

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 15TH DAY OF JANUARY, 2020



Deirdre 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 13417-19

AGENCY DKT. NO. 2020-716

**IN THE MATTER OF RAKESHKUMA T.
PATEL, MOTOR VEHICLE COMMISSION,**

Rakeshkuma T. Patel, appearing pro se

**Nonee Lee Wagner, Deputy Attorney General (Gurbir S. Grewal, Attorney
General of New Jersey, attorney)**

Record Closed: December 10, 2019

Decided: December 18, 2019

BEFORE JOANN LASALA CANDIDO, ALAJ

Appellant, Rakeshkuma T. Patel, appealed the release from his position as a Technician /MVC with the respondent, Motor Vehicle Commission ("MVC") at the end of his ninety-day working test period, effective August 27, 2019.

Appellant requested a hearing and on September 24, 2019, the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 to -13 and N.J.S.A. 52:14B-1 -15. The hearing was held on December 10, 2019, on which date the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether appellant has established that the respondent acted in bad faith in terminating him at the end of the ninety-day working test period.

FACTUAL DISCUSSION

The following facts are not disputed and accepted as **FACT**. Appellant commenced a ninety-day working test period as an MVC Technician on April 27, 2019. His job description was to assist customers in need of a driver's license, permit applications, title, registration, customer driving records and overall attentiveness to customer's needs. Appellant's performance was evaluated after 60 days and 90 days. At the end of the first 60 days, a Report on Progress of Probationer was completed by appellant's supervisor, Kathleen deVillava R-1. At the end of 90 days, Report on Progress of Probationer was again completed by appellant's supervisor, Kathleen deVillava. R-2 Appellant exhibited an unsatisfactory performance on both reports and was terminated on August 27, 2019. Appellant did not understand how common mistakes can lead to termination.

deVillava based her decision on incidents that occurred during the working test period. Appellant passed the first phase of the working test period which consisted of the first two months of training. During those first two months, he was trained to take applications at the front desk and advise the customer what line to go in. She rated that time as unsatisfactory. Appellant had difficulty following instructions from senior staff and if he disagreed, he would dispute the instruction. On May 31, 2019, a customer came into Motor Vehicle requesting a license renewal and address change and appellant only changed the address. Appellant's supervisor counselled him verbally.

In July 2019, appellant became a full-time employee. On July 10, 2019, appellant was verbally counseled by his supervisor when he incorrectly processed a driver's license transfer. The incorrect card has to be hole punched for auditing purposes and given back to the customer however, appellant shredded the transfer card rather than hole punch it.

On July 12, 2019, appellant was verbally counseled for processing a NONGDL (customer has a driver's license from another country or state) driving permit for a

period of three months, without proof from the customer that they had previous driving experience. The Driving Test section sent the customer back to appellant to reprocess the permit and he made the same mistake again.

On July 22, 2019, a customer came to Motor Vehicle for a renewal, requiring six points of identification, but appellant signed in the customer using a one point of identification for a duplicate identification card.

On July 24, 2019, a non-New Jersey resident came in to Motor Vehicle to apply for a duplicate title of a vehicle not registered in New Jersey. Appellant mistakenly gave the gentleman a New Jersey application for a duplicate title. The customer stood on a long line before being told by another employee that he had to go to NY to apply for a duplicate.

On July 27, 2019, a husband and wife came in to Motor Vehicle for a transaction and appellant signed the wife in using their child's immigration document rather than the wife.

On July 29, 2019, appellant processed seven Non-GDL two year permits without an explanation on the back of the application to provide proof of the driving experience needed for such applications.

On the morning of August 2, 2019, supervisor deVillava was setting up the camera stations when she discovered expired hole punched drivers licenses in appellant's camera box that were supposed to be given back to the customer.

Lastly, appellant pressured a co-worker to help a friend of his sign in without having the immigration documents in their possession. The employee reported this to supervisor deVillava.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

The purpose of the probationary or working test period under the Civil Service System is to give the appointing authority an opportunity to evaluate an employee's work performance and conduct in order to determine whether the employee merits permanent status. N.J.A.C. 4A:1-1.3 and N.J.A.C. 4A:4-5.1. A basic condition of

permanent or absolute appointment to any civil service position is a favorable opinion of the employee's fitness as formed by the appointing authority during the working test period. Cipriano v. Department of Civil Service of the State of New Jersey, 151 N.J. Super. 86 (App. Div. 1977).

An employee may also be terminated from service at the end of the working test period for unsatisfactory performance. N.J.S.A. 11A:4-15(c); N.J.A.C. 4A:2-4.1.; N.J.A.C. 4A:4-5.4(a). Pursuant to N.J.A.C. 4A:2-4.3(b), the appellant has the burden of establishing by a preponderance of the competent and credible evidence that the action to release him at the end of his working test period was taken in bad faith. Fitzpatrick v. Civil Service Comm'n, 91 N.J. Super. 535, 539 (App. Div. 1966); Briggs v. New Jersey Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960); Van Itallie v. Franklin Lakes, 28 N.J. 258, 269 (1958); Divine v. Plainfield, 31 N.J. Super. 300, 302-03 (App. Div. 1954); Dodd v. Van Riper, 135 N.J.L. 167 (E. & A. 1946). If bad faith is found, the employee shall be entitled to a new full or shortened working test period and other appropriate remedies. N.J.A.C. 4A:2-4.3(c). See, also, N.J.A.C. 4A:2-1.5.

"Bad Faith" is defined as:

Generally implying . . . a design to mislead or deceive another not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. Bad faith is not simply bad judgment or negligence but implies the conscious doing of a wrong because of a dishonest purpose. (citations omitted).

Brown v. State Department of Education, 97 N.J.A.R.2d (CSV) 537, 541 (1997)

It is a well-established principle of civil service law that the working test period is not one during which a probationer is to be given further training to qualify himself/herself for a position, but rather, is part of the testing process, given in addition to the examination conducted by the department of personnel. During that period, the employee must demonstrate that he/she is competent to discharge the duties of the position. Brown v. State Department of Education, *supra*. See also Briggs v. The New Jersey Department of Civil Service, 64 N.J. Super. 351, 355 (App. Div. 1960).

The appointing authority is required to prepare a progress report on the employee at the end of two months, prepare a final report at the conclusion of the working test period and furnish a copy of all such reports to the employee. N.J.A.C. 4A:4-5.3(a) and (c). See N.J.S.A. 11A:4-15b.

Based upon the facts adduced and the citations above, the appellant's working test period was conducted in compliance with the Civil Service rules and regulations, and I so **CONCLUDE**. Appellant has not established by a preponderance of the competent and credible evidence that there was any bad faith involved in the respondent's determination that his services were unsatisfactory. Appellant was given adequate training, which included the opportunity to observe an experienced technician, to take notes, and in general to learn the tasks expected of him.

As a result, I **CONCLUDE** that respondent's determination in releasing appellant at the end of his working test period was appropriate. Lastly, the record is devoid of any credible evidence to substantiate appellant's claim that he was treated unfairly, and I so **CONCLUDE**.

Based on the foregoing, I **ORDER** that the appeal filed by appellant be and is hereby **DISMISSED** with **PREJUDICE**.

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.

December 18, 2019
DATE

Joann Lasala Candido
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

12 | 18 | 19

Date Mailed to Parties:

12 | 20 | 19

ljb

APPENDIX

Witnesses:

For Appellant

Rakeshuma Patel

For Respondent:

Kathleen deVillava- supervisor, Bayonne MVC
Jenny Ramirez, senior technician, Bayonne MVC
Dorothy Pacheco, Bayonne MVC
Glenn Regan- MVC district manager

List of Exhibits

For Appellant:

None

For Respondent:

- R-1 Two-month Unsatisfactory Notice
- R-2 Four-month Unsatisfactory Notice
- R-3 Supporting Memorandum and Index
- R-4 Memo to record dated July 10, 2019
- R-5 Examples of errors
- R-6 Memo to record dated July 12, 2019
- R-7 Memo to record dated July 27, 2019
- R-8 Errors
- R-9 Memo to record dated July 29, 2019
- R-10 Memo to record dated August 27, 2019
- R-11 PAR
- R-12 Mistake Log
- R-15 Incorrect Login