

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:7-1 et seq., 11A:8-4 and 52:14B-10(c); and 49 CFR Parts 382 et seq.

Source and Effective Date

R.2008 d.215, effective July 1, 2008.
See: 40 N.J.R. 1402(a), 40 N.J.R. 4520(a).

Chapter Expiration Date

Chapter 2, Appeals, Discipline and Separations, expires on July 1, 2013.

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, Title Historical Note prior to N.J.A.C. 4A:1.

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, Discipline and Separations, was readopted as R.1992 d.414, effective September 22, 1992. See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Pursuant to Executive Order No. 66(1978), Chapter 2, Appeals, Discipline and Separations, was readopted as R.1997 d.435, effective September 22, 1997. See: 29 N.J.R. 3102(a), 29 N.J.R. 4455(b).

Chapter 2, Appeals, Discipline and Separations, was readopted as R.2003 d.112, effective February 13, 2003. See: 34 N.J.R. 3570(a), 35 N.J.R. 1407(b).

Chapter 2, Appeals, Discipline and Separations, was readopted as R.2008 d.215, effective July 1, 2008. See: Source and Effective Date. See, also, section annotations.

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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 Nallin, 133 N.J.L.J. No. 13, 55 (1993).

Case Notes

Employee's failure to appear at scheduled hearings on a removal action supported employer's motion to dismiss appeal, especially where the employee lied about the reason he failed to appear; however, because the removal became final for failure to appear, the employer did not have the authority to order a subsequent removal based on the employee's action in lying during the administrative process (adopting result in 2005 N.J. AGEN LEXIS 519 on other grounds). In re Drayton, OAL Dkt. No. CSV 2151-05, 2005 N.J. AGEN LEXIS 1250, Final Decision (November 3, 2005).

Time in which fire fighter was required to appeal decision of township board of fire commissioners classifying fire fighters commenced 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).

Employee's failure to appear at scheduled hearings on removal action supports employer's motion to dismiss appeal. Maycheck v. Atlantic City Housing Authority, 97 N.J.A.R.2d (CSV) 182.

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 submitted on all other parties.

(f) Following a final administrative decision by the Commissioner 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 matters 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 of suspension of deceased medical technician was dismissed without prejudice. McCormick v. City of Gloucester, 96 N.J.A.R.2d (CSV) 475.

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.

Corrections officer who failed to return to work after medical leave expired was found to have resigned not in good standing. *Hall v. Bayside State Prison*, 96 N.J.A.R.2d (CSV) 466.

Township code enforcement officer improperly deemed to have resigned not in good standing based upon actions taken on advice of counsel. *Clougher v. Hazlet Township*, 96 N.J.A.R.2d (CSV) 102.

Resignation of human services assistant from developmental center was not in good standing. *Davis v. North Princeton Developmental Center*, 95 N.J.A.R.2d (CSV) 674.

Suspension rather than termination was appropriate penalty when charges of excessive absenteeism were not all proven. *White v. City of Newark Police*, 95 N.J.A.R.2d (CSV) 599.

Removal for excessive absences was not warranted when due to medical illness stemming from training technician's alcoholism. *Telfair v. Woodbine Developmental Center*, 95 N.J.A.R.2d (CSV) 501.

Resignation not in good standing upon failing to return to work after doctor's release justified laborer's removal. *McGee v. Bergen County Utilities*, 95 N.J.A.R.2d (CSV) 486.

Termination based on deemed resignation not in good standing was inappropriate under circumstances. *Giglio v. Department of Labor*, 95 N.J.A.R.2d (CSV) 367.

Excessive absenteeism and failure to report to work warranted institutional attendant's removal. *Mills v. Montgomery Medical Home*, 95 N.J.A.R.2d (CSV) 353.

Resignation not in good standing by corrections officer following failure to report for work for five consecutive days was too harsh and changed to resignation in good standing. *Rodriguez v. Department of Corrections*, 95 N.J.A.R.2d (CSV) 254.

Absence from work and failure to advise employer warranted termination. *Matter of Wilkins*, 95 N.J.A.R.2d (CSV) 203.

Suspension of human services technician; absent from work without notice or permission. *Bucci v. Department of Human Services*, 95 N.J.A.R.2d (CSV) 111.

Failure to use established call-in procedure to report absences on five consecutive days amounted to a resignation not in good standing. *Lisowski v. Department of Buildings*, 95 N.J.A.R.2d (CSV) 98.

Removal justified; employee failed to use call-in procedure on five consecutive days. *Lisowski v. Buildings and Operations Department, Camden County*, 95 N.J.A.R.2d (CSV) 98.

Absence from duty of five or more consecutive days without approval of supervisor was not a basis for termination from public employment under circumstances. *Williams v. City of Trenton*, 95 N.J.A.R.2d (CSV) 87.

Removal not justified; employee improperly denied use of accumulated leave time to cover absence. *Williams v. City of Trenton*, 95 N.J.A.R.2d (CSV) 87.

Senior medical security officer removed; excessive absences without permission or proper notice. *Washington v. Department of Human Services*, 95 N.J.A.R.2d (CSV) 1.

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.