

A-7



STATE OF NEW JERSEY

In the Matter of Keith Layton
Ancora Psychiatric Hospital,
Department of Human Services

CSC DKT. NO. 2014-2108
OAL DKT. NO. CSV 03440-14

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**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

ISSUED: AUGUST 24, 2015 BW

The appeal of Keith Layton, Operator, Sewage and Water Treatment Plants, Ancora Psychiatric Hospital, Department of Human Services, removal effective October 12, 2012, on charges, was heard by Administrative Law Judge Sarah G. Crowley, who rendered her initial decision on July 14, 2015. Exceptions were filed on behalf of the appellant and reply to exceptions were filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on August 19, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

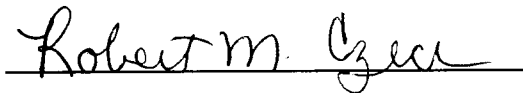
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Keith Layton.

Re: Keith Layton

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
AUGUST 19, 2015

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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P. O. Box 312
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 03440-14

AGENCY DKT. NO. 2014-2108

**IN THE MATTER OF KEITH LAYTON,
DEPARTMENT OF HUMAN SERVICES,
ANCORA PSYCHIATRIC HOSPITAL.**

Louis M. Barbone, Esq., for appellant Keith Layton (Jacobs & Barbone, P.A., attorneys)

Brian M. Scott, Deputy Attorney General, for respondent Department of Human Services (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Record Closed: June 9, 2015

Decided: July 14, 2015

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Keith Layton (appellant), a sewage and water treatment plant operator at Ancora Psychiatric Hospital (Ancora), appeals disciplinary action by the Department of Human Services (DHS) seeking his removal on charges of conduct unbecoming a public employee and other sufficient cause, specifically, leaving assigned work area, falsification, and theft of State property. The administrative charges stemmed from

criminal charges that were brought against appellant in October of 2012 as result of theft of materials from appellant's workplace. Appellant was placed on indefinite suspension pursuant to N.J.A.C. 4A:2-2.5(a)(2) on October 12, 2012, as he was charged with a fourth-degree crime occurring on the job or directly related to the job. A hearing related to the indefinite suspension was held on March 21, 2013, and a Final Notice of Disciplinary Action sustaining the indefinite suspension was issued on April 17, 2013.

After the criminal matter was concluded by way of appellant's entry into Pre-trial Intervention (PTI), an administrative investigation was conducted and an Amended Preliminary Notice of Disciplinary Action was issued on December 19, 2013, which charged appellant with conduct unbecoming and other sufficient cause, specifically, leaving assigned work area, falsification, and theft of State property. After a departmental hearing on January 23, 2014, the charges were sustained, and a Final Notice of Disciplinary Action seeking appellant's removal effective October 12, 2012, was issued on February 11, 2014. An appeal was filed and the matter was transmitted to the Office of Administrative Law, where it was filed as a contested case on March 21, 2014. N.J.S.A. 52:14F-1 to -13. A hearing was conducted on January 23, 2015, January 26, 2015, May 1, 2015, and May 7, 2015. The last post-hearing submission was received on June 9, 2015, and the record closed on that date.

TESTIMONY

For respondent

Officer John Stafford was a police officer with the DHS and was assigned to Ancora. He was employed in this capacity for fourteen years and retired in March of 2014. He was involved in the case involving Keith Layton and the theft of property (scrap metal) from Ancora. He testified that on October 7, 2012, he observed appellant come onto the grounds driving a grey pick-up truck. Appellant drove to the back of his office building, where Officer Stafford observed him place two plastic gas cans in a truck and drive off toward the gas tanks on the Ancora property. He followed appellant, and

observed him fill up the gas cans and drive towards the storage area. Officer Stafford identified a number of photographs of the area, where he observed appellant moving property with a State forklift.

On October 8, 2012, appellant came back to the grounds in a black pick-up truck and went behind his office building. Appellant was with another individual, whom Officer Stafford did not recognize, in a separate vehicle. After they left, Officer Stafford went behind the office and noticed that some iron storm collars and metal covers were missing. Officer Stafford contacted some local scrap-metal facilities to advise them to call him if appellant tried to sell any scrap metal to them. He testified that he received a call from the American Scrap Metal facility in Hamilton, NJ, just before 8:00 a.m., on October 8, 2012, advising him that appellant was there trying to sell scrap iron. They told him that appellant had already unloaded the metal from his pick-up truck and they were holding the ticket. Officer Stafford instructed them to hold the metal there, and he called the police, who met him at the American Scrap Metal site. Officer Stafford testified that he interviewed the owner of American Scrap Metal, who advised him that appellant had been coming there all year and had sold them scrap metal before. Officer Stafford also interviewed Robert Wright, who was the facility director at Ancora. Mr. Wright advised him that appellant had no authorization to take any materials from Ancora.

Video Interview of Keith Layton. The video interview of appellant by Officer Stafford was viewed in court. Appellant was read his rights, and he waived his right to an attorney and agreed to talk to Officer Stafford. Appellant maintained that everyone took things from Ancora, and that he did not know he was not supposed to take things. He never asked for and was never given permission to take any of the scrap that he took and sold. Appellant said he used the State forklift to get the metal from the woods to his truck. He stated that he had a friend that was helping him, but he did not want to give the friend's name. Appellant stated in the interview that he had not been to American Scrap Metal in "at least a year." However, when presented with some documents from Officer Stafford, he conceded that he had been there in January and again in March of that year. Appellant never said that a contractor had given him permission to take the scrap metal.

Robert Wright is a supervisor for general support services at Ancora. Prior to holding that position he was an engineer for Ancora. He was appellant's supervisor at the time of the incident that led to these charges. He testified that there was a report that items were missing from the yard, so they set-up surveillance. Officer Stafford was in charge of the surveillance. On October 8, 2012, he was called by Officer Stafford to find out if appellant was authorized to be moving materials, and he advised Officer Stafford that the appellant was not authorized. On October 8, 2012, Officer Stafford advised Mr. Wright that he had followed the appellant to a salvage yard with materials that appellant had removed from the storage areas at Ancora. The materials included manhole lids and rims. Mr. Wright discussed the construction that was occurring across the street from Ancora and the scope of the job at the old sewer plant. He testified that the old covers, rims, frames and piping were to be maintained for Ancora, and that the remainder of the scrap could be kept by the contractors. The contract for the construction across the street specifically excluded manhole covers and rims.

Mr. Wright testified that on the days that Officer Stafford observed the appellant moving scrap metal onto his truck and transporting it to the salvage yard, appellant was supposed to be working. On October 8, 2012, appellant reported working for eight hours, and he was paid for eight hours of work that day. It was a holiday, so he was paid at the overtime rate for all eight hours. He had no right to be moving materials, including any scrap metal, from the yard at 8:00 a.m. that day. He was supposed to be on site and was being paid to be on site. Wright testified that he did not have an inventory of what was in the yard before and after the alleged theft. However, Robert Gatti told him that he had picked up the manhole covers and rims from the site across the road and moved them to the yard. The next day they were gone from the yard.

John Gerigitan is the assistant engineer in charge of maintenance for Ancora. He reviewed the timesheets from appellant, and testified that the time records submitted on October 6, 7, and 8, 2012, stated that he worked overtime on these days. Appellant was responsible for certain things at the wastewater treatment facility, and although there were no special projects, he was not permitted to leave the grounds. He testified that the records indicated that on October 6, 2012, appellant signed in at 6:00 a.m. and signed out at 10:00 a.m., on October 7, 2012, he signed in at 7:00 a.m. and signed out

at 3:00 p.m.; on October 8, 2012, he signed in at 7:00 a.m. and signed out at 3:00 p.m. October 7, 2012, was a Sunday and October 8, 2012, was a holiday, so he was paid overtime for his hours on those days. Mr. Gerigitan testified that appellant signed and submitted all the time slips to be paid. He testified that he did not authorize appellant to leave his assigned work area on any of those specific days, nor did he authorize him to be in the storage area with the forklift. Finally, he testified that at no time did he ever authorize him to take any scrap materials from the Ancora property. He testified that there is not a punch clock, but an honor system, and the employees are to report the hours that they worked. With respect to flexibility on hours, he testified that appellant was required to be there between 6:00 a.m. and 7:00 a.m., and there was no flexibility with regard to leaving the job site, as someone had to be present on the grounds. Appellant had no authorization to leave the job site during the day, and he submitted time records and was paid for time when he was at the scrapyards selling scrap metal from Ancora.

Craig Farr is the employee relations coordinator for Ancora. He testified that he was familiar with the case and was involved with the original suspension and the subsequent disciplinary charges that were brought against appellant. Mr. Farr was aware that the police had done some type of surveillance and had caught appellant stealing scrap metal from Ancora, and that criminal charges had been brought. On October 12, 2012, appellant was served with a Preliminary Notice of Disciplinary Action, which sought his immediate suspension pending the outcome of the criminal matter. Mr. Farr testified that he viewed the video interview of appellant and the police report regarding the offenses for which he was charged. He also reviewed appellant's timesheets, and testified that appellant claimed to have been at work when he was selling scrap metal at American Salvage.

Mr. Farr testified that no other administrative charges were brought until after the criminal investigation was completed. After appellant had entered into the PTI program, Ancora conducted an administrative investigation and prepared an Amended Preliminary Notice of Disciplinary Action to include the underlying conduct, as well as falsification of the time records and leaving an assigned work station. This Amended Notice of Disciplinary Action was issued on December 19, 2013. Mr. Farr explained that

the original notice of discipline only pertained to a temporary suspension due to the pending criminal charges, and did not charge any specific administrative violations. The amended notice sought removal due to the severity of the underlying charges. He testified that this was appellant's fourth disciplinary charge, and, under the concept of progressive discipline, removal was appropriate. He testified that the subsequent administrative charges were not brought until after the criminal matter was resolved, and that this is the normal protocol, so that the administrative charges do not interfere with any criminal investigation that is being conducted.

Mr. Farr testified that the criminal matter was resolved in June of 2013 when appellant's application for PTI was granted. He said his office received a call from appellant in June of 2013 asking if the administrative charges would be dismissed for time served if the criminal matter were resolved. Mr. Farr testified that he returned the call and advised appellant that Ancora would not agree to that. He advised appellant that Ancora would conduct its own investigation into the matter and bring appropriate charges. After the internal investigation was completed, charges of conduct unbecoming a public employee and other sufficient cause were brought against appellant for his role in stealing scrap metal from Ancora, falsification of time records, and leaving the work site.

Mr. Farr testified with respect to the appellant's allegations that an agreement had been reached about giving him his job back after the criminal matter was concluded. He testified that he was on medical leave in April of 2013, when appellant claims to have spoken to Mr. Dillon, an administrative employee at Ancora. Mr. Farr testified that if there had been an agreement, a written settlement agreement would have been prepared and executed. He also testified that Ancora never would have agreed to return appellant to work before it did an internal investigation. Ancora might have discussed bringing him back pending the outcome of administrative charges if the criminal matter had been resolved. However, there was no such agreement, and Mr. Farr made this clear to appellant when they spoke on June 18, 2013.

Patrolman Rivera works for the Department of Human Services Police Department. He worked with Officer Stafford on the investigation at Ancora and the

arrest of appellant. He testified that Officer Stafford told him to report to him if he saw appellant or anything suspicious on the grounds. Patrolman Rivera testified that on October 7, 2012, at approximately 3:55 p.m., he observed appellant at the rear area of the Bayside Unit on a forklift. He saw him picking up something in the woods. He said he questioned appellant, and he told him he had permission from Joe Bailey to use the forklift. Patrolman Rivera notified Officer Stafford to report the activity.

For appellant

Clarence J. Mattioli, Jr., represented appellant in connection with the criminal charges that were brought against him for theft of movable property in October of 2012. He testified that he was not involved in the employment matter regarding the DHS. He said he had discussions with the Prosecutor's Office in Camden County about appellant entered into the PTI program. PTI is a program where individuals who don't have a prior criminal record and are charged with certain offenses enter into an agreement with the State, and if they stay out of trouble and meet certain conditions, the charges will be dismissed after a period of time. He recalled that he spoke to someone in April of 2013 about the possibility of appellant getting his job back. His recollection was that Mr. Dillon said that the appellant could be returned to work after the criminal matter was resolved. However, he never got anything in writing and he was not really familiar with employment law.

In June of 2013, before appellant signed the final PTI agreement in court, he called again to talk to the employer about appellant getting his job back. They never got any confirmation of this, or anything in writing, and he proceeded to execute the PTI agreement. Appellant entered into PTI to avoid the potential consequences of a guilty plea. Mr. Mattioli said they had discussed PTI with the Prosecutor's Office from the start, and he was not really involved in the employment aspect of it, but he does recall that it was important to appellant to try to get his job back.

Alan Renouf is employed at Ancora and is the Local 195 union representative. Appellant is a member of Local 195. Mr. Renouf helps the members when they are involved in disciplinary matters. He tries to settle matters, and when a matter settles,

the settlement is usually documented. He deals with the Employee Relations office, which is headed by Craig Farr. He testified that he represented appellant at the Loudermill hearing in October of 2012, where he was suspended indefinitely pending the outcome of the criminal matter. He testified that sometime in April of 2013, he spoke with Mr. Dillon about the appellant getting his job back if the criminal charges were resolved. He testified that it was his understanding that Mr. Dillon said he could get his job back. However, he was not really involved after that and never got anything in writing. He testified that this was his first involvement with a case involving PTI, and he did not have any further involvement in the matter.

Edmund Dillon is an administrative employee at the DHS. He testified that he is primarily responsible for reduction of absenteeism. He is not really an employee relations officer, and does not prepare PNDAs or FNDAs. He was "sort of" in charge when Craig Farr was out on a medical leave of absence in April of 2013. He testified that Mr. Renouf, the union representative, contacted him in April of 2013 and asked him if the administrative charges would be dismissed if appellant completed PTI. He testified that it was his understanding that they would be, but he was not really in charge of these matters. He did not prepare or receive anything in writing about this. The charges had put appellant off duty, and it was his understating that appellant would remain off duty until those charges were resolved. He never discussed it with Mr. Farr, since he was on medical leave, and he never drafted an agreement or put anything in writing about his conversations with Renouf

Anthony Neri, of Neri's Construction and Rental, Inc., was the contractor who was hired by the State of New Jersey to do demolition of the old wastewater treatment plant at Ancora. The plant was on the opposite side of the road from Ancora. Mr. Neri testified that he told some of the guys at Ancora that they could take some of the scrap. They would ask if they could take specific things and he would tell them if they could. The lids (manhole covers) and rims were to be returned to Ancora, so he put them aside, and never gave anyone permission to take any of them. He recognized appellant as one of the employees who asked to take some of the scrap. He identified the letter dated November 16, 2012, that he wrote regarding giving employees at Ancora permission to take certain salvage items. Mr. Neri reiterated that he knew that the

manhole covers and rims had to be returned to Ancora, and he never gave anyone permission to take them.

Rebuttal witnesses for respondent

Nereida Weisback is a personnel assistant and works for Craig Farr in the Employee Relations department of the DHS. She testified that on June 18, 2013, appellant called to speak with Mr. Farr. He advised her that he was calling to get some written guaranty that he would get his job back after entering PTI. She said she told him that Mr. Farr was not in, but she would give him the message when he got in. She gave the message to Mr. Farr when he got into the office, and he returned the call.

Robert Gatti has been employed by Ancora for twenty-seven years in the Buildings and Grounds department at Ancora. His boss is Robert Wright. He testified that there was demolition work being done at the old wastewater treatment plant, and that he recalled Robert Wright asking him to pick-up the manhole covers and other items from the demolition site and put them behind the maintenance/storage area. It is an area that they call "shed city" because there are a lot of old shed-like buildings around there. Mr. Gatti recalled going across the street and picking up the items and putting them in the storage area pursuant to Mr. Wright's request. He did not recall if the demolition was completed or ongoing at the time, but he knows that he went over there and retrieved two manhole covers. He made only one trip, and he thinks it was in the fall of 2012.

FINDINGS OF FACT

The resolution of the charges against Keith Layton requires that I make credibility determinations regarding some of the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16

N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth. In re Perrone, 5 N.J. 514, 521–22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses and review the documents entered into evidence, I **FIND** as follows:

1. Appellant Keith Layton was employed by Ancora Psychiatric Hospital as an operator of the wastewater treatment facility.
2. On October 6, 2012, and October 8, 2012, appellant removed property from Ancora that did not belong to him and sold it to American Scrap Metal. He was not given permission to take the property that he took without authorization and sold.
3. At the time appellant removed the property from Ancora, he was supposed to be working, and he submitted time records to be paid for this time. In addition, appellant left the job site to go to American Scrap Metal, which was not permitted.
4. On October 8, 2012, appellant was arrested and charged in Winslow Township Municipal Court with five separate counts of theft of movable property from Ancora.
5. On October 12, 2012, appellant was served with a Preliminary Notice of Disciplinary Action which sought his immediate suspension on charges of

conduct unbecoming a public employee and other sufficient cause pending the disposition of criminal charges pursuant to N.J.A.C. 4A:2-2.5(a)(2).

6. Appellant requested a hearing, and a departmental hearing was held on March 21, 2013. On April 17, 2013, a Final Notice of Disciplinary Action sustaining the charges and notifying appellant of his indefinite suspension was issued.
7. Appellant filed an application with the Camden County Prosecutor's Office seeking entry into the Pre-Trial Intervention program in connection with the criminal charges that were pending against him. He was represented by counsel in connection with the criminal matter.
8. Appellant and/or his representative had a discussion in April of 2013 with Mr. Dillon of DHS regarding the possibility of appellant getting his job back if the criminal charges were dismissed. There was no memorialization of this agreement and appellant was not returned to work at that time.
9. On June 18, 2013, the morning appellant was scheduled to appear in Superior Court on the criminal charges, appellant telephoned the director of Employee Relations at Ancora, Craig Farr, seeking written confirmation that he would get his job back if the criminal charges were dismissed through PTI.
10. Mr. Farr's secretary advised appellant that she would not provide any such writing, and that she would give Mr. Farr the message. Mr. Farr returned the call, and advised appellant that he would not guarantee anything with respect to appellant's job until they had completed a full administrative investigation, which had not yet occurred due to the pending criminal charges.
11. Notwithstanding the absence of any guarantee of a return to his position at Ancora, appellant entered into PTI with respect to the underlying criminal

charges on June 18, 2013. Appellant was represented by counsel throughout the criminal matter.

12. On December 19, 2013, respondent issued an Amended Preliminary Notice of Disciplinary Action charging appellant with conduct unbecoming a public employee and other sufficient cause relating to the initial charges of theft of movable property from Ancora and the three subsequent criminal charges relating to same, falsification of records, and leaving the work area.

LEGAL DISCUSSION AND CONCLUSIONS

A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provisions of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

In an appeal concerning major disciplinary action, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). This applies to both permanent career-service employees or those in their working test periods relative to such issues as removal, suspension or fine, and disciplinary demotion. N.J.S.A. 11A:2-14; N.J.S.A. 11A:2-6. The State has the burden to establish by a preponderance of the competent, relevant and credible

evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1980).

This matter involves a major disciplinary action brought by the respondent appointing authority against appellant, Keith Layton, seeking his removal. The appellant is charged with conduct unbecoming and other sufficient cause, specifically, falsification of records, leaving the work area and theft of State property. These charges all relate to theft of property from Ancora on various dates from January 2012 to October 2012. In addition to taking property from his employer, it is alleged that appellant was at American Scrap Metal while he was supposed to be working, and that he submitted timesheets seeking to be paid for that time.

Although the appellant did not testify, he has made several arguments through his counsel in defense of these charges. The appellant has alleged that an agreement was made in April of 2013 to dismiss the administrative charges upon his successful completion of PTI in resolution of the underlying criminal charges. However, it is undisputed that there was nothing in writing regarding the scope or the finality of any such agreement. With respect to a meeting of the minds on such an agreement, it is undisputed that appellant called the Employee Relations office prior to executing the PTI agreement in June of 2013 to discuss this matter again. If there was an agreement, as he claims, why would such a call have been made and why was it not made until the morning of his PTI appearance? It is clear from the testimony of all parties that at that time, the respondent advised that no such guarantee, written or otherwise, would be provided. Accordingly, I **CONCLUDE** that there was no agreement to dismiss the pending administrative charges or to return appellant to his position.

The remaining issues are whether the charges of conduct unbecoming and other sufficient cause, specifically, falsification of records, leaving the work area and theft of State property, have been proven by a preponderance of the credible evidence. The appellant argues that he had permission from a contractor to take the property in question. However, appellant never mentioned this in his initial interview with the police after his arrest. Moreover, the contractor, who testified for appellant, testified that he never gave anyone permission to take the manhole covers and rims. Accordingly, I

CONCLUDE that appellant did not have permission to take the man hole covers and lids that he removed from Ancora and sold. I further **CONCLUDE** that the respondent has demonstrated by a preponderance of the credible evidence that appellant took property belonging to Ancora without permission and sold it to a scrap-metal facility. I also **CONCLUDE** that appellant took this property and went to sell it during work hours for which he was paid, and that he had no permission to leave the job site during work hours.

Based upon the above findings and legal discussion, I **CONCLUDE** that the respondent has satisfied its burden of proving that appellant was guilty of conduct unbecoming and other sufficient cause, specifically, falsification of records, leaving the work area and theft of State property.

PENALTY

In West New York v. Bock, 38 N.J. 500, 523 (1962), the New Jersey Supreme Court stated that a public employee's prior disciplinary record may be referred to in assessing a penalty for a current offense. However, exceptions to the application of "progressive discipline" have been made where certain acts are "so egregious in nature and/or so detrimental to the public welfare that immediate termination is warranted, notwithstanding a good disciplinary history." Curtiss v. E. Jersey State Prison, CSV 12007-96, Initial Decision (Dec. 17, 1997), aff'd, Merit Sys. Bd. (March 11, 1998), <<http://njlaw.rutgers.edu/collections/oal/>>.

In Reinhardt v. East Jersey State Prison, 97 N.J.A.R.2d (CSV) 166, 169, the judge discussed this exception to progressive discipline by stating:

[N]o rigid disciplinary guidelines for assessing penalties exist. A system of progressive discipline has evolved . . . to serve the goals of providing public employees job security and protecting them from arbitrary employment decisions. Nevertheless, at times immediate removal may be appropriate and need not be preceded by less severe penalties. See, Golaine v. Cardinale, 142 N.J. Super. 385, 395-6 (Law Div. 1976). Of course, an employee's conduct

must be egregious before the policy of progressive discipline is circumvented.

In this case, the respondent has demonstrated by a preponderance of the credible evidence that appellant stole property from his employer, sold the property to a scrap-metal facility off site during work hours, and submitted time records to be paid for this time off site. Although appellant has some prior major disciplinary actions, they are more than ten years old, and are not really an issue in this matter. However, the fact that appellant stole property from his employer on more than one occasion is an offense that is egregious enough to merit removal. It is also worth noting that the offense was significant enough to merit criminal charges. Finally, although falsification of records and leaving the work site do not alone rise to a level meriting removal, when considered in connection with the theft of property from Ancora, the discipline of removal is warranted.

ORDER

I **ORDER** that the appeal of Keith Layton is **DISMISSED**, and that the disciplinary action of the Ancora Psychiatric Hospital removing appellant is **AFFIRMED**.

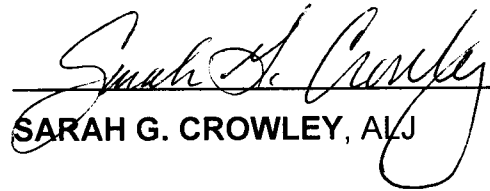
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 14, 2015

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

July 14, 2015

Date Mailed to Parties:

July 14, 2015

SGC/mel

APPENDIX

WITNESSES

For appellant:

Clarence J. Mattioli, Jr.
Alan Renouf
Edmund Dillon
Anthony Neri

For respondent:

John Stafford
Robert Wright
John Gerigitan
Craig Farr
Patrolman Rivera
Nereida Weisback
Robert Gatti

EXHIBITS

For appellant:

A-1

For respondent:

R-1 Officer Stafford's Police Investigation Report
R-2 Photographs taken by Officer Stafford
R-3 Receipts and photographs from American Auto Iron and Metal
Recycling
R-4 Patrolman Rivera's October 8, 2012, DHS Supplementary
Investigation Report

- R-5 Officer Stafford's October 12, 2012, DHS Police Arrest Report
- R-6 Complaint Summons against Layton, October 9, 2012
- R-7 Officer Stafford's October 12, 2012, Supplementary Investigation Report
- R-8 Amended PNDA dated October 12, 2012
- R-9 Officer Stafford's October 12, 2012, Police Supplementary Report
- R-10 Complaint-Summons (4) sworn by Officer Stafford against Layton on October 12, 2012
- R-11 October 16, 2012, PNDAs (3)
- R-12 Officer Stafford's DHS Police Supplementary Report