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STATE OF NEW JERSEY

In the Matter of Kendra Hall
Judiciary,
Monmouth Vicinage

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

CSC DKT. NO. 2016-4019
OAL DKT. NO. CSV 07825-16

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ISSUED: APRIL 24, 2017 BW

The appeal of Kendra Hall, Judiciary Clerk 4, Judiciary, Monmouth Vicinage, removal effective February 25, 2016, on charges, was heard by Acting Director and Chief Administrative Law Judge Laura Sanders, who rendered her initial decision on March 27, 2017. 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 April 19, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

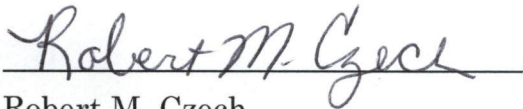
ORDER

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 Kendra Hall.

Re: Kendra Hall

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, reading "Robert M. Czech", is written over 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 07825-16

AGENCY DKT. NO. 2016-4019

**IN THE MATTER OF KENDRA HALL,
SUPERIOR COURT OF NEW JERSEY,
MONMOUTH VICINAGE.**

Franceline Ehret, CWA Staff Representative, appearing pursuant to N.J.A.C.
1:1-5.4(a)(6) for appellant

Susanna J. Morris, Esq., for respondent, Superior Court of New Jersey,
Monmouth Vicinage

Record Closed: March 1, 2017

Decided: March 27, 2017

BEFORE **LAURA SANDERS**, Acting Director & Chief ALJ:

STATEMENT OF THE FACTS

Appellant Kendra Hall appeals the action by the Superior Court of New Jersey, Monmouth Vicinage, terminating her from her position as a Judiciary Clerk 4, on grounds of conduct unbecoming, neglect of duty, misuse of public property, and other sufficient cause related to personal use of confidential Judiciary systems. Ms. Hall contends that she is not guilty of the actions attributed to her.

PROCEDURAL HISTORY

Hall was suspended without pay on February 26, 2016, effective February 25, 2016, pursuant to N.J.A.C. 4A:2-25(a)(1). On March 6, 2016, she was served with a Preliminary Notice of Disciplinary Action. She waived her right to a departmental hearing, and on May 4, 2016, a Final Notice of Disciplinary Action sustaining the charges was issued. Her removal from employment was effective as of February 26, 2016. On May 9, 2016, Hall filed an appeal with the Civil Service Commission, which determined to transmit the contested case to the Office of Administrative Law (OAL), where it was filed on May 25, 2016. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. It was heard on January 30, 2017, and the record left open to March 1, 2017, for closing statements. The record then closed.

FACTUAL DISCUSSION

Some facts are not in dispute. Appellant, who had worked for the Judiciary for approximately nine years in February 2016, had started in the Middlesex Vicinage, eventually accepting a promotion into the Judiciary Clerk 4 position in the Finance Division of the Monmouth Vicinage. She was the lead worker in the Mechanic Street Office, which accepts payments from the public for probation and for child support. In general, persons working in the first-floor Cashiers Office have access to the NJ Kids Child Support data system, which they use to ensure that child support payments are attached to the correct cases. They also have access to the Automated Complaint System and the Automated Traffic System. From August 2015 to February 2016, appellant also had access to the Judiciary's Promis/Gavel database, as the plan was to eventually undertake some reporting on open bail.

Judy Fread, administrative supervisor in the Finance Division, had six direct-reports, one of them Appellant. She testified that Hall primarily worked upstairs in the Mechanic Street office, but opened the safe downstairs if someone needed change, and was in charge of closing down the cash register at 2 p.m., getting the tape from the register, ensuring the tally was correct, and removing the cash to a safe. To her

knowledge, in February 2016, Hall was not yet assigned to actually undertake an open bail report, and had no work-related reason to be in Promis/Gavel, ATS, or ACS.

Fread also testified to the Judiciary policy concerning Information Technology Security, which is provided annually to all Judiciary employees, who are required to acknowledge that they received and read the policy and agree to abide by it. The policy states in Section 3 that “except for the incidental personal use, users shall not use (the computer, computer networks, E-mail and other electronic communications systems of the Judiciary) for personal use, and have no reasonable expectation of privacy regarding this equipment.” (R-1.) Further, employees are required to respect the confidentiality of the resources in the Judiciary’s databases. Section 4 states that, “Such information is to be accessed and used solely for legitimate Judiciary business purposes.” (Ibid.) The Code of Conduct for Judiciary Employees states in Canon 2A that “A court employee may not disclose to any unauthorized person for any purpose any confidential information acquired in the course of employment, or knowingly acquired through unauthorized disclosure by another.” (R-2.) Hall’s learning transcript shows that she acknowledged receipt of the Information Security Policy in August of 2013, July 2014, and August 2015. She similarly acknowledged receipt of the Code of Conduct in 2013, 2014, 2015, and on January 27, 2016. She received three hours of in-person training on the code in 2007 and 2010. (R-7.)

Eileen McEneny, Finance Division Manager, testified that she assigned Hall to be her “eyes and ears” at Mechanic Street because the appellant had done well and was eager to grow in her position. McEneny created a training schedule to ensure that Hall would feel comfortable in her new role as lead worker. In addition to the end-of-day close-out work, Hall was responsible for ensuring the cashier’s office had coverage at 8:30 a.m., when it opened, and that funds were transferred properly. She also was responsible for delegating modifications, which are changes to child support agreements, which must be entered correctly in the NJ Kids system. On some occasions, Hall was the highest-ranking person at the location.

Various witnesses referenced the Judiciary’s various databases. A certification from John Stewart, Administrative Supervisor 3a, lists the Comprehensive Automated

Probation System (CAPS), Promis/Gavel, the Automated Complaint system (ACS) and the Automated Traffic Complaint system (ATS). (R-10.) The certification explains that Promis/Gavel “captures information concerning defendants who have been charged with indictable offenses and tracks the processing of those defendants from initial arrest through appellate review.” (R-3.) The ACS tracks “all the pertinent incident and defendant data” from the municipal courts. (R-4.)

Esperanza Rangel, a Judiciary Clerk 3, testified that at 3:15 p.m. on February 11, 2016, she went to the cashier’s room to cover another employee’s regular break time. Entering through a back door into the room, she noticed that Hall was on the CAPS database on the computer. She testified that this caught her attention, because she knew of no reason Hall would need to be in that database. Rangel was concerned that she might have made an error in posting a payment to CAPS, and asked Hall if something was wrong. Hall replied that there was nothing wrong, that she was looking up the case of someone she knew who had been stopped by the police, and she thought there was an issue with identity theft. Hall got her cell phone out, and while talking to someone on it, sent something to the printer, which she then picked up. After the other employee returned from break, Rangel went back upstairs. At 4:15 p.m. she came down to do the day’s second cash out. On leaving, she noticed papers that said “Hamilton,” laying on the counter. Hall grabbed the papers, which she put into her purse, and Hall, Rangel, and the other employee all left work together. Rangel decided to tell a supervisor the next day because she said they had all been told many times that they could not access a computer for private business, and had been directed that if they saw something, they were to report it. She acknowledged that she did not have a good relationship with Hall, who she thought picked on her, but she had never filed a report with anyone complaining about mistreatment.

Rangel reported to management through an email to Dalia Hyppolite, a supervisor, on the next day, February 12, 2016. (R-6.) The email indicated that when she entered the cashier room, she noticed that Hall had the CAPS system open at a time when “we had finished proving out.” (R-6.) On February 12, Hall’s supervisors requested a review of Hall’s computer access logs. John Stewart, an administrative supervisor at the Judiciary, stated in a certification that on February 16, 2016, he

accessed the logs, which showed activity in all three systems between 12:41:29 and 15:50:50. For example, they showed that on 3:04:44 p.m., Hall logged into ACS/ATS, leaving it again at 3:05:59. She was also logged into Promis/Gavel twice, once around 3 p.m. and again around 3:24 p.m. She was in CAPS from 15:09:51 to 15:15:03. (R-10.)

On February 17, 2016, McEneny and Terry Mapson-Steed, a Human Relations liaison, interviewed Rangel, and on February 18, 2016, Hall. McEneny testified to the content of the interview notes, both of which she had prepared. Rangel told the two questioners that Hall had said she was looking up someone she knew who had been pulled over by police. Hall mentioned that the individual received a DUI ticket and that the individual did not realize the magnitude of the ticket. Additionally, Hall said the individual believed (he or she was) being charged for someone else's charges, someone with the same name. (R-8.)

In the McEneny and Mapson-Steed interview, when Hall was asked whether she remembered having a conversation with Rangel about a DUI, Hall replied, that she "did not remember, possibly." (R-9.) She did not remember making a comment about identity theft. Asked more directly about a "very concerning" incident about a DWI, and whether that rang a bell, Hall replied "possibly." Given details about the alleged conversation with Rangel, Hall "was quiet for a brief period, then responded that she may have had a conversation with (the other employee, Veronica), but the conversation was private." (*Ibid.*) Asked if she went in to any system to research information, she was silent briefly then replied, "Oh My Goodness." (*Ibid.*) When the interviewers inquired about folding and placing papers in her personal bag, she stated they were recipes and research and things like that.

The Judiciary also produced a copy of a video of the cashier's room made between 3 p.m. and 4:26 p.m. on February 11, 2016, which did not show Hall on a cell phone in the time frame that Rangel described. (J-1.) However, it did show that Rangel entered the cashier's room at about 3:15 p.m., walked over to Hall, and engaged in conversation with her briefly. It also showed that Hall was on and off the cell phone for much of the next half-hour. (J-1 and R-11.)

Hall testified on her own behalf. She stated that at no point was she improperly accessing Judiciary databases for her own purposes. She said she did have a friend who knew someone that police had first stopped for a tail light, then alleged he was driving on the revoked list, which caused a big problem. However, she did not access the man's records. Her comment of "Oh My Goodness," in the interview was caused by her sudden realization of what exactly she was accused of doing. Her recollection is that she was in CAPS because she had received a call earlier in the day from the mother of a probationer who thought she may have made a double payment. As per normal procedures, Hall had transferred the woman to the probation officer, but she had still pursued the question in the data base in an attempt to be helpful. She did not tell this story during her interview, because during the interview with management, her mind went blank. She did acknowledge that on February 11, 2016, she had been using the Judiciary internet access to look up and print recipes and other information, because her sister was getting married, and she was trying to help with a choice of venues, party favors, and things like that. She said those were the papers Rangel saw.

Asked about the annual request by the Judiciary to review and sign the Code of Conduct, Hall acknowledged receiving them, but said she just signed them. She never read them. She had not been trained on the Code in many years.

Essentially, the evidence comes down to two conflicting stories. The appellant contends that Rangel was a disaffected employee, who found a way to cause trouble for a higher-level employee she did not like. She had additional incentive in that removal of Hall would open a pathway for promotion from her position as Judiciary Clerk 3 bilingual. Her testimony is unreliable because Rangel said she saw Hall on CAPS, which is the probation system, which would not have carried traffic ticket or municipal court information, and therefore would not have been useful to the friend she alleged Hall was helping. She also said Hall was talking on the cell phone when she approached her, which the video does not support. The respondent argues that Rangel's story is generally true, and Hall, who is a year short of vesting, is desperately trying to save her career. The determination of factual findings thus requires a weighing of the credibility of the witnesses, i.e., "an overall assessment of the story of a witness in light of its

rationality, internal consistency, and manner in which it 'hangs together' with other evidence." Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience or because it is overborne by other testimony." Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Here, supporting evidence tends to corroborate Rangel's version of events. Her recollection of the timing of her entrance into the cashier's room aligns with the video, which also shows a conversation between the two shortly after her entrance. Although Hall is not on the phone at the moment Rangel pinpointed in testimony, Hall did use the cell phone twice while Rangel was still in the room, once at 3:24 p.m. and again at 3:28 p.m. Moreover, while Rangel was there, Hall twice printed things. (J-1 and R-11.) Further, the Judiciary's log-in tracking system shows Hall in and out of the system Rangel recalled at about the time Rangel recalled it. Hall was in CAPS from 15:09:51 to 15:15:03 (R-10), which is consistent with the 3:11 time of Rangel's arrival in the room. Further, the Judiciary's system shows that at 3:04:44 p.m., Hall logged into ACS/ATS, leaving it again at 3:05:59. She was also logged into Promis/Gavel twice, once around 3 p.m. and again around 3:24 p.m.

Hall's testimony, on the other hand, was improbable. Even if the story of the child support double-payment call is true, Hall had no legitimate business reason to be poking around once she followed the proper procedure and transferred the call to Probation. Similarly, she may have been using the Judiciary's equipment to research wedding-related things for her sister. But she said nothing about the child support double payment in her initial interview with her employer, and little beyond "recipes, research" about what she was printing. She attempted to explain those omissions with the statement that her brain went blank with the shock of the accusation. The "Oh My Goodness," may well have reflected surprise at the accusation, but it was more likely tied to knowledge of its core of truth than to confidence the allegation could not be proven.

Thus, based on Rangel's credible testimony, which in general was supported by other objective evidence, I **FIND as FACT** that Hall was accessing the various computer systems that day for personal use, which is prohibited by both the Judiciary's Code of Conduct and its Information Technology policy. I further **FIND** that although Hall elected not to read them, she had been repeatedly provided with copies of the policies, and that she signed that she had read and understood them.

LEGAL ANALYSIS AND CONCLUSION

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).

Here, the appellant is charged with conduct unbecoming, neglect of duty, misuse of public property and other sufficient cause, namely violating the Judiciary Code of Conduct. Conduct unbecoming is a term that encompasses actions adversely affecting the morale or efficiency of a governmental unit or having a tendency to destroy public respect 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). In her position, Hall had access to sensitive, private information, which is available only because of the court's role in enforcing financial orders. If citizens begin to believe that the Judiciary's systems are being manipulated for private purposes, that loss of respect threatens a central element of our three-pronged system of government. Therefore, I **CONCLUDE** that the respondent has proved the charge of conduct unbecoming.

Neglect of duty is not defined under the New Jersey Administrative Code, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of his or her job title. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186

(App. Div. 1977). It has been applied both to not fully carrying out duties and to acting incorrectly. See, e.g., In re Marucci, CSV 07241-09, Initial Decision (January 1, 2010), modified, CSC (March 6, 2010), <<http://njlaw.rutgers.edu/collections/oal/>>, aff'd, A-3607-09T1 (App. Div. January 3, 2012), <<http://njlaw.rutgers.edu/collections/courts/>> (removal of a police officer with no disciplinary record where he failed to remove drugs from under a sewer grate and then lied about his actions). Here, the neglect of duty charge here is supported by the finding that she was conducting personal business "on company time." While doing so, she was not performing the duties with which she was charged. Therefore, I **CONCLUDE** that the neglect of duty charge has been proved. Similarly, respondent has proved misuse of the Judiciary's equipment. Finally, there is no question that respondent has shown other sufficient cause, as the access violated both the Judiciary's Code of Conduct, and its Information Technology Policy.

Progressive discipline is the general rule for civil service cases. W. New York v. Bock, 38 N.J. 500 (1962). Typically, the Civil Service Commission considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Nonetheless, progressive discipline is not a fixed and immutable rule to be followed without question. Carter v. Bordentown, 191 N.J. 474, 484 (2007). Some infractions are serious enough on their own to warrant termination. In re Herrmann, 192 N.J. 19, 33 (2007).

In Herrmann, our Supreme Court affirmed the removal of a worker from the Division of Youth and Family Services (now known as the Child Protection and Permanency Agency) who had waved a lit lighter in front of a child's face, while asking about how the child set a fire. The Court noted DYFS's need to rely on the demonstrated good judgment of its workers to protect the integrity of its system. Similarly, here, even though the evidence showed that Hall had excellent performance evaluations on top of a discipline-free record, the Judiciary's dependence on the good judgment of its employees means that termination is the appropriate penalty.

ORDER

The Judiciary's action terminating appellant is hereby **AFFIRMED** and her appeal **DISMISSED** with **PREJUDICE**.

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.

March 27, 2017
DATE

Laura Sanders
LAURA SANDERS
Acting Director and Chief
Administrative Law Judge

Date Received at Agency:

March 27, 2017

Date Mailed to Parties:

March 27, 2017

/caa

WITNESSES

For Appellant:

Kendra Hall

For Respondent:

Judy Fread

Esperanza Rangel

Eileen McEneny

EXHIBITS

Joint Exhibits

J-1 Video of Cashier's Room dated February 11, 2016 (stipulation that time counter is one hour ahead in the video)

For Appellant, Kendra Hall:

A-1 Annual Performance Advisory for Calendar Year 2012

A-2 Annual Performance Advisory for Calendar Year 2013

A-3 Annual Performance Advisory for Calendar Year 2014

A-4 Annual Performance Advisory for Calendar Year 2015

For Respondent, Superior Court of New Jersey, Monmouth Vicinage:

R-1 Judiciary Information Technology Security Policy dated June 29, 2015

R-2 Code of Conduct for Judiciary Employees, adopted 2014

R-3 Description of Promis/Gavel, downloaded from Judiciary's Infonet on January 6, 2017

- R-4 Description of the Automated Complaint System, downloaded from Judiciary's Infonet on January 6, 2017
- R-5 Email from Eileen McEneny to Terry Mapson-Steed explaining responsibilities and draft training schedule for Kendra Hall, dated March 31, 2016
- R-6 Email from Esperanza Rangel to Dalia Hyppolite, dated February 12, 2016
- R-7 Learning Transcript for Kendra Hall downloaded March 31, 2016
- R-8 Notes of interview of Esperanza Rangel, dated February 17, 2016
- R-9 Notes of interview of Kendra Hall, dated February 18, 2016
- R-10 Certification of John Stewart and logs for Kendra Hall, signed January 25, 2017
- R-11 Timeline from video camera
- R-14 Final Notice of Disciplinary Action served on May 4, 2016