



STATE OF NEW JERSEY

In the Matter of Marjorie Londregan
Passaic County,
Preakness Healthcare Center

CSC DKT. NO. 2015-2336
OAL DKT. NO. CSV 4716-15
(ON REMAND CSV 05916-17)

:
:
:
:
:
:
:
:
:
:
:
:
:

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: OCTOBER 5, 2017 BW

The appeal of Marjorie Londregan, Graduate Nurse, Passaic County, Preakness Healthcare Center, removal effective January 15, 2015, on charges, was heard by Administrative Law Judge Joann Lasala Candido, who rendered her initial decision on September 1, 2017. No exceptions were filed.

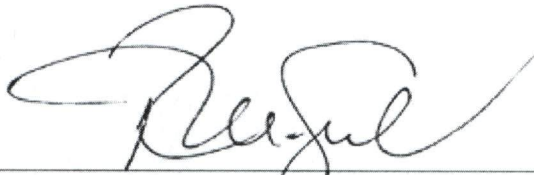
Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of October 4, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached 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 and dismisses the appeal of Marjorie Londregan.

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 4, 2017



Robert M. Czech, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 05916-17

**IN THE MATTER OF MARJORIE J. LONDREGAN,
PASSAIC COUNTY PREAKNESS HEALTHCARE
CENTER,**

Samuel Wenocur, Esq. on behalf of appellant (Oxford Cohen, PC)

Jose Santiago, Esq. on behalf of respondent (Assistant County Counsel)

Record Closed: August 28, 2017

Decided: September 1, 2017

BEFORE JOANN LASALA CANDIDO, ALAJ:

Appellant, Marjorie Londregan, appeals her termination as a graduate nurse by respondent, the Passaic County Preakness Healthcare Center, by Final Notice of Disciplinary Action dated January 22, 2015.

Appellant requested a hearing on the matter, and it was transmitted as a contested case to the Office of Administrative Law (OAL), and filed on April 7, 2015 under OAL Docket Number CSV-04716-15. N.J.S.A. 52:14B-2(b); N.J.A.C. 4A:2-2.8. Hearings were scheduled and adjournments were requested by appellant as follows: for

adjournment of the September 24, 2015 hearing date for medical reasons; adjournment of the February 16, 2016 hearing date and waived back pay; adjournment of the May 2, 2016 hearing date because she was ill; adjournment of the September 21, 2016 hearing date because she would be out-of-state; the January 10, 2017 hearing date was adjourned because the parties reached a settlement; on February 16, 2017, a telephone conference was conducted requesting status of the settlement. No settlement was reached and on March 2, 2017 another telephone conference was conducted to obtain the status of settlement. No settlement was reached and appellant requested an adjournment of the March 16, 2017 hearing date because she was out-of-state and her home needed emergency repair. A peremptory date was scheduled for March 31, 2017 and appellant failed to appear at the peremptory hearing.

The matter was remanded to me April 28, 2017, "to allow the parties to explore further efforts at settling the mater." The Commission stated that if the appellant failed to appear on the next hearing date, "the appellant **will not** be afforded another opportunity".

On May 2, 2017, OAL sent a notice to the parties, including appellant, of a telephone prehearing scheduled for June 5, 2017 and hearing dates on July 10 and 12, 2017. The June 5, 2017 prehearing was rescheduled to June 23, 2017 at 3:00p.m. During the pendency of the conference counsel advised that the July 12, 2017 hearing was not needed. A new notice went out on June 23, 2017 with the July 10, 2017 peremptory hearing date only.

On June 27, 2017 appellant's counsel requested that the July 10, 2017 hearing be cancelled. He indicated that he informed appellant that her failure to appear at the hearing could result in the dismissal of her appeal. In response appellant reiterated that she would be unavailable to attend because she will be out of state for her reiki healing training and she would not accept a settlement. Appellant's adjournment request was denied.

On July 10, 2017 the hearing proceeded without appellant's presence. The undersigned offered July 12, 2017 for an additional hearing date to allow appellant time to travel to New Jersey for the hearing. The parties agreed that the July 12 date was not necessary. It was agreed by the attorneys that this matter will be decided on the papers rather than having appellant constantly not appear for the hearings. It was also confirmed at the hearing that appellant refused the settlement offer of returning to work because she chose to stay out of state to complete the reiki healing training ending sometime in the fall. The parties requested to submit post-hearing briefs.

Appellant, a registered nurse employed by respondent since December 9, 2011, was charged with chronic or excessive lateness and absenteeism, failure to follow leave of absence procedure and abandonment. She was removed from her position as a Graduate Nurse effective January 15, 2015 by Final Notice of Disciplinary Action dated January 22, 2015. Appellant was afforded a hearing at Preakness Healthcare Center on January 15, 2015.

The Civil Service Act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1 et seq. A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. Grounds for discipline include, among other things, insubordination, chronic or excessive absenteeism or lateness, conduct unbecoming a public employee, and neglect of duty. See N.J.A.C. 4A:2-2.3(a)(2), (4), (6), and (7). An employee may also be subject to termination for resignation not in good standing. If an employee is absent from duty for five or more consecutive business days, or has not returned to work for five or more business days following an approved leave of absence, without the approval of his superior, he shall be considered to have abandoned his position and shall be recorded as a resignation not in good standing. N.J.A.C. 4A:2-6.2(b)(c).

Although the Commission remanded the matter to me for the sole purpose of continuing settlement negotiations, I am going to address and decide on the merits of the appeal as agreed by counsel.

Based upon the Final Notice of Disciplinary action dated January 22, 2015, appellant was charged with chronic or excessive lateness or absenteeism because she failed to comply with producing documentation in support of her request for family leave effective December 30, 2014 through February 9, 2015. Appellant did not come to work and was therefore absent without authorization on December 30, 2014; January 2, 3, 4, 5 and 7, 2015. Appellant had also used her eligible sick days for 2014 through May 14, 2014 and then used an additional twenty-two uncompensated sick time days for the remainder of the year. Appellant asserts that she was not aware that she needed to call out sick after December 30, 2014, the date of her request for Family Leave. This contradicts her assertion that she followed the call-out procedures between December 25 and 29, 2014 when she obviously knew what procedure to follow when not coming to work. Appellant was also previously aware of policy and procedure when she took an extended leave of absence from November 10th through November 28, 2014. Her request for Family Leave was not approved and appellant failed to follow policy and procedure to call in when not reporting for work.

An employee may be subject to discipline for chronic or excessive absenteeism. N.J.A.C. 4A:2-2.3(a)4. While there is no precise number that constitutes "chronic," it is generally understood that chronic conduct is conduct that continues over a long time or recurs frequently. Good v. Northern State Prison, 97 N.J.A.R.2d (CSV) 529, 531. Appellant was absent without authorization for five consecutive days in January 2015. She had received verbal warnings for lateness on March 5 and May 12, 2012 as well as written warnings on March 5 and June 7, 2012. Appellant received a one-day suspension and subsequently received a three-day and five-day suspension for chronic or excessive absenteeism or lateness which were converted into fines.

Courts have consistently held that excessive absenteeism need not be accommodated, and that attendance is an essential function of most jobs. See, e.g.,

Muller v. Exxon Research and Engineering Company, 345 N.J. Super. 595, 605-06 (App. Div. 2001) (under the LAD, excess absenteeism need not be accommodated even if it is caused by a disability otherwise protected by the Act.); Svarnas v. AT&T Communications, 326 N.J. Super. 59, 79 (App. Div. 1999) ([a]n employee who does not come to work cannot perform any of her job functions, essential or otherwise). See, also, Dudley v. Calif. Department of Transportation, 2000 W.L. 328119 (9th Cir. 2000) (a diabetic with frequent absences who failed to provide adequate medical documentation and could not provide a definite return to work date was not a qualified individual).

Furthermore, in Hatcher v. Northern State Prison, 2002 W.L. 31731008 (N.J. Adm.) at p. 4, the court held that:

[T]here is no way to reasonably accommodate the unpredictable aspect of an employees sporadic and unscheduled absences. Svarnas v. AT&T Communications, 326 N.J. Super. 59, 77 (App. Div. 1999). As noted by the New Jersey Supreme Court, 'just cause for dismissal can be found in habitual tardiness or similar chronic conduct.' West New York v. Bock, 38 N.J. 500, 522 (1962). While a single instance may not be sufficient, 'numerous occurrences over a reasonably short space of time, even though sporadic, may evidence an attitude of indifference amounting to neglect of duty.' Ibid. . Especially in times of budgetary constraint, it is important that management utilize existing staff efficiently and effectively. 'We do not expect heroics', but 'being there,' i.e., appearing for work on a regular and timely basis is not asking too much. State Operated Sch. Dist. Of Newark v. Gaines, 309 N.J. Super. 327, 333 (App. Div. 1998).

Appellant had been excessively absent from work sufficient to warrant disciplinary charges, and I so **CONCLUDE**. Appellant's employer had a right to expect that she would be present at work, willing and able to work. Certainly respondent is not obligated to continue to employ a person who either cannot or will not perform her job duties on a regular basis. Frequent absences cause disruption in the public work place

and create a hardship for the remaining employees, who must absorb the job duties of a person who cannot or will not perform them. I therefore **CONCLUDE** that the respondent has met its burden of proof regarding excessive absenteeism. Furthermore, appellant failed to comply with policy and procedure by not providing the requested medical documentation for a family leave request. She failed to appear for her hearing as well as for all scheduled dates before me.

There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against appellant. The charge of other sufficient cause has been dismissed when "respondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm'r (April 26, 2006), <<http://njlaw.rutgers.edu/collections/oal/final/csv9122-99.pdf>>. The FNDA states that the charge for other sufficient cause is sustained for failure to follow leave of absence procedures. Because I find the respondent to have proven the above-named charges by a preponderance of the credible evidence, I therefore **CONCLUDE** that respondent has satisfied its burden of proving, by a preponderance of the credible evidence of other sufficient cause.

Based upon all of the foregoing, including the evidence and certifications submitted, I **CONCLUDE** that respondent has met its burden of proving, by a preponderance of the credible evidence, the charges against appellant. Furthermore, based upon the Commissioner's instruction that this matter be remanded for the sole purpose of appellant to appear for further settlement discussion, to which she refused, also warrants dismissal of this matter.

ORDER

It is hereby **ORDERED** that the removal of appellant is hereby **AFFIRMED** and her appeal is **DISMISSED**.

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 1, 2017
DATE

Joann Lasala Candido
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

Date Mailed to Parties:
ljb

SEP 5 2017

Luana Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

JOINT EXHIBITS

- J-1 January 12, 2015 Preliminary Notice of Disciplinary Action (31-A) December 30, 2014 Memo concerning Ms. Londregan Certified Mail Receipt of January 12, 2015 Employee Monthly Schedule
- J-2 December 30, 2014 E-mail from Renee Peterman to Tawanda Sangster and Mariene Williams, Archived Time Card Report for Marjorie J. Londregan
- J-3 January 7, 2015 e-mail from Ibelise Grullon to Director Lucinda Corrado, Renee Peterman and Adelaida Sanchez concerning Ms. Londregan Time Card Report for Marjorie J. Londregan
- J-4 Employee Attendance Records- 2014/Londregan, Marjorie
- J-5 Employee Attendance Records- 2014/Londregan, Marjorie
- J-7 Sick Call Log- May 23, 2014 – The Call Out Sick Book with call outs for days for Marjorie J. Londregan
- J-8 County of Passaic Personnel Policies & Procedures Manual
- J-9 December 12, 2011 Acknowledge/Receipt for Personal Policies and Procedures
- J-13 Marjorie Londregan Grievance History