



STATE OF NEW JERSEY

In the Matter of Alexis Miller
 Essex County, Department of Citizen
 Services

CSC DKT. NO. 2018-1872
 OAL DKT. NO. CSV 00727-18

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

ISSUED: MARCH 27, 2019 BW

The appeal of Alexis Miller, Family Service Supervisor, Essex County, Department of Citizen Services, return to formerly held permanent title at the end of the working test period effective December 10, 2017, was heard by Administrative Law Judge Tricia M. Caliguire, who rendered her initial decision on February 13, 2019. Exceptions were filed by the appellant and a reply to exceptions was filed on behalf of the appointing authority. A response to the reply was filed by the appellant.

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, 2019, 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 returning the appellant to her formerly held permanent title at the end of the working test period was justified. The Commission therefore affirms that action and dismisses the appeal of Alexis Miller.

Re: Alexis Miller

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, 2019



Deirdré L. Webster Cobb
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

Re: Alexis Miller

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, 2019



Deirdré L. Webster Cobb
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 00727-18

AGENCY DKT. NO. 2018-1872

**IN THE MATTER OF ALEXIS MILLER,
ESSEX COUNTY DEPARTMENT
OF CITIZEN SERVICES.**

Alexis Miller, appellant, pro se

Robin E. Magrath, Assistant County Counsel, for respondent Essex County
Department of Citizen Services (Courtney M. Gaccione, County Counsel)

Record Closed: December 31, 2018

Decided: February 13, 2019

BEFORE TRICIA M. CALIGUIRE, ALJ:

STATEMENT OF THE CASE

Appellant Alexis Miller (Miller) appeals the decision of respondent Essex County Department of Citizen Services to return Miller to the permanent title of family service worker (FSW) at the Supplemental Nutrition Assistance Program (SNAP) office, 50 South Clinton Street, East Orange, New Jersey, following her working test period in the title of family service supervisor (FSS), effective December 10, 2017.

PROCEDURAL HISTORY

Miller was notified of respondent's decision by letter dated December 8, 2017. She filed a request for a hearing on December 27, 2018. The Civil Service Commission (CSC) transmitted this matter to the Office of Administrative Law (OAL) as a contested case on January 17, 2018, pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

This matter was originally assigned to the Honorable Kelly J. Kirk, ALJ, who scheduled a telephone prehearing conference for January 26, 2018. This conference was rescheduled to February 1, 2018. After the conference, Miller sent a letter dated February 1, 2018, to the Honorable Joann Candido, ALJ, and Assignment Judge in the Newark office of the OAL, in which Miller objected to the inability of Judge Kirk to schedule the hearing prior to September 28, 2018, and requested that another judge who had availability in February or March be assigned her case. In this letter, Miller stated that she had been told that the prehearing conference with Judge Kirk would be an attempt to resolve the issues and review procedural items, but that only procedural matters were discussed. After reviewing this letter, Judge Candido directed her assistant to notify Miller that Judge Kirk would keep her case.

On February 5, 2018, Miller sent a written complaint regarding Judges Kirk and Candido to the Honorable Lisa James-Beavers, Chief ALJ and Acting Director of the OAL. In her letter to Judge James-Beavers, Miller questioned whether Judge Candido read the reasons Miller gave for requesting her case to be reassigned. Further, Miller claimed that her conversations with OAL staff left her feeling disrespected and berated. Judge James-Beavers responded that Judge Kirk was correct in determining that the matter was not emergent in nature and that an application for emergent relief must be filed directly with the CSC. Judge James-Beavers then reassigned this matter to the undersigned on February 9, 2018.

I held a telephone prehearing conference with the parties on February 14, 2018, during which Miller stated that she would appeal to the CSC for expedited treatment of her case, citing the negative impacts of returning to her previous place of employment. On February 15, 2018, Miller sent a request for emergent relief to the CSC, which was denied by letter dated February 20, 2018. Miller appealed this decision by letter to the CSC dated February 21,

2018. The same date, Miller sent the undersigned a letter stating that all three of the witnesses she intended to call at hearing decided not to testify out of fear of retaliation at the workplace, and, therefore, she requested a hearing date in April 2018, rather than May 2018, as had been agreed to by the parties. A prehearing order was issued on February 23, 2018, by which the parties were ordered to complete discovery by May 15, 2018. The hearing was scheduled for May 24 and 31, 2018, at the OAL, 33 Washington Street, Newark, New Jersey, with the understanding that should the CSC grant Miller's appeal, the schedule would be changed accordingly. The CSC denied Miller's appeal by letter dated February 28, 2018, and the hearing proceeded on May 24, 2018.

On May 24, 2018, as the hearing began, Miller requested an adjournment to seek counsel, as she had determined she needed assistance in issuing subpoenas to potential witnesses and reviewing the more than 200 documents respondent had provided in discovery the previous week, none of which were marked, collated or bound. Further, Miller stated that during our final prehearing telephone conference on May 18, 2018, the undersigned told her she needed an attorney. Respondent objected to an adjournment on the grounds that: (1) significant preparation had been conducted in advance of the scheduled hearing date of May 24, 2018; (2) respondent's witnesses had taken time off from work and were present outside the hearing room; (3) there is no requirement that discovery documents be provided to an adversary in a binder; and (4) respondent had attempted to exchange discovery with appellant on May 4, 2018, but appellant was not prepared to make this exchange prior to May 18, 2018. I immediately denied appellant's adjournment request, noting that she had asked the directors of both the OAL and the CSC for expedited treatment, and clarified that I did not, and would not, tell appellant (or any pro se litigant) that an attorney was needed in an OAL proceeding. I did, however, offer Miller the opportunity to request an adjournment of the second hearing date and stated that I would review such a request (and respondent's response) quickly. Miller declined to make such a request.

After the close of testimony on May 31, 2018, at which point Miller had just begun her cross-examination of respondent's first witness, it was necessary to schedule additional hearing dates. On June 6, 2018, Miller sent me a letter complaining of delays in scheduling she attributed to respondent and requesting that this matter not be unduly delayed. After

due consideration, I notified the parties during a telephone conference on June 11, 2018, that I would direct Miller to complete her cross-examination of respondent's first witness and then put on her case. Should counsel for respondent, who does not bear the burden of proof, determine that it would be necessary to call witnesses on rebuttal, she could then do so. On June 13, 2018, Miller sent me a letter expressing her concern that I was "inclined to side with the County," had prejudged the case, and may be biased "against pro se litigants or persons appealing a demotion." I responded by letter dated June 15, 2018, stating that I had made no decision with respect to the merits of the case and had no such bias, and reminding Miller that the purpose of my making a change to the order of proofs was to address her concern regarding delays.

The hearing resumed on July 10 and 11, 2018, with additional hearing dates scheduled for August 13, September 5, and September 20, 2018. On July 16, 2018, Miller submitted a letter motion to reopen discovery so that she could request certain additional documents from respondent and to recall respondent's witness, Nancy Gervickas, for additional cross-examination. On July 17, 2018, Miller submitted a letter motion to subpoena four witnesses even though the deadline for such action had passed. On July 17, 2018, respondent filed a letter brief objecting to both of Miller's motions. I issued an order on July 24, 2018, granting appellant's request for documents, granting in-part appellant's request to subpoena witnesses, and directing appellant to provide summaries of anticipated witness testimony to respondent on or before August 3, 2018. By letter dated July 27, 2018, Miller challenged my decision not to issue a subpoena to Jeanette Page-Hawkins (Page-Hawkins), the director of the Division of Family and Adult Benefits (DFAB), on the grounds that I misunderstood how Page-Hawkins had firsthand knowledge of the events giving rise to the contested case. By letter dated July 30, 2018, I replied to Miller that she had yet to provide any evidence that Page-Hawkins had firsthand knowledge sufficient to merit a subpoena, and refused to modify my July 24, 2018, order.¹

¹ In her post-hearing brief, Miller questioned the basis for this decision, speculating that I did not want a pro se litigant to question a division director. Letter Br. of Appellant (December 14, 2018) at 21. It is true, as Miller contends, that Page-Hawkins has knowledge of the reasons she refused specific requests Miller made of her during the time period at issue, as discussed below. However, Miller offered no proof at any point that Page-Hawkins had firsthand knowledge of Miller's performance as an FSS, that she observed Miller in the workplace, evaluated her performance, and/or contributed to Miller's formal evaluations, and it is these matters which are the subject of Miller's appeal.

The hearing continued on August 13, September 5, and September 20, 2018. On October 31, 2018, appellant moved to introduce additional documents on the grounds that she provided testimony with respect to these documents. A number of the documents had already been introduced by respondent, and by return letter dated October 31, 2018, I so advised the parties. On November 9, 2018, respondent filed objections to introduction of two of appellant's new documents. On November 15, 2018, I notified the parties that I would accept all new documents submitted by appellant and that post-hearing submissions and responses thereto were due from both parties on December 14, 2018, and December 21, 2018, respectively.

Respondent filed a post-hearing brief, which included a motion to enter specific listed exhibits into evidence, on December 14, 2018. Appellant made no objections to any of the exhibits, all of which were accepted into evidence and are listed in the appendix to this decision. Both parties filed post-hearing briefs on December 14, 2018, and after obtaining approval of an extension request, filed responsive briefs on December 31, 2018,² and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Throughout the hearing, both parties offered documentary and testimonial hearsay evidence, that is, evidence of statements made out of court which is offered in court to prove the truth of the matter(s) asserted therein. Generally, such evidence is not admissible in proceedings held in the Judicial Branch, but in administrative hearings the rule governing the admissibility of hearsay evidence is different. Hearsay may be admitted in evidence subject to limitations on its use as a means of establishing ultimate findings of fact. The rule is codified at N.J.A.C. 1:1-15.5.

² In a footnote in its response brief, respondent objected to appellant's entire brief on the ground that "it is an attempt by [Miller] to submit additional testimony in this matter[.]" Response Br. of Respondent (December 31, 2018) at n. 1. Respondent's objection lacks specificity and is overruled; I accept appellant's brief but, to the extent that appellant submits new testimony, it shall be disregarded.

- (a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.
- (b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

[N.J.A.C. 1:1-15.5.]

N.J.A.C. 1:1-15.5(b) recites what is commonly referred to as the residuum rule, which was best described in Justice Francis's foundational opinion for the New Jersey Supreme Court in Weston v. State, 60 N.J. 36, 50–51 (1972):

It is common practice for administrative agencies to receive hearsay evidence at their hearings. . . . As Judge Learned Hand said for the Court of Appeals for the Second Circuit in NLRB v. Remington Rand, Inc., 94 F.2d 862, 873 (1938), mere rumor would not support a board finding, 'but hearsay may do so, at least if more is not conveniently available, and if in the end the finding is supported by the kind of evidence on which responsible persons are accustomed to rely in serious affairs.' And see, Goldsmith v. Kingsford, 92 N.H. 442, 32 A.2d 810 (1943) However, in our State as well as in many other jurisdictions the rule is that a fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it.

Although I accepted almost all testimonial and documentary evidence offered by both parties both during and following the hearing, I note below where such evidence was deemed unreliable or was insufficient to support a finding of fact.

Summary of Testimony

The issue in this case is whether, as appellant alleges, respondent acted in bad faith in making the decision that Miller was unable and/or unwilling to perform the duties of an FSS in a satisfactory manner and to return Miller to the title of FSW at the end of her working test period.

The following is not intended to be a verbatim report of the testimony and evidence presented in this matter, but is intended to summarize the portions of the testimony and evidence that I found to be relevant to this issue.

Testimony of Nancy Gervickas

Nancy Gervickas (Gervickas) testified for respondent. For three years, Gervickas has served as administrative supervisor, Family Services, in the Essex County DFAB, 18 Rector Street, Newark, New Jersey, and has been employed by the agency for fourteen years. Gervickas manages an office of sixty employees, supervising clerical staff, FSWs, four FSSs, and an assistant administrative supervisor. The office administers numerous aid programs, including the Supplemental Nutrition Assistance Program (SNAP); WorkFirst New Jersey/ General Assistance (WFNJ/GA), Temporary Assistance for Needy Families (TANF), and Emergency Assistance (EA); and Medicaid. Gervickas described her job as ensuring that staff is processing aid applications and determining eligibility of applicants according to State and federal regulations on a timely and efficient basis. Further, she ensures that staff has all necessary resources, and she handles time and attendance and personnel issues.

Gervickas testified that prior to September 2017 she had never met Miller. Tr. of May 24, 2018 (T-1), at 126. On cross-examination, Gervickas stated more specifically that she does not recall Miller from the time when both worked in the Medicaid unit on the tenth floor of the DFAB office at 18 Rector Street, Newark, New Jersey. Tr. of May 31, 2018 (T-2), at 68.

FSS Job Duties

Gervickas supervised Miller throughout her ninety-day working test period in the Civil Service title of FSS. Miller's duties as an FSS included overseeing a unit of five FSWs (the KC Unit), ensuring that agency clients³ are serviced in an efficient and timely manner and in compliance with State and federal regulations, and assisting the FSWs in understanding those regulations. Each case completed by an FSW in the KC Unit would then be reviewed by Miller. Further, Miller was tasked with "providing [the FSWs] with assistance or resources for potential training, identifying strengths and weaknesses, communication with all levels of staff, providing an effective link between [the KC Unit] and other staff in the office and management," and handling time and attendance and personnel issues. T-1 at 23–25; see also, R-91.

The processing of an application for aid under one of the above-listed programs begins with the FSW, who interviews a client by phone or in person, and then makes a determination of the client's eligibility for benefits. When the FSW has completed a case (the "first batch"), he or she notifies the FSS. The FSS retrieves the batch from the electronic file and reviews it "to ensure that regulations are followed and that the FSW took appropriate action as far as determination of eligibility." T-1 at 38. If the FSS finds an error, the FSS goes to the FSW to review the error. Once an error is corrected, the case can be cleared.⁴ If the case is not cleared by the FSS within seven days of the date of the first batch, it must be redone or "re-batched" by the FSW. Gervickas identified documents showing examples of cases that were re-batched because Miller did not complete her review within seven days. (R-8; R-25; R-26; R-27; R-41; R-48; R-67.)

There are times when the FSS makes an error in approving a case; Gervickas conducts random checks to catch such errors.⁵ If the case proceeds with an uncorrected error, it may be caught upon review at the State or federal level, or the case may be the

³ The term "client" was used by the parties to denote applicants for aid and recipients of aid.

⁴ The terms "cleared" and "passed" are synonymous in this context; both mean "approved."

⁵ Miller asked Gervickas repeatedly at what point she expects new FSSs to stop making mistakes and Gervickas answered that errors never stop.

subject of a fair hearing if the client is impacted negatively, and then the error may be caught upon review by an administrative law judge or the reviewing agency. If the result is that monies are awarded to a client in error, the agency may then act to recoup the money. Gervickas identified documents with examples of errors Miller made in her review of cases. (R-2; R-3; R-4; R-5.)

Training

On September 11, 2017, Miller's first day in the title of FSS, Gervickas was out of the office, but her assistant, Daria Rotondo (Rotondo), met with Miller. On September 12, 2017, Gervickas met with Miller for the first time, and apologized for missing Miller's first day, blaming it on the late notice she had received of Miller's promotion. Gervickas told Miller that she prefers to meet with new hires on their first day, to ensure they have computer-system access and to review office procedures and policies.⁶ During this first meeting, Gervickas reviewed the case bank system, call-outs, the time and attendance policies, and general office procedures.

Gervickas understood that Miller had worked as an FSW for about eight years prior to her promotion, and also knows that FSWs are trained on the regulations covering the above-described aid programs at the time they are hired and during the course of each year of employment. All newly-promoted FSSs receive additional training at the time of promotion; seven separate training sessions were held for Miller and the four-other new FSSs during the course of their working test period, including a session on their first day on the new job. (R-87.) Topics covered in the training sessions included job expectations and duties; the process of approving cases that have been completed by FSWs; time and attendance policies and supervisory duties; and aid programs and the regulations implementing the programs.⁷

⁶ In a memo to Gervickas dated October 5, 2017, Miller described this first meeting differently, stating "I . . . arrived to this office under the worst circumstances. You were upset that no one told you I was coming and actual [sic] have resented me ever since." (R-22.)

⁷ Miller elected not to attend the training session on able-bodied adults with dependents (ABAWD) regulations. (R-17.)

Gervickas also set up shadowing sessions for Miller with two other, more experienced FSSs, Crystal Adams (Adams) and Ricky Restaino (Restaino), during which necessary office procedures, including computer systems, use of forms, the case-bank system, and time and attendance policies, were reviewed. (R-28.) Miller “was to shadow a third [FSS], and she declined to set up a time with that [FSS].” T-1 at 44. Gervickas spoke with Adams and Restaino following their shadow sessions, and Adams sent Gervickas a memo confirming their conversation. In this memo, Adams described the shadow session of September 13, 2018, Miller’s third day on the job. (R-28.)⁸

Over the course of Miller’s working test period, Gervickas offered Miller additional training and assistance, including weekly mentoring or coaching sessions. According to Gervickas, Miller preferred bi-weekly coaching sessions. In an email to Gervickas dated October 2, 2017, Miller stated, “Documented weekly meetings for a new supervisor would only affect me negatively when it comes time for my evaluation and are not warranted at this time. [P]erhaps biweekly or monthly meetings would be more suitable since you do have an open door policy.” (R-17.)

Complaints Regarding Miller

Gervickas met with Miller on September 15, 2017, the end of Miller’s first week on the job, to discuss complaints that some staff in the KC Unit made regarding Miller. They told Gervickas that Miller was abrasive in nature and was not communicating well with her staff.⁹ Gervickas advised Miller that communication skills, as well as a positive manner and tone, were necessary to foster collaboration with her staff.

On September 25, 2017, Local 1081 of the Communications Workers of America (CWA) filed grievances with Gervickas against Miller on behalf of each FSW in the KC Unit. (R-31 to R-35.) Gervickas testified that it was not normal for an entire unit to file grievances at

⁸ Miller objected to the introduction of this memo; it is hearsay, Adams was not called to testify, and respondent offered no other evidence to corroborate Adams’s statements therein. Accordingly, this memo will only be used to corroborate Gervickas’s understanding that the shadow session with Adams occurred.

⁹ Although the statements attributed to unnamed persons are hearsay, Miller did not dispute that this meeting took place or that the discussion at the meeting was as Gervickas described.

once, and she wanted to encourage "a cohesive working relationship." T-1 at 84. For these reasons she set up a meeting on September 28, 2017, with the entire KC Unit, to address complaints that staff had about Miller, and that Miller had about her staff. (R-12.) During this meeting, Gervickas covered the need for respectfulness in speaking with one another; the County policies on office conduct and communication; and office policies, including the need to serve clients in a timely manner, lunch scheduling, and regulatory issues. Gervickas stated that though she opened the meeting by saying they did not want to try and place blame, during the meeting Miller called out specific individuals and specific errors made by those individuals. This, Gervickas said, was "not collaborative." T-1 at 90. At the same time, a specific concern expressed by the FSWs regarding Miller, that her failure to review cases in a timely manner caused extra work for the FSWs, was also discussed. T-1 at 89. Overall, Gervickas stressed that she and Rotondo raised concerns they had about "errors being made as a whole for everybody." Ibid.

On September 28, 2017, Gervickas, Rotondo, and Miller met alone to address the administrators' concerns regarding re-batching cases and a disagreement over lunch schedules. Gervickas reiterated her concern that re-batching creates extra work for FSWs, making it important for FSSs to clear cases within seven days. In response, Miller minimized the impact of re-batching on FSWs. The other topic in this meeting was the KC Unit lunch schedule. Miller had asked Rotondo how to schedule lunches in the unit to ensure client coverage, and expressed her preference for staff who came in first to take the earlier lunches. Gervickas recalled that Rotondo disagreed with Miller, stating that staff could go to lunch when they pleased as long as there was coverage at all times. Miller issued a schedule consistent with her preferred method and conflict ensued.

Later on September 28, 2017, Gervickas, Rotondo, and Miller met with Carol Perkins (Perkins), president of the Public Employees Supervisors Union (PESU), the union representing Miller. During this meeting, Miller complained that Rotondo was not supportive of her, stated that she had issues with the FSWs in her unit, and specifically complained that FSW Lisa Williams (Williams) was rude to her. Gervickas and Rotondo reviewed all they had done to support Miller and their attempts to promote collaboration among everyone in the KC Unit and Miller. With respect to Miller's complaint regarding Williams,

Gervickas explained that Miller took issue with Williams's refusal to sit during a unit meeting, but that Williams had a medical issue that prevented her from sitting. Rather than disclose this information in front of the entire unit, Williams remained standing. Gervickas told Miller that she could not substantiate Miller's complaint (but, interestingly, did not explain why she had not discussed this matter privately with Miller in advance so as to prevent the confrontation that resulted).

On October 3, 2017, FSW Kamiya Tate (Tate) filed a complaint against Miller, alleging retaliation and harassment. (R-36.) Gervickas stated that the issues raised by Tate were discussed with Miller during a coaching session held on October 4, 2017. (R-21.) Gervickas sent a summary of the meeting in a memo to Miller, dated October 4, 2017, with the subject line "Supervisory Concerns and Areas Requiring Improvement." The memo is written in very general terms, does not address any particular incident or person, and closes with an offer of assistance and/or training. (R-21.)

Miller responded to Gervickas with a memo dated October 5, 2017, with the subject line "Retaliation." Excerpts from the memo follow:

I knew there was a malicious reason as to why you wanted to start having these 'coaching' sessions, which you conveniently implemented after our meeting with the Union on 9/28/17. . . .

You've purposely used this forum to document what we discussed in the form of a memo by making me look incompetent when in fact; [sic] you're the one that doesn't manage your office up to par.

Since my arrival, I've mentioned several instances that warranted a meeting with certain individuals, but instead you've always dismissed my concerns and made it seem like I was the instigator, even though EVERYTHING is documented.

You've allowed numerous employees to harass, menace, belittle and berate me all while doing nothing, which is why they continue to do so. . . .

You mentioned resolving conflicts with reasonable measures as a supervisor, but you don't practice that tactic yourself because you haven't resolved one issue I've mentioned to you. . . .

Please keep in mind that this is only my fourth week here, but you have me supervising a unit of (5) [sic] people instead of allowing me to transition properly. You mentioned working as part of a team and collaborating with my peers, but how can I do so when they haven't spoken to me in (2) [sic] weeks, not even to say good morning. . . .

It's unfortunate that you are compelled to be unreasonably hard on me when I have only been in the capacity of supervisor for (18) [sic] days. It seems like retaliation and vindictiveness because I've brought certain things to your attention and you've developed a grudge against me as a result.

[(R-22.)]

Gervickas sent Miller a memo in response, dated October 6, 2017, stating, "Your alleged allegations and/or opinions should be routed to the appropriate channels." (R-23.)

On October 6, 2017, the CWA filed a grievance with Gervickas against Miller on behalf of FSW Shantia Owens (Owens). Miller did not supervise Owens, and Owens alleged that Miller "interrogated and admonished" her without Owens's supervisor's participation, in violation of protocol. (R-38.)¹⁰ Gervickas stated that Miller's actions (as alleged by Owens) were inconsistent with agency practice and that Miller had been advised on at least three prior occasions of the proper procedure to follow when dealing with FSWs in other units. T-1 at 156-157.

On October 19, 2017, the CWA sent Gervickas a grievance against Miller filed on behalf of the entire KC Unit, alleging that Miller had "created an extremely hostile environment to the point where every worker feels harassed." (R-68.)

¹⁰ Miller objected to the introduction of R-38, as she was unaware of it prior to receiving it during discovery, and Gervickas admitted that she never discussed this grievance with Miller. The author of this document was not called to testify; it was used only to support Gervickas's knowledge of the grievance Owens filed but not to prove that the incident between Owens and Miller occurred as alleged by Owens.

On November 8, 2017, Page-Hawkins convened a meeting with Miller, Gervickas, Rotondo, Perkins, Essex County Counsel and staff, and DFAB Human Resources (HR) Director Robert Jackson (Jackson) and his staff. (R-80.) Gervickas testified that Miller complained regarding the lack of support being provided by Gervickas and Rotondo. Gervickas explained that she had offered coaching to Miller, but that appellant had refused. When asked what she needed, Miller responded, "nothing." Following the meeting, Page-Hawkins sent an email to all attendees confirming that communication by email and/or memo would cease, and Miller would meet with Gervickas and Rotondo for coaching on an "as-needed" basis. Ibid.

Miller's Thirty-Day Evaluations

As with any employee in a working test period, Miller was evaluated every thirty days using a standard form. Gervickas filled out, signed, and issued each of Miller's evaluations. She was assisted in this process by Rotondo. When Miller asked why Rotondo, who was her direct supervisor, did not sign and issue the evaluations, Gervickas stated that she handles all evaluations for probationary supervisors.

Gervickas identified Miller's first thirty-day evaluation, issued on October 10, 2017. (R-1.) Miller was rated unsatisfactory in all categories: quality of work; quantity of work; attitude toward work; personal relations; professional interest; and supervisory effectiveness. Ibid.¹¹ Gervickas testified that Miller earned this review because, overall, she was making too many mistakes and declined the assistance she had been offered. Specifically, her understanding of the duties of her job and office policies was lacking; she made numerous mistakes with respect to regulations that she should have mastered as an FSW, much less as an FSS; she was unable to complete her own work; she was not following directions; and she was having problems working with other staff, peers, and subordinates.¹²

¹¹ Miller refused to sign any of the three thirty-day-review reports. (R-1; R-39; R-81.)

¹² On cross-examination, Miller asked Gervickas whether there was a reason for Gervickas to give Miller all unsatisfactory ratings other than "a personal vendetta." Gervickas said she had no such vendetta and, yes, the quality of Miller's work was unsatisfactory because she failed to catch FSW errors. T-2 at 85–86.

To illustrate Miller's shortcomings that led to her first unsatisfactory review, Gervickas identified a "Case Correction Return Sheet," which Miller gave to an FSW on September 21, 2017. (R-2.) Gervickas understood that Miller created this form to use when she reviewed cases completed by the FSWs in the KC Unit. On this particular form, Miller noted that the FSW used the wrong certification period for the applicant, but in fact, the FSW was correct initially, and Miller incorrect in her direction. This mistake was caught by Gervickas on a random review of the case. (R-2.)

Gervickas identified other Case Correction Return Sheet forms on which Miller made mistakes in her review and then returned the underlying cases to the FSWs, which both created additional work and delayed the processing of cases. (R-3; R-4; R-5; R-6; R-7; R-8; R-9; R-10.) Gervickas stated that new supervisors do make errors, and conceded that no one ever stops making mistakes. But, she also stated that Miller made more errors than was typical, made the same errors repeatedly, and lacked knowledge of the applicable regulations.

On September 28, 2017, Gervickas directed Miller to send Rotondo four cases that Miller had reviewed each day. (R-11.) Gervickas stated that the purpose of this administrative review of Miller's work was to ensure that Miller was getting the support she needed. Gervickas stated that she waited to begin this review for two weeks to allow Miller sufficient time to become acclimated and to have shadowed other FSSs. Gervickas also stated however, that as an FSS, Miller was working with the same regulations she had used as an FSW and should have known those regulations without additional training.¹³ Miller showed Gervickas sheets used by Gervickas and Rotondo to conduct the administrative review and, with respect to errors found by the administrators, Gervickas conceded that in most cases, the initial error was made by an FSW. (A-1; R-99; R-105; R-106.) The reason, though, that these review sheets are evidence of Miller's unsatisfactory performance is that, with respect to each one, Miller did not catch the errors made by the FSWs.

¹³ On cross-examination, Gervickas reiterated that "a supervisor should be able to review [cases completed by the FSWs] upon the first day of [his or her] supervisory working test period, [a]s the information that they review is the same information that they would know as an FSW and there shouldn't really be any time frame in which [he or she] needed to wait to review cases as a FSS." T-2 at 91.

Gervickas identified numerous documents evidencing that prior to the end of the second thirty-day period, Miller continued to make errors and suffer delays in her review of the work of FSWs (R-40; R-41; R-42; R-44; R-45; R-46), and was having problems with supervision of her staff. (R-66; R-72; R-73; R-74.) Gervickas identified the second thirty-day evaluation issued to Miller on November 9, 2017. (R-39.) Miller was rated unsatisfactory in all categories: quality of work; quantity of work; attitude toward work; personal relations; professional interest; and supervisory effectiveness. Ibid. Gervickas testified that Miller earned this review because, overall, she was still making too many mistakes and again declined the assistance she had been offered. Specifically, her cases were backlogged and not being processed on a timely basis; she was still making mistakes with respect to program regulations and policies; she needed to create effective supervisory links with staff at all levels; and she needed to follow directions and work as a team.

Gervickas identified the third thirty-day review, issued to Miller by Gervickas on December 8, 2017. Miller had improved marginally in two categories, earning a "fair" grade in quality of work and personal relations. (R-81.) In all other categories, she still was graded unsatisfactory. Gervickas identified numerous documents that supported the third review given to Miller. [See, R-82 (file memo describing Miller's failure to follow out-of-office procedures); R-83 and R-84 (mistakes in case reviews made by Miller); and R-85 (file memo describing Miller's failure to observe confidentiality regulations).]

Gervickas identified the three-month evaluation also issued to Miller on December 8, 2017 (which was a Friday). Miller earned a rating of unsatisfactory, as she was "unable to demonstrate the ability to form effective links between all levels of staff, unable to effectually communicate policies and regulations to staff, and unable to effectively lead, motivate, and resolve conflict within her team." (R-88.) Miller was also given a written notice of termination as an FSS, which instructed her to return to her former and permanent title of FSW at the location where she previously worked. (R-90.)

Testimony of Daria Rotondo

Rotondo was called to testify by Miller (though originally on respondent's witness list). Rotondo is the assistant administrative supervisor in the DFAB office, 18 Rector Street, Newark; New Jersey, has been in this position for three years, and has been with the agency for approximately seventeen years. Rotondo served as Miller's direct supervisor during Miller's test period; Gervickas is Rotondo's immediate supervisor. Rotondo handles evaluations for supervisors who have completed their probationary periods and are permanent in their titles; since Miller was not permanent, Rotondo assisted in Miller's evaluations but did not sign them. Rotondo does not issue discipline without conferring with Gervickas.

As of September 2017, when Miller first was promoted to FSS, Rotondo knew that the KC Unit had been without a supervisor but could not recall for how long. Before Miller's promotion, members of the KC Unit were assigned to a backup supervisor who performed all the same duties that Miller was then assigned to perform, the only difference being that Miller's cubicle was in closer proximity to the KC Unit than any backup supervisor's cubicle had been. Tr. of September 5, 2018 (T-6), at 9–10.

As with Gervickas, Rotondo did not learn of Miller's assignment prior to September 11, 2017; though uncommon, Rotondo called it a "personnel technicality." T-6 at 11. She did not expect that she would have done anything different to prepare for Miller's first day even if she had advance notice.

Rotondo recalled that on or about September 20, 2017, Miller told her that everyone in the KC Unit took their lunch at 1:00 p.m., and that Rotondo responded that lunch breaks had to be staggered to ensure coverage and preference should be given according to seniority. Rotondo identified two documents prepared by Miller, the first an agenda for a KC Unit meeting held on September 20, 2017, in which one of the topics for discussion was lunch breaks (A-3 at 17), and the second a memo issued to the KC Unit from Miller on September 20, 2017, with the new lunch-break schedule. (A-3 at 18; R-95.) As a result, one member of the KC Unit, Williams, complained to Rotondo, as she was the most senior

person and was not given preference in the new schedule. Rotondo identified the memo she issued to Miller on September 25, 2017, reviewing the discussion they had on this issue and stating that Miller disregarded Rotondo's specific direction to assign lunch breaks by seniority in the case of any conflicts. (A-27; R-95.) When Miller asked Rotondo why she chose to write a memo in this instance rather than simply discuss the issue, Rotondo responded that she did speak with Miller first, and Miller then said she would take the issue up with Gervickas. T-6 at 96–97; see also, A-27. The September 25, 2017, memo followed that discussion.

With respect to the coaching sessions, Rotondo stated that starting these was Gervickas's idea, and that she agreed with it. The sessions began about three weeks into Miller's tenure; Rotondo explained that the coaching sessions did not include training in policies, programs, or regulations, but were for issues that Miller raised, especially with respect to getting along with her staff. Rotondo also stated that coaching began immediately for the next FSS hired after Miller left.

On or about September 28, 2017, Miller was directed by Gervickas to submit four completed cases to Rotondo each day for review for accuracy. The purpose of this exercise was to determine whether Miller "was ready to be a supervisor and had the proper knowledge to review cases efficiently." T-6 at 60. Rotondo identified the documents marked as Exhibit A-1 as copies of the daily review sheets Miller provided to Rotondo between September 28, 2017, and December 6, 2017. Each sheet lists four cases, the application and review dates, the program, and comments of both Miller (typed) and Rotondo (handwritten). Each time Rotondo wrote the word "okay" on a sheet, she determined that Miller had taken the correct course of action in her review.

Miller asked Rotondo to describe the basis for marking that Miller had taken incorrect action with respect to some of the cases listed on the review sheets and, in many cases, Rotondo declined to speculate and/or did not recall. As had Gervickas, Rotondo stated that in most cases, the initial error was made by an FSW, but that Miller failed to catch those errors. (A-1.) After reviewing all the sheets, Rotondo stated that over the course of Miller's three-

month test period, she did not see a reduction in the number of errors made by Miller, and saw only two days in which Miller made no errors. T-6 at 54–56.¹⁴

Rotondo conceded that while members of the KC Unit had frequent complaints regarding Miller, she never found it necessary, or advisable, to meet alone with Miller and the complaining FSW. See, T-6 at 108–09, 113, 118, 126, 132, 162–63, 167, 180, 206, 207–08. When asked why, Rotondo stated that she generally felt it was in the best interests of the FSW and Miller for her to speak with them separately (she called this an exercise of “administrative discretion”). Similarly, Rotondo admitted to issuing a memo to one of the FSWs regarding a matter involving Miller, but not copying Miller, and could only recall one other instance prior to September 2017 where she did the same thing. T-6 at 159–60.

Rotondo identified Miller’s three thirty-day evaluations and her final evaluation (R-1; R-39; R-81; R-88); Rotondo was involved with the preparation of each of the evaluations, but only Gervickas signed them. In response to questions regarding the absence of her name on Miller’s evaluations, Rotondo explained that the input of all supervisors is reflected on an evaluation of any employee, even though the names of those supervisors do not appear. Rotondo’s input was based on her personal observations of Miller with her staff, and of Miller’s job performance, including her knowledge of basic regulations and accuracy in passing cases. T-6 at 83. With respect to the evaluations issued to Miller, Rotondo stated that each was a fair and accurate description of her input and of her assessment of Miller’s work during the respective time periods. T-7 at 122–23, 125, 127, 131. Overall, based on her supervision of Miller, Rotondo stated that Miller had an unsatisfactory working test period.

Testimony of Appellant Miller

Miller is currently serving as an FSW, a position she has held with the DFAB continuously since July 21, 2008, but for two years as a program coordinator for the Division of Youth and Family Services and during her working test period in the FSS position. She first

¹⁴ As I stated at the hearing, I reviewed the documents marked as Exhibit A-1. See, T-6 at 57. Rotondo found no errors with the cases Miller submitted for review on four occasions: October 25, 2017; October 26, 2017; November 16, 2017; and December 4, 2017.

took the Civil Service Exam for the FSS position in 2013 but was not chosen for promotion at that time. She took the exam again in 2016, scoring fourteenth, and a year later was chosen for promotion to FSS.

Miller opened her testimony with the following statement, in pertinent part:

It may come as a surprise to you, but newly promoted [FSSs] are not given supervisory training before being placed on a floor to run a unit[.] As a result, one can expect to make a few mistakes while transitioning to a newly appointed position, whereas [FSWs] are given ten weeks training[.]

[T]he unit I was made to supervise had been without a supervisor for over a year and . . . were literally doing whatever they wanted and as a result I was met with resistance and opposition almost immediately, even with the slightest instruction given to my workers.

I was made to endure unfair work practices, bullying and harassment which led to me receiving poor evaluations and two levels of discipline.

The union president, [Perkins], said that I was put here to fail^[15] and that I should not have been made to supervise people I used to work with.^[16]

I personally felt as though [Gervickas] had a vendetta against me and used her platform as an administrator to be vindictive and malicious.

I used to work with [Gervickas] about seven years ago on the tenth floor in Medicaid and I think that's where [she] derived her disdain for me and used her platform as an administrator to be vindictive and malicious and have me fail my working test period.

¹⁵ Miller did not call Perkins to testify and presented no other evidence of this hearsay statement; therefore, it was disregarded.

¹⁶ One of Miller's witnesses stated that Miller had previously had a difficult working relationship with one of the FSWs from the KC Unit. Tr. of August 13, 2018 (T-5), at 201-02. Otherwise, there was no testimony regarding Miller previously working with members of the unit.

On September 14th, three days after being promoted I received a text which I still have from a friend saying for me to be careful because they're trying to set me up at [the DFAB office where Miller was serving in her FSS test period].¹⁷

[Tr. of July 10, 2018 (T-3), at 92–94.]

In sum, Miller's claim of bad faith on the part of respondent is based on respondent's (1) alleged failure to properly train Miller in her new position; and (2) decision to promote her to FSS at a location where she would supervise former co-workers and where she would be supervised by Gervickas, who had a decade-old vendetta against her. Miller contends (somewhat contradictorily) that the harassment and bullying she endured during her working test period resulted in her poor work performance, but that she otherwise did satisfactory work as an FSS.

FSS Job Duties

Miller described her job duties as an FSS as follows:

I had to supervise a unit of five workers. I had to make sure they interviewed the clients. I had to make sure that . . . they kept their desks clean, make sure that they weren't fraternizing in the back in the case bank, which they did sometimes. And I had to pass cases.

[Tr. of July 11, 2018 (T-4), at 158.]

Miller's description of the process of "passing a case" was similar to Gervickas's description, but Miller stated that an FSS would "sometimes" review a case to make sure the FSW issued the correct benefits to the client. She further stated:

¹⁷ Miller introduced a copy of this text (A-39), but did not call the alleged author to authenticate the text. In her post-hearing brief, Miller acknowledged that she could have, and should have, called the author to corroborate this text and blames her failure to do so on her pro se status, her need to focus on other witnesses, and my statement that hearsay that is not otherwise corroborated would be weighed appropriately. Br. of Appellant at 14.

[A]ll supervisors don't read their cases. Sometimes they just pass them and just assume that the worker did what they had to do. [Some FSSs] will tell you they don't read all the cases and some tell you that they do read them all, but . . . it's not mandated that you read all the cases. There's no policy saying you have to read all the cases. [I'm] not saying that that's what I did, but . . . from my ten years being here . . . that's what I've observed. That's what been told to me . . . that's an allowed policy . . . for [an FSS] to just pass a case without reviewing it[.]

[T-4 at 155–56.]

Training

As an FSW, Miller spent her first ten weeks in training, but, by contrast, she was immediately put on the floor as an FSS without training. She stated that her supervisors vaguely went over the case-bank procedures in the first week. She claims she did not shadow Adams and Restaino during her first week; her sessions with both were spending one-half day with each, simply listening to them give her instructions on specific programs and taking notes, not watching them as they worked. She disputed everything contained in the memo drafted by Adams, including Adams's description of the instruction she gave Miller, and in the testimony of Gervickas regarding the shadowing sessions. Tr. of August 13, 2018 (T-5), at 160; R-28. Further, Miller stated that Gervickas never asked her to set up a shadow session with FSS Caressa Simmons. Miller did not shadow the case-bank administrator; she merely was told how to enter GA and SNAP cases and log sheets into the computer system, a discussion that lasted just a few minutes.

Though Miller complained of insufficient training, she stated that the reason she issued KC Unit members memos regarding their breaches of policies was that she "was simply trying to run the unit efficiently in the way I had been taught in training." T-3 at 97.

Complaints

Miller testified that the unit to which she was assigned, the KC Unit, had been operating without a supervisor for over a year before she was promoted, and the five FSWs

in the unit were unhappy to have a new FSS. From the very beginning, Miller was subject to unfair work practices, bullying, harassment, and disrespect at the hands of her staff. She testified that she emailed Page-Hawkins within her first month on the job, asking to be moved to another office. (A-38.)¹⁸

On or about September 15, 2017, Gervickas called Miller to her office to discuss complaints she had received regarding Miller. Miller expressed her surprise, as she had only started on the job four days earlier, and Gervickas explained that Miller had failed to say, "good morning," and had asked an FSW to "do something" in a way that he or she did not like. (According to Miller, Gervickas did not use names.)

Conspiracy Against Miller

Miller testified that in 2008, she and Gervickas both worked in the Medicaid office on the 10th Floor, 18 Rector Street, Newark, New Jersey. Approximately forty employees worked on that floor. Gervickas was a supervisor but did not supervise Miller (though Miller may have asked Gervickas for help once or twice). As stated above, Gervickas testified that she did not know Miller from their time on the Medicaid floor. Miller called this testimony "a blatant lie." Br. of Appellant at 4. Although Miller could recall no negative interactions with Gervickas from that time, she stated that Gervickas decided she did not like Miller then, and has had a vendetta against her since.¹⁹ Miller draws that conclusion based on the problems she observed that Gervickas had with people of Miller's race (African-American) in the Medicaid office.²⁰ Even so, Miller never complained about Gervickas and did not request not to work for her. Significantly, when cross-examining Gervickas, Miller did not raise any questions about Gervickas's alleged racial bigotry and did not fully explain her reason not to do so. See, T-4 at 215.

¹⁸ The email to Page-Hawkins dated October 5, 2017, does not include a request for reassignment. (A-38.)

¹⁹ In her October 5, 2017, email to Page-Hawkins, Miller stated that she did not want to lose her position because Gervickas and Rotondo "simply cannot control their staff and has since developed a vendetta against me because I've tried to bring structure to my unit as I was taught in supervisor training." (A-38) (emphasis added). In this email, Miller dated the origin of this vendetta much later than she presented at hearing and for reasons quite different than she alleged at hearing.

²⁰ Miller failed to describe any instances in which she observed Gervickas acting or speaking in a negative manner toward or about a person of Miller's race.

Miller stated that further proof that Gervickas had preconceived negative notions regarding Miller is that when they met on September 12, 2017, Gervickas said, "Clean slate?" and, according to Miller, "seemed more upset that it was me [who was promoted to FSS] as opposed to anyone else" than that she did not get advance notice of Miller's promotion. T-4 at 20. Again, during her cross-examination of Gervickas, Miller did not ask about Gervickas's alleged statement.

Miller testified that she was "set up to fail" in her ninety-day test period, a plan devised by Page-Hawkins, who does not like Miller because Miller has been very vocal with her complaints, and had sent emails to Page-Hawkins regarding the SNAP office (at 50 South Clinton Street, East Orange, New Jersey). Miller thinks that she became a nuisance for Page-Hawkins and may be considered an agitator. Page-Hawkins developed her vendetta against Miller on or about August 16, 2017, when Miller emailed Page-Hawkins about an incident at the SNAP office in which a supervisor cursed at Miller. T-4 at 181. The next day, Page-Hawkins met with Miller, a meeting that Miller stated, "did not go well," (A-20; A-44), proof of which is Page-Hawkins's statement when she opened the meeting; Page-Hawkins said, "I'm not going to keep coming down here," and Miller found this "not accommodating." T-4 at 172-73, 181.

On August 31, 2017, Miller was notified of her promotion to FSS and transfer to the office at 18 Rector Street, Newark, New Jersey. (A-44.) Miller described this action by Page-Hawkins of promoting Miller as retaliation for her complaints. Miller explained that she had been passed over twice for promotion since passing the Civil Service exam and Page-Hawkins could not skip her again without risking legal action due to the "rule of three." T-4 at 169.²¹ Instead, Page-Hawkins sent Miller to work with Gervickas, who did not like

²¹ At hearing, Miller agreed to submit proof of this "rule of three." In her reply brief, Miller included the following from the CSC website: "The Rule of Three allows an Appointing Authority to choose from the top 3 eligible from [a] promotional list (taking into consideration veterans' preferences)." Reply Br. of Appellant (December 31, 2018) at 6. No evidence was presented that Miller is a veteran or that, as of August 2017, she was one of the top three eligible candidates. See also, Reply Br. of Respondent (December 31, 2018) at 3 ("Miller has provided no evidence that [Page-Hawkins] was under some obligation to promote her in the first place.").

Miller.²² Miller stated that when she saw that Gervickas would be her new supervisor, she said, "Wow, this isn't even a promotion." Id. at 182.

Further proof of Page-Hawkins's vendetta is that after working in the SNAP office for seven years, Miller could have been promoted to FSS in that same office (at 50 South Clinton Street), as two other newly promoted FSS were, but Page-Hawkins "wanted to get [Miller] out of that office."²³ T-4 at 176, 181. She claims to be the only newly promoted FSS (of the group promoted on September 11, 2017) to be sent to a new office. Miller did not address how she would have avoided supervising former coworkers had she been promoted in the same office and/or how she would have prevented the same problems allegedly caused by supervising former co-workers from occurring in her original office.

Miller sent emails to Page-Hawkins on October 5 and October 10, 2017, complaining of being harassed and menaced in the workplace daily. (A-20.)²⁴ Page-Hawkins met with Miller again on October 12, 2017, but of this meeting, Miller said, "Meeting with someone doesn't mean they helped you."²⁵ Page-Hawkins "asked me . . . what was going on, . . . wrote it down and said she'll look into it and she'll get back to me." T-4 at 179.

On October 16, 2017, Miller filed the harassment complaint against Page-Hawkins, stating that between the dates of Miller's emails and the meeting of October 12, 2017, she received disciplines and a poor thirty-day evaluation. (A-20.) On October 16, 2017, Miller also brought a harassment complaint against Gervickas and Rotondo, alleging that they "allowed

²² Miller provided no proof that Gervickas spoke with Page-Hawkins about their alleged shared dislike of Miller at any time and particularly prior to September 2017.

²³ Miller refused to state that Page-Hawkins moved her out of an office about which she had been complaining into a better job. T-4 at 175–78. Further, she did not provide proof that two other FSWs in the South Clinton office were promoted to FSS on the same day Miller began at 18 Rector Street. (A-24.)

²⁴ In the email to Page-Hawkins of October 10, 2017, Miller claims that Gervickas and Rotondo are treating her "in a racist and discriminatory manner." (A-20.) Miller presented no evidence to support this claim.

²⁵ In her brief, Miller contends that Gervickas should have been allowed to participate in this meeting, and, had she, they would have resolved their issues and Miller would not then have received disciplines and poor evaluations. Br. of Appellant at 9, 17–18. This argument though, directly contradicts Miller's claims that she is the victim of a decade-old vendetta and had been set up to fail by Page-Hawkins and Gervickas.

subordinates and coworkers to belittle and menace" her, gave her poor evaluations, and wrote her negative memos—sometimes multiple memos in a single day. (A-19.)²⁶

Though Page-Hawkins had agreed to meet again on November 1, 2017, Miller canceled that meeting, as she left the office early. Page-Hawkins rescheduled the meeting to November 6, 2017, and included Perkins, Jackson, HR staff, and the County Counsel and staff, but did not include Gervickas and Rotondo. T-4 at 192–93. Miller described the purpose of the meeting, as told to her by Perkins, was to discuss the issues she had raised and the potential for her reassignment, not to discuss the harassment complaints she had filed. *Id.* at 194. In this meeting, Miller did not, however, raise the alleged vendetta held against her by Page-Hawkins. *Id.* at 200.

Page-Hawkins called a second meeting with the same persons and Gervickas and Rotondo on November 8, 2018; the purpose of this meeting was to discuss the supervisors' problems with Miller. Miller arrived for this meeting five minutes early and was made to wait fifty-five minutes while Gervickas and Rotondo first spoke with Page-Hawkins and County Counsel. *Id.* at 218–19. During the meeting, Miller stated that she had no support from her supervisors, that the disciplines they gave her were not warranted and were insufficient in detail, and that the poor evaluations Miller had received also were not warranted. Miller explained that she declined program training, which she did not need, and pleaded for help with the personality conflicts that were taking place on the floor. *Id.* at 222–223. In her brief, Miller states that "the lines of communication had finally opened up as a result" of this meeting, arguing that had she been given a new working test period, she would have been able to succeed. Br. of Appellant at 16.

Testimony of Tanya Yarrell and Sparkle Myrie

Miller subpoenaed the testimony of two former coworkers, Tanya Yarrell (Yarrell) and Sparkle Myrie (Myrie). Both have worked as FSWs at the 18 Rector Street, Newark,

²⁶ Though Miller claimed at hearing that Gervickas's vendetta was race-based, in the harassment complaint, Miller did not include race as a basis for the action allegedly being taken against her by Gervickas. T-4 at 213–14; A-19.

New Jersey, DFAB office for the past five years. Neither Yarrell nor Myrie was part of the KC Unit during Miller's working test period, though Yarrell recalled requesting Miller's assistance during that time.

Miller introduced copies of series of texts allegedly sent to her by Yarrell and Myrie in which both women initially appear to sympathize with Miller (A-23; A-25), but refuse or do not respond to Miller's requests that they testify in this proceeding. Yarrell explained that she did not feel comfortable testifying, as she only knew one side of the story, that being the version she heard from Miller. T-5 at 126. Further, Yarrell stated that her seemingly supportive texts to Miller may not have been truthful; she was trying to avoid both participating in the hearing and hurting Miller's feelings. Id. at 128.

Myrie stated that she was confused to get the subpoena, as she felt she had little to add in support of Miller's case. She stated that she did not want to get involved because she had no firsthand knowledge of the underlying claims in this matter. She said, "I wasn't a witness to that. I just witnessed that you were having a hard time with your unit as a new supervisor." Id. at 206.

Neither witness offered testimony to support Miller's claim of a conspiracy to set her up for failure during her working test period. Although she sat in fairly close proximity to the KC Unit and spoke with Miller frequently, Yarrell could recall little with respect to specific incidents between Miller and the FSWs she supervised. Yarrell described these interactions as constant "back and forth." Id. at 147, 149, 150.

Yarrell stated that she tried to be supportive of Miller when they worked in the same office, but that they were not friends outside the office. Yarrell described Miller as aggressive and inconsiderate, and stated that when she received the subpoena after telling Miller she did not want to testify, she thought that Miller was treating her as she may have treated the members of the KC Unit. Id. at 162–166.

Myrie was visibly unhappy to be on the witness stand. She stated that she interacted with Miller in the workplace on a daily basis, and though she did not witness the events of

which Miller complained, she knew that Miller's experience was negative and that Miller felt mistreated by Gervickas. Myrie also knew that Miller had a "bad reputation" among the FSWs as unapproachable and "not nice," but here too she could recall no specific examples and stated that no one spoke to her directly about Miller. Id. at 185, 207–208.

When asked to explain her text that Miller was "set up" (A-23), Myrie stated that to her knowledge, Miller was supervising FSWs whom she had previously worked alongside in the same title and they could have already been predisposed against her. Further, Miller had worked with Williams at the SNAP office, the two of them had a work-related conflict and had not spoken since, and therefore, Miller "might not have had a fair chance coming in." Id. at 201–202.²⁷ At the same time, Myrie did not believe this was sufficient reason for Miller to have been moved, as "every supervisor who comes into a unit has something said about them," and the unit members should act professionally and get to know the new FSS, "regardless of what [they] may have heard." Id. at 202.

Testimony of Courtney Gaccione, Essex County Counsel

After the close of appellant's case, respondent called Courtney Gaccione (Gaccione) as a rebuttal witness. Gaccione is the Essex County Counsel, a position she has held for approximately three years. Gaccione knows Miller from an employment matter that occurred in the fall of 2017. She was contacted by HR Director Jackson regarding four harassment complaints filed by Miller on October 16, 2017. The complaints were first referred to the Office of the Inspector General (IG), but after review, the IG determined that Miller's complaints did not fall within the legal definition of harassment and/or retaliation, and the IG returned them to Jackson to be dealt with by HR.

²⁷ It is worth noting that Williams was the FSW whose lunch schedule Miller changed in contradiction of Rotondo's direction to give the most senior employees first choice.

On November 6, 2017, Gaccione held a meeting at the DFAB with Page-Hawkins, Jackson, Perkins, and Miller to review, address, and resolve the complaints. Gaccione asked specific questions of Miller to ensure that she was not claiming discrimination related to a protected class and, based on Miller's answers, agreed that the IG had made the correct decision. She told Miller that the IG would not be investigating and, therefore, the issues should be resolved at the present meeting.

Miller stated that Gervickas, Rotondo, and Page-Hawkins were not supportive of her, that she was being undermined by her FSWs, and she was being singled out by her supervisors for errors. Gaccione described Miller as upset, frustrated, unreceptive to HR efforts, and resistant to suggestions.²⁸ A follow-up meeting was held two days later. First, Gaccione met with Gervickas and Rotondo to hear their side, then brought Miller and her union representative into the meeting.

Gervickas and Rotondo brought a surprising amount of documents with them, and the pre-meeting went much longer than expected. When Miller joined the meeting, she was very angry and voiced her displeasure with being made to wait outside.²⁹ Gaccione briefly addressed Miller's harassment complaints and Gervickas and Rotondo's response, asked everyone to stop writing memos and simply discuss their issues, and recommended coaching sessions for Miller on a weekly basis. Miller was not receptive to these suggestions. She wanted to be moved to a different floor, or different office, but Page-Hawkins refused, as there were no open FSS positions.

Miller filed an unfair-labor-practice claim against the County for failure to address her complaints, which was dismissed. Gaccione believes that Miller's complaints were handled fairly, that her office, HR, and the DFAB all made significant efforts to address them. She does not believe that Gervickas and Rotondo were biased against Miller, and believes that the evaluations they gave Miller accurately reflected her poor

²⁸ Miller describes this testimony as Gaccione's opinion and asks that it be disregarded. Br. of Appellant at 6. As there was no transcript of this meeting, and no further evidence of Miller's reaction in the meeting, I disregarded this testimony.

²⁹ In her brief, Miller both objects to this characterization and concedes that she was "somewhat upset." Br. of Appellant at 6.

performance. In Gaccione's opinion, Miller failed in her working test period because she was unable to effectively act in a supervisory role.

DISCUSSION AND FINDINGS

The resolution of this matter requires that I make credibility determinations regarding the critical facts. 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. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See, Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). 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 the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[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.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

After carefully considering the testimonial and documentary evidence presented and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, it is clear to me that with respect to almost every incident described in the seven days of testimony, Miller's characterization differed from that of every other witness. This is not to say that Miller or any one particular witness testified untruthfully, though I take issue with specific statements, as described more fully below.

Gervickas appeared to be a competent, by-the-book type of supervisor. Her commitment to serving DFAB clients came through, and I believed her when she stated that she wanted Miller to succeed and tried to help her. Though Gervickas was a willing witness for the first day or so, her patience appeared to grow thin during Miller's questioning. Gervickas changed some of her answers, became defensive, and gave long explanations when a simple yes or no would have sufficed.

Rotondo did little to mask her displeasure with participating in this hearing. In her defense, she changed vacation plans the first day she was called to appear, but was then not called as the examination of other witnesses went long, and she had to return for two additional days on the stand. Some of her answers begged credibility, such as that she had no recollection of the members of the KC Unit complaining about Miller being their supervisor. T-6 at 222. All the members of the unit filed a grievance against Miller within the first month; they would not have taken such action if they were happy with Miller, and it is hard to believe that they did not first complain to Miller's direct supervisor.

Rotondo appeared to have a hard time justifying her ongoing decisions not to bring Miller into meetings with individual members of the unit, when those decisions were actually commendable and probably prevented even greater workplace disruption. I note that Gervickas testified credibly about a meeting she and Rotondo held with the entire unit and Miller early in Miller's tenure, on or about September 25, 2017. According to Gervickas, Miller called out specific individuals by name at this meeting, action that certainly could have justified the decision not to bring Miller back in to air complaints in front of individual members of her staff. Overall, Gervickas and Rotondo made a credible case that they had never dealt with an employee who created as much disruption in the workplace as Miller did, and that they were justified in documenting all her shortcomings.

Miller was nothing if not consistent; she acted throughout these proceedings in much the same manner as she was depicted by every witness called.³⁰ I believe she thought she was doing a good job as an FSS and she seemed genuinely hurt by the way her staff and supervisors responded to her efforts to bring order to what she deemed to be a disorderly unit. At the same time, though, Miller called Yarell and Myrie, who testified credibly to Miller's constant complaining and the manner in which she made excuses for her failings. Her cross-examination of her former supervisors underscored that her response to being cited for poor performance was to challenge the standards by which she was judged: how could her supervisors expect her to know how to review cases of the type she had been handling for

³⁰ In this regard, reference is made to the procedural history.

years without special training; was not simply doing her job proof of her attempt to do her best; are not all FSSs allowed to make mistakes?

Miller claimed that the members of the KC Unit were unwilling to be supervised, stating that because they had been without a direct supervisor for a year, they were resistant to her attempt to impose "structure and regimen." T-4 at 231. When criticized by Gervickas and Rotondo for "failing to form effective links with her staff," Miller insisted that the staff was not receptive to anything she tried to say or do, she did not create the problem. T-4 at 231. Further, Miller was clearly disappointed that Gervickas and Rotondo did not reprimand her staff (especially in front of her), or at least to take her side in ongoing personality conflicts. Though believable, Miller did not help her case when she stated that Gervickas "tried to set me up for program training when I didn't need training with programs. What I needed training with and what I pleaded for help with is just the personality conflicts that were taking place on the floor." T-4 at 223.

Somewhat ironically, Miller stated that she did not need program training but was also critical of the timing of the training offered, as there was none "before being placed on the floor to run a unit as an FSS." T-3 at 91; T-4 at 132-34. There was a dearth of testimony from both parties as to whether Miller took advantage of the "open-door policy" offered and actually came to either or both of her supervisors with questions about the DFAB programs or the technical job duties of an FSS. Even so, from the beginning of her test period, Miller did not take all the training offered to her, whether shadowing of other FSSs, the formal DFAB training, or coaching sessions with her supervisors.

Based on the testimony of Gervickas and Rotondo, the coaching sessions were established specifically to benefit Miller about three weeks after she started, to address issues not related to DFAB programs, but related to interpersonal skills. Rotondo clarified that FSS training sessions were conducted by a separate unit within the DFAB and did not include topics such as "how to deal with difficult unit members." T-7 at 36. Even if Miller was correct that Gervickas and Rotondo would only use coaching sessions to document her failings, that does not explain why she did not take advantage of the other means of learning how to better perform in her new position.

The lunch-break issue is a good example of failure on Miller's part both to effectively supervise and to graciously accept supervision. Miller stated that Gervickas and Rotondo "wouldn't even allow me to change lunch breaks in my unit," T-4 at 89, but that statement is inaccurate. Miller identified a problem with her unit: that all the FSWs were taking lunch at the same time, leaving the intake desk without sufficient staff. She developed a solution and, appropriately, discussed the problem and her proposed solution with her direct supervisor, Rotondo. Rotondo essentially agreed with Miller, but cautioned her that if more than one FSW wanted the same break time, she would have to defer to the request of the more senior FSW. Instead, Miller reassigned lunch breaks based on the times the FSWs began work in the morning. Williams, the FSW with the most seniority, complained. Instead of simply adjusting the schedule to accommodate seniority, as Rotondo had directed her to do, Miller dug in. When Rotondo discussed the issue with her, in person, Miller said she would go over Rotondo's head, to Gervickas. Hence, Rotondo's memo, threatening Miller with discipline for failure to follow directives. In response, Miller complained by memo that (1) Rotondo allowed the FSWs to go over Miller's head, which is exactly what Miller had just done to Rotondo; and (2) Rotondo should not have put the dispute in writing, ignoring that the earlier face-to-face discussion resulted in Miller's insubordinate verbal response.

In both her direct testimony and her cross-examination of Gervickas and Rotondo, Miller made clear her belief that both supervisors used memos in lieu of face-to-face conversations, and relied on these memos to make their case against Miller before she had a chance to prove her suitability for the FSS position. Here Miller has a point, as receiving memos, filed for posterity, rather than being corrected informally, could have contributed to Miller's feelings of being treated unfairly (especially later in Miller's working test period). What Miller ignores when she criticizes Gervickas and Rotondo for using memos, however, is that one of her first actions as an FSS was to create a "Case Correction Review Sheet" and that instead of simply discussing minor errors (such as misspellings) with her staff, she documented their mistakes. Ironically, by using these forms, Miller provided her staff evidence against her. As shown by Gervickas and Rotondo, Miller made frequent mistakes on these forms, creating additional work for her staff and delaying the processing of cases. These mistakes prompted Gervickas's decision to have Rotondo review four cases passed by Miller each day, which then led to the documentation of a consistent pattern of errors on Miller's part.

Surprisingly, Miller did not focus in her questioning at hearing on proving bad faith on the part of Rotondo and Gervickas. In fact, she underscored their basic complaint: she did not have sufficient knowledge of the basic programs, processes, and regulations used by the DFAB to be an effective supervisor. With her argumentative nature,³¹ constant accusations of unfair treatment, and unwillingness to accept and absorb constructive criticism (R-22), she did not exhibit the leadership and interpersonal skills necessary to serve effectively as an FSS.

Based on the foregoing, I make the following **FINDINGS of FACT**:

1. The DFAB administers three programs: WFNJ, under which GA, TANF, and EA are delivered; SNAP; and Medicaid. Miller has been an employee of the DFAB since 2008; she was hired as an FSW and served in that capacity for most of the nine years prior to September 11, 2017, when she was promoted on a provisional basis to FSS at the DFAB office at 18 Rector Street, 4th Floor, Newark, New Jersey. Her ninety-day test period in the position of FSS concluded on December 8, 2017.
2. The duties of an FSW are to interview applicants to, and/or clients of, the DFAB; to review applications and recertifications to determine eligibility for benefits; and to forward cases to an FSS for review. FSWs are trained on the programs administered by the DFAB at the time they are hired and during each year of employment.
3. The duties of an FSS are, generally, to assign and supervise the work of specific FSWs. (R-91.) Specifically, an FSS ensures that clients are serviced in a timely, effective, and efficient manner; reviews cases submitted by FSWs to ensure compliance with State and federal regulations; provides FSWs with necessary training and resources; handles time and attendance and personnel matters; and

³¹ In her own defense, Miller wrote, "my need and ability to advocate for myself are often looked at as combativeness when I'm simply seeking recourse for the wrongdoing that took place." Br. of Appellant at 21. In anticipation of respondent's objection to my consideration of this statement on the grounds that it is testimony not subject to cross-examination, I disagree and find that with this statement, Miller is disputing other potential characterizations of evidence presented at hearing.

provides an effective communication link between the FSW staff and other agency staff and management.³² (R-91.)

4. Gervickas and Rotondo supervised Miller during her working test period. Page-Hawkins did not supervise Miller. As required by the regulations, Gervickas and Rotondo provided Miller with four written evaluations of her performance as an FSS, after thirty days, sixty days, and ninety days, and at the conclusion of her test period. N.J.A.C. 4A:4-5.4 et seq. In each of her four evaluations, Miller earned the rating "unsatisfactory" from her supervisors, a rating that was based on their personal observations of, and interactions with, Miller.
5. The evidence shows that Gervickas arranged sufficient training in the programs and policies and the applicable State and federal regulations to give Miller the tools necessary to learn how to be an effective supervisor. It is completely reasonable that Gervickas expected Miller to have a firm background in the laws and regulations governing the work of the DFAB offices, as well as the general process of passing and batching cases. Miller had worked at the DFAB for more than nine years at the time of her promotion; she had nine years' experience working with the regulations governing the benefit programs administered by the DFAB and she had, for at least the six years prior to her promotion, worked under the direct supervision of an FSS.
6. Many times during cross-examination, Miller questioned Gervickas and Rotondo as to the mistakes Rotondo found when reviewing Miller's work. Miller focused on who made the initial mistake and, of course, the answer each time was that the FSW made the initial mistake. But, the problem for Miller is that she was supposed to catch those mistakes and she did not! Both Miller and Rotondo had access to the same electronic files, but Miller either did not use them, did not know how to use them, or failed to review the cases at all—as she stated was the

³² It is noteworthy that Miller described her duties as an FSS to include making sure that her staff "kept their desks clean, make sure that they weren't fraternizing in the back in the case bank, which they did sometimes." T-4 at 158. These specific tasks are not included in the CSC Job Description. (R-91.)

modus operandi of “other” FSSs. T-4 at 156–57. During her working test period Miller did not show sufficient knowledge of the programs and policies administered by the DFAB to be an effective FSS.

7. Instead of focusing on developing and refining the interpersonal skills she would need to be an effective supervisor, Miller focused on nitpicking (changing lunch schedules, preventing fraternization) and correcting what she deemed to be a lack of discipline. Miller had an opportunity during her ninety-day test period to develop collaborative and respectful relationships in her new office,³³ and to ensure that she mastered the work she was promoted to supervise. She did not make the best use of that opportunity and did not satisfactorily perform the duties of the FSS position.
8. Miller did not present evidence that the testimony of Gervickas as the administrative supervisor of the DFAB office at 18 Rector Street, Newark, New Jersey, regarding her personal observations of Miller's work performance during her working test period was untrue or motivated by personal interest, bias, or other inappropriate reasons.³⁴ Miller did not present evidence that the testimony of Rotondo as Miller's direct supervisor at the DFAB office at 18 Rector Street, Newark, New Jersey, regarding her personal observations of Miller's work performance during her working test period was untrue or motivated by personal interest, bias, or other inappropriate reasons. The documentary evidence in this matter, particularly the Case Correction Review Sheets that Miller created, corroborate Miller's poor work performance. The multitude of grievances filed by and against Miller, and the extensive documentary record compiled by both respondent and appellant during the period between September 11, 2017, and December 8, 2017, corroborate the failure of Miller to perform adequately in the areas of personal relations and supervisory effectiveness.

³³ Rotondo stated that Miller disagreed with her on almost every issue that came up during Miller's tenure. Rotondo said, "You can have a difference of opinion, but you're there to learn from your supervisors. And if they give you a directive, you should follow it." T-7 at 196.

³⁴ Miller argues that the proof of Gervickas's pre-existing bias against her is Gervickas's failure to support her vis-à-vis Miller's subordinates and coworkers. Br. of Appellant at 8.

LEGAL ANALYSIS AND CONCLUSIONS

One of the objectives of the Civil Service Act, N.J.S.A. 11A:1-1 to -12.6 (the Act), is to obtain an efficient public service by merit appointments with broad tenure protection to all appointees in the classified service. Mastrobattista v. Essex Cty. Park Comm'n, 46 N.J. 138 (1965). However, before an employee receives such tenure protection, an appointing authority is permitted to observe a newly-appointed employee during a working test period. N.J.S.A. 11A:4-13(a).

The purpose of a working test period is

to permit an appointing authority to determine whether an employee satisfactorily performs the duties of a title. A working test period is part of the examination process which shall be served in the title to which the certification was issued and appointment made.

[N.J.S.A. 11A:4-15.]

Pursuant to the Act, the CSC adopted regulations which provide that during the working test period, an employee shall perform the duties of the title for which appointment was made, N.J.A.C. 4A:4-5.1(c), the period shall be three months for local employees, N.J.A.C. 4A:4-5.2(b)(1), the employer must provide the probationary employee with progress reports at the end of two months and at the end of the test period, N.J.A.C. 4A:4-5.3(a), and notice of termination must be provided to the employee following the last day of the test period. N.J.A.C. 4A:2-4.1(c).

"A fair evaluation period is further evidenced by the giving of guidance and advice due to a probationer, as well as a notification of any deficiencies in performance." Sokolowsky v. Twp. of Freehold, 92 N.J.A.R.2d (CSV) 155, 157; Davis v. Newark Pub. Library, 9 N.J.A.R. 84, 87-88 (Merit Sys. Bd. 1986). In this regard, the CSC has consistently emphasized the necessity on the part of an appointing authority to comply with the regulatory requirements governing the provision of progress reports. The progress reports required by N.J.A.C. 4A:4-5.3 are a means of notice to an employee in the working test period that his performance is unsatisfactory so that the employee has an opportunity to improve specified

performance deficiencies toward completing a successful working test period and attaining permanent appointment.

In an appeal from an employee's termination at the conclusion of a working test period, the employee shoulders the burden of proving that the appointing authority's "action was in bad faith." N.J.A.C. 4A:2-4.3(b). If bad faith is found, the employee is entitled to a new full or shortened working test period and, if appropriate, other remedies. N.J.A.C. 4A:2-4.3(c). The basic test is whether the appointing authority exercised good faith in determining that the employee was not competent to perform satisfactorily the duties of the position. See, Briggs v. Dep't of Civil Serv., 64 N.J. Super. 351, 356 (App. Div. 1960); Devine v. Plainfield, 31 N.J. Super. 300, 303-04 (App. Div. 1954); Lingrell v. N.J. Civil Serv. Comm'n, 131 N.J.L. 461, 462 (1944). In general, good faith has been defined as meaning "honesty of purpose and integrity of conduct with respect to a given subject." Smith v. Whitman, 39 N.J. 397, 405 (1963). As stated in Schopf v. New Jersey Department of Labor, 96 N.J.A.R.2d (CSV) 853, 857:

No set rule may be formulated when attempting to determine whether an employee's termination at the end of the working test period was based on opinions of the appointing authority formed in good or bad faith. If the opinion is formed based upon actual observations of the employee's performance of the duties of the position, and is an honest assessment as to whether the employee will be able to satisfactorily and efficiently perform those duties if the appointment becomes permanent, it must be considered to have been made in good faith. If, on the other hand, the decision to terminate is not based upon actual observations of performance, or if it is made based upon dishonest motives, is based on bias, prejudice or self-interest, or is made with ill will toward the employee or because of some furtive design, it must be set aside. . . . It is only required that the opinion be based on actual observations and that those observations form a rational basis for the opinion.^[35]

³⁵ The termination of an employee in situations in which the appointing authority has failed to provide progress reports or other notice has been found to be demonstrative of a lack of good faith and a denial of a fair evaluation of the employee's work performance. See, Sokolowsky, 92 N.J.A.R.2d (CSV) at 157 (employee who had received only verbal criticism from his supervisor during his working test period and never had the impression that his supervisor was unsatisfied with his work was entitled to full new working test period).

There are no reported decisions in cases appealing agency decisions at the end of a working test period where the courts have specifically defined what is meant by "good faith" or "bad faith." In a non-Civil Service case, the New Jersey Supreme Court defined "good faith" to mean honesty of purpose and integrity of conduct with respect to a given subject. Smith v. Whitman, 39 N.J. 397 (1963). More recently, the Appellate Division defined "bad faith" as the antithesis of good faith, which must be a thing done dishonestly; "bad faith" contemplates a state of mind affirmatively operating with a furtive design or some motive of interest or ill-will. Lustrelon, Inc. v. Prutscher, 178 N.J. Super. 128, 144 (App. Div. 1981).

Based on the above, it appears that for respondent's decision to return Miller from her position as an FSS to her former title of FSW to be considered to have been made in good faith, it must (1) have been formed based upon actual observations of Miller's performance of the duties of an FSS, and (2) be an honest assessment as to whether Miller would have been able to satisfactorily and efficiently perform those duties if she were made permanent in the title of FSS. If, however, respondent's decision was not based upon actual observations of Miller's performance, or if it was made based upon dishonest motives, bias, prejudice, or self-interest, or with ill-will toward Miller or because of some furtive design, it must be set aside. The use of the good-faith standard also implies that if respondent's decision was made in good faith, the fact that the CSC may not have decided the question in the same way is of no import. It is only required that the opinion be based on actual observations and that those observations form a rational basis for the opinion.

While Miller began her testimony with the promise that she would show that Gervickas and Page-Hawkins conspired against her to ensure that she would fail in her working test period, Miller did not prove that Gervickas and/or Page-Hawkins intended for Miller to fail and/or took steps to ensure that Miller would fail.³⁶ It is not enough to allege a conspiracy fueled by racial bias and personal animus. Miller made the accusations but presented no evidence to back them up, other than an unauthenticated text that alluded to unsubstantiated

³⁶ Miller states that proof of respondent's intention for her to fail is that Gervickas, Rotondo, Page-Hawkins, and Jackson gave her no support and never investigated her problems and/or did not include her in such investigations if they occurred. Br. of Appellant at 2. The other evidence is that two of her coworkers at South Clinton Street were promoted to FSS at the same time, but not moved to the Rector Street office. Id. at 3. As noted above, the record supports neither contention.

office gossip. Miller did not prove, through evidence and/or testimony, that respondent acted in bad faith in its conclusion that Miller did not satisfactorily perform the duties of an FSS during her ninety-day working test period.

The excessive use of memos may have been partly to blame for a corrosive work environment, but Miller was part of the problem here. As she states in her brief, "Whenever I would issue a memo to a unit member, I would subsequently receive a memo from [Gervickas or Rotondo]." Br. of Appellant at 2. The memos Miller authored also served to document her failings in the performance of her job. More than anything else, Miller came into the position of FSS without sufficient knowledge of the programs being administered by the DFAB, and the errors she made consistently through her test period created extra work for her staff and her supervisors, and may have led to mistakes in the award of, or the refusal to award, benefits to agency clients.

As discussed above, the testimony of respondent's witnesses was credible and established that Miller's demotion was based on her poor work performance during her working test period. There is no evidence in the record that respondent's determination was anything other than an honest assessment as to whether Miller would have been able to satisfactorily, efficiently, and effectively perform the duties of an FSS should her appointment have been made permanent. Therefore, I **CONCLUDE** that respondent's action in returning appellant to the title of FSW at the end of her working test period in the title of FSS was correct and should be **AFFIRMED**.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that respondent's decision to return appellant to the title of family service worker is **AFFIRMED** and appellant's appeal is **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.

February 13, 2019

DATE


TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

February 13, 2019

Date Mailed to Parties:

February 13, 2019

nd

APPENDIX

WITNESSES

For Appellant:

Alexis Miller
Daria Rotondo
Tanya Yarrell
Sparkle Myrie

For Respondent:

Nancy Gervickas
Courtney Gaccione

EXHIBITS

For Appellant:³⁷

- A-1 Cases Submitted Daily for Administrative Review, dated September 28, 2017 through December 6, 2017
- A-2 Email from Appellant to Ricky Restaino, Supervisor, Concerning FSW and FSS Interaction, dated September 18, 2017
- A-3 Memos Sent to Appellant's Unit Members and Coworkers, dated September through December 2017
- A-4 Email from Appellant to Nancy Gervickas, ASFS, Concerning SNAP FD-615 Case Not Completed and Untimely, dated October 20, 2017
- A-5 Email from Jeanette Page-Hawkins to Appellant Concerning Results of Meeting Held on November 8, 2017
- A-6 Email from Nancy Gervickas to Appellant Concerning FD-615 Reports, Run Date October 17, 2017

³⁷ The references to appellant's exhibits in the transcripts dated May 31, July 10 and 11, 2019, may not correspond to this list as appellant did not revise the markings on her exhibits as directed in the prehearing order until after the hearing on July 11, 2019.

- A-7 Memo from Nancy Gervickas to Appellant, SNAP FD-615 Case Not Completed and Untimely, dated October 20, 2017
- A-8 Memo from Nancy Gervickas to Appellant, SNAP Error C123915-K.G., dated October 27, 2017
- A-9 Memo from Nancy Gervickas to Appellant, SNAP Error C123915-K.G.-3rd Notice, dated October 30, 2017
- A-10 Memo from Nancy Gervickas to Appellant, SNAP Error C123915-K.G.-5th Notice, dated November 1, 2017
- A-11 Memo from Nancy Gervickas to Appellant, SNAP Error C123915-K.G.-6th Notice, dated November 2, 2017
- A-12 Email from Kareemah Lucas to All DFAB Users Concerning CRM-Unable to Edit Notes, dated April 12, 2018
- A-13 Email to Carol Perkins from Appellant Concerning Not Attending Meeting, dated November 1, 2017
- A-14 Email from Appellant to Nancy Gervickas Concerning David Weiner's Unannounced Visit, dated September 27, 2017
- A-15 Supervisor of the Day Schedule, October 2017
- A-16 Email from Caroline Jones to Appellant, Nancy Gervickas, Daria Rotundo, Concerning Chain of Command, dated September 27, 2017
- A-17 Letter from Carol Perkins, President of Public Employees Supervisor's Union, Advising that Depending on the EEOC's Decision, Appellant May Make Another Request to the Executive Board for the Assistance of a Union Attorney, dated October 24, 2017
- A-18 County of Essex Discrimination Harassment Complaint Form/Report, Asya Johnson, FSW, and Narcisa DeGracia, FSW, dated October 16, 2017, and Supporting Documents
- A-19 County of Essex Discrimination Harassment Complaint Form/Report, Nancy Gervickas, ASFS and Daria Rotundo, AASFS, dated October 16, 2017, and Supporting Documents
- A-20 County of Essex Discrimination Harassment Complaint Form/Report, Jeanette Page-Hawkins, Director, dated October 16, 2017, and Supporting Documents

- A-21 County of Essex Discrimination Harassment Complaint Form/Report, Dante Stuckey, FSW, Lisa Williams, FSW, and Katrina Morton, FSW, dated October 16, 2017, and Supporting Documents
- A-22 Email from Nancy Gervickas to Appellant Regarding Evaluation Meeting, dated December 8, 2017
- A-23 Screenshot of Text Messages Between Appellant and Sparkle Myrie, dated May 11 2018
- A-24 Civil Service Test, Family Services Supervisor's List
- A-25 Screenshot of Text Messages Between Appellant and Tanya Yarrell, dated May 14, 2018
- A-26 C. Adams, Bank Cases Log Sheets, dated September 15, 2017 through December 8, 2017
- A-27 Memo from D. Rotondo, AASFS, to Appellant, Regarding Following Directives, dated September 25, 2017
- A-28 Memo from Daria Rotondo, AASFS, to Appellant, Regarding Case Bank Procedures dated October 4, 2017
- A-29 Memo from Nancy Gervickas, Administrative Supervisor of Family Services, to Appellant, Regarding Supervisory Concerns and Areas Requiring Improvement, dated October 4, 2017
- A-30 Memo from Nancy Gervickas, Administrative Supervisor of Family Services, to Appellant, Regarding Hours of Work, dated October 12, 2017
- A-31 Memo from Nancy Gervickas, Administrative Supervisor of Family Services, to Appellant, Regarding Case Bank Log and Incomplete Cases, dated October 17, 2017
- A-32 Memo from Daria Rotondo, AASPS, to Appellant, Regarding Case Reviews, dated October 20, 2017
- A-33 Case Corrections to Appellant from Daria Rotondo, dated October 25, 2017
- A-34 Memo from Nancy Gervickas, Administrative Supervisor of Family Services, to Appellant, Regarding Hours of Work and Attendance, dated November 1, 2017
- A-35 Memo from Appellant to Ms. Rotundo, AASFS, Regarding Favoritism and Mismanagement, dated September 25, 2017

- A-36 Memo from Appellant to Daria Rotundo[sic], AASFS, Regarding GA Reviews Memo Issued on November 6, 2017, dated November 6, 2017
- A-37 Case Correction Return Sheet, Worker: Angel, WFNJ-15 needed for GA Approval, dated October 25, 2017
- A-38 Email from Appellant to Jeanette Page-Hawkins, Regarding Conspiring for Demotion of Ms. Miller (confidential), dated October 5, 2017
- A-39 Screenshot of Text Messages Between Appellant and Passion, dated December 27, 2017
- A-40 Email from Appellant to Carol Perkins, Union President, Regarding Discrimination, and Email from Appellant to Nwabueze Brooks Regarding Meeting, dated September 25, 2017
- A-41 FSS Supervisory Challenge Schedule, dated September 13, 2017
- A-42 Appellant's Notes, dated September 11, 2017 through September 13, 2017
- A-43 Not entered
- A-44 Memorandum from Jeanette Page-Hawkins, Division Head, County of Essex, Department of Citizen Services, Division of Family Assistance and Benefits-Administrative Offices, to Appellant, Regarding Reassignment, dated August 31, 2017
- A-45 Department of Citizen Services, Thirty Day Evaluation/Probationary Employees, Three Month Rating Period September 11, 2017 to October 10, 2017, dated October 10, 2017; Amended Copy dated November 9, 2017; Three Month Rating Period November 11, 2017 to December 10, 2017 (given on December 8, 2017), dated December 8, 2017; and Three Month Rating Period September 11, 2017 to December 10, 2017 (given on December 8, 2017), dated December 8, 2017
- A-46 Division of Welfare, Annual Performance Appraisal Form, dated July 21, 2017; Appellant's Rebuttal to Ms. Thomas, dated July 28, 2017
- A-47 Copy of Batch U819984 that Appellant Passed, dated October 11, 2017
- A-48 Copy of Case that Appellant Passed, dated October 11, 2017
- A-49 Copy of Batch U900105 that Appellant Passed, dated October 12, 2017
- A-50 Copy of Batch A819953 that Appellant Passed, dated October 12, 2017
- A-51 Case Correction Return Sheet, Worker: Angel, dated October 20, 2017

- A-52 Case Correction Return Sheet, Worker: Williams, dated October 25, 2017
- A-53 Case Correction Return Sheet, Worker: Angel, dated October 25, 2017
- A-54 through A-56 Not entered
- A-57 Case Correction Return Sheet, Worker: Tate, dated October 25, 2017
- A-58 Case Correction Return Sheet, Worker: Angel, dated October 4, 2017
- A-59 Copy of Batch U819958 that Appellant Passed, dated October 4, 2017
- A-60 Copy of Batch U819964 that Appellant Passed, dated October 4, 2017
- A-61 Copy of Batch U819993 that Appellant Passed, dated October 17, 2017
- A-62 Copy of Batch U819953 that Appellant Passed, dated October 3, 2017
- A-63 Copy of Batch U900105 that Appellant Passed, dated October 13, 2017
- A-64 Copy of Batch U819995 that Appellant Passed, dated October 18, 2017
- A-65 Copy of Batch U819954 that Appellant Passed, dated October 3, 2017
- A-66 Memo from Appellant to Daria Rotondo, AASFS, Regarding Case Numbers, dated October 17, 2017
- A-67 County of Essex, Department of Citizen Services, Division of Welfare, Blank Inter-Office Transfer of Case Record
- A-68 Photograph of Appellant's Computer Screen
 - a. Emails Between Appellant and Director Jeanette Page-Hawkins, Regarding Moving a Meeting Sooner Than October 12, 2017, Daria Rotondo and Nancy Gervackis Treating Appellant in a Racist and Discriminatory Manner, dated October 10, 2017 and October 11, 2017

For Respondent:

- R-1 First Thirty-Day Evaluation for Appellant, dated October 10, 2017
- R-2 Case Error. dated September 21, 2017
- R-3 Case Error, dated September 22, 2017
- R-4 Case Error, dated September 22, 2017
- R-5 Case Error, dated September 25, 2017
- R-6 Case Error, dated September 25, 2017
- R-7 Case Error, dated September 25, 2017
- R-8 Case Error, dated September 25, 2017

- R-9 Email from Nancy Gervickas to Appellant Regarding Delinked Programs, dated September 26, 2017
- R-10 Case Error, dated September 28, 2017
- R-11 Email from Nancy Gervickas to Appellant Regarding Submission of Cases for Review, dated September 28, 2017
- R-12 Email from Nancy Gervickas to KC Unit Regarding September 28 Meeting, dated September 28, 2017
- R-13 Memo from Appellant to Nancy Gervickas with List of Cases, dated September 29, 2017
- R-14 Case Error (same case as R-13), dated October 2, 2017
- R-15 Case Error (same case as R-13), dated November 1, 2017
- R-16 Email from Nancy Gervickas to Appellant Regarding ABAWD Denial Letter, dated October 2, 2017
- R-17 Email from Nancy Gervickas to Appellant Regarding Weekly October Coaching Sessions, dated October 2, 2017
- R-18 Email from Appellant to KC Unit Regarding Conferences, dated October 3, 2017
- R-19 Email from Appellant to Nancy Gervickas Regarding Cases on Mr. Stuckey's Desk, dated October 3, 2017
- R-20 Case Error, dated October 4, 2017
- R-21 Memo from Nancy Gervickas to Appellant Regarding Follow-up to October 4 Coaching Session, dated October 4, 2017
- R-22 Memo from Appellant to Nancy Gervickas, dated October 5, 2017
- R-23 Response Memo from Nancy Gervickas to Appellant, dated October 6, 2017
- R-24 Case Error, dated October 5, 2017
- R-25 Case Error, dated October 5, 2017
- R-26 Case Error, dated October 5, 2017
- R-27 Case Error, dated October 5, 2017
- R-28 Memo from C. Adams to Nancy Gervickas Regarding Appellant's September 13, 2017 Shadow Training, dated October 6, 2017
- R-29 Oral Reprimand Discipline for Appellant, dated October 11, 2017

- R-30 Email Complaint Regarding Appellant form Lakeisha Jones to Nancy Gervickas, dated September 14, 2017
- R-31 CWA 1081 Grievance Complaint Regarding Appellant on Behalf of Michael Walker, dated September 25. 2017
- R-32 CWA 1081 Grievance Complaint Regarding Appellant on Behalf of Lisa Williams, dated September 25. 2017
- R-33 CWA 1081 Grievance Complaint Regarding Appellant on Behalf of Donte Stuckey, dated September 25, 2017
- R-34 CWA 1081 Grievance Complaint Regarding Appellant on Behalf of Gloria Angel, dated September 25, 2017
- R-35 CWA 1081 Grievance Complaint Regarding Appellant on Behalf of Kamiya Tate, dated September 25, 2017
- R-36 Complaint Regarding Appellant by Kamiya Tate, dated October 3, 2017
- R-37 Complaint Regarding Appellant by Narcisa DeGracia, dated October 5, 2017
- R-38 CWA 1081 Grievance Complaint Regarding Appellant on Behalf of Shantia Owens, dated October 6, 2017
- R-39 Second Thirty-Day Evaluation for Appellant, dated October 11, 2017
- R-40 Memo from Nancy Gervickas to Appellant Regarding SNAP Issuance Code Form, dated October 12, 2017
- R-41 Case Error, dated October 16, 2017
- R-42 Memo From Nancy Gervickas to Appellant Regarding Case Bank Log and Incomplete Cases, dated October 17, 2017
- R-43 Email From Nancy Gervickas and Appellant Regarding Passing Cases, dated October 13, 2017
- R-44 Case Error, dated October 18, 2017
- R-45 Case Error, dated October 18, 2017
- R-46 Case Error FD-615 Report, dated October 19, 2017
- R-47 Email From Appellant to Nancy Gervickas Regarding October 19 Coaching Session, dated October 19, 2017
- R-48 Case Bank Deposit Log, Case Error, dated October 19, 2017
- R-49 Administrative Review Form Case Error, dated October 20, 2017
- R-50 Case Bank Deposit Log, Case Error, dated October 20, 2017

- R-51 Memo from Nancy Gervickas to Appellant Regarding SNAP FD-615 Case Not Completed and Untimely, dated October 20, 2017
- R-52 Email from Nancy Gervickas to Appellant Regarding Backlog Cases/ Training on October 23 and October 24, 2017, dated October 20, 2017
- R-53 Administrative Review Form, Case Error, dated October 23, 2017
- R-54 Administrative Review Form, Case Error, dated October 23, 2017
- R-55 Email from Nancy Gervickas and Appellant Regarding Mr. Walker's Time and Attendance Requests, dated October 25, 2017
- R-56 KC Unit Vacation Carry Over Request and Other Time and Attendance Requests
- R-57 Email From Nancy Gervickas and Appellant Regarding Dante Stuckey's Time Requests
- R-58 KC Unit Time Requests
- R-59 Email From Nancy Gervickas and Appellant Regarding FD-615 Report, dated October 27, 2017
- R-60 Memo from Nancy Gervickas to Appellant Regarding SNAP Error, dated October 27, 2017
- R-61 Written Reprimand Discipline for Appellant, dated October 27, 2017
- R-62 Email from Nancy Gervickas to Appellant Regarding November Coaching Sessions, dated October 30, 2017
- R-63 Memo from Nancy Gervickas to Appellant Regarding Hours of Work, Attendance, and Lists of Cases without Proper Log, dated November 1, 2017
- R-64 Memo from Nancy Gervickas to Appellant Regarding House of Work and Cell Phone Use, dated November 1, 2017
- R-65 Email from Appellant to Daria Rotondo/Nancy Gervickas Regarding Sick Day, dated November 1, 2017
- R-66 Complaint by Kamiya Tate About appellant, dated October 11, 2017
- R-67 Memo from Kamiya Tate to Nancy Gervickas About Appellant, dated October 18, 2017
- R-68 CWA 1081 Class Action Grievance Complaint About Appellant on Behalf of KC Unit, dated October 19, 2017

- R-69 Email Complaint About Appellant by Gloria Denise Angel and Memo Requesting Consult, dated October 19, 2017
- R-70 Lisa Williams Memo to Appellant Requesting Consultation, dated October 20, 2017
- R-71 Memo from Kammiya Tate to Nancy Gervickas, Complaint About Appellant, dated October 25, 2017
- R-72 Memo from Gloria Angel to Appellant, Complaint About Communication, dated October 26, 2017
- R-73 Memo from Lisa Williams to Appellant Regarding Communication and Review of Cases, dated October 31, 2017
- R-74 Memo from Ms. Adeyemi to Appellant Regarding Lack of Communication, dated October 31, 2017
- R-75 Memo from Kamiya Tate to Gervickas Regarding Complaint About Appellant, dated October 31, 2017
- R-76 Memo from Lisa Williams to Appellant Regarding Reviewing Cases, dated October 31, 2017
- R-77 Complaint by Lisa Williams Against Appellant, dated November 1, 2017
- R-78 Memo from Gloria Angel to Appellant Regarding Retaliation and Lack of Communication, dated November 1, 2017
- R-79 Memo from KC Unit to Nancy Gervickas Regarding Complaint About Appellant Case Bank Process/Policy, dated November 1, 2017
- R-80 Email from Page Hawkins to Appellant, Nancy Gervickas, Daria Rotondo, etc., Regarding November 8, 2017 Meeting, dated November 9, 2017
- R-81 Third Thirty-Day Evaluation for Appellant, dated December 8, 2017
- R-82 Memo to Appellant File by Nancy Gervickas Regarding Failure to Follow Out of Office Procedures, dated November 27, 2018
- R-83 Case Deposit Log, Case Error, dated December 1, 2017
- R-84 Nancy Gervickas Review of Appellant Case Review (R-83), dated December 5, 2017
- R-85 Memo to Appellant File by Nancy Gervickas Regarding Failure to Follow Directives Relating to Confidential Client Information, dated December 5, 2017

- R-86 Time and Attendance
- R-87 Lisa Maddox Email Regarding Supervisory Training, dated September 18, 2017
- R-88 Three-Month Evaluation Summary, dated December 8, 2017
- R-89 Report on Progress of Probationer, Appellant, Unsatisfactory, dated December 8, 2017
- R-90 Letter to Appellant Regarding Unsatisfactory Rating for Working Test Period, dated December 8, 2017
- R-91 Family Service Supervisor Job Specification
- R-92 through R-95 Not entered
- R-97 Daria Rotondo's Review of Appellant's Case Review, dated September 29, 2017
- R-98 Not entered
- R-99 Daria Rotondo's Review of Appellant's Case Review, dated October 3, 2017
- R-100 Daria Rotondo's Review of Appellant's Case Review, dated October 4, 2017
- R-101 Daria Rotondo's Review of Appellant's Case Review, dated October 5, 2017
- R-102 through R-105 Not entered
- R-106 Daria Rotondo's Review of Appellant's Case Review, dated October 11, 2017
- R-107 Appellant Case Error, dated October 11, 2017
- R-108 Appellant Case Error, dated October 12, 2017
- R-109 Not entered
- R-110 Daria Rotondo's Review of Appellant's Case Review, dated October 13, 2017
- R-111 through R-121 Not entered
- R-122 Daria Rotondo's Review of Appellant's Case Review, dated October 30, 2017
- R-123 through R-133 Not entered
- R-134 Daria Rotondo's Review of Appellant's Case Review, dated November 17, 2017
- R-135 through R-148 Not entered
- R-149 Human Resources' Handwritten Response to Appellant's Complaint, dated November 12, 2017
- R-150 Appellant's Email to habdul-rasheed@comcast.net