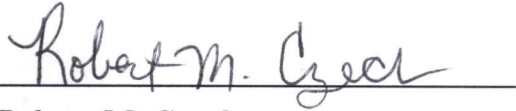


Re: Icylin Ellington

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
APRIL 19, 2017

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

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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 12787-16

AGENCY REF. NO. 2017-232

**IN THE MATTER OF ICYLIN ELLINGTON,
ESSEX COUNTY DEPARTMENT OF CITIZEN
SERVICES.**

David Weiner, Union Representative, appearing pursuant to N.J.A.C. 1:1-5.4(a)6
for appellant

Keisha Clark, Esq., and Jill Caffrey, Esq., for respondent

Record Closed: March 20, 2017

Decided: March 24, 2017

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

Icylin Ellington, a former Family Service Worker employed by the Essex County Department of Citizen Services (the County), appeals her dismissal at the conclusion of her working test period. She alleges that she was terminated in bad faith. The County replies that Ellington was unable, despite being given ample training and assistance, to properly fulfill her job responsibilities.

PROCEDURAL HISTORY

Via letter dated July 1, 2016, Ellington was notified that she did not successfully complete her working test period. The letter noted that since her evaluation resulted in an unsatisfactory rating, her last day of employment would be Friday, July 8, 2016. Ellington appealed the County's action on July 13, 2016. The contested case was transmitted to the Office of Administrative Law (OAL) on August 23, 2016. A hearing was conducted on February 27, 2017. Written summations were filed by the parties on March 20, 2017, at which time the record closed.

STATEMENT OF FACTS

The essential underlying facts are not in dispute, and I **FIND** as follows:

After successfully completing the civil service examination in January 2016, Ellington secured employment with the County. Her working test period began on April 11, 2016, and extended for ninety days. Previously, Ellington had served as a kinship navigator. She felt she was quite successful in her prior employment, which entailed doing home visits and assessments as part of making guardianship arrangements for children.

Ellington was hired as a Family Service Worker; in that role, her job was to assist clients in applying for public welfare benefits. She spent the first thirty days of the working test period in a classroom setting. Lisa Maddox-Douglas is the training supervisor. Newly hired Family Service Workers are introduced to the substantive regulations that will guide their work, and to the computer programs that are used to input client data and calculate benefit entitlements. A day and a half is spent training to use the Universal Applications Processing System (UAP), a computer program. Along the way, trainees are tested on their knowledge in eight different modules; a final test is administered at the end of the first month. A perfect score would be 100; a score of 80 must be achieved to pass.

Maddox-Douglas twice talked with Ellington about her progress during the training period. Her test scores were low. Ellington passed a test of her substantive knowledge

about the General Assistance program, and a test about her knowledge of the Emergency Assistance and SNAP (food stamps) programs. But on a test of her knowledge of the Temporary Assistance for Needy Families (TANF) program, Ellington only achieved a score of 75. She received the same score relative to her knowledge of Medicaid. And her scores in areas that asked her to master computer technology were particularly low. FAMIS is a computer program used to determine benefit entitlements; Ellington received a score of 36.¹ Likewise, "coding" and "calculations" pertain to use of the computer and the calculation of benefits; Ellington received scores of 67 and 58 respectively in these critical areas. Maddox-Douglas met with Ellington on April 25, 2016, and alerted her that in order to pass the training month of her working test period, she would have to do well on the final examination. Ellington achieved a score of 74.

A thirty-day evaluation completed by Maddox-Douglas on May 10, 2016, gave Ellington unsatisfactory scores in the area of quality and quantity of work. This resulted in an average rating of 1.6; Maddox-Douglas explained that a score of 2 was needed to satisfactorily complete the first month of training. She emphasized that the computer was a particular challenge for Ellington, noting that she even had difficulty with the passwords needed to access the necessary programs, and locked herself out on at least two to three occasions. Ellington was contrite when advised that she had not passed, indicating that she was sorry that she had "let them down." Maddox-Douglas told her to work hard in the next phase of training; to make her proud. To promote Ellington's success, she was assigned to a unit that handled food stamp benefits for one-adult households. Clients in this unit were typically disabled or elderly, with few if any changes in their income. The work was described as more straightforward and slower paced than that in other units.

Maddox-Douglas and Loy Tenyhwa, the Supervisor of Ellington's new unit, described the work of the Family Service Worker, and the output that was expected of a typical worker. Family Service Workers process a case from start to finish. They meet with a client; obtain needed information and verifications; input data into the computer; and calculate and determine benefits. A Family Service Worker typically processes 10-

¹ FAMIS and UAP are related computer programs that Family Service Workers need to master to do their jobs.

12 cases a day. A worker in training typically completes 5-6 cases a day. Ellington completed only one or two cases during the sixty-day period she was assigned to the food stamps unit.²

Ellington was not expected to work without assistance or supervision. Indeed, Tenyhwa detailed the support Ellington received during the first thirty days in her unit. She was asked to shadow experienced workers, and she was asked to complete interim reports (IRF's). Even these were completed quite slowly; only three a day and with help. Ten a day would be a more typical output. Her coaches were expected to give Ellington cases of their own to complete under their mentorship. They became quite frustrated because she was unable to do so, and thus, their own work fell behind. At the end of the sixtieth day of her working test period, Ellington was told that she was not performing to expectations. She should have been able to complete cases independently. She should have already been a "member of the unit." Ellington's difficulty in completing the work seemed primarily caused by her lack of facility with the computer. Ellington's evaluation on June 10, 2016, again was unsatisfactory. Tenyhwa told Ellington that moving forward she would meet with her once per week to review her ongoing progress and attempt to assist her. Ellington urges that Tenyhwa did not directly supervise her work, but the fact that they met weekly, and both worked together in a small unit of only five to six workers demonstrates otherwise.

But Ellington's problems persisted during the final thirty days of the working test period. Tenyhwa indicated that a typical client interview would take about thirty minutes; Ellington spent as much as two and a half hours interviewing a client. Ellington urged that her difficulty stemmed from the fact that the client was not English speaking; but Tenyhwa explained that interpreters were available to assist workers who were not fluent in a client's language. There were almost daily password issues; Ellington was locked out of her computer repeatedly because she could not properly enter her password. The frustration of Ellington's co-workers mounted. On July 7, 2016, at the end of the ninety-

² At her final evaluation meeting Ellington pointed out that a case was ready for Tenyhwa's review in her office bin. Tenyhwa stated that she acknowledged this by changing her evaluation to reflect that one case had been completed. Ellington urged that she had completed two cases. This disagreement is of no moment; either way, Ellington's output was woefully inadequate.

day probationary period Ellington and Tenyhwa met again, and she again received an unsatisfactory rating.

Ellington's testimony only served to bolster the credibility of the witnesses who described her as struggling during the working test period. Ellington was a soft-spoken, polite and deferential witness; this is how her supervisors described her as well. She admitted to her many difficulties during the working test period, and her description of the relevant events differed from Tenyhwa's only to the extent that Ellington repeatedly blamed others for her problems.

She claimed that she received insufficient training. Ellington confirmed that she was directed to shadow three more experienced co-workers, but she urged that she found them, with one exception, less than eager to help. One co-worker loudly urged that others should not assist Ellington; on another occasion a co-worker gave her an assignment and timed her. Ellington felt humiliated. She suggested that these co-workers were not supervisors and should not have assigned work to her. But the record makes it clear that the workers she shadowed were peer coaches and never were assigned to supervise Ellington's work. I thus **FIND** that notwithstanding Ellington's perception that she was being asked to hit the ground running, she in fact had little or no work of her own during the probationary period, and instead, was only asked to work alongside her peers in a continuation of her training.

Ellington confirmed that the computer systems, most specifically UAP, were hard to master. When she asked for help Tenyhwa told her to work with a co-worker because as a supervisor she did not use the program in quite the same way, and had not done so for many years. This became a focal point for Ellington, who urged repeatedly that Tenyhwa's lack of facility with UAP should somehow excuse her own. While Ellington disputed the assertion that she could not enter a computer passcode correctly, she was aware, apparently from experience, that after several tries the computer locks the user out. Ellington urged that in her three months of employment she was never tardy, and never reprimanded for misconduct on the job. This was not disputed by the supervisory personnel who testified at the hearing.

As for Ellington's assertion that her termination was in bad faith, I heard no factual support for this allegation. Both Tenyhwa and Maddox-Douglas appeared to genuinely like Ellington, and the record reflects ongoing efforts by both during the working test period to assist her; to include the very purposeful assignment to the food stamp office; weekly meetings with her; and access to peer shadows. The assertion that Division Head Jeanette Page-Hawkins somehow bore Ellington ill-will was particularly spurious. Although Page-Hawkins was one of several signatories to Ellington's final evaluation form, I was offered no evidence that Page-Hawkins even really knew Ellington, much less sought to terminate her for proscribed reasons. Page-Hawkins was subpoenaed to appear at the hearing and then was asked nothing of any substance. Instead, Ellington's representative simply established that Page-Hawkins expressed extreme aggravation when she was served with the subpoena and even went so far as to thrust the requisite fee back at him. But this testimony only established that Page-Hawkins was irritated by the prospect of having to attend a hearing; not that she or her agency were somehow "out to get" Ellington.

It is uncontroverted and I **FIND** that notice that her employment would be terminated was served on Ellington on Friday, July 8, 2016, when the July 1, 2016, letter was handed to her. Her employment terminated effective July 8, 2016. The ninety-day working test period was to end on July 10, 2016.

CONCLUSIONS OF LAW

The Civil Service Act (Act), N.J.S.A. 11A:1 to 9, reflects the public policy of the State of New Jersey to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance. N.J.S.A. 11A:1-2(c). In furtherance of this public policy, the Act and the regulations of the Civil Service Commission place an obligation on the appointing authority to monitor a probationary employee during a working test period as part of the examination process. It is designed to permit an appointing authority to determine whether the employee can satisfactorily perform the duties of the title. N.J.S.A. 11A:4-15; N.J.A.C. 4A:4-5.1(a). The purpose of a working test period is to furnish an additional test of efficiency. Devine v. Plainfield, 31 N.J. Super. 300 (App. Div. 1954). The court held in

Dodd v. Van Riper, 135 N.J.L. 167, 171 (E. & A. 1947), that “a basic condition of permanent appointment for any civil service employee is the favorable opinion of the employee’s fitness as formed by the appointing authority during the probationary period.” Termination at the end of the working test period may occur for unsatisfactory performance. N.J.S.A. 11A:2-6(a)(4); N.J.A.C. 4A:2-4 and N.J.A.C. 4A:4-5.4(a).

An employee who seeks to challenge her termination at the end of a working test period faces a heavy burden of proof. She must establish that “the action was in bad faith.” N.J.A.C. 4A:2-4.3(b); Dodd, supra, 135 N.J.L. at 172. In Briggs v. N.J. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960), the court stated that the only issue in such a case is whether the appointing authority exercised good faith in determining that the employee was not competent to satisfactorily perform the duties of the position.

Although the courts have not defined “good faith” or “bad faith” specifically in the context of a working test period case, “good faith” has generally been defined as meaning honesty of purpose and integrity of conduct with respect to a given subject. Smith v. Whitman, 39 N.J. 397, 405 (1963). Hence, if the decision to terminate an employee at the end of the working test period lacks integrity of conduct, then the decision was rendered in bad faith. “Bad faith” is the antithesis of good faith and must be a thing done dishonestly; it contemplates a state of mind affirmatively operating with a furtive design or some motive of interest or ill will. Schopf v. Dep’t of Labor, 96 N.J.A.R.2d (CSV) 853, 857.

I **CONCLUDE** that Ellington has not met her burden of proof. I heard no evidence that her termination was for any reason other than her inability to master the skills needed to perform the duties of a Family Service Worker. I **CONCLUDE** that her petition of appeal should be dismissed.

In accordance with N.J.A.C. 4A:2-4.1(c), notice of termination must be served not more five working days prior to or five working days following the last day of the working test period. Here the working test period was to conclude on July 10, 2016, a Sunday; the notice was served on July 8, 2016. Accordingly, notwithstanding the fact that the

letter of termination is dated July 1, 2016, I **CONCLUDE** that its service was timely and compliant with the requirements of the regulation.

ORDER

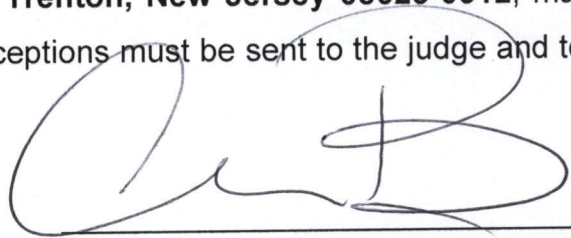
Based on the foregoing, I **ORDER** that the petition of appeal be **DISMISSED**.

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. 52:14B-10.

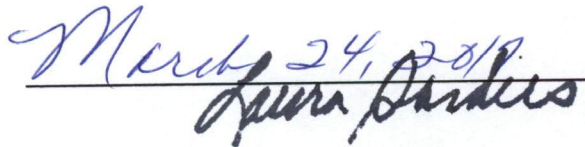
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**,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

March 24, 2017
DATE



ELLEN S. BASS, ALJ

Date Received at Agency:



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties:

MAR 27 2017

APPENDIX

WITNESSES

For Appellant:

Icylin Ellington
Jeanette Page-Hawkins

For Respondent:

Lisa Maddox-Douglas
Loy Tenyhwa

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Letter dated July 1, 2016
- R-2 Evaluations
- R-3 Test scores
- R-4 Human Resources Policy