

KAY PARLOW,
Appellant,
v.
TOWNSHIP OF EDGEWATER PARK,
Respondent.

Initial Decision: June 7, 1982 Final Agency Decision: July 23, 1982

Superior Court, Appellate Division Decision Appears at: 192 *N.J. Super.* 247 (1983)

SYNOPSIS

Appellant contests respondent's determination to terminate her from employment based upon a charge of insubordination. Upon appeal to the Civil Service Commission, the matter was transferred to an administrative law judge.

The administrative law judge found that appellant had been assigned as a clerk typist with the Police Department and as a secretary to the local planning board. The judge found that appellant had refused to perform routine clerical duties during normal business hours on behalf of the board which constituted insubordination and warranted her dismissal.

Upon review, the Civil Service Commission reduced that portion of the initial decision recommending dismissal to a written reprimand based upon appellant's lack of any prior disciplinary problem.

John Sweeney, Esq. for appellant

Ernest Sever, Esq. for respondent

Initial Decision

WIZMUR, ALJ:

Appellant seeks relief from the determination of the Township of Edgewater Park to terminate her from her employment as a clerk typist with the Township. Respondent's basis for the termination was a finding that the appellant had failed to follow a direct order and had committed insubordination. *N.J.A.C.* 4:1-16.9.

PROCEDURAL HISTORY

This matter was initiated by an appeal from a Final Notice of Disciplinary Action, dated June 29, 1981, issued on behalf of the

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Township of Edgewater Park and directed to appellant. The notice stated that appellant's employment was terminated effective May 13, 1981. By letter, dated May 15, 1981, appellant requested a hearing. At its meeting on July 28, 1981, the Civil Service Commission directed that a hearing be held. The matter was subsequently transmitted to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.* A hearing was held on April 22, 1982.

FACTS

The essential facts are not disputed and may be summarized as follows:

Appellant was employed as a clerk typist with the Township and returned from a leave of absence on September 8, 1980. On that date, she was assigned by the township administrator to perform clerk typist duties in the Police Department under the supervision of the chief of police. Her duties included typing transcripts and police reports, filing, answering the telephone and other miscellaneous office duties. In addition, appellant was assigned to perform the duties of secretary to the Zoning Board of Adjustment and the Planning Board. Her duties for that assignment included supplying application forms, receiving applications for review by the zoning officer, filing, preparing agendas and correspondence for Board members, giving routine information, typing minutes of Board meetings and signing plans in the capacity of secretary to the Zoning and Planning Boards. Also required of appellant was attendance at evening meetings of the Boards twice a month in order to operate the recording system and to take minutes. During the period in question (September 8, 1980 through March 31, 1981), appellant was not appointed formally by either the Planning Board or the Zoning Board to fulfill the responsibilities of the position of secretary to each respective Board.

Appellant was instructed to fulfill her responsibility to both assignments by spending approximately one hour per day attending to the business of the two Boards and spending the remainder of the day at the Police Department. Appellant was accustomed to spending the first hour of the day at the Planning and Zoning Board office.

For her attendance at evening sessions, respondent was paid \$55 per month (\$27.50 for each session). However, from September 1980 through March 1981, she attended and served as secretary at only one Planning Board session, held in January 1981. The first evening session following appellant's return from her leave of absence was scheduled for September 25, 1980. By letter, dated September 24,

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1980, appellant advised the chairman of the Planning Board (also the township administrator) that she would not be able to attend the meeting because of babysitting problems. The township administrator excused appellant for the following day, but indicated that appellant would be required to "make arrangement for the care of your son in the future." The next meeting of the Planning Board, scheduled for October 23, 1980, was also preceded by a note from appellant indicating that she had both car and babysitting problems and could not attend. The response from the township administrator indicated that he could not excuse her from the Planning Board meeting and that he would arrange for transportation for her to the meeting. Appellant did not attend the meeting.

The only other specific information with regard to evening meetings presented at the hearing was a note dated March 25, 1981, from the township manager, addressed to appellant, requesting appellant's presence at the March 26 Planning Board meeting and instructing appellant that if she refused to attend she should advise the administrator. Appellant's response was that she was "made aware that Ms. VanBrunt was told to attend. My presence, therefore, not necessary." In fact, appellant did not attend the evening session.

Sometime between March 26 and March 31, 1981, the township administrator instructed the person in charge of payroll for the Township not to issue to appellant her monthly check for attendance at evening meetings. On March 31, 1981, appellant was informed of the administrator's instructions, and she wrote a letter to him stating that "in light of your recent action, I am hereby advising you that the only duties I will be performing will be clerk typist duties in the Police Department." Upon receiving appellant's note, the township administrator requested that she come to his office, which she did. In the presence of several witnesses, the township administrator ordered appellant to perform the administrative duties of secretary to the Zoning and Planning Boards. Appellant's response was "I refuse." The administrator then simply stated "You are fired." The on-the-spot termination of appellant's employment was later amended to a suspension pending final hearing in the matter, to comport with Civil Service requirements.

I hereby adopt the recitation of events set forth above as my undisputed Findings of Fact.

Some difference of opinion was voiced by the parties on the issue of whether the two jobs of clerk typist in the Police Department and secretary to the Zoning and Planning Boards could be performed by one person. It was the opinion of the township administrator that

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both jobs could be done by one person. He stated that one person was actually performing both jobs at the present time. He acknowledged that there was some backlog in the Police Department on September 8, 1981, when appellant returned from her leave of absence, but indicated that the backlog was due to the fact that the position had been vacant for approximately four months. The administrator stated further that appellant never complained to him about the amount of work involved in performing both functions.

An opposite view was offered by the chief of police, who testified that there was "too much work" in the Police Department alone to enable one person to undertake additional duties. He stated that although appellant was generally caught up with her work, "there was always something to do." He added that appellant had complained to him about the excessive amount of work. He claimed that the Police Department was "overworked and understaffed" and "always has been."

DISCUSSION

The focus of the inquiry must be appellant's refusal, on March 31, 1981, to perform secretarial tasks on behalf of the Planning and Zoning Boards. While the history of appellant's failure to attend evening meetings of the Boards as ordered is instructive to provide background, I need not decide whether the Township is correct in its assertion that an employee may be ordered to attend evening sessions as a part of his or her employment with the Township. On March 31, 1981, appellant was directed by the township administrator to perform routine clerical duties during normal business hours on behalf of the Boards. Appellant flatly refused to do so. Appellant testified that her understanding of the township administrator's order, at the meeting of March 31, 1981, required her to perform all of the duties of secretary to the Boards, including attendance at evening sessions. There is no testimony in the record to indicate that attendance at evening meetings was discussed. In fact, the township clerk, who witnessed the meeting between the township administrator and appellant, specifically stated that she recalled no reference made during the short meeting to appellant's attendance at nightly sessions of the Boards.

Among the reasons appellant expressed for refusing to perform functions other than clerk typist duties in the Police Department was appellant's assessment that the time she spent performing administrative duties for the Boards was "a waste of time," particularly in light

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of the many duties she was responsible for in the Police Department and the occasional backlogs that developed, ostensibly due at least partially to the fragmentation of appellant's time between her two assignments. Appellant's assessment was bolstered by the testimony of the chief of police, who explained that appellant's absence from the Police Department during a specified period every day created problems and was "messing up police operations." For instance, if appellant was typing confidential information and was not able to complete it by the time she was required to tend to her other administrative duties, she was compelled to leave the material out and to compromise the need for confidentiality. Notwithstanding problems which may have arisen by reason of the dual assignment, it is fundamental that appellant did not possess the right to decide, based on her own assessment of efficiency, that an assigned task was "a waste of time" and to control her work assignment. The Township must maintain and exercise maximum managerial flexibility in assigning Township employees to areas as needed, as long as the assigned tasks are within the job description of the employee's title. No serious contention has been made here that the tasks required of the appellant in the capacity of secretary to the Planning and Zoning Boards were beyond the scope of the job specifications of clerk typist.

I must reject appellant's argument that she had a right to refuse to perform the administrative tasks involved in serving as secretary to the Planning and Zoning Boards because the order included the performance of "unlawful acts." Appellant contends that because she was not formally appointed by either Board as secretary, as required by the applicable statutory and regulatory provisions, she was not authorized by law to undertake the responsibility of signing documents submitted to the Boards using the title of "secretary". Appellant testified that she received advice from her attorney that it was illegal for her to sign plans as "secretary." However, because she feared that she would be fired if she did not sign plans, she agreed to do so. Actually, during the entire period from September 1980 through March 1981, she was called upon on only one occasion to sign such plans.

The State statutes and the Township zoning ordinance are not altogether clear regarding the degree of formality necessary for the appointment of a secretary to each of the Boards. In pertinent part, *N.J.S.A.* 40:55D-24, detailing the organization of the Planning Board, provides that the Board "shall elect a chairman and vice-chairman . . . , select a secretary who may or may not be a member of

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the planning board or municipal employee, and create and fill such other offices as established by ordinance.” The same language is used in the organizational statute for the Zoning Board of Adjustment. *N.J.S.A.* 40:55D-69. It is noteworthy that the statutes require the election of a chairman and vice chairman and only the selection of a secretary, who may be a municipal employee. The Township zoning ordinance requires the selection of one of the members of the Zoning Board of Adjustment to serve as secretary to the Board “who with the administrative assistance of the Office of Licensing and Inspection shall cause the clerical duties of the board to be accomplished.” The ordinance suggests the recognition that the clerical duties of the Board would not be accomplished by the formally appointed secretary of the Board, but rather would be performed with the “administrative assistance” of the Office of Licensing and Inspection. Administrative assistance was precisely the role assigned to appellant. One obviously cannot assume that the performance of routine administrative duties on behalf of the Zoning Board requires formal appointment to the Board.

If appellant misunderstood the order of the township administrator directing her, on March 31, 1982, to perform clerical tasks in the Office of Licensing and Inspection, it was her obligation to clarify the situation. In her note to the administrator immediately prior to the meeting, appellant had made clear her refusal to perform any duties unrelated to the Police Department. Any confusion on appellant’s part that the administrator may have included in his order attendance at evening sessions of the Board or that she would be required to sign plans as “secretary” to the Boards when she was not legally and formally authorized to do so, should have been resolved with the administrator by appellant. However, both in the note written by appellant as well as during the meeting at which she was terminated, she appeared to be firm in her resolve to refuse to perform any clerical work related to either of the Boards.

I **CONCLUDE** that appellant’s refusal to perform her assignment constituted insubordination which warrants her removal from employment with the township. *N.J.A.C.* 4:1-16.9(a)4. I **ORDER** that the determination of the Township of Edgewater Park to terminate appellant from her employment as a Clerk Typist be **AFFIRMED**.

This initial decision may be affirmed, modified or rejected by the Civil Service Commission, which by law is empowered to make the final decision in this matter.

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FINAL DECISION BY THE CIVIL SERVICE COMMISSION:

The appeal of Kay Parlow, clerk typist, administrative and executive, Police Department, Township of Edgewater Park, removal effective May 13, 1981, on charges, was brought on for hearing before Administrative Law Judge Judith H. Wizmur, who rendered her recommended decision on June 7, 1982. Exceptions were filed by John A. Sweeney, Esq., on behalf of Ms. Parlow. No cross exceptions were filed.

Having considered the record and the administrative law judge's recommended decision issued thereon, and based upon the record herein, and having made an independent evaluation of the same, the Civil Service Commission at its meeting on July 6, 1982, modifies the action of the appointing authority and makes the following findings of fact:

1. Appellant, a clerk typist was assigned to the Police Department and in addition to her regular duties was directed to attend the evening meetings of the Zoning Board of Adjustment and the Planning Board and to perform other responsibilities for these Boards.
2. Appellant was justifiably apprehensive about performing these Board tasks since she was not appointed secretary to such Boards pursuant to *N.J.S.A.* 40:55D-24 and 40:55D-69.
3. Appellant was advised by her attorney that it was illegal for her to sign as secretary without having been officially designated.
4. Appellant notified the appointing authority of her concerns on several occasions.
5. The appointing authority was not responsive to appellant's concerns.
6. The appointing authority had options available to it, which could have relieved or prevented the situation; however, it took no such appropriate action.
7. Appellant was appointed on June 28, 1976 and had an unblemished work record.
8. Appellant was insubordinate on March 31, 1981.
9. The penalty imposed is disproportionate to the charges and situation.

The Civil Service Commission, upon review of the record presented, finds that appellant was insubordinate but that the circumstances at issue, the actions of the appointing authority and a review of appellant's prior disciplinary history establish that the penalty was totally disproportionate to the situation. Rather, the penalty is modified to a written reprimand.

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Appellant was a clerk typist assigned to the Police Department, who, in addition to her regular duties, was directed to attend the evening meetings of the Zoning Board of Adjustment and the Planning Board and to perform other responsibilities for these Boards. She was justifiably apprehensive about performing these Board tasks since she had not been appointed secretary to such Boards pursuant to *N.J.S.A.* 40:55D-24 and 40:55D-69. Appellant was also advised by her attorney that it was illegal for her to sign plans as "secretary" without having been officially designated. The fact that appellant was only called upon to sign plans on one occasion did not allay her fears, since she could be required to execute such matters at another time.

These concerns relating to the Board duties were relayed to the appointing authority on several occasions. However, her employer did not attempt, in any manner, to relieve her fears or take reasonable and necessary steps to resolve this situation. Rather, the appointing authority acted in an unresponsive and, at least from appellant's information and viewpoint, illegal manner by ordering her to attend the meetings and perform the secretarial duties for these Boards. After having stated her position to the appointing authority and receiving no consolation or explanation, the administrator ordered her to perform these duties. One day appellant refused to continue Board work and the appointing authority removed her on the spot. This last incident cannot be viewed in isolation and is a result of a work environment that deteriorated due to many factors. While appellant's conduct is not condoned, neither can we accept the Township's actions and behavior as conducive to proper management and its own conduct was the primary, if not controlling force, in this matter.

The festering problem over Board duties should have been resolved through legal advice from the Board or Township counsel, Civil Service job audits or other appropriate measures to settle the situation. We recognize the employee's plight, the hardening of positions and the "heat of the moment" which resulted in appellant's Board work refusal on the day of her removal.

In evaluating a proper penalty on its *de novo* review, this Commission considers, among other factors, an individual's past history of disciplinary sanctions. Additionally, the Commission utilizes, where appropriate, the concept of progressive discipline. Appellant's Civil Service employment record indicates that she was appointed on June 28, 1976 and had never been disciplined by the appointing authority. Thus, we are considering the appropriateness of the penalty to an

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employee of many years service who has an unblemished record of public service. It is also noted that, during the hearing, Chief of Police Joseph F. Baranoski testified in appellant's behalf stating that her work performance had been satisfactory. Additionally, the Commission recognizes that appellant never refused to perform work which was part of her normal assignment in the Police Department.

Based on the record and after careful consideration, the Civil Service Commission renders the following

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing appellant was not justified. The Commission, therefore, modifies the action of the appointing authority and orders that appellant be given an official written reprimand for insubordinate conduct.

The Commission further orders that appellant be granted back pay for the period of removal. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned by the appellant during this period. Proof of income loss shall be submitted to the appointing authority within 30 days from the receipt of this order. However, this time limit is directory, not mandatory. Additional time will be granted for good and sufficient reason upon request.