

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
Director
Division of Appeals and Regulatory Affairs
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P. O. Box 312
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 05869-16
AGENCY DKT. 2016-3503

**IN THE MATTER OF ALFONSO SAMAYOA,
ANN KLEIN FORENSIC CENTER, DEPARTMENT
OF HUMAN SERVICES.**

Jeffrey Ziegelheim, Esq., for appellant Alfonso Samayoa (Alterman and Associates, LLC, attorneys)

Christopher Hamner, Deputy Attorney General, for respondent Department of Human Services (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: May 1, 2018

Decided: July 9, 2020

BEFORE PATRICIA M. KERINS, ALJ:

STATEMENT OF THE CASE

Respondent Anne Klein Forensic Center (Anne Klein), Department of Human Services (DHS) removed appellant, Alfonso Samayoa (Samayoa), from his position of Medical Security Officer (MSO) for assaulting a patient. Samayoa denies that he engaged in such conduct and appeals his removal.

PROCEDURAL HISTORY

On March 2, 2016, Anne Klein, a psychiatric treatment facility within the Department of Human Services (DHS), filed a Final Notice of Disciplinary Action (FNDA) against Samayoa removing him from his position effective October 26, 2015, based on offenses related to the physical abuse of a patient. The specifications in the FNDA are as follows:

Based on a recently completed investigation and a video review it has been determined that on 9/4/15 while assigned to the rehab area you restrained patient A.L. in an inappropriate manner using an unapproved restraint technique which could have caused injury to the patient. A.L. was then removed from the area and placed in the quiet room momentarily before being returned to his Unit in the Gym. As the Unit walked past you as you were in the Unity Room you rushed the patient grabbing him and restraining him against the wall. These actions were unwarranted, inappropriate and could have caused injury to the patient. (R-2)

Based on those specifications, respondent sustained charges against appellant as follows:

N.J.A.C. 4A 2-2.3(a) 6 conduct unbecoming an employee. A.O. 4:08 C3 Physical or mental abuse of a patient, client or resident. A.O. C5 inappropriate physical contact or mistreatment of a patient, client, resident or employee. (R-2)

By letter of March 29, 2016, Samayoa appealed that decision, and on April 5, 2016, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case pursuant to N.J.S.A. 11A:1-1 through 12.6 and N.J.S.A. 52:14B-2(b). Telephonic prehearing conferences were held on May 5 and November 11, 2016. The matter was heard on December 14 and 20, 2016, and December 6, 2017, at the OAL in Mercerville, New Jersey. The record remained open for post hearing submissions by the parties. The record closed on May 1, 2018 and extensions were granted for the filing of the Initial Decision.

FINDINGS OF FACT

General Background Facts

Appellant Samayoa had been employed by DHS at its Anne Klein facility since 2012 as an MSO. Anne Klein is a psychiatric treatment facility operated by DHS, with a population made up of adults needing psychiatric care. MSOs are responsible for the oversight of patients, including the maintenance of a safe environment for the patients and staff. They do not carry arms and are trained in specific physical control techniques.

On September 4, 2015, Samayoa was assigned to the Unity Room, a multi-purpose recreational room for patients at the facility. As part of his training he had received instruction in the handling of difficult patients and the de-escalation of situations. On that day A.L. was a patient at the facility and on that morning, he lodged a complaint against Samayoa. This disciplinary action arises out of the incidents on that day which formed the basis of the complaint by A.L.

Incidents of September 4, 2015

In support of its case, respondent presented the testimony of Susan Hildebrandt (Hildebrandt), an investigator with DHS' - Office of Program Integrity, Sandi Ferguson (Ferguson), Director of Staff Development at Anne Klein and Hector Figueroa (Figueroa), a program specialist for medical security at the facility. Respondent also placed in evidence exhibits R-1 through R-9 which included footage from security cameras in the areas of the incidents (R-4 and 5).

Hildebrandt testified to her more than thirty-year career at DHS in various positions and her experience in investigating claims of patient abuse at Anne Klein. She was familiar with A.L. as he had made allegations of abuse by staff on previous occasions. When he made his complaint regarding Samayoa's actions of September 4, 2015, she was assigned to investigate. As part of her investigation she interviewed A.L. and reviewed security camera tapes of their interactions that day. Two videos were entered into evidence (R-4 and R-5) from various surveillance cameras at the facility and were

viewed at the hearing. In her testimony Hildebrandt reviewed the incidents depicted on the video and her subsequent investigation into Samayoa's actions.

The first video (R-5) showed the Unity Room in the rehabilitation area of the facility. It is a large open room where staff and patients interact. In the video A.L. is first shown in the lower right. At around 10:58 a.m. the video shows A.L. attempting to go through a door and a scuffle with Samayoa ensues. Samayoa is then behind A.L. with his arms around his neck in what appears to be a choke hold and which Hildebrandt described as a "half nelson." A.L. then falls backward toward him. Hildebrandt testified that the hold which Samayoa used on A.L. was not one which should have been used and that abuse of A.L. was substantiated.

She then reviewed the second incident as pictured on the video marked R-4. After the first incident that morning, A.L. was taken to the "quiet room" down the hall from the Unity Room and then to the gym. Shortly thereafter, the video shows A.L. in the hallway outside the Unity Room, lined up with other patients along the opposite wall. A.L. passes the Unity Room door and looks over at it, stepping to the center of the hallway but stopping with his hands at his side. Samayoa then comes out from the Unity Room door and moves quickly to A.L. as A.L. turns his back on him. As Samayoa gets to A.L., he puts his right wrist to the patient's throat. Samayoa then holds A.L. from behind with his arms covering A.L.'s chest, pulling back on him. They then leave the screen. During the video as A.L. moves to the center of the hall, another officer on duty in the hall makes no move toward A.L., or to restrain him. Hildebrandt testified that Samayoa's action constituted patient abuse and that there was no reason for him to initiate physical contact with A.L.

Respondent then presented the testimony of Ferguson, a longtime employee at Anne Klein and presently its Director of Staff Development. She testified as to the defense and control techniques used at the facility, in which its personnel are trained. Detailing the allowed techniques, she described holds such as the arm and body control holds. She emphasized that a staff member placing hands too high on a patient could impede breathing, with holds in the upper body, neck and chest area creating a danger of asphyxiation. Holds should be below the diaphragm with the staff member adjusting the hold if resistance is encountered. She testified that in her review of the video of the

first incident in the Unity Room, Samayoa did not use approved holds on A.L. Ferguson further testified that MSOs are taught to first attempt to defuse a situation and that if A.L. insisted on leaving the Unity Room, an officer in the hallway could then deal with the situation. She admitted that Advanced Emergency Holds could be used in certain dangerous situations. On cross-examination she allowed that A.L. was known to spit on staff.

Figuroa also testified on behalf of respondent. Employed at Anne Klein over twenty-three years, he supervises the MSOs and oversees the Medical Security Department. He described the duties of an MSO and explained that it was only appropriate to restrain a patient when he or she presented a danger to themselves or others. Having reviewed the videos of the incidents at hand, he agreed with Hildebrandt's conclusions that patient abuse had occurred.

In response to Anne Klein's case, appellant presented the testimony of Samayoa. He reviewed his duties as a MSO and the training he received. He then testified regarding the incidents viewed on the videos. He described A.L. as an unpredictable patient, given to verbal outbursts and tantrums. Samayoa stated that he had prior interactions with A.L. and had gone "hands on" with him previously after attempts to verbally de-escalate had not worked. In reviewing the first incident in the Unity Room, Samayoa testified that A.L. was trying to leave the room when he was not allowed. When he told him, he could not do so, A.L. began to curse at him and threaten him. As A.L. attempted to push through, Samayoa said he redirected him back by picking him up and putting him back in the room. A.L. then continued threatening him and using racial slurs toward him. When A.L. made a gesture to spit at him and brought his hands up, he went "hands on" with him. As he restrained him, he said A.L. pretended to faint and he guided him to the ground. As he got back up Samayoa said A.L. attempted to assault him. He and another officer then got A.L. to the "quiet room" and Samayoa said he returned to the Unity Room.

Samayoa then testified to his recollection of the second incident. He stated he was in the Unity Room and patients were moving down the hall from the gym. He saw A.L. in the hall, verbally threatening him and using hand gestures toward him. As he passed the door A.L. turned toward him and threatened to spit on him. Samayoa testified

that as A.L. came toward him he left the Unity Room door to restrain him. As he tried to restrain him, he said A.L. became combative and he tried to guide him toward the wall. He denied punching, kicking or beating him.

When the testimony of witnesses is in disagreement, it is the obligation and responsibility of the trier of fact to weigh the credibility of the witnesses in order to make factual findings. In determining whether respondent has proven by a preponderance of the evidence that Samayoa used an unapproved hold and abused a patient, and, therefore, warrants removal from his position, it is necessary to assess the credibility of the witnesses in light of their testimony, as well as in the context of the other evidence in the record. Credibility is the value that a fact finder gives to the testimony of a witness. It envisions an overall assessment of the story of a witness in light of 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). It has been defined as testimony, which must proceed from the mouth of the credible witness and must be such as our common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 6, 24 (App. Div. 1955); see also, Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E. & A. 1934). Credibility, or more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself as well. Spagnulo v. Bonnet, 16 N.J. 546, 554-55 (1954). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837 (1973). Credibility does not depend on the number of witnesses, and the finder of fact is not bound to believe the testimony of any witness. In re Perrone, 5 N.J. 514 (1950).

In this matter key evidence is not only the testimony of the witnesses, but the actions shown on the videos of the two incidents. As to the first incident the video supports respondent's assertion that Samayoa used an unapproved hold in his restraint on A.L. As the patient is seen with his arms at his side, appellant reaches toward him, placing his right arm at the back of A.L.'s neck, encircling him with his right arm around the neck. As he moves behind A.L., Samayoa brings him back by pulling on his neck and continues his grip as A.L. goes to the floor (R-5, Cameras 21 and 22). In addition to the video, Hildebrandt and Ferguson presented credible testimony corroborating that the hold

used by Samayoa on the video was an unapproved one. While Samayoa may have been the recipient of A.L.'s threats and abusive words, he chose not to de-escalate the situation or allow A.L. to leave the room as he could have done, but rather responded with the use of an unapproved hold.

With regard to the second incident, Samayoa's contention that A.L. needed to be restrained and was a threat to him rings hollow. The video (R-4) shows appellant coming out from the Unity Room door rushing to restrain A.L. when the patient was not an immediate threat to him. There was distance between the two during A.L.'s walk down the hallway and any abusive language or threats by A.L. toward Samayoa at that point did warrant physical intervention. Other officers were on duty in the hallway and apparently saw no need to restrain A.L. At that point Samayoa could have simply gone back to his duty station in the Unity Room as a means of defusing whatever was upsetting the patient. He chose not to do so despite the training which he had received, and which both; Hildebrandt and Ferguson said would have obviated a need for physical contact.

Base on the record as a whole, I **FIND** that appellant used an inappropriate hold on A.L. as he attempted to exit the Unity Room and I further **FIND** that appellant physically assaulted A.L. in the hallway outside the Unity Room later that morning.

DISCIPLINARY HISTORY

As set forth on the record and stipulated to by the parties, appellant has no disciplinary infractions on his record.

LEGAL DISCUSSION

The Civil Service Act and the regulations promulgated thereunder, 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 engages in misconduct related to his or her duties, or who gives other just cause, may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). When an employee appeals from a disciplinary action or ruling by an appointing authority, the burden of proof is on the appointing

authority to show that the removal of appellant was justified. N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). 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).

In this matter, respondent Anne Klein has met its burden of proving the allegations against Samayoa¹. Of the two opposing versions of the alleged incident which led to the charges, I determine Anne Klein's version, in light of all the evidence, to be the credible one. I therefore **CONCLUDE** that Anne Klein has met its burden of proof that Samayoa's actions constituted conduct unbecoming an employee and patient abuse. Further those actions warranted removal. The penalty requested by Ann Klein for his infractions is removal as set forth in its policy on the abuse of patients. Despite Samayoa's clean disciplinary record, his removal is warranted under the facts of the two incidents and the policy asserted by DHS.

ORDER

It is **ORDERED** that appellant's removal from his position is upheld and his appeal is dismissed.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

¹ In its opening statement and post-hearing submission, appellant argues for the application of the "forty-five day" rule to the charges against Samayoa. That rule applies to law enforcement officers and is not applicable here as there is not sufficient authority, statutory or otherwise, to hold it applies to unarmed MSOs.

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.



July 9, 2020
DATE

PATRICIA M. KERINS, ALJ

Date Received at Agency:

July 9, 2020 (emailed)

Date Mailed to Parties:

/mel

WITNESSES

For Petitioner:

Alfonso Samayao

For Respondent:

Susan Hildebrandt

Sandi Ferguson

Hector Figueroa

EXHIBITS

For Petitioner:

- P-1 Policy on Quiet Room
- P-2 Inv. Hildebrand Video Notes
- P-3 Statement, Alphonso Samayoa
- P-4 Statement, Patient
- P-5 Statement, Officer Davis
- P-6 Statement, Officer McQuiller (phonetic)
- P-7 Statement, Officer Ware (phonetic)
- P-8 Statement, Officer Taylor
- P-9 Statement, Officer Thomas

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action dated October 23, 2015
- R-2 Final Notice of Disciplinary Action dated March 21, 2016
- R-3 DHS Administrative Order 4:08-C3

- R-4 Video – Quiet Room/Hallway Incident
- R-5 Video – Unity Room Incident
- R-6 Hildebrandt Report/Interview and Statements
- R-7 Ann Klein Police 204, Personal Defensive and Control Techniques in Aggressive Patient Situations and Emergencies dated October 2015
- R-8 Training Transcript of A. Samayoa, dated December 11, 2015
- R-9 Investigative Report of S. Hillebrand dated September 28, 2015