



STATE OF NEW JERSEY

In the Matter of Rhonda Crawley
 New Jersey Veterans Memorial
 Home-Paramus, Department of
 Military and Veterans Affairs

**DECISION OF THE
 CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2019-1567
 OAL DKT. NO. CSV 18387-18

ISSUED: MAY 1, 2020 NFA

The appeal of Rhonda Crawley, Recreation Assistant, New Jersey Veterans Memorial Home-Paramus, Department of Military and Veterans Affairs, removal effective November 29, 2018, on charges, was heard by Administrative Law Judge Susana E. Guerrero (ALJ), who rendered her initial decision on March 17, 2020 reversing the removal. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on April 29, 2020, remanded the matter to the Office of Administrative Law (OAL) for further proceedings.

In this matter, the Commission's main concern is that in his testimony, the appointing authority's Equal Employment Opportunity (EEO) Officer, James Fallon, indicated that there he interviewed "approximately six other employees" who indicated that they had engaged in conversations with the appellant where the appellant referred to a co-employee as a "b!*ch" and a "whore." As none of these employees were called to testify at the OAL hearing, and even though the ALJ found the appellant's testimony in that regard not "particularly credible," she properly found that the evidence was "inconclusive" as to whether the appellant used such discriminatory language in violation of State Policy Prohibiting Discrimination in the Workplace (State Policy). *See N.J.A.C. 4A:7-3.1.* However, the State has an obligation to ensure that investigations of violations of the State Policy are properly conducted in order to have a workplace free from discrimination and harassment. In this case, the Commission cannot make a determination as to the credibility of the appointing authority's investigatory process of suspected State

Policy violations because the ALJ did not have the benefit of reviewing the underlying EEO investigation report, witness statements or testimony from any of the witnesses who claimed that they heard the appellant make the derogatory remarks. While the need for confidentiality in the investigative process is crucial, upon the imposition of major discipline on a tenured employee, the Commission also has a responsibility to ensure that employee's due process rights are protected. Given the seriousness of the implications of violations of the State Policy in the workplace, the Commission must make reasonable attempts to ensure that an underlying EEO investigation that is the basis for major disciplinary charges is adequate. Therefore, the Commission finds that it needs more information before it can decide this matter. Specifically, the ALJ should permit the appointing authority the opportunity to present the underlying EEO investigation report, and **at least** one witness to testify regarding the conversations where the appellant allegedly used language in violation of the State Policy. The Commission notes that, pursuant to *N.J.A.C. 4A:7-3.1*, the confidentiality of any such witnesses should be protected to the extent reasonably possible. Accordingly, it is recommended that the ALJ use only initials for such witnesses.

Finally, the Commission notes that it agrees with the ALJ's determination regarding the other alleged comments made by the appellant, and finds that such comments were not a violation of the State Policy.

ORDER

The Civil Service Commission remands this matter to the Office of Administrative Law for further proceedings as indicated above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 29TH DAY OF APRIL, 2020

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 18387-18

AGENCY DKT. NO. 2019-1567

**IN THE MATTER OF RHONDA CRAWLEY,
NEW JERSEY VETERANS MEMORIAL HOME,
PARAMUS, DEPARTMENT OF MILITARY
AND VETERANS AFFAIRS.**

Rhonda Crawley, appellant, pro se

Alexis F. Fedorchak, Deputy Attorney General, for respondent New Jersey Veterans Memorial Home (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: February 7, 2020

Decided: March 17, 2020

BEFORE SUSANA E. GUERRERO, ALJ:

STATEMENT OF THE CASE

Appellant, Rhonda Crawley (Crawley or appellant), appeals her removal from her position as a Recreation Assistant with the Department of Military and Veterans Affairs' (DMAVA) Veterans Memorial Home in Paramus (the Veterans Home or the Home), for conduct that respondent asserts violated the New Jersey State Policy Prohibiting

Discrimination in the Workplace and constituted unbecoming conduct of a public employee.

PROCEDURAL HISTORY

On or around June 7, 2018, the respondent served Crawley with a Preliminary Notice of Disciplinary Action (PNDA) which informed her of the charges made against her, including: violations of Departmental Directive 230.05 pertaining to acts of sexual harassment, conduct unbecoming a public employee, and other sufficient cause. Crawley was served with a Final Notice of Disciplinary Action (FNDA) dated November 29, 2018, and an Amended FNDA dated June 18, 2019, which sustained the charges set forth in the PNDA.

The New Jersey Civil Service Commission (the Commission) transmitted the matter to the Office of Administrative Law (OAL), where it was filed on December 31, 2018, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing took place on October 31, 2019, and respondent submitted post-hearing summations. The record closed on February 7, 2020, after appellant was given an extension to submit summations by this date, per her request, but then failed to do so.

FACTUAL DISCUSSION

The following background facts are uncontroverted, and I **FIND**:

The Paramus Veterans Home serves approximately 300 individuals in a nursing home environment. Crawley was employed by the Veterans Home as a Recreation Assistant prior to her removal effective November 29, 2018. She had been employed by the Home since at least 2000.

In the summer of 2017, Claudia Laylor (Laylor), an employee of the Veterans Home, complained of Crawley's conduct to the Director of Nursing. Laylor prepared a handwritten "harassment complaint against Rhonda Crawley" recounting alleged

exchanges with Crawley and with Christopher Crawley, her husband who also works at the Home, dating back to 2013. (R-7.)

On July 2, 2017, Laylor drafted a second complaint in which she alleges that Crawley had been "spreading malicious gossip and rumors" about her in the workplace. According to Laylor, a co-worker, Mark, informed her that Crawley told him that Lakima, another co-worker, said she saw Laylor kissing another employee. Lakima confirmed that she did tell Crawley that she saw Laylor kiss someone. Laylor alleged that Crawley was defaming her character.

Laylor's handwritten complaints were ultimately submitted to DMAVA's Equal Employment Opportunity (EEO) Officer, James Fallon (Fallon), who conducted an investigation. Fallon reviewed Laylor's handwritten complaints and conducted several interviews, including those of Laylor and Crawley. The matter was then referred to the Division of EEO/AA for administrative reasons. By letter dated May 24, 2018, the Division of EEO/AA of the Civil Service Commission informed Crawley that, as a result of the investigation, the Division substantiated that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace. The May 24, 2018 letter indicates that the allegation(s) investigated were: "Ms. Crawley, in a Department facility, is alleged to have made disparaging comments to and about Ms. Laylor, and advised other employees of alleged sexual activity of Ms. Laylor with other employees." (R-6.)

On June 7, 2018, the Veterans Home issued Crawley a PNDA, and on November 29, 2018, she was issued a FNDA, removing her from employment effective that day. On June 18, 2019, the Veterans Home issued an Amended FNDA, sustaining the following charges:

DD230.05(E)1: Violation of a rule, regulation, policy, procedure, order, or administrative decision;
DD230.05(F)3: Unwelcome sexual advances, requests for sexual favors and/or other verbal or physical conduct, based on the gender of the employee, has been used for the purpose of or has had the affect [sic.] of unreasonably interfering with the targeted employee's work performance or created an

unreasonably intimidating, hostile or offensive working environment, which includes a. through f.¹

N.J.A.C. 4A:2-2.2(a)6: Conduct unbecoming a public employee

N.J.A.C. 4A:2-2.3(a)12: Other sufficient cause

The Amended FNDA lists the Incident(s) giving rise to the above charges as follows:

On or about May 24, 2019, the Division of Equal Employment Opportunity and Affirmative Action substantiated that you violated the New Jersey State Policy Prohibiting Discrimination in the Workplace State Policy. As a Recreation Assistant, you are expected to maintain a professional demeanor at all times. Your actions were unbecoming and further warrant your dismissal from State service.

Testimony

For Appellant

Christopher Crawley

Christopher Crawley, appellant's husband, has worked at the Veterans' Home for nearly twenty-two years. He described this matter as being the result of "idle gossip." He testified that Crawley and Laylor were friendly co-workers, but they also had their disagreements. Laylor had a reputation among staff at the Veterans Home for being promiscuous, and that it was Laylor's CNA co-workers who talked about Laylor kissing another employee and told Crawley. He also testified that in 2017, when Crawley was temporarily out of work, Laylor made advances towards him and gave him her phone number.

He recounted that on June 28, Crawley told him that Laylor had brushed up against her and that Crawley had reported Laylor.

¹ A-F refers to the following: a. Generalized gender based remarks and behavior; b. Inappropriate unwanted, offensive physical, or verbal sexual advances and comments; c. Solicitation of sexual activity or other sex linked behavior by promise of reward; d. Coercion of sexual activity by threat of punishment; e. Gross sexual imposition such as touching, fondling, grabbing, or assault; f. Other conduct.

Rhonda Crawley

Crawley testified on her own behalf. She denies having violated the Last Chance Agreement that she signed in 2011 and denies calling Laylor a “[b!*ch]” or a “whore.” She loves her job and denies any wrongdoing.

In or around June 26, Laylor brushed up against Crawley and Crawley reported this to Debbie Katterman. She denied bumping into Laylor, as Laylor alleged. She believes that Laylor made this complaint in retaliation to Crawley reporting Laylor for brushing up against her.

Appellant conceded that she told three co-workers, including Mark, that Lakima, another co-worker, informed her that Laylor had kissed a co-worker on the mouth.

Crawley testified that she had a “work-relationship” with Laylor, where Laylor felt comfortable enough with her to confide about her personal and intimate relationships. She denies encouraging Laylor to have a sexual relationship with her husband, as Laylor contends, and asserts that it was Laylor who expressed an interest in her husband.

Crawley was transferred off the floor on July 3, 2017, following Laylor’s complaint, and she was out on medical leave from July 6, 2017 through February 24, 2018.

For Respondent

Susan Sweeney

Susan Sweeney (Sweeney) is the Administrator of the Office of Employee Relations at DMAVA. She approved the PNDA and FNDA calling for Crawley’s removal, but played no role in the investigation.

The New Jersey State Policy Prohibiting Discrimination in the Workplace (the State Policy) is promulgated by the Civil Service Commission and applies to all State

employees. It defines sexual harassment and a hostile work environment, and states that there is no tolerance for violations of the policy.

Sweeney reviewed Crawley's prior disciplinary history. In 2010, Crawley appealed an FNDA calling for her removal, and the parties agreed to a settlement. The charges were for her "third infraction of Discourtesy to public; threatening, intimidating or interfering with fellow employees on State property; fighting or creating a disturbance on State property; and violation of a rule, regulation, procedure, order or administrative decision." In the settlement of July 2011, DMAVA agreed to reduce the penalty to a ninety-day suspension. The parties also entered into a Last Chance Agreement on July 26, 2011, which includes a list of terms that Crawley subjected herself to, and indicates that any breach of the Last Chance Agreement "which causes Ms. Crawley to be negligent, shall result in Ms. Crawley being subject to progressive discipline, seeking her removal from State service." (R-4.)

Sweeney testified that removal is appropriate here because the State Policy is a strict liability policy, meaning that any violation, regardless of intent, will be deemed a violation and could subject an employee to discipline. Here, Crawley had a disciplinary history for the same type of behavior, and for violations of the same types of policies. Moreover, she is subject to a Last Change Agreement for "the same course of conduct" that she exhibited here.

James Fallon

Fallon has been employed as the EEO Officer and legal specialist for DMAVA for the past four years. He was previously employed by the New Jersey State Police for over twenty-five years, where he conducted administrative internal investigations and was the commanding officer of Internal Investigations Bureau. At DMAVA he investigates alleged violations of the State Policy, and conducted the investigation of Crawley after receiving Laylor's complaint.

Fallon interviewed Laylor, who reported that she had been subjected to harassment by Crawley because Laylor had declined to participate in a relationship with

Crawley and her husband. She also reported that Crawley had been talking to other employees about Laylor's alleged "sexual activity."

Fallon also interviewed approximately six other employees concerning Laylor's allegations. According to Fallon, these witnesses testified that they had engaged in conversations with Crawley and that during the course of those conversations, she had referred to Laylor as a "b!*ch" and a "whore," and there were also some conversations that took place regarding Crawley's observations of Laylor allegedly kissing another employee on the floor of the facility. He felt the witnesses were credible.²

When Fallon interviewed Crawley, she denied calling Laylor a "b!*ch" and a "whore," but she did tell him that she had conversations with others about Laylor kissing another employee. Crawley told Fallon that she and Laylor had a relationship in which they discussed intimate details of Laylor's sexual life, and that Laylor had confided in her about her sexual activity. Crawley told Fallon that the relationship between them had soured because Laylor was in pursuit of Crawley's husband. Crawley also reported to him that Laylor had become aggressive with her and had a "bumping incident" with her at work, and that this led to Laylor retaliating by making this complaint.

Fallon determined that Laylor's allegations were substantiated based on his interviews of the four witnesses who, according to Fallon, confirmed that Crawley called Laylor a "b!*ch" and "whore," and that Crawley told other employees that Laylor had kissed a male employee on the mouth. Fallon concluded that Crawley's statements violated the State Policy because they were sexual and gender-related remarks, made with the intent to make the workplace uncomfortable for Laylor. He testified that Crawley's statements concerning Laylor violated the State Policy regardless of the truth of the statements because "the discussion [concerning Laylor kissing another employee] was intended to make the workplace uncomfortable for another employee, which is what the policy was designed to stop from happening." He also testified that it constituted a violation of the State Policy because Crawley made those statements with the intent of intimidation.

² Fallon's investigation file, including copies or notes of any witnesses' statements was not moved into evidence at the hearing. The witnesses referred to by Fallon did not testify at the hearing.

Fallon was not involved in determining Crawley's discipline. He prepared his report and submitted it to the State Division of EEO, where it was reviewed and returned to DMAVA for action by the Employee Relations Office.

Deborah Kattermann

Deborah Kattermann has been the Assistant CEO at the Veterans Home since 2006. Up until about September 2019, she supervised approximately ninety non-clinical employees in the recreation department. She had supervised Crawley since 2006. She confirmed that there were never any concerns regarding Crawley's performance at work.

Claudia Laylor

Laylor is a Certified Nursing Assistant (CNA), Human Service Technician at the Veterans Home, where she has worked for twenty years.

Laylor confirmed that she has had personal disagreements with Crawley in the past. In 2013 or 2014, Crawley approached her regarding having intimate relations with Mr. Crawley, and Laylor declined. Crawley then became "hot and cold" with her, greeting her sometimes but not always. Laylor testified that Crawley's actions did not have any impact on her ability to do her job.

Laylor testified that she and Crawley always talked when they were in the day room, and that they talked about "personal stuff." Sometimes they had a good work relationship, and other times they did not.

Laylor reported Crawley because she heard Crawley tell Christopher Crawley not to talk to Laylor, and because Crawley once told Laylor that she had a bad reputation. Crawley also told her that Mr. Crawley was hers and that Laylor could not talk to him if she did not speak with her. Laylor later testified that she decided to report Crawley because Crawley started to talk about her body, and she described an incident where Crawley allegedly made a disparaging comment about her breasts. Laylor also recounted

one instance when Crawley allegedly blocked her path, and another when Crawley bumped into her. She testified that these incidents took place in 2015 or 2016, but later testified that it was in 2014, and then 2017. Laylor also testified that Crawley called her a “whore” and a “slut” sometime in 2015 or 2016, when nobody could hear. She never reported this.

Laylor made her complaints to the Director of Nursing, who referred her to the Employee Relation Officer to write a statement. She wrote her first statement on June 27, 2017, although it is incorrectly dated July 27, 2017. She drafted another statement on July 2, 2017, after a co-worker told her that Crawley told him that Laylor was kissing another employee. She testified that these statements impacted her personally because she is married and the co-worker who heard it would think the statements made by Crawley were true. Laylor testified that she first started to feel afraid of Crawley after she submitted her second statement, however Crawley was removed after Laylor submitted her second statement.

Credibility

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must 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).

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. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Here, neither Crawley nor Laylor presented as particularly credible witnesses as there was clearly animus between the two. They had worked together for a number of years and seemed to have had a very friendly relationship, where they shared personal information with one another. At some point prior to Laylor filing her complaint, the relationship soured and Laylor became upset with how Crawley treated her (which she described as "hot and cold.") However, while they had their conflict in the past, they seemed to mostly get along. Laylor was visibly nervous while she testified, and her testimony was largely unfocused and difficult to follow. Her testimony was also contradictory at times, particularly concerning the timing of the alleged events, and seemed exaggerated at times. I gave little weight to Laylor's testimony.

Respondent terminated appellant based on Fallon's assessment of the witnesses' statements, and his application of the facts, as he found them, to the State Policy. Ultimately, Fallon determined that Crawley violated the State Policy because: (1) she referred to Laylor as a "b!*ch" and a "whore" to other employees; and (2) she told a co-worker that Laylor was seen kissing another employee in the building. Crawley admits having told co-workers that Laylor was seen kissing another employee, but she denies having referred to Laylor as a "b!*ch" or a "whore." Respondent did not present a single witness who testified that they heard Crawley refer to Laylor as a "b!*ch" or a "whore." Not only did these witnesses not testify at the hearing, they were never identified, Fallon's investigation report was never offered into evidence, and no testimony was offered as to when, where or in what context Crawley allegedly called Laylor a "b!*ch" or a "whore." Fallon's testimony concerning statements made to him by these employees constitutes uncorroborated and unsubstantiated hearsay.

Based upon my review of the evidence and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND as FACT** the following:

1. The evidence is inconclusive that Crawley called Laylor a "b!*ch" or a "whore."

2. Crawley heard from another employee that Laylor kissed a co-worker in the mouth, and Crawley repeated that to at least three other employees. There is no evidence that Crawley repeated this information intending to make Laylor or the workplace uncomfortable or to intimidate her.
3. Crawley's statements did not impact Laylor's ability to perform her work, and there is no evidence that it had any impact on the workplace.

LEGAL ANALYSIS AND CONCLUSIONS

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 10-3.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12).

In disciplinary cases, the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

The first issue in this proceeding is whether a preponderance of the credible evidence establishes that the appellant's actions constitute a violation of the State Policy and the charges set forth in the June 18, 2019 Amended FNDA. If so, the second issue is whether the violation warrants Crawley's removal or a lesser penalty, if any.

According to the June 18, 2019 Amended FNDA, Crawley is charged with violating provisions of the Departmental Directive Number 230.05 (DD230.05) relating to sexual harassment; and the provisions of N.J.A.C. 4A:2-2.3 relating to conduct unbecoming a public employee, and other sufficient cause, as a result of Crawley's actions, which constitute a violation of the New Jersey Policy Prohibiting Discrimination in the Workplace. The Amended FNDA lists the incident giving rise to the aforementioned charges to be the substantiation by the Division of EEO/AA that Crawley violated the State Policy, and that these actions were unbecoming. The question, therefore, is whether Crawley's action – i.e., telling three employees that Laylor was seen kissing another employee—were in fact a violation of the State Policy or constituted unbecoming conduct, or a violation of the aforementioned Departmental Directives.

New Jersey State Policy Prohibiting Discrimination in the Workplace

The basis for Crawley's termination is the Division of EEO/AA's substantiation that she violated the State Policy by making inappropriate comments, including generalized gender-based remarks and comments to and about Laylor. (R-6.) As Fallon testified, and as reflected in the Division's May 24, 2018 letter, the inappropriate comments include: (1) referring to Laylor as a "b!*ch" and a "whore," as corroborated by three independent witnesses; and (2) conversing with co-workers about Laylor kissing another employee on the mouth, which Fallon and the Division refer to as making inappropriate comments about Laylor's "sexual activity."

Respondent maintains in its post-hearing submission that the State Policy explicitly prohibits the use of "derogatory references with regard to any of the protected categories in any communication," "generalized gender based remarks and comments" and "verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions," and that Crawley violated the policy through her use of "derogatory, gender-based remarks and malicious, harmful gossip of a sexual nature [that] warrants her removal from State service." (R-5.) Since the evidence is inconclusive as to whether Crawley referred to Laylor as a "b!*ch" and a "whore," I **CONCLUDE** that the respondent has failed to establish by a preponderance of the credible evidence that Crawley violated the State

Policy and the other charges listed in the Amended FNDA for referring to Laylor as a “b!*ch” or a “whore.”

With respect to respondent’s assertion that Crawley violated the State Policy by telling three employees that Laylor was seen by another employee kissing a co-worker on the mouth, after carefully reviewing the State Policy, I cannot conclude that this gossip constitutes a violation of this policy. First, the State Policy protects against certain forms of employment discrimination or harassment based upon one of twenty-one protected categories.³ There is no evidence that Crawley’s statements were based on any one of these categories.

Second, pursuant to Fallon’s testimony, respondent asserts that Crawley’s statements constitute harassment because they relate to sexual activity, and were intended to intimidate Laylor and make the workplace uncomfortable for her. Respondent’s post-hearing brief also asserts that Crawley violated the State Policy for making “generalized gender based remarks and comments” and “verbal . . . sexually suggestive or obscene comments, jokes, or propositions.” In assessing the evidence presented, and closely reviewing the State Policy, I cannot conclude that the gossip engaged in by Crawley constituted discrimination or harassment per the policy.

The State Policy specifically defines prohibited conduct under the policy, including sexual harassment.⁴ (R-5.) There is no indication that Crawley intended to intimidate Laylor or make the workplace uncomfortable for her when she repeated to three employees that Laylor was seen by another employee kissing a male co-worker. Her comments were not sexually suggestive or obscene, and simply repeating that an

³ The State Policy reads: “Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.”

⁴ Sexual Harassment is defined in the State Policy as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when . . . submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; submission to or rejection of such conduct by an individual is used as the basis for employment; or such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.” (R-5.)

employee was seen kissing another cannot reasonably be considered to be a "generalized gender-based remark" constituting sexual harassment. Crawley took part in office gossip with her co-workers by repeating something that had been told to her, something that may or may not be true. While this conduct may be considered distasteful and inappropriate for the workplace, and was upsetting to Laylor, it cannot reasonably be considered to constitute discrimination or harassment per the State Policy. Therefore, I **CONCLUDE** that Crawley did not violate the New Jersey State Policy Prohibiting Discrimination in the Workplace by commenting that Laylor was observed kissing another employee.

Sustained Charges

The Amended FNDA list DD230.05(E)1 and DD230.05(F)3 as sustained charges. DD230.05(E)1 applies, generally, when there is a "violation of a rule, regulation, policy, procedure, order or administrative decision." DD230.05(F)3 applies when "[u]nwelcome sexual advances, requests for sexual favors and/or other verbal or physical conduct, based on the gender of the employee, has been used for the purpose of or has had the affect of unreasonably interfering with the targeted employee's work performance or created an unreasonably intimidating, hostile or offensive working environment, which includes: a. Generalized gender based remarks and behavior; b. Inappropriate unwanted, offensive physical, or verbal sexual advances and comments; c. Solicitation of sexual activity or other sex linked behavior by promise of reward; d. Coercion of sexual activity by threat of punishment; e. Gross sexual imposition such as touching, fondling, grabbing, or assault; f. Other conduct."

Here, there is no evidence to suggest that Crawley used unwelcome sexual advances, requests for sexual favors or other conduct based on Laylor's gender for purposes that interfered with Laylor's work performance or created a hostile work environment. Consequently, I **CONCLUDE** that the appellant's actions did not violate DD230.05(F)3.

The Amended FNDA also charges Crawley with violating N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)12, other sufficient

cause. There is no precise definition for conduct unbecoming a public employee, and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. In Jones v. Essex County, CSV 3552-98, Initial Decision (May 16, 2001), adopted, Merit Sys. Bd. (June 26, 2001), <http://njlaw.rutgers.edu/collections/oal/>, it was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. In Karins v. City of Atlantic City, 152 N.J. 532 (1998), an off-duty firefighter directed a racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase "unbecoming conduct" is an elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for municipal employees and confidence in the operation of municipal services." Id. at 554. In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), the court stated that 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."

Crawley's conduct was not sufficiently egregious to constitute unbecoming conduct. Crawley did not fabricate and dispel a salacious lie about Laylor with the intent of intimidation, and there is no indication that Crawley knowingly made a false statement about Crawley. She repeated what a co-worker told her that she observed in the building—Laylor kissing another co-worker. While partaking in gossip about a co-worker may be unprofessional and distasteful, there is no evidence that it adversely affected morale or efficiency by destroying public respect for State employees and confidence in the operation of State services. I **CONCLUDE**, therefore, that respondent has failed to demonstrated, by a preponderance of the credible evidence, that appellant's conduct constituted unbecoming conduct in violation of N.J.A.C. 4A:2-2.3(a)6. Consequently, I also **CONCLUDE**, that appellant did not violate N.J.A.C. 4A:2-2.3(a)12 or DD230.05(E)1.

ORDER


It is **ORDERED** that the disciplinary action of the respondent, Department of Military and Veterans Affairs, NJ Veterans Memorial Home-Paramus, in removing Crawley from her position is **REVERSED**, and that respondent reinstate Crawley with pay, including benefits, retroactive to the date of removal.

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.

3/17/20
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency: 3/17/2020

Date Mailed to Parties: 3/17/2020

jb

APPENDIX

WITNESSES

For Appellant:

Rhonda Crawley
Christopher Crawley

For Respondent:

Susan Sweeney
James Fallon
Deborah Kattermann
Claudia Laylor

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action dated June 7, 2018, Final Notice of Disciplinary Action dated November 29, 2018, and Amended Final Notice of Disciplinary Action dated June 18, 2019
- R-2 Department of Military and Veterans Affairs Corrective and Disciplinary Action Booklet
- R-3 Acknowledgment of Receipt of New Jersey State Policy Prohibiting Discrimination in the Workplace
- R-4 Disciplinary History
- R-5 New Jersey State Policy Prohibiting Discrimination in the Workplace
- R-6 Letter from Civil Service Commission Substantiating Violation of Discrimination Policy dated May 24, 2018
- R-7 Written statement of Claudia Laylor
- R-8 Written statement of Claudia Laylor dated July 2, 2017