



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>ST</sup> DAY OF DECEMBER, 2021



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT NO. CSV 11264-20

AGENCY REF. NO. 2021-418

**IN THE MATTER OF MARK TAVLAN,  
PASSAIC COUNTY, BOARD OF  
SOCIAL SERVICES.**

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**Mark Tavlan, appellant pro se**

**Albert C. Buglione, Esq., (Buglione, Huton & DeYoc, LLC) for  
respondent**

Record Closed: September 8, 2021  
2021

Decided: October 25,

**BEFORE ERNEST M. BONGIOVANNI, ALJ:**

**STATEMENT OF THE CASE**

Mark Tavlan (Tavlan or appellant) challenges the Final Notice of Disciplinary Action (FNDA) dated September 16, 2020, imposing a ten-day working suspension for insubordination in violation of N.J.A.C. 4A:2.2-3(a)(2) and other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12).

The Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13 to the Office of Administrative Law, where it was filed on December 2, 2020

The hearing was held on September 8, 2021, at which time the record was closed.

### **ISSUES**

The issues in this case are whether there is sufficient credible evidence to sustain the charges of Insubordination and Other Sufficient cause by the Passaic County Board of Social Services (PCBSS/Board) against Mark Tavlan, a HSSR4 caseworker supervisor for the chronic or excessive lateness, or other sufficient cause, and if sustained, whether a penalty of a ten-day working suspension is warranted.

### **FACTUAL DISCUSSION AND FINDINGS**

Anthony DeSimone, former Director for the Board was the only witness for respondent. He had retired two months before this hearing began after 44 years of service to the Board. He was very familiar with Tavlan, who had also worked for the agency for many years. He described their relationship as professional but "cordial" and that there was no animus between them. DeSimone described Tavlan's job for the PCBSS as a very significant one, saying that as a casework supervisor, he is "frontline management" in the enforcement of the Board's regulations and the conduct of its employees. An important responsibility is to assure fairness to applicants for benefits. Tavlan, he said, is "well compensated" for this position. Among many duties, Tavlan "signs off" on grants or denials of benefits.

At the relevant time of the events which resulted in the charges there was, according to Mr. DeSimone, and exhibits that he identified and which were entered into evidence, there was an ongoing investigation into the grant of benefits to one D.S. who was the daughter of one of the caseworkers M.R. previously known as M.W. whom was

in Tavlan's unit and whom he supervised.<sup>1</sup> DeSimone described how the "discovery" BY Tavlan who reported to a superior that he found an "empty" old file of M.R. who had applied for and received benefits as a client of the agency 20 years ago was found in his work area. This triggered an investigation into the possible connection between that file and an ongoing investigation of the processing of an application for benefits of D.S., M.R.'s daughter, by the unit Tavlan supervises. This led to a series of attempts, described in detail by DeSimone to get answers into a concurrent discovery that M.S.'s 20-year-old application electronic file, which should only be accessed to administer current benefits, had been accessed at least three times in September 2018 and February 2020, apparently by Tavlan, because Tavlan's unique passcode had been used access it

### CREDIBILITY

When witnesses present conflicting testimony, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. Credibility is the value that a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story considering its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2D 718 (9<sup>TH</sup> Cir. 1963); see In Re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). 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. 847, 93 S.Ct. 2357, 37 L.Ed.2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witnesses, and credibility does not automatically rest on the party with more witnesses. In Re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an

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<sup>1</sup> It was never made quite clear what the investigation concerned, whether owing to it still being under investigation or not, or because the Board decided not to call a second witness, but DeSimone gave insufficient details of the nature of that investigation to describe it. From his testimony, and answers to

administrative proceeding. Middleton Twp. V. Murdoch, 73 N.J. Super 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554-555 (1954).

### **FINDINGS OF FACTS**

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 **FACTS**.

1. Tavlan's report to a superior that he discovered an old "empty" file in his work area concerning his employee M.R. (M.W. when the file was created) was the trigger for an investigation involving the application for benefits by M.R.'s daughter, D.S.
2. As a result of this discovery, a check was done and revealed that the electronic files of a 20-year-old application for benefits by M.R. had been accessed by someone using Tavlan's access code, and used it to access the file on September 8, 2018, September 12, 2018, and February 13, 2020.
3. In his capacity as a caseworker supervisor, Tavlan has the training, ability, and authorization to access files such as the application records of would be assistance recipients. However, access is only permitted for the bona fide purpose of the administration of public assistance. As the records accessed by someone using Tavlan's access code were 20 years old, it was dubious that the purpose could be administer benefits for that case.
4. Mr. Tavlan reported to his supervisor of a "possible misapplication" by a current applicant (D.S., the daughter of the employee M.R. Tavlan supervised.)

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Interrogatories from documents entered the only certain thing is the investigation involved the grant of benefits to D.S. which occurred sometime between 2015-2017 and possible conflict of interest.

5. Mr. DeSimone credibly testified that there was no breach of confidentiality into Mr. Tavlan's code which would indicate that someone obtained his code and used it instead of Mr. Tavlan using it. He described a triple step process to entering applicant's files. First one logs onto the computer network, then one logs onto the operating system, and finally to enter an individualized unique passcode for the specific purpose of "the Gump eligibility system" which concerns the applicant and the applicant's processing for benefits.
6. Tavlan, who refused to take the process of swearing or affirming to testimony seriously, and who referred to the process of this appeal, like the earlier Board hearing as "crap" and other derogatory characterizations, "explained" that the code access process as explained to be DeSimone was a "lie" or that he Tavlan couldn't understand it. He claimed, without proof the system was antiquated and that anyone could easily access a file by misappropriating a general password. Finally, he said there was no "third stage" unique passcode as described by DeSimone.
7. A PCBSS Memo from DeSimone to Tavlan was sent February 18, 2020. Among other things, it stated "4) The case record shows you accessed the case of the applicant's mother multiple times. When did you access the GUMP case? What was the reason you accessed the case? What was the purpose for the access? "
8. Tavlan's reply of the day was evasive and did not respect the seriousness of the situation. His reply began "I do not understand why I am being investigated at all as all I did was report fraud..." then began to detail a purported history, but without any facts, of "workplace bullying in the agency against me since 1992." When he finally arrived at his answer to question 4, he stated "Any access for to screens were for the purpose of understanding exactly what had taken place...my name was used for approval of the case. The purpose of reporting this was to make it very clear I was not involved in processing the application. This failed to directly answer the question instead

adopting the generalization of "Any access to screens (emphasis supplied) and never answering the direct question of how many times he accessed the file.

9. In another memo of February 24, 2020, DeSimone, asked Tavlan; "Please advise if you ever accessed the case folder of [D.S.] or her mother [M.W.]. If you did, advise when you did and for what purpose. If you did so, under the authority of a program manager or other official state so."
10. Tavlan's response the same day, similarly, ignored any timeline or details of requested. Indeed, the only date mentioned in his response was when he started working at the agency in 1992. Tavlan's response was obscure and did not seem to relate to the time frames of Sept 2018 and February 2020 that were being investigated even though, the memo to him made it clear the importance of the inquiry
11. Prior to the Board hearing and the hearing at the OAL, Tavlan had never complained that his passcode had been broken into or used by anyone nor was any security issue by Tavlan heretofore raised.
12. Tavlan was not credible in explaining he would need a computer expert to prove how the GUMP system access passcode works, or that he can prove that anyone can access the applicant's records using his general passcode. His unwillingness to testify and resort to arguing over matters not in evidence such as the history of his being bullied since 1992 for which he gave no facts but which he had ample time to testify to were not only incredible but evasive.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6 governs a civil service employee's rights and duties. The act is an important inducement to attract qualified personnel to public service. It is to be liberally constructed toward attainment of merit



appointments and broad tenure protection. See Essex Council No. 1 N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super 583 (App. Div. 1972) Mastrobattista v. Essex County Park Comm'n., 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of New Jersey is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A1-2 (b). To carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

The public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); Polk, 90 N.J. 550. The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro Bottling Co., 26 N.J. 263 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del Lackawanna and W.R.R., 111 N.J.L. 487, 490 (E. & A. 1933). Preponderance may be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

In this case, Tavlan, who maintains a position of great importance with the Board failed to give straight, clear unambiguous answers to assist an investigation of why the 20-year-old applications for welfare assistance files of his current employee were accessed with his own unique personal passcode in 2018 and 2020 at a time when there was also an investigation into the current application, also processed through Tavlan's unit, of the daughter of the employee. This failure, in the sound and credible words of the Director of the PCBSS, impeded the progress into a serious investigation of potential conflict of interest in the administering of an application for benefits by an

employee's daughter. It was not refuted by Tavlan that DeSimone, his superior, had several times, by talking to him, then by asking written questions, and requesting written responses and finally having to go through the process of an agency disciplinary hearing, tried to get important but simple questions. However, DeSimone only got evasive deflecting and self-serving non responsive "responses" by an subordinate employee who seemed he thought it best to treat the process, as he himself called it, a joke. That is indeed the essence of "insubordination" and I sustain the Board's determination of finding Tavlan to have been insubordinate. He had several opportunities to provide simple clear answers, and/or denials to questions, then undercut much of his credibility by waiting until the Agency hearing before coming up with the story that he *never* accessed the records. As stated above I also find that story to be not credible as no evidence contradicted the clear and reasonable explanation of how access is obtained to the applicable electronic records and there was certainly no proof that anyone else had used Tavlan's unique GUMP passcode.

However, I cannot find Tavlan guilty of "Other sufficient Causes." The agency opinion reveals the hearing officer found Tavlan approved an application for D.S. the daughter of M.W., however no evidence of his approval was presented in this proceeding. Indeed, the Board's had planned on calling another witness, perhaps to discuss this aspect of the charges but in the end chose not to, and also stated the insubordination was the focus of the case, and, in the Board's opinion, the reason for the disciplinary action.

I agree and find the ten-day working suspension to be reasonable and sufficient penalty under the facts and the circumstances.

Accordingly, I **CONCLUDE** by the preponderance of the credible evidence that Tavlan was guilty of insubordination, and **AFFIRM** the FNDA as to that charge. As to the charge of Other Sufficient Causes, I **DISMISS** it for lack of evidence. I further **CONCLUDE** that the penalty of a ten-day working suspension is appropriate.

**ORDER**

It is hereby **ORDERED** that the appellant's appeal of the finding of Insubordination, a violation of N.J.A.C. 4A:2.2-3(a)(2), is **AFFIRMED**, and

It is further **ORDERED** that the finding of Other Sufficient Cause, is **DISMISSED**.

It is further **ORDERED** that the appellant's ten-day suspension for Insubordination is hereby **AFFIRMED**.

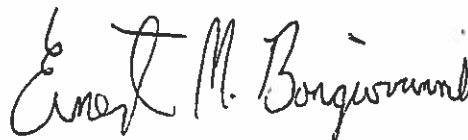
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, who 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, P.O. 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.

October 25, 2021

\_\_\_\_\_  
DATE



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**ERNEST M. BONGIOVANNI, ALJ**

Date Received at Agency:

10/25/21

Date Mailed to Parties:

10/25/21

id

**APPENDIX**

**LIST OF WITNESSES**

**For Appellant**

Mark Tavlan

**For Respondent**

Mark DeSimone

**LIST OF EXHIBITS IN EVIDENCE**

**For Appellant**

None

**For Respondent**

- R-1 a Preliminary Notice of Disciplinary Action
- R-1 b Final Notice of Disciplinary Action
- R-1 c Not Admitted into Evidence
- R-2 Interrogatories from Mr. Buglione to Mr. Tavlan
- R-3 Tavlan Answers to Interrogatories with attached exhibits
- R-3 a Email DeSimone to Tavlan, dated 1/28/20
- R-3 b PCBSS memo to Tavlan, dated 2/18/20
- R-3 c Correspondence Tavlan to DeSimone, dated 2/18/20
- R-3 d Email exchange between DeSimone and Tavlan, dated 2/24/20
- R-3 e Interoffice memo from DeSimone to Tavlan, dated 2/24/20
- R-3 f Tavlan's response to DeSimone Memo, dated 2.27/20
- R-3 g DeSimone to all Staff Program Information/ Agency Resources
- R-3 h PCBSS Code of Conduct