



STATE OF NEW JERSEY

In the Matter of Sabura Alexander
Hudson County,
Department of Family Services

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC DKT. NO. 2017-614
OAL DKT. NO. CSV 13677-16

ISSUED: AUGUST 22, 2017 BW

The appeal of Sabura Alexander, Human Services Specialist 4, Hudson County, Department of Family Services, 120 working day suspension, on charges, was heard by Administrative Law Judge Joann Lasala Candido, who rendered her initial decision on July 11, 2017. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

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 August 16, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

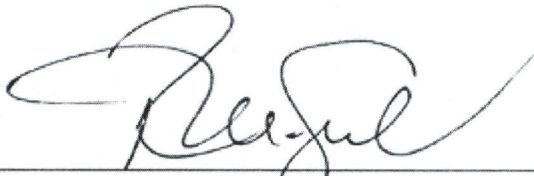
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Sabura Alexander.

Re: Sabura Alexander

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
AUGUST 16, 2017

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

Robert M. Czedo, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
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 13677-16

AGENCY DKT. NO. 2017-614

**IN THE MATTER OF SABURA
ALEXANDER, HUDSON
COUNTY DEPARTMENT OF
FAMILY SERVICES,**

Terry Woodrow, Esq., for Appellant (Staff Attorney, AFSCME Council 52,
attorneys)

Daniel W. Sexton, Esq., Assistant County Counsel for Respondent (Donato J.
Battista, County Counsel, attorneys)

Record Closed: June 14, 2017

Decided: July 11, 2017

BEFORE **JOANN LASALA CANDIDO**, ALAJ:

STATEMENT OF THE CASE

Appellant, Sabura Alexander, a Human Service Specialist IV (HSS4) Supervisor, appeals a one-hundred-twenty day suspension issued by respondent, Hudson County Department of Family Services (Respondent or County), effective April 19, 2016. Respondent alleges that appellant's conduct was unbecoming a public employee on

July 20, 2016, while raising her tone of voice to her supervisor and that she was insubordinate, neglected her duty and other sufficient cause exists.

PROCEDURAL HISTORY

On July 26, 2016, respondent issued a Preliminary Notice of Disciplinary Action against appellant and an administrative hearing was held on August 15, 2016. A Final Notice of Disciplinary Action issued on August 19, 2016 upheld the charges.

On September 6, 2016, the Civil Service Commission transmitted the matter to the Office of Administrative Law (OAL), for a hearing as a contested matter pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Hearings were scheduled for May 1 and 2, 2017. The matter was settled on May 1, 2017, and the settlement was placed on the record. Appellant subsequently changed her mind and the hearing was held on June 14, 2017, on which date the record closed.

ISSUE

Did the respondent carry its burden of proving the charges referenced above by a preponderance of the credible evidence? If so, what disciplinary action, if any, is appropriate?

TESTIMONY

The testimony of the witnesses presented is not intended to be a verbatim report. Rather, it is intended to summarize the testimony and evidence found by the undersigned to be relevant to the issues presented.

Maryann Smith

Maryann Smith, an administrator within the Hudson County Department of Family Services, testified on behalf of respondent. Smith testified to appellant's

demeanor in the workplace and specifically to the incident on July 20, 2016. Smith stated that once appellant returned from a sixty-day suspension, her demeanor changed. She stated that Alexander was irritable and contentious after her return.

With regard to the July 20, 2016 incident, Smith testified that she called a meeting in her office with appellant and Camela Nales (Nales), both HSS4 Supervisors, to discuss routine work matters. Smith asked appellant about a situation pertaining to a worker's request for more time to complete his work and whether appellant asked Nales if she could allow her worker more time. Appellant responded by loudly proclaiming that she did not need to ask for Nales' permission. Smith inquired further about the worker's caseload and appellant responded that she did not know and blamed Smith for not doing what she was supposed to and not properly staffing the department. Smith stated that she attempted to calm appellant down multiple times but she continued to escalate her tone and shout over Smith. Smith had to ask appellant multiple times to leave the room. Smith credibly testified that she felt threatened by appellant's behavior and that appellant was disrespectful. Smith agreed that at no point did appellant approach or physically threaten her. Smith memorialized the incident that day in narrative form. (R-1.)

Camela Nales

Camela Nales, HSS4 Supervisor, testified on behalf of respondent with regard to the incident on July 20, 2016. Nales testified that she was present for the entirety of the interaction between Smith and appellant, but did not say anything during the meeting. Nales stated that appellant immediately became defensive when asked about her staff's case load. She stated that Smith asked appellant about the situation surrounding one of her workers to which appellant responded by loudly accusing Smith of intentionally holding meetings when she was away. Appellant insinuated that she could not know what was going on because Smith decided not to include her in earlier discussions.

Nales stated that appellant continually shouted over Smith's attempts to explain and calm her down. She testified that appellant's behavior made her anxious and she could see it was bothering Smith as well. Nales memorialized the incident that day. (R-2.)

Sabura Alexander

Appellant testified on her own behalf. She has been an employee of Hudson County since November 5, 2007 and has been a HSS4 Supervisor since October 20, 2014. She had been disciplined twice, regarding similar circumstances, before the incident in question. The most recent prior action being a sixty-day suspension from October 8, 2015 to January 5, 2016 for insubordination towards Director Harrison from which she returned to work on or about January 5, 2016.

With regard to the incident on July 20, 2016, Alexander testified that she was called to Maryann Smith's office to discuss a routine work matter. She stated that Smith asked her about her workers' caseload but that she didn't know because she was not working on the day Smith held the meeting. She stated that she voiced her concerns with the department management but she did not raise her voice above a firm tone. Alexander claimed that Smith exaggerated her reaction and that she did not shout during the meeting. She testified that she had no intention of disrespecting or threatening Smith.

CREDIBILITY DETERMINATIONS:

Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness' 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). Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself, in that it must be such as the common experience and observation of mankind can approve as

probable in the circumstances. In re Perrone, 5 N.J. 514, 522 (1950). A fact finder is free to weigh the evidence and to reject the testimony of a witness 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. Id. at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). In other words, a trier of fact may reject testimony as inherently incredible, and may also reject testimony when it is inconsistent with other testimony or with common experience or overborne by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable choice. Renan Realty Corp. v. Dep't of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

I **FIND** the testimony offered by respondent's witnesses to be more credible than that offered by appellant. Both witnesses offered consistent versions of the events on July 20, 2016. Their testimony was wholly consistent with the memoranda written by each of the witnesses' right after the incident of July 20, 2016. Appellant's testimony on the other hand contradicts the credible eye witness accounts as to her loud tone of voice and screaming over Smith.

FACTS

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I make the following findings of relevant fact, which are essentially undisputed, in this matter:

1. Appellant received a thirty-day suspension in May 2015 for violation of a cease and desist order forbidding her from having contact with a coworker with whom there had been an altercation. The suspension was amended to fifteen days.
2. Appellant received a sixty-day suspension on or about October 12, 2015. Appellant shouted at and spoke in a disrespectful and threatening manner to Director Angelica Harrison.

3. On July 20, 2016, at the request of Maryann Smith, appellant and Camela Nales met with Smith in her office to discuss a routine work matter. Appellant became defensive during the meeting and inappropriately raised her tone of voice and shouted over Smith. She loudly accused Smith of ineffective leadership.
4. Appellant inappropriately continued to loudly intensify the conversation despite Smith's attempts to calm the situation. Ultimately, Smith felt threatened and disrespected. She requested that appellant leave the room multiple times. (R-1.)
5. Camela Nales witnessed appellant disrespecting, shouting and yelling over Smith. (R-2.)

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

A civil service employees' rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to -12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. See, Essex Council No. 1, N.J. Civil Ser. Ass'n. v. Gibson, 114 N.J. Super 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965).

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his employment. N.J.A.C. 4A:2-2.2(a) provides the penalties for a major discipline of removal or suspension for more than five working days at any one time. N.J.A.C. 4A:2-2.3 provides the reasons for a major disciplinary action including: neglect of duty, chronic or excessive absenteeism or lateness and other sufficient cause. N.J.S.A. 11A:2-14 requires written notice of the final disposition of an employee.

An appointing authority may discipline an employee on various grounds, including insubordination, conduct unbecoming a public employee and other sufficient cause. N.J.A.C. 4A:2-2.3(a). Such action is subject to review by the Merit System Board, which after a de novo hearing makes an independent determination as to both

guilt and the “propriety of the penalty imposed below.” W. New York v. Bock, 38 N.J. 500, 519 (1962). In an administrative proceeding concerning a major disciplinary action, the appointing authority must prove its case by a “fair preponderance of the believable evidence.” N.J.A.C. 4A:2-1.4(a); Polk, supra, 90 N.J. at 560; Atkinson, supra, 37 N.J. at 149.

In the present matter, appellant was charged with insubordination and conduct unbecoming a public employee, violating Civil Service Rule N.J.A.C. 4A:2-2.3(a)(6) for raising her voice to a superior and shouting over Smith’s attempt to speak. “Unbecoming conduct” is broadly defined as any conduct that adversely affects the morale or efficiency of the governmental unit or that has a tendency to destroy public respect and confidence in the delivery of governmental services. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). Conduct unbecoming need not be predicated on violations of the employer’s rules or policies, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Karins v. City of Atlantic City, 152 N.J. 532, 555 (1998). Appellant’s inappropriate tone and attitude demonstrates offensive behavior when speaking with her supervisor, and as such deviates from the “implicit standard of good behavior” expected from a public employee.

Insubordination is defined as intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority; and disrespect or use of insulting or abusive language to supervisor. Black’s Law Dictionary 870 (9th ed. 2009) defines insubordination as a “willful disregard of an employer’s instructions” or an “act of disobedience to proper authority.” Id. at 802. Webster’s II New College Dictionary (1995) defines insubordination as “not submissive to authority: disobedient.” Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation. Similarly, case law generally interprets the term to mean the refusal to obey an order of a supervisor. See e.g. Belleville v. Coppla, 187 N.J. Super. 147 (App. Div. 1982); Millan v. Morris View, 177 N.J. Super. 620 (App. Div. 1981); Rivell v. Civil Service Comm’n, 115 N.J. Super. 64 (App. Div. 1971), certif. denied, 59 N.J. 269 (1971). According to Webster’s II New College Dictionary (1995)

“insubordination” refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Stanziale v. County of Monmouth Bd. of Health and Merit Sys. Bd., 350 N.J. Super. 414 (App. Div. 2002), certif. denied, 174 N.J. 361 (2002).

I **CONCLUDE** respondent has demonstrated by the preponderance of the legally competent, credible evidence that appellant committed acts of insubordination and conduct unbecoming a public employee on July 20, 2016. Her behavior towards her supervisor when raising her voice and shouting inappropriately demonstrated a lack of respect which deviates from the “implicit standard of good behavior” expected from a public employee.

Appellant was also charged with neglect of duty, violating N.J.A.C. 4A:2-2.3(a)(7). Neglect of duty can arise from an omission to perform a duty or failure to perform or discharge a duty and includes official misconduct or misdoing, as well as negligence. Steinel v. City of Jersey City, Initial decision, 7 N.J.A.R. 91, 95 (March 21, 1983), modified on other grounds, Civ. Serv. Comm’n, 7 N.J.A.R. 100 (May 12, 1983), modified on other grounds, 193 N.J. Super. 629 (App. Div. 1984), aff’d, 99 N.J. 1 (1985). Generally, the term neglect connotes a deviation from normal standards of conduct. In re Suspension or Revoc. of the License of Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977).

I **CONCLUDE** that respondent has not met its burden of proving, by a preponderance of the credible evidence, the charge of neglect of duty. There is no evidence presented that proves appellant failed to perform her job duties.

Appellant has been charged with violating N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause. Other sufficient cause is generally defined in the charges against appellant as all other offenses caused and derived as a result of all other charges against her. Other sufficient cause is an offense for conduct that violates the implicit standards of good behavior which devolve upon one who stands in the public eye as an

upholder of that which is morally and legally correct. Therefore, I also **CONCLUDE** that the respondent has met its burden of proof on this charge.

PENALTY

Factors determining the degree of discipline to be imposed include the employee's prior disciplinary record and the gravity of the misconduct in the instant case, as well as the concept of progressive discipline. W. New York v. Bock, 38 N.J. 500, 522-524 (1962). The New Jersey Supreme Court has recognized that the principle of progressive or incremental discipline is not a "fixed and immutable rule" that must be applied in every disciplinary setting. In re Herrmann, 192 N.J. 19, 33 (2007); In re Carter, 191 N.J. 474, 484 (2007). Rather, "some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Carter, *supra*, 191 N.J. at 484. Progressive discipline is not a necessary consideration "when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest." Herrmann, *supra*, 192 N.J. at 33.

Under the facts presented, a substantial penalty is appropriate. In light of appellant's aberrant conduct and behavior, the one-hundred-twenty day suspension is appropriate, and I so **CONCLUDE**.

ORDER

Based upon the aforementioned, I **ORDER** that appellant be suspended without pay for a period of one-hundred-twenty days.

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.

July 11, 2017
DATE

Joann Lasala Candido
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

Date Mailed to Parties:

JUL 11 2017

Laura Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

Witnesses

For appellant:

Sabura Alexander

For respondent:

Maryann Smith

Camela Nales

EXHIBITS

For appellant:

P-1 ABD Back Log Cases

P-2 FNDA dated October 8, 2015 and PNDA dated July 20, 2015

P-3 Notice of Determination of benefits dated December 9, 2016

P-4 July 2016 Non-Client Contact List

P-5 Final Administrative Action of the Civil Service Commission issued February 10, 2017

P-6 Disciplinary Hearing Officer Gerald Drasheff's determination dated October 8, 2015

For respondent:

R-1 Maryann Smith report dated July 20, 2016

R-2 Camela Nales report dated July 20, 2016

R-3 Personnel Order Memorandum dated November 15, 2011