



STATE OF NEW JERSEY

In the Matter of Joseph Ruggiero
City of Hoboken
Department of Transportation and
Parking

CSC DKT. NO. 2014-1411
OAL DKT. NO. CSV 17224-13

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FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: September 3, 2014 PM

The appeal of Joseph Ruggiero, a Parking Enforcement Officer with the City of Hoboken, Department of Transportation and Parking, removal effective September 12, 2013, on charges, was heard by Administrative Law Judge Kimberly A. Moss, who rendered her initial decision on July 31, 2014. No exceptions were filed.

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, at its meeting on September 3, 2014, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

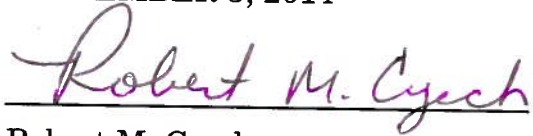
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action, upholds the resignation not in good standing and dismisses the appeal of Joseph Ruggiero.

Re: Joseph Ruggiero

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
SEPTEMBER 3, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 17224-13

AGENCY DKT. NO. 2014-1411

**IN THE MATTER OF JOSEPH
RUGGIERO, CITY OF HOBOKEN
DEPARTMENT OF TRANSPORTATION
AND PARKING.**

Merick H. Limsky, Esq., for appellant Joseph Ruggiero (Loccke, Correia, Limsky & Bukosky, attorneys)

Alysia Proko, Esq., for respondent, City of Hoboken

Record Closed: July 14, 2014

Decided: July 31, 2014

BEFORE **KIMBERLY A. MOSS, ALJ**:

STATEMENT OF THE CASE

The City of Hoboken (Hoboken) terminated appellant, Joseph Ruggiero (Ruggiero or appellant), for resignation not in good standing for absence without permission for five consecutive days. Ruggiero denies engaging in any conduct that warrants termination. At issue is whether Ruggiero engaged in the alleged conduct, and, if so, whether it constitutes absence without permission for five consecutive days for which resignation not in good standing is warranted.

PROCEDURAL HISTORY

On or about September 13, 2013, Hoboken served Ruggiero with a Preliminary Notice of Disciplinary Action. A hearing was held on October 25, 2013. Hoboken then served Ruggiero with a Final Notice of Disciplinary Action dated November 6, 2013, sustaining the charges and taking the disciplinary action of resignation not in good standing.

Following Ruggiero's November 11, 2013, appeal to the Civil Service Commission, it transmitted the matter to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13. The OAL filed it on November 27, 2013, for determination as a contested case. The matter was heard on March 24, 2014, and June 13, 2014. Closing briefs were received on July 14, 2014, at which time the record closed.

FACTUAL DISCUSSION AND FINDINGS

Based upon a consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following uncontested **FACTS**:

Ruggiero was employed as a parking enforcement officer (PEO) with Hoboken. He worked the 4:00 p.m. to midnight shift. His immediate supervisor was Vivian Delanzia (Delanzia). Robert Orsini (Orsini) is also a supervisor at Hoboken. Orsini's shift is 1:00 p.m. to 9:00 p.m. Ruggiero did not report to work on the following days: September 5, 6, 9, 10, 11, 12, 13, 16, 17, and 18, 2013. On September 16, 2013, there was a mandatory meeting for PEO's. Delanzia was not at the September 16, 2013, meeting. Orsini and Ruggiero were at the meeting.

TESTIMONY

John Morgan

John Morgan (Morgan) is employed by Hoboken as the Director of Transportation and Parking. When an officer is going to be late or take time off, the officer should contact his supervisor. The supervisor will contact the manager who will contact Morgan. If one supervisor is not in, the other supervisors cover for the supervisor who is not in. If a PEO is calling out sick and his immediate supervisor is not in, he contacts the covering supervisor. Ruggiero failed to report for work on the following days: September 5, 2013; September 6, 2013; September 9, 2013; September 10, 2013; September 11, 2013; September 12, 2013; September 13, 2013; September 16, 2013; September 17, 2013; and September 18, 2013. Morgan directed a Preliminary Notice of Disciplinary Action (PNDA) be drafted against Ruggiero. However, the date on the PNDA is inaccurate. Ruggiero did not contact Morgan in any form from September 5, 2013, through September 18, 2013. No legal or medical representative of Ruggiero contacted Morgan on Ruggiero's behalf. Morgan did not receive any medical documents regarding Ruggiero.

Morgan was present at the October 25, 2013 hearing of Ruggiero. At that hearing Orsini testified that he had spoke with Ruggiero and Ruggiero stated that his back hurt, but he did not state that he would be out or on workers' compensation.

Vivian Delanzia

Delanzia works for Hoboken as a PEO supervisor. She worked the 4:00 p.m. to midnight shift. When a PEO is late his salary is docked. When a PEO is absent, he must call in and fill out paperwork when he returns to work. Delanzia was Ruggiero's supervisor in September 2013. Ruggiero did not contact her from September 5, 2013, through September 18, 2013, to state that he would not be at work, or to tell her why he was not at work. She was not contacted by anyone regarding the time Ruggiero took off.

Robert Orsini

Robert Orsini (Orsini) is a supervisor of PEO's for Hoboken. He works the 1:00 p.m. to 9:00 p.m. shift. Ruggiero did not contact him regarding taking time off in September 2013. Ruggiero's attorney did not contact Orsini regarding Ruggiero taking time off in September 2013. He spoke to Ruggiero on September 16, 2013, at the mandatory meeting of PEO's. Ruggiero was wearing a T-shirt and shorts. Ruggiero did not tell Orsini that he wanted to use sick time or go on disability. He told Orsini that his back hurt. Ruggiero did not tell him that he was out injured or that he was pursuing a workers' compensation claim.

Joseph Ruggiero

Ruggiero began working for Hoboken on September 18, 2010. He was injured on the job in January 2012. He returned from that injury on June 5, 2013. He re-injured his back September 4, 2013. He took half-day on September 4, 2013. He contacted his workers' compensation attorney, who told him that she would contact everyone. He did not return to work. He never contacted Hoboken regarding why he was not at work. That is, he believed that he did not have to call anyone because his attorney was handling everything. Ruggiero received word that there was a mandatory PEO meeting on September 16, 2013, and attended the meeting. While he was at the meeting, his co-workers asked him why he was not working. Prior to this conversation, Ruggiero did not know that Hoboken was not aware of the reason that he was out of work. Orsini was the only supervisor present at the September 16, 2013, meeting. At that time he told Orsini that he was injured and pursuing a workers' compensation claim with an attorney. Orsini told him it was okay if he had an attorney handling the matter.

In September 2013, Ruggiero had fifteen to eighteen sick days and twenty-five to twenty-eight sick days.

Diane Nieves-Carreras

Diane Nieves Carreras (Nieves Carreras) is the president of the Hoboken Municipal Employees Association. In that capacity she represents employees in disciplinary matters. She represented Ruggiero in the October 25, 2013 on a disciplinary abandonment issue. At that hearing she questioned Orsini, who stated that Ruggiero told him that his back was hurt and he would be out. Ruggiero told Orsini that he would be going out on workers' compensation. Ruggiero previously had a workers' compensation claim.

FACTUAL DISCUSSION

In light of the contradictory testimony presented by respondent's witness and petitioner and his witness, the resolution of the charges against Ruggiero requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, 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, 60 N.J. 546 (1974); 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). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I do not **FIND** Ruggiero to be credible. He testified that he had a previous work-related injury where he was out of work for a considerable period of time. He knew at that time the

procedure was to inform his employer when he would not be reporting to work. In addition, Ruggiero stated that his attorney told him that she would contact his employer regarding him being injured and not being able to report for work. Appellant did not provide any documentation or testimony from the attorney with regard to this statement. Ruggiero stated that he was injured at work on September 4, 2013, and he was pursuing a workers' compensation claim but he did not provide any medical documentation at any point to respondent or the court. The testimony of Orsini and Morgan regarding the fall of 2003 hearing contradicts the testimony of Nieves-Carreras regarding whether Orsini had previously testified that Ruggiero told him on September 16, 2013, that he was injured and pursuing a workers' compensation case. Whether or not Ruggiero told Orsini that he was pursuing a workers' compensation claim, this conversation occurred on September 16, 2013, after Ruggiero had been out of work for eight consecutive work days. I **FIND** Morgan and Delanzia to be credible in their testimony. Morgan admitted that the date on the Preliminary Notice of Disciplinary action was wrong. Delanzia's testimony was truthful and concise.

In view of the above credibility determinations, I make the following additional **FINDINGS of FACT**:

When an officer is going to be late or take time off, the policy in Hoboken is that the officer should contact his supervisor. The supervisor will contact the manager who will contact Morgan. If one supervisor is not in, the other supervisors cover for the supervisor who is not in. If a PEO is calling out sick and his immediate supervisor is not in, he contacts the covering supervisor. Ruggiero did not report to work on September 5, 6, 9, 10, 11, 12, 13, 16, 17, and 18, 2013.

Ruggiero did not inform Hoboken that he would not be reporting to work. Even if he told Orsini that he was injured and pursuing a workers' compensation claim, that conversation took place on September 16, 2013, which would be after eight consecutive days of not reporting to work. Ruggiero stated that he was injured on September 4, 2013, and his attorney told him he would contact his employer. However, appellant did not provide any documentation of this statement by his workers' compensation attorney and did not have the attorney testify as to the conversation. Appellant did not provide

any medical documentation at the hearing to show that he was injured on September 4, 2013. Appellant did not provide any medical documentation to respondent prior to the hearing to verify his claim that he was injured on September 4, 2013. Appellant did not provide any documentation that he instituted a workers' compensation claim for injuries sustained on September 4, 2013.

LEGAL ANALYSIS AND CONCLUSIONS

Based on the foregoing facts and the applicable law, I **CONCLUDE** that the charge of absence without permission for five consecutive days is **SUSTAINED**.

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955).

Five or more consecutive days' absence without approval of the supervisor is regarded as abandonment of the position and deemed a resignation not in good standing (RNGS). N.J.A.C. 4A:2-6.2(b).

The RNGS rule is very old. See Carey v. Water Dep't of E. Orange, 32 N.J. Super. 131 (App. Div. 1954) (holding that it did not matter if the employee told other employees he was out sick with a doctor's excuse, since he failed to seek his supervisor's approval prior to his absence).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

Under N.J.A.C. 4A:2-6.2(f), the appointing authority or the Board may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.

In this matter it is undisputed that Ruggiero did not report to work for over five consecutive days. Ruggiero did not inform Hoboken that he would not be reporting for work for over five consecutive days. He has not provided any documentation that his attorney informed him that she would notify Hoboken that he was injured. He has not provided any documentation that he initiated a workers' compensation for any injury he may have sustained on September 4, 2013. Ruggiero has not provided any evidence that he was in fact injured or ill during the dates in question. Ruggiero has not provided any medical records to support that he was ill or injured on the days in question. Since Ruggiero has not provided evidence to support his position, there is no basis to modify the resignation not in good standing.

I **CONCLUDE** that Ruggiero did abandon his position in accordance with N.J.A.C. 4A:2-6.2.

ORDER


Based on the foregoing findings of fact and applicable law, it is hereby **ORDERED** that the charge of resignation not in good standing be and 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.

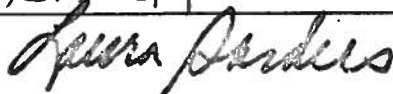
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**,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

7-31-14
DATE



KIMBERLY A. MOSS, ALJ

Date Received at Agency:

7/31/2014


LAURA PERDIS

Date Mailed to Parties:

AUG - 1 2014

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

ljb

APPENDIX

WITNESSES

For Appellant:

Diane Nieves-Carreras

For Respondent:

John Morgan

Vivian Delanzia

Robert Orsini

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Packet including Preliminary Notice of Disciplinary Action dated September 13, 2013, letters from John Morgan dated September 13, 2013, and September 18, 2013, and Employee Data Calendar
- R-2 Final Notice of Disciplinary Action dated November 5, 2013