciplined to a 10-day suspension after he failed to follow procedures in bleeding the air out of the radiation system, which caused significant damage. In re Kandic, OAL Dkt. No. CSV 330-08, 2010 N.J. CSC LEXIS 585, Final Decision (March 10, 2010).

Six-month suspension, rather than removal, was appropriate based on a county correction officer's reaction and behavior during a meeting in which he was presented with a preliminary notice of disciplinary action (PNDA) because, although the appointing authority was under no obligation to end the meeting upon the officer's request for counsel and was also under no obligation to provide the officer with prior notice that he would be presented with a PNDA, the officer felt misled by the meeting. He expected simply to be advised of the outcome of a complaint he filed regarding the assignment of overtime and his reaction to being served with a PNDA and having the charges read to him after being advised of the outcome of the investigation, while completely inappropriate, stemmed from his perception that the charges were "repercussions" for filing his complaint. In re Wolff, OAL Dkt. No. CSR 6228-09, 2010 N.J. AGEN LEXIS 693, Civil Service Comm'n Decision (February 24, 2010).

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

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

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

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

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

Americans with Disabilities Act did not require any further action by an appointing authority before removing a firefighter from his position following his second drunk-driving arrest. Pursuant to 42 U.S.C.A. § 14114(c)4 the appointing authority was entitled to hold an employee who was an alcoholic to the same qualification standards for job performance and behavior that it held other employees, even if any unsatisfactory performance or behavior was related to the alcoholism of the employee. In re Walden, OAL Dkt. No. CSV 3394-09, 2009 N.J. CSC LEXIS 1559, Final Decision (November 18, 2009).

Firefighter was properly removed following his second drunk driving arrest; the lack of a formal policy for removal did not demonstrate that he was treated in an arbitrary and capricious manner. In re Walden, OAL Dkt. No. CSV 3394-09, 2009 N.J. CSC LEXIS 1559, Final Decision (November 18, 2009).

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

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

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

Senior correction officer should not have received a 45-day suspension where the appointing authority failed to prove that the officer improperly handled and disposed of contraband, failed to secure gates, and failed to conduct tours of his unit. In the absence of evidence to the contrary, the officer's conduct in leaving gates unlocked during periods of inmate movement in and out of the unit was an acceptable practice, and his performing two to three tours during his shift satisfied the requirements set forth in his post orders. In re Smith, OAL Dkt. No. CSV 10108-07, 2009 N.J. CSC LEXIS 1439, Civil Service Comm'n Decision (October 7, 2009).

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

Where a county correction officer failed to effectively "pat search" an inmate, allowing the inmate to proceed to another floor with a wooden shank hidden in his waist band and thereby placing staff and inmates in mortal danger, serious discipline in the form of a 20 working day suspension was warranted (adopting in part and rejecting in part 2009

N.J. AGEN LEXIS 599). In re Dona, OAL Dkt. No. CSV 10782-08, 2009 N.J. CSC LEXIS 286, Final Decision (September 16, 2009).

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

Although a correction officer claimed to have been injured on the job and suffering from emotional distress as the result of an inmate's attempted suicide, she was properly disciplined for chronic or excessive absenteeism. The officer exhausted all of her sick days before calling out sick four additional days without following proper procedures despite being well aware of such procedures (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 231). In re Baldwin, OAL Dkt. No. CSV 2838-08, 2009 N.J. CSC LEXIS 405, Final Decision (August 19, 2009), reconsideration denied, OAL Dkt. No. CSV 2010-1124, 2010 N.J. CSC LEXIS 570 (Civil Service Comm'n January 15, 2010).

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

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

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

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

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

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

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

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

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

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

Fire officer was improperly disciplined for neglect of duty where the department leave policy as to sick or injured employees was amended such that the officer was not required to notify the appointing authority whenever he left his residence, but was only required to remain in his residence on duty days; however, the officer misused his leave time when he was observed driving despite his physician's restrictions on doing so while being out on paid sick leave, warranting a five-day suspension (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 161). In re Woltmann, OAL Dkt. No. CSV 11286-07, 2009 N.J. AGEN LEXIS 794, Civil Service Comm'n Decision (June 10, 2009).

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

2. In lieu of a suspension, when the appointing authority establishes that a suspension of the employee would be detrimental to the public health, safety or welfare; or

3. Where an employee has agreed to a fine as a disciplinary option.

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

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

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

Case Notes

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

Appointing authority did not have the right to fine a correction officer in lieu of suspension where the appointing authority did no more than provide conclusory testimony that a suspension would have created a public safety threat in light of the facility's staffing shortage, without also providing supporting statistics, such as the absentee rate and the number of unsecured posts; rather, it was clear that the appointing authority improperly continued its policy to impose fines rather than suspensions as a routine form of discipline, which was improper (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 231). In re Baldwin, OAL Dkt. No. CSV 2838-08, 2009 N.J. CSC LEXIS 405, Final Decision (August 19, 2009), reconsideration denied, OAL Dkt. No. CSV 2010-1124, 2010 N.J. CSC LEXIS 570 (Civil Service Comm'n January 15, 2010).

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

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

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

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

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

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

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

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

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

1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. An employee who has been appointed on or after September 1, 2011, who does not have a principal residence in New Jersey and who has not received a residency exemption in accordance with P.L.

2011, c. 70, within one year of appointment, is defined by that statute as illegally holding and unqualified for employment, and therefore subject to immediate suspension as unfit for duty. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

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

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

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

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date as agreed to by the parties. See N.J.A.C. 4A:2-2.13 for hearings regarding removal appeals by certain law enforcement officers and firefighters.

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

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
Added new (e).
Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Revised (a).
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
In (d), inserted the last sentence; and in (e), substituted "Civil Service Commission" for "Commissioner".
Readopted by R.2010 d.176, effective July 22, 2010.
See: 42 N.J.R. 693(a), 42 N.J.R. 1855(a).
Provisions of R.2009 d.221 readopted without change.
Amended by R.2012 d.056, effective March 5, 2012.
See: 43 N.J.R. 2691(a), 44 N.J.R. 576(a).
In (a)1, inserted the second sentence; and in (b), substituted "2" for "(a)2".

Law Review and Journal Commentaries

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

Case Notes

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

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

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

Adequate consideration given provisions of Law Against Discrimination. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Procedural irregularities at departmental level; cured by hearing at agency level. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

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

Departmental hearing required within thirty days of preliminary notice of disciplinary action. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

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

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

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

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

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

Initial Decision (2006 N.J. AGEN LEXIS 65) adopted, which concluded that a Motor Vehicle Commission employee failed to establish that there was any bad faith involved in returning her, at the conclusion of the working test period, to her formerly held permanent title of Support Services Representative 2. The worker was given training, counseling, critiques, the opportunity to improve, and an extension of the working test period. Whether the appointing authority's judgment concerning the worker's performance was totally accurate was not the issue for determination; rather, the only determination to be made was whether the worker had shown by a preponderance of the competent and credible evidence that the determination releasing her at the end of the working test period was made in bad faith. In re Woolford, OAL Dkt. No. CSV 803-04, 2006 N.J. AGEN LEXIS 1125, Final Decision (March 8, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 523) adopted, which found that a police officer failed to prove that the appointing authority acted in bad faith when it released her following her working test period; the failure to institute a disciplinary action in lieu of termination was not an act of bad faith where the offense of which the officer was accused occurred during her working test period, was investigated during her working test period, and was acted upon at the end of her working test period. In re Cooper, OAL Dkt. No. CSV 3473-05, 2005 N.J. AGEN LEXIS 1190, Final Decision (November 3, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 407) adopted, which found that a Human Services Assistant failed to meet his burden of proving that his removal following a working test period was made in bad faith; the employee's supervisor testified as to the employee's various deficiencies, many of which were undisputed, including his lack of driver's license, his poor attendance records, his tardiness, and his dislike for reassignments. In re Tolbert, OAL Dkt. No. CSV 4337-01, 2005 N.J. AGEN LEXIS 1260, Final Decision (September 21, 2005).

Untrustworthiness and instability justified return of bridge operator to former position of maintenance worker. Howarth v. Department of Transportation, 95 N.J.A.R.2d (CSV) 636.

Release of probationary public works repairer was justified for failure to obtain required commercial driver's license. Kreudl v. Department of Public Works, 95 N.J.A.R.2d (CSV) 584.

Termination at end of working test period was justified when building service worker's monthly probationary progress reports were unsatisfactory. Hamilton v. Essex County Hospital Center, 95 N.J.A.R.2d (CSV) 580.

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

Failure of municipal employee to exhaust administrative remedies warranted dismissal of his claim alleging violations of administrative code section prohibiting person from being appointed under title not appropriate to the duties to be performed and section prohibiting reprisal. Ferraro v. City of Long Branch, 314 N.J.Super. 268, 714 A.2d 945 (N.J.Super.A.D. 1998).

Job title elimination done in bad faith if politically motivated. Kirshbaum v. Camden County, 97 N.J.A.R.2d (CSV) 197.

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

Subchapter Historical Note

Petition for Rulemaking. See: 39 N.J.R. 4867(a).

Petition for Rulemaking. See: 42 N.J.R. 1251(b).

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).

Senior youth worker who resigned before final disposition of her disciplinary case was not entitled to back pay, benefits, or seniority upon a finding that the penalty should have been modified and reduced because the worker failed to bring a separate appeal to pursue her claim that the resignation was made under duress; Merit System Board noted that worker could still appeal within 20 days of receipt of its decision (adopting 2006 N.J. AGEN LEXIS 152). In re Thomas, OAL Dkt. No. CSV 559-05, 2006 N.J. AGEN LEXIS 539, Final Decision (April 5, 2006).

Refusal to accept rescission of resignation prior to its effective date constituted abuse of discretion. Harmon v. Monmouth County Board of Social Services, 97 N.J.A.R.2d (CSV) 541.

Police officer's resignation not in good standing for untimely resignation modified. Polidoro v. City of New Jersey Police Department, 97 N.J.A.R.2d (CSV) 239.

Employee suffering personal problems considered resigned in good standing. DiMattia v. Department of Transportation, 97 N.J.A.R.2d (CSV) 215.

Chronically absent employee granted resignation in good standing. Caldwell v. Forensic Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 134.

Merit System Board approved removal of employee for unsatisfactory attendance, but modified her termination status from resignation not in good standing to resignation in good standing, where employee's absence followed denial of her request for indefinite leave of absence due to illness. Bell v. Mid-State Correctional Facility, 96 N.J.A.R.2d (CSV) 839.

Removal of clerk typist based upon five-day absence without approval of her supervisor was not warranted, and she would be treated as if she had resigned in good standing. Neuschafer v. Vineland Developmental Center, 96 N.J.A.R.2d (CSV) 766.

Resignation proposed by employee's union representative as alternative to discipline was not coerced. Kwasniewski v. Probation Division, 96 N.J.A.R.2d (CSV) 597.

Resignation in good standing was more appropriate than removal when injury was cause of training failure. Gottlieb v. Monmouth County Sheriff, 95 N.J.A.R.2d (CSV) 573.

Highway maintenance worker with bilateral carpal tunnel syndrome resigned in good standing by reason of an inability to perform job duties. Kromenacker v. Department of Transportation, 95 N.J.A.R.2d (CSV) 275.

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.