



STATE OF NEW JERSEY

In the Matter of Billie Hayes
 Division of Medical Assistance and
 Health Services,
 Department of Human Services

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2017-221
 OAL DKT. NO. CSV 11466-16

ISSUED: MARCH 29, 2018 BW

The appeal of Billie Hayes, Quality Control Reviewer, Division of Medical Assistance and Health Services, Department of Human Services, removal and resignation not in good standing effective April 18, 2016, on charges, was heard by Administrative Law Judge Sarah G. Crowley, who rendered her initial decision on September 15, 2017.¹ 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 March 27, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission therefore grants the appointing authority's motion for summary decision and dismisses the appeal of Billie Hayes.

¹ This matter was consolidated with three other disciplinary appeals filed by the appellant. However, this decision only pertains to this matter and the other three remain pending at the Office of Administrative Law.

Re: Billie Hayes

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
THE 27TH DAY OF MARCH, 2018



Deirdre L. Webster Cobb
Acting 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 GRANTING

SUMMARY DECEISION

OAL DKT. NOS. CSV 11466-16;

11468-16; 11471-16; 11474-16

AGENCY DKT. NOS. 2017-221, 2017-219,
2015-1554, 2017-222

(CONSOLIDATED)

**IN THE MATTER OF BILLIE HAYES,
DEPARTMENT OF HUMAN SERVICES,
MEDICAL ASSISTANCE AND HEALTH
SERVICES.**

**William A. Nash., Esq. for appellant, Billie Hayes (Nash Law Firm, L.L.C.,
attorneys)**

**Rimma Razhba, Deputy Attorney General, for respondent, Department of
Human Services (Christopher S. Porrino, Attorney General of New
Jersey, attorney)**

Record Closed: August 7, 2017

Decided: September 15, 2017

BEFORE SARAH G. CROWLEY, ALJ:

PROCEDURAL HISTORY

Billie Hayes (appellant), was employed as a Quality Control Reviewer for the respondent, Department of Human Services, until his removal effective April 18, 2016.

Appellant was charged with absence from work without permission; abandonment of job as a result of absence from work; and chronic absenteeism. The Preliminary Notice of Discipline (PNDA) was served on April 18, 2016, and a Final Notice of Discipline (FNDA) served on June 10, 2016. The appellant filed an appeal, and that matter was transmitted to the Office of Administrative Law as a contested matter on July 28, 2016. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. On March 24, 2017, respondent filed a motion for summary decision on the within charges.¹ Opposition to the motion was filled by the appellant on July 13, 2017. A response to the opposition was filed by the respondent on August 7, 2017.

FACTUAL DISCUSSION

The essential facts in this case are not disputed and are as follows:

1. The appellant was out on approved worker's compensation leave from November 6, 2014, through April 10, 2016, as a result of a workplace injury that he sustained on or about November 5, 2014.
2. The appellant was given several extensions on his leave, and was cleared to return to work on April 10, 2016, by his treating physician, Dr. Vasko Gulevski.
3. Dr. Gulevski submitted a return to work form dated April 6, 2016, in which he certifies that Billie Hayes was seen or treated in his office on that date and may return to work on April 10, 2016.
4. Treatment Notices from Dr. Gulevski dated March 17, 2016, were also provided to the employer.

¹ There are several other disciplinary matters that are pending against the appellant, which have been consolidated with this matter. The within motion only relates to OAL Docket No. 11466-16.

5. Neither the notes or the return to work certification from Dr. Gulevski request an accommodation for the appellant under the ADA. The appellant never requested an accommodation.
6. On April 7, 2016, in response to the return to work notice, the respondent sent a letter to the appellant which advised that "you may have a need for a work accommodation, therefore, I am enclosing the American with Disability Act (ADA) accommodation forms for you review and completion."
7. The appellant did not respond to the correspondence or ask for an accommodation either in writing, or verbally.
8. On April 11, 2016, the date the appellant was to return to work, he sent an email at 8:30 a.m. which stated "I would like to use 7 hours of AL time today 4-11-16. Thanks."
9. The appellant was advised by the respondent on April 12, 2016, that he was not permitted to call out or request time off by email, and must have direct contact with a person at work. The letter further advised appellant that he had no remaining time available, and was therefore, "out on authorized leave as of Monday, April 11, 2016."
10. The appellant did not respond to this letter and had no further contact with the respondent, by phone or email. The appellant did not return to work on April 12, 2016, April 13, 2016, April 14, 2016, or April 15, 2015. The appellant did not request time off or an accommodation.
11. On Monday, April 18, 2016, a Preliminary Notice of Disciplinary Action (PNDA) was issued, charging the appellant with a violation of N.J.A.C. 4A:6-1.10, regarding approval for leave of absence.
12. A second PNDA was issued on charging appellant with being absent from work without permission or proper notice, and job abandonment in violation of N.J.A.C. 4A:2-6.2(c).

The foregoing facts are not disputed and I **FIND** them as **FACT**:

STATEMENT OF ISSUE

The issue presented in this Motion for Summary Decision is whether the respondent is entitled to a decision as a matter of law on the discipline related to unauthorized leave, job abandonment and excessive absenteeism. The respondent has opposed the motion on the grounds that a request for an accommodation was made, and thus, the respondent was required to respond to such a request before terminating the appellant. The appellant has provided no evidence that a request for an accommodation was ever made.

LEGAL ARGUMENT AND CONCLUSION

Pursuant to N.J.A.C. 1:1-12.5(b), a summary decision "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection, therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The 'judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial'.

[Brill, supra, 142 N.J. at 540 (citations omitted).]

Pursuant to N.J.A.C. 1:12-59(b), “an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined by an evidentiary proceeding.” The non-moving party must present more than his own self-serving facts to establish the existence of a material issue of fact. *Fargas v. Gorham*, 276 N.J. Super. 135, 139 (Law. Div. 1994).

The material facts in this case are undisputed. The appellant had been on approved leave for seventeen months as a result of a work-related injury. On April 6, 2016, appellant’s treating physician cleared him to return to work on April 10, 2016. The certification contains no request for an accommodation, nor do the treatment notes which were submitted with the certification for return to work. The respondent sent a form letter to the appellant regarding his return to work, which included a statement that he “may” qualify for an accommodation, and if so, he should request it. The April 7, 2016, letter provided documentation to assist in the event a request for an accommodation was made. However, neither appellant or his doctor ever requested an accommodation, either verbally or in writing.

The appellant has argued that Dr. Gulevski stated that appellant would need an accommodation and requested such an accommodation on his behalf. However, no documentation to support this argument has been submitted. The documentation which was provided by the appellant made no such request. Neither the certification or the treatment notes from Dr. Gulevski request an accommodation. The appellant has not presented any material facts in dispute to warrant a hearing. The appellant’s reliance on Administrative Order 4:07 is misplaced. These rules, are only applicable when a request for an accommodation is made. There is no evidence that any such request was ever made. The undisputed facts demonstrate that no request was ever made and appellant failed to return to work on April 11, 2016, and every day thereafter.

I therefore **CONCLUDE** that appellant’s failure to return to work on April 11, 2016, constituted an absence without permission. I also **CONCLUDE** that the appellant’s refusal to return to work for five consecutive days without leave or

permission constitutes job abandonment as well as excessive absenteeism. Accordingly, the charges are hereby **SUSTAINED**.

It is therefore hereby **ORDERED** that the respondent's motion for summary decision be and hereby is **GRANTED**, and the appeal is hereby **DISMISSED**.

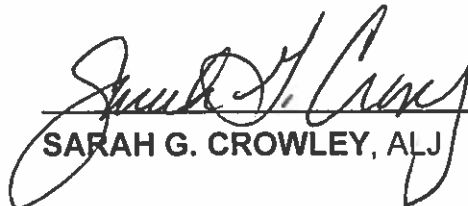
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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 15, 2017

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

September 15, 2017 (mailed)

Date Mailed to Parties:

September 15, 2017 (mailed)

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APPENDIX

BRIEFS RELIED ON

For Appellant:

Appellant's opposition to Motion for Summary Decision, dated July 13, 2017

For Respondent:

Respondent's motion for Summary Decision, dated March 22, 2017.

EXHIBITS

For Appellant:

A-1 Affidavit of appellant

For Respondent:

- R-1 Administrative Order 4:08
- R-2 RWJUHH Occupational Health Patient Visit Summary and Instructions dated November 10, 2014
- R-3 Dr. Vasko Gulevski Medical Report dated March 17, 2016
- R-4 Return to Work Note dated April 6, 2016
- R-5 Letter from Christine Boriolo, ADA Coordinator to Billie Hayes dated April 7, 2016
- R-6 E-mail from Billie Hayes to Sharon Metro dated April 11, 2016
- R-7 E-Mail from Sharon Metro to Billie Hayes dated March 10, 2016
- R-8 Memorandum from John Karl, Jr., Employee Relations Coordinator to Billie Hayes dated April 12, 2016
- R-9 Preliminary Notice of Disciplinary Action dated April 18, 2016 (Case Id. 16-016)

- R-10 Preliminary Notice of Disciplinary Action dated April 18, 2016 (Case Id. 16-020)
- R-11 Preliminary Notice of Disciplinary Action dated April 19, 2016 (Case Id. 16-021)
- R-12 E-Mail from John Karl to Billie Hayes dated June 9, 2016
- R-13 Hearing Officer Report dated June 17, 2016 (Case Id. 16-016)
- R-14 Hearing Officer Report dated June 17, 2016 (Case Id. 16-020)
- R-15 Hearing Officer Report dated June 17, 2016 (Case Id. 16-021)
- R-16 Final Notice of Disciplinary Action dated June 22, 2016 (Case Id. 16-016)
- R-17 Final Notice of Disciplinary Action dated June 22, 2016 (Case Id. 16-020)
- R-18 Final Notice of Disciplinary Action dated June 22, 2016 (Case Id. 16-021)