

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF APRIL, 2020

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
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P. O. Box 312
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 09492-19

AGENCY DKT NO. 2019-3569

**IN THE MATTER OF CHARITY BROWN,
MOTOR VEHICLE COMMISSION**

Seth B. Kennedy, Esq. on behalf of appellant

Nonee Lee Wagner, Deputy Attorney General, for respondent (Gurbir S.
Grewal, Attorney General, State of New Jersey, attorney)

Record Closed: March 9, 2020

Decided: March 12, 2020

BEFORE JOANN LASALA CANDIDO, ALJ:

STATEMENT OF THE CASE

Appellant Charity Brown (appellant or Brown) appeals the decision of respondent, Motor Vehicle Commission (MVC or the Commission), to impose a seventeen-day suspension on a charge of conduct unbecoming for rudeness and unprofessionalism towards customers and MVC Disciplinary Guidelines Section III (J), by way of Final Notice of Disciplinary Action (FNDA) dated June 3, 2019 for an incident on March 1, 2017.

PROCEDURAL HISTORY

Appellant filed this appeal on June 7, 2019, which was transmitted by the Civil Service Commission to the Office of Administrative Law, and filed as a contested case on July 16, 2019, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was heard on February 3, 2020 and the record closed on March 9, 2020, upon receipt of post submission briefs.

TESTIMONY

Sharron Green

Sharron Green testified on behalf of the MVC. She was a customer at the Newark MVC location at the time of an incident on March 1, 2017. Ms. Green testified that while she was waiting in the driver-testing vestibule area on the right side of the door, appellant approached her and stated she was standing on the wrong side of the doorway. Soon thereafter, an unidentified man entered the same area and was asked by appellant to step to the other side. The gentleman remained on the wrong side and appellant grabbed the man by the shoulder and pulled him and pushed him into the corner. Green was surprised at her actions and told appellant she put her hands on the right customer because someone else would have slapped her. The gentleman left the facility before a security guard approached.

Green spoke to an agency manager and she filed a complaint form. R-2 She then returned to the MVC facility the next day with a typewritten complaint because she felt her handwriting may not be legible. R-3 Green did not file a police report.

Trina Brooks

Trina Brooks, MVC Supervisor 1 testified on behalf of respondent. She was appellant's supervisor at the time of the incident. Brooks met with Green on March 2, 2017 and found her to be visibly upset about what happened the day before with the

road operations employee Charity Brown. She drafted a formal disciplinary action charging appellant with conduct unbecoming a public employee.

Brooks had to discipline appellant prior to this incident for conduct unbecoming and advised her that she needed to be courteous and treat customers with respect and to put herself in the shoes of the customer and treat them the way she would want to be treated. Appellant always thought she did nothing wrong in prior incidents. Brooks advised appellant that she should have come to her to handle the issue. Brooks had not witnessed what Green complained about.

Charity Brown

Charity Brown testified on behalf of herself. She has been employed with the MVC for approximately six years and currently holds the title Safety Specialist II. In 2017 she was positioned in the road-testing office at the Newark facility. She administered driving tests for cars only. Brown stated she would approach the vehicle and ask the passenger for their credentials and then test the lights and make sure the owner is on schedule for the road test. Trina Brook was her acting supervisor in 2017.

Brown denied she ever spoke to a customer in the vestibule area because she does not like standing in that area because of the customers smoking in that area. She also denied ever having placed her hand on a customer or did she ever have a conversation with Green. Brown was not involved in any investigation of this matter. She further testified that her hair style is the same today as it was in 2017 except longer.

Due to the differences in the accounts given by appellant and the eyewitness Sharron Green of the incident of March 1, 2017, a determination of credibility is required. 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's story in light of its rationality, 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).

Here, I found Sharron Green to be an extremely credible and forthright witness, offering truthful testimony. Green exhibited a lack of motive to have this forum adjudicate this matter one way or the other. She did not know the appellant. She testified clearly and precisely, and no competent evidence was presented to dispute her recollection of that day. I therefore give more weight to her testimony than that of the denial of appellant regarding her conduct on March 1, 2017. Accordingly, I FIND and adopt the entirety of Sharron Green's testimony.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act and the regulations promulgated there under, govern the rights and duties of public employees. N.J.S.A. 11A:1-1 to 12—6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. An employee who commits a wrongful act related to his or her duties or who gives other just cause, may be subject to major discipline. N.J.S.A.11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). In an appeal such as this from a disciplinary action that resulted in a seventeen-day suspension, the burden of proof is on the appointing authority. N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). The authority has the burden of proving the charges upon which it relied by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. 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 (1958). Preponderance

may also be described as the greater weight of the credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Credibility, or, more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible, as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

Appellant was charged with conduct unbecoming for having been counseled and disciplined as a result of numerous customer complaints for being rude and unprofessional. There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. In re King, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that tends to destroy public respect in the delivery of governmental services. Karins v. Atl. City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is enough 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)]. Unbecoming conduct may include behavior which is improper under the circumstances; it may be less serious than a violation of the law, but which is inappropriate on the part of a public employee because it is disruptive of governmental operations.

Likewise, MVC Disciplinary Guidelines Section III (J) sets forth a broad definition of conduct unbecoming a public employee. (R-1.) Under MVC's definition, "engaging in improper conduct," "[u]se of obscene language/gestures not reasonably associated with workplace standards," and "other acts of misconduct" are all encompassed within the definition of conduct unbecoming a public employee.

Appellant's conduct on March 1, 2017, when she inappropriately pushed a customer in the vestibule area exhibiting rudeness and unprofessionalism in the presence of other MVC customers fall under the purview of conduct unbecoming a public employee under both N.J.A.C. 4A:2.3(a)(6) and MVC Disciplinary Guidelines Section III (J). Green witnessed appellant's inappropriate behavior. As such, I **CONCLUDE** that respondent has met its burden of proving that appellant's actions on March 1, 2017, were conduct unbecoming a public employee and violations of N.J.A.C. 4A:2.3(a)(6) and MVC Disciplinary Guidelines Section III (J).

PENALTY

In West New York v. Bock, 38 N.J. 500, 522 (1962), the New Jersey Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of promotions, commendations, and the like on one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, 38 N.J. at 523-24.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v.

Bayside State Prison, 268 N.J. Super. 301, 205 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The question to be resolved is whether the seventeen-day discipline imposed in this case is appropriate.

The appellant's prior disciplinary history includes the following: (J-3)

- Final on May 21, 2014: Two-day suspension for violations of N.J.A.C. 4A:2-2.3(a)(2), Insubordination and MVC Disciplinary Guidelines Section III, and N.J.A.C. 4A:2-2.3(a)(7), Neglect of Duty and MVC Disciplinary Guidelines Section II and Other Sufficient Cause, and MVC Disciplinary Guidelines Section II;
- Final on January 19, 2016: Three- day suspension for violation of Conduct Unbecoming a Public Employee; Chronic Absenteeism and Insubordination resulted in a three-day suspension;
- Final on January 6, 2017: Ten-day suspension for violation of N.J.A.C. 4A:2-2.3(a)(6), Conduct Unbecoming a Public Employee for various incidents towards members of the public.

Here, the respondent has proven by a preponderance of the credible evidence the following charges against appellant: N.J.A.C. 4A:2-2.3(a)(6) MVC Disciplinary Guidelines Section III (J), conduct unbecoming a public employee.

Based upon a consideration of the totality of the evidence, and with due consideration of appellant's prior disciplinary record, I **CONCLUDE** that the penalty of a seventeen-day suspension is reasonable, appropriate and consistent with the policy of progressive discipline.

ORDER

I **ORDER** that the charges of N.J.A.C. 4A:2-2.3(a)(6) and MVC Disciplinary Guidelines Section III (J), conduct unbecoming a public employee be and are hereby **SUSTAINED**. Accordingly, I **ORDER** that the penalty of a seventeen-day suspension imposed is hereby **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.

March 12, 2020
DATE

Joann Lasala Candido
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

MARCH 12, 2020

Date Mailed to Parties:
ljb

MARCH 13, 2020

APPENDIX
LIST OF WITNESSES

For Appellant:

Charity Brown

For Respondent:

Sharron Green

Trina Brooks

LIST OF EXHIBITS

Joint

- J-1 Agreement
- J-2 NJ Motor Vehicle Policy and Procedures
- J-3 Summary of Employee Disciplinary History

For Appellant:

None

For Respondent:

- R-1 Subpoena Ad Testificandum
- R-2 Complaint Notification of Sharron Green
- R-3 Typewritten Complaint of Sharron Green
- R-5 Trina Brooks notes