

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4th DAY OF APRIL, 2018

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 01509-17

AGENCY DKT. NO. 2017-2002

**IN THE MATTER OF RHONDA WEST,
JERSEY CITY SCHOOL DISTRICT.**

Seth Gollin, Esq., AFSCME, for appellant Rhonda West pursuant to N.J.A.C. 1:1-5.4(a)(6)

Teresa L. Moore, Esq., for respondent Jersey City School District (Riker, Danzig, Scherer, Hyland & Perretti, attorneys)

Record Closed: November 30, 2017

Decided: January 16, 2018

BEFORE **KELLY J. KIRK, ALJ**:

STATEMENT OF THE CASE

The Jersey City School District suspended security guard Rhonda West for seven working days for insubordination, conduct unbecoming a public employee, and other sufficient cause, including violation of Security Department policies.

PROCEDURAL HISTORY

On or about October 14, 2016, the Jersey City School District served Rhonda West with a Preliminary Notice of Disciplinary Action (PNDA). (J-1.) A departmental hearing was held on October 20, 2016, and the charges of insubordination, conduct unbecoming a public employee, and other sufficient cause, including violation of Security Department policies, were sustained. (J-2.) On or about December 16, 2016, the Jersey City School District served West with a Final Notice of Disciplinary Action (FNDA), suspending her for seven working days, beginning January 1, 2017, and ending January 11, 2017. (J-2.)

West appealed, and 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 February 1, 2017. The hearing was held on October 30, 2017, and the record remained open for post-hearing submissions. The record closed on November 30, 2017.

FACTUAL DISCUSSION

Lakeisha McGoy and Celeste Williams testified on behalf of the Jersey City School District. Rhonda West testified on her own behalf.

Background

I **FIND** the following **FACTS** in this case:

On January 7, 2002, West was appointed by Jersey City Public Schools as a security guard. In the 2016–2017 school year, West was assigned as a security guard at Snyder High School. The chain of command for security is director of security, chief of security, field supervisor, senior security guard, and security guard.

On Saturday, October 1, 2016, the Snyder High School football team had a game at Cochrane Field at Caven Point in Jersey City, beginning at approximately 1:00 p.m. West was assigned as a security guard at the football game, beginning at 12:00 p.m. The

assignment was voluntary, for overtime pay. West's position at the football game was in front of the spectator stands. The stands are located on one side of the football field only, behind the visiting team's bench.

Security guard supervisor Lakeisha McGoy has been employed as a security guard by Jersey City Public Schools for approximately twelve years, and has been the chief of security since August 25, 2017. Prior thereto she was a security guard supervisor for three years. McGoy travels to the various schools and makes sure the other security guards are performing their jobs as required. McGoy was working as the field supervisor at the October 1, 2016, football game, and supervising six security guards, including West. West had previously worked other football games. The assignment begins at noon and ends when the game is over. McGoy assigned the guards to their posts and made sure they had their equipment, which consisted of vests and radios. West went to her assigned location in the spectator stands. West was positioned in the stands by the visiting-team fans (#5 on the drawing), another security guard was positioned in the stands by the home-team fans (#4 on the drawing), and McGoy was positioned near the Board of Education security (#6 on the drawing). (R-2.)

West's duties at the football game were to ensure: no spectators were leaning on the fence in front of the stands, for safety reasons; the walkways were clear; spectators were sitting and not throwing anything; and that there were no fights or other prohibited contact. McGoy advised West of her duties when she handed her the equipment.

McGoy relieved West of her duties prior to the end of the football game. West turned in her work vest and radio to McGoy before she left the football game. West wrote an Incident Report. (R-7.) McGoy wrote an incident report, dated October 1, 2016, to Arthur Youmans, director of security for the Jersey City School District. (R-6.)

McGoy's Incident Report (R-6) states:

While working the Snyder High School football game at Caven Point, I addressed West to inform her that a spectator was leaning over the fence. The spectator was right in view of her. She told me that I didn't have to tell her the same thing over

and over. She was waiting for her to finish talking to the coach before she interrupted them. I kept trying to explain to her that it was a safety risk with the spectator leaning over the fence regardless of who she was speaking to. She kept insisting that she should not interrupt them from their conversation. Her voice began to elevate in an aggressive manner and the fans appeared to be listening to her aggressiveness so I asked for her to step away so we could handle the situation without people listening but in an area where her post could still be monitored. She refused. At that time, I informed West that she was being removed from her duties. She told me that she was not going anywhere. At 2:30 pm, I radioed in to central office to inform the desk to log in that West is being removed from her work duties as of 2:30 pm. As Rhonda was handing in her radio and work vest she said to me "Now who's going to tell them not to lean over the fence now." I told her that it was not her concern at this point. She also stated that my actions were harassment. I informed West that my job is to make sure the guards are performing their duties correctly.

West's Incident Report (R-7) states:

On October 1, 2016 I Rhonda West arrived at my overtime location at 1:00 p.m. At that time I was met by Supervisor Lakeisha McGoy. She then gave me my smock and radio. I then went to the post I was assigned. Twenty minutes later Supervisor McGoy walked to my post and asked me to make sure my radio was turned up and on, I did as she asked while she stood in front of me to make sure. After she was satisfied Supervisor McGoy walked away. About forty minutes later the cheerleader coach from Belleville High School asked a mother from one of the cheerleaders about a concern of her daughter. Supervisor McGoy walked over to my post once again. I stated to Supervisor McGoy the cheerleader coach from the visiting team needed to speak to one of her parents about a concern for her daughter. Supervisor McGoy then said to me "I don't care. I told you YOU NOT TO LET ANYONE LEAN OVER THE GATE." I tried to explain, but Supervisor McGoy didn't want to hear what I had to say. She then asked to speak to me but at that time everyone was looking and listening. I believed I was harassed and humiliated, because she reprimanded me in front of everyone. Supervisor McGoy informed me that I was relieved of my duties at 2:38 p.m., at which time the area I was assigned to became unsafe. Due to this forsaken situation, I will not receive the wages I am entitled to in its entirety. The parent then apologized to me for any trouble she may have caused.

West was charged with insubordination, "unbecoming conduct," and "other just cause, including violation of Security Department policies." (J-1; J-2.)

Petitioner's disciplinary history includes a three-day unpaid suspension in September 2015 for neglect of duty, failure to perform duties, insubordination, and other just cause; a four-day unpaid suspension in September 2013 for conduct unbecoming a public employee; and a two-day unpaid suspension in April 2010 for conduct unbecoming a public employee.

Testimony

Lakeisha McGoy

From her position, McGoy saw a spectator lean over the fence near West. McGoy tried to reach West over the radio. West did not respond, so McGoy had to walk over to West. As McGoy walked up to the West, the spectator moved back. McGoy saw the radio inside West's right pocket, clipped to the pocket, with the speaker facing West's body. McGoy asked West if her radio was on, and West said that it was. McGoy asked where it was and West said that it was in her pocket. McGoy asked to see it to verify it was turned up. When West turned the knob on the radio it beeped, which is what it does when the radio is first turned on, so McGoy knew the radio had not been on.

Later, from her position McGoy saw a female spectator, approximately 5'7" or 5'8" tall, lean all the way over the fence to talk to the football coach, who was on the field. McGoy was certain that the female spectator was talking to a football coach, because it was a male, wearing headphones and holding a clipboard. The cheerleading coach is female and was next to the cheerleaders. The spectator was located a few feet from West. McGoy tried to reach West over the radio, but West did not respond. McGoy walked over to West, and as she addressed West the spectator moved back and walked up into the stands. McGoy told West that she needed to remove the spectator from the fence, and that she had been calling her over the radio and received no response. West said that she did not hear McGoy. McGoy told West that she needed to turn her radio up and that she never has her radio up. West also told McGoy that she was not going to

move the spectator until the spectator was finished with her conversation, because she was not going to interrupt her while she was talking. McGoy told West that the spectator was almost over the fence and that if anyone had tapped her, she would have fallen over the fence. West was getting loud and McGoy noticed that spectators were looking at them, so she told West to move to the side to avoid having the conversation in public. West refused to move to the side to discuss the situation. As a result, McGoy instructed West to turn in her vest and radio and sign out for the day. West initially refused to turn over the vest and radio, so McGoy, to document it, radioed in to the central station that as of 2:35 p.m. West was being relieved of her duties. Only then did West walk to the security truck and turn in her vest and radio. West was replaced by another security guard for the remainder of the game.

For safety reasons, spectators cannot lean on the fence or over the fence, as they could fall or the fence could give out. McGoy took several photographs of the stands to show why it was important that spectators not lean on or over the fence. (R-3; R-4; R-5.) The silver fence is approximately 3.5 feet high, and there is also a black fence on the field. If a spectator were to fall, the spectator could land between the two fences, or on the field.

After the game, McGoy wrote up an incident report for Director Youmans to explain why West was relieved of her duties, and to request a disciplinary hearing. (R-6.) Her incident report did not document everything that happened. She did not mention that West's radio was off, or that it was in her pocket. She only mentioned the reasons related to why West was relieved of her duties. West was disrespectful and going back and forth with her superior.

Security guards are provided with the Security Department Manual and are expected to review it. According to McGoy, various portions of the Security Department Manual were violated, including: ability to understand, remember, and carry out oral and written directions; ability to learn quickly from oral and written explanations and from demonstrations; ability to note significant conditions by observation and to take proper action; ability to work harmoniously with associates, visitors, and other groups of people; ability to follow prescribed procedures; ability to react promptly to situations requiring

action; ability to remain alert; ability to maintain order among individuals; ability to be courteous but firm with individuals; ability to make judgments; ability to take proper action in preventing potential accidents; ability to deal with people politely and helpfully beyond giving and receiving of instruction; and ability to learn to use various types of equipment. The Code of Conduct applies because it requires that the security guards provide a safe environment in their assigned school/building for staff members, students, and the general public, and protect life and property.

West knew the spectator should not have been leaning over the fence, so upon seeing her do so, West should have immediately gone over to the spectator and moved her from the fence. West did not follow procedure because she did not move the spectator away from the fence and did not have her radio on and up.

McGoy could see straight down the walkway from her location. West and the spectator were not standing where West marked the photograph (R-5). The spectator was not sitting at the front of the stands. When McGoy first walked up to West the spectator was where McGoy circled the photograph (R-5).

Celeste Williams

Williams has been the chief of talent for Jersey City Public Schools for almost three years. She oversees all human-resources functions, including the disciplinary process for non-instructional personnel, like security guards. Once the director of security requests a disciplinary hearing, Williams reviews the information from the director of security and requests any additional documentation detailing the incident and employee history. She determines whether to forward the information to counsel for a discipline case. Sometimes she discusses type or level of discipline with the director. Williams recommended a seven-day suspension based on Civil Service Commission rules on major discipline and West's prior disciplinary history.

Rhonda West

West did not hear McGoy the first time McGoy was trying to contact her. West's radio was attached to her uniform pants, but the speaker part was turned to the inside instead of the outside. She had the radio on, and thought it was not turned all the way up, but it was not. West did not hear McGoy because the music from the press box was playing. When McGoy walked over she told West to turn the radio outward when she turned it up. The radio was not off. The radio was not in her pocket. At prior football games, West always wore her radio on the inside. It was usually all the way up.

West's radio was physically on her uniform pants, "attached to my belt." The radio was clipped to her the way McGoy's radio was clipped to McGoy at the hearing, but facing the inside. The clip is on the back of the radio. The speaker is on the front. She put it against her belt. West did not know the radio was that low. It would have been her responsibility to have her radio turned up to hear a call. She was a little confused about the location of her radio. She had it clipped inside the pocket of her uniform. Her uniform pants are not loose, so it was not all the way in that pocket. The clip was clipped to her pocket, not to her belt.

Later, a female parent went up to the fence.¹ She did not lean over the fence or touch the fence. She stood in front of the fence. She was speaking to the female cheerleading coach for the other team. West asked her to sit down, which she did, and that was the end of it. The spectator continued speaking to the cheerleading coach while she was sitting down. West had no other interaction with that spectator. Maybe McGoy saw it from a distance because McGoy came over and asked West why she did not tell the female spectator to stop leaning over the fence. West explained to McGoy that she did tell the spectator, and that was why the spectator stopped leaning over the fence. West told McGoy that she asked the spectator to sit down and told the spectator that for her safety she could not lean over the fence. But she was not leaning over the fence. She was standing at the fence. McGoy again told West that she had told her not to allow

¹ West referred to the fence as a "gate," but fence is used to avoid confusion, as McGoy testified it was a fence and the photos depict a fence.

anyone to lean over the fence. West tried to explain to McGoy that the spectator was not leaning over the fence, and it escalated from there. McGoy said she was not going to argue with West and that West was given an order and did not listen. West was trying to explain, but McGoy did not want to hear what West had to say and kept interrupting West. The spectator was just sitting there. McGoy asked to speak with West. They moved over to the side, but the band was playing. When the band stopped playing, West was still trying to explain about the fence situation. McGoy said she did not care, and she told West not to let anyone lean on the fence. McGoy did not want to hear West's explanation, and relieved her of her duties. After McGoy left, the spectator came up to West and said she was sorry if she caused West any trouble. West told her that she did not, and then walked over and handed in her radio and smock. McGoy was on the other side of the field and could not see, or it could have looked like the spectator was standing up. The spectator was a little close to the fence, but West asked her to move for her safety, because she could not be that close to the fence or in the walkway.

West read the Security Department Manual. West understood that if a supervisor gives a direction, she is to follow the direction.

Additional Findings of Fact

A credibility determination requires an overall evaluation of the testimony in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). It must be such as the common experience and observation can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). "The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

Appellant's testimony was inconsistent with and overborne by the record, including the documentary evidence and the concise, consistent, and credible testimony of McGoy. By way of example, West was specifically asked, "Was the radio in your pocket?," and her response was "No." West also testified that the radio was on, but it was turned down. However, West later changed her testimony regarding the location of her radio. After initially testifying that the radio was not in her pocket and was clipped to her belt, she later testified that she had become confused, and the radio was clipped to and inside her pocket. West's testimony was overborne by the credible testimony of McGoy that West's radio had been off because McGoy heard it turn on, and that McGoy saw the radio inside West's pocket, clipped to the pocket with the speaker facing West's body. Further, given the demonstration by West as to how the radio was located in her uniform pants pocket, the clip was at the top and the speaker would not have been exposed because it would either have been turned in toward West's body.

West and McGoy each indicated on photograph R-5 where the spectator and the coach had been standing. West indicated that the spectator was standing just in front of the bottom of the stands on the opposite side of the walkway from the fence and that the coach was at the fence on the field, while McGoy indicated that the spectator was standing at the silver fence, and the coach was standing back from the black fence on the field. It is unlikely that the spectator would have been standing where West indicated, if she was trying to speak to a coach on the field, and she would have been standing in front of and blocking the view of others watching the game. Further, had the spectator not been leaning on the fence or obstructing the walkway, there would have been no reason for McGoy to have walked from her location all the way to the other side of the field to speak with West.

In view of the foregoing, I credit the testimony of McGoy and not the testimony of West, and **FIND** the following additional **FACTS** in this case:

When McGoy first walked over to speak with West, a spectator had been leaning over the fence and continued to do so until McGoy approached. West failed to instruct the spectator to move from the fence. West also failed to respond to the radio call from

McGoy. West's radio was inside West's pocket, clipped to the pocket, with the speaker facing West's body, and it was turned off.

When McGoy next walked over to speak with West, a spectator had been leaning on the fence talking to a coach and continued to do so until McGoy approached. West again failed to instruct the spectator to move from the fence. West again failed to respond to the radio call from McGoy. West's voice in speaking to McGoy became elevated and spectators were watching. When McGoy advised West that she was being removed from her duties, West refused to comply until McGoy radioed it in to the central office.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the executive branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career-service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career-service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline includes removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including insubordination, conduct unbecoming a public employee, and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(2), (6), and (12). In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

West is charged with insubordination, conduct unbecoming, and other sufficient cause, including violation of the Security Department Manual. The burden of proof is on

the Jersey City School District to prove the charges by a preponderance of the credible evidence.

N.J.A.C. 4A:2-2.3(a)(2) does not define insubordination. Black's Law Dictionary (10th ed. 2014) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Likewise, N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming. However, the Appellate Division has held that conduct unbecoming a public employee is "any conduct . . . which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). In Emmons, which involved a police officer charged with conduct unbecoming, the Appellate Division also held that conduct unbecoming is "any conduct which adversely affects the morale or efficiency of the bureau." Ibid. What constitutes conduct unbecoming a public employee is primarily a question of law. Karins v. Atl. City, 152 N.J. 532, 553 (1998).

West acknowledged reading the Security Department Manual, which requires, inter alia, that she remember and carry out oral directions, work harmoniously with associates, follow prescribed procedures, remain alert, and react promptly to situations requiring action. In both instances, the spectators remained leaning over the fence until McGoy approached. West twice failed to respond to radio calls and twice failed to instruct the spectators to move from the fence. West became combative with McGoy in view of spectators when McGoy approached her the second time, and then when West was removed from her duties, she refused to comply until McGoy radioed it in. Accordingly, I **CONCLUDE** that the charges of insubordination, conduct unbecoming a public employee, and other sufficient cause, including violation of the Security Department Manual, are sustained.

The penalty imposed by the Jersey City School District was a seven-working-day suspension. The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission

must utilize the evaluation process set forth in West New York v. Bock, 38 N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations, and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated.

In view of West's conduct on October 1, 2016, as well as her disciplinary history of three prior suspensions, ranging from two to four days, I **CONCLUDE** that a seven-working-day suspension is an appropriate penalty in this matter.

ORDER

I **ORDER** that the charges of insubordination, unbecoming conduct, and other just cause, including violation of Security Department policies, are **SUSTAINED**, and that the penalty of a seven-working-day suspension 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, 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.

1/16/18
DATE

Kelly J. Kirk
KELLY J. KIRK, ALJ

Date Received at Agency:

1/16/18

Date Mailed to Parties:

jb

JAN 18 2018

Laura Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

WITNESSES

For Appellant:

Rhonda West

For Respondent:

Lakeisha McGoy

Celeste Williams

EXHIBITS IN EVIDENCE

Joint

- J-1 PNDA
- J-2 FNDA
- J-3 Stipulation of Facts

For Appellant:

None

For Respondent:

- R-1 Security Department Manual excerpt
- R-2 School drawing
- R-3 Photograph
- R-4 Photograph
- R-5 Photograph
- R-6 Request memo, dated October 1, 2016
- R-7 Security Department Incident Report