



STATE OF NEW JERSEY

In the Matter of Danielle Horner
Department of Children and Families

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-2854
OAL DKT. NO. CSV 08243-2015

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ISSUED: NOVEMBER 15, 2016 BW

The appeal of Danielle Horner, Assistant Family Service Worker 2, Department of Children and Families, removal effective April 6, 2015, on charges, was heard by Administrative Law Judge Sarah G. Crowley, who rendered her initial decision on August 29, 2016. No exceptions were filed.

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 November 10, 2016, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge’s initial decision.

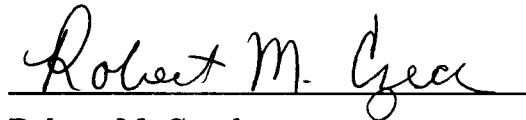
ORDER

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 Danielle Horner.

Re: Danielle Horner

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
NOVEMBER 10, 2016

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a solid horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Assistant Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 08243-2015

AGENCY DKT. NO. 2015-2854

**IN THE MATTER OF DANIELLE HORNER,
DEPARTMENT OF CHILDREN AND
FAMILIES – BURLINGTON EAST.**

George R. Saponaro, Esq., for appellant Danielle Horner (Saponaro & Sitzler,
attorneys)

Paul D. Nieves, Deputy Attorney General, for respondent, Department of
Children and Families (Christopher S. Porrino, Attorney General of New
Jersey, attorney)

Record Closed: July 15, 2016

Decided: August 29, 2016

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

STATEMENT OF THE CASE

Appellant, Danielle Horner, an Assistant Family Service Worker II for the Department of Children and Families (DCF) appeals from disciplinary action imposed on her, namely, removal, for Inability to Perform Duties, Conduct Unbecoming, and other sufficient cause, and violations of the Department's Rules and Regulations, as a result of a conviction for Driving Under the Influence (DUI). Appellant admits that she

committed the offense, but that contends that removal is not the appropriate discipline.

PROCEDURAL HISTORY

On November 20, 2014, the respondent issued a Preliminary Notice of Disciplinary Action setting forth charges for an incident which occurred on October 3, 2014, which involved appellants arrest and charge for DUI. On February 3, 2015, the appellant pled guilty to the charge of DUI. An amended Notice was served on appellant on February 27, 2015. After a departmental hearing on March 18, 2015, a Final Notice of Disciplinary Action was served on April 7, 2015, sustaining the charges, and imposing penalty of removal.

Appellant filed a timely notice of appeal on April 10, 2015. The matter was transmitted as a contested case to the Office of Administrative Law (OAL) where it was filed on June 4, 2015. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The matter was heard on June 22 and June 23, 2016. Briefs were to be filed by the parties on or before July 15, 2016. The respondent filed a closing brief on July 15, 2016, and the record closed on that date. Two telephone calls to the appellant's attorney regarding their closing submission were not returned and no closing submission was ever filed.

FACTUAL DISCUSSION

The following facts are undisputed and have been stipulated to by the parties and are found as **FACT**:

1. On October 3, 2014, the appellant was arrested by the Burlington Township Police Department for DUI, in violation of N.J.S.A. 39:4-50.
2. On October 21, 2016, the appellant advised her employer of the incident.
3. On November 18, 2014, appellant requested a leave of absence on the grounds of panic attacks and depression.

4. Appellant was suspended without pay on November 20, 2014.
5. On December 1, 2014, the request for a leave of absence was denied on the grounds that appellant had been suspended and issued a Notice of Discipline.
6. On February 3, 2015, the appellant pled guilty to DUI in the Burlington Township Municipal Court. Her license was suspended for a period of seven months.
7. An Amended Notice of Disciplinary action was served on appellant on February 27, 2015, and a hearing was requested and held on March 18, 2015.¹
8. A Final Notice of Disciplinary Action, sustaining the removal, was served on April 7, 2015. The charges included inability to perform duties, conduct unbecoming, violation of policies or administrative decision, reckless driving, unsafe lane change, failure to maintain lane and failure to signal. The motor vehicle charges were dismissed in connection with the plea of guilty to the DUI.
9. As a result of the guilty plea in municipal court, the appellant was required to install an Ignition Interlock Device on her vehicle for a period of six months, following her seven month license suspension.

TESTIMONY

Mary Ann Furphy

Ms. Furphy is the local office manager and the appellant's immediate supervisor. The appellant advised Ms. Furphy of her October 3, 2014, arrest for DUI on October 21, 2016. Ms. Furphy reported it to her superiors and she obtained a copy of the police report as well as the video of the arrest. Ms. Furphy testified that she was disappointed when she reviewed the video and the police report as she thought the appellant's behavior of trying to get out of the arrest due to her position with the Department was inappropriate. She was also disappointed that she did not report it right away and that

¹ Counsel for the appellant argued that she never received the amended Notice of Discipline. However, the appellant testified that she could not recall but she was in contact with her union representative and was aware of the March 18, 2015, departmental hearing which arose out of the amended notice.

the level of intoxication was very high. The appellant was suspended without pay on November 20, 2014. After the plea of guilty and the license suspension, the disciplinary charges were amended to include failure to perform duties. She testified that she is involved with the process of disciplining, and she was not sure about whether she would be terminated or not, but after she viewed the video and saw the police report she thought termination as appropriate.

Ms. Furphy testified that the job of an Assistant Family Service worker requires an employee to have a valid driver's license. Employees are required to report any changes in their license and driving is an essential function of the job. They are responsible for transporting clients and their children to and from appointments. Therefore, if there is a question as to the validity of someone's license, they cannot perform their job. She testified that they have a very heavy case load and it would be difficult if not impossible to have an individual in the appellant's position that did not possess a valid driver's license, as the transportation of clients is an essential function for the job. On cross-examination, Ms. Furphy acknowledged that appellant's mother had passed away but it was about a year before the incident and that appellant took a very short leave after her mother had passed away.

Vanessa Roberts is a recruiter for the DCF and is familiar with the hiring practice for the Department and the requirement for individuals interviewing for family service workers. She testified that such workers must possess a valid driver's license and they do check their driving history prior to hiring anyone. In addition, they periodically check the driving records to confirm that there have been no infractions during their employment. Every five years, employees are required to provide an updated driver's abstract. She testified that that a DUI would preclude hiring or rehiring of an individual for the family service worker.

For appellant:

Danielle Horner testified on her own behalf. She testified that she had been going through a lot at the time of her DUI arrest, and has since gone to Alcoholics Anonymous and has been sober since her arrest. She testified that on the night of the

incident she did plead with the officer as she did not want to lose her job. She knows that her job required her to drive and that she was unable to drive for seven months and after that she was required to have an interlock device installed on her car for six months. She provided some records which indicate that she has sought rehabilitation for her alcohol dependency. She testified that she went through a very difficult time after her mother died and that in November 2014, after the incident she requested a leave of absence. She does not recall they she ever received a response to this request. She did not recall receiving a copy of the subsequent Notice of Discipline. However, the appellant acknowledged that she was in touch with her union representative, and was aware of the March 2015, departmental hearing.

I **FIND** that the testimony from all the witnesses was credible and is found as **FACT**.

LEGAL ANALYSIS

The Civil Service Act, N.J.S.A. 11A:1-1 et seq., governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act sets forth that State policy is to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). To carry out this policy, the Act authorizes the discipline (and termination) of public employees. N.J.S.A. 11A:2-6.

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the

competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 561 (1982).

Conduct unbecoming a public employee has been interpreted broadly as conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect for governmental employees and confidence in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

The Department seeks to impose major discipline, namely removal, on the appellant pursuant to N.J.A.C. 4A:2-2.3(a) (6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. The appellant does not dispute the essential facts. She was arrested and charged with DUI and other motor vehicle violations on October 3, 2014. She pled guilty to the DUI charge on February 3, 2015, and was sentenced to the seven month license suspension. Upon the reinstatement of her license, she was required to install an ignition interlock device for an additional period of six months, which left her unable to perform the essential duties of her job for thirteen months. The remaining motor vehicle charges were dismissed.

Accordingly, I **CONCLUDE** that the Department has proven the following charges by a preponderance of the credible evidence: the appellant violated N.J.A.C. 4A:2-2.3(a)(6) - conduct unbecoming a public employee and N.J.A.C. 4A:2-2(a)(3) - inability to perform duties as a result of a conviction of DUI, which resulted the appellants loss

for driver's license for seven months and the inability to drive a state vehicle for an additional seven months. I **CONCLUDE** that the remaining charges were not proven by a preponderance of the credible evidence and are dismissed.

The remaining issue, however, is not whether the charges have been sustained, but rather, the level of discipline to be imposed. The Department urges removal, and the appellant urges that some level of discipline less than removal is appropriate given the circumstances presented here and his efforts at recovery and rehabilitation.

PENALTY

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid.

There are several decisions from the Civil Service Commission on the appropriate discipline on a public employee as a result of a DUI. However, there are no cases involving family service worker or employees that needed a valid driver's license as an essential function of their job. In Parshelunis v. New Jersey State Department of Education, Office of Criminal History Review, EDU 10282-07, <http://njlaw.rutgers.edu/collections/oal/final/edu10282-07.pdf>, a teacher was permitted to retain his position after being convicted of both fourth-degree assault by auto and DWI. In In re McKaig, POL 4067-09, <http://njlaw.rutgers.edu/collections/oal/final/pol04067-09.pdf>, a State Trooper had been stopped on numerous occasions and suspected of being DWI, but was never formally charged. She received a one-year suspension. In Tyler v. Burlington County, CSV 6614-03,

<http://njlaw.rutgers.edu/collections/oal/final/csv6614-03.pdf>, a county correction officer with a DWI and a disorderly persons offense for inappropriate behavior at the police station received fifteen-day suspension. Finally, in Eberhardt v. Monmouth County Sheriff, CSV 745-01, http://njlaw.rutgers.edu/collections/oal/html/initial/csv00745-01_1.html, a Monmouth County sheriff's officer failed to secure his duty weapon in his car when he got into an accident while being DWI. The MSB considered his guilty plea, cooperation, successful completion of treatment program, and disciplinary history in determining to impose a six-month suspension.

However, in the foregoing cases where public employees are not removed for a DUI conviction, their position did not require them to drive children and driving was not an essential function of their job. Moreover, there are many cases where removal has been imposed and upheld for the offense of DUI unrelated to the job. For example, in Markakis v. Commission of Education, NJ DOE Office of Criminal History Review, EDU 13275-10, http://njlaw.rutgers.edu/collections/oal/final/edu13275-10_1.pdf #369-11, http://lawlibrary.rutgers.edu/oal/html/initial/edu13275-10_2.html, the teacher pled guilty to a third-degree offense following a serious automobile accident while DWI. The disciplinary action sought removal based on sustained charges for conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause, inability to discharge one's duty, N.J.A.C. 4A:2-2.3(a)(11). The Commissioner sustained the ALJ's determination and upheld the termination.

In the matter presented herein, the appellant's disciplinary history reveals no major disciplinary actions. However, in determining the appropriate penalty to be imposed here, the following aggravating factors also have to be considered: the seriousness of the offense, as well as the very high BAC level of at least two times the legal limit. And although there is no nexus between the employment and the offense, the plea of guilty left the appellant unable to perform the essential functions of her job for thirteen months. In addition, the nature of the job which requires the transport of clients, including children on a regular basis, mandates a much higher standard with respect to acceptable behavior and the nature of the discipline to be imposed. Finally, although the efforts of the appellant to rehabilitate herself are commendable, I nevertheless **FIND** the proper discipline in this matter is removal.

ORDER

Therefore I **ORDER** the action taken by the Department in removing appellant from her position as an Assistant Family Service Worker is **AFFIRMED**, and the appeal is hereby **DISMISSED**.

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.

August 29, 2016
DATE


SARAH G. CROWLEY, ALJ

Date Received at Agency:

August 29, 2016 (mailed)

Date Mailed to Parties:

August 29, 2016 (mailed)

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LIST OF WITNESSES

For Appellant:

Danielle Horner

For Respondent:

Mary Ann Furphy

Vanessa Roberts

LIST OF EXHIBITS

For Appellant:

A-1 Leave of Absence Request

For Respondent:

- R-1 Final Notice of Disciplinary Action with Report dated April 7, 2015
- R-2 Preliminary Notice of Disciplinary Action dated November 17, 2014
- R-3 New Jersey Civil Service Commission Assistant Family Service Worker 2
Job Specification
- R-4 Department of Children and Families Policy Number 001-2011
- R-5 Court Ordered Class Attendance Notice
- R-6 Department of Children and Families Policy 006-2007
- R-7 Performance Evaluation System Report
- R-8 North Burlington Township Police Department Report Five Pages
- R-9 Burlington Township Police Department Mobile Video Recording Evidence
Request
- R-10 Summons Issued to Ms. Horner
- R-11 NJ Automated Traffic System Disposition Information Print-out
- R-12 NJ Attorney General Standard Statement for Motor Vehicle Operators
- R-13 Alcohol Influence Report form Alcotest 7110 MK111-C
- R-14 Drinking Driving Report
- R-15 Burlington Township Police Department DWI Processing Psycho-Physical
Testing
- R-16 Potential Liability Warning N.J.S.A. 39:4-50.22

- R-12 Photograph of door with exit sign
- R-13 Photograph of interior sign with danger sign
- R-14 Photograph of interior door
- R-15 Photograph of tire
- R-16 Portions of Continental Tire 2013 Commercial Vehicle Tire Data Guide
- R-17 NOAA storm data, December 2013
- R-18 NOAA Quality Controlled Climatological Data, Morristown hourly observations
December 2013
- R-19 NOAA Quality Controlled Climatological Data, Morristown hourly precipitation
observations December 2013
- R-20 Thumb drive R-20(a) PTPD Surveillance Case 14:18 December 28, 2013
R-20(b) PTPD Interview of Joseph Fedo
- R-21 Ariel Photograph of PTHDPW Facility
- R-22 Not in Evidence
- R-23 Email to Schneider regarding tire prices