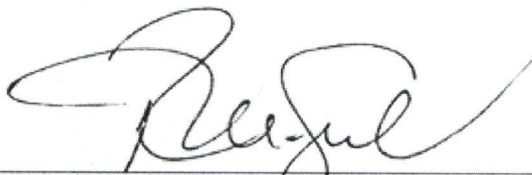


This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
OCTOBER 4, 2017

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

Robert M. Czede, 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 16969-15

AGENCY DKT. NO. 2016-734

**IN THE MATTER OF PERRY WOODING,
NEW JERSEY CITY UNIVERSITY.**

Perry Wooding, appellant, pro se

Jennifer Hoff, Deputy Attorney General, for respondent New Jersey City University (Christopher S. Porrino, Attorney General of New Jersey, attorney)

Record Closed: July 12, 2017

Decided: August 28, 2017

BEFORE **EVELYN J. MAROSE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Perry Wooding ("Wooding") appeals his termination from his position of security officer by respondent New Jersey City University ("University") for unauthorized absence and job abandonment.

The University mailed appellant a Preliminary Notice of Disciplinary Action ("PNDA") on July 6, 2015. The PNDA was sent to an address where Wooding never resided, and the PNDA was returned to the University marked "Unclaimed, Unable to

Forward.” (R-3; R-5.) The University hand-delivered a Final Notice of Disciplinary Action (“FNDA”) to Wooding on July 14, 2015. (R-4(a); R-4(b).)

In the FNDA, charges of unauthorized absence and abandonment of job as a result of absence from work as scheduled without permission for five consecutive days, in violation of N.J.A.C. 4A:2-6.2(b), were sustained, and Wooding was terminated effective July 14, 2015. On August 3, 2015, Wooding filed an appeal with the Civil Service Commission. Pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, the matter was transmitted to the Office of Administrative Law (OAL) on October 19, 2015. Hearings were conducted on March 9, 2016, June 15, 2016, and April 12, 2017. The record closed upon receipt of written summations on July 12, 2017.

TESTIMONIAL AND DOCUMENTARY EVIDENCE

Denise Gourdine, Robert Piaskowsky, Nancy Mitchell, and John Griffin testified on behalf of the University. Perry Wooding testified on his own behalf.

Denise Gourdine

Denise Gourdine (“Gourdine”) has been employed by the University for approximately twenty-six years. For the last two years she has been the assistant director of public safety. As part of her position she is involved with training, officers’ scheduling, management operations, special events, emergency management, and discipline. She also works closely with the unions, and counsels and consoles employees. Prior to being assistant director, Gourdine was assistant supervisor for about nine years. In that role, she oversaw shift operations and assisted the shift supervisor. Prior to being assistant supervisor, she was a shift supervisor, and prior to being a shift supervisor, for about six years, she was a security officer. When Gourdine was shift supervisor, she supervised Wooding for day and midnight tours. As part of those supervisory duties she reviewed and approved his attendance log and signed off on write-ups.

Gourdine has personal knowledge of the procedures that employees must use to “call out” of work. Per their union contract and per policy of the University and the Public Safety Department, public-security staff must call out at least two hours prior to the start of their shift, unless their absence is caused by an emergency that prevents such notice. Should two hours’ notice not be possible, a telephone call regarding the absence must still be made, as soon as possible, so that the shift supervisor can either find a replacement or reassign duties. It is the shift supervisor’s job to document an employee’s absence and to note the employee’s return back to duty. Employees receive training in absentee procedures at the start of their employment, and the procedures are also memorialized in their union contract.

Employee absenteeism is recorded on two forms. One form is completed when an officer “calls out” or if a family member “calls out” for the officer. A secretary maintains another form that is a matrix chart of the whole department’s absenteeism. That matrix form is submitted monthly to the director of human resources for review, so that problematic attendance can be addressed with those employees. Gourdine identified a Disciplinary Action Matrix for Wooding, which was made by the secretary of the Public Safety Department, based upon information that the secretary received from the associate director, Joseph Rodriguez. (R-1.) After the first day of hearing, Gourdine reviewed the Disciplinary Action Matrix initially submitted and compared it to the documents contained in Wooding’s personnel file. Thereafter, on March 24, 2016, Gourdine submitted a revised Disciplinary Action Matrix, which she certified was accurate and consistent with the documents in Wooding’s personnel file. (R-6(a), Exhibit C.)

Gourdine described Wooding’s job duties as a security officer as demanding. Since the job is to protect and serve, attendance is vital. Security officers must not only come to work, they must arrive on time. They patrol buildings, and respond to medical calls, incidents, slip-and-fall accidents, and emergencies, including fire emergencies. They write reports. Most recently, Wooding was assigned to the midnight shift. Gourdine noted that the midnight shift is not more laid back than the day shift; however, it does have some unique characteristics. An officer who is assigned to the midnight shift must be visible and alert at all times in order to prevent non-authorized persons

from entering the three residences halls where 262 students reside; to deter robberies and prevent transient persons from wandering the campus; and to handle emergency weather conditions. Since the midnight shift is staffed a little lighter, when someone is absent, especially without notice, it is "tough." Replacing a security officer on the midnight shift is especially problematic since overtime occurs on a voluntary basis, and some personnel find it difficult to stay awake all night, especially after their own eight-hour shift. The shift supervisor or another security guard might have to serve double duty if a replacement cannot be made.

Gourdine explained the duties of a tour supervisor. That staff person is in charge of a particular shift. He is responsible for officer training, attendance, scheduling, disciplinary issues, tour assignment, daily work assignment, vacation requests, and the review of his shift officers' reports.

If Wooding "called in" to provide the University with notice prior to being absent, an absenteeism form would have been created that would have included the anticipated number of days that Wooding would be absent, and his "rest days," for which no coverage would have been need. At the time of the "call-in" Wooding would have been asked to bring in supporting documents as to the reason for his absence. Since Alvin Agir and Robert Kline were Wooding's tour supervisors, it would have been their duty to complete an absenteeism report relating to any absent by Wooding.

In July 2015, Gourdine reviewed the documentation created by the University noting that Wooding had not reported to work for five days and had not "called in." She became concerned, and, on July 14, 2015, telephoned Wooding about his July absences. She was concerned since a five-day "no call" incident is usually automatic termination, and these July absences were not Wooding's first problem with absenteeism.

In their telephone conference, Wooding acknowledged that he did not come in to work. He said that he was not feeling well. Wooding told Gourdine that he realized that he had "messed up." He should have called or had someone call. He wanted to try to make it right. Wooding told Gourdine that he intended to come in and talk to the Human

Resources (HR), to see if he had any options. Gourdine did not discourage Wooding from "coming in" and trying to rectify his behavior and explain to HR the details of his absence. Still, Gourdine was surprised when shortly after their telephone conference Wooding arrived at Gourdine's office. Gourdine contacted Sherry Thomas, Wooding's union president, so that Wooding could have union support, and Robert Piaskowsky, the director of HR, and asked them to come to her office so that they could discuss whatever options and resources were available to Wooding. In both their telephone and office conference, Gourdine advised Wooding that his actions had subjected him to termination by the University.

Gourdine stated that Wooding "realized that his absenteeism had been a problem over the years." She described Wooding as emotional. Wooding told them that he had a lot of personal issues and medical issues, and that lots of things were taking a toll on him. Gourdine does not remember that Wooding said he was hospitalized, and Wooding never offered to bring, or brought in, medical documentation detailing a medical reason for his absences.

In lieu of termination, which would be more detrimental to Wooding's job opportunities, the option of Wooding resigning in good standing was discussed with him. Wooding was also advised that he had the option of bringing in medical documentation in support of his absenteeism. In Gourdine's opinion, by the end of the meeting in her office, Wooding seemed to agree to provide the University with a written resignation.

Gourdine has no memory of any discussion of a leave of absence as another option. Gourdine further stated that she was not certain that Wooding would have qualified for a leave of absence at that time, based upon his prior absentee record and past leaves of absence. Gourdine is aware that another meeting occurred that same day, in the HR office, though she did not attend that meeting. She was told that during that meeting, an FNDA was hand-delivered to Wooding.

Gourdine said that Wooding's missing five consecutive days as a no show/no call would definitely have had a negative impact on the University's public safety. An

absence of five days was difficult to cover with overtime and would have to have involved a tour supervisor taking a post and/or the doubling of post assignments.

Robert Piaskowsky

Robert Piaskowsky ("Piaskowsky") has been the director of HR since 1999. As part of his responsibilities he oversees all employee relations for classified staff, benefits, personnel records, and staffing. He is also familiar with the policies and procedures mandated for employees who want to request time off. Piaskowsky stated that all employees must call into their particular department should they require a day off. However, in accordance with the Health Insurance Portability and Accountability Act (HIPAA), if an employee requires any sort of medical treatment or hospitalization, the employee needs to submit a note to HR rather than to his department supervisor. The note should be from a medical practitioner, with a diagnosis and an approximate return-to-work date. These policies and procedures are memorialized in the union contract and the Administrative Code, and are also available on the University website and employee portal. Piaskowsky would only be aware of an employee's absenteeism were it to be associated with a disciplinary action.

In July 2015, Piaskowsky received a memorandum advising him that Wooding had been absent without "calling in" on July 1, 2015, July 2, 2015, July 4, 2015, July 5, 2015, and July 7, 2015. He did not receive copies of the daily Absentee Reports for those days.

Piaskowsky identified the PNDA, which he prepared on, after he received notice that Wooding had been absent without "calling in" for five consecutive days. He put the completed PNDA in his "outbox" on July 7, 2015, to be processed by the University mailroom for delivery via regular and certified mail. In accordance with the New Jersey Department of Personnel guide that describes disciplinary penalties, Piaskowsky noted the penalty of removal on the form for an unauthorized absence for five or more days. In accordance with normal University pattern and practice and union procedure, Piaskowsky also detailed a proposed time and date for a departmental hearing on the PNDA. Piaskowsky used a mailing address for Wooding on his PNDA that he obtained

from the PeopleSoft system. He noted that employees have an obligation to make sure that the University has the correct address for them on file.¹

Piaskowsky stated that while in most cases an FNDA will issue after a PNDA, if an employee resigns or retires or there is a settlement before a hearing of the charges, an FNDA might not issue. (R-3.) However, in this case, Piaskowsky authored, issued, and delivered an FNDA to Wooding on July 14, 2015. Piaskowsky stated that, during meetings with Wooding that day, Wooding told him “that he knew that he did wrong” and that he did not want a departmental hearing. Wooding wanted a Final Notice so that he could go to unemployment. (R-4.) Wooding “unequivocally” did not tell Piaskowsky that he suffered any sort of medical issue or hospitalization in July 2015, and never provided medical documentation so indicating to the HR director. Piaskowsky has no knowledge of any other meeting that Wooding might have had with another HR staff member, including any meeting wherein the possibility of Wooding taking family medical leave might have been discussed.

Nancy Mitchell

Since February 8, 2016, Nancy Mitchell (“Mitchell”) has been a medical clerk at the University. Previously, beginning on July 5, 2011, she worked in the Public Safety Department, first as a security officer and then as a dispatcher. Her duties when she was a dispatcher involved taking calls from security guards affirming their location, handling requests by the guards for assistance, handling emergency requests, handling non-emergency requests (such as calls from faculty that they needed certain doors opened or closed), and processing absentee “call-ins” from security staff.

Mitchell stated that absences have to be “called in” to the dispatcher before a security staff person is out sick. A security officer cannot tell the dispatcher that they will be out indefinitely. When a security officer intends to remain out the next day, he or she needs to “call in” their intended absence each day. When a “call-in” is received, the dispatcher logs it into a book and completes a document called an “Absentee Report.”

¹ Wooding testified that he never lived at the address where the PNDA was mailed.

The call is then transferred to the security officer's supervisor. If the supervisor is not available to pick up the call, the dispatcher must continue to reach out to the supervisor and forward the information regarding the absence to him, so that the supervisor can be aware if the next shift will be short. The dispatcher cannot go home without passing on the information to the supervisor. The dispatcher also places the Absentee Report on top of a clipboard so that the next shift supervisor will know who, if anyone, is going to be absent from their shift.

Mitchell stated that once a security officer determines that he or she will have to be out for a "length of time," the security officer must call HR rather than just "call in" to a dispatcher. In those cases, HR will advise the department of the security officer of the employee's need for a lengthy absence. The department will then advise the dispatcher that he or she will not be getting a call from that security officer because he or she will be out for a "length of time."

Mitchell is familiar with Wooding, who trained her when she was initially hired as a security guard. At times, after Mitchell was assigned to be a dispatcher, Wooding "called in" to Mitchell to report that he would be absent.

Mitchell identified the Absentee Report that she completed on June 29, 2015, in response to a telephone call from Wooding reporting that he would be absent June 30, 2015, because of sickness. (R-7.) Mitchell did not recall Wooding telling her that he would be out indefinitely. Mitchell remembered transferring Wooding's telephone call to John Griffin, his supervisor. If Mitchell were not able to reach Griffin, she would have noted in the log she maintained that the supervisor was not available to take the call. In this case, Mitchell did not make any such notation in the log. (P-7 at 3.)

John Griffin

For the last twenty-nine years, John Griffin ("Griffin") has been employed by the University. Initially, he was a security officer, and then a senior security officer, until he was promoted to be assistant supervisor, a position that he still holds. As assistant supervisor, Griffin is responsible for twelve employees on his shift and the safety of the

campus during that shift. Griffin has known Wooding since Wooding's initial employment by the University. During the period at issue, Griffin was responsible for supervising Wooding. Griffin opined that Wooding's attendance record was poor. He stated that, over the years, he had "received more than numerous calls from Wooding himself and also his wife stating that he would be out sick."

Griffin affirmed that if one of the employees that he supervised "called in" his intended absence to the dispatcher, after the dispatcher documented the call, the call would be transferred to him. Griffin would then confer with the employee regarding the absence. If appropriate, he would make notes on the Absentee Form of the information that he learned regarding the length or cause of the absence, such as that the security officer was really handling a household emergency rather than being sick or that a family member "called in" rather than the employee. Griffin defined a "timely call-in" as a call received at least an hour or two before a shift began. He affirmed that the security officer could not simply tell the dispatcher that the officer would be out "indefinitely." After the security officer informed his supervisor that he needed an extended absence, the officer would need to call HR, "because HR has to deal with everything that's going to be extended."

Griffin stated that he did not recall, since more than two years had passed, whether or not he spoke to Wooding on June 29, 2015. However, Griffin was certain that he was never advised by Wooding that he needed an extended absence. He was also never told by Mitchell, in accordance with her normal procedure, that Wooding had told her that he needed an extended absence. If Griffin had been so advised by Wooding, he would have directed Wooding to contact HR. If he learned that Wooding intended to be out several days, no matter how he obtained such information, he would have called or e-mailed that information to his assistant director, Joseph Rodriguez, and made notations on the Absentee Report regarding what he was advised and of any action he took, such as advising Wooding to contact HR. Griffin reviewed Exhibit R-7 and stated that he made no such notations on that form. It was also noted by Griffin that the Absentee Report indicated that Wooding would be out Tuesday, June 30, 2015. It did not indicate that Wooding intended to be out July 1, 2015, July 2, 2015, July 4,

2015, July 5, 2015, and/or July 7, 2017. It also did not indicate that Wooding would be out indefinitely.

Griffin also reviewed P-7, a copy of pages of the University log during the period at issue. He stated that he did not author any of those pages, which appeared to have been authored by Mitchell. Griffin again reviewed R-7, which he stated he would have seen at the end of his tour. Griffin noted that the Absentee Report was signed by the supervisor who supervised the midnight shift that night, in accordance with normal procedure. (P-7.) Griffin also acknowledged that the union book does not state that an employee has to "call in" every day if that employee already reported that he needed to be out for three days because of illness. However, he affirmed again that a daily "call-in" is required by Wooding's department unless that employee had processed a lengthy absence with HR.

Perry Wooding

The PNDA in this matter was addressed to Wooding at XX Virginia Terrace, Jersey City. However, Wooding never resided at XX Virginia Terrace. Accordingly, he was never served with a copy of the PNDA and had no knowledge that the PNDA indicated that if Wooding desired a departmental hearing, it would be held on July 16, 2015. (R-3.) Wooding acknowledged that he did receive a copy of the FNDA by hand delivery on July 14, 2015. (R-4(b).)

Wooding stated that he was an ideal employee of the University for over eleven years. (P-1.) He held numerous positions and received many promotions. Wooding stated that he had complained about other employees who came in late and fixed each other's schedules. He complained that those employees were not reprimanded, and based upon their supervisory positions, those employees were even able to reprimand other employees for the same infraction, coming in late. He speculated that he might have been terminated for whistleblowing rather than for the charges at issue.

Wooding personally telephoned the University dispatcher on July 29, 2015, and gave notice to the University that he would be out July 30, 2015, because of sickness.

He said that he told the dispatcher that he did not know when he would be able to return. He was having blurry vision, chest pain, dizziness, and numbness in his fingers at the time.

Since Wooding's doctor was not in the office, on July 1, 2015, Wooding went to Jersey City Medical Center, where he was admitted and retained overnight. (P-3.) Wooding asserts that, in accordance with University policy, he could not return to work after being out sick for three days or more without obtaining medical clearance. He could not obtain such clearance until July 16, 2015, when his doctor returned from vacation. (P-4.) Wooding acknowledged that he never provided the University with any medical documentation, or advised the University that such medical documentation existed in July 2015. (Transcript, dated June 15, 2016, page 115, lines 5–13.)

Wooding stated that on June 29, 2015, he was not only sick, he was going through a lot of "things in his personal life with his children." His personal circumstances, which were known by the administration, had caused him to take off work on numerous occasions. Among other things, his daughter had suffered burns and his grandson had brain surgery. At times, Wooding provided the University with documentation relating to him and/or his family. Wooding did not provide any documentation to the University relating to any family illness on the days at issue.

While Wooding completed an Application for Family Leave, he acknowledged that he had not yet confirmed with Trenton that he could be considered for family leave, based upon the timing of his last leave. Further, he asserted the reason for his requested leave was to care for a family member, not because of any personal illness and not relating to the days when Wooding failed to "call in." (P-5.)

Wooding did not testify that he went to the University on July 14, 2015, relating to his Family and Medical Leave Application. He stated that he did not go to the University on July 14, 2015, to discuss a failure to "call in." He stated that he went to the University on July 14, 2015, as he was directed to do by Gourdine in a telephone conference that day, wherein she directed Wooding to bring in his equipment, his identification, his clothes, and his keys. Wooding denies going to the University to meet

Gourdine to discuss his options. He denies wanting to be terminated that day so that he could apply for unemployment benefits. He asserts that he was terminated that day by Piaskowsky and handed the FNDA.

FACTUAL DISCUSSION AND FINDINGS

Based upon the evidence presented at the hearing, and the opportunity to observe the witnesses and assess their credibility, I **FIND** the following pertinent **FACTS**:

The PNDA in this matter was addressed to Wooding at XX Virginia Terrace, Jersey City. However, Wooding never resided at XX Virginia Terrace. Accordingly, he was never served with a copy of the PNDA and had no knowledge that the PNDA indicated that if Wooding desired a departmental hearing, it would be held on July 16, 2015. (P-3.) Wooding acknowledged that he did receive a copy of the FNDA by hand delivery on July 14, 2015. (P-4.) Thus, while Wooding was not served with the PNDA, I **FIND** that upon appealing his FNDA he received a hearing on all charges against him, detailed in the PNDA and FNDA, at the OAL.

Wooding was employed by the University for more than eleven years. He was bound by the University attendance policies and the procedures in place in his department. Wooding personally telephoned the University dispatcher on July 29, 2015, and gave notice to the University that he would be out July 30, 2015, because of sickness. He said that he told the dispatcher that he did not know when he would be able to return. I **FIND** that Wooding acknowledged that he never "called in" his intent to be absent after July 29, 2015.

A careful analysis of credibility is necessary in order to make critical findings of fact. 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. "[T]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.) (citation omitted), certif. denied,

10 N.J. 316 (1952). 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 other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

After observing the testimony of the five witnesses and considering their interest, bias, and motivation, I **FIND** the University's witnesses' testimony as to the required procedure for "calling in" sick to be credible and Wooding's testimony to lack credibility. All four of the University's witnesses testified that an employee who intends to be out sick is obligated to call out at least one hour prior to the start of his work shift, every day that he intends to be out sick, unless the employee has processed his need for a lengthy absence through HR. The dispatcher, shift supervisor and assistant director of public safety all consistently testified that a daily "call-in" is essential in the Public Safety Department, where the absent employee's shift must be covered by another employee or by a doubling of duties of another security person. None of the University employees had anything to gain by incorrectly stating the "call-in" procedures. In contrast, Wooding is appealing his removal. He is an interested party, highly motivated to develop a factual basis to assert that he used proper procedure when he only "called in" sick one day to the dispatcher, and that based upon his conversation with the dispatcher he was able to remain out sick until he obtained a doctor's note clearing him to return to work. Accordingly, I **FIND** that Wooding's absence from work on July 1, 2015, July 2, 2015, July 4, 2015, July 5, 2015, and July 7, 2015, was not reported in accordance with the University Department of Public Safety's attendance policies. I further **FIND** that Wooding was absent from work as scheduled without permission for five consecutive days.

Wooding stated that on June 29, 2015, he was not only sick, he was going through a lot of "things in his personal life with his children." His personal circumstances, which were known by the administration, had caused him to take off work on numerous occasions. Among other things, his daughter had suffered burns and his grandson had brain surgery. At times, Wooding provided the University with documentation relating to him and/or his family. However, I **FIND** that Wooding did not

advise the University of any family issue or difficulty that excused his failure to “call in” his absences on July 1, 2015, July 2, 2015, July 4, 2015, July 5, 2015, and July 7, 2015.

While Wooding completed an application for family leave, no evidence was presented that he ever advised any University member that he was seeking medical leave. In addition, no evidence was presented that Wooding would have qualified for consideration for family leave, based upon the timing of his leave. To the contrary, Wooding acknowledged that he needed more information from Trenton regarding the timing of his last leave in order to determine if he qualified to apply for leave. Further, the asserted reason for his requested leave was to care for a family member, not because of any personal illness and not relating to the days when Wooding failed to “call in.” (P-5.)² Accordingly, I **FIND** that Wooding’s preparation of a Family and Medical Leave Application did not excuse his failure to “call in” his absences on July 1, 2015, July 2, 2015, July 4, 2015, July 5, 2015, and July 7, 2015.

Wooding did not testify that he went to the University on July 14, 2015, relating to his Family and Medical Leave Application. Wooding stated that he did not go to the University on July 14, 2015, to discuss a failure to “call in.” He stated that he went to the University on July 14, 2015, as he was directed to do by Gourdine in a telephone conference that day, to bring in his equipment, his identification, his clothes, and his keys. In contrast, Piaskowsky and Gourdine said that the purpose of their meeting with Wooding that day was to discuss his failure to “call in” and the charges filed against him detailed on a PNDA for those actions. Again, I **FIND** Wooding’s testimony to be less credible than Piaskowsky’s and Gourdine’s consistent testimony. Both witnesses said that they discussed Wooding’s failure to call in, and that he acknowledged that “he did wrong.” Both stated that there was no mention of any family leave application or medical documentation relating to Wooding’s unapproved absences.

I **FIND** Piaskowsky’s assertion that Wooding asked that he receive his FNDA by hand delivery the day of their meeting on July 14, 2015, so that he could apply for

² It should be noted that this application incorrectly states that Wooding’s last day of work was July 11, 2015, a day that he never worked. It also notes that his leave should begin on July 14, 2015, the day he was terminated. In addition, the Family and Medical Leave Application does not reference any illness of Wooding, but rather requests “time off” for Wooding to care for a family member.

unemployment more credible than Wooding's denial of such a comment. I also **FIND** that Piaskowsky's testimony "hangs together" better than Wooding's testimony. Wooding is appealing the charge that he abandoned his job; it would not present him in a "favorable light" if it appeared that Wooding wanted to hurry the process of his termination so that he could get unemployment benefits. In contrast, Piaskowsky had no motivation to misrepresent Wooding's desire to use the FNDA to qualify for unemployment. Further, Wooding testified that he was "going through a lot of things in his personal life" and wanted time off to care for his family, which he believed that he might not qualify to receive because of the timing of his last family leave.

Wooding stated that he complained about University employees who were not reprimanded for coming in late, and who, based upon their supervisory positions, were even able to reprimand other employees for the same infraction, that is, coming in late. He speculated that he could have been terminated for whistleblowing rather than for the charges at issue. However, no credible evidence was presented that Wooding complained about anything or that he complained to Gourdine, Piaskowsky, Mitchell, or Griffin. Further, the Conscientious Employee Protection Act ("CEPA") protects an employee who objects to or refuses to participate in certain actions that the employee reasonably believes are illegal or in violation of public policy from retaliatory action. N.J.S.A. 34:19-1 to 34:19-14. A salutary limiting principle of CEPA is that the offensive activity must pose a threat of public harm, not merely private harm or harm only to the aggrieved employee. Mehlman v. Mobil Oil Corp., 153 N.J. 163, 188 (1998). Accordingly, even if credible evidence was presented of Wooding's complaints, and no such evidence was presented, objecting to failure to reprimand supervisors who come in late and yet reprimand others for coming in late is not the kind of activity that would be protected by CEPA.

LEGAL ANALYSIS AND CONCLUSIONS

Employees of the State of New Jersey are governed by Title 11A of the New Jersey Statutes, known as the Civil Service Act. N.J.S.A. 11A:1-1 et seq.; N.J.A.C. 4A:1-1.1 et seq. The objectives of our civil service laws are articulated in N.J.S.A. 11A:1-2. They include rewarding employees for "'meritorious performance' and

'separat[ing]' others whose conduct of their duties is less than adequate." City of Newark v. Gaines, 309 N.J. Super. 327, 332 (App. Div. 1998). Any employee who is absent from duty for five or more consecutive business days without the approval of his or her supervisor shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. N.J.A.C. 4A:2-6.2(b).

As an employee for more than eleven years, Wooding had knowledge of the University's policies regarding absenteeism, and for the need to cover the duties of an absentee security officer for public safety. Nevertheless, Wooding failed, on numerous days, to advise the University in advance of the start of the work day that he would not be in to work, including on July 1, 2015, July 2, 2015, July 4, 2015, July 5, 2015, and July 7, 2015. Wooding did not have the approval of any supervisor for his absences on July 1, 2015, July 2, 2015, July 4, 2015, July 5, 2015, and July 7, 2015.

Based upon a preponderance of the credible evidence, I **CONCLUDE** that the University sustained its burden of proving the charges against Wooding of unauthorized absence and abandonment of job as a result of absence from work as scheduled without permission for five consecutive days. N.J.A.C. 4A:2-6.2(b).

PENALTY

Pursuant to N.J.A.C. 4A:2-1.4, the University bears of the burden of proving the appropriateness of the major disciplinary action taken against Wooding. Violations of N.J.A.C. 4A:2-6.2 constitute grounds for major discipline. Major discipline may include removal. N.J.S.A. 11A:2-6(a).

A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number, and proximity of prior disciplinary infractions, evaluated by progressively increasing penalties. W. New York v. Bock, 38 N.J. 500, 523 (1962).

Since being hired on February 26, 2004, Wooding has received verbal warnings, written warnings, and disciplinary charges relating to his absenteeism. Attached hereto and made a part hereof is a copy of the "University Action—Perry Wooding," detailing numerous incidents relating to absenteeism. In early 2009 Wooding was charged with job abandonment and found to have resigned not in good standing. For approximately one year after being reinstated in November 2009, Wooding's incident record was "clean." However, thereafter, beginning on December 14, 2010, he was disciplined on numerous occasions because of his absenteeism. Absenteeism was also addressed on Wooding's Performance Assessments. During his assessment dated June 2015, policies and procedures and absenteeism were areas identified as needing development. It was expressly noted that he needed to improve his attendance record and to inform the Department dispatcher prior to being absent. Wooding was further instructed to continuously review the Policies and Procedures Handbook. Wooding executed the June 2015 assessment and noted his agreement to "do his best to improve." (P-1.)

While removal is the ultimate discipline, Wooding was on notice of his need to improve his attendance and comply with policies and procedures. Yet less than a month after his 2015 assessment, Wooding failed to "call in" to his department Dispatcher prior to five absences. His actions indicate a willful disregard of his obligation to comply with University policies and procedures and a lack of respect for the disciplinary process. Accordingly, I **CONCLUDE** that removing Wooding from his position is warranted.

ORDER

It is **ORDERED** that the charges of unauthorized absence and job abandonment in violation of N.J.A.C. 4A:2-6.2 be **AFFIRMED**.

It is further **ORDERED** that the penalty of removal imposed by the University be **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.

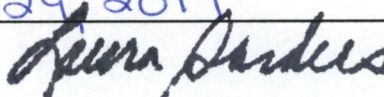
August 28, 2017

DATE



EVELYN J. MAROSE, ALJ

Date Received at Agency:

Aug. 29, 2017


Date Mailed to Parties: AUG 31 2017

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

kep

APPENDIX

WITNESSES

For Wooding:

Perry Wooding

For the University:

Denise Gourdine

Robert Piaskowsky

Nancy Mitchell

John Griffin

EXHIBITS

For Wooding:

- P-1 State of New Jersey, Performance Assessment Review, period from 11/1/14 to 10/31/15
- P-2 T-Mobile telephone records
- P-3 Jersey City Medical Center Records, dates of service July 1, 2015, to July 2, 2015
- P-4 Letter from Dr. Narisety Chalapathy, dated July 16, 2015, medically clearing Wooding to return to work as of July 16, 2015
- P-5 Application for family leave insurance benefits, noting last day worked as 7/11/15, and seeking family leave to care for a family member from July 14, 2015, to August 28, 2015
- P-6 United States Post Office Tracking Form #701405100000105560793
- P-7 Log Sheet

For the University:

- R-1 History of Disciplinary Action
- R-2 Absentee Reports
- R-3 PNDA
- R-4(a) FNDA
- R-4(b) FNDA, with signature
- R-5 United States Post Office Return Receipt, noting, "Return to Sender, Unclaimed, Unable to Forward"
- R-6 Letter dated March 29, 2016, with attached documentation including:
 - (a) Certification of Denise Gourdine, dated March 24, 2016, who substantiated that the entries on Wooding's Disciplinary Action Record correspond with information in Wooding's personnel file, but detailing five corrected entries, with attached documentation
 - (b) Certification of Robert Piaskowsky, dated March 24, 2016, with documentation regarding mailing and disciplinary action records
 - (c) Certification of Sherry Thomas, dated March 24, 2016, as to verbally requesting an appeal in July 2015 of the PNDA issued to Wooding
 - (d) Certification of Service, dated 3/29/16
- R-7 Absentee Report, date scheduled to work 6/30/15