

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12th DAY OF JUNE, 2019

Deirdre L. Webster Cobb

Deirdré 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. NO. CSV 01375-18

AGENCY DKT. NO. 2018-1949

**IN THE MATTER OF GERTRUDE SAMUELS,
DEPARTMENT OF HUMAN SERVICES,
HUNTERDON DEVELOPMENTAL CENTER.**

John F. McDonnell, Esq., for appellant (McDonnell Artigliere, attorneys)

**Jana R. DiCosmo, Deputy Attorney General, for respondent (Gurbir S. Grewal, Attorney
General of New Jersey, attorney)**

Record Closed: April 3, 2019

Decided: April 29, 2019

BEFORE JACOB S. GERTSMAN, ALJ t/a:

STATEMENT OF THE CASE

Appellant Gertrude Samuels (Samuels) appeals her termination by respondent, Hunterdon Developmental Center (Hunterdon or Appointing Authority), effective September 9, 2017, for: physical or mental abuse of a client; inappropriate physical contact or mistreatment of a client; insubordination; and any improper conduct which violates common decency. N.J.A.C. 4A:2-2.3(a)6 and 4A:2-2.3(a)12.

PROCEDURAL HISTORY

On September 8, 2017, Hunterdon issued a Preliminary Notice of Disciplinary Action (PNDA) (J-1), and an Amended Notice of Disciplinary Action (J-2) setting forth the charges and specifications made against the appellant. After a departmental hearing held on December 4, 2017, Hunterdon issued a Final Notice of Disciplinary Action (FNDA) on January 2, 2018, sustaining the charges in the amended PNDA and removing the appellant from employment effective September 9, 2017. (J-3.) The appellant filed a timely appeal and the matter was transmitted to the Office of Administrative Law on January 24, 2018, for hearing as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing for this matter was held on October 18, 2018.

The record remained open for the parties to file briefs on the limited issue of this forum taking an adverse inference against respondent due to its non-production of certain witnesses. Appellant's brief was filed December 20, 2018, and respondent's brief was filed on January 22, 2019. Appellant's full summation was filed on February 25, 2019, the respondent's summation was filed February 27, 2019, and the record closed. The record was reopened on April 2, 2019, for the parties to submit a signed and dated joint stipulation of facts. (J-5.) The signed stipulation was received on April 3, 2019, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

The following Joint Stipulation of Facts (J-5), was duly submitted by the parties and are hereby **FOUND** as **FACT**:

1. Samuels began working at Hunterdon in 1998.
2. Appellant was employed by Hunterdon as a Cottage Training Technician.
3. On September 7, 2017, Samuels was assigned to Cottage 17.
4. On the morning of September 7, 2017, Samuels was working in Zone 2 Day room.

5. On September 7, 2017, client J.V. (No. 01179) was a resident of Cottage 17.
6. On the morning of September 7, 2017, J.V. was located in Zone 2 Day Room.
7. On September 7, 2017, Hunterdon Staff Development Director Susan Fair (formerly known as Susan Pickett) alleged that Samuels slapped J.V.

TESTIMONY

For Respondent

Susan Pickett Fair (Fair),¹ is a Staff Development Director at Hunterdon. Her job responsibilities include running the training department, calendar development, face-to-face training, staff development, and daily audits. Fair trains employees on the abuse policy, and while Samuels may have attended one of her training sessions, Fair only knew appellant from the September 17, 2017, incident. She testified that on September 17, 2017:

I was doing a daily audit and I walked into Cottage 17. I walked through the front door. I went through Zone One, which was empty—there were no clients and staff. I got into Zone Two, and as I entered into Zone Two, the clients and the staff were to the left. I observed a staff—had no idea who because her back was to me—with her arm up and coming down. She was actually moving her arm. She made contact with an individual sitting on the couch in front of her. I yelled as I walked in and saw her arm moving. Honestly, I don't know what I yelled, but hoping to stop the contact. She hit the individual, she turned, she saw me, and she started walking towards me. There was a table between us and she sat at the table.

(T 20:6-19.)

Fair testified that she was approximately fifteen steps away from appellant and J.V. at time of the incident and saw the swinging of Samuels' hand and heard the contact on J.V.'s skin. Appellant's back was facing her when she entered the room, and the momentum from the swing

¹ The incident at issue in this matter was prior to Fair's marriage when she was known as Susan Pickett; respondent's exhibits identify her by that name.

turned Samuels around to face her. Fair testified that this could not have been Samuels either adjusting J.V.'s shirt or reaching her arm over J.V., as she saw the swinging of Samuels' hand and heard the contact on the skin. There were no marks or visible injuries on J.V., which Fair explained is not a requirement for the violation of the Hunterdon abuse policy.

Following the incident, Fair asked Samuels for her name twice, which was not provided. Fair then asked Samuels for her identification, which she turned over. She subsequently walked toward J.V., and when he put his hands up, she stopped and did not get any closer. She did not observe any of J.V.'s facial expressions as he was looking down.

Fair located the Cottage Training Supervisor (CTS), Lakeya Wilson (Wilson), and gave her a brief account of the incident. Samuels was then escorted to the CTS office by Fair and Wilson. She drafted an email statement to Eric B. McKenzie (McKenzie), the Assistant Supervisor of Professional and Residential Services, after taking five minutes to compose herself, where she described the incident. She stated in part, "[A]s I entered the room, I saw a staff person in mid-swing, about to slap a patient." (R-3.) Fair's account was also memorialized in the confidential incident report. (R-2 at 1-2.) However, the narrative of the incident written by McKenzie, stated that Fair observed appellant "winding up" rather than being at "mid-swing." *Id.* at 3. Fair testified she did not use the term "winding up."

On cross-examination, Fair stated that when Samuels' hand struck J.V., part of the hand hit his shirt and part hit his arm. In prior statements she stated that she "heard skin," which she stated is not in conflict with her testimony or other previous statements. She reiterated that she never used the words "winding up" to describe the movement of Samuels' hands.

Fair testified that Lisa Tyson (Tyson), a worker at Hunterdon, was also present in the room at the time of the incident. Tyson was approximately half way through the room, closer to Samuels and J.V., and the slap was loud enough for her to hear if she was focused on it. Fair added that following the incident, she only asked Tyson for J.V.'s name and did not speak to her about the incident.

Fair did not observe any redness on J.V.'s arm because he put his hands up as if to push her away. She followed protocol, which is to refrain from entering a client's personal space if they do not know the client's behavior. Had he not done that, she would have examined his arm. J.V. was examined by the nurse approximately seven to eight minutes after the incident, also pursuant to protocol, and the nurse did not see any visible marks on J.V.'s skin.

On redirect examination, she was asked if she has any reason to "make this up," to which she replied, "absolutely not."

Irene Carrozza (Carrozza), is the Supervisor of Residential and Professional Services at Hunterdon. Her main responsibilities include the supervision of residential and professional staff to ensure that services provided for the developmentally disabled clients at Hunterdon are carried out. She added that Hunterdon "is a 24-hour facility, so we have to ensure that the total care that we're providing for them is . . . occurring and that they're safe in their environment, that they're being care for in their environment, from the time they wake up to the time they go to bed—everything, because they do need assistance with everything." (T 77:5-11.) "Everything" includes the common activities of daily living, such as dressing, toileting, moving, and feeding. She added that the mental age and functionality of a resident could be from six months to two years old.

In her role as the supervisor, Carrozza is familiar with the policies and procedures at Hunterdon. While she is familiar with Samuels from the staffing lists, she did not know or work with her. Nevertheless, as a Cottage Training Technician, Samuels' main job responsibility was to provide care for clients, ensuring their safety and well-being.

Carrozza identified Hunterdon policies and memoranda dealing with the treatment of clients. Procedure Number 30, Abuse and Neglect, Mistreatment, and Reporting Reasonable Suspicion of a Crime, includes the definition of physical abuse as, "a physical act directed at a service recipient by a DHS employee, volunteer, intern, or consultant/contractor of a type that could tend to cause pain, injury, anguish, and/or suffering. Such acts include but are not limited to the service recipient being kicked, pinched, bitten, punched, slapped, hit, pushed, dragged, and/or struck with a thrown or held object." (R-11 at 1.) The purpose of the policy is to keep these vulnerable clients safe. Carrozza confirmed that

Samuels would be made aware of this policy upon hiring. The Hunterdon Chief Executive Officer (CEO) issued a memorandum to all employees on October 3, 2016, which summarized and highlighted the abuse and neglect policy, including the definition of physical abuse. (R-12.) Samuels does not dispute that she received this memorandum. (R-13.) Finally, the Hunterdon CEO issued a memorandum on July 14, 2017, reminding staff of the rules and procedures of the facility, including the requirement for courtesy and respect "to be demonstrated by all employees and at all times toward residents, fellow employees and the public." (R-14 at 2.) Samuels does not dispute that she received this memorandum. (R-15.)

Carrozza testified that slapping a resident constitutes abuse in violation of the policy. The slap does not have to cause pain, leave a mark, or cause the client to have a reaction. In fact, some clients do not have reactions and the policy states that the action "could tend to" cause pain or injury or anguish. (R-11.) She added that the Hunterdon clients are vulnerable and there is a zero-tolerance policy for abuse.

For Appellant:

Oluwakemi Ohabuiro (Ohabuiro), is a nurse at Hunterdon. She has worked for the state for fifteen years, has been at Hunterdon for three years, and is currently a licensed practical nurse (LPN). Ohabuiro is familiar with the incident and was the nurse on duty at Hunterdon on September 7, 2017. Upon direction of the CTS, she examined J.V. following the incident and completed section three of the confidential incident report approximately ten minutes after the examination. (R-2 at 1.)

The examination did not find any redness, skin openings, or signs of symptoms of pain or discomfort, and both shoulder areas looked similar. Additionally, she did not find anything unusual or other evidence that J.V. was hit. Ohabuiro admitted that she was not present during the incident. Prior to the incident, she did not know Samuels.

On cross-examination, she stated that she is familiar with patient abuse policy and confirmed that an injury is not necessary for an incident to constitute abuse. She reiterated that she did not observe the incident.

Yarkinah Cooley (Cooley), a current employee at Hunterdon, testified as a character witness for appellant. She knows Samuels from Cottage 17, and has worked with her for three and one-half years. Cooley and Samuels worked together daily as Cooley's shift ends at 7:00 a.m. and Samuels' shift begins at 6:00 a.m.

Cooley testified that Samuels is a good worker and always talks to the clients. Cooley has observed that appellant and the clients appear to like each other. She has never observed mistreatment or any inappropriate physical or verbal interactions by Samuels with the clients at Hunterdon. On cross-examination, Cooley stated that she was not present at the time of the incident at 7:30 a.m. on September 7, 2017.

Samuels testified on her own behalf. She has been employed by the State for close to twenty-four years, has been at Hunterdon since 1998, and worked in Cottage 17 for sixteen years. On September 7, 2017, Samuels was working in group two of Cottage 17, where eight clients were present. Tyson was also present and was two to four feet away. Her duties were to care for the group of clients, including J.V., who is unable to do anything for himself, requiring appellant to do everything for him, including dressing. She testified that he is not easy to care for, as he is not cooperative and moves around.

Immediately before Fair came over to her, Samuels testified that she "fixed Mr. V's shirt from behind because he was sitting on the couch, and I walked away." (T 123:8-10.) She added that the shirt was "all the way around" (T 123:15) and needed to be fixed. It was not unusual for his shirt to be in that condition. Fair then came over and asked Samuels for her name and "as she was asking my name, I was calling my name to her. But apparently, maybe she didn't understand me, so she asked for the second time and I called my name to her." (T 123 24-25; 124:1-2.) Fair then asked for her ID card, which was provided.

Samuels testified that she did not hit or slap J.V. and there was no physical contact with him that could have been interpreted as a slap or a hit. She added that when she fixed J.V.'s shirt, he leaned his head forward toward her.

On cross-examination, Samuels clarified that Tyson was five to six feet away with her back facing her. There was other activity in the room, but it was not noisy.

In this case, in order to find the facts as to what occurred on September 7, 2017, I must make a credibility determination with respect to the contradictory testimony of Fair and Samuels. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. The Supreme Court of New Jersey considered the issue of credibility in In re Estate of Perrone, 5 N.J. 514 (1950). The Court pronounced:

Testimony to be believed must to only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances.

[5 N.J. at 522.]

See also, Spagnuolo v. Bonnet, 16 N.J. 546 (1954); State v. Taylor, 38 N.J. Super. 6 (App. Div. 1955). In order to assess credibility, the witness' interest in the outcome, motive, or bias should be considered. Furthermore, 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, the testimony of Samuels and Fair provide conflicting accounts of the September 7, 2017, incident. Fair, who trains employees in the abuse policy, testified that when she entered room two of Cottage 17, she witnessed Samuels' arm in the process of coming down and striking J.V., a developmentally disabled man whose every need must be attended to by the staff at Hunterdon. She testified that she twice asked Samuels for her name which was not provided. Only after requesting her identification, did Samuels comply. Fair's consistent account of the incident was memorialized in the Confidential Incident Report (R-2), in an email to McKenzie (R-3), and in interviews with the Office of Program Integrity and Accountability (R-4, R-6).

Appellant seems to argue that the narrative drafted by McKenzie, who was not called as a witness by either party, is somehow exculpatory because McKenzie's narrative described Fair as having observed Samuels "winding up" and then striking J.V. rather than being in "mid swing." (R-2 at 3). Fair testified that she never used the term "winding up," which is bolstered by her written statement almost immediately after the incident where she stated that she witnessed Samuels in the "middle of a swing." (*Id.* at 1.) Further, it stands to reason that in the process of slapping another person, the time between "winding up" and entering the "middle of a swing" is so minimal that it renders this a distinction without a difference.

With respect to the issue of bias, I note that Fair and Samuels had such minimal interactions during their overlapping time at Hunterdon that they did not even know each other prior to the incident. Further, the record does not reflect any past animosity or conflict. Accordingly, Fair's testimony that she had no reason to "make this up" (T 72:20-21) rings true.

Conversely, Samuels' testimony that she only was adjusting J.V.'s shirt and that she did respond to Fair's request for her name, comes across as someone attempting to minimize her actions. It is not in dispute that Samuels was aware of the abuse policy and the potential consequences for a violation. While Fair has no reason to "make this up," it is in Samuels' interest to deny that these actions took place.

Accordingly, I **FIND** that the testimony offered by Fair is credible and that the testimony offered by the appellant is not credible. I further **FIND**, that based upon Fair's credible testimony, on September 7, 2017, Samuels struck J.V. and failed to respond to two requests for her name.

The following additional facts are not in dispute and I therefore **FIND** as **FACT**:

1. J.V. is a developmentally disabled individual who requires total care for all daily activities including dressing, toileting, moving, and feeding.
2. Appellant was aware of Procedure Number 30, Abuse and Neglect, Mistreatment, and Reporting Reasonable Suspicion of a Crime. (R-11.)

3. Appellant received the October 3, 2016, Memorandum from the Hunterdon CEO to all employees summarizing and highlighting the abuse and neglect policy, including the definition of physical abuse. (R-12, R-13.)
4. Appellant received the July 14, 2017, Memorandum from the Hunterdon CEO reminding staff of the rules and procedures of the facility, including the requirement for courtesy and respect "to be demonstrated by all employees and at all times toward residents, fellow employees and the public." (R-14 at 2., R-15.)

LEGAL ANALYSIS AND CONCLUSION

The appellant's rights and duties are governed by laws including the Civil Service Act and the regulations promulgated thereunder. A civil service employee who commits a wrongful act related to his or her employment, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6, -20; N.J.A.C. 4A:2-2.2, -2.3. Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, failure or inability to perform duties, chronic or excessive absenteeism or lateness; and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline should be applied. West New York v. Bock, 38 N.J. 500 (1962).

The Appointing Authority has the burden of establishing the truth of the allegations by the preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), in this de novo hearing. Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). 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, 275 (1958); see also, Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

As an initial matter, appellant argues that [I or this forum] should take an adverse inference against respondent for its failure to produce employees, Ohabuiro, McKenzie and Tyson, who are in its control and whom appellant asserts possess important factual information about this matter. Appellant stated that the general standard for such an adverse inference requires the trial court to be satisfied that the subject witness would be likely to offer more than merely cumulative evidence, is not "strongly biased against the party" against whom the inference is to be drawn and is not equally available to the party seeking the instruction. State v. Hill, 199 NJ 545, 560 (2009); State v. Lumumba, 253 NJ Super. 375, 395 (1989).

As noted above, the Appointing Authority has the burden in this matter, and made the determination not to call those witnesses. In fact, appellant called Ohabuiro as a witness and the record does not reflect that any attempt was made to compel the production of either McKenzie or Tyson as witnesses and that they were not made available. Put simply, if appellant wanted to call these witnesses, they were free to do so. Accordingly, the argument that I should take an adverse inference against respondent is without merit.

Appellant was charged with "conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has 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). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 [quoting In re Zeber, 156 A.2d 821, 825 (1959)]. Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) [quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)].

I **CONCLUDE** that appellant's behavior did rise to a level of conduct unbecoming a public employee. The basis for the charge of conduct unbecoming was appellant slapping

J.V. Samuels' conduct was such that it could adversely affect the morale or efficiency of a governmental unit or destroy public respect in the delivery of governmental services.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Specifically, appellant has been charged with violating the following provisions of Administrative Order 4:08: C3.1, Physical or mental abuse of a patient; C5.2, Inappropriate physical contact or mistreatment of a client; C9.2, Insubordination; and C11.1, Any improper conduct which violates human decency.

"Physical Abuse," as defined in Administrative Order 4:08, Supplement 1, refers to a physical act directed at a service recipient by a DHS employee of a type that could tend to cause pain, injury, anguish, and/or suffering. Such acts include, but are not limited to, the service recipient being licked, pinched, bitten, punched, slapped, hit, pushed, dragged, and/or struck with a thrown or held object. (J-4, R-11.) Here, while J.V. was not injured, it is clear that appellant's act—slapping him—could tend to cause pain, injury, anguish, and/or suffering and was both inappropriate physical contact with, and mistreatment of, J.V. Further, appellant's refusal of Fair's reasonable order to provide her name is an act of insubordination. Finally, the developmentally disabled are among the most vulnerable in our society. Samuels freely took on the responsibility to care for J.V. and others like him who need constant care for the everyday tasks that many take for granted. Undoubtedly, this can be difficult and frustrating work. However, this does not excuse appellant's actions, which are unmistakably conduct violating human decency. As such, I **CONCLUDE** that appellant's actions fit this charge. Having found that the incident occurred as set forth in the specification of the charges, I must determine the appropriate discipline to be imposed.

PENALTY

In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's 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.

Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also, In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for removal. See, Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978); In re Hermann, 192 N.J. 19 (2007).

Further, some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense); see also, In re Hermann, 192 N.J. 19, 33 (2007) (DYFS worker who snapped lighter in front of five-year-old):

... judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

The New Jersey Department of Human Services Disciplinary Action Program, ¶ C3 (R-4) provides that removal is the only option for a violation of physical or mental abuse of a patient, client, resident or employee, and does not call for a range of discipline. The Appointing Authority relies on this provision and did not present a disciplinary history on appellant. I am satisfied that appellant's actions herein were egregious. The act of slapping a developmentally disabled patient in your care has the potential of causing serious injury to the patient and cannot be tolerated. After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the behavior by appellant herein, and in light of the seriousness of the offense, I **CONCLUDE** that the removal of the appellant is appropriate.

ORDER

Accordingly, I **ORDER** that the action of the Appointing Authority in removing appellant Gertrude Samuels from her position as a Cottage Training Technician effective September 9, 2017, is **AFFIRMED**, as set forth above.

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.

April 29, 2019

DATE



JACOB S. GERTSMAN, ALJ t/a

Date Received at Agency:

April 29, 2019

Date Mailed to Parties:

April 29, 2019

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APPENDIX

WITNESSES

For Appellant:

Gertrude Samuels
Oluwakemi Ohabuiro
Yarkinah Cooley

For Respondent:

Susan Pickett Fair
Irene Carrozza

EXHIBITS

Joint:

- J-1 Preliminary Notice of Disciplinary Action (31-A), Civil Service Commission, State of New Jersey, dated September 8, 2017
- J-2 Amended Preliminary Notice of Disciplinary Action (31-A), Civil Service Commission, State of New Jersey, dated September 8, 2017
- J-3 Final Notice of Disciplinary Action (31-B), Civil Service Commission, State of New Jersey, dated January 2, 2018
- J-4 New Jersey, Department of Human Services, Disciplinary Action Program, Office of Employee Relations
- J-5 Stipulation of Counsel

For Appellant:

- A-1 Department of Human Services, Office of Program Integrity and Accountability, Office of Investigations, Oluwakemi Onabuiro, Licensed Practical Nurse (LPN), Interview Statement, dated September 1, 2017

For Respondent:

- R-1 Hunterdon Developmental Center, Home # 17, First Floor Diagram
- R-2 Confidential Incident Report, Division of Developmental Disabilities, Hunterdon Developmental Center, dated September 7, 2017
- R-3 Narrative of September 7, 2017, by Susan J. Pickett
- R-4 Department of Human Services, Office of Program Integrity and Accountability, Office of Investigations, Interview Statement of Susan Pickett, Director of Staff Development, dated September 8, 2017
- R-5 State of New Jersey, Department of Human Services, Office of Program Integrity and Accountability, Office of Investigations, Written Statement, Susan Pickett, dated September 21, 2017
- R-6 Department of Human Services, Office of Program Integrity and Accountability, Office of Investigations, Interview Statement, Susan Pickett, Director of Staff Development, dated September 24, 2017
- R-7 Confidential Incident Statement by Gertrude W. Samuels, Division of Developmental Disabilities, Hunterdon Developmental Center, dated September 7, 2017
- R-8 Department of Human Services, Office of Program Integrity and Accountability, Office of Investigations, Interview Statement, Gertrude Samuels, Cottage Training Technician (CTT), dated September 12, 2017
- R-9 Spreadsheet of Courses Completed by Gertrude Samuels, dated March 21, 2018 through May 10, 2017
- R-10 Not Admitted
- R-11 Hunterdon Developmental Center, Administration, Procedure #030, Effective September 25, 2015, Reviewed/Revised, Abuse, Neglect, Mistreatment and Reporting Reasonable Suspicion of a Crime
- R-12 Hunterdon Development Center, HDC, Interoffice Memorandum, From Husam Abdallah, CEO, To All Employees, Subject: Mistreatment of Clients, dated October 3, 2016
- R-13 Hunterdon Developmental Center, Signature Receipt of Memorandum, dated October 3, 2016

OAL DKT. NO. CSV 01375-18

- R-14 Hunterdon Development Center, HDC, Interoffice Memorandum, From Husam Abdallah, CEO, To All Employees, Subject: Administrative Decisions, dated July 14, 2017
- R-15 Hunterdon Developmental Center, Signature Receipt of Memorandum, dated July 14, 2017