



STATE OF NEW JERSEY

In the Matter of Cheryl Grier and
Christopher Hines, Middle Township,
Department of Recreation

CSC DKT. NOS. 2020-2440 & 2020-
2356

OAL DKT. NOS. CSV 04817-20 &
05336-20

(CONSOLIDATED)

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: DECEMBER 15, 2021 BW

The appeals of Cheryl Grier, Recreation Leader, and Christopher Hines, Recreation Aide, Middle Township, Department of Recreation, removals effective March 5, 2020, on various charges, were heard by Administrative Law Judge Jeffrey R. Wilson, who rendered his initial decision on November 17, 2021. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of December 15, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellants was justified. The Commission therefore affirms that action and dismisses the appeals of Cheryl Grier and Christopher Hines.

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 15TH DAY OF DECEMBER, 2021

Deirdre' 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
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**IN THE MATTER OF CHERYL GRIER,
MIDDLE TOWNSHIP,
DEPARTMENT OF RECREATION**

OAL DKT. NO. CSV 04817-20
AGENCY DKT. NO. 2020-2440

AND

**IN THE MATTER OF CHRISTOPHER HINES,
MIDDLE TOWNSHIP,
DEPARTMENT OF RECREATION**

OAL DKT. NO. CSV 05336-20
AGENCY DKT. NO. 2020-2356
(CONSOLIDATED)

Cheryl Grier, petitioner, pro se

Christopher Hines, petitioner, pro se

Paul J. Baldini, Esq., for respondent (Law Offices of Paul J. Baldini, PA,
attorneys)

Record Closed: October 29, 2021

Decided: November 17, 2021

BEFORE JEFFREY R. WILSON, ALJ

STATEMENT OF THE CASE

The appellants, Cheryl Grier (Grier), a Recreation Leader, and Christopher Hines (Hines), a Recreation Aide, appeal their respective removals, effective March 5, 2020.

PROCEDURAL HISTORY

On January 24, 2020, Middle Township issued separate Preliminary Notices of Disciplinary Action (PNDA) removing the appellants, effective January 30, 2020. On March 4, 2020, Middle Township issued separate Final Notices of Disciplinary Action (FDNA) removing the appellants, effective March 5, 2020. Grier appealed her removal, and the matter was transmitted to the Office of Administrative Law, where it was filed on May 20, 2020, as a contested case. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13. Hines appealed his removal and the matter was transmitted to the Office of Administrative Law, where it was filed on May 27, 2020, as a contested case. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13.

By order, dated December 18, 2020, the matters were consolidated. A hearing was conducted in these consolidated matters on January 19, 2021, utilizing the Zoom platform. On January 21, 2021, Hines submitted a proposed exhibit (CH-1), via email, that contained a purported email chain between he and one of the respondent's witnesses, along with a narrative in support of the proposed exhibit. The respondent objected to the proposed exhibit being entered into evidence. The proposed exhibit was excluded from evidence as it was without proper foundation. Furthermore, without advance opportunity to review the proposed exhibit, the respondent was placed at a disadvantage to appropriately respond. The record remained open for receipt of transcripts and closing submissions and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Based on the testimony of the witnesses and examination of the documentary evidence, I **FIND** the following **FACTS** are undisputed:

1. At all relevant times, Grier was employed as a Recreation Leader by the Middle Township Recreation Department (The Township).
2. On January 24, 2020, The Township issued a PNDA removing Grier, effective January 30, 2020.
3. At Grier's request, a departmental hearing was conducted on February 4, 2020.
4. On March 4, 2020, The Township issued a FNDA removing Grier, effective March 5, 2020.
5. Grier's FNDA included the following sustained charges:
 - N.J.A.C. 4A:2-2.3(a)(1) – Incompetency, inefficiency or failure to perform duties
 - N.J.A.C. 4A:2-2.3(a)(6) – Conduct unbecoming public employees
 - N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause
 - Personnel Policy Manual / Employee Discipline Policy - Falsification of public records, including attendance (pgs. 25-28)
6. Grier's FNDA detailed the alleged incident giving rise to the charges as follows:

On January 15, 2020, knowing that her coworker, Chris Hines, was not on duty and had left the Goshen Complex at 2:04 pm, the petitioner utilized Hines' personal password and login to clock Hines out of work at 4:02 pm. The petitioner acted dishonestly

and falsified attendance records pursuant to Hines' request. The petitioner's behavior is a violation of the Personnel Policy Manual as well as NJAC Title 4A subject to disciplinary action up to and including termination.

7. At all relevant times, Hines was employed as a Recreation Aide by The Township.
8. On January 24, 2020, The Township issued a PNDA removing Hines, effective January 30, 2020
9. At Hines' request, a departmental hearing was conducted on February 4, 2020.
10. On March 4, 2020, The Township issued a FNDA removing Hines, effective March 5, 2020.
11. Hines' FNDA included the following sustained charges:
 1. N.J.A.C. 4A:2-2.3(a)(1) – Incompetency, inefficiency or failure to perform duties
 2. N.J.A.C. 4A:2-2.3(a)(4) – Chronic or excessive absenteeism or lateness
 3. N.J.A.C. 4A:2-2.3(a)(6) – Conduct unbecoming public employees
 4. N.J.A.C. 4A:2-2.3(a)(7) – Neglect of duty
 5. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause
 6. Personnel Policy Manual / Hours of Work and Attendance Policy (pg. 31)

12. Hines' FNDA detailed the alleged incident giving rise to the charges as follows:

On January 15, 2020, the petitioner was scheduled to work 7:30 am – 4:00 pm at the Goshen Complex. Upon observation of security cameras, it has been determined that the petitioner left the building at 2:00 pm and went to his

other job. The petitioner did not come back to finish his scheduled shift and did not get prior approval from his supervisor to modify his schedule. On January 15, 2020, around 4:00 pm, the petitioner called his township coworker at the Goshen Complex and asked her to clock him out of work with the Township at 4:00 pm.

Testimony

Kyle Morinelli (Morinelli) testified on behalf of the Township where he is employed as the Recreation Program Coordinator. He serves directly below the Recreation Superintendent, Dustin Sturm (Sturm). Directly below him in the chain of command is the Recreation Leader (Grier) followed by the Recreation Aide (Hines).

The Department of Recreation mainly operates out of two properties: the Goshen Sports Complex and the MLK Building. The Goshen Sports Complex is the Department's outdoor facility, comprised of outdoor sports fields and a building that houses the Department's main office, a recreation room and a basketball court. The MLK Building has an office, a recreation room, a full kitchen and an outdoor basketball court. The properties are approximately a ten-minute drive apart. An employee might be required to work between the two properties, as required, in the same day.

On January 15, 2020, Morinelli was working at the MLK Building. In the afternoon, while monitoring the surveillance cameras, he observed Hines depart the Goshen Complex, Morinelli then called Grier, who was working at the Goshen Complex, and questioned Hines' whereabouts. Grier informed him that Hines went to lunch.

At approximately 4:00 p.m., Sturm joined Morinelli at the MLK Building's office. Morinelli informed Sturm that earlier, Grier indicated Hines went to lunch around noon. Sturm noticed that Hines had not returned to either office; however, he was already clocked out for the day. Sturm then called Grier at the Goshen Complex. Grier indicated that Hines had not returned to work and that she clocked him out. Morinelli

overheard this conversation because Sturm spoke to Grier using the phone's speakerphone feature.

Morinelli went on to explain that the Department utilizes the Primepoint¹ time keeping system. Upon hiring, each employee selects a unique login and password with the understanding that they are only to be used by the employee to sign in and out. Employees are not permitted to share or use each other's password. Only the Recreation Superintendent is authorized to override the system.

Dustin Sturm (Sturm) testified on behalf of the Township, where his is employed as the Acting Recreation Superintendent, a position he held on January 15, 2020. On that date, Morinelli informed him that he observed Hines leaving the Goshen Complex, while monitoring the surveillance cameras at the MLK Building. Morinelli further informed him that he called Grier, who told him that Hines went to lunch. Sturm took no action upon receiving this information.

At approximately 4:00 p.m. that day, when Sturm was clocking himself out, utilizing Primepoint at the MLK Building, he noticed Hines was already clocked out, without returning to work. He then called the Goshen Complex and spoke to Grier. She confirmed that Hines had not returned to work since she spoke to Morinelli, earlier that day. Grier also stated that she clocked Hines out. Sturm was concerned because he did not give Hines permission to leave work for the day. Neither did Sturm authorize Grier to clock Hines out. Employees are not permitted to clock another employee in or out. It is against the Township's policy.

On January 17, 2020, Grier and Hines were interviewed separately by Varvara Keun (Keun). Sturm was present for both interviews. Grier admitted that Hines asked her to clock him out at approximately 4:00 p.m., on January 15, 2020. She did so, using his credentials, knowing that he had left work earlier in the day.

¹ Primepoint is a payroll processing and human resource management company offering a fully integrated suite of technology tools.

During his interview, Hines acknowledged that he left the Goshen Complex early on January 15, 2020, to go to his teaching job. Hines claimed that he cleared this with Sturm. Sturm denied providing such clearance. There were times in the past when Sturm altered Hine's schedule to accommodate his outside obligations, however, no such accommodation was requested or granted on January 15, 2020. Ultimately, Hines admitted that he asked Grier to clock him out that day.

Varvara Keun testified on behalf of the Township where she was employed as a personnel officer, a position she has held for approximately three years. She confirmed that Grier and Hines were full-time employees on January 15, 2020. Duties of their positions are detailed in the Civil Service Commission's Job Specifications for Recreation Leader (R-4) and Recreation Aide (R-3), respectively.

Keun was approached by Sturm and directed to conduct an investigation to determine Grier's and Hines' actions, on January 15, 2020. Through her investigation, Keun learned that Hines was scheduled to work until 4:00 p.m. that day. However, review of surveillance camera footage revealed that he left the Goshen Complex shortly after 2:00 p.m. (R-6 and R-7.) Further review of the surveillance camera footage revealed that on January 15, 2020, Grier was seated at the desk in the greeting area of the Goshen Complex. At approximately 4:00 p.m., she left the greeting area and entered the main office that holds the computers utilized by employees to clock in and out. (R-8 and R-9.) At this time, Grier was the only person left at the Goshen Complex.

On January 17, 2020, Keun conducted separate in-person interviews with Grier and Hines. Upon questioning, Grier admitted that she knew other employees' passwords and that Hines had given her his login and password. Furthermore, she admitted that on January 15, 2020, Hines left the Goshen Complex around 2:00 p.m., stating that he was going to lunch. At approximately 4:00 p.m., he called her and stated that he forgot to clock out and asked her to do so using his login and password. Grier accessed Primepoint using Hines' login and password and clocked him out.

Upon questioning, Hines indicated that on January 15, 2020, he left the Goshen Complex around 2:00 p.m. to go to his part-time job as a teacher. Neither Sturm nor Keun were aware of Hines' teaching job. Hines testified that he thought he did not have to get approval from Sturm because he had prior agreements with him concerning other commitments that were already approved. He related he did not tell Grier where he was going when he left the Goshen Complex. However, he did admit that he asked her to clock him out and that it was inappropriate. He did so with the intention of making up the time, which he never did.

Keun reviewed the Primepoint Time Entries Audit Trail Report for the period in question. (R-10.) She confirmed the January 15, 2020, clock in and clock out attributed to Hines and the IP address from which the entries were made. The Report also details the action taken by Sturm to adjust those entries to reflect Hines' actual time at work that day. Keun further identified the IP Map location (R-11) that confirms the computer used to clock out Hines on January 15, 2020, is located at the Goshen Complex. Grier was the only person at the Goshen Complex at the time the clock out was entered onto Primepoint.

Finally, Kuen identified the portion of The Township's Personnel Policies and Procedures relied upon when bringing these charges. (R-14). The Employee Discipline Policy list the reasons for termination that includes: "Falsification of public records, including attendance and other personnel records." These policies were in effect January 15, 2020. Grier acknowledged receipt of these policies and procedures on May 13, 2013. (R-16.) Hines acknowledged receipt of the same on February 22, 2018. (R-15.) Copies of the policies and procedures were also delivered through each department's supervisor and made available to all employees on Primepoint.

Lisa Cermanski (Cermanski) testified on behalf of the Township where she was employed as a part-time Recreation Aide since 2018. In the fall of 2019, she was approached by Grier in the main office at the Goshen Complex. This is where Grier's

desk was located. Grier was the Recreation Leader at the time. Grier asked her to clock Hines out because the time clock at the MLK Building was not working. Grier had Hines' username and password under her computer keyboard. Grier assured her that this was done in the past and that she did not want to bother Dustin Sturm because he had a lot to deal with. Cermanski refused because she felt uncomfortable.

Grier testified on her own behalf. She has been employed by the Township since 2013. At all relevant times, her Civil Service title was Recreation Leader. Grier described the Recreation Department as a hostile working environment. She complained of harassment but was afraid to report it for fear of retaliation. Hines and Wakefield helped her out as she was dealing with issues in her personal life.

On January 15, 2020, she was working with Hines at the Goshen Complex when Sturm texted her to clear her desk and the surrounding area. Grier was very upset and began to cry because she took this to mean that she was being terminated. At approximately 2:00 p.m., Hines left the Goshen Complex. He called her shortly thereafter to see if she was okay because she was still upset and crying when he left. At some point, Morinelli called her asking where Hines was. Still upset and crying, she did not understand why he was calling her and told him to call Hines directly. Later, Sturm called her looking for Hines. She told him that Hines left around 2:00 p.m. and that she did not know where he was.

On January 17, 2020, Grier was interviewed by Kuen. During the interview Grier related that on January 15, 2020, she spoke to Morinelli and Sturm who informed her they observed Hines leave the Goshen Complex on the surveillance camera. When asked where Hines went, Grier told them she did not know and that he may have gone to lunch. She then told them to call Hines directly on his cell phone. She also told them that Hines called her shortly after leaving to see if she was okay because she was crying when he left. Grier denied that she knows Hine's Primepoint password. She denied Hines asked her to clock him out. She also denied clocking him out.

Hines testified on his own behalf. He was employed by the Township as grounds and maintenance. His Civil Service title was Recreation Aide. His job duties included taking care of the sports fields and maintaining the Recreation Department's properties, that include the MLK Building and the Goshen Complex. He was not confined to one building.

Hines never had a direct supervisor. He was basically on his own as an "exempt employee" on a "flex schedule." He could come and go as he pleased as long as he worked forty hours per week and eighty hours in a two week pay period. This scheduling arrangement was put in place when he was originally hired by Sturm's predecessor. Sturm agreed to continue Hines' scheduling arrangement after Sturm's predecessor left.

Hines described the unjust treatment he and other workers were subjected to. When he reported the inappropriate behavior, the prior superintendent exhibited towards Grier, that superintendent resigned before being investigated. Hines accused him of sexual harassment and promoting a hostile workplace. Since that incident, Hines has been the victim of retaliation.

On January 15, 2020, Hines left the Goshen Complex at approximately 2:00 p.m. He did not return to work that day. Shortly after leaving, he telephoned Grier to see if she was okay because he was upset about being told to clear her desk. He had no further contact with Grier that day. He acknowledged that his password was used to clock him out at 4:00 p.m., but he did not do it himself. He has never shared his Primepoint password with another person. He is not sure if it was Grier or another person that clocked him out, but he knew that Grier was the only person at the Goshen Complex at that time. The computers at the MLK Building save all employee logins and passwords, so it is possible for an employee to clock another employee in or out from that location. The computers at the Goshen Complex do not have that capability. At the Goshen complex, only the employee or someone who knows their password can

clock the employee in or out. Hines acknowledged that his Primepoint clock out on January 15, 2020, was entered from a computer at the Goshen Complex.

On January 16, 2020, Hines contacted Sturm and informed him that he forgot to clock out the previous day and that he would make up the two hours of time. On January 17, 2020, Hines was interviewed by Keun. The interview was not recorded. During the interview, he did not admit that he directed Grier to clock him out on January 15, 2020. After the interview, Hines made up the two hours missed.

Nakisha Wakefield (Wakefield) testified on behalf of Hines. She ceased her employment with The Township in 2018 and has no knowledge of the events of January 15, 2020. She recalled that during her employment with the Township, Hines had the "flex schedule" allowing him to come and go at any time, as long as he worked forty hours in a week. She was not aware of Hines' scheduling terms after she left employment with The Township.

Wakefield utilized Primepoint for time keeping during her employment with The Township, utilizing a unique password. She acknowledged that it was not appropriate to share or use another's password.

Credibility is best described as that quality of testimony or evidence which makes it worthy of belief. The Supreme Court of New Jersey considered the issue of credibility in In-re Estate of Perrone, 5 N.J. 514 (1950). The Court pronounced:

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.
[5 N.J. at 522.]

In order to assess credibility, the witness' interest in the outcome, motive or bias should be considered. Furthermore, 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.)

When assessing credibility, inferences may be drawn concerning the witness' expression, tone of voice and demeanor. MacDonald v. Hudson Bus Transportation Co., 100 N.J. Super. 103 (App. Div. 1968.) Additionally, the witness' interest in the outcome, motive or bias should be considered. Credibility contemplates 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.)

Having considered the testimonial and documentary evidence presented and observing the demeanor of Morinelli, Sturm, Kuen and Cermanski, I accept their testimony to be highly credible and more credible than the testimony of Grier and Hines. Morinelli, Sturm, Kuen and Cermanski merely stated that facts as they recalled them, without histrionics or magnification. Their testimony was consistent and corroborated by the documentary evidence. None of these witnesses had an ulterior motive or anything to gain by testifying. Grier and Hines appeared to be evasive and argumentative, at times. Their testimony was inconsistent and self-serving.

Accordingly, I further **FIND** as **FACT** the following:

1. On January 15, 2020, Grier and Hines were working at the Goshen Complex.
2. At approximately 2:00 p.m., Hines left the Goshen Complex without clocking out, leaving Grier as the only employee on the premises.
3. At approximately 4:00 p.m., Hines called Grier and authorized her to clock him out utilizing his username and password.

4. Grier did as requested by Hines, and clocked him out shortly after 4:00 p.m. on January 15, 2020.
5. Hines did not have prior authorization to leave work early on January 15, 2020.
6. Grier and Hines were aware that their actions were in violation of the Department's policies and procedures.

LEGAL ANALYSIS AND CONCLUSIONS

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

The respondent shoulders the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted.) Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also, Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959.)

Cheryl Grier

Here, Grier is charged with the following:

1. N.J.A.C. 4A:2-2.3(a)(1) – Incompetency, inefficiency or failure to perform duties.

This section covers instances where the employee performs his or her duties, but in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is sub-standard. See *Lynda Clark v. New Jersey Dept. of Agriculture*, 1 N.J.A.R. 315. Incompetence means that an individual lacks the ability or the qualifications to perform the duties required of him or her. *John Steinel v. City of Jersey City*, 7 N.J.A.R. 91, modified at 193 N.J. Super.629 (App. Div. 1984), *aff'd.* at 99 N.J. 2 (1985).

Based upon my findings, I **CONCLUDE** that the respondent has met its burden as to the charge of incompetency, inefficiency or failure to perform duties relative to the incidents on January 15, 2020, in violation of N.J.A.C. 4A:2-2.3(a)(1).

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

Conduct unbecoming a public employee is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. *Karins v. City of 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 v. City of Atl. City*, 152 N.J. at 555, quoting *In re Zeber*, 156 A.2d 821, 825 (1959). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” *Hartmann v. Police Dep’t of Ridgewood*, 258 N.J. Super. 32, 40 (App. Div. 1992) quoting *Asbury Park v. Dep’t of Civil Serv.*, 17 N.J. 419, 429 (1955).

Based upon my findings, I **CONCLUDE** that the respondent has met its burden as to the charge of conduct unbecoming a public employee relative to the incidents on January 15, 2020, in violation of N.J.A.C. 4A:2-2.3(a)(6)

3. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause

Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. conduct was such that she violated this standard of good behavior.

Accordingly, I **CONCLUDE** that the respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's actions violated N.J.A.C. 4A:2-2.3(a)(12).

4. Personnel Policy Manual / Employee Discipline Policy - Falsification of public records, including attendance

The Township's personnel policies and procedures explicitly lists "falsification of public records, including attendance and other personnel records' as violative and cause for discipline including termination. As detailed above, the appellant purposely falsified her coworkers' attendance record, knowing it was in violation of the Township's personnel policies and procedures.

Also listed as violative of the Township's personnel policies and procedures and cause for discipline are incompetence, inefficiency, or failure to perform duties; conduct unbecoming a public employee; other sufficient causes and violation of Township policies, procedures and regulations

Accordingly, I **CONCLUDE** that the respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's actions violated the Township's personnel policies and procedures.

Christopher Hines

Here, Hines is charged with the following:

1. N.J.A.C. 4A:2-2.3(a)(1) – Incompetency, inefficiency or failure to perform duties

This section covers instances where the employee performs his or her duties, but in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is sub-standard. See *Lynda Clark v. New Jersey Dept. of Agriculture*, 1 N.J.A.R. 315. Incompetence means that an individual lacks the ability or the qualifications to perform the duties required of him or her. *John Steinel v. City of Jersey City*, 7 N.J.A.R. 91, modified at 193 N.J. Super.629 (App. Div. 1984), aff'd. at 99 N.J. 2 (1985).

Based upon my findings, I **CONCLUDE** that the respondent has met its burden as to the charge of incompetency, inefficiency or failure to perform duties relative to the incidents on January 15, 2020, in violation of N.J.A.C. 4A:2-2.3(a)(1).

2. N.J.A.C. 4A:2-2.3(a)(4) – Chronic or excessive absenteeism or lateness

There was no testimony presented as to Hines' attendance record aside from that surrounding the January 15, 2020, incident.

Accordingly, I **CONCLUDE** that the respondent has not met its burden of proof on this issue of alleged chronic or excessive absenteeism or lateness.

3. N.J.A.C. 4A:2-2.3(a)(6) – Conduct unbecoming public employees

Conduct unbecoming a public employee is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a

governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of 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 v. City of Atl. City, 152 N.J. at 555, quoting In re Zeber, 156 A.2d 821, 825 (1959). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955).

Based upon my findings, I **CONCLUDE** that the respondent has met its burden as to the charge of conduct unbecoming a public employee relative to the incidents on January 15, 2020, in violation of N.J.A.C. 4A:2-2.3(a)(6)

4. N.J.A.C. 4A:2-2.3(a)(7) – Neglect of duty

Neglect of Duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey 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 and Veterans Affairs, 97

N.J.A.R.2d (CSV) 564 Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R.2d (CSV) 214.

Based upon my findings, I **CONCLUDE** that the respondent has met its burden as to the charge of neglect of duty relative to the incidents on January 15, 2020, in violation of N.J.A.C. 4A:2-2.3(a)(7)

5. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause

Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. conduct was such that she violated this standard of good behavior.

Accordingly, I **CONCLUDE** that the respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's actions violated N.J.A.C. 4A:2-2.3(a)(12).

6. Personnel Policy Manual / Hours of Work and Attendance Policy

The Township's personnel policies and procedures stress the importance of and expectation of attendance to maintain appropriate department/building coverage and guarantee continuity in access by and service to the citizenry. As detailed above, the appellant purposely left his place of employment before finishing his shift and requested a coworker to falsify his attendance record, knowing it was in violation of the Township's personnel policies and procedures.

Also listed as violative of the Township's personnel policies and procedures and cause for discipline are incompetence, inefficiency or failure to perform duties; conduct unbecoming a public employee; neglect of duty; other sufficient causes and violation of Township policies, procedures and regulations

Accordingly, I **CONCLUDE** that the respondent has met its burden of proof on this issue. I **CONCLUDE** that appellant's actions violated the Township's personnel policies and procedures.

DISCIPLINARY ACTION

In appeals concerning major disciplinary actions brought against classified employees, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A2-1.4(a); In re: Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962.)

The act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1 et seq. New Jersey's Civil Service Act is construed liberally in order to protect employees from arbitrary discipline. Mastrobattista v. Essex Cty. Park Comm'n, 46 N.J. 138, 147 (1965); Prosecutors, Detectives and Investigators Ass'n v. Hudson County Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952.)

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. Grounds for discipline, include, among other things, incompetency, inefficiency or failure to perform duties; conduct unbecoming a public employee; neglect of duty; and other sufficient cause. See N.J.A.C. 4A:2-2.3(a)(1), (6), (7), and (12).

Appellant Cheryl Grier's Work History (R-13) was sealed at the hearing and not unsealed until after this ALJ made his findings and conclusions as to the charges alleged. Grier's disciplinary record reflects the following:

Date	Discipline	Infraction
12/14/2014	Written Warning	Personal Use of Township Vehicle
01/30/2016	Verbal Warning	Disrespect to Supervisor
06/19/2018	Record of Conversation	Conflict Resolution
06/20/2018	Record of Conversation	Left Employment Early Failed to Request Vacation Time
06/28/2018	Record of Conversation	Respecting Other Employees
11/26/2018	Record of Conversation	Lack of Respect to co-Employees
01/24/2019	Record of Conversation	Not Calling Out to Supervisor
03/15/2019	Record of Conversation	Attendance Being Late Not Working Scheduled Time
03/15/2019	Record of Conversation	Operating Township Vehicle While Off the Clock
03/15/2019	Record of Conversation	Did Not Fully Complete Assigned Task
03/19/2019	3 Day Suspension	<ul style="list-style-type: none"> • Failure to Work 03/14/2019 and 03/15/2019 • Failure to Return from Break On Time • Failure to Report for Work On Time, Failure to Comply With Call Out/late Procedures., and Failure to Follow Clock In/Out Procedures
05/02/2019	2 Day Suspension	Tardiness – Late 04/02/2019
05/20/2019	10 Day Suspension	<ul style="list-style-type: none"> • Calling Out Procedure • Failure to Report for Work • Late for Work and Work Past Scheduled Time Without Authorization • Failure to Work Scheduled Hours,

		Failure to Follow Call Out Procedure
12/19/2019	Record of Conversation	Having Personal Conversations Via Cell Phones During Work Time

I have **CONCLUDED** that the respondent has met its burden as to the charges of incompetency, inefficiency or failure to perform duties, conduct unbecoming public employees and other sufficient cause, relative to the incidents on January 15, 2020. A review of the appellant's work record reveals fourteen prior disciplines. Three of the most recent disciplines resulted in multiple day suspensions all related to attendance and time keeping issues.

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty in disciplining a civil servant. The penalty should be reasonable and relative to the charge. W. New York v. Bock, 38 N.J. 500, 523-24 (1962). Considering Grier's history of progressive discipline, removal is the appropriate penalty. Accordingly, I **CONCLUDE** that appellant Cheryl Grier's removal from her position as a Recreation Leader, effective, March 5, 2020, must be affirmed.

Appellant Christopher Hines' work history (R-12) was sealed at the hearing and not unsealed until after this ALJ made his findings and conclusions as to the charges alleged. Hines' disciplinary record reflects the following:

Date	Discipline	Infraction
01/03/2019	Verbal Warning	<ul style="list-style-type: none"> • Calling Out Procedure • Failure to Follow Chain of Command/Policies on 01/03/2019
04/23/2019	Verbal Warning	<ul style="list-style-type: none"> • Tardiness – Late 04/08/2019 and 04/18/2019 • Late 2 Times by 15 Minutes for Work • Failure to Follow Policies

05/09/2019	Written Warning	<ul style="list-style-type: none"> • Failure to Work Assigned Shifts on 05/06/2019 and 05/07/2019 as Scheduled • Failure to Follow Policies
05/17/2019	1 Day Suspension	<ul style="list-style-type: none"> • Tardiness – Late for Work as Scheduled
08/26/2019	7 Day Suspension	<ul style="list-style-type: none"> • Chronic Tardiness

I have **CONCLUDED** that the respondent has met its burden as to the charges of incompetency, inefficiency or failure to perform duties, conduct unbecoming public employees, neglect of duty and other sufficient cause, relative to the incidents on January 15, 2020. A review of the Hines' work record reveals five prior disciplines. All prior disciplines are related to attendance issues and failure to adhere to policies.

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty in disciplining a civil servant. The penalty should be reasonable and relative to the charge. W. New York v. Bock, 38 N.J. 500, 523-24 (1962). Considering Hine's history of progressive discipline, removal is the appropriate penalty. Accordingly, I **CONCLUDE** that appellant, Christopher Hines' removal from her position as a Recreation Aide, effective, March 5, 2020, must be affirmed.

ORDER

It is hereby **ORDERED** that the appellant, Cheryl Grier's removal, effective March 5, 2020, is **AFFIRMED**. The appellant's appeal is hereby **DISMISSED**.

It is hereby **ORDERED** that the appellant, Christopher Hines' removal, effective March 5, 2020, is **AFFIRMED**. The appellant's appeal is hereby **DISMISSED**.

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

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



November 17, 2021

DATE

JEFFREY R. WILSON, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JRW/tat

WITNESSES

For Appellant Cheryl Grier:

Cheryl Grier

For Appellant Christopher Hines:

Christopher Hines
Nakisha Wakefield

For Respondent:

Lisa Cermanski
Kyle Morinelli
Varvara Keun
Justin Sturm

EXHIBITS

For Appellant Cheryl Grier:

None

For Appellant Christopher Hines:

CH-1 Not Admitted

For Respondent²:

- R-1 Christopher Hines 1.) Preliminary Notice of Disciplinary Action, dated January 24, 2020, and 2.) Final Notice of Disciplinary Action, dated March 4, 2020
- R-2 Cheryl Grier 1.) Preliminary Notice of Disciplinary Action, dated January 24, 2020, and 2.) Final Notice of Disciplinary Action, dated March 4, 2020
- R-3 NJ Civil Service Commission Job Specification – Recreation Aide
- R-4 NJ Civil Service Commission Job Specification – Recreation Leader
- R-5 Christopher Hines social media posting, dated January 13, 2020
- R-6 Christopher Hines - screenshot, captured January 15, 2020, at 14:02:04
- R-7 Christopher Hines - screenshot, captured January 15, 2020, at 14:02:37
- R-8 Cheryl Grier - screenshot, captured January 15, 2020, at 16:00:55
- R-9 Cheryl Grier - screenshot, captured January 15, 2020, at 16:01:01
- R-10 Primepoint Time Entries Audit Trail Report
- R-11 Map – IP location of Goshen Complex computer
- R-12 (SEALED JANUARY 19, 2021 – UNSEALED NOVEMBER 5, 2021)
- R-13 (SEALED JANUARY 19, 2021 – UNSEALED NOVEMBER 5, 2021)
- R-14 Township of Middle Personnel Policies& Procedures
- R-15 Christopher Hines – Receipt for Personnel Policies and Procedures Manual, dated February 22, 2018
- R-16 Cheryl Grier - Receipt for Personnel Policies and Procedures Manual, dated May 13, 2013

² Respondent's Trial Brief was sealed at the hearing on January 19, 2021, and never unsealed. The unsealed brief has been destroyed.