



STATE OF NEW JERSEY

In the Matter of Terence Britt :
Department of Children and Families :
CSC DKT. NO. 2019-1875 :
OAL DKT. NO. CSV 02725-19 :

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: MAY 22, 2020 BW

The appeal of Terence Britt, Investigator 1, Department of Children and Families, 90 working day suspension (30 days served – 60 days held in abeyance), on charges, was heard by Administrative Law Judge Catherine A. Tuohy, who rendered her initial decision on April 14, 2020. 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, at its meeting on May 20, 2020, 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 suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Terence Britt.

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 20TH DAY OF MAY, 2020

Deirdre L. Webster Cobb

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

GRANTING SUMMARY DECISION

OAL DKT. NO. CSV 02725-19

AGENCY DKT. NO. 2019-1875

**IN THE MATTER OF TERENCE BRITT,
DEPARTMENT OF CHILDREN AND FAMILIES.**

Terence Britt, appellant, pro se

**Delphinia McKinnis, Quality Assurance Coordinator, for respondent, pursuant to
N.J.A.C. 1;1-5.4(a)2**

Record Closed: March 9, 2020

Decided: April 14, 2020

BEFORE: CATHERINE A. TUOHY, ALJ:

STATEMENT OF THE CASE

Appellant, Terence Britt (Britt), an Investigator 1 with the Department of Children and Families (DCF), appeals a ninety-day working suspension pursuant to a Final Notice of Disciplinary Action (31-B) dated December 26, 2018 arising from a May 27, 2017 arrest for Driving Under the Influence in Gloucester City. Charges presented include N.J.A.C. 4A:2-2.3(a)6 Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)12 Other sufficient cause—Violation of Policy, Rule, Regulation or Administrative Decision, State Law, N.J.S.A. 39:4-50.

PROCEDURAL HISTORY

On March 20, 2018, respondent issued a Preliminary Notice of Disciplinary Action (31-A) setting forth the charges and specifications made against the appellant (respondent's brief, Exhibit 7). Appellant requested a departmental hearing which was held on November 30, 2018. The respondent issued a Final Notice of Disciplinary Action (31-B) on December 26, 2018, sustaining the charges listed in the Preliminary Notice and suspending appellant ninety working days beginning January 14, 2019 through February 22, 2019, with the remaining days held in abeyance (respondent's brief, Exhibit 8). Appellant filed an appeal on January 2, 2019, and the matter was transmitted by the Civil Service Commission, Division of Appeals and Regulatory Affairs, to the Office of Administrative Law (OAL) where it was filed on February 26, 2019, as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13.

An initial telephone conference was conducted on May 16, 2019, and discovery was to be exchanged. A follow-up telephone conference was conducted on June 24, 2019, and the matter was scheduled for a hearing on December 4, 2019. A further telephone conference was conducted on November 14, 2019, at the joint request of both parties, to discuss respondent's filing of a motion for summary decision. Respondent filed a motion for summary decision on December 16, 2019. Appellant filed a request that the undersigned recuse herself for failing to take an oath to uphold the 1844 New Jersey Constitution. Appellant's request was denied by Order dated January 31, 2020, and appellant was directed to file any opposition to respondent's motion for summary decision within thirty days, or by March 2, 2020. Appellant did not file any opposition to respondent's motion for summary decision and the record closed on March 9, 2020.

FACTUAL DISCUSSION AND FINDINGS

As the appellant did not file any opposition to the motion for summary decision, I **FIND** that the following **FACTS** are not in dispute:

The appellant worked as an Investigator 1, in the Office of Employee Relations, for the Department of Children and Families beginning April 29, 2017. On May 27, 2017, the appellant was arrested for Driving While Under the Influence, N.J.S.A. 39:4-50; Careless Driving, N.J.S.A. 39:4-97; Open Alcohol in Motor Vehicle, N.J.S.A. 39:4-51; and Refusal to Consent (Breath), N.J.S.A. 39:4-50.2.

On February 27, 2018, appellant appeared in Gloucester City Municipal Court, represented by counsel, and on the record entered a plea of guilty to the Driving While Under the Influence charge N.J.S.A. 39:4-50 (respondent's brief, Exhibit 3).

The appellant was issued a PNDA on March 20, 2018. Charges presented include N.J.A.C. 4A:2-2.3(a)6 Conduct Unbecoming a Public Employee; N.J.A.C. 4A:2-2.3(a)12 Other sufficient cause—Violation of Policy, Rule, Regulation or Administrative Decision, State Law N.J.S.A. 39:4-50.

The specifications of the PNDA stated:

"On or about May 30, 2017, you informed your Supervisor that you were arrested and charged on May 27, 2017 for Driving Under the Influence (DUI). DCF subsequently obtained a copy of the police report from the Gloucester City Police Department which confirmed that you were charged with a violation of N.J.S.A. 39:4-50 Driving Under the Influence; N.J.S.A. 39:4-97 Careless Driving; N.J.S.A. 39:4-51 Open Alcohol in Motor Vehicle; and N.J.S.A. 39:4-50.2 Refusal to Consent (Breath).

You appeared in Gloucester City Municipal court on February 27, 2018 and you were convicted for a violation of N.J.S.A. 39:4.50 Driving Under the Influence. Consequently, your driving privileges in the State of New Jersey were suspended for ninety (90) days.

As an Investigator 1 within DCF's Office of Employee Relations, you are held to a high standard of conduct as your duties include, but are not limited to, administering the Agency's disciplinary program, representing DCF in disciplinary matters involving DUI convictions, and enforcing DCF Policy(ies) regarding conduct.

DCF trusts its employees to behave appropriately and to use sound judgment. You have violated that trust as well as the trust of the public at large by your conduct, which was egregious. Your actions placed your safety as well as the safety of the public at risk. Furthermore, the gravity fo your conduct is unprinicipaled and unbecoming a public employee.

Your Conduct supports the Charges and Penalty.”

On November 30, 2018, a disciplinary hearing was held at the departmental level and the charges were sustained. A Final Notice of Disciplinary Action (FNDA) was issued to appellant on December 26, 2018, which sustained the charges of N.J.A.C. 4A:2-2.3(a)6 Conduct Unbecoming a Public Employee; N.J.A.C. 4A:2-2.3(a)12 Other Sufficient Cause: Violation of Policy, Rule, Regulation or Administrative Decision; N.J.S.A. 39-4.50 Driving While Intoxicated. As a result, appellant was suspended ninety working days beginning January 14, 2019 through February 22, 2019, with the remaining days held in abeyance.

LEGAL ANALYSIS AND CONCLUSIONS

The respondent seeks relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Our regulation mirrors R. 4:46-2(c) which provides that “the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 213 (1986)). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 251-2, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

Following the Brill standard, after considering all the papers and evidence filed in support of respondent's motion for summary decision and considering that appellant failed to oppose the motion, I **CONCLUDE** that there are no issues of fact that require a plenary hearing and that this matter is ripe for summary decision.

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority bears the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (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). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J Super. 93,104 (App. Div. 1959).

Appellant was charged with "Conduct Unbecoming a Public Employee," N.J.A.C. 4A:2-2.3(a)(6). "Conduct Unbecoming a Public Employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental 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). It is sufficient that the complained of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "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 Dep't. of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955))

On February 27, 2018, Britt entered a plea of guilty to the charge of Driving While Under the Influence in Gloucester City Municipal Court as a result of his May 27, 2017 arrest. As an Investigator 1 within DCF's Office of Employee Relations, appellant is held to a high standard of conduct as his duties included, but were not limited to, administering the Agency's disciplinary program, representing the DCF in disciplinary matters involving DUI convictions, and enforcing DCF Policy(ies) regarding conduct. Respondent trusts its employees to behave appropriately and to use sound judgment. Britt violated that trust as well as the trust of the public at large by his conduct, which was egregious. His action of driving while intoxicated placed his safety as well as the safety of the public at risk.

Therefore, I **CONCLUDE** that the respondent has met its burden in proving the charge of conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6), by a preponderance of the credible evidence.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. The other sufficient cause was for a violation of state law and appellant's plea of guilty to Driving While Intoxicated pursuant to N.J.S.A. 39:4.50. As set forth in the findings of facts and as discussed above, appellant's conduct of driving while intoxicated on May 27, 2017, violates the implicit standard of good behavior, one would expect from a public employee. This is especially true, as aforesaid, where appellant as an Investigator 1 for the respondent is charged with

the processing of discipline against other employees of the respondent. Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause, pursuant to N.J.A.C. 4A:2-2.3(a)(12), by a preponderance of the credible evidence.

PENALTY

The remaining issue is penalty. The Civil Service Commission's review of a penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Brock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). 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). The question to be resolved is whether the discipline imposed in this case is appropriate.

For his actions arising out of this incident, appellant has been found to have violated 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 for violation of N.J.S.A. 39:4.50 Driving While Intoxicated on May 27, 2017 to which he entered a plea of guilty in Gloucester City Municipal Court on February 27, 2018. As a result of his plea to N.J.S.A. 39:4-50, driving under the influence, appellant's driving privileges in the State of New Jersey were suspended for ninety (90) days.

Appellant received a ninety-working-day suspension from January 14, 2019 to February 22, 2019 (thirty days), with the remaining days held in abeyance. Respondent did not provide any chronology of discipline regarding appellant as part of its motion papers. However, respondent did provide a copy of appellant's Performance Assessment Review for September 1, 2016 through August 31, 2017 (respondent's brief, Exhibit 1). His overall evaluation rating was "3 – Exceptional."

Appellant's DWI conviction supports the imposition of the ninety-working-day suspension beginning January 14, 2019 through February 22, 2019, with the remaining days held in abeyance. After having considered all of the documents submitted in this matter and considering the impact upon the Department of Children and Families regarding the behavior by appellant herein, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that appellant's violations are significant to warrant a penalty of a ninety-working-day suspension. Therefore, I **CONCLUDE** that the imposition of a ninety-working-day suspension from January 14, 2019 to February 22, 2019 (thirty days), with the remaining days held in abeyance, was an appropriate penalty.

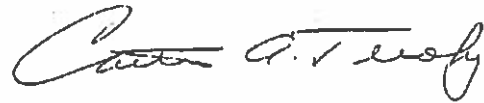
ORDER

Accordingly, I **ORDER** that respondent's motion for summary decision is **GRANTED** and that the action of respondent in suspending the appellant for ninety working days from January 14, 2019 to February 22, 2019 (thirty days), with the remaining days held in abeyance is **AFFIRMED**. 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.



April 14, 2020

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

4-14-20

Date Mailed to Parties:

4-14-20

CAT/mel

APPENDIX

Witnesses

For Appellant:

None

For Respondent:

None

Exhibits

For Appellant:

None

For Respondent:

Respondent's Brief in Support of Summary Decision with attached exhibits