



STATE OF NEW JERSEY

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

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2017-3046 and 2017-
3415
OAL DKT. NOS. CSV 07196-17 and
07200-174
(Consolidated)

ISSUED: AUGUST 19, 2020 BW

The appeals of Karen Rouse, Senior Human Services Technician, New Jersey Veterans Memorial Home - Paramus, Department of Military and Veterans Affairs, 60 working day suspension and removal effective February 7, 2017, on charges, were heard by Administrative Law Judge Julio C. Morejon, who rendered his initial decision on July 17, 2020. No exceptions were filed.

Subsequent to the issuance of the initial decision, the parties settled the matters. They have submitted the settlement to the Civil Service Commission for acknowledgment. A review of the settlement indicates that it complies with Civil Service law and rules.

Having considered the record and the attached Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on August 19, 2020, rejected the initial decision and acknowledged the settlement.

ORDER

The Civil Service Commission rejects the Administrative Law Judge's initial decision and acknowledges the settlement.

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 19th DAY OF AUGUST, 2020

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Christopher S. Myers
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CSV 07196-17
and CSV 07200-17
AGENCY DKT. NOS. 2017-3046
and 2017-3415
(CONSOLIDATED)

KAREN ROUSE,

Appellant,

v.

**NEW JERSEY VETERANS MEMORIAL HOME,
PARAMUS, DEPARTMENT OF MILITARY AND
VETERANS AFFAIRS,**

Respondent.

Theresa Richardson, Esq., for appellant

Aimee Blenner, Deputy Attorney General, for respondent (Gurbir S. Grewal,
Attorney General of New Jersey, attorney)

BEFORE JULIO C. MOREJON, ALJ:

Record Closed: March 19, 2020
17, 2020

Decided: July

STATEMENT OF THE CASE

Appellant, Karen Rouse (Rouse), a human services technician, appeals two separate decisions by respondent, the New Jersey Veterans Memorial Home, Paramus, Department of Military and Veterans Affairs, (NJVM) concerning two incidents involving Rouse and two separate residents at different times. One decision imposed a sixty-day suspension, and a second decision imposed a termination of Rouse's employment.

PROCEDURAL HISTORY

On March 30, 2016, the NJVM issued a Preliminary Notice of Disciplinary Action ("March PNDA"), imposing a sixty-day suspension of Rouse due to her alleged mistreatment of a resident on March 24, 2016. The March PNDA contained the following violations by Rouse:

New Jersey Civil Service Regulations:

- N.J.A.C. 4A:2-2.3(a)(1)—Incompetency, inefficiency, failure to perform duties;
- N.J.A.C. 4A:2-2.3(a)(12)—Other sufficient cause.

New Jersey Department of Military and Veterans Affairs (DMAVA) Corrective and Disciplinary Action Booklet, Departmental Directive 230.05 (Departmental Directive);

- B(9)—Incompetence or inefficiency;
- C(5)—Inappropriate physical contact or mistreatment of a patient, client, resident or employee;
- C(9)—Insubordination; Intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor;
- C(20)—Discourtesy to public, visitors, patients, residents, or clients;
- E(1)—Violation of a rule, regulation, policy, procedure, order or administrative decision.

Following a departmental hearing, the NJVM issued a Final Notice of Disciplinary Action (FNDA) on February 22, 2017, upholding all of the charges contained in the March PNDA, and imposed a sixty-day suspension of Rouse commencing February 22, 2017 ("sixty-day suspension").

Prior to the issuance of the FNDA of February 22, 2017, the NJVM had issued a second PNDA against Rouse dated June 6, 2016 ("June PNDA") for the alleged verbal abuse by Rouse of a resident on May 18, 2016. The June PNDA contained the following violations by Rouse:

New Jersey Civil Service Regulations:

- N.J.A.C. 4A:2-2.3(a)(7)—Neglect of Duty;
- 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.

New Jersey Department of Military and Veterans Affairs (DMAVA) Corrective and Disciplinary Action Booklet, Departmental Directive 230.05 (Departmental Directive):

- B(2)—Neglect of duty;
- C(4)—Verbal abuse of a patient, client, resident, or employee;
- C(7)—Fighting or creating a disturbance on State property;
- C(20)—Discourtesy to public, visitors, patients, residents or clients;
- D(7)—Violation of administrative procedures involving safety and/or security; and
- E(1)—Violation of a rule, regulation, policy, procedure, order or administrative decision.

Following a departmental hearing, the NJVM issued an FNDA on February 7, 2017, upholding all of the charges contained in the June PNDA, and imposed a termination of Rouse commencing February 17, 2017.

Rouse appealed the FNDA dated February 22, 2017, regarding the sixty-day suspension, and the FNDA dated February 7, 2017,¹ regarding the termination, and the two matters were filed simultaneously at the Office of Administrative Law (OAL) on May 22, 2017, to be heard as contested cases pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The parties consented to an Order to Consolidate on June 14, 2017, consolidating both matters for hearing pursuant to N.J.A.C. 1:1-17.3(a), because the two matters involved identical parties and witnesses, contained common questions of fact and law, and avoided duplication and inconsistency. At the request of the NJVM, and with the consent of Rouse, a Consent Confidentiality and Protective Order regarding the exchange of discovery material was entered on June 20, 2017. Hearings were conducted on November 2, 2017, December 20, 2017, and April 10, 2018.

Prior to the commencement of the hearings, on November 1, 2017, a motion was filed by the New Jersey Department of Health Office of Program Compliance (DOH), seeking to quash a subpoena for records and the testimony of Lisa King, regulatory officer of the DOH, which had been served upon them by Rouse on August 16, 2017. On November 2, 2017, after oral argument, Rouse withdrew the subpoenas and the motion was withdrawn.

At my request, on November 16, 2017, the NJVM filed a motion to admit exhibits R-5 and R-7 in evidence, in opposition to Rouse's hearsay exceptions made during the November 2, 2017, hearing. Rouse submitted opposition to the motion. On December 19, 2017, an Order granting the NJVM's motion was issued and exhibits R-5 and R-7 were admitted in evidence.²

¹ For reasons that were not fully explained, the two FNDAs were not processed or dated chronologically to the respective PNDAs and incident dates and penalties.

² The Order granting NJVM's motion provided that "Notwithstanding my ruling herein, regarding the admission of Exhibits R-5 and R-7 in evidence, I will give said documents the weight deemed appropriate in considering the 'nature, character and scope of the evidence' when rendering my Initial Decision in this matter. In other words, the admission of Exhibits R-5 and R-7 alone without other independent evidence as to the alleged incident, will weigh in my final decision when considering all the evidence presented. N.J.A.C. 1:1-15.5(c)."

Following the conclusion of the hearings on April 10, 2018, the parties were to file written summations, along with copies of the hearing transcripts. On June 12, 2019, the parties filed their summations and hearing transcripts.³ After a thorough review of the submissions on behalf of both parties, and extensive research into their respective legal arguments, the record closed on March 19, 2020.

FACTUAL DISCUSSION AND FINDINGS

At the hearing, the NJVM presented testimony from the following individuals, as to the sixty-day suspension: Denise Githinji, instructor of nursing; Sisily Matthew, nursing supervisor; Barbara Marella, quality assurance health specialist; and Lucy Davis, director of nursing. The NJVM presented the following individuals as to the termination: Marion Peyko; Loris Albano, licensed practical nurse; Eduardo Caning, registered nurse; and, on recall, Lucy Davis, director of nursing.

Rouse did not call any witnesses and testified on her own behalf as to both matters.

Sixty-Day Suspension

Witness Testimony

Testimony of Denise Githinji

Denise Githinji (Githinji) is the instructor of nursing at the NJVM and has worked there for five years. She testified that her job responsibilities include providing education to nursing staff and auxiliary workers, which includes people in the human services technicians (HST) position, which was Rouse's position at the NJVM. Githinji testified that training is conducted based on DMAVA requirements regarding education, which

³ On August 6, 2018, Rouse filed her summation and on August 9, 2018, NJVM filed its written summation. The record was incorrectly closed on August 9, 2018, as the undersigned believed all documents had been submitted in proper form. Orders of Extension were entered on September 21, 2018, and November 8, 2018, extending the time file an initial decision to December 24, 2018. The record was re-opened to allow for the parties to submit their summations in Word format, along with the hearing transcripts.

require courses regarding abuse and neglect to be completed annually. Githinji testified that she creates a schedule for the required courses and sends that schedule out to the nursing supervisors, who schedule employees to take the courses they need, and the employees are required to complete the mandatory courses by the end of the calendar year.

Githinji testified that a record is kept for each employee that lists the courses that employee has completed and the date of completion. Githinji stated that for employees who, like Rouse, are certified nurse aides (CNA), keeping a record of the courses taken is particularly important because the CNAs must accumulate a certain amount of training before they can have their license recertified by the State. Githinji testified that a record of the courses taken by Rouse was kept and reflects a training history detail from January 9, 2014, through January 6, 2016 (R-14).

Githinji testified that Rouse's training history shows that she was trained in how to handle residents respectfully, as Rouse had completed multiple courses that were relevant to providing medical care in a respectful way. Githinji testified that Rouse was properly trained to provide nursing care to NJVM residents, including individuals afflicted with dementia and Alzheimer's; topics of abuse and neglect were covered, as well.

Githinji testified that each year she provides a Competency Day where the staff, including HSTs, are involved in hands-on activities that they are likely to encounter while on duty. Githinji testified that Rouse had satisfactorily completed a Competency Day, and that she was satisfied with Rouse's work and training. (T3:23:21–23.) Overall, Githinji testified, Rouse was properly trained to perform the duties of her job and completed her training as required. (T3:21:16–18.)

Testimony of Sisily Matthew

Sisily Matthew (Matthew) is a nursing supervisor at the NJVM. She works the 11-p.m.-to-7:00-a.m. shift at the NJVM. Her job entails supervising all nursing staff, including HSTs. Matthew testified that staff members are responsible for checking the "assignment sheets" when they begin their shifts. Matthew stated that on March 24, 2016, she worked

the 11-p.m.-to-7:00-a.m. shift and that Rouse had worked the prior shift of 3:00 p.m. to 11 p.m. and was assigned to patient A.B.⁴ (R-4).

Matthew testified that she was working when around 12:15 a.m., Barbara Marella, the charge nurse from A.B.'s unit, called her to report that A.B. had some concerns about how he had been treated by Rouse during her shift. Matthew testified that upon hearing that A.B. had concerns, she went to A.B. and spoke with him. A.B. told her that he had asked Rouse to put him to bed around 6:15 p.m., after his dinner; Rouse told A.B. that she would return around 6:40 p.m., but she did not return to A.B.'s room until 7 p.m.; and when Rouse returned to his room, she began hollering at him and she put him to bed. Matthew testified that A.B. told her that Rouse changed his diaper without washing him first, leaving him wet, and that he was upset with Rouse's behavior.

Matthew testified that she took notes of what A.B. told her, which she then typed into a document (R-5). She said she read back to A.B. the notes she had taken, but he did not sign the document containing her notes, as he did not want to "bother the aide or anything like that." Matthew confirmed that she did not read the typed statement to A.B. but that both statements (written and typed) were the same Matthew testified further that it was her impression that A.B. understood her and was coherent and was upset with Rouse.

Testimony of Barbara Marella

Barbara Marella (Marella) works at the NJVM as a quality assurance health specialist. Marella testified that her job responsibilities include tracking everything that goes on in the building to provide a high quality of life for the residents, and as part of her duties she interviews patients who have complaints. Marella testified that she was working on March 25, 2016, and she interviewed A.B. due to his complaint about Rouse's treatment, as testified to by Matthew. Marella corroborated what Matthew had testified to concerning A.B.'s complaints about Rouse not putting him to bed on time, and her

⁴ This patient passed away prior to the commencement of the hearings, and his name will not be disclosed; instead, he will be referred to as "A.B."

treatment of him in raising her voice, and Rouse's failure to clean A.B. after Rouse removed and changed his diaper.

Marella testified further that A.B. told her that around 9:00 p.m. he used the call bell for Rouse to change his diaper, and that when she arrived she told him not to use the call bell, as she already knew he needed a diaper change. Marella stated that A.B. told her that Rouse did not change his diaper at 9:00 p.m., and that he was upset with how she had treated him. Marella testified that she prepared a typed report concerning her interview of A.B. and what he told her. (R-7.) She said she did not have A.B. write or sign a statement because she did not think he was capable of writing. Marella testified that A.B. was not his usual happy self when she interviewed him. Marella's report reflects that A.B. responded "no" when she asked him if he felt Rouse had "abused" him. (ibid.)

Testimony of Lucy Davis

Direct Examination

Lucy Davis (Davis) works as the director of nursing at the NJVM. Her duties include overseeing the functions of the facility, supervising all nursing staff, and attending to the residents' needs. Davis is also responsible for investigating any complaints from residents involving the staff. Davis investigated the incident of March 25, 2016, involving A.B. and Rouse. As part of her investigation, Davis relied upon the statements of Matthew (R-5) and Marella (R-7). In addition, Davis also interviewed Rouse on March 25, 2016. Present at this interview were Rouse and her union representative, and assistant CEO Kamala Kovacs (Kovacs). Davis testified that she prepared a handwritten statement of her interview of Rouse (R-8) on the date of her interview, and then prepared a Final Investigation Report dated March 31, 2016 (R-9), recommending Rouse's suspension. Davis did not interview A.B. as part of her investigation.

Davis testified that when Rouse was interviewed on March 25, 2016, she asked Rouse to write a statement regarding her care of and interaction with the residents, and specifically asked Rouse about her treatment of A.B. on March 24, 2016, and Rouse prepared the statement (R-15). Davis testified that Rouse reported that on the night in

question, she put A.B. to bed, changed him, and told him not to call her again. Davis stated that Rouse told A.B. not to put the call light on unless it was an emergency. Davis explained that the call light, or call bell, is a device that allows a resident to communicate to the staff that there is an issue that requires their attention. Davis stated that reasons for a resident to turn on the call light range from trivial to emergent, and it is never appropriate to tell the resident not to use the call light. Davis stated that staff are required to respond immediately to residents who have put the call light on.

Davis testified that before the interview concluded, Rouse left the interview room and did not return. Davis stated that she had not given Rouse permission to leave the interview. (R-8.)

Davis testified that in preparing the Final Investigation Report (R-9), she reviewed the statements provided by staff, along with Rouse's statement (R-15), and concluded that Rouse did not put A.B. to bed at the proper time; that she had hollered at him; and that she did not properly wash him when changing his diaper. She concluded that Rouse's behavior constituted neglect of A.B.

Davis testified further that a disciplinary action was initiated, and Rouse was transferred to another unit and reeducated on appropriate patient care, steps that were taken to ensure the safety of the residents. She explained that the reeducation was necessary because of her report concluding that Rouse's conduct in yelling at A.B and her failure to properly wash A.B., an incontinent resident, were both inappropriate, and fell well below the standard of care that must be provided to residents.

Davis testified that she is familiar with the Employee Code of Conduct (Code of Conduct), which details the manner in which staff should behave and how they should interact with the residents (R-10). Davis stated that all employees are required to follow the Code of Conduct, and the policy is provided to employees multiple times a year. Davis concluded that Rouse's behavior toward A.B. violated the Code of Conduct because Rouse treated A.B. disrespectfully when she hollered at him and failed to clean him properly.

Davis testified that she is familiar with the Mandatory Resident Rights (Resident Rights) (R-11), and that the same details the rights of all NJVM residents to be treated with respect, without abuse or neglect by staff members. Davis testified that all NJVM employees are required to follow the Resident Rights policy, and they are made aware of these rights on an annual basis. It was Davis opinion that Rouse's conduct towards A.B. violated the Resident Rights policy.

Davis testified that the Residents Right policy further states that residents have the right "to be free from physical and mental abuse and/or neglect." (R-11.) Davis testified that it was her opinion that Rouse violated the Resident Rights policy because her conduct toward A.B. disturbed and upset him.

Davis testified further that she was familiar with the NJVM Standard of Practice for Incontinent Care policy (Incontinent Care) (R-12). The policy explains the manner in which staff members are required to care for an incontinent patient. Davis explained that it is important for staff members to follow the Standard of Practice policy because if the residents are not properly cleaned after soiling themselves, the skin can break down and result in irritating rashes, boils, or blisters.

Davis opined that Rouse's conduct violated the Standard of Practice because she took A.B.'s soiled diaper off and put on a clean diaper without cleaning his body, in direct violation of the Standard of Practice.

Davis testified that Rouse's behavior toward A.B. was reported to the DOH, as Rouse is a licensed certified nurse aide. Davis stated that the DOH found that there was insufficient information to establish abuse and neglect in accordance with 42 C.F.R. § 488.301 to warrant removal of appellant's certification. (A-2.) Davis further stated that the DOH's decision to dismiss the matter against Rouse concerned her certification, as the DOH "has no jurisdiction over, and will not discuss, employment matters such as termination or suspension." (A-3.)

Cross-Examination

Davis stated that when she interviewed Rouse on March 25, 2016, she told Rouse that she was being suspended immediately because of her conduct with A.B. on March 24, 2016. Davis also stated that she did not ask Rouse any questions regarding the statement she had prepared. Davis confirmed that Rouse was covering for another HST on March 24, 2016, and that between 6:00 and 6:30 Rouse was assigned to the "day room," and would not be able to leave the day room to put A.B. to bed. Davis stated further that the findings and conclusions in her report resulted from her reading the statements from Matthew and Marella, and that she had not interviewed A.B. Davis opined that Rouse's statement was inconsistent with A.B.'s statements to Matthew and Marella.

As to the improper-incontinent-care allegation, Davis detailed the procedure for investigating said claim and acknowledged that the only evidence that Rouse did not render proper incontinent care was A.B.'s statements to Matthew and Marella.

Testimony of Karen Rouse

Direct Examination

Rouse testified that she has worked at the NJVM for thirteen years. She was hired on May 5, 2003; she became an HST sometime in 2005, and a senior HST in 2008. Rouse stated that on March 24, 2016, she worked the 3-p.m.-to-11-p.m. shift in Unit MN. She testified that she completed the safety rounds and reported to the nurse's station for her assignments, and that she was assigned to "Emily's schedule," which had been assigned to her "at least ten times before" (T3:46:10–16).⁵

Rouse testified that her resident assignment on March 24, 2016, consisted of A.B. and twelve patients. Her schedule (A-1) was broken down to day-room times—3:00 to

⁵ The transcripts for the three days of hearings will be referred to as follows: T1 for the 11/2/2017 hearing, T2 for the 12/20/2017 hearing, and T3 for the 4/10/2018 hearing.

3:30 p.m., 6:00 to 6:30 p.m., and 9:00 to 9:30 p.m.—and her dinner break was 6:30 to 7:00 p.m. Rouse testified that she had worked with A.B. before, and that he usually did not make complaints and was generally easy to work with. Rouse testified that A.B. was wheelchair bound, and he required two people to assist and Hoyer lift him for transfers (T3:50:3–15). Rouse testified that she first saw A.B. around 4:45 p.m. on March 24, 2016, in the hallway sitting outside of his room waiting for dinner. Rouse described A.B.'s demeanor as “forgetful”.

Rouse testified that she was assigned to the day room from 6:00 p.m. to 6:30 p.m. assisting/monitoring residents and “tidying the room” (T3:54:12–21), and that she went to dinner break at 6:30 p.m. Rouse testified that she returned from her dinner break around 6:50 p.m. and she saw A.B. and asked him if he were ready for bed, to which he replied “yes” (T3:55:5, 15–17). Rouse stated that she and her coworker “Sarah” used the Hoyer lift to transfer A.B. to bed. Rouse then undressed him, “washed him with warm water and soap, applied cream on him, changed his diaper with a dry diaper, covered him, put his table on his side, gave him a throat lozenge”, and told him, “I will see you later” (T3:56:5–11).

Rouse testified that around 9:15–9:20 p.m. while she was attending to another resident, Sarah came in the room and told her that A.B.'s call light was on, and that after she finished what she was doing with the other resident, she went to A.B.'s room and asked him what he needed, as she thought his call was an “emergency.” (T3:57:1–5). A.B. informed her that he “needed to be changed”, and she told him that he did not have to put his call light on for a change. (*Ibid.*). Rouse testified that she turned off A.B.'s call light, left his room, and went back to the resident she had been attending to, and then returned to A.B.'s room when she was done. Rouse stated that A.B. was soiled, and she washed him and changed his diaper. Rouse testified that A.B.'s demeanor was “fine,” and she saw him again fifteen minutes before she went off duty, and A.B. was asleep.

Rouse testified that Davis called her at home the next day and told her to come in for a meeting. Rouse, along with her union representative, met with Davis and Kovacs at the NJVM, and that Davis informed her that A.B. had complained that Rouse had not cleaned him and did not care for him properly the night before. Rouse stated that she

was asked to prepare a written statement (A-3) concerning what occurred the night before, and that after doing so Kovacs told her that she was being “suspended” and her certification would be “taken away” (T3:60:15–18.) Rouse stated that Kovacs told her to “leave,” and she did, returning to work three days later.

Rouse testified that sometime later she received a letter from the DOH (A-2) advising her that the charges of abuse or neglect against her were being dismissed (Id.). Rouse testified that she has been certified with the DOH since 1993 and recertified every year, and that her certification has never been suspended or revoked.

Cross-Examination

Rouse was asked about use of the call light. She testified that even though the call light can be used for both emergency and non-emergency situations, she did not believe that A.B.'s call light for a change signaled an emergency, and she allowed five to ten minutes to pass between the time the call light was rung and the time she returned to A.B.'s room.

Termination

Witness Testimony

Testimony of M.P.

Direct Examination

M.P. (Mrs. P.) testified that she and her husband, M.P. (Mr. P.), are residents of the NJVM. Mrs. P. has resided at the NJVM since 2016, and Mr. P. since 2012. Her husband is confined to a wheelchair and has dementia. Mrs. P. testified that on May 18, 2016, she was sitting in her room, when she heard “arguing and yelling” in the hallway but was not sure of the people involved. Mrs. P. stated that she saw Rouse bring Mr. P. into the room, and she heard the two of them “yelling back and forth at one another.” (T1:61:24.)

Mrs. P. testified that she saw Rouse bring Mr. P. into the bathroom located inside their room, and that she could hear them continuing to yell at each other. Mrs. P. stated that Rouse stormed out of the bathroom and yelled, "I can't do this anymore." (T1:62:3-4.) Mrs. P. testified that Rouse turned around and picked up a laundry bag from the bed and threw it across the room "with all her might," and it landed on a snack table and a pillow, and then Rouse left the room. (T1:64:5.)

Mrs. P. stated that Rouse returned sometime later and wheeled Mr. P. out of the bathroom, placed him at the side of the bed, and left the room again, and did not return for some time. Mrs. P. testified that outside of her room she saw a male nurse (Edwardo Caning) and one of the aides, who she was sure "saw everything that went on," because they came into the room and "put Mr. P. to bed" (T1:62:12-15).

Mrs. P. testified that she observed the altercation involving Rouse and Mr. P. from a distance of ten feet, and that she is fully able to see objects from that distance and could observe clearly from her chair. Mrs. P. testified that this was the first time she had ever seen a staff-person argue with a resident, the next morning she reported the incident involving Rouse and Mr. P. to the head nurse.

Cross-Examination

Mrs. P. was asked if her husband had any "behavioral problems," and her reply was that he occasionally "loses his memory and he yells" (T1:69:19-21). She explained that Rouse "threw the clothes, walked out of the room, and didn't come back for a minute or two" and when she came back she went into the bathroom, wheeled Mr. P. out, put him alongside his bed, and walked out of the room, "never to come back" (T1:76:2-7, 76:13). She further stated that Mr. P. "stayed in that position right there in the chair, he did not leave the room at all, he sat right where she put him and did not move" (T1:76:16-23).

On further cross-examination, Mrs. P. stated that while her husband sat in his wheelchair she saw that Edwardo Caning was "right outside the door, he was on his way to give meds but he was right there, him, his cart, Rouse [and] the aide, he was right in front of [room] A113" (T1:77:1-6). Mrs. P. responded that Caning "saw everything going on, he heard the yelling in the bathroom, he was in front of the room when she took him in the bathroom" (T1:77:8-10,7-18).

Testimony of Loris Albano

Direct Examination

Loris Albano (Albano) is a licensed practical nurse at the NJVM. His job responsibilities include general patient care, giving out medications, and administering treatments. He has worked there since 2005.

Albano testified that on May 18, 2016, he filled out an assignment sheet that assigned each employee to care for different patients. (R-23.) Albano stated that Rouse was assigned to care for a total of eleven residents, one of whom was Mr. P., and that other employees working in the same area were also assigned to care for eleven residents. Albano testified that when an individual is admitted to the NJVM, a plan of care is made for them based on their specific medical needs, and that individual's particular plan of care is used by all nursing staff, including HSTs. Albano testified that the plan of care is updated every quarter, but can be updated more frequently if issues with the specific resident arise. Albano testified that the plan of care is made available for all staff to review regularly.

Albano stated that Mr. P.'s plan of care reflected that he was diagnosed with dementia prior to May 2016, and that he experienced a fall on May 13, 2016, which required staff members to assist him with toileting. (R-24.) Further, Albano testified that Mr. P. is unable to walk and is bound to a wheelchair.

Albano testified that on May 18, 2016, he was in the B Wing near the nurse's station when he heard a "loud noise" in the A Wing about twenty-five feet away. He said

he heard the noise but was unable to “visualize what was going” on because of the configuration of the AB unit (T2:35:18–25). When asked to describe what he heard, Albano stated “Somebody was kind of loud, it was voices (T2:36:3–4). When asked, “What type of sound was it?,” he replied, “Voices,” and said he “could identify [Rouse’s] voice, it was loud, but not argumentative and not screaming, but loud enough for me to hear” (T2:39:5–10). Albano stated, “ I heard Ed Caning briefly” (T2:39:22–25).

Albano confirmed that he wrote a statement about the incident (R-25). Albano testified it was “uncommon” to hear the loud noises that he heard on May 18, 2016, and that it is “never appropriate” to speak loudly or raise one’s voice toward a patient. (T2:45:11–19, 75:15–18.) It is not appropriate even if there is a problem with the resident—the resident can be separated from the situation, or spoken to softly, but it is never appropriate to raise a voice at a resident. Albano testified that Mr. P. could sometimes be difficult, but that he was generally responsive to staff requests.

Cross-Examination

Albano testified that Rouse’s voice was one of the loud voices he heard in the hallway of the A Wing, and in his written statement, he wrote that the loud voices in the A Wing were heard “before 9:00 p.m.,” yet Rouse had been assigned to the dayroom between 8:30 p.m. and 9:00 p.m. Asked to explain this discrepancy, Albano replied, “Based on what I wrote in here, I know that I asked [Rouse] to put the two residents in bed and she was still in the day room; it may not be exactly 9:00 p.m. but it was close, that’s why I wrote 9:00 p.m., but it was after” (T2:73:24–25).

Albano described Mr. P.’s demeanor, as “Nothing unusual, still kind of anxious, still trying to get out of the day room” (T2:74:11–14). Albano stated that he could not make out who was talking in the hallway what was said, as they were too far away. Albano could not recall when he saw Rouse return from caring for her residents. Albano opined that if Mr. P. was being difficult with Rouse, she should have asked for assistance from a CNA or nurse to help her with Mr. P. He added that it “does not mean that she’s going to get it” (T2:79:12–25, 80:1).

Testimony of Eduardo Caning

Direct Examination

Eduardo Caning (Caning) works at the NJVM as a registered nurse and has been there for about nine years. His duties include assessing residents in the facility, passing out medications, and carrying out doctors' orders regarding resident care. Caning testified that he was working at the NJVM on May 18, 2016, in the same unit as Rouse. He stated that around 8:00 p.m. he was passing out medication near the nurse's station when he noticed that Mr. P. was restless. Caning testified that Rouse approached him and asked him to watch Mr. P., and that he responded that he was unable to do so because he was passing out medication.

Caning testified that about a half hour later, he was preparing medication for a patient when he heard a "commotion" coming from two rooms away, which was the room inhabited by Mr. and Mrs. P.. He said that the commotion sounded like two voices, one of which he recognized as the voice of Mr. P. and the other he recognized as the voice of Rouse. Caning described both voices as "loud," and he described Rouse's voice as an "anxious tone." (T2:97:10-11.)

Caning testified that he then saw Mr. P. wheeling himself out of the room, followed by Rouse, and that she approached him again to ask that he watch Mr. P. Caning recalls Rouse telling him: "You need to watch him." (T2:102:22.) Caning stated that he again told Rouse that he could not watch Mr. P. because he had to give medications to other residents. Caning testified that he saw Mr. P. wheeling himself toward the nurse's station, unsupervised by Rouse, and that he followed Mr. P. because he did not want him to fall. Caning stated that he assisted Mr. P. even though he was holding medication to give to another resident, and that he assisted Mr. P. to bed, as Rouse was not present.

Caning testified that it is never appropriate for an employee to speak to a resident in an anxious tone, because doing so may agitate the resident. On May 19, 2016, Caning was asked to prepare a written statement, which was admitted into evidence as R-26.

Cross-Examination

On cross-examination, Caning described Mr. P. as having "good and bad days". He stated, "On a bad day, confused, confused mood, restless" (T2:109:20–24). Caning testified that he saw Mr. P. around 8:00 p.m., when Mr. P. wanted to go to bed, and that Mr. P. was wheeling himself in the direction of his room. He stated that Rouse was following Mr. P. down the hallway. He then stated that the next time he saw Mr. P. and Rouse was around 8:30, in Mr. P's room, which is the time the HST "should be helping the residents, toileting them and getting them ready for bed" (T2:122:2–5). Caning stated that after Rouse left A Wing, he did not see her again that evening.

Testimony of Lucy Davis (recalled)

Direct Examination

Davis is the director of nursing at the NJVM and her duties include supervising the entire nursing department and conducting investigations when improper activity is reported. Davis stated that she was asked to investigate the incident that occurred on May 18, 2016, where Mrs. P. reported to the nursing staff that an Rouse was yelling loudly to her husband. The complaint stated specifically that Rouse was loud, and yelled, "I don't have to take this anymore," and threw a laundry bag against the wall, leaving Mr. P. in the care of another employee. (R-31.) Davis confirmed that an Incident Case Report was filed to document Mrs. P.'s complaint. (R-30.)

Davis admitted she never spoke to Mrs. P. She testified that she interviewed the social worker who interviewed Mrs. P. , and the following individuals: Rouse, Caning, Albano, and staff members Roshmi Matthew and Milka Graves (T2:136:5–12). Davis testified that she took notes of her interviews (T2:140:3–4; R-27; R-28; R-29). Davis testified that the notes of her interview with Rouse on May 19, 2016, reflect that Rouse told her that Mr. P. called her a "black bastard," that Mr. P. was giving Rouse a "hard time," and that Rouse "totally denies throwing the laundry bag across the room." (R-29.)

Davis' Final Investigation Report (R-31) included the fact summary, conclusions, and a recommendation of removal. Davis testified that her conclusion was that Rouse was "loud, and argumentative and discourteous to a patient in the hallway" (T2:146:14, 147:1–10).

Davis testified that she decided to terminate Rouse based upon her investigation concerning the events of May 18, 2016, as well as Rouse's "extensive prior disciplinary history (R-34; R-35;R-36; T2:164:4–17). Davis testified that it was her opinion that Rouse's conduct violated the NJVM Home Resident Safety Policy and Procedure, Resident Abuse Policy.

Specifically, Davis stated that the said policy defines verbal abuse as "the use of oral, written, or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance . . ." (R-13.) Davis testified that Rouse's behavior constituted "verbal abuse" in accordance with this definition, as she opined that Rouse was yelling at and speaking disrespectfully toward Mr. P. (R-11.)

Davis testified that upon completing her investigation, she disclosed to the DOH the report she wrote, pursuant to pertinent reporting regulations. (R-32.) Davis stated that the DOH ultimately dismissed the case (A-4). Davis testified that even though the DOH did not pursue any action against Rouse, the facility remains the sole decision maker in terms of determining whether Rouse's conduct warrants discipline.

Cross-Examination

On cross-examination, Davis was shown the letter from the DOH informing the NJVM that the charges against Rouse were dismissed for insufficient evidence and inquiring if the NJVM had any additional evidence (A-4). Davis denied submitting any additional documentation or information to the DOH. Davis affirmed that neither she or Canning spoke to Mrs. P. regarding her complaint about Rouse.

Davis testified that she determined that Rouse had committed verbal abuse, because Rouse was "loud and argumentative" to Canning in the hallway; Rouse was

yelling and screaming at Mr. P. in the bathroom and not treating him with “dignity and respect” (T2:205:12–14); Rouse was neglectful of her duty, in that she did not take care of Mr. P. as required of her ; Rouse was “fighting” and creating a disturbance in the hallway, resulting in the staff in another wing hearing “a commotion and argument”, (T2:205:25); and Rouse created noise in the hallway, which is a disturbance to patients.

Testimony of Karen Rouse

Direct Examination

Rouse confirmed that on May 18, 2016, she reported to the AB Unit nurse’s station, and received her assignment; she was assigned to care for Mr. P. She testified that she first saw Mr. P. “around 4:40 p.m.,” and she “asked him if he needed to go to the men’s room.” She testified that “he is on a toileting schedule” (T3:86:18–23), and that “if you don’t ask him, or try to take him to the bathroom, he’ll go on his own, and he is a fall risk” (T3:87:2–5). Rouse stated that “Mr. P. has to go to the dayroom for monitoring” (T3:87:18–20); specifically, “he has to be supervised; someone has to be with him at all times” (T3:88:6–7).

Rouse recalled that she then saw Mr. P. around 8:00–8:15 p.m., and he was with a group and his wife, and she saw Mr. P. going towards the dayroom (T3:88:10–12). Rouse testified that at 8:30 p.m., Mr. P. wanted to go to the bathroom, and that she told him that she could not take him then, as she had to wait for staff to come to get the residents. Rouse stated that when the staff came and took their residents from the dayroom, she was able to take Mr. P. to his room, and she took him to the bathroom. Rouse stated that Mr. P. started “getting loud and cursing,” and that she told Caning that Mr. P. was being loud and “cursing” her (T3:89:20–25). Rouse testified that Caning told her he could not help her because he was “was passing out meds” (T3:90:1). Rouse testified that she remembers that Caning was standing outside Mr. P.’s room (T3:90:22–23).

Rouse testified that she took Mr. P. to the bathroom in his room, and Mrs. P. was in the room. Rouse stated that Mrs. P. said to Mr. P. “Mike, why are you giving her a hard

time; why are you cursing her?" (T3:91:1-4). Rouse testified that in the bathroom she got Mr. P.'s pants down and took off his briefs, and she sat him on the toilet. Rouse recalled that while Mr. P. was in the bathroom, Mrs. P. was sitting in front of the bathroom, so she left the bathroom door open, while she turned down Mr. P.'s bed. Rouse testified that she heard Mrs. P. say to Mr. P. "don't get up," and that she then went to the bathroom and found Mr. P. standing. Rouse stated that she put clean briefs on him, and she pulled his pants up, and he sat in his wheelchair.

Rouse testified that she asked Mr. P. if he was ready for bed, and he said "no," and started to wheel himself "backwards to get to the door" (T3:92:17-21); he wheeled himself out the door and he was going to the left towards the A Wing dayroom. Rouse said she told Caning to "keep an eye" on Mr. P. because he did not want to go to bed, and she had to go to B Wing because she had to tend to three residents waiting for her.

Rouse stated that after she finished with the residents in B Wing, she went back to the A Wing, and Caning told her he had put Mr. P. to bed. Rouse testified that she went into Mr. P.'s room and "put the laundry up on the night table between the beds and put the brown wrapping paper in the soil utility bin" (T3:103:8-13). Rouse recalled doing her last check of Mr. P. at 10:45 p.m.

Rouse described Mr. P.'s care plan as stating: "Depression and anxiety with behavioral problems such as yelling and restlessness," and said that she has had this experience with Mr. P. before "maybe ten times" (T3:106:8-25). She also said, "When it happened in the past, the nurse would take over to calm him down" (T3:107:4-7).

Rouse testified that the next day Davis called her and told her to arrive one hour prior to starting her shift, and she was not told why. Rouse testified that she arrived the next day at the NJVM around 1:45 p.m., and she met with Kovacs and Davis. Rouse stated that Davis told her that Mrs. P. told them that the night before she was in their room and that she "picked up the laundry bag and threw [it] upside the wall and it almost hit her in the head, and that I mistreated Mr. P." (T3:111:1-10). Rouse confirmed that Davis told her was suspended indefinitely and that she was going to call the DOH, that she was to leave the NJVM and Kovacs escorted her out of the building.

Rouse testified as requested by Davis, she prepared a statement as to what had occurred with Mr. P., the night before. (A-6). Rouse read the statement in the hearing and confirmed that it was accurate. Rouse testified further that Davis and Kovacs told her she was terminated before they read the statement (T3:126:6--23).

Cross-Examination

Rouse testified that Caning told her to leave Mr. P., as he would take care of him while Rouse tended to the residents in the day room. Rouse denied that the laundry was on the floor by Mr. P.'s bed and said that it was on the tabletop instead. Rouse stated that she would ask for help with a resident from another CNA or nurse, if a resident was unruly or loud.

In response to my questions, Rouse stated that Mr. P.'s level of attention was "high", and she asked Caning to help her with Mr. P. because she had other patients who had to be provided care Rouse confirmed that she is currently employed at Oakland Rehabilitation & Healthcare Center (Oakland Care).

Credibility

To resolve the inconsistencies in the witness testimony, the credibility of the witnesses must be determined. Credibility contemplates an overall assessment of the story of a witness considering its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). 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). 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).

As the finder of the facts, I must determine the credibility of the witnesses. In deciding what testimony to believe, I may take into consideration any of the following

factors:

- The witness' interest, if any in the outcome of this case;
- The accuracy of the witness' recollection;
- The witness' ability to know what he/she or them is talking about;
- The reasonableness of the testimony;
- The witness' demeanor on the stand;
- The witness' willingness or reluctance to answer;
- The inherent believability of the testimony; and
- The presence of any inconsistent or contradictory statement.

Through this analysis, as the judge of the facts, I will weigh the testimony of each witness and then determine the weight to give it. Through this process, I may accept all, a portion, or none of the testimony.

Findings of Fact—Sixty-Day Suspension

Based on the evidence presented at the hearing, as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following in connection with the sixty-day suspension of Rouse:

Rouse has worked at the NJVM for thirteen years, as a human services technician. On March 24, 2016, she was working from 3 p.m. to 11 p.m., covering another employee's shift, and A.B. was one of the residents assigned to her. Rouse was properly trained to perform the duties of her job and completed her training as required.

A.B. was a resident at the NJVM during all relevant times herein. He passed away prior to the hearings held in this matter. Matthew and Marella spoke with A.B. on March 25, 2016, concerning an incident that occurred with Rouse on March 24, 2016, and each took notes of their interviews, which were later typed and submitted to Davis. Matthew's and Marella's testimony was consistent with the notes they each independently took of their interview of A.B. on March 25, 2016.

Matthew testified truthfully that she read the typed statement to A.B., but she did not have him sign or acknowledge the same. Matthew believed A.B. understood her and was coherent when he spoke to her.

Marella testified truthfully that she prepared a typed report concerning her interview of A.B. and what he told her and that she did not have A.B. write or sign a statement because she did not think he was capable of writing. Marella's report reflects that A.B. responded "no" when she asked him if he felt Rouse had "abused" him.

Davis did not speak with or interview A.B. concerning his allegations against Rouse. Davis and Kovacs meet and spoke with Rouse on March 25, 2016, concerning A.B.'s allegations regarding Rouse's treatment of him. Davis' conclusion to suspend Rouse for sixty-days, contained in the Final Investigation Report dated March 31, 2016, was based exclusively on the reports/statements submitted by Matthew and Marella, her interview of Rouse, and Rouse's statement, and did not reflect that Davis interviewed A.B. Davis did not ask Rouse any questions regarding the statement she had prepared. The only evidence that Rouse did not render proper incontinent care was A.B.'s statement to Matthew and Marella. Davis' Final Investigation Report stated that a skin assessment was performed on A.B., and "no redness or bruising was noted."

Rouse provided credible testimony concerning the incontinent care she provided to A.B. on March 24, 2016. Rouse's testimony is consistent with her written statement provided to Davis on March 25, 2016, concerning the incontinent care she provided to A.B. Rouse responded to A.B. after he had turned on the call light around 9:15–9:20 p.m., and she told him that he should only turn on the call light for an "emergency" and not a diaper change. Rouse believed A.B.'s demeanor was "fine," and he did not complain to her, and her testimony is consistent with Matthew's and Marella's testimony and typed statements that A.B. did not complain that Rouse was abusive with him.

Rouse met with Davis and Kovacs on March 25, 2016 and was informed by them of A.B.'s complaints for the first time. She was told that she was suspended and that her certification would be "taken away," and Kovacs instructed her to leave the facility.

Rouse is currently employed at Oakland Care. Rouse had been previously suspended by the NJVM for prior incidents related to her conduct. (R-34; R-35; R-36.)

Analysis and Additional Findings of Fact

Judicial rules of evidence do not apply to administrative-agency proceedings, except for rules of privileges or where required by law. N.J.R.E. 101(a)(3); DeBartolomeis v. Bd. of Review, 341 N.J. Super. 80, 82 (App. Div. 2001); N.J.S.A. 52:14B-10(a); N.J.A.C. 1:1-15.1(c).

“Hearsay” is statements other than ones made by the declarant while testifying at a hearing, offered into evidence to prove the truth of the matter asserted. N.J.R.E. 801(c). Hearsay is usually not admissible because it is deemed untrustworthy and unreliable, N.J.R.E. 802, unless it falls within an exception set forth in N.J.R.E. 803 or 804. However, hearsay is admissible in an administrative proceeding such as this one subject to the “residuum rule,” which mandates that the administrative decision cannot be predicated on hearsay alone. Weston v. State, 60 N.J. 36 (1972).

“[A] fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it.” Id. at 51.

The Uniform Administrative Procedure Rules governing administrative-agency proceedings codify this doctrine by requiring that “some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.” N.J.A.C. 1:1-15.5(b). In assessing hearsay evidence, it should be accorded “whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the

circumstances of its creation and production, and, generally, its reliability." N.J.A.C. 1:1-15.5(a).

Here, the NJVM has produced as witnesses Denise Githinji, Sisily Matthew, Barbara Marella, and Lucy Davis to establish the FNDA suspension. However, the NJVM was not able to produce the most important witness of all, A.B., to testify as to what occurred on March 24, 2016, as A.B. passed away prior to the commencement of the hearing. As a result, through the testimony of Matthew and Marella, the NJVM has attempted to establish A.B.'s observations, impressions, and recitation of Rouse's conduct on March 24, 2016.

Matthew and Marella's testimony is hearsay, concerning what A.B. told them occurred on March 24, 2016. Both testified that A.B. told them that Rouse "hollered" at him; that she failed to properly clean him when she changed him; that he was "upset" with Rouse's conduct; and that Rouse told him not to use the call light for a change. The NJVM then produced Davis to opine as to Rouse's behavior based solely upon her interviews of Matthew, Marella, and Rouse, but not A.B. No evidence was produced that could corroborate A.B.'s allegations regarding Rouse's treatment of him. The only corroborating evidence presented was Davis, who testified that A.B. did not have a rash or dry skin, symptoms consistent with improper incontinent care.

While hearsay is admissible in an administrative hearing, the introduction and admission of the handwritten notes and typed notes prepared by Matthew and Marella do not satisfy the residuum rule, which mandates that the administrative decision cannot be predicated on hearsay alone, N.J.A.C. 1:1-15.5(b). Both testified that their notes were not provided to A.B. for his validation as to its content.

I **FIND** that Matthew's and Marella's testimony does not offer any additional information as to what occurred on March 24, 2016, other than what A.B. told them. The statements prepared and typed by Matthew and Marella do not contain any additional information that corroborates what A.B. told them. Neither Matthew nor Marella had A.B. sign or initial the statement to confirm its content.

I **FIND** the testimony of Matthew and Marella to contradict what the NJVM is seeking to prove herein, that Rouse failed to perform her duties (N.J.A.C. 4A:2-2.3(a)(1)), or that her conduct was incompetent (DMAVA 230.05, B(9)), inappropriate (DMAVA 230.05, C(5)), or discourteous to the patient (DMAVA 230.05, C(20)), as Matthew and Marella testified that A.B. did not state that Rouse abused him and that he did not want to sign any statement so as not to “bother” Rouse (T1:120:1-25).

I **FIND** the testimony of Davis and her Final Investigation Report concerning her conclusion to suspend Rouse to be pure hearsay without any residuum of independent reliable facts, as the same is totally reliant upon Davis’ interviews of Matthew and Marella and their notes and typed statements, which I have found to be hearsay, as well as her interview of Rouse, where Rouse disputes A.B.’s statements.

I **FIND** that Matthew’s, Marella’s, and Davis’ testimony does not corroborate A.B.’s statement that Rouse hollered at him, that she failed to properly change him, and that he was “upset” with Rouse’s behavior.

I **FIND** that Rouse admitted that she told A.B. not to turn on the call light for a diaper change, as this was “not an emergency,” which is inconsistent with proper care of a resident at the NJVM.

Findings of Fact—Termination

Based on the evidence presented at the hearing, as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following in connection with the termination of Rouse:

Mrs. P. and Mr. P. are residents of the NJVM. Mrs. P. has resided at the NJVM since 2016, and Mr. P. since 2012. Mr. P. is confined to a wheelchair and has “dementia.” Mr. and Mrs. P. reside in the same room in the A Wing.

On May 18, 2016, Rouse reported to the AB Unit nurse’s station and received her assignment for the 3-p.m.-to-11-p.m. shift (R-23). She was assigned to care for Mr. P.

Rouse described Mr. P.'s care plan as stating: "Depression and anxiety with behavioral problems such as yelling and restlessness."

At 8:30 p.m., Rouse was watching Mr. P. in the day room, along with another resident. Mr. P. told Rouse that he wanted to go to the bathroom. Rouse was able to take Mr. P. to the bathroom in his room, after the staff came and took their residents from the day room.

Mrs. P. was sitting in her room when she heard "arguing and yelling" in the hallway but could not identify the source of the same. Rouse wheeled Mr. P. into the room and then took him to the bathroom. Mrs. P. testified that Rouse then stormed out of the bathroom and yelled, "I can't do this anymore," and she left the room. Rouse then returned, and took Mr. P. into his bedroom, where she left him sitting in his wheelchair while she made his bed. Thereafter, Mr. P. left the room by wheeling backward in his wheelchair, and Rouse gave chase after him.

Caning was outside of Mr. P.'s room when he heard loud voices and arguing emanating from Mr. P.'s room, and he saw Rouse following Peyko out of the room, as he wheeled himself. Rouse asked Caning to watch Mr. P., as she needed to tend to other residents in the B Wing. Caning could not tend to Mr. P. initially because he was distributing medication to other residents. Rouse wheeled Mr. P. back to his room and left to attend to other residents.

Albano testified that he heard loud voices emanating from the A Wing. He identified the voices as belonging to Rouse. Albano's written statement indicated that he heard these loud voices before 9:00 p.m., which was not the time Rouse was in the A Wing, as Rouse had a day room assignment between 8:30 p.m. and 9:00 p.m.

After Rouse finished with the residents in B Wing, she went back to the A Wing to tend to Mr. P. When she arrived at Mr. P.'s room, Caning told her he had put Mr. P. to bed. Rouse then went into Mr. P.'s room and put the laundry up on the night table between the beds. Rouse recalled doing her last check of Mr. P. at 10:45 p.m.

I **FIND** Mrs. P.'s testimony not credible that Rouse threw the laundry bag across the room with "all her might and it landed on a snack table and a pillow," and that Rouse yelled, "I can't take it anymore," as it is inconsistent with her testimony that Caning was outside the room and "saw everything," when Caning never described seeing any events, but only hearing loud voices. I **FIND** further that Mrs. P.'s statement is inconsistent with Caning's testimony and written statement which is devoid of any information Rouse throwing the laundry bag.

Davis investigated Mrs. P.'s complaint, and as part of her investigation she spoke with Caning and Albano, who told her that they had heard loud talking emanating from the hallway and Mr. P.'s room but did not recall what was said. They also told Davis that they did not see Rouse throw the laundry bag as Mrs. P. claimed. I **FIND** Caning and Albano's testimony credible, as the same was consistent with their original statements communicated to Davis, and as contained in their respective written statements provided to Davis.

As part of her investigation, the following day Davis called Rouse and told her to arrive one hour prior to starting her shift, and she was not told why. Rouse met with Kovacs and Davis, and Davis told her that Mrs. P. had filed a complaint that Rouse had thrown the laundry bag against the wall in their room, and that Rouse had mistreated Mr. P. in screaming at him.

Rouse prepared a three-page handwritten statement, as requested by Davis and Kovacs, and she submitted the same to them. Before reading Rouse's statement, Davis and Kovacs informed Rouse that she was terminated and asked Rouse to leave the facility.

Following the interviews of Caning, Albano, and Rouse, Davis prepared a Final Investigation Report and recommended removal of Rouse, which relied exclusively on statements provided to her and did not include an interview and statement from Mrs. P.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act and the implementing regulations govern the rights and duties of public employees. N.J.S.A. 11A:1-1 to 12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. An employee who commits a wrongful act related to his or her duties or who gives other just cause may be subject to major discipline. N.J.S.A. 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). In a civil service disciplinary case, the employer bears the burden of sufficient, competent, and credible evidence of facts essential to the charge. N.J.S.A. 11A:2-6(a)(2), -21; N.J.S.A. 52:14B-10(c); N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. That burden is to establish by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

An appointing authority may discipline an employee on various grounds, including conduct unbecoming a public employee, neglect of duty, and other sufficient cause. N.J.A.C. 4A:2-2.3(a). Such action is subject to review by the Civil Service Commission, which after a de novo hearing makes an independent determination as to both guilt and the "propriety of the penalty imposed below." W. New York v. Bock, 38 N.J. 500, 519 (1962). In an administrative proceeding concerning a major disciplinary action, the appointing authority must prove its case by a "fair preponderance of the believable evidence." Polk, 90 N.J. at 560 (citation omitted); N.J.A.C. 4A:2-1.4(a); Atkinson, 37 N.J. at 149.

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 greater weight of credible evidence in the case—the preponderance—depends not only on the number of witnesses, but "the greater convincing power to our minds." State v. Lewis, 67 N.J. 47, 49 (1975) (citation omitted). Similarly, credible testimony "must not only proceed from the mouth of a credible witness but must be credible in itself." In re Estate of Perrone, 5 N.J. 514, 522 (1950).

Sixty-day Suspension

The relevant specifications of the PNDA, which were upheld in the FNDA of February 22, 2017, provide:

On or about 3/24/16, you were assigned to provide direct care to VMH (Veterans Memorial Home) Resident "A.B." During your interactions with "A.B.," you yelled and belittled this resident. You also informed the resident that his use of the call bell was unnecessary and you failed to immediately provide the incontinent care as he requested. Furthermore, you failed to properly clean the resident in accordance with the policy. As a result of your mistreatment towards A.B., you were removed from future assignments as his direct care staff member. In addition, on or about 3/25/16, you exhibited inappropriate conduct towards the Director of Nursing, the Assistant Chief Executive Officer. While addressing your behavior towards A.B., you abruptly ended the meeting and left the area without authorization.

[R-2.]

The allegations were made by resident A.B., who was not produced at the hearing due to his demise. The testimony of Matthew and Marella concerning what A.B. told them is hearsay testimony that does not satisfy the residuum-rule requirement (Weston v. State, 60 N.J. 51; N.J.A.C. 1:1-15.5(b)). In assessing hearsay evidence, it should be accorded "whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability." N.J.A.C. 1:1-15.5(a).

In considering the hearsay testimony of Matthew and Marella, I am not satisfied that it can overcome an analysis under N.J.A.C. 1:1-15.5(a), as I cannot rely upon a statement taken of a person who does not want to sign the statement because he does not want to cause any problems, and who is not shown the statement, and as part of the allegations contained in A.B.'s statement are disproven by the testimony of Davis.

Matthew's and Marella's testimony regarding A.B.'s allegations that Rouse hollered at him is discounted when A.B. tells them he did not feel he was "abused" by

Rouse. Similarly, A.B.'s allegation that Rouse did not properly change him is not substantiated by Davis' testimony that she did not find A.B. to have a rash or dry skin related to a failing to render proper incontinent care. "Inappropriate conduct" by Rouse in leaving the meeting with Davis and Kovacs was never established.

After deconstructing the testimony of Matthew and Marella concerning Rouse's mistreatment of A.B., I **CONCLUDE** that I am left with hearsay testimony, which is unreliable and does not satisfy the residuum rule, and it is the only evidence that the NJVM has presented to substantiate the violations contained in the FNDA of February 22, 2017.

Regarding the allegation that Rouse did not "clean" A.B. and provide him with proper incontinent care, I **CONCLUDE** that the testimony of Davis and her findings do not support this claim, as she testified that A.B. did not exhibit a rash or dryness of the skin, which would be consistent with the charge of failing to clean A.B and render proper incontinent care.

Concerning the allegation that Rouse did not respond to the call bell as required, I **CONCLUDE** that Rouse admitted she that informed A.B. that the bell should not be used for a diaper change, which is inconsistent with NJVM policy. Notwithstanding my conclusion, I **CONCLUDE** that Rouse's admitted violation was insignificant, as the record reveals that she did respond to A.B.'s call, and Davis' testimony established that A.B. received proper incontinent care.

I **CONCLUDE** that the NJVM did not prove by a preponderance of the credible evidence all of the violations contained in the FNDA dated February 22, 2017, against Rouse for her conduct on March 24, 2016. For the reasons set forth above, I **CONCLUDE** that the charges are **DISMISSED**.

Termination

The FNDA that resulted in Rouse's termination on February 7, 2017, states that on May 18, 2016, Mrs. P. observed Rouse verbally abusing Mr. P. in the bathroom, and

that after the verbal altercation, Rouse threw a laundry bag against the wall and stated, “I don’t have to take this anymore.” Rouse is also alleged to have violated the regulations below for her failure to complete the care of Mr. P. on May 18, 2016:

- N.J.A.C. 4A:2-2.3(a)(7)—Neglect of Duty;
- 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.
- Departmental Directive 230.05, B(2)—Neglect of duty;
- Departmental Directive 230.05C(4)—Verbal abuse of a patient, client, resident, or employee;
- Departmental Directive 230.05C(7)—Fighting or creating a disturbance on State property;
- Departmental Directive 230.05C(20)—Discourtesy to public, visitors, patients, residents or clients;
- Departmental Directive 230.05D(7)—Violation of administrative procedures involving safety and/or security; and
- Departmental Directive 230.05E(1)—Violation of a rule, regulation, policy, procedure, order or administrative decision.

The initial charge that Rouse neglected her duty under N.J.A.C. 4A:2-2.3(a)(7) is not supported by the record. Although “neglect of duty” is not defined in the N.J. Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep’t of Military & Veterans Affairs, 97 N.J.A.R.2d (CSV) 564 (1996) (sustaining a charge of neglect against an employee who failed to handle a resident’s claim in a timely and competent manner); In re Calio, Camden Cty. Dep’t of Corr., CSV 05868-16, Initial Decision (May 30, 2017), adopted, CSC, (July 17, 2017), <http://njlaw.rutgers.edu/collections/oal/> (sustaining a charge of neglect of duty against a correction officer in a correctional facility who failed to search inmates).

Here, the NJVM seeks to establish that Rouse neglected her duty when she left Mr. P. with Caning. However, Rouse’s and Mrs. P.’s testimony confirms that Mr. P. left the room while Rouse was making the bed, and Rouse followed Mr. P. out of the room. Caning confirmed that when Mr. P. left the room, Rouse was behind him, and that she asked Caning for assistance, as she had to tend to other resident. Mrs. P. testified that her husband often became loud and difficult. The record shows that Rouse had taken Mr. P. to his room and was rendering proper care consistent with Mr. P.’s plan of care;

that Mr. P. would not remain in his room; and that Rouse had to leave Mr. P. to attend to other residents, whose care Rouse did not want to neglect.

As to Rouse “verbally abusing” Mr. P. in the bathroom, the record reflects that Rouse spoke loudly to Mr. P., or they may have been arguing, depending upon your viewpoint of their interaction. The record also reflects that Mr. P. cursed Rouse and called her a racial epithet of “black bastard” while in the bathroom, which may have exacerbated Rouse's frustration in dealing with Mr. P.

Based upon the testimony of Mrs. P., Rouse, Caning, and Albano, and the statement of said witnesses submitted in evidence, I **CONCLUDE** that the NJVM has failed to prove by a preponderance of the evidence that Rouse's conduct in leaving Mr. P. to tend to other residents constitutes a violation of N.J.A.C. 4A:2-2.3(a)(7), neglect of duty of Mr. P.. Caning is the nurse assigned to oversee A Wing, where Mr. P. resided, and Rouse asked for his assistance tending to Mr. P., which he did provide, so that she could provide assistance to other residents. For these reasons, the charge of violation of N.J.A.C. 4A:2-2.3(a)(7) is **DISMISSED**.

The next charge is 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 tends to destroy public respect in the delivery of governmental services. Karins v. City of Atl. 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)).

The record reveals that Rouse and Mr. P. were “arguing” or speaking loudly in Mr. P.'s room. The testimony of Mrs. P., Rouse, Caning, and Albano confirms the same. The record also reveals that Mr. P. was impatient and not an easy resident to interact with. Furthermore, the record reveals that Mr. P. called Rouse a racial epithet while she was tending to him in the bathroom.

As a result of Mr. P.'s racial epithet, did Rouse lose her composure and verbally abuse Mr. P. as alleged by the NJVM? Unfortunately for the NJVM, Davis and Kovacs failed in their attempt to inquire about what happened on May 18, 2016, when they conducted their interview of Rouse on the day following the incident with Mr. P., which led to Davis filing her Final Investigation Report on June 6, 2016, terminating Rouse.

Notwithstanding the NJVM's failure to fully investigate what occurred on May 18, 2016, and not condoning the racial epithet uttered by Mr. P. to Rouse, I cannot excuse Rouse losing her composure with Mr. P., and speaking to him in a tone that others have described as "arguing." A professional must rise above the situation when confronted with behavior, such as exhibited by Mr. P.

Therefore, I **CONCLUDE** that Rouse's conduct when tending to Mr. P. in his room constituted conduct unbecoming a public employee, and, therefore, I **CONCLUDE** that NJVM has sustained its burden of proof by a preponderance of the credible evidence in establishing that Rouse violated N.J.A.C. 4A:2-2.3(a)(6), and the charge is **AFFIRMED**.

Having determined that the NJVM has sustained its burden in establishing that Rouse violated N.J.A.C. 2.3.(a)(6), conduct unbecoming, I **CONCLUDE** that the NJVM has sustained its burden of proof by a preponderance of the credible evidence in establishing that Rouse violated the following departmental charges; Departmental Directive 230.05, B(4), verbal abuse of a patient, client, resident, or employee; Departmental Directive 230.05,C(20), discourtesy to public, visitors, patients, resident, or client, and Departmental Directive 230.05,E(1), violation of a rule, regulation, policy, procedure, order or administrative decision.

As to whether throwing a laundry bag against the wall constituted conduct unbecoming a public employee, I **CONCLUDE** that the NJVM has failed to establish by a preponderance of the credible evidence that Rouse did throw the laundry bag against the wall, and, therefore, I **CONCLUDE** that the charge that Rouse violated N.J.A.C. 4A:2-2.3(a)(6) in throwing the laundry bag is **DISMISSED**.

Finally, Rouse was charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, and the remaining departmental charges; Departmental Directive 230.05 B(2)—Neglect of duty; Departmental Directive 230.05 C(7)—Fighting or creating a disturbance on State property; and Departmental Directive 230.05 D(7)—Violation of administrative procedures involving safety and/or security.

Insofar as the above-cited departmental violations concern Rouse's "neglect" of Mr. P., or creating a disturbance, I have concluded above that the NJVM has failed to establish by a preponderance of the credible evidence that Rouse violated N.J.A.C. 4A:2-2.3(a)(7), neglect of duty, and I therefore **CONCLUDE** that the NJVM has failed to prove by a preponderance of the credible evidence that Rouse violated N.J.A.C. 4A:2-2.3(a)(12), and Departmental Directive 230.05 B(2)—Neglect of duty; Departmental Directive 230.05 C(7)—Fighting or creating a disturbance on State property and Departmental Directive 230.05 D(7)—Violation of administrative procedures involving safety and/or security; and Departmental Directive 230.05 E(1)—Violation of a rule, regulation, policy, procedure, order or administrative decision. I **CONCLUDE** that the said charges are **DISMISSED**.

PENALTY

When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and penalty on appeal based on the charges. N.J.S.A. 11A:2-19. Factors determining the degree of discipline include the employee's work history, his prior disciplinary record, and the gravity of the misconduct. In West New York v. Bock, 38 N.J. 500, 522 (1962), our Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so

to speak, by having been previously called to the attention of and admitted by the employee.”
Bock, 38 N.J. 523–24.

The record reveals that Rouse has prior infractions dating back to 1999, as follows:

- R-20, incident dated February 5, 1999, 5-day suspension
- R-36, incident dated October 7, 2005, 5-day suspension
- R-35, incident dated January 15, 2009, 5-day suspension
- R-19/R-34, incident dated October 16, 2010, 6-day suspension, and
- R-17, incident dated January 14, 2014, 30-day suspension

According to the records provided by the NJVM, the suspensions served by Rouse were for violations of NJVM departmental policy involving insubordination (R-19/R-34; R-35) and creating a disturbance on State property (R-35).

Based upon my conclusions that the NJVM did not prove the charges for the sixty-day suspension concerning the incident that occurred on March 24, 2016, and that the NJVM partially proved the charges concerning Rouse’s conduct on May 18, 2016, and when factoring in Rouse’s prior disciplinary record and the gravity of the misconduct, as set forth in Bock, 38 N.J. 522, I **CONCLUDE** that the NJVM’s termination of Rouse’s employment for the May 18, 2016, incident should be reduced to a thirty-day suspension.

ORDER

Regarding the sixty-day suspension, the NJVM has not sustained its burden of proof on any of the charges, and I **ORDER** that the action of the NJVM in suspending Rouse for sixty days is **REVERSED**. I **ORDER** that Rouse is entitled to back pay if the penalty has already been served, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10 for the sixty-day suspension.

Regarding the NJVM’s termination of Rouse, Mr. P. the NJVM has sustained its burden of proof by a preponderance of the credible evidence that Rouse violated N.J.A.C. 4A:2-2.3(a)(6), and I **ORDER** that the charge of conduct unbecoming a public employee is **AFFIRMED**.

Regarding the remaining charges in the termination of Rouse, the NJVM has failed to establish by a preponderance of the credible evidence that Rouse violated N.J.A.C. 4A:2-2.3(a)(7) or N.J.A.C. 4A:2-2.3(a)(12), Departmental Directive 230.05, B(2)—Neglect of duty; C(4)—Verbal abuse of a patient, client, resident, or employee; C(7)—Fighting or creating a disturbance on State property; C(20)—Discourtesy to public, visitors, patients, residents or clients; D(7)—Violation of administrative procedures involving safety and/or security; and E(1)—Violation of a rule, regulation, policy, procedure, order or administrative decision, and the said charges are **DISMISSED**.

I **ORDER** that the NJVM's penalty of termination is **REVERSED**, and the penalty is reduced to a thirty-day suspension for Rouse's violation of N.J.A.C. 4A:2-2.3(a)(6), effective February 7, 2017. I **ORDER** that Rouse is entitled to back pay if the penalty has already been served, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10 for the thirty-day suspension.

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.

Julio C. Morejon

July 17, 2020

DATE

JULIO C. MOREJON, ALJ

Date Received at Agency:

July 17, 2020

Date E-Mailed to Parties:

July 17, 2020

lr

APPENDIX

Witnesses

Sixty-Day Suspension

For Appellant:

Karen Rouse

For Respondent:

Denise Githinji, Instructor of Nursing

Sisily Matthew, Nursing Supervisor

Barbara Marella, Quality Assurance Health Specialist

Lucy Davis, Director of Nursing

Termination

For Appellant:

Karen Rouse

For Respondent:

Marion Peyko

Loris Albano, Licensed Practical Nurse

Eduardo Caning, Registered Nurse

Lucy Davis, Director of Nursing

Exhibits

Joint:

J-1 Sketch of AB Unit by Loris Albano, December 20, 2017

For Appellant:

A-1 NJVM Care Assignment dated March 24, 2016

- A-2 Letter from Department of Health, dated August 23, 2016
- A-3 Karen Rouse, Individual Statement Form, dated March 24, 2016
- A-4 AB Unit Nursing Care Assignment, dated May 18, 2016
- A-5 NJVM Plan of Care, dated July 16, 2016
- A-6 Karen Rouse, Individual Statement Form, dated May 19, 2016
- A-7 Karen Rouse, Nurse Aid License

For Respondent NJVM:

- R-1 PNDA dated March 30, 2016, for the suspension of Karen Rouse
- R-2 FNDA dated February 22, 2017, for the suspension of Karen Rouse
- R-3 New Jersey Department of Military and Veterans Affairs Corrective and Disciplinary Action Booklet
- R-4 New Jersey Veterans Home at Paramus Nursing Care Assignment M/M #5 dated March 24, 2016
- R-5 Statement of Sisily Matthew RN, Nursing Supervisor, sent to Lucy Davis, Director of Nursing, dated March 25, 2016
- R-6 Not in evidence
- R-7 Statement submitted by Barbara Marella on March 25, 2016
- R-8 Statement of Lucy Davis regarding dated March 25, 2016
- R-9 Final Investigation of 3/25/16 Incident Completed by Lucy Davis
- R-10 Department of Military and Veterans Affairs (DMAVA) Code of Conduct
- R-11 Division of Veterans Healthcare Services Mandatory Resident Rights Policy
- R-12 New Jersey Veterans Memorial Homes at Paramus, Standard of Practice, Incontinent Care
- R-13 New Jersey Veterans Memorial Home at Paramus, Resident Safety Policy and Procedure, Resident Abuse
- R-14 Training History of Karen Rouse dated 1/31/14–3/17/16
- R-15 Not in evidence
- R-16 Not in evidence
- R-17 Department of Military and Veterans Affairs Disciplinary Action Appeal Settlement Agreement for Karen Rouse, dated October 8, 2014
- R-19 FNDA dated April 8, 2011, for the suspension of Karen Rouse
- R-20 FNDA dated February 13, 2009, for the suspension of Karen Rouse

- R-21 PNDA dated June 6, 2016, for the suspension of Karen Rouse
- R-22 FNDA dated February 7, 2017, for the removal of Karen Rouse
- R-23 AB Unit Nursing Case Assignment 5 for May 18, 2016
- R-24 Plan of Care for Michael Peyko dated July 19, 2016
- R-25 Statement of Loris Albano dated May 19, 2016
- R-26 Statement submitted by Eduardo Canning dated May 17, 2016
- R-27 Interview of Eduardo Canning dated 5/19/16
- R-28 Statement of Lucy Davis dated May 19, 2016
- R-29 Statement of Lucy Davis dated May 19, 2016
- R-30 Incident Case Report and Summary for Michael Peyko dated May 20, 2016
- R-31 Final Investigation Report of Lucy Davis dated June 6, 2016
- R-32 Letter from Kathleen Powell, RN, field investigator, dated July 19, 2016
- R-33 Not in evidence
- R-34 Department of Military and Veterans Affairs Disciplinary Action Appeal Settlement Agreement
- R-35 Department of Military and Veterans Affairs Disciplinary Action Appeal Settlement Agreement
- R-36 Department of Military and Veterans Affairs Notice of Suspension of Duty Without Pay

SETTLEMENT AGREEMENT

KAREN ROUSE

v.

NEW JERSEY MEMORIAL HOME AT
PARAMUS

The parties in this appeal have voluntarily resolved all disputed matters and enter into the following settlement, which fully disposes of all issues in controversy between them.

A. In the present appeal there were two Final Notices of Disciplinary Action ("FNDA") in dispute.

1. The first FNDA dated February 7, 2017, contained the following charges and proposed discipline:

a. New Jersey Civil Service Regulations:

- i. N.J.A.C. 4A:2-2.3(a)(7)—Neglect of Duty;
- ii. N.J.A.C. 4A:2-2.3(a)(6)—Conduct unbecoming a public employee;
- iii. N.J.A.C. 4A:2-2.3(a)(12)—Other sufficient cause.

b. New Jersey Department of Military and Veterans Affairs (DMAVA) Corrective and Disciplinary Action Booklet, Departmental Directive 230.05 (Departmental Directive):

- i. B(2)—Neglect of duty;
- ii. C(4)—Verbal abuse of a patient, client, resident, or employee;
- iii. C(7)—Fighting or creating a disturbance on State property;
- iv. C(20)—Discourtesy to public, visitors, patients, residents or clients;
- v. D(7)—Violation of administrative procedures involving safety and/or security; and
- vi. E(1)—Violation of a rule, regulation, policy, procedure, order or administrative decision.

- vii. Removal effective 02/17/17;
2. The second FNDA dated February 22, 2017 contained the following charges and proposed discipline:
- a. New Jersey Civil Service Regulations:
 - i. N.J.A.C. 4A:2-2.3(a)(1)—Incompetency, inefficiency, failure to perform duties;
 - ii. N.J.A.C. 4A:2-2.3(a)(12)—Other sufficient cause.
 - b. New Jersey Department of Military and Veterans Affairs (DMAVA) Corrective and Disciplinary Action Booklet, Departmental Directive 230.05 (Departmental Directive);
 - i. B(9)—Incompetence or inefficiency;
 - ii. C(5)—Inappropriate physical contact or mistreatment of a patient, client, resident or employee;
 - iii. C(9)—Insubordination; Intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor;
 - iv. C(20)—Discourtesy to public, visitors, patients, residents, or clients;
 - v. E(1)—Violation of a rule, regulation, policy, procedure, order or administrative decision.
 - vi. Sixty-day (60) suspension commencing 02/22/ 2017.

B. The parties have agreed to the following:

- 1. Appellant Karen Rouse and the Respondent Appointing Authority agrees that the following result will occur with regard to each charge:
 - a. Consistent with ALJ Morejon's July 17, 2020, initial decision the following charges are dismissed;

i. February 7, 2017 FNDA

1. New Jersey Civil Service Regulations:
 - a. N.J.A.C. 4A:2-2.3(a)(7)—Neglect of Duty;
 - b. N.J.A.C. 4A:2-2.3(a)(12)—Other sufficient cause.
2. New Jersey Department of Military and Veterans Affairs (DMAVA) Corrective and Disciplinary Action Booklet, Departmental Directive 230.05 (Departmental Directive):
 - a. B(2)—Neglect of duty;
 - b. C(4)—Verbal abuse of a patient, client, resident, or employee;
 - c. C(7)—Fighting or creating a disturbance on State property;
 - d. C(20)—Discourtesy to public, visitors, patients, residents or clients;
 - e. D(7)—Violation of administrative procedures involving safety and/or security; and
 - f. E(1)—Violation of a rule, regulation, policy, procedure, order or administrative decision.

ii. February 22, 2017 FNDA;

1. New Jersey Civil Service Regulations:
 - a. N.J.A.C. 4A:2-2.3(a)(1)—Incompetency, inefficiency, failure to perform duties;
 - b. N.J.A.C. 4A:2-2.3(a)(12)—Other sufficient cause.
2. New Jersey Department of Military and Veterans Affairs (DMAVA) Corrective and Disciplinary Action Booklet, Departmental Directive 230.05 (Departmental Directive):
 - a. B(9)—Incompetence or inefficiency;
 - b. C(5)—Inappropriate physical contact or mistreatment of a patient, client, resident or employee;
 - c. C(9)—Insubordination; Intentional disobedience or refusal to accept a

reasonable order, assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor;

- d. C(20)—Discourtesy to public, visitors, patients, residents, or clients;
- e. E(1)—Violation of a rule, regulation, policy, procedure, order or administrative decision.

b. Consistent with ALJ Morejon's July 17, 2020, initial decision the following charges are affirmed;

i. February 7, 2017 FNDA;

1. New Jersey Civil Service Regulations:

- a. N.J.A.C. 4A:2-2.3(a)(6)—Conduct unbecoming a public employee.

2. Total number of workdays of suspension without pay Respondent will impose on Appellant: 60 day suspension.

3. The total number of days of back pay to be paid by the Appointing Authority to the Appellant is as follows: back pay consistent with N.J.A.C. 4A:2-2.10(e) less 60 days

4. Any other days from the time of last suspension day until return to work shall be treated as an approved leave of absence with pay.

5. Respondent agrees to pay reasonable attorneys fees consistent with law.

C. The parties acknowledge that under N.J.A.C. 17:1-2.18, no pension or seniority time may be credited for periods for which the employee is not paid by the employer.

1. Respondent shall not intentionally interfere or obstruct Appellant's application for retirement. Parties acknowledge that any action upon



any retirement application is solely within the discretion of the Division of Pensions and Benefits and the Department of Military and Veterans Affairs has no connection or responsibility therewith.

D. All internal records of the Department of Veterans and Military Affairs will be kept intact. Nothing herein shall preclude the Department from releasing information on this matter to anyone who has a release executed by appellant or as consistent with the law. Any information regarding the underlying charges will be provided to the Public Employees Retirement System pursuant to N.J.S.A. 43:1-3.3 as amended effective April 14, 2007.

E. Appellant waives all other claims against Respondent with regard to this matter, including any award of back pay, counsel fees or other monetary relief, except as may otherwise be provided herein.

F. Except for the assessment of Karen Rouse's disciplinary record in any subsequent personnel disciplinary hearing, nothing in this agreement shall be deemed to be an admission of liability on behalf of either party. This agreement shall not constitute a precedent in matters involving other employees.

G. Appellant waives all claims, suits or actions, whether known, unknown, vested or contingent, civil, criminal or administrative, in law or equity against the State of New Jersey, the New Jersey Department of Military and Veteran Affairs, their employees, agents, or assigns, including but not limited to those which have been or could have been made or prosecuted on account of any conduct of any party occurring at any time with respect to the events, information or disputes giving rise to this action up to the date of this agreement, including, but not limited to, all claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Family Leave Act, the Family and Medical Leave Act, the New Jersey Law Against Discrimination, the Equal Pay Act, the Conscientious Employee Protection Act, the Age Discrimination in Employment Act, Title 11A - the Civil Service Act, the Older Workers

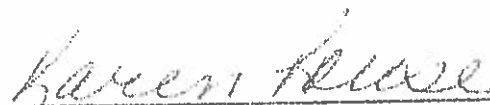
Benefits Protection Act, the Occupational Safety and Health Act, the Public Employee Occupational Safety and Health Act, the New Jersey Smoking Act, New Jersey wages and hours law, public works statutes, unemployment compensation laws, disability benefits laws, the United States Constitution, the New Jersey Constitution, any workers compensation or common law claims and any contract express or implied. This waiver includes all claims involving any continuing effects of actions or practices which arose prior to the date of this Settlement Agreement and bars the use in any way of any past action or practice in any subsequent claims, except pending workers compensation claims.

H. The parties agree that if any portion of this Settlement Agreement is deemed unenforceable, the remainder of this Settlement Agreement shall be fully enforceable.

I. The parties waive the right to file exceptions and cross exceptions.

J. This agreement will become effective only if approved by the **CIVIL SERVICE COMMISSION**. Any disapproval by the **CIVIL SERVICE COMMISSION** shall not interfere with the rights of either party to pursue the matter further.

8/5/20
DATE

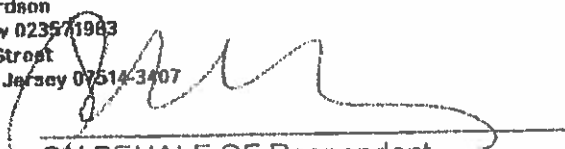

Karen Rouse

8/5/20
DATE


ON BEHALF OF Appellant

8/6/20
DATE

R
Theresa Richardson
Attorney at Law 023571983
225 East 30th Street
Paterson, New Jersey 07514-3407


ON BEHALF OF Respondent
Susan C. Sweehey, Esq.
ADMIN KRL, NJBMAVA



CERTIFICATION

I, Karen Rouse, being the moving party in this matter, hereby certify that I have reviewed this Settlement Agreement and fully understand its meaning and terms. I acknowledge my understanding and verify my acceptance of the terms of this Settlement Agreement. I acknowledge that my representative questioned my understanding, verified my acceptance of the terms of this Settlement Agreement, and answered all my questions regarding this settlement to my satisfaction. I am satisfied with my representation and I enter into this Settlement Agreement voluntarily.

I also understand that if this Settlement Agreement is approved by the **CIVIL SERVICE COMMISSION**, my claim against the Respondent will terminate.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

8/5/20
DATE

Karen Rouse
Karen Rouse