



STATE OF NEW JERSEY

In the Matter of Victor Sanchez
 Town of West New York, Department
 of Parks and Public Property

DECISION OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-2795
 OAL DKT. NO. CSV 05728-18

ISSUED: MAY 22, 2019 BW

The appeal of Victor Sanchez, Laborer 1, Town of West New York, Department of Parks and Public Property, removal effective October 23, 2017, on charges, was heard by Administrative Law Judge Kelly J. Kirk, who rendered her initial decision on April 18, 2019 reversing the removal. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, the Civil Service Commission (Commission), at its meeting on May 22, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

Since the charges have been dismissed, the appellant is entitled to mitigated back pay, benefits, and seniority and reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Victor Sanchez. The Commission further orders that appellant be granted back pay, benefits, and seniority from October 23, 2017 to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22ND DAY OF MAY, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 05728-18

AGENCY DKT. NO. 2018-2795

**IN THE MATTER OF VICTOR SANCHEZ,
TOWN OF WEST NEW YORK, DEPARTMENT
OF PARKS AND PUBLIC PROPERTY .**

Joseph H. Neiman, Esq., for appellant Victor Sanchez

**Michael DiFazio II, Esq., for respondent Town of West New York (DeCotiis,
FitzPatrick, Cole & Giblin, attorneys)**

Record Closed: January 30, 2019

Decided: April 18, 2019

BEFORE KELLY J. KIRK, ALJ:

STATEMENT OF THE CASE

The Town of West New York (the Town or West New York) Department of Parks and Public Property (DPPP) terminated laborer Victor Sanchez for insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause.

PROCEDURAL HISTORY

On or about October 23, 2017, the West New York DPPP served Sanchez with a Preliminary Notice of Disciplinary Action (PNDA), charging him with insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. (R-1.) A departmental hearing was not held, and all charges were sustained. (R-2.) On or about March 5, 2018, West New York served Sanchez with a Final Notice of Disciplinary Action (FNDA), terminating him effective October 23, 2017. (R-2.)

Sanchez appealed, and the Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 to the Office of Administrative Law (OAL), where it was filed on April 23, 2018. The hearing was scheduled for August 24, 2018. The parties requested adjournment of the hearing date to continue to engage in settlement negotiations. The parties confirmed awareness of potential back-pay issues and the hearing date was adjourned. The parties were unable to settle, and the hearing was held on November 9, 2018. The record remained open for post-hearing submissions and closed on January 30, 2019.

FACTUAL DISCUSSION

James Cryan testified on behalf of West New York. Victor Sanchez, via translator, testified on his own behalf.

Background

I **FIND** the following preliminary **FACTS** in this case:

Sanchez began working as a laborer for the West New York DPPP in July 2015. Initially he was classified as part-time and was an evening security guard. He became a full-time employee in July 2016, working as a laborer in the DPPP.

There were approximately fifty employees in the DPPP, approximately seven or eight of whom were laborers. The laborers' duties and responsibilities included building maintenance for Town-owned public buildings, and maintenance of sixteen fields and parks. Sanchez's immediate supervisor was Luis Kano, and his commissioner was Margarita Guzman.

In December 2016, Sanchez injured his shoulder at work. He went to physical therapy and continued to work, not on restricted duty, but ultimately had surgery in April 2017. After the surgery he was out of work until September 5, 2017. On September 15, 2017, he reinjured his shoulder at work.

Sanchez visited Angeline Macalalag, FNP, of North Hudson Community Action Corporation Health Center, on September 16, 2017, on which date his diagnoses included right-shoulder pain. On that date, Sanchez was provided with an excuse slip to excuse him from work from September 16, 2017, to September 25, 2017, for his right shoulder. (P-2.)

Sanchez visited Angeline Macalalag/Mapa, APN, on September 27, 2017, on which date he was provided with a prescription blank stating, "Pls excuse pt from work due to con't (R) shoulder pain until October 6, 2017." (P-3.)

Sanchez visited Angeline Macalalag/Mapa, APN, on October 11, 2017, on which date he was provided with a prescription blank stating, "Pls excuse from work from Oct 7–Nov 7, 2017 due to cont. (R) shoulder pain. Pt needs to see PT & ortho for further eval of this pain." (P-4.)

On October 12, 2017, at 1:26 p.m., Yesenia "Jennie" Delrio (aide to DPPP commissioner Margarita Guzman) sent an email about Sanchez to Kelly Schweitzer (human resources clerk), with a copy to Guzman and James Cryan (West New York business administrator), stating, in pertinent part, as follows:

As per my conversation with Commissioner Guzman, according to Victor Sanchez last doctor's note he was

supposed to return to work on October 6. I reached out to him via text on Saturday, October 7 to see if he was going to commence work. He replied that he had gone to his doctor and she told him to return on October 11 that she was very busy and that she will then give him a note to cover him from the 6th to the 11th. As of today, I have not yet heard from him. Please advise[.] Thank you.

[R-12.]

On or about October 17, 2017, Sanchez completed an application for temporary disability, reflecting that the first day he became unable to work due to disability for right-shoulder pain was September 15, 2017. (P-5.) The Medical Certificate accompanying the application reflects that his diagnosis was: "(R) shoulder tear anterior fibers of supraspinatus; (R) shoulder pain." (P-5.)

Article IV, "Sick Leave," of the Employee Handbook (P-6) reflects the following:

B. Reporting of Absence on Sick Leave

1. If an employee is absent for reasons that entitle him or her to sick leave, his or her supervisor shall be notified by the employee's starting time.
2. Failure to so notify his/her supervisor or his/her designee for any day during that calendar year may be cause of denial of the use of sick leave for that absence and constitute cause for disciplinary action.

C. Verification of Sick Leave

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2. An employee who shall be absent on sick leave for three (3) or more consecutive work days during any calendar year shall submit acceptable medical evidence substantiating the illness. The Town may require proof of an illness of an employee on sick leave. Abuse of sick leave shall be cause for disciplinary action.

Additionally, Article XVIII, "Special Provisions—Public Works and Parks Department," reflects, in pertinent part, the following: "C. In the event of absence for sickness, or any other reason, the employee shall make one (1) phone call to the Public Works Department, which shall be recorded on a telephone answering service." (P-6.)

Sanchez has no prior disciplinary history.

Testimony

James Cryan

Cryan testified that October is a very busy month for the Town because the football and soccer fields require maintenance and because the Town hosts the statewide Hispanic Day Parade, participates in Paint the Town Pink for breast-cancer awareness, and holds a fall feast. The Town needs all laborers working in October. Due to budget constraints, that department is already short-staffed, so if a laborer is out sick, calling other laborers on their day off or asking laborers to work longer hours creates overtime issues. Services are disrupted when an employee does not communicate or show up for work.

Delrio texted Sanchez to determine whether he was returning to work. This was not the normal process, and was done because in the past there had been issues with Sanchez contacting the Town, and they tried to be proactive to avoid such a situation.

Policy requires that if an employee is going to be out sick, the employee must notify the supervisor that day. Cryan was not aware that the Town ever authorized sick leave for Sanchez. Other than from Delrio's email, Cryan was not aware if anyone had spoken to Sanchez during the time in question, and he testified as follows:

Q. Did you speak to everybody that he would have spoken to, to find out if he contacted anyone?

A. Is there anybody in particular that you're talking about?

- Q. I just want to know if you spoke with anybody.
- A. It's a tough question for me to answer exactly. Did I speak with anybody?
- Q. Did you speak with anybody in the administration that Victor would have called to say that I'm not coming in.
- A. I probably did.
- Q. You probably did?
- A. Yeah, I mean I can't say exactly because you're not saying anything specific.
- Q. Okay. What part of did you speak with anyone isn't specific enough for you to understand?
- A. Anyone is a very broad term.
- Q. I understand, but I'm talking about in the administration. Any people that Victor would have contacted. You say it's very broad. How many people would Victor have contacted in the administration here to tell them that he wasn't coming in?
- A. I don't know.

Cryan later testified that there were approximately five different people, including payroll, the human resources clerk, or the commissioner, that Sanchez could have contacted to advise he was not returning to work. Cryan further testified that he had spoken to each of the five people, but did not know the exact date.

Cryan testified that Sanchez was not deemed to have "excessive absences," because that would be for absences without medical excuses.

Per Sanchez's collective-bargaining-agreement employment contract, Sanchez would notify Kano or payroll if he were going to be out. Kano was not copied on the email from Delrio, but Kano is generally out on the road working, and Delrio would be in the office and the one contacted. Cryan was unable to specify what individual Sanchez would

have to call if he were out, indicating that could be payroll or human resources or his supervisor. Cryan testified that he verified that Sanchez had not called any of the three.

Cryan acknowledged that the Town had received written medical excuses for all of Sanchez's absences, but believed most of the medical notes were presented well after the dates of absence.

Cryan was aware that Sanchez reinjured his shoulder while working. Cryan agreed that once out sick, a doctor's note was required to return, so Sanchez could not have come back to work if he could not obtain a doctor's note. If Sanchez did not have a doctor's note reflecting that he would be out for two weeks, he would have to call daily to advise that he would be out each day.

Victor Sanchez

On September 15, 2017, Sanchez reinjured his shoulder at work, picking up garbage bags that were too heavy. That night, Sanchez tried to call Kano several times, to no avail. On September 16, 2017, at 6:00 a.m., Sanchez texted Kano that he had been injured and was in pain all evening and that he would not be able to work that day because he had to see his doctor. Sanchez went to the doctor on September 16, 2017, and afterward he hand-delivered the summary and excuse slip to Olga in payroll. She made Sanchez a copy and he provided a copy to Delrio, the secretary at the DPPP. Kano called Sanchez on September 16, 2017, at 11:36 p.m., but Sanchez had taken pain medication and was sleeping.

Sanchez advised Kano, payroll, and the DPPP that he reinjured himself. Sanchez was out from September 16, 2017, to September 25, 2017. He returned to the doctor on September 27, 2017. He was still very much in pain and not able to work. The doctor gave him a note excusing him from work until October 6, 2017. On his way home from the doctor, he stopped and provided the note to payroll and to the DPPP. Sanchez testified that the note excused him from work through October 6, 2017, so he was to return on October 7, 2017.

On October 6, 2017, he spoke to Delrio, and he could hear Guzman in the background. They were calling to tell him he was supposed to return to work that day. He told Delrio that the excuse note included October 6, 2017. Later that day, Sanchez went to the doctor's office, but the doctor was very busy and did not have time to see him. Normally, there is no specific doctor at that clinic, just whoever is on duty, but since that specific doctor was covering his case, she was the person he was to see. He was asked to return on October 11, 2017. Thereafter, he went to Town Hall and spoke to Delrio and to payroll and advised them that the doctor had been unable to see him, and he could not get an appointment until October 11, 2017. Payroll advised him that he could not return to work without a note allowing him to return to full duty, because they did not have light duty.

Sanchez went to the doctor on October 11, 2017, and obtained another medical-excuse note, which he hand-delivered to Olga in payroll and to the DPPP. He also had the doctor complete a disability form while he was there, which form he also provided to the Town.

Sanchez's work schedule was Wednesday through Sunday. He was off on Mondays and Tuesdays. Monday, October 9, 2017, was Columbus Day, a holiday. If a holiday falls on a Monday, his scheduled day off, he would get Monday, Tuesday, and Wednesday off.

Sanchez was out of work from October 6, 2017, to October 23, 2017, on temporary disability.

Sanchez denied receipt of a text from Delrio on or about October 12, 2017. He did speak to Delrio on October 6, 2017. She told him that she was sorry, but he did not have any more personal or sick days and was not getting any compensation. Sanchez testified that he has always maintained communication with Kano and Guzman if he was taking a day off for sickness or injury. Sanchez spoke with Kano on October 8, 2017. Kano and Delrio knew he would not be able to see the doctor until October 11, 2017.

Additional Findings of Fact

A credibility determination requires an overall evaluation of the testimony in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). "The 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).

From Delrio's email, the DPPP was on notice that Guzman would be out until either October 5 or October 6. There is a difference of opinion as to the first date of work, the Town being of the view that the note reflects that Sanchez was to return on October 6, and Sanchez being of the view that he was to be out through October 6. From the testimony, however, it was evident that he would not be allowed to return to work after leave without a doctor's note clearing him to return to work. He did not have such a note on October 6 or October 7. Additionally, from Delrio's email, the DPPP was also on notice as of October 7 that Sanchez was not yet returning to work, and that his doctor was going to provide a note to cover his absence through his appointment on October 11.

Sanchez testified that he provided the medical excuse obtained on October 11 to the Town on the same day. Although Delrio's email reflects that as of October 12, 2017, at 1:26 p.m., she had not heard from Sanchez, Sanchez testified that he provided the note to Olga in payroll and to the DPPP on October 11, 2017. Cryan had no firsthand knowledge relative to the notes, and his testimony was not reliable in terms of the individuals he did or did not speak to. Further, even if it had been reliable, it nevertheless would have been hearsay. Hearsay evidence is admissible in the trial of contested cases and is 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. N.J.A.C. 1:1-15.5(a). However, 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(b). Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, when there is a residuum of legal and competent evidence in the record. Weston v. State, 60 N.J. 36, 51 (1972). Sanchez disputed Cryan's testimony, and the Town did not present any testimony from Delrio, Kano, Guzman, or Olga. Accordingly, there is no credible evidence to refute Sanchez's testimony that he timely provided the documentation to the Town.

In view of the testimony, I **FIND** the following additional **FACTS**:

Sanchez reinjured his shoulder. The Town has been provided with medical excuses for every day that Sanchez was absent. Sanchez would not have been allowed to return to work without a doctor's note clearing him to do so. Sanchez's weekly work schedule was Wednesday through Sunday.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the executive branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career-service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career-service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline includes removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a),

including insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(2), (3), (6), (7), and (12).

In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Sanchez was charged with insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. The burden of proof is on West New York to prove the charges by a preponderance of the credible evidence.

N.J.A.C. 4A:2-2.3(a)(2) does not define insubordination. Black's Law Dictionary 919 (10th ed. 2014) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Likewise, N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming. However, the Appellate Division has held that conduct unbecoming a public employee is "any conduct . . . which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." Karins v. Atl. City, 152 N.J. 532, 554 (1998). What constitutes conduct unbecoming a public employee is primarily a question of law. Id. at 553.

The FNDA (R-2) states:

Your hours of work are 7:30 a.m. to 3:30 p.m., Wednesday through Sunday. You have failed to report for duty on the following dates in 2017: October 6th, 7th, 8th, 9th, 10th, 11th and 12th[.] These absences were not approved by your supervisor. You informed your supervisor you would be returning to work on October 6th. You were absent for seven (7) consecutive working days without the approval of your supervisor. This is considered abandonment of your position.

With respect to the issue of "abandonment," N.J.A.C. 4A:2-6.2(b) provides that "[a]ny employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing." Similarly, N.J.A.C. 4A:2-6.2(c) provides that "[a]n employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. In either situation, the request for extension of leave shall not be unreasonably denied. N.J.A.C. 4A:2-6.2(b), (c). Where an employee is resigned not in good standing, the employee shall be provided with notice and an opportunity for a departmental hearing under N.J.A.C. 4A:2-2.5, and Final Notice and a right to appeal to the Civil Service Commission under N.J.A.C. 4A:2-2.8. N.J.A.C. 4A:2-6.2(d). If the resignation is reversed, the employee shall be entitled to remedies under N.J.A.C. 4A:2-2.10.

I **CONCLUDE** that the appointing authority has failed in its burden to prove insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause, and further **CONCLUDE** that no penalty should apply. There was no documentation presented reflecting any request to Sanchez for documentation. The FNDA states, "You have failed to report for duty on the following dates in 2017: October 6th, 7th, 8th, 9th, 10th, 11th and 12th," and "You were absent for seven (7) consecutive working days without the approval of your supervisor." However, Sanchez testified that since October 6, 2017 was a holiday on his regularly scheduled day off, he would have been off Monday and Tuesday as scheduled and would have been off Wednesday for the holiday. Therefore, Sanchez would not have been required to report for duty on October 6, October 7, or October 8, and would not have been absent for seven consecutive "working days" as alleged. He was not allowed to return without a doctor's note, and the Town was aware that he was not able to see the doctor until October 11, 2017. Further, it was undisputed that the Town had medical excuses for each absence, and that it was aware that Sanchez had reinjured his shoulder. Sanchez also testified that he was on temporary disability until October 23, 2017.

ORDER

I **ORDER** that the charges of insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause are **NOT SUSTAINED**, and I further **ORDER** that the penalty of removal by the appointing authority is **REVERSED** in its entirety. It is further **ORDERED** that Sanchez be awarded back pay, benefits, and seniority in accordance with the guidelines set forth in N.J.A.C. 4A:2-2.10, taking into account, however, his disability and/or workers' compensation status.

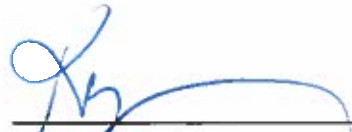
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

April 18, 2019
DATE



KELLY J. KIRK, ALJ

Date Received at Agency:

April 18, 2019

Date Mailed to Parties:
mm

APPENDIX

WITNESSES

For Appellant:

Victor Sanchez

For Respondent:

James Cryan

EXHIBITS IN EVIDENCE

For Appellant:

- P-1 Visit Summary, dated September 16, 2017
- P-2 Excuse slip, dated September 16, 2017
- P-3 Prescription blank, dated September 27, 2017
- P-4 Prescription blank, dated October 11, 2017
- P-5 Temporary Disability Insurance Application, dated October 17, 2017, and Pensionable Salary Spreadsheet
- P-6 Sick-leave policy

For Respondent:

- R-1 PNDA
- R-2 FNDA
- R-3 (Not in Evidence)
- R-4 (Not in Evidence)
- R-5 (Not in Evidence)
- R-6 (Not in Evidence)
- R-7 (Not in Evidence)
- R-8 (Not in Evidence)
- R-9 (Not in Evidence)

R-10 (Not in Evidence)

R-11 (Not in Evidence)

R-12 Email from Delrio, dated October 12, 2017