(b) In appeals concerning minor disciplinary actions, see N.J.A.C. 4A:2-3.7(f) for burden of proof standards.

(c) In all other Commissioner and Board appeals, the burden of proof shall be on the appellant.

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
Added new (b) and relettered old (b) as (c).

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 322) adopted, which found that a police officer who refused to work the front desk after he temporarily lost his right to carry a firearm following an allegation of domestic violence and, instead "mouthed off" to his superiors, was guilty of insubordination, warranting a six month suspension; however, the evidence did not support a finding that the police officer was no longer fit for duty where a psychologist found no pathology, no diagnosable medical disorder, no psychological disorders, and nothing in the officer's background from a psychiatric perspective to deem him unfit. In re Venson, OAL Dkt. No. CSV 07545-07, 2009 N.J. AGEN LEXIS 964, Civil Service Comm'n Decision (August 5, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 449) adopted, which found that a county correction officer was properly suspended for ten days following her unexcused absence from work; the ALJ found that the officer's demeanor while testifying as to the reason for her absence evidenced a lack of confidence and, therefore, lacked credibility. In re Gregg, OAL Dkt. No. CSV 6712-08, 2009 N.J. AGEN LEXIS 1008, Final Decision (August 5, 2009).

University failed to satisfy its burden of proof that a security guard neglected his duty by failing to report to his post in accordance with his shift or that leaving the post for some period of time without authorization; the guard was exercising his discretion to patrol the hall grounds, gardens and buildings. Additionally, the university failed to prove that the security guard misused public property where the sole basis of this charge was that the mileage reported from his tour of duty that evening was five miles when the university believed it should have been closer to three or three-and-one half miles (adopting 2009 N.J. AGEN LEXIS 155). In re Cassidy, OAL Dkt. No. CSV 2852-08, 2009 N.J. AGEN LEXIS 906, Civil Service Comm'n Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 441) adopted, which found that a senior medical security officer was properly removed after physically abusing a patient when the officer removed a towel from the patient's head without there being an order or authorization to do so; the patient was not a danger to himself or others and often wore a towel around his head when on the unit and was not prohibited from doing so. In re Corker, OAL Dkt. No. CSV 236-09, 2009 N.J. AGEN LEXIS 976, Final Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 444) adopted, which found that a human services technician was improperly disciplined for neglect of duty and falsification of documents where the evidence clearly demonstrated that the technician was doing the job of three people and had no choice but to complete the forms; her actions were not voluntary and she did not attempt to intentionally make any misrepresentations. In re Cruz, OAL Dkt. No. CSV 4146-07, 2009 N.J. AGEN LEXIS 981, Civil Service Comm'n Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 67) adopted, which found that several police officers appropriately submitted an "open door" incident report regarding a possible burglarized apartment where the owner was not present, even after being advised by another victim that three men entered his apartment and pointed a gun in his face; the other victims were not cooperative and did not want to become involved and the officers specifically received authorization from their lieutenant to file such a report. In re Clarkin, OAL Dkt. No. CSV 01980-08; 01982-08; 01983-08; 01984-08 (Consolidated), 2009 N.J. AGEN LEXIS 959, Civil Service Comm'n Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 247) adopted, which found that the appointing authority failed to satisfy its burden of proof that a bus driver's positive drug screen warranted the extreme discipline of termination where the evidence showed that the isolated incident of personal marijuana use occurred off-duty and the driver had an exemplary employment history, took responsibility for the incident, and participated in a voluntary drug program; the appointing authority's own policy set forth that the ingestion of drugs or alcohol prior to an employee reporting to the worksite "shall result in disciplinary action," which, by its own terms, was not cause for automatic termination, but instead required that the type of disciplinary action should be informed by contextual and background factors. In re Deans, OAL Dkt. No. CSV 01134-09, 2009 N.J. AGEN LEXIS 957, Civil Service Comm'n Decision (June 10, 2009).

Appointing authority sustained its burden of proof regarding a court security guard's inability to perform his duties because the issue was not whether the appointing authority proved that the guard was a paranoid schizophrenic, but whether he was unable to perform his duties; the guard was quarrelsome, insubordinate, rude, obsessive, untruthful, chronically agitated, had difficulty controlling his impulses, and appeared to suffer from paranoid delusions about being monitored by the government. In re Patel, OAL Dkt. No. CSV 11119-07, 2009 N.J. AGEN LEXIS 793, Final Decision (June 10, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 232) adopted, which found that the City failed to prove that a public works employee was fit to return to work after an on-the-job injury, surgery, and therapy; the worker was under no obligation to sua sponte offer to return to work without documented medical clearance, nor did the conflicting evidence establish that he was, in fact, fit to return to work at the time alleged by the City. In re Pappas, OAL Dkt. No. CSV 09761-05, 2009 N.J. AGEN LEXIS 899, Civil Service Comm'n Decision (May 27, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 160) adopted, which found that a police lieutenant was properly suspended for 30 days when he failed to respond in a timely manner after being dispatched to a domestic violence event; the lieutenant could have and should have advised dispatch if he was delayed, not waited until his number was called again. That the matter resolved without further incident was of little comfort and of no moment to the expectation that a dispatched officer would respond when called; the reasons for following procedures were for the purpose of preventing what could have happened, and the failure to follow them was not mitigated by what did not. In re Slack, OAL Dkt. No. CSV 8826-08, 2009 N.J. AGEN LEXIS 967, Final Decision (April 29, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 71) adopted, which found that an engineering aide was properly suspended for 60 days after he shoved a coworker from behind while involved in an argument; however, because the aide was acting on the advice of counsel when he recorded a subsequent meeting with his supervisor, failure to turn off the tape recorder was not a deliberate disregard of a supervisor's direction. In re Dowd, OAL Dkt. No. CSV 05028-08, 2009 N.J. AGEN LEXIS 961, Final Decision (April 15, 2009).

Appointing authority failed to sustain its burden of proof regarding "double dipping" charges against a police officer who allegedly received payment for off-duty traffic and construction jobs while on duty and submitted overtime reports while working off-duty; similar situations existed when police officers worked part-time jobs as security officers or traffic control guards and covered for each other on the part-time job if an officer was called to testify in municipal court during part-time employment hours and the testimony from all witnesses was consistent regarding the accepted part-time-job routine and reporting requirements (adopting 2009 N.J. AGEN LEXIS 117). In re Bell, OAL Dkt. No. CSV 9013-07, 2009 N.J. AGEN LEXIS 810, Civil Service Comm'n Decision (April 15, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 986) adopted which found that a county correction officer was properly removed after submitting a falsified document as evidence to support her claim that the absence for which she had been docked and subsequently charged was FMLA related; the officer intentionally misstated a material fact in connection

with her work and her conduct constituted conduct unbecoming a public employee. In re Moss, OAL Dkt. No. CSV 10398-07, 2009 N.J. AGEN LEXIS 787, Final Decision (March 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 120) adopted, which found that a driver of handicapped and elderly could no longer fulfill his duties after an expert evaluation of his medical condition revealed that he did not have the requisite back strength to help people who were unsteady or in wheelchairs; the County acted in good faith and properly removed the driver from his employment, however, where employees were found to be medically unfit and were not guilty of any kind of wrongdoing, there was precedent for changing their termination status to a resignation in good standing in order to avoid the harsh consequences of removal. In re LaCava, OAL Dkt. No. CSV 10401-07, 2009 N.J. AGEN LEXIS 788, Final Decision (March 25, 2009).

Where a county correction officer was actually injured, was authorized off-duty by a doctor, and prescribed Percocet, causing her to fall deeply asleep, resulting in a failure to answer the phone while sick, she should not have been disciplined for the first incident, but the officer was properly disciplined for a subsequent similar incident where she was well aware that she had to answer the phone, and was also aware that the Percocet strongly affected her; however, the officer's failure to be available for the phone call on the latter occasion was not so egregious as to warrant a 60 working day suspension and the infraction warranted a reduction in the penalty, regardless of the officer's disciplinary history, to a 10 working day suspension (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 39). In re Echevarria, OAL Dkt. No. CSV 6730-08, 2009 N.J. AGEN LEXIS 824, Civil Service Comm'n Decision (March 11, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 74) adopted, which found that a 5-day, rather than 11-day, suspension was warranted when a police officer was insubordinate by continuing to argue with a uniformed superior officer about the officer's transportation to his post; the officer did not act belligerently against his superior and his last infraction was 13 years ago had nothing to do with insubordination. In re Cirasella, OAL Dkt. No. CSV 09100-06, 2009 N.J. AGEN LEXIS 898, Final Decision (March 11, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 23) adopted, which found that, although the complaining patient was not capable of presenting clear testimony at a hearing regarding a cottage training technician's alleged abuse, the appointing authority presented credible evidence to substantiate the hearsay testimony regarding the abusive behavior and the technician's inconsistent recollection of the events diminished her ability to be a credible witness. In re Simmons, OAL Dkt. No. CSV 11726-07, 2009 N.J. AGEN LEXIS 799, Final Decision (February 11, 2009).

Personal assistant in the Office of Public Defender was properly demoted and re-assigned where the ALJ found, on conflicting evidence, that the assistant failed to process some 56 personnel action requests and failed to provide her manager with documentation necessary to respond to a civil suit filed by a former employee; the assistant's conduct in not performing a proper search for documents when requested by a supervisor, and her failure to process time-sensitive employee requests could have led to catastrophic results and it demonstrated that she was continuously deficient in the performance of her job responsibilities, even without regard to a prior disciplinary history. In re Ramos, OAL Dkt. No. CSV 50-06, 2009 N.J. AGEN LEXIS 987, Final Decision (February 11, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 1426) adopted, which suspended a police officer for three days after the officer failed to obey an order to submit to a medical examination because, although the officer reported as directed, he refused to allow the independent physician to complete a full examination, claiming that he was there for an examination of his ankle, only; the officer was not in a position to substitute his own judgment concerning appropriate medical technique for that of the independent physician and the fact that he was concerned about the appointing authority attempting to "pension him out" of his job did not alter his duty to follow orders. In re Walski, OAL Dkt. No. CSV 01859-06, 2009 N.J. AGEN LEXIS 545, Civil Service Comm'n Decision (January 14, 2009).

ALJ failed to give sufficient credit and deference to the professional opinion of a licensed psychologist who examined a police officer for a determination as to his fitness for duty; the psychologist's report and conclusions were based on numerous test administrations, a personal interview, reviews of prior psychological testing and a review of the officer's employment record, providing detailed and reasonable conclusions that the officer was psychologically unfit for duty (rejecting 2008 N.J. AGEN LEXIS 768). In re Medina, OAL Dkt. No. CSV 7820-07, 2009 N.J. AGEN LEXIS 825, Final Decision (January 14, 2009).

ALJ's determination that the appointing authority failed to prove by a preponderance of the credible evidence that an employee abused a resident could not be disturbed on appeal to the Civil Service Commission because the ALJ presented numerous specific reasons why the clients' testimony was not worthy of credit; the ALJ's rationale for finding the clients' testimony not credible was detailed, logical, and reasonable, and therefore, afforded due deference. In re Fairmon, OAL Dkt. No. CSV 3289-08, 2008 N.J. AGEN LEXIS 1216, Civil Service Comm'n Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 397) adopted, in which the ALJ concluded, on conflicting evidence, that an off-duty police officer ran down the middle of a street with his service weapon in the air, effectively dispersing more than 100 people who had assembled to participate in illegal drag racing and then lied to Internal Affairs about what happened; progressive discipline was bypassed and he was removed because his actions jeopardized an undercover sting operation and also went to the heart of his ability to be trusted and function as a police officer. In re Beltre, OAL Dkt. No. CSV 07910-06, 2008 N.J. AGEN LEXIS 1411, Final Decision (July 30, 2008).

Appointing authority failed to present any evidence to establish that a correction officer who shared her home with her husband knew or was aware of the illegal items in a locked closet or that she had the means to access that closet; there was no basis to find that she engaged in conduct that constituted either possession of a controlled dangerous substance or unlawful possession of a weapon based on her mere presence at the address in question (adopting 2008 N.J. AGEN LEXIS 18). In re Henderson, OAL Dkt. No. CSV 9214-07, 2008 N.J. AGEN LEXIS 626, Merit System Board Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 188) adopted, which determined that a correction officer's assertion that his gun was holstered at the scene of an altercation involving his son was not credible, based in part on his contradictory testimony during an unemployment hearing and also on the testimony of other witnesses; the correction officer, who failed to call the police regarding the altercation and brandished his service weapon at the scene, was properly terminated. In re Porch, OAL Dkt. No. CSV 01307-07 (CSV 9567-06 On Remand), 2008 N.J. AGEN LEXIS 574, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 55) adopted, which concluded that, in view of the divergent testimony presented by the employee and a fellow senior probation officer, and a credibility determination with regard to the critical facts, the employee had a knife in her desk drawer, but did not communicate a threat; charge of conduct unbecoming a public employee dismissed. In re Rodriguez, OAL Dkt. No. CSV 05518-06, 2008 N.J. AGEN LEXIS 576, Merit System Board Decision (March 12, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 826) adopted, which concluded that employee, a senior correction officer, did not facilitate a romantic relationship between an inmate and another correction officer or act as their lookout; nothing on the record supported the assertion that the employee manipulated her work schedule so that the couple could spend time together, and apart from uncorroborated hearsay originating from a highly unreliable source, there was no independent proof that the employee knew about the clandestine activity and failed to report it. Even though the Department of Corrections may have had reason to suspect that the employee aided or abetted the other officer's improper conduct, mere suspicion was no substitute for competent evidence at an

administrative hearing. In re Livingston, OAL Dkt. No. CSV 05786-06, 2008 N.J. AGEN LEXIS 577, Merit System Board Decision (January 30, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 772) adopted, which found, based on the ALJ's credibility determinations, that a male corrections department sergeant made inappropriate sexual comments to a female senior corrections officer; the sergeant, who denied making the comments, was suspended without pay for 10 days. In re LaPoint, OAL Dkt. No. CSV 5590-07, 2008 N.J. AGEN LEXIS 506, Final Decision (January 16, 2008).

ALJ's conclusion, on conflicting evidence, that a cottage training technician was not guilty of patient abuse was not arbitrary, capricious, or unreasonable; the finding that the slapping sound was the result of a latex glove rather than the slapping of a patient was supported by competent evidence, given the ALJ's advantage of hearing, seeing, and assessing the credibility of the witnesses before him (adopting 2007 N.J. AGEN LEXIS 468). In re Bice-Bey, OAL Dkt. No. CSV 8296-06, 2007 N.J. AGEN LEXIS 1161, Merit System Board Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 582) adopted, which found that two senior correction officers were improperly terminated after an inmate escaped underneath a truck as it left the facility. One officer was at lunch when the escape occurred, no mirrors were provided to the officers, and facility policy did not require the other officer to crawl under trucks to perform an inspection as they left. In re Cowans, OAL Dkt. No. CSV 10725-06 and CSV 10748-06 (Consolidated), 2007 N.J. AGEN LEXIS 1062, Merit System Board Decision (November 8, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 368) adopted, which found that the appointing authority failed to meet its burden of proof to demonstrate by a preponderance of the evidence that a senior medical security officer abused a patient; in assessing conflicting evidence, any number of circumstances could have caused the patient's injuries and the record contained additional evidence that tended to establish the officer's innocence, including the testimony of fellow officers that they had never witnessed him engage in any abusive or improper behavior directed toward patients and that he had a reputation for truthfulness. In re Scipio, OAL Dkt. No. CSV 4447-06, 2007 N.J. AGEN LEXIS 1126, Merit System Board Decision (October 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 432) adopted, which found that the appointing authority failed in its burden of proving that a cottage training technician falsely reported an incident of possible patient abuse where it offered no direct testimony by those alleged to be present at the incident and chose to rely upon investigative statements of some, but not all, of those alleged to have been present at the incident; the investigative statement of a key witness was missing from its file and the technician was credible in her testimony. In re Frake, OAL Dkt. No. CSV 45-06, 2007 N.J. AGEN LEXIS 1129, Merit System Board Decision (October 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 614) adopted, which concluded that the appointing authority met its burden of proving that a senior correction officer was properly removed for testing positive for cocaine; although the officer contended that a hair follicle test revealed no drugs were in her system, there was no evidence submitted to suggest that the hair follicle test – performed nearly a month after the urinalysis was performed – was proof that no drugs were in her system when the initial drug test was performed and there was no evidence to indicate that it was a scientifically reliable test. In re Morris, OAL Dkt. No. CSV 8075-04, 2007 N.J. AGEN LEXIS 1160, Final Decision (October 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 552) adopted, which concluded that a Human Services Technician was entitled to dismissal of the disciplinary charges against him where the appointing authority treated a charge of possession of a controlled dangerous substance as fact, even though the technician pleaded guilty to a municipal ordinance violation of loitering; furthermore, the appointing authority merely relied on the record that the technician was convicted of loitering, with no testimony establishing that his conduct disrupted the efficient operation of the hospital or destroyed respect for governmental employees. In re Love, OAL Dkt. No. CSV 8835-06, 2007 N.J. AGEN LEXIS 1172, Merit System Board Decision (September 12, 2007).

Thirty-day suspension of a sheriff's officer for failing to report her partner's smoking in a sheriff's vehicle was improper where the smoking violation was "trivial," smoking in a vehicle was common, and no other sheriff's officer was ever previously charged with a smoking violation; in addition, the penalty given to the officer stood in stark contrast to the four-day suspension that her partner received and such a discrepancy was ludicrous and nonsensical (adopting 2007 N.J. AGEN LEXIS 465). In re Ivan, OAL Dkt. No. CSV 4720-03 and CSV 8676-03 (Consolidated), 2007 N.J. AGEN LEXIS 1132, Merit System Board Decision (August 29, 2007), aff'd per curiam, No. A-1070-07T2, 2009 N.J. Super. Unpub. LEXIS 764 (App.Div. April 28, 2009).

Termination of a sheriff's officer for her failure to qualify with her service weapon after nine attempts over a period of three days was proper, in spite of any animus that may have been established by her unwarranted suspension for an unrelated smoking incident; the range staff had no duty to guarantee her successful qualification and the ultimate responsibility was on the officer, who admittedly failed to practice (adopting 2007 N.J. AGEN LEXIS 465). In re Ivan, OAL Dkt. No. CSV 4720-03 and CSV 8676-03 (Consolidated), 2007 N.J. AGEN LEXIS 1132, Final Decision), (August 29, 2007), aff'd per curiam, No. A-1070-07T2, 2009 N.J. Super. Unpub. LEXIS 764 (App.Div. April 28, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 247) adopted, which found that a senior correction officer was properly removed following his positive drug test that revealed the presence of cocaine; the appointing authority presented evidence that it complied with random protocol and testing procedures and the officer declined to present competing expert testimony. In re Pecorella, OAL Dkt. No. CSV 4663-06, 2007 N.J. AGEN LEXIS 1131, Final Decision (June 20, 2007).

Safety specialist's seven-day suspension for knowingly entering false information on school bus inspection reports was reversed because, even if the appointing authority could show that the specialist failed to conduct thorough inspections, it failed to meet its burden of proving that he knowingly entered false information on the reports; of the two reports at issue, one was never entered into evidence and the appointing authority never presented any evidence that the specialist was the author of the second report. In re Greiner, OAL Dkt. No. CSV 7150-06, 2007 N.J. AGEN LEXIS 1153, Merit System Board Decision (June 20, 2007).

Although the appointing authority requested dismissal as it could not prove the sexual harassment charges against the Correction Sergeant without the cooperation of the sole witness, the Merit System Board could not ignore the seriousness of the accusation against a supervisor and was compelled to invoke its subpoena powers so that the witness, who was currently employed by the Department of Corrections, could be called to testify on remand. In re LaPoint, OAL Dkt. No. CSV 3585-06, Final Decision (April 25, 2007).

Where an ALJ found, on conflicting evidence, that an inmate was injured after a trooper slipped on a wet cell floor, the two collided, and the trooper's nameplate scratched and bruised the inmate's cheek around his eye, the trooper should have documented the injury in a written report and his failure to do so resulted in a five-day suspension; failure on the part of a trooper to promptly report and take proper police action in any situation reasonably requiring such action constituted neglect of duty (adopting 2007 N.J. AGEN LEXIS 133). In re Dammann, OAL Dkt. No. POL 6003-05, 2007 N.J. AGEN LEXIS 425, Final Decision (April 19, 2007).

Where an ALJ found, on conflicting evidence, that an inmate was injured after a trooper slipped on a wet cell floor, the two collided, and the trooper's nameplate scratched and bruised the inmate's cheek around his eye, the original arresting officer who noticed the change in the inmate's appearance should have documented the injury in a written report and his failure to do so resulted in a warning to be more vigilant in his observation of those under police custody; failure on the part of a trooper to promptly report and take proper police action in any situation

reasonably requiring such action constituted neglect of duty (adopting 2007 N.J. AGEN LEXIS 133). In re Dammann, OAL Dkt. No. POL 6003-05, 2007 N.J. AGEN LEXIS 425, Final Decision (April 19, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 59) adopted, which concluded that a police officer did not meet his burden of showing that the rationale stated for not promoting him to sergeant on two separate occasions was pre-textual; it was not the appointing authority's burden to be more specific in identifying the information, namely the individuals promoted did not have serious or sustained disciplinary records worse than the officer, but it was the officer who had the burden of showing specific irregularities in the reason given for the bypasses that would have made them pre-textual. In re Bradley, OAL Dkt. No. CSV 5837-02, 2007 N.J. AGEN LEXIS 354, Final Decision (March 14, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 32) adopted, which concluded that the appointing authority failed in its burden of proving that a correction officer abused an inmate because testimony that the officer continuously stomped the heel of his boot on the arm of a female inmate as she left her arm protruding from her cell through the food port was not entirely credible; the two inmate witnesses who claimed to have seen the incident were not credible, not simply because of their criminal status, but because of the inconsistencies in their statements and testimony. In re Messinger, OAL Dkt. No. CSV 8947-05, 2007 N.J. AGEN LEXIS 1173, Merit System Board Decision (February 28, 2007).

Upon an independent review of the record, including a review of a videotape, the Merit System Board agreed with the ALJ's findings that a Human Services employee at a psychiatric hospital was aware of a patient's injury and failed to report it, but the Board rejected the ALJ's same conclusions as to a second employee; the videotape showed one employee going into the room where the injured patient was along with the individual who was responsible for the patient's injury, but the videotape did not definitely show that the second employee was aware of the patient's injury, given the fact that the second employee's view was blocked by others (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 733). In re Green, OAL Dkt. No. CSV 2832-05 and CSV 2835-05, 2006 N.J. AGEN LEXIS 1107, Merit System Board Decision (December 20, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 891) adopted, which concluded that the appointing authority failed in its burden of proving that a Human Services Technician witnessed an incident between a patient and another staff member, but failed to take appropriate action thereafter; in fact, the evidence demonstrated that the technician quickly went to where the other staff member and the patient had fallen, gained control over the situation, called for assistance, escorted the patient to the Quiet Room, and prepared a statement describing the incident. In re Fortson, OAL Dkt. No. CSV 8699-05, 2006 N.J. AGEN LEXIS 1130, Merit System Board Decision (December 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 966) adopted, which concluded, on conflicting evidence, that a Human Services Assistant refused to take a patient to the bathroom and that his actions in physically stopping the patient from going to the bathroom amounted to inappropriate physical contact and mistreatment of a patient; 10-day suspension was appropriate. In re Parks, OAL Dkt. No. CSV 8702-05, 2006 N.J. AGEN LEXIS 1131, Merit System Board Decision (December 6, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 699) adopted, which concluded that a junior sergeant was properly demoted to the position of correction officer where the appointing authority demonstrated by a preponderance of the evidence that the sergeant failed to perform a weapons check during her shift; the fact that she and her supervising partner may have created some other informal type of arrangement regarding the execution of their shift duties did not absolve her of her responsibility to perform that weapons inspection as the junior sergeant and as mandated by institutional policy. In re Golden, OAL Dkt. No. CSV 918-03, 2006 N.J. AGEN LEXIS 865, Final Decision (September 20, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 435) adopted, which found that developmental center caregiver was properly removed for abusing a patient and sleeping while on duty. Although the caregiver denied the charges, testimony was presented that the caregiver had turned on an overhead light while a resident was sleeping, pulled her out of bed after noticing that she had urinated on herself, refused to give another resident a bathroom key, and yelled at a resident who had vomited on herself. In re Oluku, OAL Dkt. No. CSV 11932-05, 2006 N.J. AGEN LEXIS 768, Final Decision (August 9, 2006).

Appointing authority failed in its burden of proving that a senior correction officer was guilty of conduct unbecoming a public employee, improper or unauthorized contact with an inmate, and undue familiarity with an inmate based, in large part, on the fact that the inmate's testimony was not credible; although it would have been improper to use the inmate's incarceration as the sole basis for finding him not credible, the inmate's incarceration was only one factor and others included the inmate's demeanor and conflicting accounts of what occurred (adopting 2006 N.J. AGEN LEXIS 340). In re Jenkins, OAL Dkt. No. CSV 6363-04, 2006 N.J. AGEN LEXIS 775, Merit System Board Decision (July 19, 2006).

Appointing authority failed in its burden of proving that a senior correction officer was guilty of conduct unbecoming a public employee, improper or unauthorized contact with an inmate, and undue familiarity with an inmate based, in part, on the fact that the ALJ was not convinced that the letters presented by the inmate were written by the officer; the ALJ was free to determine what weight to afford the handwriting expert's opinion and, contrary to the appointing authority's assertions, the ALJ did not discount the expert's opinion, but determined that the expert's opinion on its own was insufficient for the appointing authority to meet its burden of proof (adopting 2006 N.J. AGEN LEXIS 340). In re Jenkins, OAL Dkt. No. CSV 6363-04, 2006 N.J. AGEN LEXIS 775, Merit System Board Decision (July 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 341) adopted, which concluded that the appointing authority failed to meet its burden of proving that a prison worker neglected his duty when he allegedly failed to discover a knife-like weapon among a prisoner's personal belongings during a search; the appointing authority did not prove that, following his search, the box was secured from tampering before the contraband was discovered, and other officials handling the box after his search failed to properly document their custody of the box. In re Ortiz, OAL Dkt. No. CSV 6670-04, 2006 N.J. AGEN LEXIS 628, Merit System Board Decision (July 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 64) adopted, which concluded that the appointing authority did not meet its burden of proof against a senior correction officer, where the appointing authority's expert witness testified that it was equally as likely that the positive reading for marijuana was caused by passive inhalation as by active inhalation. In re Lore, OAL Dkt. No. CSV 544-05, 2006 N.J. AGEN LEXIS 538, Merit System Board Decision (May 24, 2006).

Appointing authority satisfied its burden of demonstrating that a budget officer's performance and work product remained unsatisfactory, despite being given ample notice and opportunity to correct his deficiencies, follow orders, and timely complete his assigned duties; even after the imposition of a 10-day suspension, the officer continued to submit untimely and inaccurate work and continued to refuse to complete assigned tasks and sign required time sheets for a significant period after his suspension, which justified the appointing authority's decision to remove him. In re Lucas, OAL Dkt. No. CSV 8051-02, 2006 N.J. AGEN LEXIS 564, Final Decision (May 10, 2006), aff'd per curiam, No. A-5532-05T3, 2007 N.J. Super. Unpub. LEXIS 1233 (App.Div. November 16, 2007).

Police officer was properly removed on a finding that he was unable to perform his duties where a restraining order for domestic violence prevented him from carrying a weapon and, even though the order was ultimately lifted, the ALJ found, on conflicting evidence, that the officer was not psychologically fit to serve as a police officer; the ALJ was within its right to credit one expert's testimony over another's and conclude that the officer presented a danger to himself and others

(adopting 2006 N.J. AGEN LEXIS 67). In re Bergus, OAL Dkt. No. CSV 7416-02, 2006 N.J. AGEN LEXIS 631, Final Decision (April 5, 2006), aff'd per curiam, No. A-4669-05T1, 2007 N.J. Super. Unpub. LEXIS 2655 (App.Div. August 14, 2007).

In a civil administrative proceeding, even though possible loss of government employment is involved, an employee's silence in the face of highly relevant assertions well within the employee's personal knowledge can give rise to an adverse inference and can constitute one element among others in an ALJ's consideration of the employee's ultimate culpability (adopting 2006 N.J. AGEN LEXIS 42). In re Terry, OAL Dkt. No. CSV 7420-02, 2006 N.J. AGEN LEXIS 1122, Final Decision (March 8, 2006), aff'd per curiam, No. A-4451-05T1, 2007 N.J. Super. Unpub. LEXIS 2973 (App.Div. August 23, 2007).

Police officer was properly removed where the appointing authority proved by a preponderance of the evidence that she lied about her relationship with a felon in her pre-employment psychological interview, pre-employment application, and interview with Internal Affairs (adopting 2006 N.J. AGEN LEXIS 42). In re Terry, OAL Dkt. No. CSV 7420-02, 2006 N.J. AGEN LEXIS 1122, Final Decision (March 8, 2006), aff'd per curiam, No. A-4451-05T1, 2007 N.J. Super. Unpub. LEXIS 2973 (App.Div. August 23, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 44) adopted, which found on conflicting testimony that a developmental center employee kicked a patient in or near the groin. The patient had Down Syndrome and was deaf. In re Mount, OAL Dkt. No. CSV 10610-04, 2006 N.J. AGEN LEXIS 1097, Final Decision (March 8, 2006).

Administrative Law Judge erred in dismissing an employee's appeal from a 30-day suspension where neither the employee nor the appointing authority presented any evidence regarding the disciplinary action; the appointing authority had the burden of proof and where it failed to present any evidence in support of its action, the proper result was to dismiss the charges and reverse the penalty (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 702). In re Cooper, OAL Dkt. No. CSV 3639-03 and CSV 5037-04 (Consolidated), 2006 N.J. AGEN LEXIS 1109, Merit System Board Decision (March 8, 2006).

In a disciplinary action brought against a senior correction officer after his positive drug test for marijuana, discrepancies regarding other specimens and the container used to collect the officer's sample did not undermine the reasonable probability that the officer's specimen had not been altered in any important respect between collection and analysis; the ALJ's findings otherwise were unreasonable and contrary to the credible evidence in the record. In re Gonsalvez, OAL Dkt. No. CSV 8601-02, 2006 N.J. AGEN LEXIS 1128, Final Decision (February 22, 2006), aff'd per curiam, No. A-4080-05T5, 2007 N.J. Super. Unpub. LEXIS 1369 (App.Div. October 31, 2007).

In a disciplinary action against a correction officer recruit on claims that he made inappropriate sexual comments, exposed himself, and masturbated in front of a fellow recruit, the ALJ's determination that the complaining witness was not credible was unreasonable and contrary to the evidence in the record where the witness's account of the critical details of the incident remained consistent, and the minor inconsistencies cited by the ALJ regarding the precise words uttered by the recruit, his exact location during the masturbation, and the time of the witness's telephone call to her supervisor were of little consequence; additionally, the record was devoid of any reason why the complaining witness would lie about what occurred during the shift in question. In re Royster, OAL Dkt. No. CSV 6360-04, 2005 N.J. AGEN LEXIS 1087, Final Decision (December 7, 2005), aff'd per curiam, No. A-2435-05T5, 2007 N.J. Super. Unpub. LEXIS 1260 (App.Div. April 19, 2007).

Six-month suspension of a state police officer was proper where there was substantial credible evidence in the record that the officer failed to take possession of controlled dangerous substances found in a restroom at a racetrack and also failed to properly conduct an investigation into the incident; there was evidence that, even after interviewing the suspect, the officer failed to obtain his name and that the officer actually instructed the guards to flush the heroin down the toilet (rejecting 2005 N.J. AGEN LEXIS 596). Div. of State Police v. Morales, OAL Dkt. No. POL 4868-04, 2005 N.J. AGEN LEXIS 1468, Final Decision (November 14, 2005), aff'd per curiam, No. A-1576-05T5, 2007 N.J. Super. Unpub. LEXIS 2065 (App.Div. February 7, 2007).

Initial Decision (2005 N.J. AGEN LEXIS 526) adopted, in which the ALJ found, on conflicting evidence, that a painter for the school district was guilty of conduct unbecoming a public employee and theft of school property after he attempted to take a camera from the school; the painter's contention that he intended to ask permission to temporarily borrow the camera was belied by the fact that, instead of seeking immediate permission, he took the camera to a different room and placed it under a drop cloth. In re Joyce, OAL Dkt. No. CSV 9392-03, 2005 N.J. AGEN LEXIS 1222, Final Decision (October 19, 2005).

On an independent review of the record, including review of a surveillance videotape, the Merit System Board disagreed with the ALJ's findings and concluded that the appointing authority met its burden of proof that a Human Services Assistant was guilty of abusing a patient; the video revealed that the assistant grabbed the patient, threw him down on the ground, did not offer any assistance, and left the scene. In re McKoy, OAL Dkt. No. CSV 8344-02, 2005 N.J. AGEN LEXIS 1218, Final Decision (October 19, 2005).

Police officer was reinstated when removed on hearsay evidence that was less than competent. Rhodes v. Union City Police Department, 95 N.J.A.R.2d (CSV) 643.

Assault upon a patient was not sufficiently proven to justify removal of therapy program assistant. Berrien v. Department of Human Services, 95 N.J.A.R.2d (CSV) 629.

Termination of training technician at developmental center was not justified absent evidence of endangering a client through neglect of duty. Forde v. Hunterdon Developmental Center, 95 N.J.A.R.2d (CSV) 577.

Suspension of public employee was not warranted when appointing authority failed to carry burden of proof on charge of insubordination. Pennoh v. North Princeton Developmental Center, 95 N.J.A.R.2d (CSV) 514.

Insufficient evidence precluded removal of corrections officer on charges of unbecoming conduct. Parham v. Department of Corrections, 95 N.J.A.R.2d (CSV) 439.

Charges of misconduct were insufficient to sustain suspension of corrections officer in absence of credible evidence in record. Tyson v. Department of Corrections, 95 N.J.A.R.2d (CSV) 419.

Removal of training technician was not warranted when sole witness to alleged beating of client was not credible. Murray v. Department of Human Services, 95 N.J.A.R.2d (CSV) 407.

Removal of nurse was not warranted absent credible proof of actual assault on patient. Fontenot v. Ancora Psychiatric Hospital, 95 N.J.A.R.2d (CSV) 291.

Prison worker's removal for insubordination not supported by sufficient evidence. Balkaran v. Northern State Prison, 95 N.J.A.R.2d (CSV) 256.

No preponderance of credible evidence that layoffs were in bad faith. Edwards v. Department of Community Affairs Employee Layoffs, 95 N.J.A.R.2d (CSV) 29.

Charges in disciplinary proceedings against police officers with respect to sports betting were not sustained. State Police v. Hall, Buhan, 95 N.J.A.R.2d (POL) 1.

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

Appointing authority Proved that employee was incompetent, inefficient, failed to perform her duties and conducted herself in a manner

unbecoming a public employee. Janowski v. Bergen County Department of the Judiciary, 94 N.J.A.R.2d (CSV) 550.

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

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

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

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

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

Failure to adhere to documenting requirements; urine testing. Riley v. Southern State Correctional Facility, 93 N.J.A.R.2d (CSV) 385.

Order to submit urine specimens for drug testing was not justified. Riley v. Southern State Correctional Facility, 93 N.J.A.R.2d (CSV) 385.

Evidence did not show failure to report client abuse. Grant v. North Princeton Developmental Center, 93 N.J.A.R.2d (CSV) 332.

Failure of proof that employee was guilty of client abuse. Locklear v. New Lisbon Developmental Center, 93 N.J.A.R.2d (CSV) 197.

Failure of proof that employee disobeyed order. Lott v. Woodbridge Developmental Center, 93 N.J.A.R.2d (CSV) 141.

Abuse of client not proven. Brent v. Vineland Developmental Center, 93 N.J.A.R.2d (CSV) 82.

There was failure of proof that employee sought compensation improperly. Cressinger v. Newark Board of Education, 93 N.J.A.R.2d (CSV) 63.

Absent showing that inspector passed noncomplying vehicle suspension was unwarranted. Inge v. Division of Motor Vehicles, 93 N.J.A.R.2d (CSV) 47.

Town failed to sustain burden of proof and removal was unwarranted. Corso v. West New York, 93 N.J.A.R.2d (CSV) 43.

Confession to drug use was not subject to independent corroboration and was cause for state trooper's dismissal. State Police v. Naranjo, 93 N.J.A.R.2d (POL) 17.

It was not shown that employee was guilty of client abuse. Hopkins v. New Jersey Department of Human Services, 93 N.J.A.R.2d (CSV) 17.

Evidence; sleeping while on duty; removal not warranted. Glenn v. Department of Corrections, 92 N.J.A.R.2d (CSV) 918.

Evidence; intention to steal sneakers from impounded car; removal not warranted. Walsh v. City of Vineland, 92 N.J.A.R.2d (CSV) 833.

Evidence; inappropriate physical contact with a client; suspension not warranted. Stewart v. Arthur Brisbane Child Treatment Center, 92 N.J.A.R.2d (CSV) 827.

Evidence; physical abuse of a client; removal not warranted. Mestres v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 823.

Failure of proof; layoff in bad faith; presumption that measures removing them were for reasons of economy. In the Matter of Layoffs of Certain Employees of Bergen Pines County Hospital, 92 N.J.A.R.2d (CSV) 779.

Proof failed to show that employee resigned under duress or that her employer acceded to her efforts to rescind. Torres v. Buttonwood Hospital, 92 N.J.A.R.2d (CSV) 753.

Psychiatric technician's medical condition and history was not sufficient to deprive her of employment. Smith v. Essex County Hospital Center, 92 N.J.A.R.2d (CSV) 702.

Failure to prove that employee engaged in an act of client abuse. Brooks v. Ancora Developmental Center, 92 N.J.A.R.2d (CSV) 664.

Failure to show that officer was improperly bypassed for promotion to police captain. Hannafey v. Middletownship, 92 N.J.A.R.2d (CSV) 594.

Failure to sustain disciplinary charge. Angiuoli v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 570.

Failure to obtain a second urine sample for retesting did not prevent removal of police officers. Higgins v. Department of Corrections, 92 N.J.A.R.2d (CSV) 525.

Evidence failed to establish abuse of client. Woolridge v. Ancora Psychiatric Hospital, 92 N.J.A.R.2d (CSV) 316.

Failure to prove that employee stuck his finger in client's eye. Jones v. New Lisbon Developmental Center, 92 N.J.A.R.2d (CSV) 291.

Failure to establish neglect of duty and/or conduct unbecoming a police officer. Ogonowski v. Police Department, Atlantic City, 92 N.J.A.R.2d (CSV) 264.

Failure of evidence to support charge of physical abuse of patient. Van Doimen v. Greystone Park, 92 N.J.A.R.2d (CSV) 223.

Failure to establish physical abuse of clients; removal not justified. Hannah v. Vineland Developmental Center, 92 N.J.A.R.2d (CSV) 195.

Failure to sustain burden of proof; suspension. DeSantis v. New Jersey Training School, 92 N.J.A.R.2d (CSV) 193.

Evidence was sufficient to find employee guilty of coercion and intimidation of a co-worker; removal. Perrin v. N.J. Veteran's Memorial Home, Vineland, 92 N.J.A.R.2d (CSV) 148.

Evidence was insufficient to find that officer struck juvenile; removal not justified. Dorsey v. Department of Corrections, Atlantic City, 92 N.J.A.R.2d (CSV) 92.

Evidence was insufficient to find that nurse struck two patients. Baker v. North Princeton Developmental Center, State Dept. of Human Services, 92 N.J.A.R.2d (CSV) 84.

Evidence was insufficient to find that care worker slapped a patient; removal. N.J.S.A. 11A:2-21. Gholston v. North Jersey Developmental Center, 92 N.J.A.R.2d (CSV) 82.

Evidence established abuse of patient. Williams v. Marlborough Psychiatric Hosp., State Dept. of Human Services, 92 N.J.A.R.2d (CSV) 66.

Evidence was insufficient to find inappropriate physical contact with inmate. Sepulveda v. New Jersey Training School for Boys, Jamesburg, 92 N.J.A.R.2d (CSV) 65.

Evidence established that employee abused resident; removal. New Jersey Veterans' Memorial Home, Parimus v. Cotton, 92 N.J.A.R.2d (CSV) 60.

Release at end of working test period; failure to meet burden of establishing bad faith. N.J.S.A. 11A:4-15, 4A:2-4.1. Jackson v. Meadowview Hosp., Hudson County, 92 N.J.A.R.2d (CSV) 49.

Inconsistencies in record precluded finding as to making of false and misleading official statements. State Police v. Suarez, 92 N.J.A.R.2d (POL) 29.

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

Alleged misrepresentation of facts by police officer as to presence of radar unit in troop car was not substantiated. State Police v. McClelland, 92 N.J.A.R.2d (POL) 19.

Evidence was insufficient to find that human services assistant mentally or physically abused patient. Pierce v. Vineland Developmental Center, New Jersey Department of Human Services, 92 N.J.A.R.2d (CSV) 15.

Witness standoff left false statement charge unsubstantiated and required police officer's exoneration. State Police v. Crawford, 92 N.J.A.R.2d (POL) 9.

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

False report charge was not substantiated and precluded dismissal of police officer. State Police v. McGovern, 92 N.J.A.R.2d (POL) 1.

Failure to prove that employee engaged in patient abuse. Walker v. Violend Developmental Center, 91 N.J.A.R.2d (CSV) 91.

Evidence was sufficient to find abuse of patient and threatening supervisor. Knight v. Trenton Psychiatric Hosp., 91 N.J.A.R.2d (CSV) 85.

Evidence was sufficient to find employee falsified his attendance record. Edmonds v. Ancora Psychiatric Hospital, 91 N.J.A.R.2d (CSV) 67.

Evidence was insufficient to support patient's allegation of physical abuse. Almedia v. Atlantic County Department of Health Institutions, 91 N.J.A.R.2d (CSV) 49.

Evidence established neglect of duty, willful violation of law, conduct unbecoming public employee and dishonest and immoral conduct. Smith v. Municipal Court of the Township of Hamilton, 91 N.J.A.R.2d (CSV) 37.

Release from position at end of extended working test period; failure to establish that employer acted in bad faith. Nardone v. New Jersey Commission for the Blind Visually Impaired, 91 N.J.A.R.2d (CSV) 35.

Evidence was sufficient to find that worker burned client with hot water and failed to fully report the injuries. Witcher v. New Lisbon Developmental Center, 91 N.J.A.R.2d (CSV) 31.

Evidence was sufficient to find technician punched a patient in the face. Willis v. Trenton Psychiatric Hosp., 91 N.J.A.R.2d (CSV) 27.

Discharge at end of working test period; failure to establish that employer acted in bad faith. O'Connor v. Health Services Center of Camden County, 91 N.J.A.R.2d (CSV) 23.

Evidence was sufficient to find neglect of duties, insubordination, and unbecoming conduct. McIver v. Newark Housing Authority, 91 N.J.A.R.2d (CSV) 19.

Evidence was sufficient to find absenteeism and tardiness and deliberate and material false misrepresentation on employment application. N.J.S.A. 11A:4-10. Essex County Jail v. Burchett, 91 N.J.A.R.2d (CSV) 5.

Evidence was sufficient to find chronic, excessive and abusive absenteeism and lateness. N.J.S.A. 4A:2-2.3. Daniels v. Evergreen Manor, Camden County, 91 N.J.A.R.2d (CSV) 3.

Appellant failed to show that employer (Newark Free Public Library) acted in bad faith in denying her a fair evaluation of her work performance and releasing her at the end of her working test period based on claim that her services were unsatisfactory (citing former N.J.A.C. 4:1-5.10). Davis v. Newark Public Library, 9 N.J.A.R. 84 (1987).

Burden of proof rests with employee challenging economic layoff (citing former N.J.A.C. (4:1-5.10). Tyler et al. v. City of Paterson, 2 N.J.A.R. 272 (1979).

In an appeal from a disciplinary action, the burden of proof is on the appointing authority (citing former N.J.A.C. 4:1-5.10). Clark v. New Jersey Dep't of Agriculture, 1 N.J.A.R. 315 (1980).

4A:2-1.5 Remedies

(a) Seniority credit may be awarded in any successful appeal.

(b) Back pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. See N.J.A.C. 4A:2-2.10. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Civil Service Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation.

Amended by R.2012 d.007, effective January 3, 2012.
See: 43 N.J.R. 2395(a), 44 N.J.R. 65(a).
In (b), substituted "Civil Service Commission or where the Commission" for "Commissioner or Board or where the Board", and inserted the last sentence.

Case Notes

A wrongfully discharged employee was entitled to both vacation leave and sick leave credits. Rule invalid (citing former N.J.A.C. 4:1-

5.5(a)). Eaddy v. Dep't of Transp., 208 N.J.Super. 156, 505 A.2d 162 (App.Div.1986) appeal dismissed 105 N.J. 569, 523 A.2d 200.

Even though an employee was entitled to a new working test period due to irregularities during the original working test period, the employee was not entitled to back pay and counsel fees because there was no determination that he successfully completed the working test period and was, therefore, entitled to a permanent appointment; rather, the employee was simply entitled to a new three-month working test period, during which time his performance would be evaluated. In re Bernal, OAL Dkt. No. CSV 3154-07, 2008 N.J. AGEN LEXIS 1054, Final Decision (October 22, 2008).

Although Department of Education Manager was found not to have violated the New Jersey State Policy Prohibiting Discrimination in the Workplace, N.J.A.C. 4A:7-3.1, he was not entitled to back pay or counsel fees; pursuant to N.J.A.C. 4A:2-1.5, the employee did not show that the actions of the appointing authority in finding a violation of the State Policy and terminating his unclassified position were made in bad faith (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 177). In re Hearn, OAL Dkt. No. CSV 04991-05, Final Decision (October 10, 2007).

Sufficient cause not demonstrated to award back pay where employee was not entitled to a permanent appointment based on successful completion of the working test period, but rather was simply entitled to a new four-month working test period. In re Afolo, OAL Dkt. No. CSV 4145-07, 2008 N.J. AGEN LEXIS 546, Final Decision (May 7, 2008).

Reinstated county correction officer was not entitled to recover counsel fees because the appointing authority did not unreasonably delay implementing the Board's order after the parties were unsuccessful in attempting to resolve the amount of back pay due; the record also failed to indicate that the appointing authority's actions were based on any improper motivation. In re Martin, OAL Dkt. No. CSV 6599-03 (CSV 8656-98 On Remand), 2005 N.J. AGEN LEXIS 1211, Final Decision (July 13, 2005).

Appellant suspended and subsequently removed from title of Senior Systems Analyst was reinstated to duties appropriate to his permanent title (citing former N.J.A.C. 4:1-5.5). Valluzzi v. Bergen County, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

4A:2-1.6 Reconsideration of decisions

(a) Within 45 days of receipt of a decision, a party to the appeal may petition the Commissioner or Board for reconsideration.

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

1. The new evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or

2. That a clear material error has occurred.

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

Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
In (a), substituted "Within 45 days of" for "Upon the".

Case Notes

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

Senior corrections officer was an employee on date when complaint which formed basis of harassment conviction was filed, for purposes of forfeiture statute. Moore v. Youth Correctional Institute at Annandale, 230 N.J.Super. 374, 553 A.2d 830 (A.D.1989), affirmed 119 N.J. 256, 574 A.2d 983.

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

4A:2-1.7 Specific appeals

(a) For specific appeal procedures see:

1. Awards in State service (N.J.A.C. 4A:6-6.10);

2. Classification (N.J.A.C. 4A:3-3.9);

3. Discipline, major (N.J.A.C. 4A:2-2);

4. Discipline, minor (N.J.A.C. 4A:2-3);

5. Discrimination in State service (N.J.A.C. 4A:7-3.2 and 3.3);

6. Employment list removal for medical reasons (N.J.A.C. 4A:4-6.5);

7. Employment list removal for psychological reasons (N.J.A.C. 4A:4-6.5);

8. Examinations (N.J.A.C. 4A:4-6);

9. Grievances (N.J.A.C. 4A:2-3);

10. Layoffs (N.J.A.C. 4A:8-2.6);

11. Overtime in State service (N.J.A.C. 4A:3-5.10);

12. Performance Assessment Review in State service (N.J.A.C. 4A:6-5.3);

13. Reprisals (N.J.A.C. 4A:2-5);

14. Resignations (N.J.A.C. 4A:2-6);

15. Salary (job reevaluation) in state service (N.J.A.C. 4A:3-4.3);

16. Sick leave injury in State service (N.J.A.C. 4A:6-1.7); and

17. Supplemental compensation on retirement in State service (N.J.A.C. 4A:6-3.4).

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

Administrative correction to (a), with deletion of (a)11 and renumbering of old (a)12-18 to new (a)11-17.
See: 22 N.J.R. 165(a).
Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
Deleted ".1 et seq." following N.J.A.C. references throughout; in (a)5, substituted "and 3.3" for "through 4A:7-3.4"; and in (a)11, deleted "et seq." following N.J.A.C. reference.

Case Notes

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

4A:2-1.8 Appeal processing fees

(a) A $20.00 processing fee shall be charged for all appeals and requests for relief filed with the Civil Service Commission, subject to the exemptions in (e) below, except that no fee shall be charged for the following types of appeals:

1. Stay or interim relief (N.J.A.C. 4A:2-1.2), except that:

i. Interim relief requests filed pursuant to N.J.A.C. 4A:2-2.5(e) (violation of departmental disciplinary hearing requirements) are subject to the appeal fee; and

ii. Requests for stay filed pursuant to N.J.A.C. 4A:2-1.2(f) are subject to the appeal fee;

2. Petition for reconsideration of an appeal that is not subject to an appeal fee (see N.J.A.C. 4A:2-1.6);

3. Grievance in State service (N.J.A.C. 4A:2-3.1);

4. Reprisal or political coercion (N.J.A.C. 4A:2-5.2);

5. Classification (N.J.A.C. 4A:3-3.9);

6. Job reevaluation (N.J.A.C. 4A:3-4.3);

7. Waiver of salary overpayment (N.J.A.C. 4A:3-4.21);

8. Retroactive appointment date (N.J.A.C. 4A:4-1.10);

9. Extension of an eligible list (N.J.A.C. 4A:4-3.3);

10. Revival of an eligible list (N.J.A.C. 4A:4-3.4);

11. Relaxation of the intergovernmental transfer rule (N.J.A.C. 4A:4-7.1A);

12. Relaxation of the donated leave rule (N.J.A.C. 4A:6-1.22);

13. Layoff rights (N.J.A.C. 4A:8-2.6(a)2);

14. Enforcement of a Civil Service Commission decision or a determination by a Division of the Civil Service Commission (N.J.A.C. 4A:10-2.1); or

15. Appointment waiver (N.J.A.C. 4A:10-2.2).

(b) The fee shall be paid by check or money order, made payable to NJCSC, and submitted with the appeal.

(c) Appeals filed on behalf of multiple appellants must include a $20.00 fee for each appellant, except that:

1. In cases where, on behalf of all similarly situated members of a unit represented by a union, an attorney or authorized union representative files a request for a stay or other interim relief that does not fall under N.J.A.C. 4A:2-1.2, because it does not pertain to a pending appeal, such request is only subject to one $20.00 fee; and

2. Appeal fees as described above may be combined in one check or money order.

EXAMPLE 1: An attorney representing a local union seeks an order on behalf of all affected unit members to stay a layoff from occurring in response to a proposed layoff plan. The request does not fall under N.J.A.C. 4A:2-1.2, because it does not pertain to a pending appeal. Therefore, the request is subject to a fee. However, as it is filed on behalf of all similarly situated union members by an authorized representative, the attorney is only required to submit one $20.00 fee in total, rather than a fee for each unit member.

EXAMPLE 2: An attorney appeals the good faith of a layoff on behalf of 20 members of an affected unit represented by a local union. The attorney also seeks an order to stay the layoff from occurring pending a hearing on the good faith layoff appeal. The pending appeal, regarding the good faith of the layoff, is subject to a fee. Therefore, the attorney is required to submit a $20.00 fee for each appellant in the good faith layoff appeal for a total of $400.00. The attorney decides to submit a check for $400.00, rather than write 20 checks in the amount of $20.00 for each appellant, although either approach is permissible. However, no separate fee is required for the stay request because it pertains to the pending appeal. See N.J.A.C. 4A:2-1.8(a)1.

(d) Appeals received without a fee shall not be processed unless the appellant submits, within the time required by written notice from the Commission, the required fee, or proof of exemption as described in (e) below. Fees received after the due date shall not be accepted unless good cause is shown by the appellant.

(e) An appellant shall be granted a waiver of the fee if the appellant:

1. Has established veterans' preference pursuant to N.J.S.A. 11A:5-1 et seq.; or

2. Provides documentation showing that he or she is receiving General Assistance benefits, benefits under the Work First New Jersey Act, or Supplemental Security Income. Proof must consist of one of the following:

i. General Assistance—a copy of the appellant's benefits identification card (if one was issued) or a letter from the appellant's local municipal welfare director;

ii. Work First New Jersey Act—a copy of the appellant's Families First card; or

iii. Supplemental Security Income—a copy of the appellant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(f) The fee is for processing purposes only and shall not be refunded for any reason except when submitted in error for an exempt appeal.

New Rule, R.2011 d.173, effective June 20, 2011.
See: 43 N.J.R. 470(a), 43 N.J.R. 1419(b).

SUBCHAPTER 2. MAJOR DISCIPLINE

Cross References

Applicability of this subchapter to SES members, see N.J.A.C. 4A:3-2.9.

4A:2-2.1 Employees covered

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

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

(c) When the State of New Jersey and the majority representative have agreed pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, to a procedure for appointing authority review before a disciplinary action is taken against a permanent employee in the career service or an employee serving a working test period, such procedure shall be the exclusive procedure for review before the appointing authority.

(d) When the State of New Jersey and the majority representative have agreed pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, to a disciplinary review procedure that provides for binding arbitration 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.

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 suspended for five days, reprimanded, and suspended for seven days; a greater sanction was necessary to impress upon the custodian that superiors and fellow employees depended upon him to fulfill his custodial responsibilities, and to mitigate the possibility of a hazardous environment for those who work at and attended the schools. In re Weeks, OAL Dkt. No. CSV 11073-07, 2009 N.J. AGEN LEXIS 792, Final Decision (April 15, 2009).

Removal was the proper penalty where a chemist was not a resident of Trenton and he supplied incorrect and misleading information to the appointing authority regarding his residency. In re Emelumba, OAL Dkt. No. CSV 2214-08, 2009 N.J. AGEN LEXIS 974, Final Decision (April 15, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 111) adopted, which found that a cottage training technician knew her obligation to call-in her intended absences no later than one hour of the time her shift was scheduled to begin, but failed to do so on four occasions; her repeated offenses for similar conduct led to the conclusion she would not rehabilitate her work ethic to guarantee her employer she would abide by its attendance and related absence policy. In re Brown, OAL Dkt. No. CSV 4693-08, 2009 N.J. AGEN LEXIS 819, Final Decision (April 15, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 115) adopted, which found that a human services technician was properly removed after having inappropriate contact with a patient because, although the technician did not intend to harm the patient, there was no reason for her to hold on to the patient after the room was locked, which had the effect of escalating instead of deescalating the situation; additionally, the technician had three five-day sentences and a five-month suspension for verbal abuse of a patient. In re Cloyd, OAL Dkt. No. CSV 8809-08, 2009 N.J. AGEN LEXIS 997, Final Decision (April 15, 2009).

While the OAL and the Commission are not strictly bound by the terms set forth in a Last Chance agreement, where the parties voluntarily agree to a penalty of removal for any subsequent violation, the Last Chance Agreement can be used by the Commission as a significant factor to be considered, along with a worker's prior disciplinary history, when determining the appropriate penalty in an appeal. In re King, OAL Dkt. No. CSV 11696-08, 2009 N.J. AGEN LEXIS 904, Final Decision (March 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 35) adopted, which found that a custodial worker was properly removed for chronic and excessive absenteeism where she had four prior suspensions for excessive absenteeism and a "Last Chance Agreement," which was a clear warning to that any further attendance difficulties would be more harshly dealt with; the appointing authority did all it could to accommodate the worker, including a transfer to a daytime shift in a different school, but it was clear that numerous reprimands and suspensions were not enough to compel improvement in the worker's attendance. In re Brown, OAL Dkt. No. CSV 3042-08, 2009 N.J. AGEN LEXIS 815, Final Decision (March 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 34) adopted, which found that a cooking instructor was properly removed for chronic lateness and absenteeism because, even if the last chance agreement between the instructor and the appointing authority was not dispositive, the circumstances dictated removal where the instructor had a history of chronic absenteeism, including an official reprimand in 2001 and 2003, respectively, a three day suspension in July 2003, a five day suspension in November 2003, a 15 day suspension in December 2003, and the three month suspension which was part of an earlier settlement, wherein the DOC sought his removal, in 2005. In re Keat, OAL Dkt. No. CSV 2026-08, 2009 N.J. AGEN LEXIS 973, Final Decision (March 11, 2009).

ALJ erred in finding that a building maintenance worker's prior discipline for leaving his assigned work area without permission could not be considered in determining a proper punishment for subsequent violations because the ALJ erroneously believed that the prior charge was part of the parties' earlier settlement agreement, when, in fact, the prior agreement did not encompass the charge; therefore, the appointing authority was within its right to remove the worker after his third such infraction (rejecting 2008 N.J. AGEN LEXIS 985). In re Wicker, OAL Dkt. No. CSV 8394-07 and CSV 10250-07, 2009 N.J. AGEN LEXIS 827, Final Decision (February 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 6) adopted, which found that a cemetery caretaker was properly removed from her position after engaging in conduct unbecoming a public employee by drinking on the job, possessing marijuana on the job, driving a county vehicle while intoxicated, and being criminally charged with driving while under the influence of alcohol; although the caretaker claimed that she was simply hung over from the night before, her testimony was not believable. In re Cochrane, OAL Dkt. No. CSV 10073-08, 2009 N.J. AGEN LEXIS 784, Final Decision (February 25, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 746) adopted, which concluded that a county correctional officer was properly removed from office for sleeping while on duty, the first time when the officer was stationed in a hospital room in the early morning with a shackled inmate and the second time when the officer was assigned to a dorm in the county correctional facility where inmates were seen milling around him. The danger to himself and others was so blatantly obvious and his explanations so lacking in credibility that it was clear that the officer did not understand the nature of the job he was in, and these two incidents were so egregious in nature as to warrant his immediate removal. In re O'Mullan, OAL Dkt. No. CSV 12226-05, 2008 N.J. AGEN LEXIS 1091, Final Decision (December 17, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 765) adopted, which concluded that a police officer was properly removed on allegations of domestic abuse, even after the victim recanted her earlier statements, because the evidence demonstrated that the officer not only abused the victim but lied about it and attempted to procure false testimony from his friend; removal was appropriate despite the officer's military history and honorable conduct in his neighborhood. In re Mayfield, OAL Dkt. No. CSV 6564-07, 2008 N.J. AGEN LEXIS 1063, Final Decision (December 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 846) adopted, which concluded that a campus police sergeant was properly removed after he purchased and injected anabolic steroids in an effort to impress his girlfriend with his increased muscle mass and then refused to identify the individual who sold him the substance and related paraphernalia. In re Fleming, OAL Dkt. No. CSV 6485-07, 2008 N.J. AGEN LEXIS 1231, Final Decision (November 6, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 841) adopted, which found, on conflicting evidence, that a police officer was properly suspended for 20 days after he was rude when approached by three woman from a daycare center who were concerned that there was gang activity nearby, refusing to take a report and later submitting a false report about his whereabouts; however, because the officer had an unblemished disciplinary history and had been a member of the department for 13 years, a 20-day suspension was appropriate, even if more extensive discipline may have been authorized. In re Henriques, OAL Dkt. No. CSV 01462-08, 2008 N.J. AGEN LEXIS 1202, Final Decision (November 6, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 849) adopted, which concluded that a correction lieutenant, who twice refused to cooperate with the Special Investigations Division by ordering a correction officer to provide a specimen for a drug testing urinalysis, frustrated an important drug-testing policy and was guilty of unbecoming conduct and a neglect of duty; however, the lieutenant had served for many years and had not been the subject of major discipline, so a 15-day, rather than 45-day suspension, was appropriate. In re Dudich, OAL Dkt. No. CSV 10114-07, 2008 N.J. AGEN LEXIS 1083, Civil Service Comm'n Decision (November 6, 2008).

Where a prison employee admitted to falsifying his attendance records and providing extravagant gifts to his supervisor, both at the behest and under threat from the supervisor, but failed to report the activities to higher level authorities, his actions could have potentially undermined the safety and security of the correctional facility; despite his lack of significant disciplinary history, the employee's removal was warranted because he had not shown himself to have the character or sense of responsibility to shield himself from the stresses and pressures of a correctional setting (adopting 2008 N.J. AGEN LEXIS 789). In re Elmaghrabi, OAL Dkt. No. CSV 3548-08, 2008 N.J. AGEN LEXIS 1217, Final Decision (October 22, 2008).

Thirty-working day suspension was warranted after two sheriff's officers engaged in irresponsible and reprehensible behavior by having a serious physical altercation while on duty in a public area in front of other county employees (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 764). 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 (2008 N.J. AGEN LEXIS 788) adopted, which concluded that a 20-day, rather than 30-day, suspension of a police officer was the appropriate penalty for leaving the township in a police vehicle without permission, being in a liquor store in violation of departmental rules, and then subsequently evading questions during an investigation of the incident; the officer was a 14-year veteran with a perfect disciplinary record and had been commended on five different occasions, whereas he was in the liquor store for only three minutes. In re Manson, OAL Dkt. No. CSV 2390-08, 2008 N.J. AGEN LEXIS 1213, Final Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 619) adopted, which concluded that removal of a county correction officer was appropriate after two separate instances in which the officer filed a false report and used excessive force against an inmate; both events, although serious, would not have warranted termination, but the officer had four major disciplines for conduct unbecoming a public employee and neglect of duty, each entailing suspension of 30 days or more. In re Garcia, OAL Dkt. No. CSV 9777-07, 2008 N.J. AGEN LEXIS 1069, Final Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 741) adopted, which found, on conflicting evidence, that a city laborer removed approximately $30 of plumbing parts belonging to the City without permission or authorization and secreted them; however, the laborer's conduct did not warrant removal and a more appropriate penalty was a 30-working-day suspension, based on the fact that the laborer had been an employee for 19 years and had an unblemished record. In re Williams, OAL Dkt. No. CSV 01455-08, 2008 N.J. AGEN LEXIS 1201, Civil Service Comm'n Decision (September 24, 2008).

Removal from position of supervising sheet metal worker with public school district on grounds of (1) misrepresentation of facts of his criminal history on his job application and (2) abuse of authority by instructing subordinates to remove school district property for personal gain, was modified to six-month suspension where (1) school district did not prove that the alleged "crime" was in fact a crime and not a disorderly persons offense but (2) while that there was no policy concerning the disposal of scrap metal, it was abundantly clear that a public employee should not be able to profit when disposing of materials belonging to the appointing authority. That contractors were allowed to keep the salvaged proceeds for the sale of scrap they collected was inconsequential since the terms of a contract with an outside vendor may be clearly different from the responsibilities of employees with regard to appointing authority property. In re Delli Santi, OAL Dkt. No. CSV 11901-07, 2008 N.J. AGEN LEXIS 1088, Civil Service Comm'n Decision (September 24, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 745) adopted, which concluded that a police officer was properly removed from office for conduct unbecoming and other sufficient cause for allegedly going on a family vacation and being at a work site for his landscaping business while, in both instances, he was on extended sick leave and did not have permission of his supervisor, particularly since the General Order which described the police department's sick-leave policy was very specific where it stated that an officer on sick leave must remain ". . . at his home unless he receives a Supervisor's permission to leave." In re Wright, OAL Dkt. No. CSV 11929-07, 2008 N.J. AGEN LEXIS 1090, Final Decision (September 24, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 742) adopted, which concluded on conflicting testimony that a Judiciary Account Clerk 2 who was charged with unlawfully taking child support payments totaling $2,000 and refraining from depositing the cash in a state account, was properly removed notwithstanding the clerk's largely unblemished prior record. Although the clerk was a 20-year employee and her prior record included only a six-day suspension, removal was the proper penalty since it went without saying that the theft of funds fell short of that which the public has a right to expect, especially in the court system. In re Shabazz-Allen, OAL Dkt. No. CSV 3592-06, 2008 N.J. AGEN LEXIS 1055, Final Decision (September 24, 2008).

Police officer who had justifiably arrested a citizen for drunk and disorderly behavior but then detained the citizen in municipal jail for an unreasonable amount of time for improper and retaliatory reasons, was properly removed from office where he had previously received a 120 working day suspension and the offending conduct reflected an egregious abuse of discretion and authority. While the discretion given to police officers to determine length of detention was meant to include consideration of factors such as a detainee's combative conduct while in custody and the availability of a responsible adult to whom a detainee can be released, the length of the arrestee's detention was directly related to the police officer's desire to frustrate and aggravate the arrestee's wife in retaliation for her negative vote as a member of a zoning board of adjustment against the police officer's wife's variance application. In re Sharin, OAL Dkt. No. CSV 4705-05, 2008 N.J. AGEN LEXIS 1225, Final Decision (September 24, 2008).

County correction lieutenant was properly suspended for 60 days on charges of conduct unbecoming a public employee, insubordination, and other sufficient cause after the lieutenant was seen yelling at a county correction captain in a belligerent manner, leading a witness to believe that the lieutenant was going to do physical harm to the captain; regardless of his disciplinary history, the lieutenant's offense was sufficiently egregious to warrant a 60-day suspension and, if anything, the fact that a supervisory law enforcement officer was guilty of such conduct compounded the seriousness of the offense (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 402). In re Oyola, OAL Dkt. No. CSV 9782-07, 2008 N.J. AGEN LEXIS 1236, Final Decision (September 10, 2008).

In a disciplinary action against a county correction lieutenant, the ALJ erred in concluding that portions of the lieutenant's disciplinary record were not subject to review for purposes of progressive discipline because the prior offenses were too remote in time; where the officer had some history of adjudicated disciplinary action within a reasonable time, consideration of further disciplinary actions that were more than seven years old was permissible (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 402). In re Oyola, OAL Dkt. No. CSV 9782-07, 2008 N.J. AGEN LEXIS 1236, Final Decision (September 10, 2008).

Theory of progressive discipline should not have been used in a disciplinary action in which an assistant family services worker was found working at her restaurant on a day in which she was supposed to have been working in the field for the appointing authority; the worker had only been in a field position working with clients for a short time and her misconduct demonstrated that she was not trustworthy (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 620). In re Jiles, OAL Dkt. No. CSV 10042-07, 2008 N.J. AGEN LEXIS 620, Final Decision (August 27, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 362) adopted, which concluded that a police officer was properly suspended for 10 days after he cashed checks when there were insufficient funds in the account and failed to timely reimburse the store because the officer's actions and omissions had the potential to negatively impact the Police Department in relation to the public; where the officer had previously received a 30-day suspension for an incident occurring at a bar while he was off duty, the imposition of a 10-day suspension regarding the checks in question was consistent with the rules. In re Moran, OAL Dkt. No. CSV 03391-01 and CSV 01560-03 (Consolidated), 2008 N.J. AGEN LEXIS 1410, Final Decision (July 16, 2008).

Even if a nursing home institutional attendant was legitimately ill and falsified a doctor's note only to avoid being sent home and missing more work, the attendant's conduct warranted removal; the attendant was responsible for a vulnerable population and held a position of trust, i.e., the maintenance of patient records (modifying 2008 N.J. AGEN LEXIS 358). In re Bundy, OAL Dkt. No. CSV 724-08, Final Decision (July 16, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 360) adopted, which concluded that removal of a city laborer employed for 19 years was proper because he tested positive on a random drug test, after having executed a Letter of Conditional Employment agreement; the agreement was a condition of the laborer's return to employment after admitting to a drug problem and undergoing rehabilitation, and the positive drug test was within 90 days of his return. In re Hayward, OAL Dkt. No. CSV 03287-08, Final Decision (July 16, 2008).

Termination of a laborer-heavy was modified to a four-month suspension because, although his positive drug test for marijuana was serious given his safety-sensitive position, the laborer's disciplinary history did not evidence any formal discipline since he began working for the township 15 years prior; for non-law enforcement employees who are not held to the stricter standard of conduct expected of law enforcement officers, a "second chance" is generally provided by appointing authorities in similar situations. In re Daraklis, OAL Dkt. No. CSV 6744-07, 2008 N.J. AGEN LEXIS 717, Merit System Board Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 287) adopted, which concluded that mitigating circumstances existed to reduce a correction officer's penalty for failing to conduct half-hour inmate counts, resulting in a delay in the discovery of a fatally ill inmate; removal was not justified where the officer was a new transferee with only five days on the job who had never served a third shift nor worked in an administrative segregation unit and thus did not have sufficient training to have been assigned to such a sensitive position. In re Washington, OAL Dkt. No. CSV 5886-07, 2008 N.J. AGEN LEXIS 715, Merit System Board Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 224) adopted, which concluded that removal was warranted for a laborer who had a lifting restriction preventing him from performing the essential functions of the position and who was found, despite his testimony to the contrary, to have frequently refused to perform job requirements. In re Delgado, OAL Dkt. No. CSV 9697-07 (CSV 11940-05 On Remand), 2008 N.J. AGEN LEXIS 721, Final Decision (May 21, 2008).

In determining the proper penalty for a public employee's infraction, several factors must be considered, including the seriousness of the underlying incident, the concept of progressive discipline, when appropriate, and the employee's prior record. In re Pettiford, OAL Dkt. No. CSV 8801-07, 2008 N.J. AGEN LEXIS 719, Merit System Board Decision (May 21, 2008).

As a law enforcement officer, a Correction Officer is held to a higher standard than a civilian public employee. In re Pettiford, OAL Dkt. No. CSV 8801-07, 2008 N.J. AGEN LEXIS 719, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 293) adopted, which concluded that an eight-day suspension was warranted for a police officer's failure to obey an order to holdover and work overtime and failure to communicate through regular channels; the police officer had worked 42 hours during the three previous days. In re Hannibal, OAL Dkt. No. CSV 12920-05, 2008 N.J. AGEN LEXIS 607, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 161) adopted, which concluded that 45-day suspension, rather than removal, of a police officer was warranted. The officer was the union representative and claimed to have been summoned to assist another officer undergoing internal affairs questioning when a scuffle developed. Testimony conflicted as to how the scuffle had started and the officer, with 20 years experience, contended that he was being prevented from doing his job as union representative. In re Rowe, OAL Dkt. No. CSV 11935-07, 2008 N.J. AGEN LEXIS 596, Merit System Board Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 194) adopted, which concluded that removal of a senior correction officer was warranted, notwithstanding a largely unblemished record, after the officer ignored directives barring familiarity and dealings between correction officers and inmates and smuggled in voluminous amounts of food for an inmate; the officer's misconduct was so severe that progressive discipline was bypassed. In re Battle, OAL Dkt. No. CSV 06489-07, 2008 N.J. AGEN LEXIS 578, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 227) adopted, which concluded that a correction officer's removal was proper based on a positive drug test for marijuana; although no witnesses with personal knowledge were found on remand to testify regarding the drug testing procedure and chain of custody, the documentary evidence was sufficient to meet the appointing authority's burden of proof. In re Brown, OAL Dkt. No. CSV 12280-06 (CVS 8874-04 On Remand), 2008 N.J. AGEN LEXIS 602, Final Decision (May 7, 2008).

Unrefuted positive test result for drug use has uniformly been held by the Merit System Board to warrant removal from employment for law enforcement employees. In re Brown, OAL Dkt. No. CSV 12280-06 (CVS 8874-04 On Remand), 2008 N.J. AGEN LEXIS 602, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 221) adopted, which concluded that a sign maker's separation from employment in the city's public works department was proper for inability to perform essential duties under N.J.A.C. 4A:2-2.3(a)3; the sign maker's loss of function due to an injury was permanent, causing an inability to perform about a third of the duties, the city had accommodated the employee by allowing time for recovery and light or limited duty, and the city did not have permanent light or limited duty available. Under these circumstances, a resignation in good standing, rather than removal, was appropriate in order to avoid stigma to the employee. In re Drake, OAL Dkt. No. CSV 8579-07 (CSV 8618-06 On Remand), 2008 N.J. AGEN LEXIS 526, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 222) adopted, which found that the city was well within its rights to request a water works laborer to return to work until providing additional medical documentation to further verify his medical condition, and when the employee did not return to work, the city properly considered the absences unauthorized and the employee to have abandoned his position, pursuant to N.J.A.C. 4A:2-6.2(b) and (c). However, the employee did get the documentation to the city and thus his actions were not so grave as to warrant termination; instead, a 60-day suspension was appropriate. In re Boyd, OAL Dkt. No. CSV 8836-07, 2008 N.J. AGEN LEXIS 625, Merit System Board Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 188) adopted, which emphasized that law enforcement officers, including correction officers, are held to the highest standards of conduct, as they are vested with powers and responsibilities not held by other public employees. In re Porch, OAL Dkt. No. CSV 01307-07 (CSV 9567-06 On Remand), 2008 N.J. AGEN LEXIS 574, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 200) adopted, which concluded that a county maintenance repairer was properly removed after pleading guilty to receipt of stolen property and breach of the peace, given the employee's previous six-month suspension and the sensitive areas in which maintenance repairers must work. In re Ditchkus, OAL Dkt. No. CSV 10252-07, 2008 N.J. AGEN LEXIS 587, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 162) adopted, which found that removal of a corrections officer was the proper disciplinary action under N.J.A.C. 4A:2-2 for conduct unbecoming, neglect of duty, harassment, and "other sufficient cause" under N.J.A.C. 4A:2-2.3, based on the officer's playing of a DVD in the facility in the presence of an inmate, failing to maintain her logbook, insubordination, and intimidation and harassment toward her fellow officers; the environment of a correction facility is such that rules must be adhered to in order to preserve order and safety and, even if each individual infraction was not egregious, the officer's behavior had to be considered as a whole. In re Waiters, OAL Dkt. No. CSV 13121-05, 2008 N.J. AGEN LEXIS 530, Merit System Board Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 191) adopted, which concluded that termination was proper for a public works laborer who was informed after surgery that he must be at full capacity to work and thereafter did not call in sick on a daily basis or provide a doctor's note specifying the date he could return to full duty. The progressive penalties required for termination of a civil service employee pursuant to *West New York v. Bock*, 38 N.J. 500 (1962), were sufficient where the laborer had received multiple warnings of termination over the years due to excessive absenteeism; although the previous disciplinary actions were minor and there were none from March 2004 until Sept. 2006, the impact on the city's small public works department was major and enhanced suspensions would have only penalized the city. In re Pressley, OAL Dkt. No. CSV 4501-07, 2008 N.J. AGEN LEXIS 503, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 197) adopted, which concluded that a building maintenance worker, who drove a township motor vehicle while under the influence of alcohol, resulting in suspension of his driver's license for two years, was properly removed; assuming that

the employee was disabled by alcoholism, the township had repeatedly accommodated him despite previous offenses and there was no township employment available for him that did not require a driver's license. In re Overton, OAL Dkt. No. CSV 8542-07, 2008 N.J. AGEN LEXIS 525, Final Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 108) adopted, which concluded that a campus police officer was properly removed where the evidence clearly showed that, while on duty and using a University computer, the officer sent numerous e-mails to a fellow employee whom he was pursuing romantically, e-mailed a confidential police report to her, and posted an offensive and menacing MySpace.com profile in her name after being rejected, and then continued to incur unauthorized charges on a University cellular phone pending the criminal investigation into the matter; such conduct was unbecoming of an officer and was incompatible with service as a police officer. In re Mandi, OAL Dkt. No. CSV 4824-07, 2008 N.J. AGEN LEXIS 559, Final Decision (April 23, 2008).

Ninety working day suspension, rather than 60 working day suspension, was appropriate where the employee, a Personnel Assistant II for the New Jersey Department of Corrections with responsibility for processing secondary employment applications, was found to have neglected her duties and failed to perform certain of them, resulting in the investigation of innocent employees, and to have created false backdated memos in an effort to cover up her neglect; the employee's disregard of duties caused significant disruption at the prison and unnecessary work, and the employee had a substantial disciplinary record, including a recent 60 working day suspension. The Merit System Board will not tolerate such conduct, which undermines the trust that is placed on staff members with responsibility for personnel records (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 53). In re Alonso, OAL Dkt. No. CSV 4219-07, 2008 N.J. AGEN LEXIS 548, Final Decision (April 9, 2008).

Proper penalty for a police officer, who forwarded a crime scene photograph to a civilian without authorization and for no reason other than either morbid entertainment gratification or to attempt to impress someone, was 30 days suspension; mitigating factors such as remorse for lapse in judgment and the fact that the investigation was not compromised did not warrant a penalty reduction, and the lack of any prior disciplinary record was balanced against the fact that the officer was a relatively short-term employee at the time (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 109). In re Curry, OAL Dkt. No. CSV 5512-06, 2008 N.J. AGEN LEXIS 505, Final Decision (April 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 112) adopted, which concluded that an aide whose driver's license had been suspended for driving while impaired was properly removed because a valid driver's license was a condition of employment; additionally, the aide's disciplinary record revealed that he had difficulty with supervision and with alcohol, having been disciplined on at least two prior occasions for offenses related to alcohol. In re Foster, OAL Dkt. No. CSV 6964-07, 2008 N.J. AGEN LEXIS 1289, Final Decision (April 9, 2008).

Notwithstanding a police officer's relatively unblemished history of discipline, a 20-day suspension, rather than a 7-day suspension, was warranted where the officer failed to maintain constant visual observation of a prisoner, allowing for his escape; such conduct demonstrated neglect of the officer's duty and placed the public at risk (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 50). In re Davis, OAL Dkt. No. CSV 3475-05, 2008 N.J. AGEN LEXIS 538, Final Decision (March 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 82) adopted, which found that a Human Services Assistant was properly removed following his conviction for simple assault and failure to appear at work for five consecutive days. The employee pleaded guilty to simple assault following a domestic dispute and could not collaterally attack the conviction by attempting to show mitigating factors; removal was required pursuant to N.J.S.A. 30:4-3.5. In re Hammie, OAL Dkt. No. CSV 4526-07, 2008 N.J. AGEN LEXIS 554, Final Decision (March 12, 2008).

Correction officer who had called in sick and was not available to answer his home phone during his shift as required by department rules was subject to two-day suspension, despite his contention that he had called in sick because he was closing on a house (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 20). In re Layton, OAL Dkt. No. CSV 12206-06, 2008 N.J. AGEN LEXIS 598, Merit System Board Decision (February 27, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 797) adopted, which found that where a Human Services Assistant engaged in a fight on State property, such behavior was "other sufficient cause" for disciplinary action pursuant to N.J.A.C. 4A:2-2.3(a)11; however, because the assistant was not the aggressor, a 90-day suspension was an appropriate penalty. In re Tyson, OAL Dkt. No. CSV 2338-07, 2008 N.J. AGEN LEXIS 535, Merit System Board Decision (February 27, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 51) adopted, which found that removal of a fire alarm operator for unexcused absences was the proper disciplinary action because the duties of an operator were crucial, and the operator's failure to follow procedures had the potential to put the public safety at risk and to disrupt operations of the appointing authority; in addition, the operator had a substantial disciplinary record evidencing serious violations and a pattern of disregard for procedures

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 (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).

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).

Initial Decision (2009 N.J. AGEN LEXIS 164) adopted, which held that a police officer was properly terminated from his conditional appointment after a medical exam determined that he was not medically fit to participate in the PTC Physical Conditioning Training program. In re Cordero, OAL Dkt. No. CSV 11944-08, 2009 N.J. AGEN LEXIS 802, Final Decision (May 13, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 72) adopted, which found that a county correction officer was properly suspended for 10 days after the officer was observed at a construction site at his mother-in-law's home while on "no-activity" status and receiving full pay for an on-the-job injury; however, the fact that the officer signed his mother-in-law's building permit as the contractor did not warrant a conclusion that the officer was engaged in outside employment. In re Sottilare, OAL Dkt. No. CSV 07148-07, 2009 N.J. AGEN LEXIS 895, Final Decision (April 29, 2009), aff'd per curiam, No. A-4761-08T3, 2010 N.J. Super. Unpub. LEXIS 1195 (App.Div. June 1, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 72) adopted, which found that a county correction officer should not have been disciplined for failing to appear at Internal Affairs meeting to discuss a matter involving another individual, who was then the subject of an IA investigation; the officer was on unpaid suspension at the time he was summoned and declined to appear because of the pending charges against him and it would have been incongruous to require an officer on unpaid suspension to appear for department business. In re Sottilare, OAL Dkt. No. CSV 07148-07, 2009 N.J. AGEN LEXIS 895, Final Decision (April 29, 2009), aff'd per curiam, No. A-4761-08T3, 2010 N.J. Super. Unpub. LEXIS 1195 (App.Div. June 1, 2010).

Initial Decision (2009 N.J. AGEN LEXIS 72) adopted, which found that a correction officer was properly removed after he revealed both the existence and the nature of an Internal Affairs investigation to a fellow officer; the officer had a duty to "adhere strictly" to the Attorney General Guidelines of not disclosing confidential information and his conduct went to the heart of his ability to be trusted to function appropriately in his position. In re Sottilare, OAL Dkt. No. CSV 07148-07, 2009 N.J. AGEN LEXIS 895, Final Decision (April 29, 2009), aff'd per curiam, No. A-4761-08T3, 2010 N.J. Super. Unpub. LEXIS 1195 (App.Div. June 1, 2010).

Twenty-day suspension was warranted upon a finding that an off-duty police lieutenant pushed and cursed security personnel following an altercation at a concert; contrary to the lieutenant's argument, his position in law enforcement required that he act with dignity, even while off duty (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 119). In re Slack, OAL Dkt. No. CSV 10263-07, 2009 N.J. AGEN LEXIS 901, Civil Service Commission Decision (April 15, 2009).

Police officer's 60-day suspension was appropriate upon a finding that the officer used excessive profanity towards a civilian during an arrest out of frustration or emotion and not for the purpose of compelling cooperation through a "good cop-bad cop" scenario (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 37). In re DeMarzo, OAL Dkt. No. CSV 4930-07, 2009 N.J. AGEN LEXIS 821, Final Decision (March 11, 2009).

ALJ erred in finding that a police officer's failure to timely complete his reports should have been dismissed due to the absence of a written policy where the procedures for completing arrest or investigation reports in a timely fashion were communicated to all officers at roll call; moreover, the absence of a specific rule or procedure regarding the completion of reports did not absolve the officer of his responsibility to complete a basic and necessary duty of a police officer (adopting in part and rejecting in part 2009 N.J. AGEN LEXIS 37). In re DeMarzo, OAL Dkt. No. CSV 4930-07, 2009 N.J. AGEN LEXIS 821, Final Decision (March 11, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 873) adopted, which concluded that 12-year senior juvenile detention officer used excessive force against a 12-year-old juvenile detainee and was guilty of conduct unbecoming a public employee justifying removal from his position. It was readily apparent from viewing a surveillance video that the officer became angry and intended to enact some type of retribution against the juvenile for hitting him on the nose; the officer knew the floor of the "day room" was concrete yet he dangled the juvenile over it risking serious harm to him if he fell and hit his head, and he knew the juvenile suffered from ADHD and was "excitable" and yet persisted with his conduct that contributed to further agitation and fear. In re Heigler, OAL Dkt. No. CSV 4448-06, 2008 N.J. AGEN LEXIS 1057, Final Decision (December 17, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 796) adopted, which found that a correction lieutenant was properly removed from his position after testing positive for marijuana; there was no evidence that his urine sample had been tampered with or that the reading was flawed in any way, and the lieutenant's explanations for why the test was positive, including his mother's use of hemp seed oil in her cooking, was mere speculation. In re Glass, OAL Dkt. No. CSV 08807-07, Final Decision (December 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 613) adopted, which concluded on conflicting testimony that a township police officer was properly removed on charges that he unnecessarily engaged in a physical altercation in a bar, which he instigated, and subsequently engaged in conduct aimed at preventing his identification in the incident, such as shielding his license plate from view, leaving the premises before the authorities arrived, and ignoring a message from a superior officer regarding the incident. Moreover, it could not be ignored that the police officer was a relatively short-term employee, having been employed for approximately four years at the time of the incident. In re Hawkins, OAL Dkt. No. CSV 4469-05, 2008 N.J. AGEN LEXIS 1222, Final Decision (December 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 842) adopted, which concluded on conflicting testimony that conduct of an employee in forcefully grabbing patient around her neck and walking her down the hallway while striking her on her back was so egregious and unacceptable that the employee should be removed from her position as a human services assistant at a developmental center. In re Dempster, OAL Dkt. No. CSV 2356-08 (CSV 2944-07 On Remand), 2008 N.J. AGEN LEXIS 1211, Final Decision (November 6, 2008).

Correction sergeant at youth correctional facility was properly removed from office on charges that on three occasions, sergeant attended his township's council or board of education meetings while he reported on his timesheet and in the log books that he was at work for the entire shift, and he received compensation for the entire shift. Although the sergeant attempted to justify this egregious and dishonest behavior by suggesting that other employees were "covering for" him, the log books showed that the sergeant was on duty and, in the event of an emergency or unusual incident, superior officers would have had inaccurate information as to who was on duty; moreover, there was no evidence that the

sergeant received any supervisory approval for these reciprocal arrangements on the dates in question. In re La Pierre, OAL Dkt. No. CSV 462-08, 2008 N.J. AGEN LEXIS 1224, Final Decision (October 22, 2008).

Correction sergeant at youth correctional facility was suspended from office for six months on charges that he was elected to his township's board of education, but he failed to notify his employer of his outside activity, as required by the appointing authority's code of ethics. Despite sergeant's contention that an April 2003 note from him to a personnel officer advised that he had been so elected, the sergeant did not testify as to the authenticity of this document, and there was no evidence presented to demonstrate that the document was actually created in 2003 and submitted to the appointing authority; without such testimony or evidence, this document was essentially meaningless, as it just as likely could have been created by the sergeant immediately in advance of the hearing. Moreover, even if genuine, such brief correspondence, on a one-time basis, did not fulfill the sergeant's obligations under the appointing authority's code of ethics or its policy regarding political activity. In re La Pierre, OAL Dkt. No. CSV 462-08, 2008 N.J. AGEN LEXIS 1224, Final Decision (October 22, 2008).

Correction sergeant at youth correctional facility was suspended from office for six months on charges that sergeant during his shift observed an abandoned vehicle in the staff parking area, and he failed to report this observation to the ranking correction lieutenant, the shift commander, or the correction sergeant who relieved him at the end of his shift. Although the sergeant's offense touched upon the security of the facility, and it should have been promptly reported and addressed, in light of his prior minor disciplinary record, a six-month suspension was sufficient. In re La Pierre, OAL Dkt. No. CSV 462-08, 2008 N.J. AGEN LEXIS 1224, Final Decision (October 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 797) adopted, which concluded that a 10-day suspension was warranted when a police officer spoke to his captain in a contentious, hostile, and disrespectful manner at an informal meeting; there was nothing in the ground rules for the meeting that would have allowed insubordinate or disrespectful conduct and the manner in which the officer spoke tended to undermine the captain's authority from the perspective of the other officers and generally brought discredit to the department. In re Danoys, OAL Dkt. No. CSV 11121-07, 2008 N.J. AGEN LEXIS 1086, Final Decision (October 22, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 820) adopted, which concluded that, even if a senior correction officer had time available under the Family and Medical Leave Act, the officer bore the responsibility of informing his supervisor and personnel officer of the reasons for his absence within two days of taking the time; removal was appropriate because there was nothing in the record to indicate that the officer met this obligation and his disciplinary record consisted solely of charges of chronic or excessive absence, demonstrating his failure to recognize the serious risks and effects his behavior caused within the facility. In re Mitchell, OAL Dkt. No. CSV 11727-07 and CSV 5416-08 (Consolidated), 2008 N.J. AGEN LEXIS 1087, Final Decision (October 22, 2008).

Forty-five-day time limitation contained in N.J.S.A. 40A:9-117.6a only applied to charges related to violations of departmental rules and regulations; where two sheriff's officers were also charged with conduct unbecoming a public employee, neglect of duty, misuse of public property, and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a), the statutory 45-day time limitation was inapplicable. 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).

While the Civil Service Commission cannot tolerate the continued employment of an employee who is in constant contact with a vulnerable population and who reports to duty while under the influence of alcohol, nevertheless the Commission is hesitant to deprive an employee of his property interest in his employment solely on the basis of a test that reflected a blood alcohol content (BAC) reading of .011%, which an expert testified equated to one-half of an alcoholic beverage, at 11:25 a.m., the time of the BAC test. The case was remanded to the OAL in order that the expert could present his expert opinion regarding what the employee's BAC would have been when he reported to duty at 6:25 a.m., and the employee was to be given the opportunity to cross-examine the expert regarding his opinion and to present testimony from his own expert on the extrapolation issue. In re Dare, OAL Dkt. No. CSV 548-08, 2008 N.J. AGEN LEXIS 1227, Remand Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 787) adopted, which concluded that a county correction officer was properly removed for falsely reporting that he had attended high school for four years and had received a GED; even though the misconduct occurred before his employment began, the fact that he lied in order to obtain his position constituted grounds for discipline since his false representation could have impacted those who reviewed his application and decided to hire him. In re Anderson, OAL Dkt. No. CSV 0638-07 (CSV 02101-05 and CSV 4698-04 On Remand), 2008 N.J. AGEN LEXIS 1205, Final Decision (October 8, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 813) adopted, which concluded that a police officer was properly removed because, even though the appointing authority failed to present sufficient credible evidence to establish that the officer had actual knowledge of her brother's criminal activity out of her apartment, it was clear that the officer had a romantic association with a convicted felon, left an assigned post early and without authority, failed to properly report "off duty," failed to keep the Department aware of her current residence, and failed to completely answer her employment questionnaire by omitting the names and addresses of all of her siblings, including her brother. In re Decosey, OAL Dkt. No. CSV 3932-08, 2008 N.J. AGEN LEXIS 1056, Final Decision (October 8, 2008).

Removal of a city water worker for chronic or excessive absenteeism was improper; although the appointing authority requested that the employee submit a medical certification in support of his absences, his verbal notification of his son's illness was sufficient notice that he had rights under the Family and Medical Leave Act. Since the appointing authority acknowledged that it was aware that the worker's son's asthma might have been a qualifying illness, the burden shifted to it to inquire further and to request the necessary medical documentation and such documentation should have been applied retroactively (adopting 2008 N.J. AGEN LEXIS 483). In re Rivera, OAL Dkt. No. CSV 10109-07, 2008 N.J. AGEN LEXIS 1082, Final Decision (September 24, 2008).

Removal of a city water worker for chronic or excessive absenteeism was improper because 6 absences in a 90-day period were not, by themselves, chronic or excessive absenteeism; while such a determination was generally left to the discretion of the appointing authority, the ultimate decision rested with the Commission, which was not bound by the appointing authority's contractual provisions (adopting 2008 N.J. AGEN LEXIS 483). In re Rivera, OAL Dkt. No. CSV 10109-07, 2008 N.J. AGEN LEXIS 1082, Final Decision (September 24, 2008).

Correction officer was guilty of misconduct for driving on a suspended license due to unpaid parking tickets; a county correction officer is a law enforcement employee who must enforce and promote adherence to the law. In re Dickerson, OAL Dkt. No. CSV 11065-06, 2008 N.J. AGEN LEXIS 1084, Final Decision (September 10, 2008).

Correction officer was guilty of misconduct for failing to report, in writing, his outside employment activities, regardless of his supervisor's tacit approval. In re Dickerson, OAL Dkt. No. CSV 11065-06, 2008 N.J. AGEN LEXIS 1084, Final Decision (September 10, 2008).

Correction sergeant's use of the term "fag" in an argument with a fellow employee violated the State Policy as it was a demeaning term based on gender and sexual orientation, and a 10 working day suspension was appropriate. Although the sergeant had only one prior minor disciplinary suspension, her conduct was unacceptable and warranted major discipline. Her behavior was especially egregious given that she was a law enforcement superior officer; a correction sergeant, like a municipal police officer, holds a highly visible and sensitive position within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. In re Carter-Green, OAL Dkt. No. CSV 4272-07, 2008 N.J. AGEN LEXIS 1221, Final Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 361) adopted, which concluded that a correction officer committed no infraction by failing to submit written proof of her family emergency because the emergency was that the officer's young daughter was locked out of the house, a situation that would not generate written proof. In re Irizarry, OAL Dkt. No. CSV 03298-07, Final Decision (Aug. 27, 2008).

Senior correction officer at youth correctional facility who was found to have interfered with an escort team of correction officers attempting to remove an inmate from a scuffle was properly terminated from employment; the officer contended that the other officers were mistreating the inmate. The officer's interference and shouting of inflammatory remarks in the presence of other inmates could have incited the other prisoners in the area to riot and could have led to injuries to officers (adopting 2008 N.J. AGEN LEXIS 766). In re Lee, OAL Dkt. No. CSV 6814-07, 2008 N.J. AGEN LEXIS 1064, Final Decision (August 27, 2008).

Police officer was improperly disciplined for failing to answer questions during an Internal Affairs investigation because he was denied the right to counsel. The officer explicitly stated that he refused to answer the questions without consulting an attorney because he feared self-incrimination; even if there was no reasonable basis to perceive a criminal violation, the Department's own regulations (which incorporated non-conflicting Attorney General Guidelines) were not followed. In re Young, OAL Dkt. No. CSV 07809-07, 2008 N.J. AGEN LEXIS 618, Initial Decision (July 15, 2008), adopted (Civil Service Comm'n August 27, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 617) adopted, which found that where a senior food service handler was convicted for offensive touching following an incident in which he yelled, used profanity, and pushed a fellow coworker, he was disqualified from his position pursuant to N.J.S.A. 30:4-3.5(a)(1)(a), absent a finding that he affirmatively demonstrated to the Commissioner of Human Services clear and convincing evidence of his rehabilitation. In re Taylor, OAL Dkt. No. CSV 6837-05, 2008 N.J. AGEN LEXIS 617, Final Decision (August 27, 2008).

Forty-five-day rule set forth in N.J.S.A. 40A:14-147 only applies to charges relating to violations of internal rules or regulations; where an employee is also charged with conduct unbecoming a public employee and other sufficient cause in violation of N.J.A.C. 4A:2-2.3, the statutory 45-day time limitation is not applicable to all of the charges (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1427). In re Parham, OAL Dkt. No. CSV 5340-07, 2008 N.J. AGEN LEXIS 1414, Final Decision (June 25, 2008).

Police officer was properly removed after the ALJ found, based on the credible evidence and testimony presented, that the officer carried an unauthorized weapon and pointed it at a civilian whose sister was involved in an altercation with the daughter of the officer's girlfriend, and that he subsequently falsely told the investigator that he did not have a handgun on the date in question; in addition, the officer failed to return to work when medically authorized, and he neglected to comply with an order to attend a medical evaluation with the appointing authority's physician (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 1427). In re Parham, OAL Dkt. No. CSV 5340-07, 2008 N.J. AGEN LEXIS 1414, Final Decision (June 25, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 314) adopted, which concluded, *inter alia*, that an employee charged with excessive absenteeism presented no basis to find that the appointing authority violated FMLA rights in connection with her absences to care for her son when he was suspended from school; the record did not contain sufficient evidence substantiating the suspensions, supporting the pediatrician's opinion, and relating the school suspensions to the son's psychological/emotional problems. In re Paolella, OAL Dkt. No. CSV 118-08, 2008 N.J. AGEN LEXIS 707, Final Decision (June 11, 2008).

Printing machine operator was properly suspended for 25 days for falsifying his time sheet; even though the operator was only 20 minutes late, any falsification of a record by a public employee could not be tolerated. The operator was properly suspended for 45 days for another incident, in which he returned late from an appointment without informing his supervisor. A 90-day suspension was appropriate for a third incident, in which the operator left work for a family emergency without informing the supervisor or another employee of the emergency. In re Middleton, OAL Dkt. No. CSV 10657-06 and CSV 10658-06 (Consolidated), 2008 N.J. AGEN LEXIS 704, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 317) adopted, which concluded that undisputed testimony established that a sanitation department laborer used reasonable force to defend himself when a co-worker pushed him; thus, the 10-day suspension of the laborer was not justified. In re Greene, OAL Dkt. No. CSV 5322-06, 2008 N.J. AGEN LEXIS 501, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 290) adopted, which concluded that dismissal was justified where an assistant water treatment plant operator failed a drug test, after having signed a last-chance agreement; the failure of a public employee to abide by the terms of a last-chance agreement constitutes sufficient cause for dismissal. In re McBride, OAL Dkt. No. CSV 10111-07, 2008 N.J. AGEN LEXIS 585, Final Decision (May 21, 2008).

Working day suspension of 120 days rather than removal was appropriate where a police officer's deficiencies, while serious, were in one area only, that of report preparation, and the officer was otherwise able to successfully execute the duties of police officer (adopting in part and modifying in part 2008 N.J. AGEN LEXIS 290). In re Linthicum, OAL Dkt. No. CSV 10251-07, 2008 N.J. AGEN LEXIS 703, Merit System Board Decision (May 21, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 61) adopted, which found that a police officer's off-duty arrests for domestic violence and abuse of alcoholic beverages amounted to unfitness for duty, criminal mischief, and conduct unbecoming a public employee, and that his removal was appropriate. In re Allen, OAL Dkt. No. CSV 09765-05, 2008 N.J. AGEN LEXIS 584, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 160) adopted, in which county employee was terminated for failing to submit to a medical examination and for missing 10 days of work without medical documentation. The submission was required as a result of the settlement of an earlier disciplinary action, which required the employee to submit to six random drug tests during a 15-month period. In re Walker, OAL Dkt. No. CSV 11068-06, 2008 N.J. AGEN LEXIS 589, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 219) adopted, which concluded that county policy mandated removal of an equipment operator who refused to provide a second sample during a drug test, considering his drug test record; the presence or absence of random selection for the testing in question had not been demonstrated with persuasive scientific evidence, and even if so found, absence of randomness would not, on the present record, have forestalled application of the rules directing termination. In re Riggins, OAL Dkt. No. CSV 4788-07, 2008 N.J. AGEN LEXIS 555, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 218) adopted, which concluded that city failed to meet its burden of proof that a police lieutenant, assigned as desk supervisor, neglected his duty by failing to maintain order and control over a subordinate officer when a detective entered the precinct in a disorderly manner looking for a relative who was under arrest; the lieutenant did all that he could to subdue the ranting and raving of the detective. In re Mercado, OAL Dkt. No. CSV 7901-07, 2008 N.J. AGEN LEXIS 518, Merit System Board Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 223) adopted, which found that conduct unbecoming a police officer included engaging in outside employment while on sick leave and failing to obtain approval for, and making a false statement to an Internal Affairs investigator about, the outside employment; removal was neither unduly harsh nor disproportionate. In re Howard, OAL Dkt. No. CSV 9338-06, 2008 N.J. AGEN LEXIS 627, Final Decision (May 7, 2008).

Matter remanded because an incident report completed to document an employee's refusal to submit to a drug screening and for the purpose of pursuing discipline was not a routine report admissible under N.J.R.E. 803(c)(6); the supervisor who completed the report did not testify. In re Richardson, OAL Dkt. No. CSV 5339-07, 2008 N.J. AGEN LEXIS 502, Merit System Board Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 192) adopted, which concluded that 10-day suspension for unbecoming conduct was proper where the ALJ found, on conflicting testimony, that a cook employee refused four direct orders from her supervisors and openly dared them to charge her with insubordination. In re Johnson-McCall, OAL Dkt. No. CSV 4825-07, 2008 N.J. AGEN LEXIS 560, Final Decision (April 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 106) adopted, which found that removal of a senior correction officer for conduct unbecoming an employee was appropriate after the officer was involved in a physical confrontation with the mother of his children, which resulted in serious injury to her facial area; the absence of a criminal conviction, whether by reason of non-prosecution or even acquittal, did not bar a finding of guilt for misconduct in office in the disciplinary proceedings. In re Baylor, OAL Dkt. No. CSV 2184-06, 2008 N.J. AGEN LEXIS 534, Final Decision (April 9, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 80) adopted, which found that termination of a police aide for failure to timely and satisfactorily respond to a 911 call was warranted where the aide neglected to refer and prioritize a domestic violence call to the dispatcher. In re Flagler, OAL Dkt. No. CSV 1302-06, 2008 N.J. AGEN LEXIS 527, Final Decision (April 9, 2008).

Police officer's forwarding of crime scene photograph to a civilian constituted conduct unbecoming a public employee; 30 days suspension. In re Curry, OAL Dkt. No. CSV 5512-06, 2008 N.J. AGEN LEXIS 505, Final Decision (April 9, 2008).

Removal of a truck driver following his positive drug test was too harsh of a penalty, given his unblemished disciplinary history and the fact that he was a non-law enforcement employee, who was not held to the stricter standard of conduct expected of law enforcement officers; the truck driver was entitled to a "second chance" and, therefore, his penalty was modified to a four-month suspension, with reinstatement subject to a return to work drug test and random monthly drug testing for a period of one year (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 2). In re Simpson, OAL Dkt. No. CSV 4498-07, 2008 N.J. AGEN LEXIS 552, Merit System Board Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 88) adopted, in which a police officer was removed for associating with criminals. The officer's husband was a gang member and she had answered in the negative when asked during the employment application process if she had associated with criminals or gang members. In addition, prior to the officer's removal, her husband had pleaded guilty to several felonies, amounting to safety concerns arising out of her possession of her service weapon and bullet proof vests in the home she shared with her husband. In re Griffin, OAL Dkt. No. CSV 11074-07, 2008 N.J. AGEN LEXIS 590, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 107) adopted, which found that a six-day suspension of a correction officer was appropriate where she neglected to provide a land line phone number and where she had a disciplinary history that included a 60-day suspension for incompetence. In re Gaines, OAL Dkt. No. CSV 4265-07, 2008 N.J. AGEN LEXIS 549, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 104) adopted, which concluded that termination was proper for a university cleaning employee who was found, on conflicting testimony, to have threatened another employee, while off-campus and off-duty, and to have made false charges against a supervisor; although the phrase "conduct unbecoming," is not defined in the New Jersey Statutes or in the New Jersey Administrative Code, as noted by the New Jersey Supreme Court, the phrase is an elastic one, and has been defined as "any conduct which adversely affects . . . morale or efficiency . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Ufomba, OAL Dkt. No. CSV 00440-06, 2008 N.J. AGEN LEXIS 572, Final Decision (March 26, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 58) adopted, which reversed police officer's 59-day suspension, as the officer's actions, in his capacity as a union representative, were within the bounds of allowable advocacy and therefore, were neither insubordinate nor unbecoming a police officer. An employer cannot condition a union representative's attendance at an interview on the representative's silence, and a shop steward may help an employee clarify an account; object to harassing, confusing, or misleading questions; and suggest additional witnesses. In re Rowe, OAL Dkt. No. CSV 07535-07, 2008 N.J. AGEN LEXIS 580, Merit System Board Decision (March 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 59) adopted, which concluded that a correction officer accused of sleeping had been inattentive, evidenced by his failure to stand when the superior entered the trailer, and that the appropriate punishment was a 15-day suspension. While punishment was necessary because harm to inmates could have resulted, the supervisor had failed to have a third party witness the incident and he had failed to mention in his report that the employee had fashioned a makeshift pillow. In re Melendez, OAL Dkt. No. CSV 7822-07 (CSV 11302-06 On Remand), 2008 N.J. AGEN LEXIS 592, Merit System Board Decision (February 13, 2008).

Case Notes

Director of county board of social services possessed final authority regarding the board's personnel and discipline decisions, as required for municipal liability under § 1983 based upon former county employee's First Amendment retaliation claims. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983; N.J.Admin. Code tit. 4A, §§ 2-2.8, 2-3.2. Marrero v. Camden County Board of Social Services, 164 F.Supp.2d 455 (D.N.J. 2001).

Administrative code section providing the receipt of Final Notice of Disciplinary Action on a different date by the employee's attorney or union representative shall not affect the appeal period did not conflict with the legislative intent of the Civil Service Act. Mesghali v. Bayside State Prison, 334 N.J.Super 617, 760 A.2d 805 (N.J.Super.A.D. 2000).

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

Human Services Assistant's working test period appeal was moot because the assistant's separate appeal of her removal on disciplinary charges was untimely filed and therefore dismissed; the denial of a hearing due to the late filing was not subject to an appeal before the OAL but had to be appealed to the Superior Court, Appellate Division. In re Black, OAL Dkt. No. CSV 8953-06, 2007 N.J. AGEN LEXIS 1176, Final Decision (June 20, 2007).

Where an employee appealed from the appointing authority's decision to remove her from her position, but failed to appeal other disciplinary actions taken against her within 20 days, the Merit System Board had jurisdiction over the issue of whether the employee was properly removed, but did not have jurisdiction to render a decision on the other disciplinary actions (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 734). In re Small, OAL Dkt. No. CSV 3331-03, 2007 N.J. AGEN LEXIS 1106, Final Decision (January 17, 2007).

Administrative Law Judge may only review an employee's discipline if the matter is transmitted by the Merit System Board; an ALJ does not have the authority to determine whether an appeal has been filed (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 734). In re Small, OAL Dkt. No. CSV 3331-03, 2007 N.J. AGEN LEXIS 1106, Final Decision (January 17, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 991) adopted, which found that a cottage training technician's appeal from a disciplinary action in which he was removed from his employment was moot where the technician failed to timely appeal from a second disciplinary action that also resulted in his removal. In re Clarke, OAL Dkt. No. CSV 2040-06, 2006 N.J. AGEN LEXIS 1098, Final Decision (December 20, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 528) adopted, which concluded that a judiciary clerk's appeal from her removal was dismissed as untimely where neither the Merit System Board, the appointing authority, or the Office of Administrative Law received any notice of appeal. In re Keels, OAL Dkt. No. CSV 9883-03, 2005 N.J. AGEN LEXIS 1226, Final Decision (October 19, 2005).

Where an employee received pertinent disciplinary notices in which he was specifically advised of the applicable 20-day time period for appealing, but failed to do so, the appeal was dismissed; the applicable time limit is jurisdictional and mandatory. In re Floyd, OAL Dkt. No. CSV 5660-03, 2005 N.J. AGEN LEXIS 427, Initial Decision (August 19, 2005), adopted (Merit System Board September 21, 2005).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. Russ v. Human Services Department, 95 N.J.A.R.2d (CSV) 647.

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

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

4A:2-2.9 Commission hearings

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

(b) Major discipline hearings will be heard by the Commission or referred to the Office of Administrative Law for hearing before an administrative law judge, except that an appeal by certain law enforcement officers or firefighters of a removal shall be heard as provided in N.J.A.C. 4A:2-2.13. Minor discipline matters will be heard by the Commission or referred to the Office of Administrative Law for a hearing before an administrative law judge for an employee's last suspension or fine for five working days or less where the aggregate number of days the employee has been suspended or fined in a calendar year, including the last suspension or fine, is 15 working days or more, or for an employee's last suspension or fine where the employee receives more than three suspensions or fines of five working days or less in a calendar year. See N.J.A.C. 1:1 for OAL hearing procedures.

1. Where an employee has pled guilty to or been convicted of a crime or offense which is cause for forfeiture of employment under N.J.S.A. 2C:51-2, but the court has not issued an order of forfeiture, the Commission shall not refer the employee's appeal for a hearing regarding the applicability of N.J.S.A. 2C:51-2 nor make a determination on that issue. See N.J.A.C. 4A:2-2.7.

2. Where a court has entered an order of forfeiture, and the appointing authority has so notified the employee, but the employee disputes whether an order of forfeiture was actually entered, the Commission may make a determination on the issue of whether the order was actually entered. See N.J.A.C. 4A:2-2.7.

3. Notwithstanding (b)1 and 2 above, the Commission may determine whether an individual must be discharged from a State or local government position due to a permanent disqualification from public employment based upon the prior conviction of a crime or offense involving or touching on a previously held public office or employment, provided, however, that the Attorney General or county prosecutor has not sought or received a court order waiving the disqualification provision. See N.J.S.A. 2C:51-2(d) and (e).

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

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

Amended by R.1995 d.417, effective August 7, 1995.
See: 27 N.J.R. 1838(a), 27 N.J.R. 2885(a).
In (a), substituted the Commissioner or the Commissioner's designee for the Board as the party that does the review.
Amended by R.2000 d.433, effective October 16, 2000.
See: 32 N.J.R. 2275(a), 32 N.J.R. 3870(a).
In (b), amended the N.J.A.C. reference in the introductory paragraph, and added 1 through 3.
Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
In (b), added the second sentence.
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Section was "Board hearings". Substituted "Commission" for "Board" throughout; in (a), substituted "Chairperson or the Chairperson's" for "Commissioner or Commissioner's"; and in the introductory paragraph of (b), inserted ", except that an appeal by certain law enforcement officers or firefighters of a removal shall be heard as provided in N.J.A.C. 4A:2-2.13".
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.

Case Notes

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

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

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

Five-day, rather than 10-day, suspension of a county correction officer was appropriate where the officer violated the appointing authority's rules by failing to ask for and secure the trailer keys from a fellow officer he was relieving; the officer was required to "maintain control of all equipment, keys, and logbook" and was guilty of incompetency, conduct unbecoming a public employee, and neglect of duty in failing to secure the proper equipment (rejecting 2009 N.J. AGEN LEXIS 290). In re Rosario, OAL Dkt. No. CSV 5829-08, 2009 N.J. AGEN LEXIS 1006, Final Decision (July 8, 2009).

Where an ALJ found, on conflicting evidence, that a former correction sergeant had a conversation with officers under his supervision in which he made sexually explicit comments towards one of them, the sergeant clearly violated of the New Jersey State Policy Prohibiting Discrimination in the Workplace; however, the sergeant had a 24-year career with the Department with only one minor discipline of an official reprimand in the 10 years prior to the incident, justifying a modification of the 10-day suspension imposed by the appointing authority to a 6-day suspension (adopting 2008 N.J. AGEN LEXIS 1258). In re Ross, OAL Dkt. No. CSV 8839-07, 2009 N.J. AGEN LEXIS 1001, Civil Service Comm'n Decision (April 15, 2009).

While a senior correction officer's conduct in refusing to provide the log book to a superior officer and making the statement that he would hand it over when he was "good and ready" were clearly insubordinate, the ALJ should not have modified his penalty from a 15-day suspension to a 120-day suspension where the alleged misconduct occurred in 2005 and the officer had been employed since May 1990, with his last disciplinary infraction occurring in 1995; the officer's actions, while inappropriate and insubordinate, were not so inherently egregious that they warranted an increase of the penalty in light of his long record of service and disciplinary history and the fact that the appointing authority chose a 15-day penalty (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).

Deputy fire chief was entitled to appeal seven-day suspension as "major disciplinary action," notwithstanding appointing authority's argument that since deputy's normal work schedule was to work one 24-hour shift and then have three 24-hour tours off duty, with the 24-hour tour of duty being divided into two 12-hour shifts, therefore the deputy was effectively suspended for only two 24-hour tours of duty or a four-day suspension during the seven calendar day suspension. The five-day standard for major disciplinary action refers to five working days of not more than 40 hours of pay and since the deputy was suspended for 48 hours, his suspension was considered a major disciplinary action equal to six days and entitled him to a hearing on the discipline. In re Crowder, OAL Dkt. No. CSV 2998-08, 2008 N.J. AGEN LEXIS 1053, Final Decision (October 22, 2008).

Based on a library assistant's disciplinary record, including a recent 10-day suspension, and the nature of the incident, in which the assistant was argumentative and loud to the public information officer, resulting in the officer asking the assistant to leave her office five times before he finally left, a 30-day suspension, rather than 15 days as recommended by the ALJ, was the appropriate penalty. In re Daughtry, OAL Dkt. No. CSV 10171-06, 2008 N.J. AGEN LEXIS 586, Final Decision (May 7, 2008).

Although a prison cooking instructor had valid, substantiated excuses as to why she was absent from work one day and why she did not call her supervisor in a timely manner on another, she failed to present a convincing reason for failing to abide by the appointing authority's call-on and call-off policy for a third absence, even in light of the accommodations the instructor received under the FMLA; however, removal was not consistent with the principles of progressive discipline, considering that the instructor's prior record consisted of only minor discipline and her medical condition mitigated the offense. In re Debias, OAL Dkt. No. CSV 6114-07, 2008 N.J. AGEN LEXIS 508, Merit System Board Decision (May 7, 2008).

Removal of a high school security guard for chronic or excessive absenteeism and violation of Consent Order was modified to a resignation in good standing, where the employee's absences were due to her disability, domestic violence incidents, and/or child care concerns; although the employee may not have provided timely documentation for her absences, she did eventually present documentation. In re Sanders, OAL Dkt. No. CSV 11115-07, 2008 N.J. AGEN LEXIS 591, Final Decision (April 23, 2008).

Removal modified to resignation in good standing for a nursing home Institutional Attendant whose medical condition rendered her incapable of performing the essential lifting functions of the position; in light of the fact that the employee's problems were not specifically performance related or based on misconduct, and were based instead on a documented medical condition, the disciplinary penalty of removal was unduly harsh. In re Clarke, OAL Dkt. No. CSV 4495-07, 2008 N.J. AGEN LEXIS 551, Final Decision (April 23, 2008).

Senior alcoholism counselor who failed to comply with repeated directives to complete the mandatory coursework required to obtain the proper license/certification for her position could not perform the essential functions of her job and separation from employment was required; however, in light of the fact that the counselor's problems were not specifically performance related or based on misconduct, but were based instead on a change in the qualifications needed to hold her title, the disciplinary penalty of removal was modified to a resignation in good standing. In re VanDerveer, OAL Dkt. No. CSV 6265-07, 2008 N.J. AGEN LEXIS 511, Final Decision (February 27, 2008).

Based on divergent testimony and a credibility determination regarding certain critical facts, Fire Alarm Operator (also known as a dispatcher) falsely represented himself as a firefighter to a police officer during a motor vehicle stop, constituting conduct unbecoming a public employee, and left his confinement during sick leave without first contacting his tour commander; Merit System Board increased 30-working day suspension to 120-working day suspension (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 3). In re McFadden, OAL Dkt. No. CSV 07267-07, 2008 N.J. AGEN LEXIS 579, Final Decision (February 13, 2008).

Penalty increased to a 45 working day suspension for a School Clerk who was found, on conflicting evidence, to have engaged in such conduct as leaving her post without authorization and making defiant and disrespectful comments to a supervisor. The employee's infractions were consistent with a prior pattern of similar misconduct and served as a significant disruption to the smooth functioning of the appointing authority, and the employee's apparent disrespectful attitude was especially a concern given the educational setting (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 735). In re Ramos, OAL Dkt. No. CSV 3883-07, 2008 N.J. AGEN LEXIS 541, Final Decision (February 13, 2008).

Where police officer was charged with violating order to attend a pistol range for weapons qualifications by failing to attend or notify his supervisor of his absence, ALJ's imposition of eight-day suspension (forfeiture of eight vacation days) was improper and penalty was increased to a 120 working day suspension. It was implausible that an experienced police officer could have mistakenly thought that the mandatory firearms training conducted twice per year under the guidelines of the State Attorney General would be optional for him, and in light of the officer's extensive disciplinary record, his actions were egregious and worthy of a severe sanction, placing him on notice that any future infraction might lead to his removal from employment. In re Martin, OAL Dkt. No. CSV 1303-06, 2008 N.J. AGEN LEXIS 528, Final Decision (January 16, 2008).

Eight-day suspension for unauthorized absences was not warranted where the evidence showed that supervisors condoned the practice of leaving work early upon completion of an inspection and the supervisors themselves received six and eight-day suspensions; nonetheless, the ALJ's recommendation of a one-day suspension was not sufficient, and a more appropriate penalty was a five-day suspension (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 732). In re Thompson,

actually earned during the period of separation, including any unemployment insurance benefits received, subject to any applicable limitations set forth in (d)4 below.

4. Where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed, and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts.

i. "Underemployed" shall mean employment during a period of separation from the employee's public employment that does not constitute suitable employment.

ii. "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or online job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; networking with other people; and distributing resumes.

iii. "Suitable employment" or "suitable position" shall mean employment that is comparable to the employee's permanent career service position with respect to job duties, responsibilities, functions, location, and salary.

iv. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter.

v. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment.

5. An employee shall not be required to mitigate back pay for any period between the issue date of a Civil Service Commission decision reversing or modifying a removal or reversing an indefinite suspension and the date of actual reinstatement. The award of back pay for this time period shall be reduced only by the amount of money that was actually earned during that period, including any unemployment insurance benefits received.

6. Should a Civil Service Commission decision reversing or modifying a removal or reversing an indefinite suspension subsequently be stayed, an individual shall be required to mitigate an award of back pay from the date of the stay through the date of actual reinstatement, in accordance with (d)4i through v above.

7. If an employee also held other employment at the time of the adverse action, the back pay award shall not be reduced by earnings from such other employment. However, if the employee increased his or her work hours at the other employment during the back pay period, the back pay award shall be reduced by the earnings from such additional hours.

8. A back pay award is subject to reduction by any period of unreasonable delay of the appeal proceedings directly attributable to the employee. Delays caused by an employee's representative may not be considered in reducing the award of back pay.

9. A back pay award is subject to reduction for any period of time during which the employee was disabled from working.

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

(e) Unless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll.

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

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

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

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

(h) See N.J.A.C. 4A:2-2.13 for situations in which certain law enforcement officers or firefighters have appealed a removal that has been reversed or modified.

Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Redesignated part of existing text in (a) to (d); added new (b)-(c); redesignated existing (b)-(d) to (e)-(g).
Amended by R.1997 d.435, effective October 20, 1997.
See: 29 N.J.R. 3102(a), 29 N.J.R. 4455(b).
Inserted new (d)4; and recodified existing (d)4 as (d)5.
Amended by R.2008 d.215, effective August 4, 2008.
See: 40 N.J.R. 1402(a), 40 N.J.R. 4520(a).
Rewrote (d)3 and (d)4; added new (d)5 through (d)9; and recodified former (d)5 as (d)10.
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Substituted "Commission" for "Board" and "Civil Service Commission" for "Merit System Board" throughout; and added (h).

Amended by R.2010 d.068, effective May 17, 2010.
See: 42 N.J.R. 116(a), 42 N.J.R. 928(a).

In (d)1, substituted a comma for "and" following the second occurrence of "pay" and inserted "and retroactive clothing, uniform or equipment allowances for periods in which the employee was not working".
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.

Case Notes

On a backpay claim where a State employee has been removed from employment due to his or her own misconduct but is later reinstated, the availability of substitute employment is relevant to the establishment of a failure-to-mitigate defense by the appointing agency, and the employee's failure to seek substitute employment during separation is not a sufficient basis to deny the claim without any consideration of the availability of such employment. O'Lone v. Department of Human Services, 357 N.J. Super. 170, 814 A.2d 665.

Regulation applies in those circumstances where employee has been completely exonerated of the criminal charges, yet there is basis for disciplinary suspension despite employee's exoneration. Walcott v. City of Plainfield, 282 N.J.Super. 121, 659 A.2d 532 (A.D.1995).

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

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

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

Corrections officers who were dismissed for violation of mandatory drug test order were not entitled to award of back pay as remedy for due process violations at pretermination hearings. Caldwell v. New Jersey Dept. of Corrections, 250 N.J.Super. 592, 595 A.2d 1118 (A.D.1991), certification denied 127 N.J. 555, 606 A.2d 367.

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

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

Although an employee with the Department of Children and Family services uttered, "if I return to work and my supervisor and any of her flunkies harass me, I will grab her about the neck and rip her eyes out," the employee should not have been subject to discipline where the comment was made in a therapeutic setting during a psychiatric evaluation, was not an actual threat, and the employee did not otherwise display any violent tendencies. In re Bellamy, OAL Dkt. No. CSV 8866-06, 2009 N.J. AGEN LEXIS 807, Civil Service Comm'n Decision (March 25, 2009).

Since removal from position of supervising sheet metal worker with public school district was modified to a six-month suspension, employee was entitled to mitigated back pay, benefits, and seniority. In re Delli Santi, OAL Dkt. No. CSV 11901-07, 2008 N.J. AGEN LEXIS 1088, Civil Service Commission Decision (September 24, 2008).

Imputed mitigation subtracted from former city firefighter's back pay award. In re Abdul-Haqq, OAL Dkt. No. CSV 9385-03, 2008 N.J. AGEN LEXIS 720, Final Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 228) adopted, which concluded that the appointing authority had the right to impose an indefinite suspension without pay under N.J.A.C. 4A:2-2.5(a)2 on a correction officer until June 26, the date when the officer pleaded guilty to downgraded charges, rather than only until March 7, the date when the County Prosecutor chose to downgrade the indictable offense, as the downgrade was specifically conditioned on a guilty plea. In re Paris, OAL Dkt. No. CSV 12208-06, 2008 N.J. AGEN LEXIS 708, Final Decision (June 11, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 228) adopted, which concluded that while the appointing authority had the right to impose an indefinite suspension without pay under N.J.A.C. 4A:2-2.5(a)2 from Dec. 14, 2005 until June 26, 2006, the date when the correction officer pleaded guilty in municipal court to downgraded charges, back pay was due the officer under N.J.A.C. 4A:2-2.10(c)2 for the period of the indefinite suspension that exceeded six months, i.e., from June 14, 2006 to July 30, 2006. In re Paris, OAL Dkt. No. CSV 12208-06, 2008 N.J. AGEN LEXIS 708, Final Decision (June 11, 2008).

Although a police officer was exonerated on criminal charges that he sexually assaulted three women, he was not entitled to reinstatement or back pay because he still remained subject to disciplinary proceedings, including conduct unbecoming a police officer. In re Cofone, OAL Dkt. No. CSV 6774-05 (CSV 2578-01 and CSV 6148-03 On Remand), 2006 N.J. AGEN LEXIS 776, Final Decision (July 19, 2006), aff'd per curiam, No. A-0306-06T5, 2008 N.J. Super. Unpub. LEXIS 1694 (App.Div. July 16, 2008).

Correction officer, who was unreasonably denied a leave of absence during her working test period, was entitled to back pay from the date she was medically cleared to return to work (August 5, 2005), rather than from the date of her removal (June 7, 2005); because it could not be assumed that the officer would have passed her working test period, she was entitled to back pay for 10 months (the part of the one-year working test she did not complete) or until her reinstatement, whichever was first. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 483) adopted, which found that city was required to pay back wages to police officer after criminal charges against him were dismissed, there was no administrative action against him, and he had mitigated his losses during his period of separation; after termination, the officer had increased his hours at his second job, which constituted sufficient mitigation of his back pay award. In re Russo, OAL Dkt. No. CSV 11729-03, 2005 N.J. AGEN LEXIS 1077, Final Decision (November 22, 2005).

Reinstated county correction officer was entitled to back pay for the period of time in which he sought substitute employment because the appointing authority did not provide any evidence that suitable substitute employment was available, nor did it overcome the officer's testimony that his search for substitute employment took place in the period right after he was terminated; however, the officer was not entitled to back pay for the period of time that he attended school on a full-time basis because he was not actively seeking substitute employment. In re Martin, OAL Dkt. No. CSV 6599-03 (CSV 8656-98 On Remand), 2005 N.J. AGEN LEXIS 1211, Final Decision (July 13, 2005).

Reinstated county correction officer was not entitled to recover his monthly expenses for medications not covered by his spouse's health insurance because he was only entitled to recover additional amounts expended to maintain health insurance coverage during the period of improper suspension or removal. In re Martin, OAL Dkt. No. CSV 6599-03 (CSV 8656-98 On Remand), 2005 N.J. AGEN LEXIS 1211, Final Decision (July 13, 2005).

Reinstated county correction officer was not entitled to recover unpaid accrued vacation time because, pursuant to N.J.A.C. 4A:6-1.2, vacation leave not taken in a given year could only be carried over to the following year; it could not be accrued and carried over from year to year. In re Martin, OAL Dkt. No. CSV 6599-03 (CSV 8656-98 On Remand), 2005 N.J. AGEN LEXIS 1211, Final Decision (July 13, 2005).

Suspended employee not entitled to back pay and benefits for accepting plea agreement. Ward v. Department of Labor, 97 N.J.A.R.2d (CSV) 180.

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

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

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

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

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
Added new (c) and relettered old (c)-(f) as (d)-(g), with no change in text.

Case Notes

Appointing authority's reduction in penalty to a five-day suspension divested the Commission of jurisdiction over the matter; if there was no mechanism available to the employee to pursue a minor disciplinary action under standards and procedures established by his appointing authority or by a negotiated labor agreement, the employee could seek relief through the Law Division of the Superior Court of New Jersey. In re Poeppel, OAL Dkt. No. CSV 6153-08, 2009 N.J. AGEN LEXIS 1007, Final Decision (March 25, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 819) adopted, which found that where the appointing authority changed an employee's discipline from a 10-day to a five-day suspension, the matter changed from a major disciplinary action to a minor disciplinary action over which the Office of Administrative Law had no jurisdiction. In re Lewis, OAL Dkt. No. CSV 4216-07, 2008 N.J. AGEN LEXIS 547, Final Decision (January 30, 2008).

Minor disciplinary actions insufficient basis for independent removal action. Range v. Newark Board of Education, 97 N.J.A.R.2d (CSV) 700.

Petition dismissed for lack of jurisdiction. Harrison v. Buttonwood Hospital, 97 N.J.A.R.2d (CSV) 250.

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

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

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

1. The departmental hearing shall be conducted within 30 days of such request unless adjourned by the consent of the parties.

2. The burden of proof shall be on the appointing authority.

3. The department shall make a final written disposition of the charges within 20 days of the hearing on Appeal of Minor Discipline Action form, unless the parties have consented to a time extension. The lack of response by the department within this period shall be considered a denial of the appeal.

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

Case Notes

Director of county board of social services possessed final authority regarding the board's personnel and discipline decisions, as required for municipal liability under § 1983 based upon former county employee's First Amendment retaliation claims. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983; N.J.Admin. Code tit. 4A, §§ 2-2.8, 2-3.2. Marrero v. Camden County Board of Social Services, 164 F.Supp.2d 455 (D.N.J. 2001).

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

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

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

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

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

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

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

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

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

(b) All grievances shall:

1. Specify the particular act or circumstance being grieved;

2. State the requested remedy; and

3. Indicate whether the employee is representing himself or herself or the name of the employee's counsel or agent.

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

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

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

4A:2-3.5 Grievance procedure: Step Two

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

1. Receipt of the written decision at Step One; or

2. A lack of timely response by the department. See N.J.A.C. 4A:2-3.4(e).

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

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

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

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

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

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

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

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

Case Notes

Initial Decision (2006 N.J. AGEN LEXIS 325) adopted, which dismissed an employee's appeal from her removal as moot based on her failure to timely file an appeal of her release at the end of the working test period. In re Drummond, OAL Dkt. No. CSV 6845-05, 2006 N.J. AGEN LEXIS 629, Final Decision (June 7, 2006).

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

4A:2-4.3 Board hearing

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

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

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

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 446) adopted, which found that a hospital provided a technical assistant with appropriate training for her position, but that she was unable to perform the duties expected of her during the working test period, as observed by her co-workers, other staff, as well as by her supervisor; the assistant's performance did not improve even after being afforded an extension of the working test period and there was simply no evidence that the termination was based on anything other than her performance. In re Graves, OAL Dkt. No. CSV 4701-08, 2009 N.J. AGEN LEXIS 985, Final Decision (August 19, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 439) adopted, which found that a sheriff's officer was properly removed where the officer, while on probation and on duty, lent her car to her sister's boyfriend, who was then arrested for possession of a handgun and possession of a controlled dangerous substance while driving her car; the officer lied about directly lending the car to the boyfriend in her report to her supervisor and such misconduct went to the heart of the officer's ability to be trusted and function appropriately in her position, warranting the bypass of progressive discipline and justifying her removal. In re Ocasio, OAL Dkt. No. CSV 01171-08, 2009 N.J. AGEN LEXIS 958, Final Decision (July 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 285) adopted, which found that a Public Safety Telecommunicator Trainee was properly released at the conclusion of her working test period; the trainee received classroom training, on the job training, and remedial training, evidencing that the appointing authority did not rush to judgment on her performance, but provided her training and a reasonable time to show she was capable of performing the duties of her assignment. In re Mitchell, OAL Dkt. No. CSV 1478-09, 2009 N.J. AGEN LEXIS 969, Final Decision (June 24, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 158) adopted, which found that a family service worker was properly released at the end of her working test period where she was unproductive, error prone, and failed to acquire the level of knowledge necessary to function as a family service worker; additionally, although she needed supervision, she failed to seek guidance when she was underperforming. In re Johnson, OAL Dkt. No. CSV 07526-08, 2009 N.J. AGEN LEXIS 963, Final Decision (May 27, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 68) adopted, which held that, although it was true that a youth worker was working in a facility with residents who were street wise, manipulative, and were capable of making false allegations against him, the scope and variety of charges leveled against him during the working test period demonstrated that he was inappropriate and unprofessional; there were allegations that he used inappropriate restraining techniques, foul language, taunted a resident, and was tardy on numerous occasions. In re Macklin, OAL Dkt. No. CSV 02016-08, 2009 N.J. AGEN LEXIS 888, Final Decision (April 15, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 109) adopted, which found that an animal control officer was properly removed at the end of his probationary work period after the ALJ found, on conflicting evidence, that the officer had sexually harassed a worker, disobeyed a direct order, and conducted private business while on duty. In re Kanis, OAL Dkt. No. CSV 782-07, 2009 N.J. AGEN LEXIS 996, Final Decision (March 25, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 7) adopted, which found that a building management specialist was properly terminated following his working test period where: he was either absent or late on 27 out of the 60 days, causing the work to be redistributed within the unit; produced a work product which was incomplete, lacking in critical information or contained errors; was insubordinate in that he hung-up on his supervisor who called to discuss an incident that had taken place in the office; and, demonstrated a lack of veracity on two occasions. In re Robinson, OAL Dkt. No. CSV 12165-07, 2009 N.J. AGEN LEXIS 804, Final Decision (February 25, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 771) adopted, which concluded that an employee was properly returned to her former title after a working test period for the position of Head Cottage Training Supervisor after she allowed telephone contact between a patient and her alleged abuser, who also worked in the facility; the employee's actions were seen as a failure to exercise sound judgment and give due attention to a significant occurrence at the Group Home. In re Pennington, OAL Dkt. No. CSV 10039-07, 2008 N.J. AGEN LEXIS 1081, Final Decision (September 24, 2008).

Social Service Aide was entitled to a new working test period because, in failing to provide the aide with timely written notification of his deficiencies through the progress reports required by N.J.A.C. 4A:4-5.3, the appointing authority denied him a fair evaluation of his work performance and the authority's release of the aide for deficiencies in job performance that were not adequately brought to his attention through the required progress reports evidenced a lack of good faith. In re Maldonado, OAL Dkt. No. CSV 07337-04, 2008 N.J. AGEN LEXIS 396, Initial Decision (June 6, 2008), adopted (Civil Service Comm'n July 30, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which concluded that an employee failed to demonstrate that the decision to release her at the end of her working test period was made in bad faith; in a probationary employee's appeal of termination, the only issue is whether the appointing authority exercised good faith in determining that the employee was not competent to satisfactorily perform the duties of the position. In re Villecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which explained that if the appointing authority's decision to release an employee at the end of the working test period is based on actual observations of the employee's performance of the duties of the position, and is an honest assessment as to whether the employee will be able to satisfactorily and efficiently perform those duties, it must be considered to have been formed in good faith. In re Villecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 217) adopted, which concluded that a probationary Supervising Family Service Specialist 2 should be afforded a new working-test period rather than demoted, based on credibility determinations, the employee's satisfactory ratings during five years as a provisional supervisor, and the timing of the unsatis-

factory reports, which only began to surface after the employee's return from emergency leave and his filing of a hostile work environment claim. In re Afolo, OAL Dkt. No. CSV 4145-07, 2008 N.J. AGEN LEXIS 546, Final Decision (May 7, 2008).

Where the Merit System Board did not find that an employee was entitled to a permanent appointment based on the successful completion of the employee's working test period, but rather that the employee was simply entitled to a new working test period, sufficient cause was not demonstrated to award back pay. In re Afolo, OAL Dkt. No. CSV 4145-07, 2008 N.J. AGEN LEXIS 546, Final Decision (May 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 189) adopted, which concluded that a clerk typist had presented no evidence that her release at the end of the working test period was based on anything other than her performance, and thus failed to sustain burden of showing bad faith. The only requirement to justify release at the end of the working test period is good faith. In re Ehrenkranz, OAL Dkt. No. CSV 4026-07, 2008 N.J. AGEN LEXIS 545, Final Decision (April 23, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 830) adopted, which concluded that a correction officer failed to show by a preponderance of the competent and credible evidence that the appointing authority's determination releasing him at the end of his working test period was made in bad faith where the evidence revealed that the officer had difficulty dealing with inmates and was not forceful enough with them, as evidenced by the inmate who refused to go back into his cell when ordered to do so, as well as the officer's reluctance to charge an inmate who threw bleach at him; the facility performed and graded the officer's two evaluations in good faith and had legitimate concerns as to his ability to perform. In re Britton, OAL Dkt. No. CSV 8350-06, 2008 N.J. AGEN LEXIS 520, Final Decision (January 30, 2008).

Initial Decision adopted, which concluded, based on the testimony and record presented, that the probationary employee, a county correction officer, failed to show bad faith on the part of the appointing authority in terminating him. His protestations that he was completely caught off guard when he received the negative evaluation and subsequent termination did not comport with the weight of the evidence, as: (1) the employee failed to show that enforcement was directed at him particularly, but rather was a general change in attitude by the new administration; (2) the claim that the county had the obligation to provide additional training to help him with his skills was equally unfounded, as the county provided him with four months of training; and (3) the employee provided no explanation for the 13 instances in which he took sick time either before or after regularly scheduled time off, and an employer looking at the record could validly question a probationary employee's commitment to the job based on this pattern (2007 N.J. AGEN LEXIS 708 adopted as clarified). In re Matus, OAL Dkt. No. CSV 5064-07, 2007 N.J. AGEN LEXIS 1029, Final Decision (December 5, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 665) adopted, which concluded that a correction officer recruit was properly removed following her one-year testing period because, although she received satisfactory ratings after her first six months of employment, the recruit had attendance problems and was advised that her absences were unauthorized; the recruit incurred 11 sick days with no sick leave to cover them and her supervisor formed an honest assessment that she would not be able to satisfactorily and efficiently perform the duties of a corrections officer if the appointment became permanent. In re Petty, OAL Dkt. No. CSV 60-07, 2007 N.J. AGEN LEXIS 1141, Final Decision (December 5, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 593) adopted, which concluded that a Department of Transportation employee failed to establish by a preponderance of the competent and credible evidence that there was any bad faith involved in the decision to demote her to her prior-held permanent title (technical assistant personnel) at the conclusion of her six-month working test period; the employee was given critiques and the opportunity to improve, including an extension of the working test period to give her an additional opportunity to succeed. In re Stubbs, OAL Dkt. No. CSV 6150-06, 2007 N.J. AGEN LEXIS 1145, Final Decision (September 26, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 280) adopted, in which a county employee was returned to his prior position after completion of his working test period. The employee's supervisor had testified that the employee had continued difficulty completing required tasks to an acceptable level of competence in the prescribed time for the required tasks and no bad faith had been shown. In re Woodford, OAL Dkt. No. CSV 11157-04, 2007 N.J. AGEN LEXIS 1064, Final Decision (June 20, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 143) adopted, which found that a social services clerk failed to establish her release at the end of the working test period was done in bad faith; the appointing authority had no choice but to release the clerk after the reception area, which worked fine prior to her arrival, became dysfunctional and clients witnessed arguments between the clerk and her co-worker. In re Barnes, OAL Dkt. No. CSV 2885-05, 2007 N.J. AGEN LEXIS 1099, Final Decision (April 25, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1028) adopted, which concluded that a Motor Vehicle Commission service center employee, who was terminated at the end of the working test period, failed to carry the burden of proof of bad faith where, despite the employee's conflicting testimony, the appointing authority provided detailed documentation indicating that most of the employee's errors were of a serious nature and required extra work by co-workers. Moreover, despite an extended working test period and additional remedial instruction, the employee showed no improvement in the ability to handle crucially important tasks, indicating that the appointing authority had more than adequate justification for terminating the employee. In re Acosta, OAL Dkt. No. CSV 227-06, Final Decision (January 31, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 736) adopted, which concluded that the police department had ample non-discriminatory reasons to terminate a police officer at the end of her one-year working test period, including an unacceptably high absentee record of 37 or 38 days and inadequate report-writing ability; contrary to the officer's assertions, she had adequate notice of the department's dissatisfaction with her performance and ample opportunity to correct her deficiencies during the course of her working test period, even absent a formal six-month written report. In re Ausby, OAL Dkt. No. CSV 5735-04, 2006 N.J. AGEN LEXIS 863, Final Decision (October 4, 2006).

Petitioner failed to meet his burden of proving that the appointing authority's action in demoting him to his prior permanent title as Senior Engineer at the end of an extended working test period for Principal Engineer was in bad faith; the working test period was not one during which petitioner was to be given further training to qualify himself for the position and the evidence demonstrated that petitioner simply did not have the requisite skills. In re Olofintuyi, OAL Dkt. No. CSV 4571-05, 2006 N.J. AGEN LEXIS 619, Final Decision (June 21, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 239) adopted, which found that a county welfare services employee had properly been terminated at the end of her working test period. Evidence was presented that the employee had performed unsatisfactorily in classroom training and her productivity was below acceptable standards, requiring excessive supervision, and there was no proof that the county based its determination on factors other than observations of the employee's actual performance or that the county was wrongly influenced by bias, prejudice, or other improper motive. In re Yanes, OAL Dkt. No. CSV 11481-04, 2006 N.J. AGEN LEXIS 560, Final Decision (April 5, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 35) adopted, which found that the probationary or working test period under N.J.A.C. 4A:4-5.1 is part of the testing process and an employee must demonstrate competency to discharge the duties of the position without further training; only upon a showing of bad faith under N.J.A.C. 4A:2-4.3 will an employer's decision to release an employee be scrutinized. In re Mabson, OAL Dkt. No. CSV 2164-05, 2006 N.J. AGEN LEXIS 1101, Final Decision (March 8, 2006).

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.