A-7

STATE OF NEW JERSEY

In the Matter of Charles Hackley Montclair State University CSC DKT. NO. 2015-1303 OAL DKT. NO. CSV 16443-14	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

ISSUED: NOVEMBER 5, 2015 BW

The appeal of Charles Hackley, Senior Building Maintenance Worker, Montclair State University, removal effective October 23, 2014, on charges, was heard by Administrative Law Judge Kimberly A. Moss, who rendered her initial decision on September 23, 2015. Exceptions were filed on behalf of the appellant.

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 November 5, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

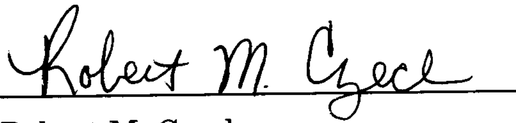
ORDER

The Civil Service Commission therefore grants the motion for summary decision and affirms the removal of Charles Hackley.

Re: Charles Hackley

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
NOVEMBER 5, 2015



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

SUMMARY DECISION

OAL DKT. NO. CSV 16443-14

AGENCY DKT. NO. 2015-1303

IN THE MATTER OF CHARLES HACKLEY, MONTCLAIR STATE UNIVERSITY.

Dan S. Smith, Esq., appearing for appellant Charles Hackley

Beth N. Shore, Deputy Attorney General, for respondent Montclair State University (John J. Hoffman, Attorney General of New Jersey, attorney)

Record Closed: September 1, 2015 Decided: September 23, 2015

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Montclair State University (MSU) removed appellant Charles Hackley (Hackley) for conduct unbecoming an employee in public service, violation of a Last-Chance Agreement (LCA), and violation of its drug-and-alcohol-free workplace policy. Hackley appealed and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on December 11, 2014, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A Motion to Dismiss was filed

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by appellant on August 31, 2015. A Motion for Summary Decision was filed by respondent on September 1, 2015.

FACTUAL DISCUSSION AND FINDINGS

Based on the documentary evidence presented, I make the following **FINDINGS** of **FACT**:

Hackley was employed by MSU as a senior maintenance worker. Hackley was sent a Notice of Disciplinary Action on or about January 5, 2013, for neglect of duty. The proposed discipline was a three-day suspension without pay. The parties settled the matter, the terms of which were that Hackley received a one-day suspension without pay and a two-day suspension on the record.

A second Notice of Disciplinary Action was sent to Hackley, on or about August 29, 2013, for absenteeism and sleeping on the job. He received a ten-day suspension.

A third Notice of Disciplinary Action was sent to Hackley, on or about October 31, 2013, for sleeping on the job and testing positive for alcohol. A settlement was reached reducing the penalty from termination to the terms of a LCA. Those terms included the following paragraph:

> Mr. Hackley agrees to mandatory and random testing for a period of two years commencing with the execution of this waiver/agreement. Said testing shall be performed at the discretion and direction of managerial staff in the Facilities and/or Human Services Department. If Mr. Hackley fails to immediately go for a test when directed to do so, or if the University is informed of one positive result, Mr. Hackley agrees and understands that his employment with the University is terminated.

The LCA was signed by Hackley on December 11, 2013.

On October 3, 2014, Hackley appeared impaired during his shift. He was taken to Immedicenter, where he was screened for drugs and alcohol. Hackley did not test positive for drugs. He tested positive for alcohol on three separate tests. The test done at 8:42 a.m. showed a blood-alcohol level (BAC) of 0.068; the test done at 9:05 a.m. showed a BAC of 0.083; and the test done at 10:11 a.m. showed a BAC of 0.047. Appellant did not contest the validity of the test results in his moving papers. Hackley tested positive for alcohol within the two-year period specified in the LCA.

LEGAL ANALYSIS AND CONCLUSION

The respondent seeks summary disposition of this matter. The rules governing motions for summary decision in an OAL matter are embodied in N.J.A.C. 1:1-12.5. These provisions mirror the summary-judgement language of R. 4:46-2 and the Supreme Court's decision in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67 (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary decision should be based on the papers presented, as well as any affidavits that may have been filed with the application. In order for the adverse, i.e., the non-moving, party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 523 (1995), set the standard to be applied when deciding a motion for summary decision:

> [T]he determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

In this matter there are no disputed facts. The issue is whether the Last-Chance Agreement was ambiguous. The LCA states with regard to testing positive during random testing that "if the University is informed of one positive result, Mr. Hackley agrees and understands that his employment with the University is terminated." This

term of the Last-Chance Agreement is not ambiguous. It is clear that appellant agreed to mandatory and random testing. It is also clear that appellant agreed that if he tested positive for drugs or alcohol his employment would be terminated.

In Watson v. City of East Orange, 175 N.J. 442 (2003), petitioner Watson entered into a last-chance agreement. The Court stated:

> Consistent with that agreement, respondent suspended petitioner for ninety working days, beginning January 5, 1997, and concluding May 20, 1997. The [last-chance agreement] reflects unambiguously that respondent had agreed that petitioner could return to work only when he completed a mutually acceptable program for alcohol recovery. Petitioner did not begin attending such a program until May 5, 1997, just fifteen days before his suspension was scheduled to end.
>
> [175 N.J. at 444.]

The Court in Watson did not find the last-chance agreement to be ambiguous. The Court stated:

> A contrary conclusion likely would chill employers from entering into last chance agreements to the detriment of future employees. See Golson-El v. Runyon, 812 F. Supp. 558, 561 (E.D.Pa.) (construing last chance agreements in favor of employers because to do otherwise would "discourage their use by making their terms meaningless"), aff'd, 8 F.3d 811 (3d Cir. 1993).
>
> [Id. at 445.]

I **CONCLUDE** that the provisions of the LCA that require random and mandatory testing, and state that if appellant tests positive his employment is terminated, are clear and not ambiguous.

I **FURTHER CONCLUDE** that appellant violated the terms of the LCA by testing positive for alcohol on October 3, 2014.

ORDER

Based on the foregoing, respondent's motion for summary decision is **GRANTED**. Appellant's motion to dismiss is **DENIED**.

It is hereby **ORDERED** that MSU's determination to terminate appellant from employment is **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.

9-23-15

DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency: Sept. 23, 2015

Date Mailed to Parties: SEP 25 2015

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

ljb

DOCUMENTS RELIED UPON

Moving papers of the parties.