STATE OF NEW JERSEY

In the Matter of Muhammad Gonzalez, Hudson County, Department of Health and Human Services

CSC DKT. NO. 2021-200
OAL DKT. NO. CSV 08143-20

DECISION OF THE CIVIL SERVICE COMMISSION

ISSUED: DECEMBER 15, 2021 BW

The appeal of Muhammad Gonzalez, Hospital Attendant, Hudson County, Department of Health and Human Services, removal effective July 15, 2020, on charges, was heard by Administrative Law Judge Susana E. Guerrero (ALJ), who rendered her initial decision on September 28, 2021. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the submissions of the parties, as well as its own review of the video of the incident, the Civil Service Commission (Commission), at its meeting of December 15, 2021, modified the removal to a three-month suspension.

DISCUSSION

This matter stems from allegations that the appellant, a Hospital Attendant, removed money from a patient's pocket without authorization and only returned it after repeatedly being requested to do so. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law as a contested case.

In her initial decision, the ALJ found that the appellant did, in fact, take money from the client's pocket, essentially basing this on the video evidence presented in the record. Based on her determination that such an infraction was egregious in nature, the ALJ recommended upholding the appellant's removal from employment.

In his exceptions, the appellant argues, *inter alia*, that the video of the incident does not establish that he took money from the patient's pocket as was indicated on the Final Notice of Disciplinary Action (FNDA). In this regard, he argues that there is no corroborating testimony to establish that he did, indeed, take the money from the patient's pocket.

In reply, the appointing authority argues that the ALJ's review of the credible facts in the record support the charges and the penalty of removal.

Upon its *de novo* review of the record, the Commission agrees with the ALJ that the appellant did, indeed, place his hand in the client's pocket and that such action was unauthorized. However, upon its own review of the video, it cannot agree that it was established that the appellant took money as alleged from the patient. Accordingly, as the specifications in the FNDA indicate that the appellant "reached into his [the patient's] pocket," and the record shows that such action was unauthorized, the Commission upholds the charges on that basis only.

While the upheld infraction is serious, it does not support the penalty of removal. In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In assessing the penalty in relation to the employee's conduct, it is important to emphasize that the nature of the offense must be balanced against mitigating circumstances, including any prior disciplinary history. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown,* 191 *N.J.* 474 (2007).

In this case, the appellant's actions are clearly serious, especially in a psychiatric setting. Unauthorized contact with patients can have catastrophic consequences. Nevertheless, the appellant's actions in this case are not so egregious as to bypass progressive discipline. The record indicates that the appellant possesses a prior 45 working day suspension. Accordingly, the Commission finds that a more severe suspension is warranted in this matter. Therefore, the Commission finds that a three-month suspension is the proper penalty. This penalty should serve as a warning to the appellant that any future infractions could lead to a more severe disciplinary sanction, including removal from employment.

As the appellant's removal has been modified, he is entitled to mitigated back

pay, seniority and benefits three months from his separation from employment until his actual reinstatement. *See N.J.A.C.* 4A:2-2.10. However, he is not entitled to counsel fees. *N.J.A.C.* 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield,* 282 *N.J. Super.* 121,128 (App. Div. 1995): *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and major discipline was imposed. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections,* unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. However, under no circumstances should the appellant's reinstatement be delayed due to any back pay dispute.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modified the removal to a three-month suspension. The appellant is entitled to backpay, benefits and seniority as provided for in *N.J.A.C.* 4A:2-2.10. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned, or could have been earned, by the appellant during this period. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R.* 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15Th DAY OF DECEMBER, 2021

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 08143-20

AGENCY DKT. NO. 2021-200

IN THE MATTER OF MUHAMMAD GONZALEZ HUDSON COUNTY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, MEADOWVIEW PSYCHIATRIC HOSPITAL.

William Hannon, Esq. for appellant Muhammad Gonzalez (Oxfeld Cohen, attorneys)

Donald Gardner, Esq., for respondent Hudson County

Record Closed: August 11, 2021 Decided: September 28, 2021

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Appellant Muhammad Gonzalez (Gonzalez or appellant) appeals the determination of the respondent Hudson County, Department of Health and Human Services, Meadowview Psychiatric Hospital (respondent or Meadowview) that found appellant removed money from a patient's pocket without his authorization, and only

returned the money to the patient after repeatedly being asked by the patient to do so. Respondent terminated Gonzalez based on this alleged incident. Appellant denies taking any money from the patient, and he seeks reinstatement to his prior position as a hospital attendant.

PROCEDURAL HISTORY

On or around June 10, 2020, respondent served Gonzalez with a Preliminary Notice of Disciplinary Action (PNDA), dated March 30, 2020, informing him of the charges made against him for reaching into a patient's pocket and removing the patient's money without the patient's consent. An internal disciplinary hearing took place on July 9, 2020, pursuant to Gonzalez's request. Gonzalez was subsequently served with a Final Notice of Disciplinary Action (FNDA), dated July 21, 2020, which sustained all charges set forth in the PNDA. The disciplinary action taken against Gonzalez was removal, effective July 15, 2020.

On or around September 3, 2020, the New Jersey Civil Service Commission, Division of Appeals and Regulatory Affairs, transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to B-15 and N.J.S.A. 52:14F-1 to F-13. This matter was assigned to the undersigned and the hearing was initially scheduled for December 16, 2020, but adjourned at the request of respondent due to a scheduling conflict. The hearings was rescheduled to January 7, 2021, but adjourned at the request of respondent because of a court conflict, and the January 12, 2021 hearing date was adjourned at the joint request of counsel because they needed additional time to prepare for hearing. A February 2, 2021 hearing date was also adjourned at the request of respondent. The hearing took place on February 10, 2021, March 18, 2021 and April 9, 2021. The record closed on August 11, 2021 following receipt of post-hearing submissions.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** as **FACT** the following uncontroverted facts:

Gonzalez was employed as a hospital attendant at Meadowview for approximately five years. In February 2020, a male patient, M.H., reported that Gonzalez had taken money from his pocket without his authorization. Gonzalez was subsequently terminated. He denies the allegations.

Charges

The charges in the FNDA include violations of: N.J.A.C. 4A:2-2.3(a)(2), Insubordination; N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), Neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause.

The specification of the charges sustained in the FNDA reads as follows:

> On February 25, 2020 at approximately 8:57pm in dayroom 324 a male patient was seated watching television with his peers. Hospital Attendant Muhammad Gonzalez walked up to the patient while he was seated, reached into his pocket, and removed the patient's money. Mr. Gonzalez reportedly returned the money once the patient repeatedly demanded him to do so.

Testimony

Virginia Flint-Montenegro (Flint-Montenegro) testified on behalf of the Respondent. She has been employed by Meadowview for eleven years and was the Assistant Director of Nursing at the time of the alleged incident.

Flint-Montenegro testified that on February 28, 2020, one of Meadowview's patients, M.H., reported to her and the Director of Nursing that on February 25, 2020, Gonzalez took money out of his pocket while in the third floor day room, but returned the money after being asked multiple times to do so. M.H. is no longer a patient at Meadowview, and he told Flint-Montenegro that he did not want to call the police. Both she and the Director of Nursing subsequently conducted an investigation which involved

reviewing video footage of the day room and nursing station outside the day room from the evening of February 25, 2020.

Flint-Montenegro testified that she believed M.H.'s allegations, and her review of the video footage taken inside the day room on the evening of February 25, 2020 substantiated his allegations. When reviewing the video at the hearing, she testified that from her review of the video footage, she could not be certain what Gonzalez removed from M.H.'s pocket but that it "looked like papers," and could be money. She also testified that Gonzalez's actions constituted a violation of patients' rights, and that it did not consist of a proper search of M.H. She did not question Gonzalez as part of her investigation and was unsure whether the Director did an investigation. Nobody present in the day room on February 25, 2020 reported witnessing Gonzalez take M.H.'s money.

Flint-Montenegro testified that Meadowview staff do not conduct body searches of their patients, and that after a patient has a visitor, the patient is taken to a separate semi-private room to be searched before being returned to the unit. This search consists of asking the patient to empty out his pockets and take off his shoes. The purpose of this is to maintain patient safety. There is annual mandatory training for employees that includes how to conduct contraband searches. She testified that there is no evidence that M.H. had a visitor on February 25, 2020, and she had no knowledge as to whether M.H. declined to put his money in a safe or lock box that day. She testified that the Shift Change Report prepared that day, in part by Gonzalez, makes no mention of seizing money from the patient. If money had been seized from the patient, it would have been placed into a safe.

Flint-Montenegro testified that patients are entitled to keep money on their person at Meadowview, but that they are discouraged from carrying more than $30 to $40.

Muhammad Gonzalez testified on his own behalf. He was hired by Meadowview in 2015 as a nurse attendant/hospital attendant. On February 25, 2020, he worked the 3:00 to 11:00 p.m. shift, and was assigned to the third floor.

Gonzalez understood that patients were not allowed to have more than $40 on their person. If a patient had more than $40, they were to report it to the charge nurse, and the patient would be encouraged to place it in the safe.

Gonzalez testified that on February 25, 2020, he was instructed to leave the floor to get M.H. after he had a visit downstairs. Gonzalez retrieved M.H. after the visit and took him to the quiet room, where he instructed M.H. to empty his pockets, but M.H. refused. Gonzalez testified that he was alone in the room with M.H. but that Nurse Dorothy Okeke (Nurse Okeke) was just outside the quiet room, and he told her that the patient had too much money in his pocket. He testified that M.H. had a history of claiming that he had money missing and of flaunting the money that he had. Gonzalez testified that Nurse Okeke told him that they had to find out how much money he had in his possession. Gonzalez testified that he counted M.H.'s money in front of Nurse Okeke and M.H. at the nurses' station, that M.H. refused to put it in the safe, and that the money counted amounted to $181 and change, which was returned to M.H. He testified that after counting the money, he prepared an Incident Report, in which he referenced the money counted, and Nurse Okeke completed a Shift Report.

Gonzalez denied putting his hand in M.H.'s pocket, but testified that he patted him down. He denied taking any money out of his pocket.

The first time Gonzalez became aware of M.H.'s complaint was in June 2020 when he was served with the PNDA and was suspended. He testified that nobody questioned him about the allegations.

Gonzalez conceded that he had been suspended twice before. Once for two days and the second time for forty-five days, for conduct unbecoming. On cross-examination, he again denied reaching into M.H.'s pocket, and testified that he patted

his pocket because he believed M.H. had taken an extra snack. He testified on cross that it was M.H. who pulled money out of his own pocket between 7:45 and 8:15 that evening (prior to the video footage shown in the day room), and that he and Nurse Okeke counted the money.

Flint-Montenegro testified on rebuttal that if money is seized from a patient, or if the patient refuses a search, it is documented in the shift report. Meadowview staff is not permitted to conduct searches by going into a patient's pockets. If a patient elects to give money to staff for safe keeping, the nurse would collect it, document that, and lock the money up in a safe. The nurse is to fill out a "Patient valuables form" after counting the money with the patient present. If the patient does not want to turn the money over for safe-keeping, and elects to hold onto the money, this is also documented on a progress note and shift and/or incident report. Flint-Montenegro testified that she did not receive any such forms from Nurse Okeke that day. Flint-Montenegro also testified that she reviewed all of M.H.'s medical records for that day and that there was no reference to a visit that day, and no reference anywhere in the records concerning M.H.'s money. The charge nurse is required to document a money issue, and the attendant should also, and none was done here.

Marissa Haya Feldman (Feldman) testified on behalf of respondent. She has been an employee at Meadowview for over sixteen years, and is currently the Director of Quality Assurance. She burned the DVDs in evidence here. Feldman reviewed video footage of February 25, 2020 after she was advised of the allegations. She also watched video taken of the hallway outside of the day room, which consisted of the nursing station and hallway. She testified that footage is automatically deleted after thirty days, unless it is burned or preserved. She was only asked to review footage for February 25, 2020.

Dorothy Okeke has been employed as a charge nurse at Meadowview since July 28, 2008. She recalled that on one occasion sometime in February 2020, M.H. and Gonzalez approached her at the nurses' station to count money in M.H.'s possession following a visit. Gonzalez told her that M.H. had money in his pockets and

Nurse Okeke told M.H. that they had to count it. She also offered to hold his money at the nurses' station. She testified that M.H. did not want them to touch his money or to hold it for him, so she had M.H. count the money in front of them. She testified that M.H. had $65, and that she documented that in a shift change report that day. Nurse Okeke also testified that she also documented it in the patient's electronic file, and she informed her supervisor about it. She could not recall when this occurred, but believed it was sometime in February 2020. She was shown R-5, a shift change report from February 25, 2020, which did not document that M.H. had money in his possession. On February 25, 2020, Nurse Okeke worked the 3:00-11:00 p.m. shift. She testified that M.H.'s family often gave him money, which he liked to hold on to and give to other patients, which is why they wanted to count and keep track of his money.

Credibility

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "'[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.'" State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Here, the respondent's witnesses presented as credible. Neither Flint-Montenegro's testimony nor Nurse Okeke's testimony appeared contrived or exaggerated. I have no reason to doubt their testimony, and accept their testimony as fact. On the other hand, Gonzalez did not present as a credible witness. He was overly emotional, appeared angry and distracted, and his version of the events was not supported by the documentary evidence or the video. He denied reaching into M.H.'s pocket despite the video depicting otherwise, and his assertion that he was only patting the patient's pocket in search of an extra snack was not believable and was inconsistent with the video. I give his testimony no weight.

FINDINGS OF FACT

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

1. M.H., a psychiatric patient at Meadowview, reported on February 28, 2020 that Gonzalez took money out of his pocket on February 25, 2020, but returned it days later after M.H. repeatedly asked for his money.

2. On the evening of February 25, 2020, Gonzalez reached into M.H.'s pocket, without his authorization, and removed M.H.'s money.

3. Gonzalez was not authorized to conduct a body search of M.H., and he was not authorized to take money from M.H.'s pocket per Meadowview policy.

4. Meadowview policy, for which Meadowview employees are trained, addresses the manner in which searches of its patients are to be conducted. It does not permit body searches, including the reaching into a patient's pockets. Gonzalez violated this policy by removing money from M.H.'s pocket.

5. Gonzalez did not document seizing this money from M.H., and he did not report this to a nurse or to any other staff at Meadowview.

6. M.H. did not have visitors on February 25, 2020, and there is no documentary evidence of either M.H. having his money counted as part of a search on February 25, 2020, of M.H. refusing to turn over his money or have his money counted, or of any money-related issues involving M.H. on that day.

7. M.H. was known to carry money on his person at Meadowview. While Nurse Okeke testified that on one occasion she and Gonzalez had M.H. count his money in their presence following one of his visits, there is no evidence that occurred on February 25, 2020. The evidence suggests that this exchange occurred on another day in or around February 2020, following one of M.H.'s visits. M.H. did have a visit in the afternoon of February 22, 2020.

LEGAL ANALYSIS AND CONCLUSIONS

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 4A:2-6.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(11).

In disciplinary cases, the appointing authority has both the burden of persuasion and production and must demonstrate by a preponderance of the competent, relevant and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct.

1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

Given the findings of fact, and specifically the determination that Gonzalez did in fact take money from a patient's pocket, the first issue in this proceeding is whether a preponderance of the credible evidence supports the charges set forth in the FNDA. If so, the second issue to be addressed is whether termination is the appropriate disciplinary action.

Gonzalez is charged with insubordination, pursuant to N.J.A.C. 4A:2-2.3(a)(2). The Civil Service Act does not provide a definition for this charge. The term, however, is generally interpreted to mean the refusal to obey an order of a supervisor. In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), https://njlaw.rutgers.edu/collections/oal/. According to Webster's II New College Dictionary (1995) "insubordination" refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. In In re Rudolph, CSV 5083-99 (consolidated), Initial Decision (October 23, 2000), adopted, Merit Sys. Bd. (December 18, 2000), http://njlaw.rutgers.edu/collections/oal/, the Merit System Board upheld the removal of a public works repairer for refusing to respond to the reasonable orders of his supervisor to complete an assignment.

Gonzalez is also charged with conduct unbecoming a public employee, pursuant to N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming" is an "elastic" phrase that encompasses conduct that "adversely affects the morale or efficiency of a governmental unit . . . [or] which has a tendency to destroy public respect in the delivery of governmental services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (citing In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

Appellant is also charged with neglect of duty, N.J.A.C. 4A:2-2.3(a)(7). "Neglect of duty" has been interpreted to mean that an employee "neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, Civil Service Commission (March 27, 2009), http://njlaw.rutgers.edu/collections/oal/. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

Finally, Gonzalez is charged with violating N.J.A.C. 4A:2-2.3(a)(12), "other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standards of good behavior which devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re MacDonald, CSR 9803-13, Initial Decision (May 19, 2014), adopted, Civil Service Commission (September 3, 2014), http://njlaw.rutgers.edu/collections/oal/.

Here, Gonzalez's actions on the evening of February 25, 2020 clearly violate Meadowview's policy and practices since employees are prohibited from removing money or any contraband from a patient's pockets. Gonzalez's failure to comply with Meadowview's policy and practices, which Flint-Montenegro also described as a violation of patient rights, constitutes insubordination, neglect of duty, conduct unbecoming and "other sufficient cause." I can only assume that Gonzalez's intention in taking the money was to keep it. There is no evidence that money taken from M.H. that day was either documented anywhere or put away for safekeeping. Respondent only presented hearsay evidence that the money was ultimately returned to M.H. days later after he demanded the return of his money from Gonzalez multiple times. On the

evening of February 25, 2020, as a public employee, the appellant not only failed in his duties to attend to and care for his patients, he betrayed a patient's trust, his employer's trust, and the public trust.

Based on my findings, I **CONCLUDE** that respondent has demonstrated, by a preponderance of credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(2)a (Insubordination), N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming a Public Employee), N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty), and N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause), and that such charges must be **SUSTAINED**.

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; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 1996 N.J. AGEN LEXIS 467 (April 16, 1996). Pursuant to Bock, concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522-24.

Progressive discipline may only be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest. In re Herrmann, 192 N.J. 19, 33 (2007). Termination of employment is the penalty of last resort reserved for the most severe infractions or habitual negative conduct unresponsive to intervention. Rotundi v. Dep't of Health and Human Services, OAL Dkt. No. CSV 385-88 (Sept. 29, 1988)

Here, while Gonzalez does have a history of discipline that includes a forty-five-day suspension for unbecoming conduct, respondent argues that Gonzalez's misconduct was so severe that it falls outside of progressive discipline and that removal is the appropriate remedy. I agree. Gonzalez misused his position as a hospital attendant to take money from a psychiatric patient. He certainly cannot be trusted to continue to work with the vulnerable population at Meadowview. I **CONCLUDE** that given the nature of the misconduct, Gonzalez's actions were sufficiently severe to render him unsuitable to continue in his position as a hospital attendant at Meadowview. I further **CONCLUDE** that Gonzalez's removal is appropriate.

ORDER

It is **ORDERED** that the determination of respondent to terminate Muhammad Gonzalez from his employment at Meadowview Hospital is **SUSTAINED**.

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.

September 28, 2021
DATE

SUSANA E. GUERRERO, ALJ

Date Received at Agency:

Date Mailed to Parties:
jb

APPENDIX

WITNESSES

For Appellant:

Muhammad Gonzalez

For Respondent:

Virginia Flint-Montenegro

Marissa Haya Feldman

Dorothy Okeke

EXHIBITS

Joint:

J-1 Final Notice of Disciplinary Action

For Appellant:

None

For Respondent:

R-1(a) Preliminary Notice of Disciplinary Action

R-1(b) Page 2 of Preliminary Notice of Disciplinary Action with statement

R-2 February 25, 2020 Shift Change Report signed by Gonzalez

R-3 Video (day room)

R-4 Video (hall near nurse's station) (on same disk as R-3)

R-5 Four-page Shift Change Report

R-6 Patient Visitor Sign-In Sheet for February 22, 2020