



STATE OF NEW JERSEY

In the Matter of Montaniz Stills
Ann Klein Forensic Center,
Department of Health

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2019-295
OAL DKT. NO. CSV 12394-18

ISSUED: SEPTEMBER 10, 2019 BW

The appeal of Montaniz Stills, Senior Medical Security Officer, Ann Klein Forensic Center, Department of Health, removal effective August 21, 2017, on charges, was heard by Administrative Law Judge Susan L. Olgiati, who rendered her initial decision on August 5, 2019. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

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 September 10, 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 removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Montaniz Stills.

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 10TH DAY OF SEPTEMBER, 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 12394-18

AGENCY DKT. NO. 2019-295

**IN THE MATTER OF MONTANIZ STILLIS,
ANN KLEIN FORENSIC CENTER,
DEPARTMENT OF HEALTH.**

Arthur J. Murray, Esq., for appellant, (Alterman and Associates, LLC, attorneys)

Aimee Blenner, Deputy Attorney General, for respondent (Gurbir S. Grewal,
Attorney General of New Jersey, attorney)

Record Closed: June 19, 2019

Decided: August 5, 2019

BEFORE **SUSAN L. OLGATI, ALJ:**

STATEMENT OF THE CASE

Appellant, Montaniz Stills, appeals the action of the respondent, Ann Klein Forensic Center (AKFC), Department of Health, seeking his removal from his position as a Senior Medical Officer based on charges of conduct unbecoming an employee in violation of N.J.A.C. 4A:2-2.3(a)(6), inappropriate physical contact or mistreatment of a patient, client, resident, or employee in violation of Administrative Order (A.O.) 4:08 C5, and physical or mental abuse of a patient, client, resident, or employee in violation of A.O. 4:08 C3.

Appellant concedes that the AKFC met its burden of proof as to the disciplinary charges issued, thus the sole remaining issue on appeal is whether the penalty of removal is appropriate.

PROCEDURAL HISTORY

Appellant was served with a Preliminary Notice of Disciplinary Action (PNDA), suspending him without pay effective August 21, 2017. He did not request a departmental hearing. Thereafter, appellant was served with a Final Notice of Disciplinary Action (FNDA) dated April 25, 2018, seeking his removal effective August 21, 2017. Appellant timely filed a notice of appeal, and on August 27, 2018, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13. On or about November 13, 2018, AKFC filed a motion for summary decision. Appellant filed opposition to same. On January 14, 2019, the undersigned issued an Order denying the motion for summary decision. The hearing in this matter was held on February 21, 2019. The record remained open until May 14, 2019, to allow for receipt of the hearing transcript and submission of written summations. On June 19, 2019, the record was reopened for clarification purposes and, following a teleconference with counsel, closed on the same date.

FACTUAL DISCUSSION AND FINDINGS

I. Undisputed facts:

The following facts are not in dispute, therefore I **FIND**:

1. On August 12, 2017, appellant was working as a Senior Medical Security Officer (SMO) at AKFC.
2. On that date, appellant observed patient, J.G., taking food and beverages into his room and instructed him to stop as doing so was against AKFC policy.

3. J.G. failed to comply with appellant's instruction. Thereafter, appellant and J.G. became involved in a physical altercation.
4. Following the August 12, 2017, altercation, appellant was served with a FNDA charging him with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); inappropriate physical contact or mistreatment of a patient, client, resident, or employee in violation of A.O. 4:08 C5; and physical or mental abuse of a patient, client, resident, or employee in violation of A.O. 4:08 C3.
5. Appellant's prior disciplinary history consists of a forty-five (45) day suspension resulting from an incident with a co-worker.¹ The sustained charges included conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); inappropriate physical contact or mistreatment of a patient, client, resident, or employee in violation of A.O. 4:08 C5, and fighting or creating a disturbance on State property in violation of A.O. 4:08 C7.

II. Testimony

The following is a summary of the relevant and material testimony given at hearing.

For respondent

Milton Glover testified that he is a medical security officer at AKFC and was working on August 12, 2017. T21:12-16. He witnessed the altercation between appellant and J.G. Glover was about eight (8) to ten (10) feet away from the two men. T21-T25:1-6. J.G. refused to comply with appellant's directive regarding not taking excessive food and drinks into his room. Words were exchanged and then it became a "scuffle." T22:7-11. Appellant "picked the boy up and threw him to the floor." T22:13-15. Glover did not see J.G. spit on appellant. T25:7-9. Glover and another officer got appellant off of J.G.

¹ The date of the prior discipline is 2012. See R-2, disciplinary history report.

T23:1-2. Milton helped get appellant off of J.G. because he felt the incident "went too far." :6-8. Glover was "shocked" that the incident occurred. T39:13-15. Glover prepared an incident report approximately nine (9) days after the incident. T43:14-15.

Glover testified that upon being hired by AKFC, he received approximately two weeks of training. T52:7-10. The training included written materials and "hands-on training." T52:19-25 - T53:1-5. The training included instruction on permissible holds and covered issues including patients spitting. T53:2-9. The training was entitled "Handle with Care." T53:10-12. After initial training, Glover received updated training annually. T78:6-11.

Sandi Ferguson testified that she is the Director of Staff Development at AKFC and is responsible for staff training. T87:24-25 - T88:6-9. She is also responsible for maintaining a record of staff training. T89:11-18 Upon hire, medical officers receive approximately two weeks of training. Thereafter, they receive additional training within their departments. T89:5-10. Training is updated annually. T98:17-20. Staff training includes how to stop aggressive behavior. Staff are taught to step back to prevent patients from coming into their personal space. T92:10-13. They are taught permissible holds, none of which involve a hold around a patient's neck. T92:15-19. It is never permissible to grab a patient by the neck or throw him to the ground because it could cause injury. T93-2-7. In a situation where a patient is spitting, staff are trained to back away. If that does not work, staff are trained to use a permissible hold. T99: 17-24.

Ferguson testified that appellant's training record included a course entitled "Therapeutic Options" which teaches verbal and nonverbal de-escalation skills and holds. T94: 22-25 - T95:5-10. staff members are required to take this training annually. T95:13-15. Appellant also completed a course entitled "Advanced Emergency Holds." T94:23-25. In this training, staff are taught five specific holds that can be used if needed. T95:18-22. Appellant's training relating to handling difficult patients also included courses entitled "Update Patient Care Review" and "Seclusion Restraint" T98:6-9.

Ferguson also testified regarding AKFC's policy entitled "Personal Defensive and Control Techniques in Aggressive Patient Situations and Emergencies." This policy

instructs staff what to do when patients become aggressive. T101:1-5. Based on her review of the video, she concluded that appellant's actions violated the policy. Only personal control techniques referenced in the policy are permitted to be used. T102:8-13. Appellant's behavior also violated the AKFC policy against patient abuse. Appellant's action in grabbing the patient by the neck and throwing him to the ground was an example of "rough handling" prohibited by AFKC policy. T105:8-12; 24-25 -T106:1-2.

Ferguson believes that appellant was adequately trained to do his job and handle difficult patients. T116:21-25 –T117:1-5.

Rishan Ware, a medical security officer at AKFC, testified that he was not present during the altercation between appellant and J.G. T119:23-24. He took photos of the patient after the incident. T120:2-3, See also R-8. The photos depicted bruises on J.G.'s arm. T121:14-15. He also photographed J.G.'s knees. T123:5-10. Ware took photos of the areas where J.G. indicated he was injured. T126: 17-25. The photos were taken two days after the incident. T125:13-15. Ware acknowledged that did not know what may have happened to the patient between the date of the incident and the date he took the photos. T127:19-20.

Robert Girard, testified that he is an investigator for the Department of Health. T135:9-11. Since 2016, Girard conducted approximately 150 investigations. T136:10-13. He conducted an investigation of the altercation between appellant and patient, J.G. T140:1-4. As part of his investigation, Girard interviewed J.G. T140:13-16. Girard also reviewed video of the incident, which consisted of two different camera angles. T145:2-4; 13-16. The video corroborated J.G.'s version of the altercation. T148:20-25. Girard also interviewed approximately five patients and four staff members. T149:15-16. He believes that Henderson (another medical security officer) was the only witness who said the patient may have spat on appellant. T154:6-9.

When Girard interviewed appellant, appellant was unsure how he had taken the patient to the floor. He thought he had J.G. by the shoulders. T155:6-12.

Girard acknowledged that J.G. did not write out his statement. He explained that when taking a statement from a patient the practice in 2017 was to write the statement, read to the patient, and have the patient sign if able. T169:19-22. Patients were not given pens to write out their statements. This was done for safety reasons. T171: 9-17. During patient interviews, another officer was stationed in the room with the investigator. T172: 7-12.

For appellant

Montaniz Stills, testified that he is forty-three (43) years old, six (6) foot, one (1) inches tall and weighs approximately 252 pounds. T197:19-25. At the time of the incident he weighed about 243 pounds. T198:5. He testified that he had no training regarding how to deal with individuals with mental health issues. T204: 17-20. Over time he learned of the type of persons admitted to AKFC. T204: 21-23.

On August 12, 2017, appellant got into an altercation with J.G. T211:16-25. J.G. was bringing food and beverages into his room. T214:15-16. He directed J.G. to stop doing this because it creates problems with insects. T215:3-5. Appellant told J.G., a few times, to stop and then he closed the door (preventing J.G. from going into his room). T215:5-10. J.G. approached appellant and threatened to throw coffee on him. T215: 12-16. Thereafter, J.G. spat in appellant's face. T216:3-7. The spit landed in appellant's eye. T217:5-6. Appellant received no training regarding how to handle spitting patients. T217:13-15. After he was spat on, appellant "lost it." T217:9-12. Appellant went home after the altercation because he felt that he couldn't continue to do his job. T217:20-25.

Prior to the altercation with J.G., appellant had twice been spat on by patients at AKFC. T218:5-10. In those prior instances, the patients were in restraint chairs. T218:15. His reaction to those prior spitting incidents was different because the individuals were restrained and he was no longer in threat as he was able to move and get out of the "line of fire." T219:3-8.

Appellant believes that he should be disciplined for the incident but not terminated. T220:11-12. He believes that termination is not warranted because he did not receive

training regarding how to handle the incident and because he was in a "hostile situation" with him "working by myself and no other assistance from any other officer that was assigned to the unit." T220:15-20.

Appellant was previously suspended for forty-five days due to a "little pushing match" with another employee. T222:13-14.

In his written statement regarding the incident, appellant stated "I don't believe I grabbed [J.G's] neck. T 242:19-23.

Credibility

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness' story in light of its rationality or internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he 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).

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).

As to the credibility of the witnesses, I accept the testimony of each of respondent's witnesses as credible. Milton Glover's testimony regarding the events which he witnessed was rational and reasonable. Moreover, his testimony was both internally consistent, and consistent with other evidence in the record including the video of the

altercation and the statement of J.G. I also find the testimony of Sandi Ferguson as credible and consistent with the other evidence in the record, including AKFC's policies and appellant's training records which reveal that he received adequate and updated training.

Similarly, I find Robert Girard's testimony regarding his investigation of the altercation, including his interview of and the statement obtained from J.G., to be credible and consistent with the other evidence in the record. Finally, I find Rishan Ware's testimony regarding the authenticity of the photos of J.G.'s injuries to be credible and consistent with the other evidence in the record.

In contrast, I do not accept the testimony of appellant as credible. His version of the altercation is not supported by the other evidence in the record including the testimony and statement of Milton Glover, the statement of J.G., and the video of the incident. Additionally, his written statement given on August 21, 2017, just nine days after the incident, in which he denies/doesn't recall grabbing J.G. by the neck, is directly contradicted by the video.

Similarly, appellant's testimony that he did not receive training regarding how to handle patients at AKFC is in direct conflict with the ample other evidence in the record including the testimony of Ferguson and AKFC training records. Finally, appellant's testimony that he was working alone and/or was not assisted by other officers is also in direct conflict with the other evidence in the record including the testimony of Glover, the investigation report, and the video of the incident.

III. Additional Facts:

After having the opportunity to review the evidence, including but not limited to, the video of the incident, and to consider the testimony and demeanor of the witnesses, I **FIND** the following additional facts:

1. On August 12, 2017, after directing patient J.G. to stop bringing excessive food and beverages into his room, appellant approached J.G. and put his face within

inches of J.G.'s. Thereafter, appellant grabbed J.G. by the neck and threw him to the floor. Once on the floor, appellant remained on top of J.G. with his hand on J.G.'s neck. The altercation was broken up by two other officers who assisted in removing appellant off of J.G.

2. Following the altercation, appellant left work because he felt he could not continue to do his job.

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. In an appeal from such discipline, the appointing authority bears the burden of proving the charges by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). In re Polk, 90 N.J. 550, 560 (1982); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

In his post hearing written summation, appellant concedes that AKFC met its burden of proof as to the charges issued. For the reasons set forth herein, I agree. Accordingly, I **CONCLUDE** respondent has proved the charges of: conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6); inappropriate physical contact or mistreatment of a patient, client, resident, or employee in violation of A.O. 4:08 C5; and physical or mental abuse of a patient, client, resident, or employee in violation of A.O. 4:08 C3.

PENALTY

As appellant has conceded and I, in agreement, have concluded that appellant engaged in the conduct charged, I must determine the proper penalty to be assessed. When dealing with the question of penalty in a de novo review of a disciplinary action, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges.

N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. W. New York v. Bock, 38 N.J. 500, 523–24. Factors determining the degree of discipline include the employee’s prior disciplinary record and the gravity of the instant misconduct. “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...” In re Herrman, 192 N.J. 19, at 33 (2007).

Here, AKFC has proved all charges issued against appellant. Major discipline for a charge of conduct unbecoming a public employee ranges from suspension to removal. See N.J.A.C. 4A:2-2.2(a). For the two additional charges against appellant, AKFC references the Disciplinary Action Program (DAP) handbook which contains a table of offenses and penalties. R-3. According to the table, a first infraction of inappropriate physical contact or mistreatment of a patient, client, resident or employee (C5) carries a penalty ranging from official reprimand to removal. Id. A first infraction for the charge of physical or mental abuse of a patient, client, resident, or employee (C3) carries a penalty of removal. The DAP provides that:

All penalties imposed must be within the range of penalties set forth in the TABLE for the particular type of offense and the number of the infraction, unless consideration of mitigating factors would cause the penalty to be deemed inappropriate. Mitigating factors can be the length of service, disciplinary record, or other legitimate reasons.
R-3, see Supplement 1.

In an attempt to mitigate his conduct and thereby reduce the penalty to be imposed, appellant claims that he was spat on by J.G. and argues that his actions were merely an attempt to stop the assault. Appellant further claims that he did not receive training and that he was working alone and/or not assisted by the other medical officers. For the reasons, set forth herein, these claims are not credible and/or are in direct conflict with the ample other

evidence in the record. However, even if appellant's claims were true, his conduct remains unjustified and inexcusable. Appellant failed to move away from the patient, employ any de-escalation techniques, or use a permissible hold on the patient. Instead, appellant chose to escalate the situation by approaching the patient in a confrontational manner, grabbing him by the neck and throwing him to the ground. For these reasons, appellant's arguments in mitigation of the penalty are unpersuasive.

AKFC is a psychiatric hospital which cares for and provides treatment to mentally ill patients who are in the legal system. As a Senior Medical Officer at AKFC, appellant is responsible for the safety of the patients and maintaining order at the facility. His actions fell far short of these responsibilities and had the potential to create serious harm to J.G., the other patients, and the overall order of the facility. Given the serious nature of the current charges, the penalty of removal, which is consistent with the penalty outlined in the DAP, is warranted. Additionally, the penalty of removal is further warranted based upon appellant's prior disciplinary history which includes, a forty-five (45) day suspension for inappropriate physical contact or mistreatment of a patient, client, resident, or employee in violation of A.O. 4:08 C3.

Accordingly, I **CONCLUDE** that removal is the appropriate penalty.

ORDER

I **ORDER** that the penalty imposed by Ann Klein Forensic Center, removing appellant from his position as a Senior Medical Officer is **AFFIRMED** and appellant's appeal is **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

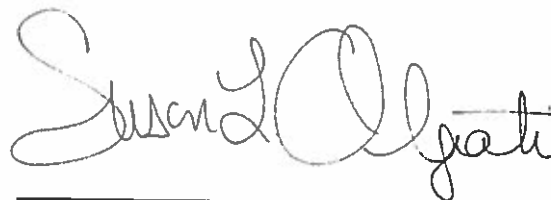
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision

within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

August 5, 2019

DATE



SUSAN L. OLGATI, ALJ

Date Received at Agency:

8/5/19

Date Mailed to Parties:

8/5/19

SLO/vj

APPENDIX
LIST OF WITNESSES

For appellant:

Montaniz Stills

For respondent:

Milton Glover

Sandi Ferguson

Rishan Ware

Robert Girard

LIST OF EXHIBITS

For appellant:

None

For respondent:

R-1 PNDA, August 22, 2017 and FNDA April 25, 2018

R-2 Disciplinary History report

R-3 Disciplinary Action Program

R-5 DOH Investigation Report,

R-6 Written Statement of J.G.

R-7 Unusual Incident Report

R-8 Photographs of J.G.

R-9 Written Statement of Milton Glover

R-11 Written Statement of Montaniz Stills

R-12 Still Training Transcript

R-13 Personal Defensive and Control Techniques in Aggressive Patient Situations
and Emergencies Policy

R-14 Reporting and Investigating Allegations of Patient Abuse and Professional
Misconduct Policy

R-15 Video of Incident Camera 38

R-16 Video of Incident Camera 14