



STATE OF NEW JERSEY

In the Matter of Jeanette Melendez
Hudson County, Department of Roads
and Public Safety

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2018-2985 & 2018-
2986
OAL DKT. NOS. CSV 06394-18 &
06396-18
(Consolidated)

ISSUED: JUNE 12, 2019 BW

The appeals of Jeanette Melendez, Building Maintenance Worker, Hudson County, Department of Roads and Public Property, of her 60 working day suspension and removal effective May 19, 2018, on charges, were heard by Administrative Law Judge Barry E. Moscovitz, who rendered his initial decision on May 16, 2019. Exceptions were filed on behalf of 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 (Commission), at its meeting of June 12, 2019, 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 suspending and removing the appellant was justified. The Commission therefore affirms those actions and dismisses the appeals of Jeanette Melendez.

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
THE 12th DAY OF JUNE, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CSV 06394-18 &
CSV 06396-18
AGENCY NOS. 2018-2985 &
2018-2986

**IN THE MATTER OF JEANETTE MELENDEZ,
HUDSON COUNTY, DEPARTMENT OF ROADS
AND PUBLIC SAFETY.**

William B. Hannan, Esq., for appellant Jeanette Melendez (Oxfeld Cohen, P.C.,
attorneys)

John C. Collins, Assistant County Counsel, for respondent Hudson County
(Donato Battista, County Counsel, attorney)

Record Closed: April 22, 2019

Decided: May 16, 2019

BEFORE BARRY E. MOSCOWITZ, ALJ:

STATEMENT OF THE CASE

On January 26, 2018, Jeanette Melendez, a building maintenance worker, left personal paperwork on the desks of Superior Court Judges, who now no longer want Melendez to have access to their chambers. This was the fifth time in the past three years that Melendez has engaged in misconduct. Given her prior disciplinary record,

should Melendez be terminated? Yes. An employee's prior disciplinary record is inherently relevant to determining an appropriate penalty for a subsequent offense. In re Carter, 191 N.J. 474, 483 (2007).

PROCEDURAL HISTORY

CSV 06394-18

On January 26, 2018, Hudson County served Melendez with a Preliminary Notice of Disciplinary Action, charging Melendez with insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12).

The notice specifies that on January 17, 2018, at approximately 5:15 p.m., the facility manager, Kim Riscart-Cardella, and Melendez's supervisor, Orestes Acosta, had gone to the eighth floor of the Hudson County Administration Building, where Melendez had been assigned to clean, and noticed that none of her assigned areas had been cleaned. For example, none of the garbage in the bathrooms had been emptied, the floors were still dirty, and Melendez's cart was still in the maintenance closet, her bucket empty and dry.

At 5:30 p.m., Cardella and Acosta found Melendez on the fourth floor in the jury room socializing. They reminded Melendez that none of her assigned duties had been completed, but Melendez responded that she still had until the end of her shift at 11:00 p.m. to complete them. Cardella and Acosta explained to her that her hours are from 3:00 p.m. to 11:00 p.m., and that she should have been cleaning during this time, not socializing, but Melendez retorted, "Do what you have to. Give me the suspension paperwork." As a result, Cardella gave Melendez the suspension paperwork, which Melendez refused to sign, and sent her home.

CSV 06396-18

On January 26, 2018, Hudson County served Melendez with a second Preliminary Notice of Disciplinary Action, charging Melendez with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). The notice specifies that on January 24, 2018, Melendez left paperwork on Judge Militello's, Judge Nelson's, Judge Defazio's, Judge Espinales-Maloney's, and Judge Rich's desks in their chambers. The notice continues: "Your conduct evidenced extreme disregard for the security of the court and unwarranted access to the facilities for your personal use." Because the judges now no longer want Melendez to have access to their chambers or to their floors, Hudson County seeks her termination.

On February 15, 2018, a departmental hearing was held for both sets of charges and specifications.

On February 27, 2018, Melendez was served with Final Notices of Disciplinary Action. The first final notice sustained all the charges and specifications contained in its preliminary notice and suspended Melendez sixty days for failing to clean her assigned area. More significantly, the second final notice sustained all the charges and specifications contained in its preliminary notice and terminated her effective May 19, 2018, for leaving the paperwork on the judges' desks.

Transmittal, Consolidation, and Hearing

On March 12, 2018, Melendez appealed the determinations.

On May 3, 2018, the Civil Service Commission transmitted both cases to the Office of Administrative Law as contested cases under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On December 5, 2018, I consolidated the cases; on April 22, 2019, I held the hearing; and on the latter date, I closed the record.

FINDINGS OF FACT

Based on the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

I.

Kim Riscart-Cardella is the facility manager for the Hudson County Administrative Building, 595 Newark Avenue, Jersey City, New Jersey.

On January 17, 2018, at approximately 5:15 p.m., the facility manager, Cardella, and Melendez's supervisor, Orestes Acosta, had gone to the eighth floor of the Hudson County Administration Building, where Melendez had been assigned to clean, and noticed that none of her assigned areas had been cleaned. For example, none of the garbage in the bathrooms had been emptied, the floors were still dirty, and Melendez's cart was still in the maintenance closet—her bucket empty and dry.

At the hearing, Melendez admitted as much. Melendez, who had been working as a building maintenance worker in the Administration Building for the past twenty years, testified that her shift was from 3:00 p.m. to 11:00 p.m., with a fifteen-minute break at 5:00 p.m. and a one-hour break at 7:00 p.m., but that two courtrooms were in use from 3:00 p.m. to 5:00 p.m., so she waited to do any cleaning until after her fifteen-minute break at 5:00 p.m. Melendez explained that she waited in the hallway by a windowsill until 5:00 p.m. and took her break at that time on the fourth floor in a jury room where she could socialize with two coworkers. Both Cardella and Melendez testified that there are six courtrooms on the eighth floor, each with an office for the judge and an area for his or her staff, as well as public bathrooms and hallways, all of which need to be cleaned. Cardella added that there are stairwells, elevator banks, and windowsills that also need to be cleaned.

Yet Melendez admitted that only three of the six courtrooms were in use between 3:00 p.m. and 5:00 p.m. and that she chose not to clean any of the other areas until after her fifteen-minute break at 5:00. Melendez further specified that two of the courtrooms were in use for a sheriff's sale and that the hallway was crowded with members of the public because of it. Melendez noted that a third courtroom was in use because a judge was on the bench, and that a fourth judge was in his chambers. This still left other areas to be cleaned—the other courtrooms, the other judges' offices, the other secretarial areas, the public bathrooms, the stairwells, the elevator banks, and the windowsills—but Melendez just picked up some trash from the bathroom and chose to wait until after her break to begin her workday. To make matters worse, Cardella testified that Melendez was not even authorized to use the jury room on the fourth floor to take her break.

II.

At 5:30 p.m., Cardella and Acosta found Melendez on the fourth floor in the jury room socializing. They reminded Melendez that none of her assigned duties had been completed, but Melendez responded that she still had until the end of her shift at 11:00 p.m. to complete them. Cardella and Acosta explained to her that her hours are from 3:00 p.m. to 11:00 p.m., and that she should have been cleaning during this time, not socializing, but Melendez retorted, "Do what you have to. Give me the suspension paperwork." As a result, Cardella gave Melendez the suspension paperwork, which Melendez refused to sign, and sent her home.

Melendez, however, testified that Cardella found her in the jury room with two coworkers, pointed to them one at a time, and said, "Suspended . . . suspended . . . suspended. Come to my office."

Cardella testified on rebuttal that she did not point to Melendez and her coworkers one at a time and say, "Suspended . . . suspended . . . suspended." To the contrary, Cardella explained that she had asked Melendez why she had not cleaned anything, that she had asked Melendez and her coworkers to come to her office to discuss their being in the jury room socializing instead of working, and that Melendez's coworkers

apologized, so she let them return to their work. But Melendez did not apologize. She did not apologize about being in the jury room or failing to clean the eighth floor; instead, Melendez asked Cardella to suspend her.

This was not the first time that Melendez had been insubordinate or had neglected her duty. In fact, this was the fourth time in just the past three years. On April 20, 2015, Melendez was suspended for three days for insubordination and neglect of duty; on September 16, 2015, she was suspended for five days for insubordination and neglect of duty; and on November 17, 2015, she was suspended for twenty days for having been charged with defiant trespass in violation of N.J.S.A. 2C:18-3(b). Now she was facing a suspension for sixty days.

At the hearing, Melendez cried that she was facing termination. But Melendez was only feeling sorry for herself. Indeed, Melendez revealed on cross-examination that she still does not understand what it means to be insubordinate and that she has not learned from her past suspensions for insubordination and neglect of duty.

Between Cardella and Melendez, Cardella was not only the more credible witness, but also the more trustworthy one, and I take Cardella at her word. Melendez, on the other hand, I do not trust her. Which brings me to the second set of specifications.

III.

On January 24, 2018, Melendez left paperwork on Judge Militello's, Judge Nelson's, Judge Defazio's, Judge Espinales-Maloney's, and Judge Schillari Rich's desks in their chambers. The paperwork was a summons Melendez had received on November 17, 2015, from the Hudson County Sheriff's Office for defiant trespass in violation of N.J.S.A. 2C:18-3(b). The charge, however, had been dismissed. Nevertheless, Melendez left a copy of that summons on each of the judges' desks with a handwritten note, "Sorry to have left this but I can't take it."

At the hearing, Melendez, who knew that she was not to violate the private working space of the Superior Court Judges, testified that she did just that by leaving the

paperwork on the judges' desks. As Melendez explained, a coworker, whom she could not identify by name or description, only that she had known this person a short time, had told her that the past issuance of the summons by the Hudson County Sheriff's Office, and the current disciplinary charges by implication, constitute harassment, and that she should sue the County. When Melendez distilled it, she was asking the judges to recommend a lawyer who could sue the County on her behalf.

In reaction, Kimberly Cicala, the acting general operations division manager for the New Jersey Courts, Hudson County, wrote a letter to Cardella on January 24, 2018, notifying her that this paperwork had been left on Judge Militello's desk, and asking Cardella to remind her staff not to leave things on the judges' desks. When this paperwork was also discovered on four other judges' desks the following day, Cicala immediately wrote another letter to Cardella requesting that Melendez's access to judges' chambers be rescinded. As a result, Cardella restricted Melendez's access.

At the hearing, Cardella testified that she restricted Melendez's access to the first floor of the Administration Building. On cross-examination, Cardella explained that there are other buildings in which Melendez could conceivably work, but that she would not assign Melendez to any of those other buildings because that would displace or inconvenience other workers. And as Cardella asserted, these coworkers do not deserve to be displaced or inconvenienced due to Melendez's misconduct.

CONCLUSIONS OF LAW

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). On such appeals, the Civil Service Commission may increase or decrease the penalty, N.J.S.A. 11A:2-19, and the concept of progressive discipline guides that determination, In re Carter, 191 N.J. 474, 483-86 (2007). Thus, an employee's prior disciplinary record is inherently relevant to determining an appropriate penalty for a subsequent offense, id. at 483, and the question upon appellate review is whether such punishment is "so disproportionate to the offense,

in the light of all the circumstances, as to be shocking to one's sense of fairness," Id. at 484 (quoting In re Polk, 90 N.J. 550, 578 (1982) (internal quotes omitted)).

In the first case, Melendez is charged with insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). In applying the law to the facts—which the specifications in the Final Notice of Disciplinary Action lay bare and I found as fact—Melendez violated all of these regulations. In particular, the evidence supports, and I found, that Melendez failed to do any of her assigned duties during the first two hours of her shift, from 3:00 p.m. to 5:00 p.m., took a break in a room that she knew was not designated for breaks, was insubordinate when questioned why she had neglected her duty from 3:00 p.m. to 5:00 p.m., and has not learned from any past discipline. Given this application of the law to the facts, I **CONCLUDE** that Melendez violated all of the regulations the final notice asserts, and that Melendez should be suspended for sixty days.

In the second case, Melendez was charged with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). Once again, in applying the law to the facts—which the specifications in the Final Notice of Disciplinary Action lay bare and I found as fact—Melendez violated all of these regulations. In particular, the evidence supports, and I found, that Melendez, who had worked in the courthouse for twenty years, and knew not to disturb the private working space of the Superior Court Judges, still did so by leaving personal paperwork on their desks in an effort to gain the recommendation of a lawyer who could sue the County on her behalf. Such conduct is unbecoming. Given this application of the law to the facts, together with her prior disciplinary record, I **CONCLUDE** that Melendez violated all of the regulations the final notice asserts and this misconduct, and that Melendez should be terminated from her employment.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Melendez be terminated from her employment as a building maintenance worker for Hudson County.

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 is authorized by law to make a final decision in this case. 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 under 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.

5/16/19
DATE


BARRY E. MOSGOWITZ, ALJ

Date Received at Agency:

May 16, 2019

Date Mailed to Parties:
dr

May 16, 2019

APPENDIX

Witnesses

For Appellant:

Jeanette Melendez

For Respondent:

Kim Riscart-Cardella

Orestes Acosta

Documents

Joint:

- J-1 Preliminary Notice of Disciplinary Action dated January 26, 2018
- J-2 Preliminary Notice of Disciplinary Action dated January 25, 2018
- J-3 Employee Profile (Disciplinary Record) dated May 10, 2018

For Appellant:

None

For Respondent:

- R-1 Letter from New Jersey Courts to Cardella dated January 24, 2018
- R-2 Letter from New Jersey Courts to Cardella dated January 25, 2018
- R-3 Attendance Record for Calendar Year 2018