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FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

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The appeal of James Slyke, Human Services Specialist 1, Monmouth County, Department of Human Services, release at the end of the working test period, was heard by Acting Director and Chief Administrative Law Judge Laura Sanders, who rendered her initial decision on September 15, 2017. No exceptions were filed.

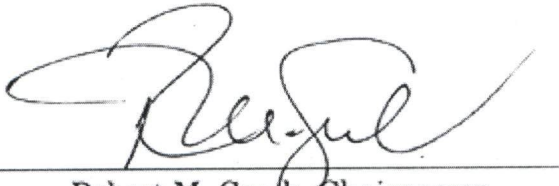
Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on October 18, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

The Civil Service Commission finds that the action of the appointing authority in releasing the appellant at the end of the working test period was justified. The Commission therefore affirms that action and dismisses the appeal of James Slyke.

Re: James Slyke

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
OCTOBER 18, 2017

A handwritten signature in black ink, appearing to read 'R. Czech', is written over a horizontal line.

Robert M. Czech, Chairperson
Civil Service Commission

Inquiries
and
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 17652-13

AGENCY DKT. NO. 2014-1419

**IN THE MATTER OF JAMES SLYKE,
MONMOUTH COUNTY DEPARTMENT
OF HUMAN SERVICES**

James Slyke, appellant, pro se

Steven W. Kleinman, Special County Counsel, for respondent Monmouth County
(Andrea I. Bazer, County Counsel)

Record Closed: February 2, 2016

Decided: September 15, 2017

BEFORE **LAURA SANDERS**, Acting Director and Chief ALJ:

STATEMENT OF THE CASE

James Slyke (Appellant, Slyke) appeals his termination from his position as Human Services Specialist 1 (HHS-1), at the respondent Monmouth County Department of Human Services (the County), following the working test period (WTP). The termination was effective on November 15, 2013. He contends that he was terminated in bad faith, because he was evaluated based on a group of tests, rather than his actual work in the daily operation of the office. He also feels that all of the tests did not fairly represent his training.

PROCEDURAL HISTORY

Slyke was notified of the termination through a letter dated November 15, 2013. By letter dated November 17, 2013, he requested a fair hearing, and the Civil Service Commission transmitted the contested case to the Office of Administrative Law (OAL), N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The matter was filed with the OAL on December 9, 2013, and heard on February 2, 2016 by Administrative Law Judge John Schuster, III. Thereafter, Judge Schuster, who conducted the hearing, did not issue an Initial Decision, and the initial forty-five day period for issuing an initial decision expired on March 18, 2016, for unknown reasons ALJ Schuster neither submitted any requests for an extension or issued an initial decision prior to his retirement. An additional extension was granted to allow time to contact the parties pursuant to N.J.A.C. 1:1-14.13, to determine if the parties could settle or wished to relitigate it upon transfer to a new judge. The answer having been in the negative, the undersigned was assigned the case, and yet another extension was requested and received to allow time to request and receive the transcript and to review the entire record.

FACTUAL DISCUSSION AND FINDINGS

The following is not in dispute. Appellant began his ninety-day working test period or about August 19, 2013, when he signed a copy of the requirements for a successful completion of the WTP. Prior to transitioning to the position of HSS-1, Slyke served as a social service assistant at the County.

In order to successfully complete the WTP, a trainee must pass what the County characterizes as the performance-based examination, which comprises six sample cases. The candidate also must earn passing scores on a knowledge-based examination, and observations of interviews of actual clients. Additionally, the prospective employee must satisfactorily demonstrate the ability to accurately process and complete the work of a HHS-1 as outlined in the job description. (R-1.) If a trainee fails one of the four parts, he or she is not retained. Slyke passed the knowledge-based examination, but did not pass the performance-based examination, as he achieved passing scores on only two of the six

sample cases. (R-12.) He was notified by letter and in person by Granville LeMeune (LeMeunne), human resources administrator for the MCBSS, on November 15, 2013, who explained to Slyke why he did not pass the WTP, told him he would not be hired on a permanent basis, and provided him with information on his recourse. In this meeting, LeMeunne provided Slyke with a hard copy of the letter, which terminated him at close of business that day.

The dispute centers on whether Slyke was terminated in bad faith. Kathleen Vitale (Vitale), assistant training supervisor at the County, testified on behalf of the respondent. She stated that the responsibilities of the HHS-1 position are to determine an applicant's eligibility for benefits, including food stamps, Medicaid or cash assistance. Slyke's class of trainees was divided in half, with his group supervised by Eileen Corliss (Corliss), human resources 3. Vitale stated that the training for Slyke's particular group of trainees was primarily focused on Supplemental Nutrition Assistance Program benefits (food stamps). (Tr. at 15.)

The first three weeks of training were in a classroom environment where the trainees learned programs and general procedures, how to determine eligibility, and how to utilize the computer. After the classroom learning, the trainees began working under their immediate supervisor on the floor to learn the daily routine.

Vitale described the four criteria trainees need to meet to successfully complete the WTP. In the performance-based exam, trainees must achieve passing scores on four of six practical cases. On the knowledge-based examination, they must obtain a score of at least seventy-five to pass. In the interview observation, trainees are brought to the client intake and reception area, and their interviews are observed. Finally, trainees must satisfactorily demonstrate the ability to process and complete the daily work of an HSS-1.

The examinations are usually given within the last ten-days of the WTP, as occurred here. Vitale stated that performance examinations are utilized to demonstrate that HSS-1 can be self-sufficient. A HHS-1 must be able to take a case, go through the procedures, and determine if the person is eligible or ineligible. If this is not done correctly, the clients are very likely to suffer because they will be either receiving fewer benefits than they are

entitled to receive, or too many, which they will eventually have to pay back. Vitale testified that the requirements have been a part of the program at least back to her hiring in 2000, when she went through the same process. The County does not deviate from this process. People have failed before, and none have been retained as an HSS-1. She added that anyone who is not retained following the WTP can always reapply.

Vitale stated that Slyke was surprised and not happy when he was informed that he did not pass the performance-based examination, never said whether the test was fair or unfair, and signed the final progress report. (R-3.) She added that there were interim progress reports for Slyke that were adequate, and trainees met with supervisors every two weeks to assess their progress. Finally, Vitale stated that Slyke was present for all training, except for the training on benefits, which he did not need as he was a current employee of the County.

Corliss testified that she supervised Slyke and dealt with him regularly. She trained appellant on the floor, set up packets, and live cases for trainees to go through. Corliss added that the main objective of the training was for food stamps, since the primary job responsibility for the trainees was to learn all the various aspects of the food stamp program.

Corliss explained the details of Slyke's performance examination, and why he did not pass. (R-12.) The first test case is the interim referring form (IRF), which she described as a form a client sends in reporting changes. The test requires the worker to review the form with the client to verify the information, and enter the information into the system. Corliss stated that the information is important as it will determine whether the client will continue to receive benefits. Slyke's errors in the IRF test included missing the certification period, which caused the client to not receive benefits. He received a non-passing score of sixty (R-5).

The second test case was for a prior General Assistance/food stamp client reapplying for food stamps only. (R-12.) Multiple errors led to deductions of thirty-five points for a non-passing score of thirty-five. In one calculation, the General Assistance income was left out, which would have led to a real-world consequence of a lower calculation for food stamp benefits. Other errors included incorrect segment and person types. (R-5.) By way of

comparison, Corliss referred to an example of a passing score on the same test by one of Slyke's classmates. (R-9.)

Although Slyke passed tests three and four (R-12), he received a non-passing score of fifty-five on test five, which required him to put an application into the system in a way that if a client calls in, there would be an application pending. It was commonly referred to putting a new case in "app status." Because of the kind of errors Slyke made, the system would not have recognized that an application was pending, and eventually, the system would have deleted the application, such that the County would no longer have a record that a valid, pending application existed. In real life, this would have caused a deserving client to have to start a new application and to lose back benefits to which they were entitled. (R-7.)

The final test was an application for food stamps. Slyke received a non-passing score of sixty. Based upon Slyke's incorrect calculations, the applicant would not have received the correct benefits. (R-8.)

Corliss referred to examples of passing scores by one of Slyke's classmates for tests five and six to demonstrate that the trainees who received the same training during the WTP were able to obtain passing scores. (R-10, R-11.)

Corliss stated that no one else in Slyke's class failed this exam, but others have failed in the past. No one has ever been granted an exemption from the requirement to pass at least four of the six parts of the performance exam. Thus, Corliss, said, the appellant was treated in the same manner as any other trainee. Corliss acknowledged that she was surprised he did not pass the test. (Tr. at 67.) She added that there is only one correct way to pass the examination, and the examples of passing examinations were introduced only to demonstrate this, not to compare Slyke to others. On redirect, Corliss stated that everyone was trained on the subject matter that was tested on.

Appellant Slyke testified on his own behalf. He stated that he knows that this is an uphill battle, and wanted to have his opinion heard. As an example of unfairness, he pointed in particular to a test case in which "GA cases . . . (were) being turned into Food

Stamp cases that they took back from us because they had to go to GA workers to try and figure out what the error was. We were told to do some a certain way, and when done on the test, it was considered wrong.” (Tr. at 76, 77.) Additionally, he stated that, “because two of the six cases (were not) strictly food stamps, I just felt like I didn’t have a fair advantage of passing all six.” (Tr. at 77.) This is because he was trained primarily in food stamps. On cross examination, he admitted that he received the same training as everyone else, was not singled out unfairly, and was given the same opportunities as everyone else to pass the test.

Having heard the testimony of the witnesses and reviewed the documentary evidence, I **FIND** as **FACT** that Slyke did not pass the performance-based examination. I **FIND** that the County has established that others with the same training passed the examination. I **FIND** that the County has long used the four-part criteria without deviation, and therefore, I **FIND** that he did not successfully complete the working test period.

LEGAL ANALYSIS AND CONCLUSION

The purpose of the working test period under the Civil Service system is to enable the appointing authority to evaluate an employee’s fitness through observed job performance under actual working conditions. Cipriano v. Dep’t of Civil Serv., 151 N.J. Super. 86, 89 (App. Div. 1977). On appeal to the Civil Service Commission, the only issue is whether the appointing authority exercised good faith in determining that the employee was not competent to perform satisfactorily the duties of that position. Briggs v. Dep’t of Civil Serv., 64 N.J. Super. 351 (App. Div. 1960). Thus, it is up to the employee to demonstrate that the appointing authority has acted in bad faith. N.J.A.C. 4A:2-4.3(b); Devine v. Plainfield, 31 N.J. Super. 300 (App. Div. 1954); Fitzpatrick v. Civil Serv. Comm’n, 91 N.J. Super. 535, 539 (App. Div. 1966). Bad faith is “not simply bad judgment or negligence, but implies the conscious doing of a wrong because of dishonest purpose.” Brown v. State Dep’t of Educ., 97 N.J.A.R.2d (CSV) 537, 541 (citations omitted).

To prove “bad faith” in a working test period case, the employee must prove sinister motive or conscious doing of a wrong because of a dishonest purpose. The fact that the appointing authority’s determination was not entirely accurate or even that the facts allow for

a determination different than that of the appointing authority is not alone sufficient to prove bad faith. Broughton v. Woodbine Dev'l Ctr., CSV 4179-02, Initial Decision (Oct. 1, 2003), adopted, Merit System Board (Nov. 24, 2003), <<http://lawlibrary.rutgers.edu/oal/search.html>>.

The evidence does not support a conclusion of bad faith. While the appellant has offered general grievances with the performance-based examination, he has provided no evidence of unfair treatment. Rather, the County demonstrated that it utilized standard criteria, that all candidates were provided with the same training and the same opportunity to successfully complete the WTP.

A showing of bad faith by the appellant is a high standard to meet, and I **CONCLUDE** that Slyke has not been able to meet that burden.

ORDER

The termination at the end of the working test period 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.

September 15, 2017

DATE

Laura Sanders

LAURA SANDERS

ACTING DIRECTOR AND CHIEF

ADMINISTRATIVE LAW JUDGE

Date Received at Agency:

September 15, 2017

Date Mailed to Parties:

September 15, 2017

/nd

APPENDIX

WITNESSES

For appellant:

James Slyke

For respondent:

Kathleen Vitale

Eileen Corliss

EXHIBITS

For appellant:

None

For respondent:

- R-1 Successful Completion of the Working Test Period for the On-the-Job Training Program, dated August 19, 2013
- R-2 Notice of Counseling, County of Monmouth, dated September 17, 2013
- R-3 Monmouth County Division of Social Services, Report on Progress of Probationer form, dated November 15, 2013
- R-4 Termination Letter from Granville LeMeune, Human Resources Administrator, County of Monmouth, Department of Human Services, Division of Social Services, to appellant, dated November 15, 2013
- R-5 Appellant's Performance Based Examination (IRF Test) #1
- R-6 Appellant's Performance Based Examination #2
- R-7 Appellant's Performance Based Examination #5
- R-8 Appellant's Performance Based Examination #6
- R-9 Sample Answers to Performance Based Examination #2
- R-10 Sample Answers to Performance Based Examination #5
- R-11 Sample Answers to Performance Based Examination #6
- R-12 Training Class Test Results form for appellant, dated November 12, 2013