



STATE OF NEW JERSEY

In the Matter of Monica Paylor
Willingboro Township, General
Government Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2019-721
OAL DKT. NO. CSV 13856-18

ISSUED: JULY 31, 2019 BW

The appeal of Monica Paylor, Accountant, Willingboro Township, General Government Department, removal effective May 31, 2018, on charges, was heard by Administrative Law Judge Susan L. Olgiati, who rendered her initial decision on June 19, 2019. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of July 31, 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 removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Monica Paylor.

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 31ST DAY OF JULY, 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
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 13856-18

AGENCY DKT. NO. 2019-721

**IN THE MATTER OF MONICA D. PAYLOR,
WILLINGBORO TOWNSHIP, GENERAL
GOVERNMENT DEPARTMENT.**

Thomas M. Barron, Esq., for appellant (Law Offices of Thomas M. Barron,
attorneys)

Lester E. Taylor, III, Esq., for respondent (Florio Perrucci Steinhardt and Cappelli,
LLC, attorneys)

Record Closed: May 6, 2019

Decided: June 19, 2019

BEFORE **SUSAN L. OLGATI, ALJ:**

STATEMENT OF THE CASE

Appellant, Monica D. Paylor, appeals the action of the respondent, Willingboro Township, (the Township) removing her from her position as an accountant effective May 31, 2018. Appellant also makes a motion to enforcement settlement in this matter.

PROCEDURAL HISTORY

On or about May 24, 2018, appellant was served with a Preliminary Notice of Disciplinary Action (PNDA), seeking removal effective May 31, 2018. Appellant requested a departmental hearing and on August 22, 2018, she was served with a Final Notice of Disciplinary Action (FNDA) removing her from her position effective May 31, 2018. Appellant timely filed a notice of appeal, and on September 24, 2018, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13. A hearing in this matter was held on March 1, 2019. On the date of hearing, appellant's counsel made an oral motion on the record to enforce settlement. The undersigned reserved decision on the motion and proceeded with the hearing. The record remained open to allow for post-hearing written summations. On May 3, 2019, a telephone conference was held to clarify certain exhibits admitted into evidence. The judge conducted a final review of the exhibits, written summations and legal arguments and closed the record on May 6, 2019.

MOTION TO ENFORCE SETTLEMENT

As an initial matter, I address petitioner's motion to enforcement settlement.

FACTUAL DISCUSSION AND FINDINGS

The following facts are not in dispute therefore I **FIND**:

On February 25, 2019, Thomas M. Baron, counsel for appellant, contacted Lester Taylor, counsel for the Township, advising that Paylor:

...expressed interest in settling her disputes with the Township of Willingboro under the general terms that we discussed. Those terms are that the Township would withdraw the disciplinary actions against her and report that she resigned in good standing with the Township and that her record of employment would reflect those facts. In turn she would dismiss the civil action for overtime compensation pending in Superior Court. Please give me a more detailed statement of the proposed settlement so I can confirm it with her.

C-1, at pg. 3, see email sent at 6:23PM.

Later on February 25, 2019, Taylor responded, "Please forward the outstanding discovery per the courts order. My office has spent substantial time preparing for trial in this matter on two occasions.¹ My client would like to review the discovery in order to assess whether to resolve this matter. Id. at pgs. 2-3, see email sent at 7:25PM. Taylor concluded, "I look forward to receiving the discovery which is due tomorrow and the proposed/draft settlement agreement so I may review with my client." Id.

On February 28, 2019, Baron emailed Taylor setting forth the specific terms of the proposed agreement and advised that he planned to appear in the OAL for the scheduled hearing in this matter unless "you tell me that this is acceptable to the Township and you contact Judge Ogliati [sic] and tell her the matter is resolved." Id. at pgs. 1-2, see email sent at 9:01AM.

Taylor emailed Baron later on February 28, 2019, advising that after reviewing the discovery with his client, "It appears as though the diploma you provided in reply to our document production request is fraudulent. We will have to proceed with the hearing." Id. at pg.1. see email from 11:07AM.

In response, Baron denied that the document was fraudulent and argued that the settlement offer "wasn't contingent on the quality of the discovery. You seem to have reneged on the settlement offer." Id. at pg.1. see email from February 28, 2019, at 11:07AM.

LEGAL ANALYSIS AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-19.1:

¹ This matter was previously scheduled for hearing on February 1, 2019, February 26, 2019, and March 1, 2019. The first hearing date was adjourned at the request of Mr. Barron. Per a status conference call held on February 1, 2019, all discovery was to completed/exchanged five days prior to the next hearing date. By letter dated February 22, 2019, Mr. Taylor advised that appellant failed to comply with the pre hearing order's discovery deadline and requested that the matter be dismissed. At a status conference held on February 22, 2019, Mr. Baron advised that he was unavailable for hearing on February 26, 2019, as he had a conflict in superior court. The February 26, 2019, hearing date was adjourned and appellant was then ordered to produce outstanding responses by the close of business on February 26, 2019.

(a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or
2. Orally, by the parties or their representatives.

(b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement. Id.

Appellant argues that counsel for the Township made a "clear and simple" offer of settlement. Upon acceptance of that offer, counsel suddenly made the offer contingent upon review of discovery. Appellant argues that this was a material change of the offer and seeks enforcement of the rescinded offer. The Township argues while the parties were in discussions regarding a potential settlement agreement, the terms of the proposed agreement were never finalized or agreed upon. I agree.

Here, the competent evidence in the record demonstrates that while the parties were engaged in settlement negotiations, the full settlement terms had not been finalized nor agreed upon. In his email, Baron acknowledged his client had "expressed an interest" in settling and as a result, requested of Taylor, a more detailed statement of "proposed settlement" so that he could "confirm same" with his client. In response, Taylor immediately made clear that he wanted to first receive the outstanding discovery responses and review same with his client to assess "whether to resolve the matter." Thus, the plain language of the communications between counsel makes clear that the terms of the settlement had never been finalized, that more detailed terms were required, and review of the proposed terms with the respective clients was necessary. Furthermore, when engaging in eleventh hour settlement negotiations initiated by appellant, respondent never waived its right to review appellant's long overdue discovery responses and was entitled to assess same to determine whether settlement remained an appropriate course of action. Finally, even if the full settlement terms had been agreed

upon, it is undisputed that the proposed agreement was never presented to the ALJ for determination as to whether or not it was voluntary, consistent with the law, and fully dispositive of all issues in controversy.

Accordingly, I **CONCLUDE** that the full settlement terms in this matter were not finalized and had not been agreed upon. I further **CONCLUDE** that the full settlement terms were never disclosed to this Administrative Law Judge for consideration. Therefore, appellant's motion to enforce settlement is **DENIED**.

Next, I address the merits of the charges against appellant.

FACTUAL DISCUSSION AND FINDINGS

I. Undisputed facts:

The following facts are not in dispute, therefore I **FIND**:

On June 26, 2007, Paylor completed an application for employment as an account clerk with the Township. (R-4). Under the educational history section of the application, Paylor indicated that she had a Bachelors of Science from NJCSU (New Jersey City State University)². Id.

In 2007, Paylor was hired by the Township as an account clerk.

Thereafter, in 2016, Paylor was promoted by the Township and permanently appointed to the position of accountant.

The job specification for the position of accountant with the Township required graduation from an accredited college or university with a Bachelor's degree including or supplemented by twenty-one credit hours in professional accounting subjects. (R-1.)

² The university has since been renamed "New Jersey City University."

On or about March 26, 2018, Jesse King, Director of Personnel, for the Township received an anonymous letter via interoffice mail making allegations against Paylor including that, "Monica did not go to college and she does not have a college degree." The letter further alleged, "She falsified her records and paid a company to make a phony transcript." (R-11.)

Paylor was served with a PNDA seeking her removal effective May 31, 2018.

Thereafter, she was served with a FNDA charging her with: Conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a) (6); Fraud; Falsification of records; and Other sufficient cause, N.J.A.C. 4A:2-2.3(a) (12). J-1.

Paylor was removed from her position effective May 31, 2018.

II. Testimony

The following is a summary of the relevant and material testimony.

For respondent:

Alfred Ramey, is Counsel to, and Open Public Records Act (OPRA) officer for, New Jersey City University (NJCU). He testified that on or about March 28, 2018, he received an OPRA request from Jesse King seeking a list of all students who graduated with a Bachelor's of Science (BS) in 1995. By letter dated April 19, 2018, Ramey responded to King's request and provided him with a list of the requested names. Paylor's name did not appear on the list. A review of the search results revealed no record of a "Monica Paylor" attending or graduating from NJCU during the indicated time frame. Thereafter, King provided Ramey with a copy of a transcript purporting to be Paylor's and asked if the transcript was accurate/had been issued by the University. Upon review, Ramey concluded that the transcript was not legitimate. As the OPRA Officer, Ramey had experience reviewing transcripts and noted that the font used for the student name and address was different from the font used on the rest of the transcript. Ramey explained that the registrar ran a search of appellant's name and social security number and found no record of her attending the

college. A search of the student ID number on the transcript provided by King, revealed that it was a legitimate student ID number but that it belonged to another student. By letter dated May 3, 2018, Ramey issued a response to King advising of his results.

Ramey also testified that prior to the hearing, counsel for respondent provided him with a copy of a New Jersey City State College diploma purportedly issued to Paylor and a January 1995 letter to Paylor from University President, Carlos Hernandez. Upon review, Ramey concluded that neither document was legitimate. Ramey noted discrepancies in the diploma including that it contained the incorrect seal/logo for the 1995 time frame in which it was purportedly issued and it bore a computer generated script font signature for the president and the chairman of the board rather than a facsimile of their signatures (as is the practice). Similarly, Ramey noted that the letter also contained a number of discrepancies /errors which identified it as inauthentic. The letter did not contain the full date but listed only the month and year. It was addressed only to "Ms. Paylor" and did not include her full name and address. The letter bore a computer generated script font signature of the president rather than a facsimile of his signature. The letter also contained several misspelled words including, "suuccessful" and "luvk." Ramey testified that he worked directly with Dr. Hernandez for several years, he was very meticulous and would not have allowed a letter like that to go out under his signature.

On cross-examination, Ramey testified that NJCU's records are computerized and have been throughout the course of his employment. He acknowledged that he does not know how the records were maintained in 1995 or how the records were transferred from the earlier system to the computerized record keeping system.

Ramey clarified that King provided him with a copy of a transcript purporting to be for Paylor. He did not provide any transcripts to King.

Jesse King, is the Director of Personnel for the Township, he has been in this position for approximately two years. Prior to that, he served as a personnel officer for the Township. He began employment with the Township in April 2015. King testified that he was not involved in Paylor's hiring but he was involved in her promotional process. In her 1995 employment application, Paylor represented that she had a Bachelor's of Science from NJCSU.

King received an anonymous letter via interoffice mail, from a person who claimed to be Paylor's friend. The letter alleged that Paylor did not attend college and did not have a college degree. The letter alleged that Paylor falsified her records and paid a company to make a "phony" transcript.

A copy of the college transcript was in Paylor's personnel file. Paylor also provided King a college transcript in connection with the promotional process from the position of account clerk to accountant. Upon receipt of the anonymous letter, King made an OPRA request to NJCU for a list of 1995 graduates. When he received the responsive list, King followed up with Ramey because he wanted to understand why Paylor's name was not included. King provided Ramey with a copy of a transcript from Paylor's file. The response from Ramey confirmed that NJCU had no record of Paylor or anyone with her social security number attending the college. Once King reported the results to the Township attorney, he was advised that counsel would "handle it." That ended his involvement in the matter.

On cross-examination, King explained that Paylor provided another copy of her transcript during the promotional process because she was made aware that the position of accountant required a bachelor's degree. He testified that whatever Paylor provided to the Township by way of credentials was in her file.

King did not clearly recall filing disciplinary charges against Paylor. Rather, he recalled that she had filed a grievance relating to a change in the confidential status of certain employees. King also testified that he was aware that Paylor had filed a civil suit relating to overtime and compensation claims.

Finally, King testified on cross-examination that he was aware that Paylor had filed a resignation letter. He was not involved in bringing the present disciplinary charges and he was not aware of any action by the Township to rescind the resignation and terminate Paylor.

Richard Brevogel, is the Acting Township Manager, he has served in this position from January 2016 through May 2017. He resumed the position in September 2017, and continues to serve as same. In early May 2018, Brevogel was advised by the township attorney that an anonymous letter had been received alleging that Paylor did not have the

requisite degree required for her position. Upon learning of communications between the Township and NJCU, and information indicating that Paylor did not have the credentials she claimed, Brevogel determined that termination was appropriate. Paylor had received an economic benefit from being in the accountant title which required a degree she did not have.

On cross-examination, Brevogel explained that he did not speak to Paylor about the allegations in the anonymous letter because he believed she was represented by counsel. He also testified that he had returned Paylor to her former position in the Finance Department.³ Finally, he testified he was aware of an administrative complaint that Paylor filed against King.

For appellant:

Monica Paylor testified that in August 2007, she went to the Township offices to complete an in-person application for employment. She was responding to a posting for an account clerk position. No college degree was required for that position so she did not provide a copy of her diploma or transcript or other supplemental information with that application.

Paylor graduated from Jersey City State College in May 1995. She started there as a co-op student while she was still in high school. Paylor's mother was also enrolled at and earned her degree from the college. Her mother died in November 1996.

Paylor had course catalogues from the college in her possession reflecting courses she took. Her mother directed her how to complete the forms. She did not include her social security number on these forms because she went "under her mother's name." Paylor explained that her mother took care of the financial part of her registration. Her mother received direction from her friends who worked at JCSC in the registrar's and admissions' offices, the cafeteria, and campus store.

³ Based on the testimony, it appears that Paylor was removed from this assignment in connection with a prior disciplinary/personnel action during a time when Brevogel was not the Acting Township Manager.

Paylor didn't know if she still had a copy of her college transcript because she had a fire in her house in Jersey City and afterwards only had a few books left. Paylor denied providing the Township with a copy of the transcript with a run date of October 12, 2007 (see R-14) nor did she provide the Township with a copy of the transcript with a run date of February 8, 2016 (see R-6.) While Paylor did not provide the Township with a copy of the transcript [R-6], it reflected her social security number, the courses she took, and the grades she received.

Paylor was provisionally appointed to the position of accountant. Thereafter, she was permanently appointed to the position. She contends she met the educational requirements for the position of accountant because, [in addition to her Bachelor's degree] she took courses to obtain additional certifications. Paylor contends she took over sixteen such courses which were offered by Rutgers University and were college credit courses. The courses were approximately six-eight weeks long and scheduled two days per week for approximately five hours each day. She estimated that she took approximately 120 credit hours of such courses. Paylor claimed she has certificates for these courses.

Paylor became an officer in the ACSFME union in 2016. In 2017, she was removed from the Finance Department. Thereafter, she was out of work on a disability leave, she returned to work in October 2017. Brevogel returned Paylor to the Finance Department. She described her relationship with the Township as "hostile." She filed a complaint or grievance against King which has not yet been resolved. King filed disciplinary charges against her because she filed a grievance against him. The disciplinary charges arose out of a phone call petitioner made to inquire whether one of her union member's could take a certain class. Paylor also filed a complaint (civil lawsuit) against the Township regarding overtime.

In May 2018, Paylor was made aware of the accusation that she did not have her college degree. She submitted a letter of resignation but it was not accepted.

On cross-examination, Paylor acknowledged that on her application, she indicated she had a Bachelor's degree from "NJCSU" but did not list the graduation date.

Regarding the additional courses taken during her employment, petitioner acknowledged that these were continuing education units (CEUs) paid for by the Township.

Credibility

For testimony to be believed, it must not only come from the mouth of a credible witness, 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' story in light of its rationality or 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).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Conleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

As to the credibility of the witnesses, I accept the testimony of each of respondent's witnesses as credible.

I accept the testimony of Alfred Ramey regarding NJCU's efforts to determine whether or not appellant or anyone with her name or social security number attended or graduated from the University to be thorough, rational, and reasonable. I further accept his testimony regarding his response to King's OPRA request to be forthright and reasonable. He is a disinterested witness with no motivation, bias, or other reason to misrepresent the facts.

I accept the testimony of Jesse King as credible. His testimony, regarding his actions following receipt of the anonymous letter and his efforts to confirm whether appellant had the college degree which she claimed was forthright and reasonable. Additionally, his testimony regarding the academic records contained within Paylor's personnel file and the additional records she provided in connection with the promotional process was reasonable. Further, there is no reasonable basis to accept that King's testimony was motivated or biased by the union grievance filed by Paylor or any prior disciplinary action that he may have filed against her.

Similarly, I accept the testimony of Richard Brevogel regarding the decision to terminate Paylor as rational, reasonable, and without motivation or bias.

In contrast, I do not accept the testimony of appellant as credible. Her testimony that while attending NJCSU and registering for classes, she "went under her mother's name" and that her mother handled the financial aspects of her registration is not plausible and simply makes no sense. Additionally, Paylor's testimony that she did not provide the Township with the transcript, diploma, or letter from the University president which bears her name isn't credible and is inconsistent with the rational and reasonable testimony of King. Further, her testimony that she attended and graduated from NJCSU is not credible as it is in conflict with the weight of the other credible and competent evidence in the record. Finally, her testimony that she also or alternatively met the academic requirement of the position via completion of the various CLE courses offered by the Township is similarly lacking in credibility and is unpersuasive. Like her claims of graduating from college, Paylor's claims that she completed approximately 120 hours of college credit via Township CLE's is wholly unsupported by any credible or competent evidence in the record.

Additional Findings:

After having an opportunity to review the evidence and consider the testimony and demeanor of the witnesses, I further **FIND:**

NJCU has no record of appellant or anyone with her name or social security number attending or graduating from its institution.

The transcript, letter to Paylor from University President Hernandez, and the diploma bearing her name were provided by Paylor during the course of her employment with the Township and in connection with her promotion to the position of accountant. These records were not authentic nor were they issued to Paylor by the University.

Appellant does not have a Bachelor's of Science from "NJCSU." Nor did she otherwise earn the requisite number of college credits for the position of accountant through the Townships' CLE program.

During the course of her employment with the Township, appellant misrepresented her academic credentials. Appellant applied for and was promoted to the position of accountant without having the requisites academic credentials.

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. In an appeal from such discipline, the appointing authority bears the burden of proving the charges by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). In re Polk License Revocation, 90 N.J. 550, 560 (1982); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Here, the Township charged appellant with: Conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a) (6); Fraud; Falsification of records; and Other sufficient cause, N.J.A.C. 4A:2-2.3(a) (12).

Conduct Unbecoming

Conduct unbecoming a public employee constitutes grounds for disciplinary action. N.J.A.C. 4A:2-2.3(a)6. Conduct unbecoming a public employee is also a violation of a departmental rule. "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a

government unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). A finding of misconduct need not “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dept. of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dept. of Civil Serv., 17 N.J. 419, 429 (1955)).

Here, the competent documentary and testimonial evidence in the record demonstrates that appellant did not have a Bachelor's degree from NJCSU as she alleged on her 2007 employment application and as she continued to allege during the course of her employment and throughout the hearing in this matter. Further, the competent evidence in the record also demonstrates that the academic records provided by appellant and purporting to document her attendance/graduation from NJCSU were not authentic. The competent evidence in the record also demonstrates that appellant applied for and obtained a promotion for which she was not qualified. Misrepresenting her credentials in order to obtain a promotion for a position to which she was not otherwise entitled adversely affects the efficiency of municipal government and destroys public respect in the delivery of governmental services. Accordingly, I **CONCLUDE** that the respondent proved the charge of conduct unbecoming a public employee.

Fraud and Falsification of Records

The FNDA also charges appellant with fraud and falsification of records. Respondent however cites to no statute, regulation, rule or policy in support of same. Thus, there is nothing in the record defining the elements of these charges. To the extent that respondent seeks to bring these charges under common law, the Office of Administrative Law has no jurisdiction over same. See, Brooks et al v. Public Services Electric and Gas, holding that common law causes of action for damages are within the jurisdiction of the judiciary and may not be heard by a state board or agency, which in turn means that common law causes of action may not be heard by the OAL. 1 N.J.A.R.

243 (Bd. of Public Utilities 1981). Accordingly, I **CONCLUDE** that the respondent has not proved the charges of fraud and falsification of records.

Other Sufficient Cause

The FNDA also charges the appellant with other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a) (12). Other sufficient cause is an offense for conduct that violates the implicit standards of good behavior which devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct. See, In re MacDonald, CSR 9803-13, Initial Decision (May 19, 2014), adopted, Civil Service Commission (September 3, 2014).

Appellant indicated on her 2007 employment application and continued to alleged at hearing that she graduated NJCSU with a bachelor's degree. As set forth above, the competent evidence in the record demonstrates that appellant did not graduate from college and does not have the degree to which she claims. Moreover, the competent evidence in the record further demonstrates that the academic records she provided to respondent during the course of her employment were not authentic. Appellant applied for an obtained a promotion to a position for which she did not have the requisite degree and/or qualifications. Thus, her actions constitute other sufficient cause for disciplinary action. Accordingly, I **CONCLUDE** that the respondent has proved the charge of other sufficient cause.

Having concluded that respondent proved the disciplinary charges of conduct unbecoming a public employee and other sufficient cause, the issue then becomes the level of discipline to be imposed.

PENALTY

Once a determination is made that an employee has violated a statute, regulation, or rule concerning his employment, the concept of progressive discipline must be considered. When dealing with the question of penalty in a de novo review of a disciplinary action against a civil service employee, the Civil Service Commission is

required to evaluate the proofs and penalty on appeal, based on the charges. N.J.S.A. 11A:2-19; West New York v. Bock, 38 N.J. 500 (1962). With respect to the discipline, under the precedent established by West New York v. Bock, courts have stated, “[a]lthough we recognize that a tribunal may not consider an employee's past record to prove a present charge, that past record may be considered when determining the appropriate penalty for the current offense.” In re Phillips, 117 N.J. 567, 581 (1990) (citing West New York v. Bock, supra, 38 N.J. at 523). Ultimately, however, “it is the appraisal of the seriousness of the offense which lies at the heart of the matter.” Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Here, the respondent has proved the disciplinary charges of conduct unbecoming a public employee and other sufficient cause. While appellant testified about prior disciplinary charges filed by King, the record is devoid of prior disciplinary history. Nevertheless, based on the seriousness of the present charges, and given appellant's misrepresentation of her academic credentials throughout the course of her employment with the Township, I **CONCLUDE** that removal is the appropriate penalty.

ORDER

I **ORDER** that appellant's motion to enforce settlement is hereby **DENIED**. I further **ORDER** that the charges of conduct unbecoming a public employee and other sufficient cause are sustained, and that the penalty of removal is hereby **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.

June 19, 2019

DATE



SUSAN L. OLGIATI, ALJ

Date Received at Agency:

6/19/19

Date Mailed to Parties:

6/19/19

SLO/vj

APPENDIX
LIST OF WITNESSES

For appellant:

Monica Paylor

For respondent:

Alfred E. Ramey

Jesse King Jr.

Richard Brevogel

LIST OF EXHIBITS

Court

C-1 Email chain between Thomas Baron and Lester Taylor, dated February 25, 2019 through February 28, 2019.⁴

Joint

J-1 Final Notice of Disciplinary Action, August 8, 2018

For appellant:

None

For respondent:

R-1 NJ Civil Service Commission Job Specification, Accountant

R-4 Township of Willingboro, Application for Employment, M. Paylor, June 26, 2007.

R-6 New Jersey City University (NJCU) Undergraduate Record, M. Paylor

⁴ These emails were exhibits to the parties post-hearing submissions and were therefore marked for identification and entered into evidence by this ALJ post hearing.

R-7 May 3, 2018, letter from Ramey to King

R-8 April 27, 2018 letter from King to Ramey

R-9 OPRA Form to Request University Record, March 28, 2018

R-10 April 19, 2018, letter from Ramey to King

R-11 March 26, 2018 anonymous letter to King

R-14 NJCU Undergraduate Record, M. Paylor, 5 pages, ⁵ Jersey City State College Diploma for Monica Paylor, ⁶ and January 1995 letter from Carlos Hernandez, President, Jersey City State College,⁷

⁵ Page 1 bears exhibit stamp, "Defendant's Exhibit E-1"

⁶ Bearing exhibit stamp, "Defendant's Exhibit E-6"

⁷ Bearing exhibit stamp, "Defendant's Exhibit E-7"