

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 5TH DAY OF SEPTEMBER, 2018

Deirdre L. Webster Cobb

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Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

FAILURE TO APPEAR

OAL DKT. NO. CSV 19368-16

AGENCY DKT. NO. 2017-1921

**IN THE MATTER OF MILLIODERE
SENECAT, DEPARTMENT OF
HUMAN SERVICES, NEW LISBON
DEVELOPMENTAL CENTER.**

Rashidah Hasan, Esq., for appellant Milliodere Senecat

Aaron Cruz, Deputy Attorney General, for respondent Department of Human Services, New Lisbon Developmental Center (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: July 25, 2018

Decided: August 2, 2018

BEFORE **JOSEPH A. ASCIONE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter, appellant, Milliodere Senecat, challenges her removal on August 19, 2016, on charges of violation of N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)12 (other sufficient cause). Specifically, B.2-2, Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would result in danger to persons or property; B.3-2, Sleeping while on duty; D.7-2,

Violation of administrative procedures and or regulations involving safety and security; and E.1-2, Violation of a rule regulation, policy, procedure, order or administrative decision. The event allegedly committed on May 14, 2016. The event, falling asleep while assigned for enhanced supervision of a patient. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on December 27, 2016, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The respondent presented its case on May 16, 2018, the parties agreed to a settlement on the record of a voluntary resignation in good standing without any back pay or attorney's fees. The undersigned permitted the parties to submit a settlement agreement within ten days of that date. The settlement agreement did not appear. The OAL set up a telephone conference for July 17, 2018, to discuss the whereabouts of the settlement agreement. Appellant's counsel failed to appear for the July 17, 2018, telephone conference and requested to be excused from the failure to appear which the undersigned granted. Appellant's counsel represented his inability to obtain appellant's signature on the settlement agreement; and requested a new hearing date. The failure to appear was excused. On July 20, 2018, the respondent through counsel, Aaron J. Cruz, DAG, objected to granted new hearing dates due to the interruption of the presentation of its case with the settlement, and the loss of available witnesses which were available for testimony back on May 16, 2018; but now were no longer employed by the respondent. A second telephone conference was scheduled for July 24, 2018. Appellant's counsel again failed to appear for the telephone conference and requested that the failure to appear be excused, new hearing dates be set, and he be allowed to make a motion to be relieved as counsel.

FACTUAL FINDINGS REGARDING THE PROCEEDINGS

Based upon a review of the record, and the submission of respondent's counsel to the second request of appellant's counsel to be excused from the failure to appear at the July 24, 2018, telephone conference, and giving fair weight thereto, I **FIND** the following **FACTS**:

1. The appellant's counsel's reason to be excused from the failure to be available for the telephone conference on July 24, 2018, is a law office failure and does not meet the criteria to be excused from the failure to appear.
2. The respondent will suffer additional costs and expenses, if compelled to complete its hearing; and there are no assurances that respondent's witnesses previously available will be available in the future. Accordingly, respondent will be prejudiced by the reopening of the matter.
3. The transcript from May 16, 2018, reflects that the appellant agreed to the terms of a settlement; and then changed his mind to execute a document memorializing the settlement which provided for a general resignation in good standing, with no back pay or attorney's fees and an agreement not to reapply for employment with the respondent.
4. The representation of appellant's counsel that she would be seeking to be relieved as counsel is inconsistent with the prehearing order in this matter as it would delay further hearing dates.

ORDER

IT IS ORDERED that the petition be **DISMISSED** outright or in accord with the settlement agreement reached on the record of a resignation in good standing, without back pay or attorney's fees, and a representation that appellant will not seek further employment with the respondent; and,

IT IS ORDERED in the event of remand by the **CIVIL SERVICE COMMISSION** to excuse the default and provide a new hearing for appellant that it do so only conditioned on a payment by appellant of the additional costs incurred by the respondent to present the initial hearing, in the event an entirely new hearing is required, or the remainder of the hearing, if an entire new hearing is not required.

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 2, 2018
DATE

Joseph A. Ascione
JOSEPH A. ASCIONE, ALJ

Date Received at Agency:

8/2/18

Date Mailed to Parties:

8/2/18

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APPENDIX

LIST OF EXHIBITS

- C-1 Appellant's counsel's request of July 19, 2018, to be excused from the July 17, 2018 failure to appear
- C-2 Respondent's counsel's objection of July 20, 2018, to grant new hearing dates due to availability of witnesses
- C-3 Appellant's counsel's request of July 25, 2018, to be excused from the July 24, 2018 failure to appear