

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF DECEMBER, 2019

Deirdre L. Webster Cobb

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Chairperson
Civil Service Commission

Inquiries
and
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Christopher S. Myers
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 18140-17

AGENCY DKT. NO. 2018-1510

**IN THE MATTER OF TAMARA SMITH-BROWN,
IRVINGTON TOWNSHIP DEPARTMENT OF
PUBLIC WORKS.**

Tamara Smith-Brown, appellant, pro se

**Jason Orlando, Esq., for respondent Township of Irvington (Murphy Orlando,
LLC, attorneys)**

Record Closed: October 23, 2019

Decided: November 20, 2019

BEFORE BARRY E. MOSCOWITZ, ALJ:

STATEMENT OF THE CASE

On August 8, 2014, a jury found that appellant, Tamara Smith-Brown, a code enforcement official for respondent, the Township of Irvington, had defamed the mayor, Anthony Vauss, and awarded him \$7,000. Should Smith-Brown be removed from her position as a code enforcement official even though she has no prior discipline? Yes. Progressive discipline may be bypassed when the misconduct renders the employee unsuitable for continuation in the position. In re Herrmann, 192 N.J. 19, 33 (2007).

PROCEDURAL HISTORY

In October 2014, Smith-Brown filed a civil action in the Superior Court of ██████ against Irvington and Vauss, alleging violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49. Smith-Brown alleged that Vauss had sexually harassed her numerous times over the course of several months when she was working as a public works inspector for Irvington and Vauss was her supervisor. Smith-Brown further alleged that Vauss had continued to sexually harass her when he became the mayor-elect in May 2014. Moreover, Smith-Brown alleged that Vauss sexually assaulted her one month later.

Thereafter, Smith-Brown told numerous people about her allegations.

In her complaint, Smith-Brown claimed that she suffered "severe emotional distress and humiliation." Irvington and Vauss denied the allegations, and Vauss filed a counterclaim, including a claim for defamation. At the end of a sixteen-day trial, on August 8, 2014, the jury rejected Smith-Brown's claims, unanimously finding that she failed to prove Vauss sexually assaulted her or made sexual comments toward her.

The jury also determined, in a vote of five to one, that Smith-Brown, by clear and convincing evidence, defamed Vauss, and awarded him \$7,000 in damages.

Smith-Brown appealed, but on March 14, 2019, the Appellate Division affirmed the judgment of no cause. (The Appellate Division also affirmed the denial of her motion to dismiss Vauss's counterclaim for defamation, which Smith-Brown had made at the end of his case.) Smith-Brown appealed the Appellate Division decision too, but on May 28, 2019, the Supreme Court denied certification.

On August 22, 2017, Irvington issued a Preliminary Notice of Disciplinary Action. In its notice, Irvington charged Smith-Brown 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). Irvington specified that it had brought these charges because a jury had

found defamation of character by Smith-Brown against a township official and had awarded that official \$7,000. In addition, Irvington alleged that Smith-Brown had abused her authority as a code enforcement officer when she issued summonses that falsely reported a violation of a township ordinance. At the hearing, Irvington acknowledged that it was only one summons, issued on November 4, 2015, and that Smith-Brown had abused her authority because the recipient of the ticket was Samone Miller, Vauss's ex-wife. Irvington likewise explained that Smith-Brown could no longer be trusted in her role as a code enforcement official. As a result, Irvington sought her removal, effective August 31, 2017.

On October 26, 2017, a departmental hearing was held, after which the hearing officer sustained the charges and removed Smith-Brown from her position as a code enforcement officer, effective November 7, 2017.

On November 9, 2017, Irvington issued the Final Notice of Disciplinary Action, sustaining the charges and removing her from her position as a code enforcement officer, effective November 7, 2017. Although there is no proof of service, Smith-Brown received the Final Notice of Disciplinary Action by November 27, 2017, and on that date, appealed the determination to the Civil Service Commission.

On December 12, 2017, the Civil Service Commission transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, 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 October 23, 2019, I held the hearing and closed the record.

FINDINGS OF FACT

Based upon 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.

On August 8, 2014, a jury determined, in a vote of five to one, that Smith-Brown, by clear and convincing evidence, defamed Vauss, and awarded him \$7,000 in damages.

At the hearing, Musa Malik, the business administrator for Irvington, explained that since code enforcement officials act under color of law, he believed that any summons Smith-Brown issued would be undermined by the judgment against her, and that she had to be removed as a code enforcement official as a consequence.

Indeed, Malik stated that Smith-Brown no longer had the credibility to issue summonses.

II.

On November 4, 2015, Smith-Brown issued a summons to Miller for failure to keep the curbside free from obstruction in violation of municipal ordinance 134-30.

The ordinance states that the sidewalks and curbs in front of homes are to be kept free from obstruction, and on November 5, 2015, Miller had four bags of leaves in the street against the curb in front of her home. The township recycling calendar for 2015 from the Department of Public Works, however, had designated that day as a day for leaf pickup. More significantly, the calendar instructed residents to place leaves in bags and to leave them curbside for pickup. As a result, on October 18, 2017, the summons was dismissed.

Smith-Brown explained during colloquy and argued during closing that she understood the municipal ordinance as more authoritative than a recycling calendar, and that curbside meant on the curb and not in the street against the curb. Smith-Brown further explained during colloquy and argued during closing that she takes her job as a code enforcement official seriously; that she always acts in a professional manner, not in a personal capacity; and that she issues summonses for violation of the law, period. To prove her point, Smith-Brown explained during colloquy and argued during closing that

she has issued summonses in the past against friends and family when they were in violation of the law.

Jamel Holley, the director of public works, testified that he believed the leaf placement was acceptable. He also speculated that Smith-Brown issued the summons in retaliation for having her claim against Vauss rejected and for having a judgment awarded against her. Other than his speculation, no other evidence exists that Smith-Brown issued the summon against Miller for retaliation. Thus, a preponderance of the evidence does not exist that Smith-Brown issued the summons against Miller in retaliation for having her claim against Vauss rejected and for having a judgment awarded against her.

CONCLUSIONS OF LAW

In appeals concerning major disciplinary actions, 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)).

Progressive discipline, however, may be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest, such as when the position involves public safety and the misconduct causes risk of harm to persons or property. In re Herrmann, 192 N.J. at 33.

In this case, a jury found that Smith-Brown had defamed the mayor and awarded him \$7,000. Although Smith-Brown has no prior discipline, code enforcement officials, as Malik explained and stated, act under color of law, and because a jury found that Smith-Brown had defamed the mayor and awarded him \$7,000, Smith-Brown no longer has the credibility to issue summonses. This point is plain. The fact that a jury found that Smith-Brown had defamed the mayor and awarded him \$7,000 is also unbecoming a public employee. Therefore, I **CONCLUDE** that a preponderance of the evidence exists that Smith-Brown engaged in 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); that she is no longer suitable for continuation in her position as a code enforcement official; and that she should be removed from her position as a code enforcement official for Irvington, effective November 7, 2017.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Smith-Brown be removed from her position as a code enforcement official for Irvington.

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.

11/20/19
DATE


BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

11/20/19

Date Mailed to Parties:
dr

11/21/19

APPENDIX

Witnesses

For Appellant:

Carl M. Brown, Jr.

For Respondent:

Musa Malik

Jamel Holley

Documents

For Appellant:

A-1 Irvington Education & Enforcement 2015 Recycling Calendar (Color)

A-2 Municipal Ordinance 134-30

For Respondent:

Ex. A Preliminary Notice of Disciplinary Action dated August 22, 2017

Ex. B Not in Evidence

Ex. C Summons and Complaint dated November 4, 2014

Ex. D Answer and Counterclaim dated January 9, 2015

Ex. E Not in Evidence

Ex. F Township of Irvington Personnel Policy Manual and Handbook dated January 2003

Ex. G Letter from Irvington Township Attorney to the Acting Essex County Prosecutor dated November 10, 2014

Ex. H Letter from the Acting Essex County Prosecutor to the Irvington Township Attorney dated December 9, 2014

Ex. I Jury Charges

Ex. J Verdict Sheet dated August 8, 2017

Ex. K T.S. v. Township of Irvington and Anthony Vauss, Superior Court of New Jersey, Appellate Division, Docket No. A-0004-17T2, Decided March 14, 2019

Ex. L Final Judgment dated August 17, 2017

Ex. M Order dated May 28, 2019

Ex. N Irvington Education & Enforcement 2015 Recycling Calendar (Black and White)

Ex. O Summons dated November 4, 2015

Ex. P NJ Automated Complaint System, Charge Disposition Maintenance, dated
October 18, 2017

Ex. Q NJ Disposition Codes