



STATE OF NEW JERSEY

In the Matter of Tracy Guarneri
City of Perth Amboy,
Police Department

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

CSC DKT. NO. 2016-685
OAL DKT. NO. CSV 13425-15

ISSUED: NOVEMBER 28, 2016 BW

The appeal of Tracy Guarneri, Keyboarding Clerk 1, City of Perth Amboy, Police Department, removal effective June 19, 2015, on charges, was heard by Administrative Law Judge Imre Karaszegi, Jr., who rendered his initial decision on October 12, 2016. Exceptions were filed by the appellant.

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 23, 2016, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

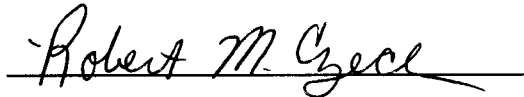
ORDER

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 Tracy Guarneri.

Re: Tracy Guarneri

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 23, 2016

A handwritten signature in black ink that reads "Robert M. Czech". The signature is written in a cursive style and is positioned above a 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 13425-15

AGENCY DKT. NO. 2016-685

**IN THE MATTER OF TRACY GUARNERI,
CITY OF PERTH AMBOY, DEPARTMENT
OF POLICE.**

Debbie Parks, AFSCME Council 73, for petitioner/appellant, appearing pursuant to N.J.A.C. 1:1-5.4(a)(6)

Arlene Quinones Perez, Esq., for respondent (DeCotiis, Fitzpatrick & Cole, attorneys)

Record Closed: April 22, 2016

Decided: October 12, 2016

BEFORE **IMRE KARASZEGI, JR.**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The City of Perth Amboy, Department of Police (City), seeks to impose major discipline against appellant, Tracy Guarneri (Guarneri), a keyboarding clerk, removing her effective June 19, 2015. The City alleges that she violated N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient

cause. Specifically, the City alleges that the incident of June 18, 2015, constitutes a breach of a Last Chance Agreement dated April 29, 2013, justifying termination.

On June 19, 2015, the City prepared a Preliminary Notice of Disciplinary Action (PNDA) against appellant. After a departmental hearing, the City prepared a Final Notice of Disciplinary Hearing (FNDA), on July 13, 2015, removing Guarneri effective June 19, 2015. On July 16, 2015, Guarneri requested a hearing. The Civil Service Commission transmitted the contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, to the Office of Administrative Law (OAL), where it was filed on September 1, 2015. Hearings were scheduled on February 22, 2016, and February 24, 2016. The parties submitted written summations, and following their receipt, the record closed on April 22, 2016. Orders were entered extending the time for filing this decision.

FACTUAL DISCUSSION

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following **FACTS**:

1. Guarneri had been employed by the City of Perth Amboy since April 8, 1996, most recently working as a keyboarding clerk in the City's municipal court.
2. As a result of a PNDA dated January 18, 2013, related to a workplace incident of December 26, 2012, involving the use of insulting and profane language by Guarneri, the City and Guarneri entered into a Last Chance Agreement on April 29, 2013, converting a termination to a suspension without pay from January 18, 2013, through April 30, 2013.
3. In addition, the Last Chance Agreement set forth the following;
 - E. Ms. Guarneri agrees that any future disciplinary infraction(s) of the following City Police Department Rules and Regulations ("Rules and Regulations") shall be deemed

a breach of the Last Chance Agreement and shall result in immediate removal, effective January 18, 2013:

- a. Acts of insubordination as defined under Rules and Regulations 3.1.10;
 - b. Use of profane or insulting language to a Superior or Subordinate Officer, or to a member of the general public pursuant to Rules and Regulations 3.1.11;
 - c. Fighting or quarreling with members of the City Police Department pursuant to Rules and Regulations 8.1.15, and
 - d. Violation of Rules and Regulations 8.1.6, sub-parts A through G.
4. Ample evidence suggests that the use of profanity among some employees of the City of Perth Amboy municipal court is a common occurrence.
5. Laura Meade, Deputy Court Administrator, and Guarneri affirm Guarneri loudly making the following statement to Meade about a co-worker at work as follows; "I can't believe this. This is bullshit. I feel like punching her in the face. Fuck this."

LEGAL ANALYSIS AND CONCLUSIONS

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; N.J.A.C. 4A:2-2.3. 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 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Both guilt and penalty are redetermined on appeal from a

determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

Based on the foregoing facts and applicable law as well as the testimonial and documentary evidence presented, I **CONCLUDE** that respondent has proven, by a preponderance of the competent, credible evidence, that Guarneri's conduct was clearly unbecoming that of a public employee. I **CONCLUDE** that respondent has not proven the charges of insubordination or neglect of duty. I also **CONCLUDE** that despite the fact that the use of profanity was common among the employees of the City of Perth Amboy municipal court, Guarneri's use of such profanity violated a 2013 Last Chance Agreement that she and the City had agreed to regarding similar conduct in the past.

ORDER

Based on the foregoing, it is **ORDERED** that the action of respondent, City of Perth Amboy, Department of Police, in removing appellant, effective June 19, 2015, 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. 52:14B-10.

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, P.O. 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.

October 12, 2016

DATE

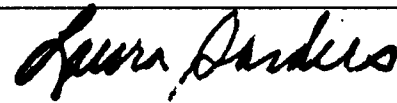


IMRE KARASZEGI, JR., ALJ

Date Received at Agency:

Date Mailed to Parties:

OCT 21 2016



**DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE**

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APPENDIX

LIST OF WITNESSES

For Petitioner/Appellant:

Richard S. Sorokac
Nelson Rivera
Dana Spindel
Maria Edwards
Laura Meade
Tracy Guarneri

For Respondent:

Jennifer Ingenito
Teofila Diaz

LIST OF EXHIBITS IN EVIDENCE

For Petitioner/Appellant:

None

For Respondent:

- R-1 Final Notice of Disciplinary Action (FNDA) dated July 13, 2015
- R-2 Last Chance Agreement dated April 29, 2013
- R-3 Personnel manual/acknowledgment of receipt