



STATE OF NEW JERSEY

In the Matter of Neila Clitus
New Jersey Veterans Memorial Home
at Paramus, Department of Military
and Veterans Affairs

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-3110
OAL DKT. NO. CSV 07691-15

ISSUED: MAY 4, 2018 BW

The appeal of Neila Clitus, Human Services Technician, New Jersey Veterans Memorial Home at Paramus, Department of Military and Veterans Affairs, removal effective September 29, 2014, on charges, were heard by Administrative Law Judge Caridad F. Rigo, who rendered her initial decision on March 26, 2018. 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 (Commission), at its meeting of May 2, 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 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 Neila Clitus.

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 2ND DAY OF MAY, 2018



Deirdre L. Webster Cobb
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 07691-15

AGENCY DKT. NO. 2015-3110

**IN THE MATTER OF NEILA CLITUS,
NEW JERSEY VETERANS MEMORIAL HOME,
PARAMUS, DEPARTMENT OF MILITARY
AND VETERANS AFFAIRS.**

Amie DiCola, Esq., for petitioner, (Fusco & Macaluso Partners, attorneys)

**Elizabeth A. Davies, Deputy Attorney General, for respondent (Gurbir S.
Grewal, Attorney General of New Jersey, attorney)**

Record Closed: March 12, 2018

Decided: March 26, 2018

BEFORE CARIDAD F. RIGO, ALJ t/a:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant appeals her removal from the position of human services technician (HST) at the New Jersey Veterans Memorial Home at Paramus, Department of Military and Veterans Affairs on a charge of neglect of duty, loafing, idleness or willful failure to devote attention to tasks, which could result in danger to persons or property in violation of N.J.A.C. 4A:2-2.3(a)(7). And, the negligent contribution to an elopement or escape of

a resident. The incident that brought about these charges took place on September 8, 2014.

The matter was transmitted to the Office of Administrative Law (OAL) on May 28, 2015, for a hearing as a contested case. The matter was heard on January 11, 2016, February 19, 2016, May 9, 2016, June 14, 2016, November 15, 2016, January 5, 2017, and September 19, 2017. The petitioner changed her counsel three times during this time and one of her attorneys had to withdraw due to an illness.

ISSUES

Was appellant neglectful of her duties? Did such neglect of duty result in danger to persons and property? Was appellant's removal appropriate?

FACTUAL DISCUSSION

Pamela Kovacs

The first witness to testify for respondent was Pamela Kovacs. She is employed by the respondent as assistant chief executive officer for clinical services of the facility since June 2015. Prior to that position she was director of nursing services, in total she has worked for respondent 4.5 years. At the time of the incident, September 2014, she was the director of nursing.

The Veterans Memorial Home in Paramus is a long-term-care facility for veterans and/or spouses or for dependent children of a veteran.

Kovacs testified that she was notified on September 8, 2014, that a patient had eloped from his room. According to Kovacs an elopement is a serious event that requires reporting to the N.J. Department of Health. The elopement took place at K-L unit. Kovacs said she interviewed the staff members in the unit at the time, she also went to the area of the elopement. The incident was documented in respondent's

exhibit R-13. After the investigation was completed a final report was completed and that is exhibit R-12, this report was rendered by this witness.

Kovacs said that K-L unit has an ongoing video camera of the nurses' station and that she looked at the video. Kovacs noted appellant spent at least six hours of her shift in the Break Room. The video records all activities that take place in the nursing stations. She especially noted that Appellant was in the Break Room during the time the elopement took place. The elopement took place during the 11:00 p.m. to 7:00 a.m. shift. Kovacs furthered that she viewed the video from 10:45 p.m., until 7:30 a.m. Five people generally work the 11 p.m. to 7:00 a.m. shift. There is one charge nurse, a registered nurse, and four nurse assistants.

The video recording was played over the course of four hearing days that Kovacs testified. In the course of Kovacs's testimony, she identified appellant as well as other employees. Kovacs also identified the area of the nurses' station identifying the various room doors.

The resident that eloped from K-L unit was spotted between 3:10-3:15 a.m. by other staff in the other unit. The resident was spotted at the R-S unit and found outside the building. The R-S unit is on the first floor and the K-L unit is on the second floor. (See R-5, a diagram of both floors.)

Kovacs testified that as she viewed the video during the 11 p.m. to 7:00 a.m., shift she noted that appellant came into the nurses' station at 11:21 p.m. and that at 11:22 p.m., appellant went into the Break Room. Kovacs noted that appellant reported to work twenty-one minutes late. Kovacs furthered that appellant exited the Break Room at 11:34 p.m. Kovacs said that she saw appellant enter the Nourishment Room, which is a room that has a refrigerator for staff use and she returns to the Break Room. At 11:36 p.m. appellant exits Break Room and returns to the Nourishment Room. At 11:38 p.m., appellant exits Nourishment Room and returns to the Break Room. Appellant exits Break Room and stands in the north side of the nurses' station by the door of the Nourishment Room and she is there until 11:49 p.m., when she returns to the Break Room until 11:54 p.m. The Break Room is for staff to take their breaks.

Kovacs stated that appellant was in and out of the Break Room and the Nourishment Room for approximately 2.5 hours after having clocked in to work at 11:21 p.m. Kovacs stated that at 2:31 a.m., appellant leaves the nurses station and she cannot be seen on the video. Appellant is next seen entering the Linen Room at 3:19 a.m. Kovacs furthered that between 3:19 a.m. and 3:38 a.m. appellant enters and leaves the Break Room and the Nourishment Room numerous times.

Kovacs reported that the video shows that at 3:38 a.m. appellant exits the Break Room with a book in her hand, she puts the book down, and goes outside the nurses' station returns and goes back into the Break Room. In the Break Room she turns off the light leaves the door open and does not emerge from that room until fifty-six minutes later at 4:34 a.m. At 4:55 a.m., appellant exits the Break Room and goes to the K wing hallway and at 4:56 a.m., she returns to the Break Room. Appellant exits the Break Room at around 5:13 a.m., and enters the Nourishment Room, she exits that room at 5:14 a.m., and goes to the bathroom.

Kovacs furthered that at about 3:15 a.m., a patient escaped from his room. The patient was eighty-eight years old, had Alzheimer's disease, and numerous other serious diseases. Cognitively the patient was confused and his ability to make decisions were moderately impaired. Kovacs stated that this particular patient was not assigned to appellant; however, an alarm was sounded and all personnel was to assist in looking for the patient but appellant was nowhere to be found during this emergent moment. According to Kovacs the video indicates that appellant was in the Break Room for six hours out of her assigned eight-hour shift, this includes the fact that appellant was twenty-one minutes late in starting her shift.

Under cross-examination Kovacs stated the reason why appellant was being disciplined was because of the amount of time appellant spent in the Break Room. And, because appellant was twenty-one minutes late she missed getting the reports from the prior shift workers. Reports are done at 11:00 p.m. Kovacs also said that procedure called for nurse assistants to do checks on patients every two hours. Kovacs noted that appellant did not do any patient checks during her shift. Kovacs said appellant was not

around to assist with finding the patient that had escaped. According to Kovacs everyone in the unit is responsible for all patients.

Almalyn Robinson

Almalyn Robinson at the time of her testimony worked as a nurse assistant/nurse's aide, also known as a Human Services Technician (HST). She was assigned fifteen patients. She has worked in this unit for twenty-eight years and works the 11:00 p.m. to 7:00 a.m. shift.

Robinson explained that part of her job is to do rounds every two hours. Rounds is the checking of patients making sure they are safe and clean. When an HST does rounds you are to check everybody not just the patients that have been assigned to you. Robinson furthered that between rounds you are to refill supplies, check the stock, and complete patient's charts.

Under cross-examination she acknowledged that she was suspended for forty days because it was her patient that eloped; she said she was on break when the patient escaped. She said when she left for her break all three HST's were in the nurses' station and they were responsible for her patient.

Peasama Joseph

Peasama Joseph was employed by the respondent for seventeen years, she worked the 11:00 p.m. to 7:00 a.m., shift. She is an HST. Her co-worker HST on that shift were the appellant, Olga Delgado, and Almalyn Robinson. She said that her nurse supervisor/charge nurse was Jane Semifranco. It is the charge nurse that provides the medications as ordered by the doctor and she too makes rounds.

Olga Delgado

Olga Delgado is employed at respondent's facility as an HST. She works the 11:00 p.m. to 7:00 a.m. shift. She recalls the night that the resident eloped and recalls

that appellant was in the unit. She stated that whoever is not on a break is responsible for looking after the patients. She was suspended for sixty days as a result of the patient escaping.

Neila Clitus

Appellant Neila Clitus testified on her own behalf. She started working for respondent in January 2000, as a Human Services Technician (HST). She admitted that she received training on how to do her job and how to review records and chart a resident's file.

Appellant said that every day when she got to work she would receive her assignments for her shift, she was assigned K wing. She said she was also considered a "floater" so her assignments were even more fluid. Appellant stated that on the night of September 8, 2014, she came in at 11:00 p.m., and went directly to K wing to look into her residents. She explained that she checked thirty residents as she came in that night before entering the nurses' station.

She furthered that the time she spent in the Break Room was because she was reading the resident's care plans. She said that is where she sat and reviewed all of her care plans. She furthered that her director of nursing (DON) encouraged her to review care plans. Specifically, she stated she read fifteen care plans. She said no one ever told her to leave the Break Room. She said the Break Room has one table with chairs that have no arm rests. The room also has wall-to-wall lockers.

According to appellant the eloper was an Alzheimer's resident and did not belong there. She said an Alzheimer's resident belongs in the T-V unit not in the K-L unit.

Under cross-examination she reiterated that she had been assigned fifteen residents that shift. She denied that there was a mandatory two-hour check. According to her the care plan books are not kept in the Break Room that she had to bring them into the Break Room to read them.

FINDINGS AND LEGAL DISCUSSION

In an appeal such as this from a disciplinary action or ruling by an appointing authority, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). That burden is to establish by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

Based upon the testimony of the witnesses and the documentary evidence submitted at the hearing I **FIND**, that:

1. Appellant worked as a Human Services Technician (HST) at the N.J. Veterans Memorial Home in Paramus, New Jersey.
2. Appellant on September 8, 2014, was assigned to work the 11:00 p.m. to 7:00 a.m. shift on K-L unit. She reported to work at 11:21 p.m., arriving after the shift reporting time.
3. Appellant spent six hours in the Break Room out of the eight hours she was to be actively working completing her job duties.
4. Appellant failed to make the required resident check every two hours.
5. Appellant failed to make any rounds on all residents in K-L unit.
6. Appellant was not available to her peers and did not work for six hours out of her eight-hour shift.
7. Appellant failed to assist and ensure the safety and security of the residents on K-L unit.

I **FIND** nothing in the testimony or the documents that substantiated or supported appellant's arguments that she did not have to make rounds every two hours because the residents told her not to disturb them. Appellant's self-serving testimony contradicts the testimony of Kovacs and Robinson who explained in very clear terms the responsibilities of an HST. I **FIND** appellant's testimony incredible.

I **FIND** that appellant neglected her duty by being idle when she should have been doing her assigned tasks. I **FIND** appellant violated the work rules, she neglected her residents, and showed a bold disregard for the health and welfare of the elderly veterans who were placed in her care.

A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6. The Act also recognizes that the public policy of this State is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). In order to carry out this policy, the Act also includes provisions authorizing the discipline and termination of public employees.

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 or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). The charges in this matter may be considered violations of N.J.A.C. 4A:2-2.3(a)(1), such as incompetency, inefficiency or failure to perform duties, and neglect of duty. The Final Notice of Disciplinary Action found appellant guilty of the charges brought against her. (See R-1.)

PENALTY

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty in disciplining a civil servant. The penalty should be reasonable and relative to the charge. W. New York v. Bock, 38 N.J. 500, 523-24 (1962).

In this matter, appellant was employed at New Jersey Veterans Memorial Home-Paramus for a period of approximately fourteen years. She was a seasoned HST. Appellant had been trained numerous times on various aspects of caring for a resident at such a facility, a nursing facility that provides direct long-term care for veterans and their spouses.

Appellant's disciplinary record was entered in evidence at the hearing. (R-21, R-22, and R-23.) The disciplinary record shows a series of incidents that required respondent to discipline appellant for her failure to observe the rules and policy of her job. For example, leaving the work area without permission and refusing to accept a regular assignment.

I believe that appellant's conduct in this matter was so irresponsible and flagrant as to justify her removal. Where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public to be served, good cause exists for removal. Golaine v. Cardinale, 142 N.J. Super. 385, aff'd, 163 N.J. Super. 453 (App. Div. 1978). In this case appellant was obligated to provide the utmost of diligence in providing care to the residents of the nursing home who essentially are helpless. Therefore, I **CONCLUDE** that appellant's removal from her position as a Human Services Technician at the N.J. Veterans Memorial Home-Paramus effective September 29, 2014, should be affirmed.

ORDER

Based on the above findings It is hereby **ORDERED** that appellant's removal as a Human Services Technician at N.J. Veterans Memorial Home-Paramus effective September 29, 2014, is hereby **AFFIRMED** and appellant's appeal is hereby **DISMISSED**.

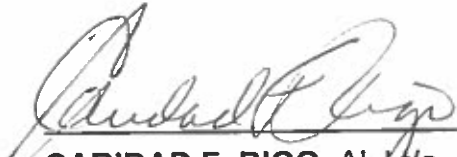
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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, P.O. 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.

March 26, 2018

DATE



CARIDAD F. RIGO, ALJ/a

Date Received at Agency:

March 26, 2018

Date Mailed to Parties:

MAR 27 2018

lr



**DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE**

APPENDIX

WITNESSES

For Appellant:

Neila Clitus

For Respondent:

Kamala Kovacs

Almalyn Robinson

Peasama Joseph

Olga Delgado

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Final Notice of Disciplinary Action dated 4/27/15
- R-2 Preliminary Notice of Disciplinary Action dated 12/09/14
- R-3 Chronological Timeline of Appellant's activities
- R-5 Building 2 Floor Plan
- R-7 Statements of Jane Semifranco dated 9/08/14
- R-8 Residency Responsibility List
- R-10 Statement of Kamala Kovacs dated 9/8/14
- R-11 11:00 p.m. to 7:00 a.m. thirty-minute rounds dated 9/08/14
- R-12 Final Investigation Report dated 9/16/14
- R-13 Incident Case Report
- R-15 Neila Clitus PAR for 2014
- R-19 Resident's Rights Handbook
- R-21 Record of Counselling or Oral Warning dated 1/26/04

R-22 Notice of Official Reprimand dated 9/25/02

R-23 Record of Written Warning dated 3/15/02

R-24 Video of the Nurses' Station on 9/8/14

R-25 Corrective and Disciplinary Action Booklet