



STATE OF NEW JERSEY

In the Matter of Lisa Sargent  
Township of West Milford, Police  
Department

CSC DKT. NO. 2020-1984  
OAL DKT. NO. CSV 02155-20

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

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ISSUED: MARCH 26, 2021 (NFA)

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The appeal of Lisa Sargent, Records Support Technician 2, Township of West Milford, Police Department, 30 working day suspension, on charges, was heard by Administrative Law Judge Kimberly A. Moss, who rendered her initial decision on January 16, 2018. No exceptions were filed.

Having considered the record and the Administrative Law Judge's (ALJ) initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on March 24, 2021, accepted and adopted the Findings of Fact as contained in the attached Administrative Law Judge's initial decision. However, the Commission did not adopt the recommendation to modify the 30 working day suspension to a 15 working day suspension. Rather, the Commission upheld the 30 working day suspension.

DISCUSSION

The appellant in this matter was charged with fraudulent misrepresentation for the purpose of wrongfully obtaining benefits. Specifically, it was alleged that the appellant misrepresented the extent of her physical activities while on vacation in an attempt to secure further Worker's Compensation benefits.

In her initial decision, the ALJ found that the appellant, indeed, has purposely made such misrepresentations. Accordingly, she upheld the charges. However, in regard to the penalty, the ALJ found that suspension should be modified from a 30 working day suspension to a 15 working day suspension. In that

regard, she stated the reductions was warranted since the appellant “did not obtain the benefit she had hoped to gain from misrepresenting the facts.”

Upon its *de novo* review of the record, the Commission agrees with the ALJ regarding the charges. However, it disagrees that the penalty in this matter should be modified. Rather, it finds that the appropriate penalty is a 30 working day suspension.

In determining the proper penalty, the Commission’s review is also *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).

The Commission rejects the ALJ’s rationale for modifying the penalty in this matter. The appellant deliberately lied about the extent of her workplace injury in a brazen attempt to attain further Worker’s Compensation benefits. The fact that she did not ultimately receive those benefits in now way mitigates the serious nature of the infraction. In essence, the appellant attempted to commit fraud but was unsuccessful in doing so. She should not be rewarded with a reduction to the reasonably imposed 30 working day suspension for her unsuccessful attempt. In fact, had she been successful and later found to have committed the fraud, it is assumed that the appointing authority would have sought her removal if she was not otherwise charged with a crime. To exacerbate this infraction, the Commission notes that the appellant works in the Police Department as a Records Support Technician 2, where she has access to sensitive and confidential records.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore upholds the 30 working day suspension.

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 24<sup>TH</sup> DAY OF MARCH, 2021

*Deirdre L. Webster Cobb*

Deirdre L. Webster Cobb  
Acting Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. 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 02155-20

AGENCY DKT. NO. N/A

2020-1984

**IN THE MATTER OF LISA SARGENT,  
TOWNSHIP OF WEST MILFORD,**

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**John M. Barbarula, Esq.** for petitioner

**R. Scott Fahrney, Esq.,** for respondent (Kaufman, Semeraro & Leibman, LLP.)

Record Closed: February 13, 2021

Decided: February 19, 2021

**BEFORE KIMBERLY A. MOSS, ALJ:**

Appellant Lisa Sargent (Sargent or appellant) appealed the Final Notice of Disciplinary Action (FNDA) charges of the Township of West Milford (West Milford) charging her with fraudulent misrepresentations for the purpose of wrongfully obtaining benefits resulting in a suspension of thirty days. Respondent filed a motion to amend the FNDA to include the charges of chronic or excessive absenteeism or lateness, conduct unbecoming a public employee and neglect of office which were sustained at the disciplinary hearing and entering into evidence an audio recording of appellant on February 26, 2019. Appellant filed opposition to the motion on November 13, 2020. I denied respondents motion to amend the FDNA and granted his motion entering the audio recording into evidence. The matter was heard on November 18, 2020 and December 2, 2020. Petitioner's brief was submitted on February 12, 2021,

respondent's closing brief was submitted on February 13, 2021, at which time I closed the record.

## FACTUAL DISCUSSION

### Testimony

#### Lisa Sargent

Sargent is employed by West Milford Police Department (WMPD) as a support records technician. Her duties include greeting people who request reports, entering summons, preparing discovery packets and other clerical activities.

On February 6, 2019, Sargent arrived at work. As she exited her car, she fell on black ice. She reported the fall to WMPD, she sustained injuries to her left wrist, left elbow, shoulder and back. She went in and worked for two hours, at which time her pain increased. She spoke to Lieutenant Sommerville about the fall. He spoke to the City Administrator and it was agreed that she needed to be checked out. Sargent had pain tingling and numbness in the fingers of her left hand. She went to Valley Medical where x-rays were done on her left elbow. She returned to work after leaving Valley Medical. The City Administrator told her to go home.

On February 8, 2019, Sargent returned to Valley Medical because of pain in her elbow and wrist. Sargent had bruises on her elbow, forearm and back that were black and purple. She saw Dr. Snyder, the Workers Compensation doctor on February 13, 2019, whom she told about the pain and the fact that she could not grab or hold anything heavy in her left hand. She does not recall telling Dr. Snyder that she could not type, although typing is a major part of her job. Snyder prescribed two weeks out from work. Sargent stated that Dr. Snyder told her to use the injured arm as much as possible. However, Dr Snyder's report says for her to rest the arm. Sargent advised Dr Snyder that she was going on vacation, he told her to relax and use the arm as much as possible.

Sargent had a scheduled vacation from February 17, 2019 to February 22, 2019 to Puerto Vallarta. She asked WMPD could she go and was told to use vacation time, which she did. While she was on vacation, she participated in swimming with dolphins. She did not participate in the other physical activities such as jet skiing and volleyball.

While on vacation, Sargent took a picture holding a perfectly posh bottle in her left hand. She stated that she was not gripping the bottle. The bottle was leaning on her hand.

Sargent saw Dr. Snyder once she returned from vacation. He had her attempt to hold an eighteen-ounce bottle, she could not lift it. Dr. Snyder showed her the pictures of her on the dolphin. He did not ask her questions about swimming with the dolphins. He then told her she was fully able to go back to work, prescribed medication, and occupational therapy three times a week for three weeks.

Sargent was interviewed by Robert O'Brien (O'Brien) for her Workers Compensation case. She knew that he was investigating her workers compensation claim. He asked her what she did on vacation. She told him that she sat on the beach and did everything with her right hand. She said that she did not engage in any physical activity. She advised O'Brien that she could not lift anything with her left arm. She later told O'Brien that she did nothing while on vacation. Sargent did not think that swimming with the dolphins was a physical activity. Sargent has had one prior discipline.

### Elaine Maxwell

Elaine Maxwell (Maxwell) was the principal payroll and benefits clerk for West Milford. She has swum with dolphins in Bermuda. The dolphin comes underneath the person who must grab the fins of the dolphin while the dolphin is moving with the person on its back. She had to hold on to the dolphin fin firmly.

Robert O'Brien

Robert O'Brien (O'Brien) is the owner of Atlantic Investigations. He is an investigator. He has worked for Qual lynx, which is a third-party administrator of Workers Compensation claims for municipalities. He investigated Sargent's Workers Compensation claim. He contacted Sargent to set up a time for the interview. The interview was scheduled, and O'Brien had Sargent's consent to record the interview. She told him how the injury occurred and what her injuries were. He asked her what she did while she was on vacation. At the time of the interview, O'Brien did not know about the social media post of Sargent while she was on vacation.

**FACTUAL DISCUSSION**

In light of the contradictory testimony presented by respondent's witnesses and appellant the resolution of the charges against Sargent requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to 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, 60 N.J. 546 (1974); 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). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-522 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I FIND O'Brien and Maxwell to be credible. Their testimony was clear and consistent. I did not

find Sargent to be credible. She testified that she rode on a dolphin, she was not strapped onto the dolphin and did not grab the fins to hold on. She also stated that she swam two to three feet to get to the dolphin but did not use her left hand. In addition, when O'Brien interviewed her, she did not say that she swam with the dolphins. On her second visit with Dr. Snyder, Sargent asserted that she could not lift an eighteen-ounce bottle, but there was a picture of her with a perfectly posh bottle in her left hand, taken while she was on vacation.

Having reviewed the testimony and evidence and credibility of the witnesses, I make the following **FINDINGS of FACTS**.

Sargent has been employed by West Milford since March 2008. She is a records support technician two. On February 6, 2019, Sargent arrived at work. As she exited her car, she fell on black ice. She reported the fall to WMPD, she sustained injuries to her left wrist, left elbow, shoulder and back. She went to Valley Medical where x-rays were done of her left elbow. She returned to work after leaving Valley Medical. The City Administrator told her to go home.

Sargent saw Dr. Snyder, the Workers Compensation doctor, on February 13, 2019. She explained the pain to Dr. Snyder and the fact that she could not grab or hold anything heavy in her left hand. She does not recall telling Dr. Snyder that she could not type, although typing is a major part of her job. Snyder prescribed two weeks out from work.

Sargent had a vacation scheduled for February 17, 2019 to February 22, 2019 to Puerto Vallarta. She was told by West Milford to use vacation time. Sargent went on the vacation. While she was on vacation she swam with dolphins. This required her to swim three to four feet to get to the dolphin. She laid on the dolphin and grabbed its fins as she rode on the dolphin. She also held a perfectly posh bottle in her left hand while on vacation. Pictures of Sargent swimming with the dolphins and holding a bottle in her left hand were posted on social media.



After her vacation, Sargent was contacted by O'Brien, who was investigating her Workers Compensation claim. He interviewed at her home. The interview was recorded. He asked her what she did while she was on vacation. She first told him that she sat on the beach and did everything with her right hand and that she did not engage in any physical activity. She later told O'Brien that she did nothing while on vacation. She also told O'Brien that she could not lift anything with her left arm.

Sargent saw Dr. Snyder after her vacation. She was asked to hold eighteen-ounce bottle in her left hand, but she stated that she could not lift it. Dr Snyder then showed her the social media pictures of Sargent while she was on vacation. He then told her she was fully able to go back to work, prescribed medication, and occupational therapy three times a week for three weeks.

### **LEGAL ANALYSIS AND CONCLUSION**

The charge of fraudulent misrepresentations for the purpose of wrongfully obtaining benefits is **SUSTAINED**.

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

In this matter Sargent represented to the Workers Compensation Investigator O'Brien, that she did not engage in physical activity while she was on vacation, when she in fact swim and rode on a dolphin's back, in which she had to grab on to the dolphin's fins while it moved in the water. During the interview Sargent told O'Brien that she did nothing while on vacation. These were clearly fraudulent misrepresentations, to a Worker's Compensation Investigator. The benefit obtained would be for Sargent to be out of work and collecting Workers Compensation benefits for a longer period.

The next issue is the discipline to be imposed.

Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990).

Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

In this matter Sargent has one prior discipline. A suspension of thirty days is excessive since she did not obtain the benefit, she hoped to gain from misrepresenting the facts. Sargent misrepresented her use of her left hand while she was on vacation to the workers compensation investigator together with only one prior discipline, the discipline in this matter should be fifteen days.

I **CONCLUDE** the discipline in this matter should be modified to fifteen days.

**ORDER**

Based on the foregoing findings of fact and applicable law, it is **ORDERED** that the determination of respondent of a thirty-day suspension of Sargent is **MODIFIED**. It is **FURTHER ORDERED** that Sargent serve a fifteen-day suspension and be awarded back pay, if applicable, in accordance with this decision.

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.

February 19, 2021



\_\_\_\_\_  
DATE

\_\_\_\_\_  
KIMBERLY A. MOSS, ALJ

Date Received at Agency:

February 19, 2021

Date Mailed to Parties:

February 19, 2021

ljb

**WITNESSES**

**For Appellant**

**For Respondent**

Elaine Maxwell

Robert O'Brien

**EXHIBITS**

**For Appellant**

A-1 Photo

A-2 Photo

A-3 Photo

A-4 Photo

A-5 Photo

A-6 Photo

**For Respondent**

R-1 Report of Dr Snyder

R-2 Photo of Appellant Swimming with Dolphins

R-3 Workers Compensation Denial Letter

R-4 Recording of Interview of Sargent by O'Brien

R-5 Preliminary Notice of Disciplinary Action

R-6 Final notice of Disciplinary Action



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

**ORDER SALARY PAYMENT**

OAL DKT. NO.: CSV 2155-20

**IN THE MATTER OF LISA SARGENT,  
TOWNSHIP OF WEST MILFORD,**

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**BEFORE: KIMBERLY A. MOSS, ALJ:**

On this date, I issued an initial decision in this matter which recommended that the disciplinary charges against appellant be revised. Therefore, pursuant to N.J.S.A. 40A:14-203(b), I **ORDER** the appointing authority to begin paying Lisa Sargent any back pay that is due immediately pending issuance of the final decision by the Civil Service Commission.

This Order is effective immediately and shall continue in effect until issuance of the Final Decision in this matter by the Civil Service Commission.

Date  
ljb

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**KIMBERLY A. MOSS, ALJ**