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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4850-15T2

IN THE MATTER OF TELINA HAIRSTON,
CITY OF EAST ORANGE POLICE DEPARTMENT.

Submitted August 30, 2017 – Decided September 7, 2017

Before Judges Rothstadt and Vernoia.

On appeal from the New Jersey Civil Service
Commission, Docket No. 7114-15.

Weiner Law Group, LLP, attorneys for appellant
City of East Orange Police Department (Mark
A. Tabakin, of counsel; Patricia C. Melia, on
the briefs).

Caruso Smith Picini, PC, attorneys for
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brief).

Christopher S. Porrino, Attorney General,
attorney for respondent Civil Service
Commission (Pamela N. Ullman, Deputy Attorney
General, on the statement in lieu of brief).

PER CURIAM

The City of East Orange Police Department appeals the Civil Service Commission's final agency decision reversing the City's 100 calendar day suspension of police officer Telina Hairston.

The Commission adopted an administrative law judge's determination that a reversal of the suspension was required because the City failed to file its disciplinary complaint against Hairston within the forty-five day time period required by N.J.S.A. 40A:14-147. We vacate the Commission's decision and remand for further proceedings.

The incident giving rise to the disciplinary action against Hairston occurred on December 28, 2013, when the police department experienced a high volume of emergencies and had too few officers on duty. To address the shortage of officers, Hairston was ordered to continue working beyond her scheduled 8:00 a.m. to 4:00 p.m. shift. She refused the order, alleging she could not continue to work because she was required to attend to her children at her home. Hairston reported she was sick and left work at approximately 7:00 p.m.

Later that evening, Hairston went to a birthday party at a hotel. Other police officers who also attended the party reported seeing Hairston there to the police department.

The department's Professional Standards Unit conducted an investigation of Hairston's refusal to comply with the order to continue working, her claim she could not work because she was required to care for her children, her report of being sick, and

her attendance at the party. The Unit issued a May 12, 2014 investigative report to the Chief of Police.

On June 26, 2014, the police department issued a preliminary notice of disciplinary action (PNDA) charging that on December 28, 2013, Hairston willfully refused a direct order, neglected her duties, and "reported out of duty due to illness knowing she was not ill." The PNDA also alleged Hairston violated a March 24, 2014 "Last Chance Agreement" between her and the City, and charged Hairston with violating department rules, regulations and a general order. It also cited Hairston for violating N.J.A.C. 4A:2-2.3(a)(12), which permits the imposition of discipline for "[o]ther sufficient cause." The PNDA advised Hairston that the City might take action to suspend her for 180 working days or remove her from her position.

Hairston filed a motion with the Commission requesting dismissal of the portion of the PNDA charging her with violating the Last Chance Agreement. In a December 19, 2014 decision and order, the Commission granted Hairston's motion and directed the City "to amend the [June 26, 2014] PNDA and delete any reference to the 'Last Chance Agreement.'"

In accordance with the Commission's order, on January 8, 2015, the City filed an amended PNDA, deleting only the charge alleging a violation of the Last Chance Agreement, and reducing

the potential suspension period from 180 to 100 days. The amended PNDA otherwise asserted charges identical to those in the original June 26, 2014 PNDA.

A City hearing officer sustained the charges and determined Hairston should be suspended for 100 days. The City subsequently issued a final notice of disciplinary action implementing the 100-day suspension. Hairston appealed to the Commission.

Following an evidentiary hearing, an administrative law judge issued a written initial decision reversing the 100-day suspension. The judge found Hairston was insubordinate by failing to comply with a direct order to continue working, committed neglect of duty by invoking sick leave when she was not ill, and violated the department's rules and regulations prohibiting malingering by feigning illness to avoid performing her duties. The judge also found Hairston violated the City's sick leave policy.

Nevertheless, the judge dismissed the charges against Hairston, finding the City failed to file the charges within the forty-five day period required under N.J.S.A. 40A:14-147. Noting the statute requires that charges be filed within forty-five days of the time the department "obtain[s] sufficient information to file the matter upon which the complaint is based," N.J.S.A. 40A:14-147, the judge observed that the Professional Services Unit

investigation report was completed on May 12, 2014, and found the charges were not filed until January 2015. The judge dismissed the charges, finding they were not filed within the statute's forty-five day deadline, and entered an order reversing the 100-day suspension.

The City filed exceptions to the judge's initial decision and order with the Commission,¹ but the Commission never directly considered them. A lack of a quorum caused multiple adjournments, but the Commission ultimately adopted by default the judge's initial decision as its final agency decision in accordance with N.J.S.A. 52:14B-10(c), and awarded Hairston counsel fees pursuant to N.J.A.C. 4A:2-2.12. This appeal followed.

Our review of an agency's decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). We "afford[] a 'strong presumption of reasonableness' to an administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting City of Newark v. Nat. Res. Council, Dep't of Env'tl. Prot., 82 N.J. 530, 539, cert. denied, 449 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 245 (1980)). A reviewing court "should not disturb an administrative agency's

¹ Hairston did not file any exceptions to the judge's findings that she committed the offenses charged in the final notice of disciplinary action.

determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). The party challenging the agency's action has the burden of proving that the action was arbitrary, capricious, or unreasonable. Lavezzi, supra, 219 N.J. at 171.

Here, the Commission's determination that the charges were filed beyond the time permitted by N.J.S.A. 40A:14-147 was based on the erroneous finding that the charges were first filed on January 8, 2015. That was simply not the case. The record establishes the charges were first filed on June 26, 2014.² Indeed, Hairston filed a motion challenging the inclusion of the Last Chance Agreement charge in the June 26, 2014 PNDA, and the Commission, in its December 19, 2014 decision on the motion, found the charges were first filed on June 26, 2014. Of course, Hairston could not have filed a motion in 2014 challenging charges that had not yet been filed, and the Commission could not have issued a decision in December 2014 concerning charges that were first filed one month later in January 2015. Nor could the Commission have

² Hairston does not dispute that the original charges were first filed on June 26, 2014.

directed in December 2014 that the City amend charges that had not been previously filed.

The Commission's dismissal of the charges based on the finding they were first filed in January 2015 is not supported by the record and, for the reasons stated, contradicts the Commission's prior factual findings and decision. The Commission therefore erred in concluding the charges were time-barred under N.J.S.A. 40A:14-147.

Hairston contends the Commission's determination was proper because the City failed to introduce the June 26, 2014 PNDA into evidence. She argues that because only the January 2015 PNDA was introduced into evidence, the record supports the Commission's determination that the charges were first filed in 2015. We are not persuaded. Hairston ignores that she filed a motion in 2014 challenging the charges contained in the June 26, 2014 PNDA and, as such, is fully aware the original charges were filed on June 26, 2014.

Moreover, there was no requirement that the June 26, 2014 PNDA be introduced into evidence. The Commission had already determined in its December 19, 2014 decision and order that the charges were first filed on June 26, 2014. We are satisfied the administrative law judge and Commission erred by ignoring the Commission's prior determination that the charges were filed on

June 26, 2014, and finding the charges were time-barred under N.J.S.A. 40A:14-147.

We do not, however, reverse the Commission's final agency decision. Hairston's challenge to the timeliness of the charges requires a determination as to when the department obtained sufficient information to file the June 26, 2014 PNDA. See N.J.S.A. 40A:14-147; Grubb v. Borough of Hightstown, 331 N.J. Super. 398, 405 (Law Div. 2000) (holding that "a violation of the internal rules and regulations established for the conduct of a law enforcement unit," N.J.S.A. 40A:14-147, must be filed within forty-five days "after the date on which the department obtain[ed] 'sufficient information' to file the complaint"), aff'd, 353 N.J. Super. 333 (App. Div. 2002). Although the Commission erred in finding the charges were first filed in January 2015 and incorrectly dismissed the charges on that basis, the record is inadequate to permit a determination as to whether the charges were otherwise timely filed under N.J.S.A. 40A:14-147.

The City contends that sufficient information to file the PNDA was first supplied with the Professional Standards Unit's May 12, 2014 report. Hairston argues the City had sufficient information prior to the issuance of the report. The disagreement presents factual disputes that must be decided in the first

instance by the Commission after the development of an evidentiary record.


The City correctly states that the forty-five day deadline applies only to charges alleging violations of the department's "internal rules and regulations." N.J.S.A. 40A:14-147. The PNDA alleges violations of the department's rules and regulations, but also charges there is "other sufficient cause" for the imposition of discipline. See N.J.A.C. 4A:2-2.3(a)(12). We agree the separate charge alleging "other sufficient cause" for the imposition of discipline is not subject to the time-bar under N.J.S.A. 40A:14-147. The Commission erred in finding otherwise. We also observe that neither the administrative law judge nor the Commission made a separate determination on that charge. On remand, they shall do so.

We are therefore constrained to vacate the final agency decision in its entirety and remand for a determination as to whether those portions of the June 26, 2014 charges (as amended in January 2015), alleging a violation of the department's rules and regulations were timely under N.J.S.A. 40A:14-147. The Commission shall also determine and make findings as to whether the department proved there was "other sufficient cause" for the imposition of discipline. If it is determined that the rules and regulations charges were timely, or that there was other sufficient

cause for the imposition of discipline, the Commission shall determine if the discipline imposed was appropriate. Any determination by the Commission on an award of attorney's fees shall abide its decisions on the other issues on remand.

We vacate the final agency decision and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION