(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

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 (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).

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).

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).

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 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).

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).

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).

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 Commissioner or Board or where the Board finds sufficient cause based on the particular case.

Case Notes

A wrongfully discharged employee was entitled to both vacation leave and sick leave credits. Rule invalid (citing former N.J.A.C. 4:1-5.5(a)). Eaddy v. Dep't of Transp., 208 N.J.Super. 156, 505 A.2d 162 (App.Div.1986) appeal dismissed 105 N.J. 569, 523 A.2d 200.

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

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

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

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).

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).

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 semi-colon 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 (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).

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).

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 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 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).

Initial Decision (2007 N.J. AGEN LEXIS 43) adopted, which concluded that a laborer charged with 57 occasions of absenteeism without notice to superior or good cause was improperly terminated where the county failed to impose progressive discipline prior to removal. In re Porter, OAL Dkt. No. CSV 1146-06, 2007 N.J. AGEN LEXIS 347, Merit System Board Decision (March 16, 2007).

Appointing authority's attempt to impose punishment at a later date for excessive absences previously addressed in a letter of reprimand was improper; reviving a stale charge in an attempt to impose a greater penalty at a later date is improper, and double punishment for the same offenses will be rejected. In re Porter, OAL Dkt. No. CSV 1146-06, 2007 N.J. AGEN LEXIS 347, Merit System Board Decision (March 16, 2007).

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 (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 and the public safety. In re Bugg, OAL Dkt. No. CSV 3975-05, 2008 N.J. AGEN LEXIS 542, Final Decision (February 27, 2008).

Where police officer had been charged with performing his security duty without his duty belt and holster on, ALJ's recommendation to modify a 10-day suspension to a five-day suspension was proper since officer's actions did not rise to the level of willful defiance and were more akin to indifference or negligence; such actions were not worthy of a major discipline, especially in light of the officer's prior disciplinary history. In re Stewart, OAL Dkt. No. CSV 12227-05, 2008 N.J. AGEN LEXIS 601, Final Decision (February 27, 2008).

Where police officer had been charged with revealing confidential information when he wrongfully posted a director's memorandum addressing access to city buildings to outsiders, ALJ's recommendation to reverse a five-day suspension and dismiss the charge was improper. The posting of the memorandum, though harmless, was still a violation of a police department regulation and it was clear that the memorandum contained official orders that should not have been disseminated to the public without approval. However, given the innocuous nature of the officer's actions, and the factual circumstances presented, an official written reprimand was the appropriate penalty. In re Stewart, OAL Dkt. No. CSV 12227-05, 2008 N.J. AGEN LEXIS 601, Final Decision (February 27, 2008).

Where police officer had been charged with neglect of duty for failing to submit an administrative submission to his commanding officer disclosing that he had received a subpoena to appear in municipal court for testimony, ALJ's recommendation to modify a one-day suspension to a written warning was improper and the one-day suspension was reinstated. It is a fundamental principle of the workplace, especially in a paramilitary organization, that rules and regulations are to be followed, and a police officer cannot be permitted to pick and choose which rules and regulations he or she will adhere to. Given the police department's admission that the policy was not strictly adhered to, the imposition of a minor discipline for the infraction was proper. In re Stewart, OAL Dkt. No. CSV 12227-05, 2008 N.J. AGEN LEXIS 601, Final Decision (February 27, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 734) adopted, which found that a sanitation employee was properly removed following a confrontation with a co-employee in which he and his brother threatened the co-employee with violence and violence subsequently was inflicted; whether the employee or his brother wielded the bat that caused the co-employee serious injury was irrelevant where the employee's participation was unquestionable and unrefuted. In re Keyes, OAL Dkt. No. CSV 3598-06, 2007 N.J. AGEN LEXIS 1022, Final Decision (December 19, 2007).

Where a pumping station operator with a county municipal utilities authority was charged with taking his fifteen-minute break in excess of one hour and fifteen minutes with a company vehicle without authorization, removal of the employee was improper and a four-month suspension was the proper penalty. The employee was a 17-year employee whose disciplinary record only evidenced one major disciplinary action, a 15-day suspension, and several minor disciplinary actions; while the employee's actions adversely affected the public's perception of the utilities authority, the employee's conduct was not of such an egregious nature as to justify a penalty of removal regardless of any mitigating factors. In re Stallworth, OAL Dkt. No. CSV 2297-07, 2007 N.J. AGEN LEXIS 1020, Merit System Board Decision (December 19, 2007).

Removal of county correction officer on grounds that she intentionally threw a pair of scissors at an inmate, causing cuts to his left middle finger and thumb, that she failed to report the incident to a supervisor and failed to have the inmate's injuries treated by medical personnel, was modified to a 90-day suspension where officer had been employed by the county since November 1990 and her disciplinary record evidenced 11 minor disciplines and a disciplinary demotion. The present infractions were not so inherently egregious that they warranted the officer's removal in light of her long record of service and disciplinary history and the fact that the most serious allegation, namely that she intentionally threw the scissors at the inmate, was withdrawn. In re Golden, OAL Dkt. No. CSV 12214-06, 2007 N.J. AGEN LEXIS 1035, Merit System Board Decision (December 5, 2007).

Fifteen-day suspension of employee Museum Assistant was proper where the Museum Director had asked a developmentally challenged student visiting the museum if he would resort to violence if he were asked to take out the garbage, and in response, the employee stated to the student, "just remember, when you want to kill everyone in the building, you do it when there's no witnesses"; the employee's claim that he was merely joking was insufficient to mitigate the fact that he advocated violence to a developmentally challenged student (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 704). In re Veronelli,

OAL Dkt. No. CSV 3881-07, 2007 N.J. AGEN LEXIS 1023, Merit System Board Decision (December 5, 2007).

Employee's highly inappropriate comment advocating violence to a developmentally challenged student coupled with the employee's prior history of an alleged altercation with a fellow employee provided a sufficient basis for the appointing authority to order a fitness for duty psychological examination. However, the indefinite suspension of the employee for refusing to take the psychological examination was improper, as indefinite suspension is limited by N.J.A.C. 4A:2-2.7 to matters in which there is a pending criminal complaint or indictment (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 704). In re Veronelli, OAL Dkt. No. CSV 3881-07, 2007 N.J. AGEN LEXIS 1023, Merit System Board Decision (December 5, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 667) adopted, which found that 129 absences during a nine-month period clearly constituted excessive absenteeism, warranting removal of a public works facility laborer; removal is appropriate when there is a long-term, consistent, unapproved course of habitual and chronic absenteeism. In re Blakely, OAL Dkt. No. CSV 2104-06, 2007 N.J. AGEN LEXIS 1085, Final Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 675) adopted, which concluded that a firefighter was properly removed for refusing to obey a direct order of a superior officer to comply with a safety regulation governing the length of the firefighter's hair, sideburns, mustaches, and beards. Excessive hair growth either on the head or face may have prevented a good "face seal" when wearing a self-contained breathing apparatus; although requiring him to be clean-shaven violated the tenets of his religion, the firefighter offered no solution that would have enabled him to be accommodated as a firefighter where fighting fires required the use of the apparatus. In re Wright, OAL Dkt. No. CSV 9711-02, 2007 N.J. AGEN LEXIS 1182, Final Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 770) adopted, which found that a police officer's failure to provide requested information during a departmental investigation constituted insubordination for which a 20-day suspension, without pay, was an appropriate discipline; such failure was especially egregious in light of the serious nature of the police officer's initial complaints about his lieutenant, the fact that he was given ample time to comply with the requests, and the fact that he was not forthright in his dealing with the investigating officer. In re Rowe, OAL Dkt. No. CSV 3470-05, 2007 N.J. AGEN LEXIS 1108, Final Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 612) adopted, which concluded that a public works laborer was properly removed for neglect of duty when, after being directed by his supervisor, he failed to look for and repair potholes; the worker was disciplined 12 separate times in an 11-year period, for charges that included four counts of conduct unbecoming, two counts of insubordination and one count of neglect of duty, and the worker's significant disciplinary record, in conjunction with his continuing misconduct, warranted his removal. In re Mayfield, OAL Dkt. No. CSV 5883-06, 2007 N.J. AGEN LEXIS 1140, Final Decision (October 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 554) adopted, which concluded that a 120-day suspension was warranted under N.J.A.C. 4A:2-2.3(a)11 where a police officer was found to have intentionally thrown a pack of lit firecrackers in close proximity to a fellow officer in order to alarm and frighten her and also to have intentionally shot the same officer in the thigh with a plastic pellet from a confiscated handgun; the officer's relatively unblemished disciplinary record and numerous commendations mitigated the penalty. In re Sharin, OAL Dkt. No. CSV 17-04, 2007 N.J. AGEN LEXIS 1083, Final Decision (September 12, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 580) adopted, which found that a correction officer was properly removed after he pleaded guilty to fourth-degree child abuse and admitted under oath that he knowingly touched his 11-year-old step-daughter's vaginal area; although the officer attempted to offer mitigating testimony during the penalty phase of the disciplinary action, the statements he made during the criminal plea hearing supported a conclusion that the officer took advantage of his position of trust in his own family to improperly touch a child and such actions were sufficiently egregious to make him unworthy of his position of trust with the State of New Jersey, without regard to concepts of progressive discipline. In re Gonzalez, OAL Dkt. No. CSV 2583-07 (6581-04 On Remand), 2007 N.J. AGEN LEXIS 1102, Final Decision (September 12, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 464) adopted, which found that a 10-day suspension of a correction officer was appropriate where the officer was absent from his work without approval and in violation of the time and attendance policy of the employer. In re McKnight, OAL Dkt. No. CSV 2049-06, 2007 N.J. AGEN LEXIS 1084, Final Decision (August 15, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 466) adopted, in which the ALJ found, on conflicting evidence, that a police officer issued 12 summonses to a neighbor in an act of retaliation for a neighborhood dispute, signing another officer's name and identification to the summonses and then later filing false reports denying knowledge of the incident and attempting to implicate other officers; the issuance of false summonses in retaliation for a neighborhood dispute, beyond being harassment, was an egregious breach of the public trust and unwarranted use of authority, deserving a six-month suspension. In re Gonzalez, OAL Dkt. No. CSV 5013-04, 2007 N.J. AGEN LEXIS 1134, Final Decision (August 15, 2007), aff'd per curiam, No. A-0644-07T2, 2009 N.J. Super. Unpub. LEXIS 2010 (App.Div. July 31, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 469) adopted, which concluded that, although a senior building maintenance worker did not have a record of any disciplinary action, the fact that he admittedly went to an area that he should have avoided and later proceeded to escalate his "yelling" at two of his supervisors, during working hours, at his place of employment, in front of other employees and perhaps clients, necessitated, at the very least, a 10-day suspension. In re Brown, OAL Dkt. No. CSV 08952-06, 2007 N.J. AGEN LEXIS 1175, Final Decision (August 15, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 367) adopted, which concluded that 60-day suspension of a Human Services Assistant at a psychiatric hospital was justified where the ALJ found, based on conflicting evidence and the credibility of the witnesses, that the employee verbally abused a patient. In re Moss, OAL Dkt. No. CSV 4442-06, 2007 N.J. AGEN LEXIS 1125, Final Decision (July 25, 2007).

Although a Human Services Assistant engaged in conduct unbecoming a public employee when she attacked a fellow employee at work, the evidence demonstrated that the fellow employee was a former lover who had been harassing the employee and, while the employee was not without fault for physically attacking him after a verbal assault, removal was too harsh of a penalty; a 30-day suspension, rather than removal, was the appropriate discipline (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 274). In re Wagner, OAL Dkt. No. CSV 2974-06, 2007 N.J. AGEN LEXIS 1100, Merit System Board Decision (June 20, 2007).

That an employee served in a low-level non-supervisory position was irrelevant in determining the proper discipline to be imposed for his use of threatening and inappropriate language with others; verbal threats by any employee, regardless of his position, cannot be tolerated in the workplace (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 111). In re Rahming, OAL Dkt. No. CSV 3450-06, 2007 N.J. AGEN LEXIS 1107, Final Decision (April 11, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 14) adopted, which concluded that 6-day, 10-day, and 30-day suspensions and removal were appropriate, notwithstanding 13-year employment, where the record indicated a consistent, extended pattern of refusal to work mandatory overtime; the correction officer provided virtually no defense for his refusal to work overtime, except for such specious reasons as attendance at athletic events, and had received numerous warnings, minor discipline, and major discipline and had not changed his behavior. In re Matarazzo, OAL Dkt. No. CSV 3973-06, 2007 N.J. AGEN LEXIS 426, Final Decision (February 28, 2007).

Where the record failed to establish that an employee took $5 with the intent to keep it and, in fact, immediately attempted to return the money once she realized she had forgotten it in her pocket, a five-day suspension, rather then removal, was the appropriate penalty (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 1034). In re Payton, OAL Dkt. No. CSV 7740-05, 2007 N.J. AGEN LEXIS 1168, Merit System Board Decision (January 17, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 803) adopted, which concluded that 10-day and 20-day suspensions for a county correction officer's absences were properly imposed under the theory of progressive discipline; contrary to the officer's arguments, the Merit System Board was not bound by any contractual agreements of employers and employees or their bargaining units regarding major disciplinary matters, but had plenary authority to determine the appropriate level of discipline for the offense involved. In re Teel, OAL Dkt. No. CSV 08757-05, 2006 N.J. AGEN LEXIS 1132, Final Decision (December 20, 2006), aff'd per curiam, No. A-2917-06T1, 2008 N.J. Super. Unpub. LEXIS 540 (App.Div. May 29, 2008).

Possible sanctions under the Health Insurance Portability and Accountability Act of 1996 were irrelevant in a disciplinary action brought against a hospital attendant for disclosing information about a patient without his consent (adopting 2006 N.J. AGEN LEXIS 802). In re Williams, OAL Dkt. No. CSV 7849-05, Merit System Board Decision (November 15, 2006).

Where a hospital attendant was asked by a patient's family member where she worked (a psychiatric hospital) and whether she knew a particular individual, the attendant should have realized that she was disclosing confidential information about a patient, but her actions were not so egregious as to warrant a 45-day suspension, especially in light of the attendant's 30-year employment history; therefore, her penalty was modified to a 20-day suspension (adopting 2006 N.J. AGEN LEXIS 802). In re Williams, OAL Dkt. No. CSV 7849-05, Merit System Board Decision (November 15, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 31) adopted, in which the ALJ found, on conflicting evidence, that a cottage technician was properly suspended for 10 days for insubordination after she refused to accept a reasonable order to be reassigned to a different unit during her shift, voicing illness as a mere pretext for not following a supervisor's reasonable directive. In re Edison, OAL Dkt. No. CSV 549-05, 2006 N.J. AGEN LEXIS 908, Final Decision (October 18, 2006).

Senior security guard could not be punished twice for the same conduct and, contrary to the appointing authority's assertions, letters that were written by a supervisor, placed in the guard's personnel file, and copied to the Labor Relations Unit were "official letters of reprimand", even though that particular supervisor did not have the authority to discipline employees; the appointing authority was attempting to impose double punishment for the same offense and attempting to revive a stale charge in order to impose a greater penalty at a later date, which was improper (adopting 2006 N.J. AGEN LEXIS 364). In re Onwuzuruike, OAL Dkt. No. CSV 5737-04, 2006 N.J. AGEN LEXIS 774, Merit System Board Decision (August 9, 2006).

Removal of correction officer, and not 60-day suspension, was proper where employee had a short employment tenure and prior major discipline; moreover, the activation of a false fire alarm is a serious offense especially given the heightened security concerns in a correctional facility and the risk to the safety of the other officers and inmates (officer yelled and set off fire alarm when he was denied permission to contact his son's daycare center after being ordered to work overtime). In re Bell, OAL Dkt. No. CSV 3527-05, 2006 N.J. AGEN LEXIS 771, Final Decision (August 9, 2006).

Removal of a police officer was the proper penalty after the ALJ found, on conflicting evidence, that the officer was aware that a woman with whom he had sex was under the age of 21 and inebriated, and that he was involved with three different women, who were not connected in any way, all who alleged that they were sexually exploited by him; the officer was a law enforcement officer who should have been aware of the potential dire consequences that the consumption of alcohol could have on a person's ability, whether underage or not, to make reasoned decisions regarding her actions, including consenting to sexual intercourse (adopting 2006 N.J. AGEN LEXIS 403). 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).

Parole officer failed to properly perform her duties, which involved maintaining appropriate supervision of parolees and accurate recordkeeping of her cases, where she admitted that she failed to open an envelope containing her casebook review and she did not correct her deficiencies; the officer's disciplinary record did not mitigate against her removal, as her record contained two major disciplines on similar charges and the officer's failure to properly perform her job duties posed a great risk to the public and to the livelihood of the parolees (adopting 2006 N.J. AGEN LEXIS 329). In re James, OAL Dkt. No. CSV 9992-02 and CSV 7762-04 (Consolidated), 2006 N.J. AGEN LEXIS 566, Final Decision (June 21, 2006).

Officer's removal was appropriate where the ALJ found, on conflicting evidence, that the officer found her husband in possession of heroin and failed to take action, allowed her husband to elude capture and prosecution for criminal activity, consorted with known criminals, and admitted to knowing that her husband possessed guns and other dangerous controlled substances in her home; the officer had an affirmative obligation to provide this information to the police department and, in failing to do so, she subordinated her obligation as a police officer and her allegiance to her fellow officers when she associated with her husband after knowing that he was committing criminal acts (adopting 2006 N.J. AGEN LEXIS 321). In re Morton, OAL Dkt. No. CSV 2374-05 (CSV 2300-04 On Remand), 2006 N.J. AGEN LEXIS 615, Final Decision (June 7, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 258) adopted, finding removal appropriate for drug use during period of agreed upon mandatory testing. In re Shannon, OAL Dkt. No. CSV 05034-05, 2006 N.J. AGEN LEXIS 611, Final Decision (May 10, 2006).

Removal of a correction officer was appropriate because an individual in the officer's position was entrusted with the supervision of inmates in a secured facility and her sexual relationship with an inmate was surreptitious and defied any logical explanation; the inmate was in possession and receipt of extremely personal information regarding the officer to such an extent as to compromise her viability as a senior correction officer (adopting 2006 N.J. AGEN LEXIS 291). In re Hutchings, OAL Dkt. No. CSV 2703-04, 2006 N.J. AGEN LEXIS 530, Final Decision (April 5, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 235) adopted, which concluded that removal of a licensed practical nurse was the proper disciplinary action where ALJ found that the nurse's testimony was not credible and that the nurse failed to confirm and record patients' vital signs before administering medication in contravention of policy; removal was warranted especially in light of the nurse's previous 20-day suspension for failing to complete documents related to medication for patients. In re Tarver, OAL Dkt. No. CSV 2817-05, 2006 N.J. AGEN LEXIS 531, Final Decision (April 5, 2006).

Removal of a maintenance repairer on charges of conduct unbecoming a public employee for cursing, yelling, and pushing a tenant and cursing and yelling at other tenants and security guards was appropriate where the repairer's disciplinary record did not mitigate his offense; his five-year record included a similar infraction for conduct unbecoming (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 33). In re Hannibal, OAL Dkt. No. CSV 971-04, 2006 N.J. AGEN LEXIS 1135, Final Decision (March 8, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 37) adopted, which found that a Human Services Assistant was properly removed after she breached the most basic responsibility she had to her one-to-one patient when she fell asleep, not once but twice, and did not intervene to prevent harm to the patient; although this was the assistant's first infraction, she had been employed for less than five months when the incident occurred and was still in her working test period — her basic responsibility was clear and simple and her failure was egregious. In re Reed, OAL Dkt.

No. CSV 2840-05, 2006 N.J. AGEN LEXIS 1108, Final Decision (March 8, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 38) adopted, which concluded, based on credibility assessments of the lay witness testimony, that an employee was under the influence of marijuana when he had an accident in a state vehicle; the director of the state toxicology lab testified that it could not be determined from the positive test result when the employee had used marijuana. The employee, an Operating Engineer Heating and Air Conditioning with the Department of Transportation (DOT), was properly removed; DOT policies expressly stated that the penalty for getting into an accident while operating a state vehicle under the influence of an illegal drug was removal, and also listed removal as a possible penalty for accidental damage loss due to negligence. In re Sempkowski, OAL Dkt. No. CSV 04701-05, 2006 N.J. AGEN LEXIS 196, Final Decision (February 22, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 922) adopted, which found that a police officer's removal from his position was appropriate where a psychologist opined that he suffered from depression, anxiety, alcohol dependence, and delusional thinking and that he was unable to benefit from alcohol abuse therapy because of his declination to use medications. In re Del Valle, OAL Dkt. No. CSV 2878-04, 2006 N.J. AGEN LEXIS 533, Final Decision (February 8, 2006), aff'd per curiam, No. A-3934-05T5, 2007 N.J. Super. Unpub. LEXIS 1121 (App.Div. February 8, 2007).

Initial Decision (2005 N.J. AGEN LEXIS 953) adopted, which concluded that a police officer was properly removed for conduct unbecoming a public employee and inability to perform duties after testing positive for cocaine; contrary to the officer's argument, the test was conducted with reasonable suspicion based on the officer's own bizarre conduct, his unusually numerous absences, as well as information from a reliable source that the officer was abusing drugs. In re Haynes, OAL Dkt. No. CSV 07778-04 and CSV 05038-05 (Consolidated), 2006 N.J. AGEN LEXIS 99, Final Decision (January 25, 2006).

Suspension of 120 working days, rather than 90 working days, was the appropriate penalty where the employee's decision to report to work while having a blood alcohol level above the prescribed amounts placed the employee and others in potential danger and could have led to more severe consequences had he been assigned to drive on the day in question; although the employee's disciplinary history did not evidence any formal discipline, the employee had three prior incidents involving alcohol and one incident involving marijuana since he began working for the county in 1997. In re Eastlack, OAL Dkt. No. CSV 270-05, 2006 N.J. AGEN LEXIS 206, Final Decision (January 25, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 613) adopted, which concluded that a 12-day suspension was appropriate for a correction officer who made inappropriate comments to a female officer who was his former girlfriend. In re Miller, OAL Dkt. No. CSV 8036-03, 2006 N.J. AGEN LEXIS 104, Final Decision (December 21, 2005).

Although a police officer drove a motor vehicle while his license had been revoked (for failure to appear on a traffic summons) and in direct violation of orders from his superior officers, a four-month suspension, rather than a six-month, suspension was warranted; the officer's disciplinary record mitigated a harsher penalty and, while the officer's actions in driving his vehicle were inappropriate, he did so only in an effort to get to work and after a full month of complying with the restriction (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 678). In re Revelli, OAL Dkt. No. CSV 399-03, 2006 N.J. AGEN LEXIS 103, Merit System Board Decision (December 21, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 652) adopted, which concluded that a public works laborer was properly removed where ALJ assessed testimony and found that while the laborer was on duty for the City, he solicited a businessman and offered to dispose of junked tires for his personal gain and that, while on duty for the City and using a City truck, the laborer removed and disposed of the junked tires, for which he accepted money from the businessman, which he did not turn over and did not intend to turn over to the City; the laborer had an extensive prior disciplinary record and, prior to engaging in this misconduct, he knew or should have known that additional misconduct would result in his termination. In re Washington, OAL Dkt. No. CSV 4211-03, 2005 N.J. AGEN LEXIS 1049, Final Decision (December 7, 2005).

Six-month suspension, rather than removal, was appropriate where the ALJ found, on conflicting evidence, that a city's construction project coordinator reported that he was working when, in fact, he was at home or at his side business; although the charges were serious, the coordinator had a 32-year employment history with the city and no prior discipline (adopting 2005 N.J. AGEN LEXIS 553). In re Cammisa, OAL Dkt. No. CSV 8558-04, 2005 N.J. AGEN LEXIS 1051, Merit System Board Decision (November 22, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 521) adopted, which found that a senior correction officer was properly removed where the ALJ found, on conflicting evidence, that the officer falsified various documents in applying for health, prescription, and dental benefits for a girlfriend and her child in representing that she was his wife and the child was his dependent stepchild; correction officers are held to a higher standard of conduct and the officer's willful falsification of the applications was conduct unbecoming a public employee. In re Warfield, OAL Dkt. No. CSV 2706-04, 2005 N.J. AGEN LEXIS 1252, Final Decision (November 3, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 526) adopted, which upheld a six-month suspension of a school district painter for attempting to take a camera from school property; although the painter had a 20-year employment history with the school district and had an unblemished past disciplinary record, his actions were sufficiently egregious to warrant the suspension. In re Joyce, OAL Dkt. No. CSV 9392-03, 2005 N.J. AGEN LEXIS 1222, Final Decision (October 19, 2005).

Ten-day suspension and demotion of a former crew supervisor was appropriate where ALJ found on conflicting evidence that he was verbally abusive, disrespectful, and inappropriate; the supervisor's racially derogatory remarks did not constitute a separate charge that had to be sustained on the departmental level before being presented before the ALJ, but were part of the abusive language and conduct exhibited by the supervisor (adopting 2005 N.J. AGEN LEXIS 517). In re Keynton, OAL Dkt. No. CSV 328-04, 2005 N.J. AGEN LEXIS 1255, Final Decision (October 9, 2005).

There was a sufficient basis to impose a 10-day suspension, a major disciplinary action, where a Truck Driver, Tandem Axle, negligently drove a state truck into a basketball pole; the employee admitted that at the time of the accident he was looking elsewhere instead of watching where he was driving, the employee had previously been warned about his driving, and the damage to state property in the instant matter was well over $6,000 (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 479). In re Johnson, OAL Dkt. No. CSV 4410-03, 2005 N.J. AGEN LEXIS 1194, Final Decision (October 5, 2005).

Senior correction officer's actions in leaving his post were clearly wrong, but mitigating factors existed that warranted a six-month suspension rather than removal, including the fact that there were informal agreements between officers regarding who would stay and await relief and the officer was the first of the three officers in the unit to leave and not the last; the officer's record did not include any prior major discipline. In re Oliveira, OAL Dkt. No. CSV 5943-04, 2005 N.J. AGEN LEXIS 1204 (On Remand), Merit System Board Decision (October 5, 2005).

Correction officer was properly removed for conduct unbecoming a public employee and insubordination after he disobeyed repeated requests to complete an identification form as per an identification policy and made a mockery of the form by writing "Y" for sex; the officer was employed in a position where immediate obedience to direct orders from superiors was of particular importance, and his repeated refusals to properly complete the identification form were inexcusable (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 401). In re McGinnis, OAL Dkt. No. CSV 950-02 and CSV 6231-02 (Consolidated), 2005 N.J. AGEN LEXIS 1223, Final Decision (October 5, 2005).

Correction officer properly received a 6-working day suspension for his admitted failure to ensure the safety and security of a prison kitchen

by verifying that all of the kitchen padlocks were secured. However, a 5-working day suspension, rather than a 10-working day suspension, was appropriate where the officer violated an attendance verification policy by failing to remain available for contact during the hours of his normal shift; although the officer did not answer the phone at home when his supervisor attempted to reach him on two occasions, the officer did call in before the end of his shift (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 575). In re Penn, OAL Dkt. No. CSV 4871-04, 2005 N.J. AGEN LEXIS 1262, Final Decision (September 21, 2005), aff'd per curiam, No. A-1214-05T2, 2006 N.J. Super. Unpub. LEXIS 2736 (App.Div. September 28, 2006).

Attorney General Guidelines, which mandated the removal of law enforcement employees who tested positive for drug use, were inapplicable to a civilian employee who was a police aide; however, the aide was employed by a law enforcement agency and in a position with important public safety functions and the use of illegal controlled dangerous substances clearly constituted unbecoming conduct for which a six-month suspension was appropriate (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 581). In re Wilkins, OAL Dkt. No. CSV 9515-03, 2005 N.J. AGEN LEXIS 1131, Merit System Board Decision (September 21, 2005).

Six-month suspension, rather than removal, was the appropriate disciplinary action against a police officer who left the scene of an accident and failed to report the incident; the ALJ's credibility assessments and conclusion that the officer did not suffer from some medical condition that caused him to "lose awareness" were entitled to deference and were not in error, but the officer's preoccupation with his potentially frightening medical condition was a mitigating factor for the penalty to be imposed (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 371). In re Foti, OAL Dkt. No. CSV 3199-03, 2005 N.J. AGEN LEXIS 1463, Merit System Board Decision (September 21, 2005).

Credible evidence in the record supported the ALJ's conclusion that the employee, a data control clerk with the Newark School District, had notice of the e-mail policy when she forwarded sexually explicit, pornographic photos via e-mail to another employee, who then forwarded the e-mail to at least 5 other employees; a 4-month suspension was the appropriate penalty where the employee had been employed for 12 years, her disciplinary history revealed only a 3-day suspension for an attendance infraction, and she did not have any prior violations of the e-mail policy. Although the Merit System Board agreed that the e-mail was highly offensive, the Board did not find that the employee's conduct of forwarding the e-mail to a single fellow employee was sufficiently egregious to warrant removal or a 6-month suspension (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 577) . In re Copeland, OAL Dkt. No. CSV 05036-04, 2005 N.J. AGEN LEXIS 1239, Merit System Board Decision (September 7, 2005).

Removal from employment for falsification of records was not too harsh of a penalty because it was a very serious offense. Employees of the State and local government have access to information and documents that must be properly maintained and kept as accurate as possible; when a public employee falsifies a record, he or she erodes the trust that the general public places on the government to maintain accurate records. In addition, many of the employee's previous disciplinary actions, although minor, were for related or similar conduct (adopting 2005 N.J. AGEN LEXIS 339). In re Gilfone, OAL Dkt. No. CSV 3637-03 (CSV 9662-02 On Remand), 2005 N.J. AGEN LEXIS 1191, Final Decision (September 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 404) adopted, which found that a senior maintenance repairer was properly removed for chronic and excessive absenteeism; the appointing authority's operations were significantly affected by his excessive absences in that it was forced to burden other employees and at times pay overtime in order to absorb his job duties. In re Rios, OAL Dkt. No. CSV 3009-02, 2005 N.J. AGEN LEXIS 1084, Final Decision (September 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 402) adopted, which emphasized that the concept of progressive discipline does not mean that all possible measures must be taken; instead, an examination of the frequency, number, and continuity of the employer's warnings, reprimands, counseling and other measures, without necessarily including suspensions, indicates the progression of discipline (chronic lateness case). In re Jackson, OAL Dkt. No. CSV 01869-04, 2005 N.J. AGEN LEXIS 1074, Final Decision (September 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 402) adopted, which found that language of a disciplinary settlement agreement, providing that the settlement would not be used as a precedent in any other matter, did not foreclose the use of the prior discipline to decide whether there had been progressive discipline. In re Jackson, OAL Dkt. No. CSV 01869-04, 2005 N.J. AGEN LEXIS 1074, Final Decision (September 7, 2005).

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

4A:2-2.3 General causes

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

1. Incompetency, inefficiency or failure to perform duties;

2. Insubordination;

3. Inability to perform duties;

4. Chronic or excessive absenteeism or lateness;

5. Conviction of a crime;

6. Conduct unbecoming a public employee;

7. Neglect of duty;

8. Misuse of public property, including motor vehicles;

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

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

11. Other sufficient cause.

Amended by R.1990 d.308, effective June 18, 1990.
See: 22 N.J.R. 1015(b), 22 N.J.R. 1915(a).
Added misuse of public property, including motor vehicles.
Amended by R.1994 d.618, effective December 19, 1994.
See: 26 N.J.R. 3507(a), 26 N.J.R. 5000(a).
Amended by R.1995 d.415, effective August 7, 1995.
See: 27 N.J.R. 1837(a), 27 N.J.R. 2884(a).
Added (a)10, and recodified former (a)10 as (a)11.

Case Notes

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 opin-

ion 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 (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 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 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 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).

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).

Suspension of 10 days was warranted, where there was no dispute that the county employee served on the advisory board of a community group that was seeking county approval of a proposed redevelopment project on county property; despite repeated warnings by supervisors, the employee continued to make contact with other public and private officials in his capacity as a Senior Planner with the county in an attempt to further the goals of the community group. The employee's activities constituted conduct unbecoming a public employee, misuse of county property, and violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22.5. In re Reid, OAL Dkt. No. CSV 2045-06, 2007 N.J. AGEN LEXIS 1044, Final Decision (January 17, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 800) adopted, which found that the language a police officer used in a report was disrespectful and insubordinate, justifying a 15-day suspension; instead of explaining his behavior regarding his use of the term "ghetto" over the police scanner, the officer took the opportunity to berate and criticize his superior. In re Montalvo, OAL Dkt. No. CSV 9869-02, 2008 N.J. AGEN LEXIS 628, Final Decision (January 16, 2008).

City health officer who used paid sick time while out under the Family and Medical Leave Act, but engaged in and was compensated for secondary employment, was guilty of conduct unbecoming a public employee; however, an official written reprimand and a fine of an amount equivalent to the number of hours of sick leave she received while performing work for another municipality, rather than removal, was the appropriate penalty based on the officer's record of no prior major discipline. In re Warwas, OAL Dkt. No. CSV 11781-06, 2008 N.J. AGEN LEXIS 594, Merit System Board Decision (January 16, 2008).

Reversal of disciplinary action against a county correction officer was required where neither a videotape of the officer's conduct nor the testimonial evidence demonstrated that the officer was publicly intoxicated, ordered and consumed food without the intent to pay, or brought the police department into disrepute; additionally, the effect of the officer's "last chance agreement" was irrelevant, since the officer did not engage in any misconduct (adopting 2007 N.J. AGEN LEXIS 733). In re Keegan, OAL Dkt. No. CSV 2777-07, 2008 N.J. AGEN LEXIS 537, Merit System Board Decision (January 16, 2008).

Employee's medical condition made resignation in good standing, and not removal based on "inability to perform duties," appropriate. In re Gore-Bell, OAL Dkt. No. CSV 3975-06, 2007 N.J. AGEN LEXIS 1024, Final Decision (December 5, 2007).

Removal was warranted after a plumbing official urinated out of a window of a building under construction, in front of a representative of the construction company, while he was performing official duties; the public expects its servants to conduct its business in a manner that does not offend publicly accepted standards of decency (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 769). In re Malayter, OAL Dkt. No. CSV 2188-06, 2007 N.J. AGEN LEXIS 1019, Final Decision (December 5, 2007).

Where the nature and extent of a county clerk's mental condition and accompanying alarming behavior precluded her from successfully performing her job, the appointing authority was not precluded from pursuing termination (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 574). In re Wilson, OAL Dkt. No. CSV 9640-04, 2007 N.J. AGEN LEXIS 1180, Final Decision (October 10, 2007), aff'd per curiam, No. A-1291-07T1, 2009 N.J. Super. Unpub. LEXIS 1055 (App.Div. May 5, 2009).

Charges against a Youth Worker for excessive use of force against a resident of a youth detention center were properly dismissed where a videotape of the event and testimony revealed that the officer acted in an appropriate manner when faced with an unruly resident who was inciting other residents to misbehave and disregard the officer's directives; the resident made a number of threats of physical violence toward the officer that appeared to be genuine, causing the officer to call for assistance and use a minimal amount of force to defuse an escalating situation (adopting 2007 N.J. AGEN LEXIS 568). In re Zorn, OAL Dkt. No. CSV 2685-06 (CSV 8501-05 On Remand), 2007 N.J. AGEN LEXIS 1104, Merit System Board Decision (October 10, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 571) adopted, which concluded that a licensed practical nurse was properly removed after she failed to assist a resident in taking her medication and then later threatened retaliation against a coworker who reported the conduct; instead of helping the resident sit up so that she could swallow the pills, the nurse told the resident that she was too busy to help her, and would record that the resident refused to take her medication. In re Johnson, OAL Dkt. No. CSV 920-06, 2007 N.J. AGEN LEXIS 1179, Final Decision (September 12, 2007).

Ninety-day suspension, rather than removal, was the appropriate penalty for a county correction officer who violated the county's inmate visitation regulation when she visited an acquaintance at a state prison on three separate occasions. The evidence was clear that there was no "fraternization" or "undue familiarity"; rather, it appeared as though the officer was doing a favor for the inmate's aunt by providing transportation to the facility (adopting as modified 2007 N.J. AGEN LEXIS 372). In re Brown, OAL Dkt. No. CSV 7960-06 and CSV 7962-06, Merit System Board Decision (July 11, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 275) adopted, which concluded that county corrections officer's failure to call the county to report an absence did not rise to the level of "conduct unbecoming" since it was not an activity that would destroy public confidence in governmental services. In re Novielli, OAL Dkt. No. CSV 03981-06, Final Decision (June 20, 2007), aff'd per curiam, No. A-5890-06T2, 2009 N.J. Super. Unpub. LEXIS 350 (App.Div. February 24, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 175) adopted, which found that a police officer was properly terminated for conduct unbecoming a police officer after he was convicted of driving under the influence of alcohol; the officer was not rehabilitated and his advertising his ability to drink beer on MySpace.com was conduct that diminished respect for the office. In re Larkin, OAL Dkt. No. CSV 225-06, 2007 N.J. AGEN LEXIS 1087, Final Decision (June 20, 2007).

Three-day suspension, rather than 10-day suspension, was the appropriate penalty after a correction officer was insubordinate for failing to immediately following her supervisor's order that she return to her post; the officer was required to comply with the order, even if she believed it to be improper or contrary to established rules and regulations (adopting 2007 N.J. AGEN LEXIS 243). In re Faasen, OAL Dkt. No. CSV 2617-06, 2007 N.J. AGEN LEXIS 1103, Merit System Board Decision (June 20, 2007).

Contrary to the Administrative Law Judge's finding, a correction officer may have been eligible for time off to care for sick family members under New Jersey's Family Leave Act and the federal Family Medical Leave Act, had she applied. However, the officer was properly suspended for chronic and excessive absenteeism, as the ALJ found, contrary to the officer's testimony, that she was given notice of those rights (adopting as modified 2007 N.J. AGEN LEXIS 176). In re Stokes, OAL Dkt. No. CSV 4327-05 and CSV 8116-06 (Consolidated), 2007 N.J. AGEN LEXIS 1111, Final Decision (May 9, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 144) adopted, which concluded that a school bus inspector was properly suspended for seven days after falsifying documents to indicate that the buses' brakes were in approved working order when he never performed the inspections; the inspector's prior reprimand for neglect of duty based on his failure to actually perform the required inspections did not prevent a later finding that he falsified documents pertaining to the phantom inspections and, therefore, the inspector was not punished twice for the same offense. In re Leaty, OAL Dkt. No. CSV 5351-06, 2007 N.J. AGEN LEXIS 1136, Final Decision (April 25, 2007).

Where an employee believed that he was being asked to perform duties outside of his job title, he should have sought an audit of the position to determine whether re-classification was warranted; but until such time as an audit could be performed and a final determination made, the employee was required to continue to perform the duties assigned by management. In refusing to perform the disputed duties, the employee engaged in conduct of insubordination because "insubordination" refers not only to affirmative acts of disobedience, but also acts of non-compliance and non-cooperation, including any conduct that constitutes a refusal to submit to supervisory authority (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 57). In re Hatcher, OAL Dkt. No. CSV 2123-06, 2007 N.J. AGEN LEXIS 352, Final Decision (March 28, 2007).

Public works employee was properly assessed a 15-day suspension on charges of conduct unbecoming a public employee after he used a township vehicle to transport cases of beer while on duty and also transported bricks for a home improvement project; the employee's 3- and 5-day suspensions in 2002 were properly considered in fashioning his penalty under the concept of progressive discipline (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 48). In re Stefani, OAL Dkt. No. CSV 1849-06, Final Decision (January 23, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 994) adopted, which found that a 90-day suspension of a corrections officer was appropriate based on his failure to work mandatory overtime; the officer failed to comply with a direct order to stay on his post (given after he had e-timed out), and instead left the premises. In re Ballon, OAL Dkt. No. CSV 3974-06, 2007 N.J. AGEN LEXIS 92, Final Decision (January 17, 2007).

Where a police officer was arrested on charges of cocaine possession, the appointing authority had reasonable suspicion to believe that the officer was under the influence of drugs; therefore, his refusal to submit to timely drug testing at the authority's request was insubordination warranting removal from his position. In re Hosten, OAL Dkt. No. CSV 3269-04, 2006 N.J. AGEN LEXIS 829, Initial Decision (October 13, 2006), adopted (Merit System Board November 15, 2006).

Police officer was guilty of conduct unbecoming a police officer when he refused to answer questions during a criminal investigation into the abuse of overtime; while the officer's attorneys' advice did not invalidate the charges against him, the officer had no prior major discipline in 17 years and his misplaced reliance on his attorneys' advice mitigated the penalty of removal to a 6-month suspension. In re Sandifer, OAL Dkt. No. CSV 5096-05, 2006 N.J. AGEN LEXIS 869, Merit System Board Decision (September 6, 2006), aff'd per curiam, No. A-1992-06T2, 2008 N.J. Super. Unpub. LEXIS 2892 (App.Div. July 18, 2008).

Correction officer was improperly disciplined for his alleged failure to cooperate in an investigation of a fellow officer; even if the officer displayed a defiant attitude in asserting his right to counsel, the investigators had suggested that he "think about his family," remarked that he was "leaving himself as a target" of the investigation, refused to permit the officer's union representative to enter the room with him after the suggestion was made that he had become a target of the investigation, and persisted in attempting to question him over two days, despite his repeated requests to consult with his attorney and his assurance that he would cooperate following his consultation (adopting 2006 N.J. AGEN LEXIS 363). In re Ricchiuti, OAL Dkt. No. CSV 4992-04, 2006 N.J. AGEN LEXIS 773, Merit System Board Decision (August 9, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 360) adopted, which found that a police officer was properly removed for conduct unbecoming an officer where she used her position as an officer to have a legally parked car towed and then lied about having the authority to release the car to the registered owner; either the officer was not candid about drugs being in the car, and only made the statement to have the vehicle towed, or knowing that there were drugs in her car, she was helping to have the vehicle released before it could be searched – either scenario represented a severe breach of public trust. In re Colon, OAL Dkt. No. CSV 2853-05 (CSV 4989-04 On Remand), 2006 N.J. AGEN LEXIS 532, Final Decision (July 19, 2006).

Fifteen-day suspension of a correction officer was appropriate where the officer pushed his way into an agitated crowd of inmates in order to restrain an inmate without seeking authorization and without following the established procedures regarding use of force; such behavior compromised the safety and security of the institution and had the dangerous potential to subvert prison order (adopting 2006 N.J. AGEN LEXIS 292). In re Ricigliano, OAL Dkt. No. CSV 4326-05, 2006 N.J. AGEN LEXIS 534, Final Decision (June 7, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 155) adopted, in which the ALJ found, on conflicting evidence, that a worker in a psychiatric hospital neglected to account for the presence of a male patient, who was subsequently found to have committed suicide in a unit bathroom, and then falsified the patient census sheet; the patient committed suicide during the preceding shift but was not missed or found until almost four and a half hours later, lying within six feet of the nurses' station. In re Whisnant, OAL Dkt. No. CSV 4999-04, 2006 N.J. AGEN LEXIS 621, Final Decision (May 24, 2006).

Police officer was properly disciplined for insubordination and neglect of duty when he failed to follow his superior's order to arrest a juvenile for receiving stolen property (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 293). In re Solowiej, OAL Dkt. No. CSV 5101-04, 2006 N.J. AGEN LEXIS 537, Final Decision (May 24, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 295) adopted, which concluded that a correction officer's removal for violating the County's policy and rules by having an intense romantic relationship with an inmate did not unconstitutionally restrict the fundamental right to association. In re Stansfield, OAL Dkt. No. CSV 6101-05, 2006 N.J. AGEN LEXIS 540, Final Decision (May 24, 2006).

Correction officer was properly removed after testing positive for marijuana; although use of a coffee cup during testing violated the Attorney General's Law Enforcement Drug Testing Policy, the technical deviations did not amount to a violation of the officer's right to due process or call into question the validity of the positive test result (adopting 2006 N.J. AGEN LEXIS 154). In re Grillo, OAL Dkt. No. CSV 2813-04, 2006 N.J. AGEN LEXIS 562, Final Decision (May 10, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 257) adopted, which found that a senior correction officer was properly removed for an inability to perform his duties after his gun was confiscated following a domestic abuse dispute; although the prohibition against carrying a firearm

imposed on the officer was a legal inability based on psychological reports recommending that the officer's gun not be returned because of his history of poor judgment, the appointing authority was not expected to maintain the officer's employment indefinitely when eligibility to carry a firearm was a requirement of his position. In re Hawkins, OAL Dkt. No. CSV 2814-05, 2006 N.J. AGEN LEXIS 617, Final Decision (May 10, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 157) adopted, which concluded that a city truck driver's act of engaging in horseplay at work, taking out a knife, and cutting the pants of another employee near the employee's groin constituted conduct unbecoming a public employee. In re James, OAL Dkt. No. CSV 6099-05, 2006 N.J. AGEN LEXIS 625, Final Decision (April 26, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 157) adopted, which concluded that the term "insubordination" refers not only to affirmative acts of disobedience, but also acts of noncompliance and non-cooperation, including any conduct that constitutes a refusal to submit to supervisory authority; therefore, a city truck driver was insubordinate in refusing to take an alcohol and drug screening when requested. In re James, OAL Dkt. No. CSV 6099-05, 2006 N.J. AGEN LEXIS 625, Final Decision (April 26, 2006).

Where an odor of alcohol emanated from a senior parole officer and he was unsteady, groggy, and fell asleep during his shift, it was irrelevant that his supervisor did not disarm him or that he was sent home during the preparatory period in the office prior to going out on the road; notwithstanding the fact that the officer was not charged with sleeping on duty, he came to work unfit to carry a firearm and had every intention of going on his assignment in the field — such inappropriate behavior warranted a 13-day suspension (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 36). In re Steimle, OAL Dkt. No. CSV 2837-05, 2006 N.J. AGEN LEXIS 618, Final Decision (March 22, 2006).

Removal of a correction officer recruit was the appropriate penalty when an anonymous tip revealed that she was living with a parolee, who was the father of her children; the officer was removed, not simply for the fact that she violated the rule against undue familiarity, but because she was aware of her duty to disclose her relationship, but failed to do so (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 920). In re Ridgeway, OAL Dkt. No. CSV 552-05, 2006 N.J. AGEN LEXIS 1532, Final Decision (February 8, 2006).

Arriving late for work and failing to call the supervisor does not rise to the level of "conduct unbecoming a public employee." In re Wilson, OAL Dkt. No. CSV 2162-05, 2005 N.J. AGEN LEXIS 1046, Final Decision (December 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 337) adopted, which explained that an occurrence reflecting upon an individual's character and honesty may constitute unbecoming conduct and cause for discipline; a county correction sergeant's actions as a supervisor and prison official in directing his subordinates to violate rules and procedures, and causing posts to be unmanned resulting in mandated inmate checks not being conducted, were putting the facility, staff, and inmates at risk. In re Matza, OAL Dkt. No. CSV 1967-01, 2005 N.J. AGEN LEXIS 1045, Final Decision (November 22, 2005), aff'd per curiam, No. A-2481-05T1, 2007 N.J. Super. Unpub. LEXIS 907 (App.Div. June 19, 2007).

Police officer's unintentionally leaving his keys in a safety box that contained live ammunition in a secured area only frequented by officers did not meet the standard of conduct unbecoming a public employee; however, the conduct supported a finding of negligence and careless handling of county property and violations of departmental rules and regulations pertaining to equipment and property and safety and control, supporting a five-day suspension. In re Currier, OAL Dkt. No. CSV 2589-05, 2005 N.J. AGEN LEXIS 1082, Merit System Board Decision (November 22, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 634) adopted, which found that a correction officer was improperly disciplined for indulging in undue familiarity with an inmate by allowing him to call her residence numerous times; although the appointing authority established that an inmate made collect calls to and spoke with someone at the officer's residence on nine separate occasions over the course of four days, it did not prove that it was the officer who received those calls and not her brother or her friend. In re Williams, OAL Dkt. No. CSV 2875-04, 2005 N.J. AGEN LEXIS 1188, Merit System Board Decision (November 22, 2005).

Where the medical evidence unquestionably established that a firefighter was physically unable to perform the essential functions of a firefighter, rendering him unfit and unqualified for the position he sought, the appointing authority was not legally obligated to create or maintain a light-duty assignment position, initially offered as a temporary accommodation for what was then perceived to be a temporary job-related disability (adopting 2005 N.J. AGEN LEXIS 574). In re Czarnecki, OAL Dkt. No. CSV 2943-03, 2005 N.J. AGEN LEXIS 1254, Final Decision (November 3, 2005), aff'd per curiam, No. A-1993-05T5, 2007 N.J. Super. Unpub. LEXIS 2927 (App.Div. July 20, 2007).

Initial Decision (2005 N.J. AGEN LEXIS 522) adopted, which found that a senior correction officer was properly removed where the officer mismanaged the juvenile detention unit by encouraging inmates to beat each other for the purpose of enforcing order; the officer also failed to report an injury involving a resident. In re Matias, OAL Dkt. No. CSV 2749-04, 2005 N.J. AGEN LEXIS 1187, Final Decision (October 19, 2005).

Ten-day suspension, rather than 25-day suspension, was warranted where a correction officer's employment record revealed that he had received no prior major discipline and it was undisputed that he did not intentionally allow a fellow officer to deliver contraband to an inmate, nor did he file a false report about the incident; while it was undisputed that the officer had failed to fulfill his duties as Control Room officer and that his actions were negligent, the harsh sanction of the appointing authority was not appropriate (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 605). In re Beuckman, OAL Dkt. No. CSV 403-03, 2005 N.J. AGEN LEXIS 1482, Merit System Board Decision (October 19, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 576) adopted, which concluded that a correction officer was properly disciplined for fraternization or undue familiarity with an inmate based on numerous phone calls the inmate made to the officer's home; the fact that there was no evidence alleging any undue familiarity with the inmate while "on-the-job" in the jail was of no consequence where the officer accepted and had lengthy phone conversations with the inmate, as evidenced by the business phone records of both the jail phone system and the officer's phone records and bills. In re Addison, OAL Dkt. No. CSV 4988-04, 2005 N.J. AGEN LEXIS 1199, Final Decision (September 21, 2005), aff'd per curiam, No. A-0892-05T5, 2006 N.J. Super. Unpub. LEXIS 2673 (App.Div. May 26, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 576) adopted, which concluded that undue familiarity existed when an inmate had a correction officer's phone number, the inmate made over 30 collect calls to the correction officer's home phone which were accepted, and multiple and lengthy phone conversations occurred between the inmate and the correction officer at her home. In re Addison, OAL Dkt. No. CSV 4988-04, 2005 N.J. AGEN LEXIS 1199, Final Decision (September 21, 2005), aff'd per curiam, No. A-0892-05T5, 2006 N.J. Super. Unpub. LEXIS 2673 (App.Div. May 26, 2006).

Emergency medical technician had a duty to respond on foot to an emergency call one block away when an ambulance was not available during a blackout; even though the call came at night in a crime-ridden neighborhood, it was the fundamental duty of an EMT to render emergency medical aid. The ALJ's reliance on the Department of Personnel job specifications for EMTs and the appointing authority's procedures to support his conclusion that the EMT was not required to respond was misplaced where such documents could not account for all the potential situations that may arise for such a position (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 457). In re Vena, OAL Dkt. No. CSV 9340-01, 2005 N.J. AGEN LEXIS 1088, Final Decision (August 10, 2005), aff'd per curiam, No. A-4128-05T1, 2007 N.J. Super. Unpub. LEXIS 1325 (App.Div. October 26, 2007).

hearing occur 39 days after service of the PNDA; the 30-day provision is not an absolute and inflexible requirement, nor is it a jurisdictional requirement that prohibits an appointing authority from proceeding with bringing the charges even though it fails to conduct the hearing within the statutorily mandated period. In re Del Valle, OAL Dkt. No. CSV 2878-04, 2006 N.J. AGEN LEXIS 533, Final Decision (February 8, 2006), aff'd per curiam, Docket No. A-3934-05T5, 2007 N.J. Super. Unpub. LEXIS 1121 (App.Div. February 8, 2007).

When a building maintenance employee was sent home upon arriving late to work, it constituted an immediate suspension for which he was entitled to oral or written notice of the charges, an explanation of the employer's evidence, and an opportunity to review the charges and evidence and to respond; because the employer failed to comply with these requirements, the employee was entitled to back pay for the day he reported to work and was sent home. In re Wilson, OAL Dkt. No. CSV 2162-05, 2005 N.J. AGEN LEXIS 1046, Final Decision (December 7, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 337) adopted, which found that immediate suspension of a county correction sergeant was proper upon a finding that his suspension was necessary to maintain the safety and effective direction of the prison; the officer's actions as a supervisor and prison official in directing his subordinates to violate rules and procedures, and causing posts to be unmanned resulting in mandated inmate checks not being conducted, were putting the facility, staff, and inmates at risk. In re Matza, OAL Dkt. No. CSV 1967-01, 2005 N.J. AGEN LEXIS 1045, Final Decision (November 22, 2005), aff'd per curiam, No. A-2481-05T1, 2007 N.J. Super. Unpub. LEXIS 907 (App.Div. June 19, 2007).

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

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

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

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

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

4A:2-2.6 Hearings before the appointing authority

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

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

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

(d) Within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a Final Notice of Disciplinary Action. See N.J.A.C. 4A:2-2.13 for the issuance of a Final Notice in removal appeals by certain law enforcement officers and firefighters.

Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
In (d), inserted the last sentence.
In accordance with N.J.S.A. 52:14B-5.1c, special amendment R.2009 d.221 expires on December 28, 2010.
See: 42 N.J.R. 693(a).

Case Notes

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

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

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

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.

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

4A:2-2.7 Actions involving criminal matters

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

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

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

i. Where an employee who has been indefinitely suspended enters Pre-Trial Intervention (PTI) or has received a conditional discharge, the criminal complaint or indictment shall not be deemed disposed of until completion of PTI or until dismissal of the charges due

to the employee's satisfaction of the conditions in a conditional discharge, as the case may be.

ii. An appointing authority may continue an indefinite suspension until completion of PTI or until satisfaction of the conditions imposed in a conditional discharge. If an appointing authority chooses not to continue an indefinite suspension during the PTI period or during the period of conditional discharge, it may restore the employee to employment or initiate disciplinary action against the employee.

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

(b) When a court has entered an order of forfeiture pursuant to N.J.S.A. 2C:51-2, the appointing authority shall notify the employee in writing of the forfeiture and record the forfeiture in the employee's personnel records. The appointing authority shall also forward a copy of this notification to the Department of Personnel.

1. If the criminal action does not result in an order of forfeiture issued by the court pursuant to N.J.S.A. 2C:51-2, the appointing authority shall issue a second Preliminary Notice of Disciplinary Action specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under N.J.A.C. 4A:2-2.5 and 2.6.

(c) Where an employee has pled guilty or been convicted of a crime or offense which is cause for forfeiture of employment under N.J.S.A. 2C:51-2 but the court has not entered an order of forfeiture, the appointing authority may seek forfeiture by applying to the court for an order of forfeiture. The appointing authority shall not hold a departmental hearing regarding the issue of the applicability of N.J.S.A. 2C:51-2. If the court declines to enter an order of forfeiture in response to the appointing authority's application, the appointing authority may hold a departmental hearing regarding other disciplinary charges, if any, as provided in (b)1 above.

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
In (a)1: added text, "The standard ... public services."
Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Revised (a).
Public Notice: Notice of Receipt of a Petition for Rulemaking.
See: 29 N.J.R. 5333(a).
Amended by R.2000 d.433, effective October 16, 2000.
See: 32 N.J.R. 2275(a), 32 N.J.R. 3870(a).
Rewrote (b) and (c).
Amended by R.2006 d.271, effective July 17, 2006.
See: 37 N.J.R. 4345(a), 38 N.J.R. 3016(b).
Added (a)2i and (a)2ii.

Case Notes

Forfeiture of public office was not unconstitutional. State v. Timoldi, 277 N.J.Super. 297, 649 A.2d 872 (A.D.1994), certification denied 142 N.J. 449, 663 A.2d 1356.

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

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

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

Initial Decision (2008 N.J. AGEN LEXIS 108) adopted, which concluded that a campus police officer was properly suspended upon allegations that he used university equipment to send 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; the officer's misconduct involved, and directly touched upon, his employment. In re Mandi, OAL Dkt. No. CSV 4824-07, 2008 N.J. AGEN LEXIS 559, Final Decision (April 23, 2008).

Employee's highly inappropriate comment advocating violence to a developmentally challenged student coupled with the employee's prior history of an alleged altercation with a fellow employee provided a sufficient basis for the appointing authority to order a fitness for duty psychological examination. However, the indefinite suspension of the employee for refusing to take the psychological examination was improper, as indefinite suspension is limited by N.J.A.C. 4A:2-2.7 to matters in which there is a pending criminal complaint or indictment (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 704). In re Veronelli, OAL Dkt. No. CSV 3881-07, 2007 N.J. AGEN LEXIS 1023, Merit System Board Decision (December 5, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 963) adopted, which found that the appointing authority was authorized to suspend a senior correction officer indefinitely without pay pending the outcome of his criminal charges; it was alleged that the officer sold a cellular phone to an inmate for $300 and the criminal charges were, therefore, directly related to his job. In re Mangual, OAL Dkt. No. CSV 4032-06, 2006 N.J. AGEN LEXIS 1110, Final Decision (December 6, 2006).

Youth worker's immediate and indefinite suspension was appropriate pursuant to N.J.A.C. 4A:2-2.5 and 4A:2-2.7 after he was charged with a third-degree crime; however, because the worker's subsequent removal was unrelated to the criminal charges, he was still entitled to a determination as to whether he was owed back wages for the time between his immediate suspension and the resolution of the criminal charges against him (adopting result in 2006 N.J. AGEN LEXIS 828 on other grounds). In re Smith, OAL Dkt. No. CSV 2147-05, 2006 N.J. AGEN LEXIS 1100, Final Decision (November 15, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 72) adopted, which found that deceased motor vehicle employee's appeal was moot, and employee's indefinite suspension under N.J.A.C. 4A:2-2.7 would have been upheld; the employee's access to records in her daily functions aided her ability to perpetuate the crime and subverted the normal system for obtaining licenses and undermined the public trust in the Motor Vehicle Commission's ability to serve the public. In re Love, OAL Dkt. No. CSV 2232-04, 2006 N.J. AGEN LEXIS 1102, Final Decision (March 22, 2006).

Automatic termination of correction sergeant based on conviction for crime of dishonesty affirmed. Christian v. Department of Corrections, Northern State Prison, 97 N.J.A.R.2d (CSV) 636.

Arrest for possession of illegal drugs provides grounds for blood test and removal. Pickett v. Department of Corrections, 97 N.J.A.R.2d (CSV) 546.

Corrections officer's illegal purchase of ammunition justifies removal. Nelsen v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 347.

Corrections officer with drugs in car suffers removal even though criminal action acquits. Reinhardt v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 166.

School district employee removed for arrest on charges of possessing illegal drugs. Hargrove v. State Operated School District of Newark, 97 N.J.A.R.2d (CSV) 112.

Corrections officer was not entitled to back pay for period of suspension pending resolution of criminal charges. Auberzinsky v. Cumberland County Sheriff's Department, 96 N.J.A.R.2d (CSV) 372.

Public works truck driver dismissed after conviction for offense involving minor child. Furde v. Hamilton Township Department of Public Works, 96 N.J.A.R.2d (CSV) 262.

No entitlement to continued employment in sensitive position for employee facing criminal and narcotics charges. Spellman v. Township of Parsippany-Troy Hills Police Department, 96 N.J.A.R.2d (CSV) 214.

Where corrections officer's off-duty simple assault on supervisor related to on-duty events, assault constituted insubordination and conduct unbecoming a public employee and warranted dismissal. Melillo v. Department of Corrections, East Jersey State Prison, 96 N.J.A.R.2d (CSV) 184.

Corrections officer's conviction for obstruction of justice and driving while under the influence justifies 78-day suspension. Scott v. Burlington County Jail, 96 N.J.A.R.2d (CSV) 171.

Criminal convictions result in summary forfeiture of school custodian's position. Turner v. State-Operated School District of the City of Newark, 96 N.J.A.R.2d (CSV) 146.

State corrections officer terminated for firing gun during off-duty argument. Dunns v. Department of Corrections, 96 N.J.A.R.2d (CSV) 108.

Park maintenance worker forfeits position due to conviction for disorderly persons offense involving dishonesty. Alsheimer v. County of Middlesex, 96 N.J.A.R.2d (CSV) 7.

Conviction on plea of guilty to drug offense warranted correction officer's termination. Ricks v. Department of Corrections, 95 N.J.A.R.2d (CSV) 441.

Filing of criminal charges directly relating to employment warranted indefinite suspension of safety specialist. Washington v. Division of Motor Vehicles, 95 N.J.A.R.2d (CSV) 336.

Indefinite suspension of police officer pending disposition of criminal indictment was not warranted absent evidence that public interest would be served. Nagy v. Borough of Carteret, 95 N.J.A.R.2d (CSV) 224.

Correction officer's termination justified; shooting of companion with stun gun. Curry v. Burlington County Jail, 95 N.J.A.R.2d (CSV) 92.

Conviction on plea of guilty to charge of conspiring to sell a false document of age was cause for forfeiture of correction officer's public employment. State Department of Corrections v. Gomez, 95 N.J.A.R.2d (CSV) 77.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

School bus driver disqualified from school employment due to drug offense. Kovalak v. New Jersey State Department of Education, 97 N.J.A.R.2d (EDU) 456.

School superintendent dismissed due to unbecoming conduct. In the Matter of the Tenure Hearing of Robert R. Vitacco, 97 N.J.A.R.2d (EDU) 449.

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

4A:2-2.8 Appeals to Civil Service Commission

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

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

(c) The appeal shall be substantially similar in format to the Major Disciplinary Appeal Form illustrated in the subchapter Appendix, incorporated herein by reference, and the employee shall provide a copy of the appeal to the appointing authority. The employee shall attach to the appeal a copy of the Preliminary Notice of Disciplinary Action and, unless (b) above is applicable, the Final Notice of Disciplinary Action. The appeal shall also include the following information:

1. The name, title, mailing address and telephone number of the appointing authority representative to whom the notices were provided;

2. The employee's name, mailing address and telephone number; and

3. The action that is being appealed.

(d) The employee should also include a statement of the reason(s) for the appeal and the requested relief.

(e) Failure of an employee to provide the information specified in (c) above shall not result in dismissal of the appeal, but shall delay processing of the appeal until the required information is provided, and may result in a reduced back pay award pursuant to N.J.A.C. 4A:2-2.10(d)4.

(f) See N.J.A.C. 4A:2-2.13 for removal appeals by certain law enforcement officers and firefighters.

Amended by R.1995 d.416, effective August 7, 1995.
See: 27 N.J.R. 1837(b), 27 N.J.R. 2884(b).
In (a), added the provision governing receipt of notice by the employee's attorney or union representative.
Amended by R.1998 d.518, effective November 2, 1998.
See: 30 N.J.R. 2325(a), 30 N.J.R. 3935(a).
Added (c) through (e).
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Section was "Appeals to Merit System Board". In (b), substituted "Commission" for "Board"; and added (f).
In accordance with N.J.S.A. 52:14B-5.1c, special amendment R.2009 d.221 expires on December 28, 2010.
See: 42 N.J.R. 693(a).

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).

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".
In accordance with N.J.S.A. 52:14B-5.1c, special amendment R.2009 d.221 expires on December 28, 2010.
See: 42 N.J.R. 693(a).

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).

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).

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).

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, OAL Dkt. No. CSV 774-07, 2007 N.J. AGEN LEXIS 1017, Final Decision (December 19, 2007).

Removal of county correction officer, based on the charge of inability to perform duties, was unduly harsh where the officer's problems were the result of a medical condition, permanent uncontrolled glaucoma in the right eye, and it was undisputed that there was no history of disciplinary actions against the officer; the circumstances provided a sufficient basis to modify the removal to a resignation in good standing, pursuant to N.J.A.C. 4A:2-2.9(d) (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 705). In re Gore-Bell, OAL Dkt. No. CSV 3975-06, 2007 N.J. AGEN LEXIS 1024, Final Decision (December 5, 2007).

Although a police officer had only a minor disciplinary history, he attempted to use his position as a police officer to intimidate fellow police officers and members of the public in order to secure advantages for himself to which he would not otherwise be entitled; such egregious conduct warranted an increased suspension of 120 working days, rather than a 60-working day suspension (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 615). In re Joyce, OAL Dkt. No. CSV 9145-06, 2007 N.J. AGEN LEXIS 1177, Final Decision (September 26, 2007), aff'd per curiam, No. A-1038-07T2, 2008 N.J. Super. Unpub. LEXIS 2882 (App.Div. December 4, 2008).

Determination that an electrician's failure to replace and properly dispose of multiple electrical light ballasts known to contain dangerous polychlorinated biphenyls was understandable due to his lack of supervision did not mandate a finding that his actions did not constitute a neglect of duty, but such a finding was relevant in determining the electrician's penalty; a four-month suspension, rather than removal, was appropriate in light of the circumstances of the case as well as the electrician's long record of service (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 276). In re Gatewood, OAL Dkt. No. CSV 7812-06, 2007 N.J. AGEN LEXIS 1169, Merit System Board Decision (June 20, 2007).

Six-month suspension rather than 20-day suspension was appropriate for a police sergeant found on conflicting testimony to have blamed a totally emotional and distraught woman for causing her son's death, used profanity towards her, and punched the woman, who was half his size. In re Ricciardi, OAL Dkt. No. CSV 1851-06, 2007 N.J. AGEN LEXIS 1043, Final Decision (April 25, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 795) adopted, which concluded that 10-day and 20-day suspensions were justified for a correction officer's two unexcused absences after the officer's sick leave was exhausted, despite the officer's family issues; furthermore, in the determination of the appropriate penalty, the Merit System Board is not bound by the provisions of a collective bargaining agreement. In re Bahm, OAL Dkt. No. CSV 00468-05, Final Decision (December 20, 2006).

Forty-five day suspension, rather than removal or a 90-day suspension, was appropriate discipline where a psychiatric hospital employee was found to have used inappropriate physical contact in restraining a patient; a charge of abuse was not sustainable because the evidence demonstrated that the employee was only attempting to restrain the patient after the patient first made physical contact with the employee (adopting in part and rejecting in part 2006 N.J. AGEN LEXIS 400). In re Graves, OAL Dkt. No. CSV 226-06, 2006 N.J. AGEN LEXIS 770, Merit System Board Decision (August 9, 2006).

Where a police officer disobeyed lawful orders, disregarded police department policies and procedures, and embarked on a high-speed vehicle pursuit without notifying police headquarters and without authorization, a 20-day suspension did not convey to the officer the seriousness of his infractions and was, therefore, increased to a 30-day suspension; the police chase could have had tragic consequences and the officer had received counseling for similar behavior in the past (adopting in part and modifying in part 2006 N.J. AGEN LEXIS 69). In re McConnell, OAL Dkt. No. CSV 9430-04, 2006 N.J. AGEN LEXIS 547, Final Decision (April 5, 2006).

Three-month suspension, rather than removal, was the appropriate discipline for a nurse's aide who was accused of neglecting a patient after she refused to care for a male patient on two occasions, assuming other aides would see to his care; although the aide was pregnant and feared the often combative patient, she never made a formal request to be re-assigned, nor did she provide medical documentation for special accommodation. In re Snyder, OAL Dkt. No. CSV 554-05, 2006 N.J. AGEN LEXIS 623, Final Decision (March 8, 2006).

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).

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).

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).

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).

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.

Firefighter entitled to back pay for period of suspension while awaiting outcome of criminal indictment. Naro v. Trenton Fire Department, 96 N.J.A.R.2d (CSV) 234.

Reinstatement of guard at correctional facility was required when he did not intentionally trip or kick inmate. Finley v. Wagner Youth Correctional Facility, 95 N.J.A.R.2d (CSV) 676.

Agency awarding employee back pay was entitled to offset unemployment benefits as long as state was reimbursed. Bellamy v. Essex County Hospital, 95 N.J.A.R.2d (CSV) 652.

Public employee was entitled to back pay for period of indefinite suspension that was improper, incorrect and invalid. Gonzalez v. Essex County, 95 N.J.A.R.2d (CSV) 200.

Medical expenses to be paid after improper reduction in force action. Takakjian v. Fairview Borough Board of Education, 93 N.J.A.R.2d (EDU) 184.

Employee was entitled to back pay following acquittal. Scouler v. Housing Services and Code Enforcement, City of Camden, 93 N.J.A.R.2d (CSV) 40.

Employee not entitled to back pay for period of suspension even if she successfully completed intervention program. Amison v. New Jersey Department of Environmental Protection, 92 N.J.A.R.2d (CSV) 568.

Employee was entitled to back pay for period of suspension pending disposition of criminal charges. Kelly v. City of Camden, 92 N.J.A.R.2d (CSV) 537.

Initial suspension from employment violated due process; later valid removal; no entitlement to back pay. Brantley v. New Jersey State Prison, 92 N.J.A.R.2d (CSV) 37.

Employee entitled to reinstatement and back pay. N.J.S.A. 11A:1-1 et seq. Holmes v. Essex County, 91 N.J.A.R.2d (CSV) 65.

Appellant, removed from employment and later reinstated with back pay, denied counsel fees; appellant entitled to award of 30 vacation days (citing former N.J.A.C. 4:1-5.5). Harrington v. Dep't of Human Services, 11 N.J.A.R. 537 (1989).

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-16.14). Valluzzi v. Bergen County, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

4A:2-2.11 Interest

(a) When the Commissioner or Board makes an award of back pay, it may also award interest in the following situations:

1. When an appointing authority has unreasonably delayed compliance with an order of the Commissioner or Board; or

2. Where the Board finds sufficient cause based on the particular case.

(b) Where applicable, interest shall be at the annual rate as set forth in New Jersey court rules, R.4:42-11.

(c) Before interest is applied, an award of back pay shall be reduced in accordance with N.J.A.C. 4A:2-2.10(d)2 and 3.

Administrative Correction.
See: 26 N.J.R. 198(a).

4A:2-2.12 Counsel fees

(a) The Civil Service Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission.

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

(c) Subject to the provisions of (d) and (e) below, the following fee ranges shall apply in determining counsel fees:

1. Associate in a law firm: $100.00 to $150.00 per hour;

2. Partner or equivalent in a law firm with fewer than 15 years of experience in the practice of law: $150.00 to $175.00 per hour; or

3. Partner or equivalent in a law firm with 15 or more years of experience in the practice of law, or, notwithstanding the number of years of experience, with a practice concentrated in employment or labor law: $175.00 to $200.00 per hour.

(d) If an attorney has signed a specific fee agreement with the employee or employee's negotiations representative, the attorney shall disclose the agreement to the appointing authority. The fee ranges set forth in (c) above may be adjusted if the attorney has signed such an agreement, provided that the attorney shall not be entitled to a greater rate than that set forth in the agreement.

(e) A fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors (see the Rules of Professional Conduct of the New Jersey Court Rules, at RPC 1.5(a)) shall be considered:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

2. The fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated;

3. The nature and length of the professional relationship with the employee; and

4. The experience, reputation and ability of the attorney performing the services.

(f) Counsel fees incurred in matters at the departmental level that do not reach the Civil Service Commission on appeal or are incurred in furtherance of appellate court review shall not be awarded by the Commission.

(g) Reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and subpoena fees and out-of-State travel expenses. Costs associated with normal office overhead shall not be awarded.

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

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

(j) See N.J.A.C. 4A:2-2.13 for situations in which certain law enforcement officers or firefighters have appealed a removal.

Amended by R.2001 d.424, effective November 19, 2001.
See: 33 N.J.R. 2725(a), 33 N.J.R. 3280(a), 33 N.J.R. 3895(a).
Rewrote (a) and (c); added new (d) through (g), and recodified existing (d) and (e) as (h) and (i).
Special amendment, R.2009 d.221, effective June 10, 2009 (to expire July 1, 2010).
See: 41 N.J.R. 2720(a).
Substituted "Civil Service Commission" for "Merit System Board" and "Commission" for "Board" throughout; and added (j).
In accordance with N.J.S.A. 52:14B-5.1c, special amendment R.2009 d.221 expires on December 28, 2010.
See: 42 N.J.R. 693(a).

Case Notes

After considering both N.J.A.C. 4A:2-2.12(e) and N.J. Ct. R. Prof. Conduct 1.5(a), counsel for an official at a mental health residential facility was entitled to an hourly fee of $250, given the complexity of the case and the amount of skill required to adequately represent his client, who was subject to discipline for failing to develop an intervention plan to deal with a patient's behavioral disorder, and that patient died, as counsel had to be alert to the potential implications for his client of the testimony put forth by each of the various witnesses; further, the court did not think it could seriously be disputed that attorneys of a similar background and experience as counsel herein would customarily charge an equivalent or greater amount for their services in this type of case. In re Malone, 381 N.J. Super. 344, 886 A.2d 181, 2005 N.J. Super. LEXIS 340 (App.Div. 2005).

Merit System Board had the statutory authority to make an award to township police officer for counsel fees incurred in connection with police department hearing which had preceded officer's appeal to the Merit System Board, regarding officer's claim for reinstatement; the departmental hearing was an integral part of the civil service process. Burris v. Police Department, Township of West Orange, 769 A.2d 1112 (2001).

Regulation mandating the award of counsel fees was intended to apply in cases where disciplinary charges did not arise out of employee's lawful exercise of powers in furtherance of official duties. Marjarum v. Township of Hamilton, 336 N.J.Super. 85 (A.D. 2001).

Statute and its accompanying regulation, allowing Merit System Board to award fees to employee who has prevailed on all or substantially all of the primary issues, authorized fee award to police officer. Oches v. Township of Middletown Police Dept., 155 N.J. 1, 713 A.2d 993 (N.J. 1998).

Municipal employee whose removal was mitigated to six-month suspension by Merit System Board was not entitled to award of counsel fees as prevailing party under regulation. Walcott v. City of Plainfield, 282 N.J.Super. 121, 659 A.2d 532 (A.D.1995).

Initial Decision (2008 N.J. AGEN LEXIS 613) adopted, which concluded that while the appointing authority had withdrawn some of the charges against a township police officer, the Merit System Board had sustained the other serious charges against the officer resulting in his removal from office, and the officer's request for counsel fees lacked merit since he had not prevailed on all or substantially all of the primary issues of his appeal. In re Hawkins, OAL Dkt. No. CSV 4469-05, 2008 N.J. AGEN LEXIS 1222, Final Decision (December 3, 2008).

Correction officer was not entitled to counsel fees although the penalty against the officer was modified from removal to a 60-day suspension; the officer did not prevail on all or substantially all of the primary issues in the appeal because two of the charges against the officer were sustained and major discipline was imposed. In re Pettiford, OAL Dkt. No. CSV 8801-07, 2008 N.J. AGEN LEXIS 719, Merit System Board Decision (May 21, 2008).

Employee was entitled to an award of partial counsel fees where she prevailed on one of two charges against her, including an allegation of conduct unbecoming a public employee; the remaining charge of neglect of duty for failure to place $5 in the proper place was not egregious. In

re Payton, OAL Dkt. No. CSV 7740-05, 2007 N.J. AGEN LEXIS 1168, Merit System Board Decision (January 17, 2007).

Charge of possession of controlled, dangerous substance was not supported by credible evidence and required public employee's reinstatement after removal. Ramos v. Department of Corrections, 95 N.J.A.R.2d (CSV) 413.

Removal of plant operator not justified; charges against him were indefinite and inconsistent with job requirements. Onori v. City of Burlington Department of Public Works, 95 N.J.A.R.2d (CSV) 53.

Police officer was entitled to reimbursement of the expenses of his defense when allegations against the officer were dismissed. Black v. Lakehurst Borough Police Department, 94 N.J.A.R.2d (CSV) 35.

Reasonable and partial attorney fee award. Gill v. State Dept. of Health, 92 N.J.A.R.2d (CSV) 142.

Reprimand and ten days' suspension would be reversed and attorney fees would be awarded. Neal v. Police Dept., City of New Brunswick, 92 N.J.A.R.2d (CSV) 52.

Officer was entitled to unmitigated back pay but was not entitled to attorney fees or interest. N.J.S.A. 11A:11-5. Franklin v. City of Atlantic City, 91 N.J.A.R.2d (CSV) 71.

Appellant, removed from employment and later reinstated with back pay, denied counsel fees; appellant entitled to award of 30 vacation days (citing former N.J.A.C. 4:1-5.6). Harrington v. Dep't. of Human Services, 11 N.J.A.R. 537 (1989).

4A:2-2.13 Removal appeals of certain law enforcement officers and firefighters

(a) For purposes of this section:

1. "Law enforcement officer" or "officer" is defined as an individual employed as a permanent, full-time member of a State, county, or municipal law enforcement agency who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State and statutorily required to successfully complete a training course approved by, or certified as substantially equivalent to such an approved course, by the Police Training Commission. See N.J.S.A. 52:17B-66 et seq. With the exception of the Juvenile Justice Commission, which is covered by this definition, the Department of Law and Public Safety shall not be considered a law enforcement agency for purposes of this definition.

2. "Firefighter" is defined as a full-time, paid firefighter employed by a public fire department as provided in N.J.S.A. 40A:14-200.

3. "Appellant" refers to a "law enforcement officer" or "firefighter" as defined in (a)1 and 2 above.

4. "Removal," "removal date," "and "removal effective date" shall mean the first date on which the law enforcement officer or firefighter is separated from employment without pay.

(b) If the law enforcement officer or firefighter requests a departmental hearing regarding his or her removal in accordance with N.J.A.C. 4A:2-2.5, the appointing authority shall conduct a hearing within 30 days of the removal's effective date, unless:

1. The officer or firefighter agrees to waive his or her right to the hearing; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Appeals shall include:

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

2. Written argument and documentation.

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

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

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

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

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

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
In (f): Revised text to specify employee's responsibilities in presenting issues in appeals.
Added 1. and 2. regarding burden of proof.

SUBCHAPTER 4. TERMINATION AT END OF WORKING TEST PERIOD

4A:2-4.1 Notice of termination

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

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

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

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

Case Notes

New four-month working test period was granted in the title of Assistant District Parole Supervisor based on the totality of the circumstances, including the employee's satisfactory performance during the majority of the working test period and the lack of opportunity to remedy performance deficiencies brought to the employee's attention during the latter part of the working test period; the procedural irregularity caused by the fact that the working test period start date was not the same as the regular appointment date was not enough to justify granting permanent status to the employee under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Merit System Board directed the Division of Human Resource Information Services to reevaluate its practice of approving regular appointment dates that were not consistent with working test period start dates, resulting in uncertainties concerning the ending date of an employee's working test period and the time within which notice must be served under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Release at end of working test period appropriate absent employer's bad faith. Brown v. State Department of Education, 97 N.J.A.R.2d (CSV) 537.

Employee properly released at the end of working test period if poor performance assessment made in good faith. Murry v. Geraldine L. Thompson Medical Home, 97 N.J.A.R.2d (CSV) 371.

Employee's unsatisfactory performance during working test period warrants removal. Tassoni v. County of Cape May, 97 N.J.A.R.2d (CSV) 248.

Employee receiving poor evaluations terminated at end of working test period for failing to improve. Raffa v. County of Cape May, 97 N.J.A.R.2d (CSV) 203.

Employee terminated at end of working test period entitled to reinstatement if termination based on insufficient evaluations. Polk v. City of Camden Utilities Department, 97 N.J.A.R.2d (CSV) 163.

Park ranger's refusal to clean up park during working test period justifies termination. Heim v. Monmouth County, Department of Parks, 97 N.J.A.R.2d (CSV) 143.

Employee's abandonment of position during working test period justifies termination. Kilpatrick v. Department of Community Affairs, 97 N.J.A.R.2d (CSV) 115.

Release of public works employee at end of working test period is justified if agency's opinion that employee has performed in unsatisfactory manner was formed in good faith. Raymond v. Trenton Department of Public Works, 97 N.J.A.R.2d (CSV) 52.

Examining physician's prospective opinion as to corrections officer's future unfitness was insufficient to preclude officer's entrance into police training program. Farrar v. Passaic County Sheriff's Department, 96 N.J.A.R.2d (CSV) 780.

Excessive absenteeism during probationary period justified termination of employee. Harris v. Northern State Prison, 96 N.J.A.R.2d (CSV) 596.

County laborer's tardiness and absences justified termination at the end of the working test period. Woodburn v. Ocean County Department of Roads, 96 N.J.A.R.2d (CSV) 387.

Unsatisfactory performance justified release of county corrections officer following working test period. Walker v. Camden County Sheriff's Department, 96 N.J.A.R.2d (CSV) 295.

Unsatisfactory performance reviews justify county inspector's termination at end of working test period. Plummer v. Monmouth County Department of Buildings and Grounds, 96 N.J.A.R.2d (CSV) 129.

State human services department technician released following inadequate performance following working test period. Patel v. State Department of Human Services, 96 N.J.A.R.2d (CSV) 126.

County's removal of communications operator at end of working test period justified where operator's performance unsatisfactory and operator failed to show county acted in bad faith. Ball v. Burlington County, 96 N.J.A.R.2d (CSV) 33.

County social services board's good faith in evaluating income maintenance technician's performance justifies release after working test period. Chandiramani v. Bergen County Board of Social Services, 96 N.J.A.R.2d (CSV) 12.

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.

Release of income maintenance technician trainee after working test period was not in bad faith. Montesi v. Burlington County, 95 N.J.A.R.2d (CSV) 404.

Appellant failed to show that employer (Newark Free Public Library) acted in bad faith in denying her a fair evaluation of her work performance and releasing her at the end of her working test period based on claim that her services were unsatisfactory (citing former N.J.A.C. 4:1-13.7). Davis v. Newark Public Library, 9 N.J.A.R. 84 (1987).

4A:2-4.2 Time for appeal

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

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

Case Notes

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

4A:2-4.3 Board hearing

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

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

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

Case Notes

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 unsatisfactory 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 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 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).

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 (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).

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).

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 Pyschiatric 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.

(e) Where the resignation is reversed, the employee shall be entitled to remedies under N.J.A.C. 4A:2-2.10.

(f) The appointing authority or the Board may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.

Public Notice on Resignation not in good standing.
See: 22 N.J.R. 3407(b).
Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Revised (b)-(c).

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 847) adopted, which concluded that a city laborer was deemed to have abandoned his position when he was absent for more than five consecutive business days, and his absenteeism and lateness was chronic and excessive; the laborer was absent from work 22 times, late to work 11 times, failed to call in to work 2 times, and was also absent more than 19 consecutive days when he was incarcerated in a drug rehabilitation program, but never informed anyone. In re Mickens, OAL Dkt. No. CSV 07248-08, 2008 N.J. AGEN LEXIS 1206, Final Decision (November 6, 2008).

While appointing authority met its burden in establishing that a secretarial assistant 1 (non-stenographic) failed to return to work for five or more consecutive days after an approved leave of absence following her carpal tunnel surgery, discipline of a resignation not in good standing was modified to a 15-day suspension where there was a complete breakdown of communication between the employee and the appointing authority. The employee's supervisor failed to return the employee's calls, did not contact the employee when she failed to return to work, and did not communicate to the employee that a light duty plan was developed for her. The employee failed to state her needs to her supervisor, failed to find out if light duty was available and the details of any such accommodation, and failed to be more diligent in contacting the appointing authority with her medical needs and requirements. In re Cannuli, OAL Dkt. No. CSV 4533-07, 2008 N.J. AGEN LEXIS 1059, Civil Service Comm'n Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 220) adopted, which concluded that a licensed practical nurse (LPN) was properly terminated under the designation of resignation not in good standing based on unauthorized absenteeism for five or more days, pursuant to N.J.A.C. 4A:2-6.2; the LPN had previously been disciplined numerous times for

absenteeism, and in this instance the chronic absences critically affected the infirmary's ability to function. In re Uhland, OAL Dkt. No. CSV 08226-02, 2008 N.J. AGEN LEXIS 583, Final Decision (April 23, 2008).

Resignation not in good standing was the proper disciplinary action after an employee failed to report to work for four consecutive days due to his incarceration; the appointing authority was under no obligation to provide the employee with a leave for incarceration (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 52). In re Hidalgo, OAL Dkt. No. CSV 4029-07 (CSV 6712-06 On Remand), 2008 N.J. AGEN LEXIS 1433, Final Decision (March 12, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 666) adopted, which concluded that a psychiatric hospital employee's conduct fell within the definition of a resignation not in good standing under N.J.A.C. 4A:2-6.2(c) because whatever the employee believed about the length of her leave, she filed two sets of papers putting the end date prior to her return, did not go to the doctor until after the day she said she thought she was due back at work, and delayed several weeks in filing documentation that might have affected the hospital's willingness to take her back; however, balancing the need for adequate staffing in the facility with the employee's lack of prior discipline, a 90-day suspension rather than resignation was warranted. In re Bazile, OAL Dkt. No. CSV 00478-07, Final Decision (November 21, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 374) adopted, which concluded that a sanitation employee who was familiar with the process of requesting a leave extension, having done so on two prior occasions, was properly removed. While the director approved the extension, it was clear that the director's approval was only the initial step in the approval process and that the ultimate approval was denied until the employee supplied certain required documentation; the employee failed to provide such documentation as was clearly provided for in the notice and which was further required pursuant to a telephone conversation with the clerk. In re Braswell, OAL Dkt. No. CSV 09148-06, 2007 N.J. AGEN LEXIS 1178, Final Decision (August 15, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 275) adopted, which concluded that resignation not in good standing was warranted for a senior corrections officer who was absent for an extended time period in February after having exhausted sick leave; the ALJ found, based in part on credibility assessments, that the absences were without authorization. The officer had previous warnings and fines for excessive absenteeism. Given the dependence on manpower to maintain order and discipline at a correctional facility, it is imperative that correction officers be available for duty. In re Novielli, OAL Dkt. No. CSV 03981-06, Final Decision (May 7, 2007), aff'd per curiam, No. A-5890-06T2, 2009 N.J. Super. Unpub. LEXIS 350 (App.Div. February 24, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 43) adopted, which concluded that a laborer was improperly removed for unauthorized excessive absenteeism, including two incremental five working day consecutive periods, where the county failed to impose progressive discipline prior to termination. In re Porter, OAL Dkt. No. CSV 1146-06, 2007 N.J. AGEN LEXIS 347, Merit System Board Decision (March 16, 2007).

Lifeguard abandoned his position pursuant to N.J.A.C. 4A:2-6.2(b), which was properly recorded as a resignation in good standing. Based on an assessment of the medical evidence, the ALJ rejected the employee's argument that his absence was justified because he did not have the physical capacity to return to work. In re Harris, OAL Dkt. No. CSV 03968-05, 2006 N.J. AGEN LEXIS 797, Initial Decision (September 25, 2006), adopted (Merit System Board November 11, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 921) adopted, which found that because the duties and responsibilities of a Human Services Assistant are of great public importance, the appointing authority was within its right to deny an assistant's request for an indefinite leave of absence; however, because the assistant's illness was what prevented him from returning to work after a temporary unpaid leave of absence, the harsh consequence of a resignation not in good standing, which would have precluded the assistant from seeking future public employment, was modified to a resignation in good standing from his position. In re Taylor, OAL Dkt. No. CSV 2842-05, 2006 N.J. AGEN LEXIS 102, Final Decision (January 11, 2006).

Resignation pursuant to valid settlement agreement affirmed. Fuller v. New Jersey Department of Environmental Protection, 97 N.J.A.R.2d (CSV) 688.

Employee offering medical evidence for leave of absence defeats employer's resignation not in good standing action. Wright v. Burlington County Juvenile Detention Center, 97 N.J.A.R.2d (CSV) 555.

Storekeeper's abandonment of position justifies resignation not in good standing. Aikens v. Riverfront State Prison, 97 N.J.A.R.2d (CSV) 422.

Employee's unreliable work history and absence without approval justifies employer's resignation not in good standing. Roberts v. Thomas Edison State College, 97 N.J.A.R.2d (CSV) 382.

Progressive discipline supports suspension over resignation not in good standing when employee fails to report for duty. Hargis v. Forensic Psychiatric Hospital, 97 N.J.A.R.2d (CSV) 335.

Unreasonable denial of medical leave precludes employer's removal action for abandoning position. Gilmore v. Veteran's Memorial Home, 97 N.J.A.R.2d (CSV) 332.

Practical nurse's resignation not in good standing for job abandonment modified to resignation in good standing. Miles v. Woodbridge Developmental Center, 97 N.J.A.R.2d (CSV) 222.

Resignation not in good standing for absence from duty modified to resignation in good standing. Bogar v. Department of Human Resources, 97 N.J.A.R.2d (CSV) 189.

Removal of laborer for abandonment of position modified to resignation in good standing. Niosi v. Department of Public Works, 97 N.J.A.R.2d (CSV) 161.

Nurse's refusal to work due to unsubstantiated knee injury justified implied resignation not in good standing. Gregg v. Woodbine Developmental Center, 96 N.J.A.R.2d (CSV) 594.

Clerk who failed to provide timely medical documentation for extension of medical leave resigned not in good standing. Littlejohn v. Division of Medical Assistance and Health Services, 96 N.J.A.R.2d (CSV) 471.