

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 28TH DAY OF APRIL, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 15263-18

AGENCY DKT. NO. 2019-937

**IN THE MATTER OF
SAMANTHA A. IVANIC, GLOUCESTER COUNTY,
DEPARTMENT OF SOCIAL SERVICES.**

Samantha A. Ivanic, appellant pro se

Michael J. DiPiero, Esq., for respondent (Brown & Conner, LLP, attorneys)

Record Closed: March 16, 2020

Decided: March 29, 2021

BEFORE JACOB S. GERTSMAN, ALJ t/a:

STATEMENT OF THE CASE

Appellant Samantha A. Ivanic (Ivanic) appeals her removal by respondent, Gloucester County Department of Social Services (GCDSS), for insubordination, chronic or excessive absenteeism or lateness, and conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3 (a). The incident giving rise to the charges occurred on June 22, 2018 where GCDSS alleges that Ivanic failed to follow proper leave procedures; was absent without leave; called out after start time and arrived twenty-one minutes later for her shift; dishonesty; and a violation of a Last Chance Agreement (LCA) dated May 8, 2018.

PROCEDURAL HISTORY

On or about June 26, 2018, respondent issued a Preliminary Notice of Disciplinary Action (PNDA)¹ relating to appellant's actions on June 22, 2018 (A-17, A-18). Appellant requested a hearing which was held on September 7, 2018.² Thereafter, on or about September 20, 2018, respondent issued a Final Notice of Disciplinary Action (FNDA), (R-1) removing appellant from employment effective July 10, 2018. Appellant timely filed an appeal with the Civil Service Commission, and the matter was transmitted to the Office of Administrative Law on October 22, 2018, for determination as a contested case. N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to-13. Following multiple status conferences, and the withdrawal of appellant's representative,³ the hearing was held on November 14 and December 20, 2019.

The record remained open to allow the parties to request a transcript of the proceedings and submit written summations. The undersigned granted extensions to the parties to submit their summations, which were filed on March 16, 2020, and the record closed. Due to the COVID-19 pandemic and the public health emergency declared in Executive Orders issued by the Governor of New Jersey, the time to complete administrative decisions has been extended.

FACTUAL DISCUSSION AND FINDINGS

The following facts are not in dispute and I **SO FIND**:

Ivanic, a Clerk 2 for the GCDSS, began her employment on April 17, 2013, and has been subject to disciplinary action seven separate times, beginning in 2014 for the following:

¹ The PNDA was revised to include the charge of conduct unbecoming a public employee.

² As discussed further below, the original hearing date was delayed to Ivanic's in-patient treatment for substance abuse.

³ By letter dated January 24, 2019, Michael Błaszczyk, President, Communications Workers of America (CWA) Local 1085, and subsequently a witness for the appellant in this matter, withdrew as Ivanic's representative and noted that she would be proceeding pro se.

1. Five-day suspension for incidents of excessive absenteeism and conduct unbecoming taking place in November 2014.
2. Six-day suspension for conduct unbecoming taking place in June 2015.
3. One-day suspension for chronic or excessive absenteeism or lateness taking place in May 2016.
4. One-day suspension for chronic or excessive absenteeism or lateness, insubordination, and the failure to provide sufficient medical documentation for an absence taking place in July and August 2016.
5. Three-day suspension for chronic or excessive absenteeism or lateness taking place in August and September 2016.
6. Ten-day suspension for chronic or excessive absenteeism or lateness taking place in September and October 2016.
7. Twenty-day suspension for chronic or excessive absenteeism or lateness and insubordination taking place in March and April 2017.

(R-9.)

Ivanic signed the LCA for a thirty-day suspension for chronic or excessive absenteeism or lateness, insubordination on May 8, 2018. Ibid. (R-2.) The LCA noted that Ivanic had "been subject to progressive discipline for issues with insubordination and excessive lateness, among other things" and "on or about April 20, 2018, the County served Ivanic with a Preliminary Notice of Disciplinary Action ("PNDA") seeking a 45-day suspension without pay." (R-2 at 1.) Ivanic "acknowledged the validity of the charges in the PNDA and admits to the conduct alleged therein." Ibid. The charges in the PNDA included chronic or excessive absenteeism or lateness and insubordination. (R-9.)

The LCA reduced Ivanic's penalty from forty-five to thirty days without pay and she was permitted to serve the suspension by serving two days per pay period. (R-2 at 1.) Among other provisions, Ivanic was subject to the following conditions regarding attendance:

- (a) Attendance. For a period of 30 months (2.5 years) from the date of execution of this agreement Ivanic: (1) shall not have unauthorized and/or excessive absences; (2) shall not have unauthorized and/or excessive latenesses [sic]; (3) shall not take unauthorized breaks without authorization and (4) shall follow all call-out procedures for requesting leave time, paid or unpaid. Any such conduct during the 30 month (2.5 year) period shall constitute a material breach of this Agreement. Ivanic acknowledges that in light of her prior attendance record and prior disciplinary history and the fact that this Agreement signifies her last chance to correct this problem, any such breach shall constitute just cause for her permanent removal from employment.

- (b) Other Offenses. For a period of 30 months (2.5 years), any conduct by Ivanic not specifically referenced above that otherwise would warrant discipline under Civil Service laws and regulations shall constitute a material breach of this Agreement. Ivanic acknowledges and agrees that such a breach shall, in light of her prior work performance and the fact that this Agreement signifies her last chance to continue working for the County, constitute just cause for her permanent removal from employment.

Id. at 1-2.

Finally, "Ivanic acknowledges that she has had the opportunity to consult with counsel and/or Union representation regarding this Agreement and all implications thereof, and that she enters into this Agreement knowingly and of her own free will." (R-2 at 2.)

FACTUAL DISCUSSION AND FINDINGS

SUMMARY OF TESTIMONY

The following is a summary of the relevant and material testimony given at hearing.

For Respondent

Kathleen Doyle (Doyle), is the Director of GCDSS and knows Ivanic from her term of employment with the Agency. Prior to beginning her employment in 2013, Ivanic was a Coordinated Work Experience Program (CWEP)⁴ worker placed at the Agency. Doyle testified that the hiring of Ivanic from the CWEP program was the first time GCDSS had hired a CWEP worker to a full-time position and added that she did not have any direct hiring responsibility for Ivanic. In her former role as Deputy Director, Doyle was involved with disciplinary issues for employees and is aware that Ivanic has been disciplined for lateness and absenteeism. She was involved in the May 2018 disciplinary action that led to the LCA signed by Ivanic.

While treatment for issues including substance abuse and mental health would be offered as a part of an LCA, in Ivanic's case, it was not brought to Doyle's attention. Additionally, in the time before the LCA, she was not aware of any issues with Ivanic's work. If issues were present, Ivanic's supervisor would have reported it to Administration.

Ivanic did not have any problems at work following the signing of the LCA and did not come to Doyle with any mental health or substance abuse issues. Doyle added that if she had been made aware of someone with such an issue, they would be referred to the Employee Assistance Program (EAP.) During her involvement with Ivanic's disciplinary issues, Ivanic did not tell Doyle that she was having a substance abuse or mental health problem. If that had occurred, she would have referred Ivanic to EAP services. These services are further addressed in the Human Resources manual that all employees are required to review. (R-3.)

Doyle was made aware that Ivanic was having a domestic violence issue in 2017. Ivanic provided her with a restraining order related to that issue that did not mention mental health or substance abuse issues. Additionally, when Ivanic became homeless in this time period, the GCDSS attempted to provide her with assistance but were unable to place her in a shelter.

⁴ CWEP is a program through Work First New Jersey.

Doyle testified that On June 22, 2018, Ivanic called her supervisor Trisha Brattelli (Brattelli) notifying her that after she dropped her daughter off at daycare, her car would not start. When she arrived at work, she told Brattelli that she had to have another parent bring her to work, however, upon viewing the surveillance tape, she learned that she came to work in her own car. She identified the photograph indicating that Ivanic arrived at work at 8:21 a.m. (R-8), as part of the video she observed.

She described the procedure that employees are required to follow if they are going to call out or be late to work, which required that employees must call out before their start time, and if they are late between one and five minutes, they are permitted to make up that time at the end of the day. When Ivanic was disciplined for lateness and absence from work, these procedures were reinforced with her.

Ivanic did not come to see Doyle to inform her that she had an issue with substance abuse or mental health before she was served with the PNDA on June 26, 2018. She testified that Human Resources notified her that Ivanic did go for treatment following the June 26, 2018 incident, which caused the postponement of the originally scheduled hearing date. She was not aware of the kind of treatment that Ivanic sought.

Doyle noted that supervisors of employees who had issues with lateness or chronic absenteeism kept logs of the calls from those employees when they call out in the morning. The entry on the log kept by Brattelli (R-6) is from a spreadsheet kept in the ordinary course of business in terms of call outs, stated that on June 22, 2018, Ivanic arrived at work at 8:21 a.m. using the front door in the picture where she entered (R-8) and left for the day at 4:16 p.m.

On cross-examination, Doyle reiterated that Brattelli made her aware of the June 28, 2018, incident. She added that Ivanic was served with her PNDA when she came to work on June 28, 2018 and sent home with pay pending the hearing. Ivanic was required to come in to work on June 28, 2018, since she had no more leave time available. Finally, when questioned if she ever received any calls regarding Ivanic's appearance or demeanor, Doyle stated that a supervisor may have come to her administrative assistant to inform her that Ivanic's clothes were not clean.

On re-direct, she stated that when she was informed that Ivanic's clothes were not clean, the procedure is to remind the employee to wash their clothes. That complaint did not give her concern that Ivanic had a substance abuse or mental health problem.

On re-cross-examination, she stated that none of Ivanic's co-workers made her aware that they thought Ivanic had substance abuse or mental health issues.

Trisha Brattelli (Brattelli), is a Clerk 4, Supervisor Clerical Banking Unit, at GCDSS and has been Ivanic's direct supervisor since 2015. She has worked for GCDSS for thirty years.

It was Ivanic's responsibility to call in, before her start time, if she was going to take leave or was not going to make it to work. Brattelli stated that she had an issue with Ivanic's excessive absenteeism and that occasionally Ivanic would call in after her start time. Additionally, she identified her personal log that she kept on Ivanic (R-5) and noted that similar logs were kept for employees who have been subject to disciplinary issues. In general, the logs reflected time and attendance issues, along with disciplinary issues.

On June 22, 2018, Brattelli received a call from Ivanic at 8:02 a.m., after her start time of 8:00 a.m., stating that after she dropped her daughter off at day care, her car would not start when she was ready to leave. Brattelli informed Ivanic that she needed to get in to work as soon as she was able. She testified that information was added to the log as the events were occurring.

Ivanic arrived at work at 8:21 a.m. and subsequently met with Brattelli. In recounting her conversation with Ivanic, Brattelli stated that Ivanic asked if she knew what would happen with regard to her being late. Brattelli responded that she did not know and added, "[y]ou know, you can't – you can't use vacation time cause it's against policy. And you can't use personal time. You can't call out using them. And it's – you have to have advanced notice for them. You can't call out. And she had not [sic] more sick time left to use." TT2 10:3-8.

Brattelli additionally recounted Ivanic's statement regarding how she got to work. "She had told me that somebody was trying to get her car started for her but that another parent that was there felt sorry for her and brought her in." TT2 10: 10-13. This was contemporaneously noted in the log on June 22, 2018. (R-5.) She later became aware that she was not dropped off by another parent.

On cross-examination, she stated that she was off of the phone when Ivanic called in on June 22, 2018 and added that Ivanic was told that if she was not able to get ahold of her when calling in, the procedure is to call the Administrator. She conceded that there was no way for her to check to see if Ivanic had called prior to 8:02 a.m. but added that "whenever anybody called out I always check to [sic] clock to make sure they're calling before their start time." TT2 21: 4-6. Ivanic was following procedure by calling in to say she would be late.

Brattelli stated that no one ever came to her regarding concerns for about Ivanic's safety, however, Ivanic herself said something to her and that she was trying to get help. She added that she does not handle the PNDAs.

On re-direct, she clarified that the issue Ivanic informed her about was her history as a victim of domestic violence and that Doyle told her that the Agency attempted to help Ivanic. She added that she included all of the details of her interactions with Ivanic related to her lateness on June 22, 2018, in the log. Finally, she noted that the Sherriff's Department, not GCDSS, has control and access to video cameras.

For Appellant

Michael Blaszczyk (Blaszczyk),⁵ is the President of Local 1085 CWA. He became President in December 2014 and met Ivanic soon after as she was facing a disciplinary issue.

⁵ As noted above, Blaszczyk was Ivanic's previous representative in this matter.

When questioned who Ivanic should have called if she was going to be late, he stated that “[a]ccording to the policy and the Collective Bargaining Agreement if an employee’s [sic] going to be sick or late they are to contact their supervisor.” TT1 95: 13-15. Following the issuance of the PNDA in this matter, he was notified by Ivanic and Terry Livorsi that it was her intent to enter an in-patient facility for drugs and alcohol which delayed the hearing.

Regarding the LCA, he recounted his discussion with Ivanic on the morning of the hearing, where his “job at that point was to make sure you understood the agreement. Then explain to you the ramifications of it because a Last Chance Agreement is obviously very serious. So I – I know we did have a lengthy discussion about the agreement.” TT1 90: 17-21. He could not say that Ivanic was under the influence during that conversation. Further, the issue of domestic violence did not come up in any of the disciplinary hearings, or in the negotiation of the LCA.

On cross-examination, he reiterated that employees must contact their supervisor before their shift starts if they are going to be late. While he was aware that Ivanic was using prescription medication during his interaction with her on the May 8, 2018, disciplinary matter, the issue of EAP did not come up during the negotiations that led to the LCA. He has negotiated other LCAs where EAP has been a condition of the agreement. The LCA was negotiated since Ivanic was “struggling with certain aspects of her life, number one being financially, and we were trying to shave time off of her suspension.” TT1 102: 8-12. Finally, he noted that Ivanic had the right to reject the agreement.

Terry Livorsi (Livorsi), is an Employee Assistance Counselor at Health Care Assistance Member Support (HCAMS). He is a Certified Employee Assistance Professional (CEAP), is certified as a drug and alcohol counselor, and deals with individuals when their behavior begins to interfere with their employment. Livorsi, who is EAP certified to interact with an employer, described how he deals with a potential client including the intake process and the development of a treatment plan. He first interacted with Ivanic in 2016 and described her in an “agitated state of distress” in their first call, where she described what was going on in her life. TT1 118:7.

On cross-examination, Livorsi stated that Ivanic contacted him directly in 2016 and he was involved with her after the call as her case manager where he facilitated the treatment his program provided. He added that he recommended residential care at that time, but Ivanic chose outpatient care. Since Ivanic did not chose in-patient care, a letter advising GCDSS that medical leave was not necessary.

Ivanic was a single mother on welfare in 2012 when she was sent to GCDSS for a training program as a requirement for her benefits, and subsequently hired after six months because of her hard work. She did not receive the same training and orientation that other new employees received. During that time, she was the victim of domestic violence which led to her living in a shelter for battered women in July 2014 and became homeless on or about Thanksgiving 2017. She further described the circumstances that led to the disciplinary action against her between 2014 and 2018.

On May 22, 2018, she took her daughter to daycare. When she came out, her car would not start, and she became frantic. She thought that she called Brattelli before 8:00 a.m., her report time, but "I know it's not, the records don't lie." TT1 139:1-2. When Brattelli asked if she was coming in to work, she told her

[e]ven if I have to get some – other mom here to drive me I will be in. I needed the money. I needed to be in work. And yeah, I called Mr. Wonderful my ex, to [sic] already come and get the car started like he used to do all the time. And he did. I got dropped off at the front door of the Social Services building where all the clients and the cameras and I know that the cameras go into the back room. I wasn't hiding anything.

TT1 139 4-12.

When Ivanic called Brattelli, she had already called her ex but did not inform her of that fact and she admitted that he dropped her off at GCDSS. When she arrived at work, she informed Brattelli that she was there and filled out a leave request. She added that Doyle was aware she had car problems.

After being served with the PNDA, she arranged with Livorsi to enter rehab where she was an in-patient for fifty-eight days. She described her treatment as hard work and that she is now a different person.

On cross-examination, Ivanic did not remember signing off annually on HR training. However, when questioned if she had any reason to disagree that she signed a document almost every year that she worked for GCDSS indicating she received all of the policies and procedures, she answered no. She added that she "can't say I read them." TT1 143:16. While she wanted to go, when questioned why she declined an offer from Livorsi's for in-patient treatment in 2016, she replied "I had two children and nobody to watch them." TT1 144:9.

Ivanic conceded she had exhausted her Family and Medical Leave Act (FMLA) time and had not worked enough hours to get additional time. Further, every year she worked for GCDSS, except her last year of 2018, she went through all of her paid leave time. With regard to the signing of the LCA, Ivanic stated that she was not conscious of what she was doing. However, she conceded that she never told Blaszczyk that she did not understand what was happening and did not tell anyone from GCDSS that she could not sign the agreement due to her drug use.

Ivanic stated that her substance abuse issue began in 2016 and agreed when asked if she had no issues with her work performance from that point on. Other than one issue with mishandling a client, she did not have any disciplinary issues related to her performance and her job performance was satisfactory. She conceded that notwithstanding her drug use, she was able to do her job and agreed that once she violated the LCA, she decided to seek help.

FINDINGS OF FACT

The resolution of the charges against appellant requires that I make a credibility determination regarding the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. 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 experiences 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 witnesses' 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 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly 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. Super. 514. 521-22 (1950). See, D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that Doyle and Brattelli were honest and sincere in their testimony. Further, Brattelli's testimony regarding her interactions with Ivanic on June 22, 2018, was clear and concise, and is bolstered by her contemporaneous notes in the log regarding Ivanic's disciplinary issues. (R-5.) Conversely, Ivanic's testimony, which was at times confusing and inconsistent, is not credible. She conceded that she called in after her start time, 8:02 a.m., TT1 139:1-2, and that she had already contacted her ex prior to her call to Brattelli. TT1 139 4-12. Further, Ivanic's had no credible testimony in response to Brattelli, who stated that Ivanic told her after she arrived that another mother, not her ex, drove her to work.

As to the credibility of appellant's other witnesses, while both Blaszczyk and Livorsi presented testimony of limited probative value in the instant matter, I accept the testimony of the witnesses as credible.

After having an opportunity to consider the testimony, observe the demeanor of the witnesses and assess their credibility, as well as having considered the documentary evidence in the record, I **FIND** the following as **FACT**:

GCDSS was not made aware of Ivanic's substance abuse issue until she entered into in-patient treatment following the issuance of the PNDA in the instant matter.

On June 22, 2018, Ivanic called Brattelli at 8:02 a.m. to inform her that she would be late to work since her car would not start after she dropped her daughter off at daycare. She arrived at work at 8:21 a.m. Upon meeting with Brattelli, Ivanic reiterated that her car would not start at her daughter's daycare and added that she received a ride from one of the other mothers at the daycare. In reality, she received a ride from her ex in her own car, and dropped off at the main entrance to GCDSS, which was documented by the security cameras (R-8). While Ivanic filled out a leave form for her lateness upon her arrival at work, she had exhausted her eligible paid leave time.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See, Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1971); Mastrobattista v. Essex County Park Commission, 46 N.J. Super. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provision of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employments. The general causes for such discipline are enumerated in N.J.A.C. 4a:2-2.3.

In an appeal concerning major disciplinary action, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11:2-21; N.J.A.C. 4A:2-14 (a). This applies to both permanent career service employees and those in their working test period relative to such issues as removal, suspension, or fine and disciplinary demotion. N.J.S.A. 11A:2-14; N.J.S.A. 11A:2-6. The State has the burden to establish by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. Super. 143 (1962); In re Polk License Revocation, 90 N.J. Super. 550 (1980).

This matter involves a major disciplinary action brought by the respondent appointing authority against appellant seeking her removal. Specifically, appellant has been charged with violating the following three sections of N.J.A.C. 4A:2-2.3(a)

2. Insubordination;
4. Chronic or excessive absenteeism or lateness; and
6. Conduct unbecoming a public employee.

Based upon the testimony and findings, I **CONCLUDE** that:

1. Respondent had satisfied its burden of proving that on June 22, 2018, appellant called in after her start time, arrived late to work, and was dishonest to her direct supervisor in her explanation regarding the circumstances of how she arrived at work.
2. Respondent has satisfied its burden of proving that such conduct constitutes insubordination, chronic or excessive absenteeism or lateness, and conduct unbecoming a public employee.
3. Appellant has violated the terms of the LCA.

PENALTY

A Civil Service employee who commits a wrongful act related to his or her duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, 2.3(a). This requires a de novo review of appellant's disciplinary action. 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., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also, In re Parlo, 192 N.J. Super. 247 (App. Div. 1983).

Here, Ivanic was able to perform her duties throughout the term of her employment, and the record reflects that GCDSS attempted to provide assistance to Ivanic when they were made aware of her issue with domestic violence. However, appellant's issue with substance abuse was not brought to the attention of GCDSS until after the PNDA was served in the instant matter.

Appellant's disciplinary history includes seven suspensions between 2014 and 2018, the vast majority of which were for chronic or excessive absenteeism or lateness. Most significantly, appellant entered into a last chance agreement which included a thirty-day suspension for chronic or excessive absenteeism or lateness, insubordination on May 8, 2018.

The LCA noted that appellant had "been subject to progressive discipline for issues with insubordination and excessive lateness, among other things." (R-2 at 1.) Pursuant to the LCA, for a period of thirty months, another instance of unauthorized and/or excessive lateness would result in her removal. Ibid. Appellant actions on June 22, 2018, including calling in after her start time, arriving late without any eligible leave time, and her dishonest account to her direct supervisor, are a clear violation of sections 1 (a) and (b) of the LCA. These actions took place just forty-five days after appellant signed the LCA. It is well settled that "last-chance agreements" are interpreted as just that—a last chance. As stated by the New Jersey Supreme Court in Watson v. City of East Orange, 175 N.J. 442, 445–46 (2003), "[a] contrary conclusion likely would chill employers from entering into last chance agreements to the detriment of future employees." See, Golson-El v. Runyon, 812 F. Supp. 558, 561 (E.D. Pa.) (construing last chance agreements in favor of employers, because to do otherwise would 'discourage their use by making their terms meaningless'), aff'd, 8 F.3d 811 (3d Cir. 1993).

In this case, even without an LCA, appellant's long disciplinary history, including multiple instances of excessive lateness for which she received seven separate suspensions, demonstrates that removal is warranted under the concept of progressive discipline. I therefore **CONCLUDE** that the removal of appellant is appropriate.

ORDER

I hereby **ORDER** that the charges have been sustained and are hereby **AFFIRMED**. I **FURTHER ORDER** that the action of the Appointing Authority in removing appellant from her position of employment is **AFFIRMED**. Finally, I **ORDER** that as the charges have been sustained, that appellant is not entitled to any back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10.

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.

March 29, 2021
DATE



JACOB S. GERTSMAN, ALJ t/a

Date Received at Agency: _____

Date Mailed to Parties: _____

JSG/nd

APPENDIX

WITNESSES

For Appellant:

Michael Blaszczyk
Samantha A. Ivanic
Terry Livorsi

For Respondent:

Kathleen Doyle
Trisha Brattelli

EXHIBITS

For Appellant:

- A-1 Disciplinary Memorandum, County Gloucester, Human Resources Manual, dated December 16, 2014
- A-2 Preliminary Notice of Disciplinary Action (31-A) Civil Service Commission, State of New Jersey, N.J.A.C. 4A:2-2.3 General Causes, Conduct Unbecoming a Public Employee, Soliciting Funds from Co-workers, Incident date: December 2014, dated December 26, 2014
- A-3 January 12, 2015 Letter from Kathy Seibert
- A-4 County of Gloucester, Human Resources Manual, Chapter 5 Employee Benefits, Section 10 Employee Assistance Program, Adopted March 7, 2006, Revised September 21, 2016
- A-5 Memo from Chad M. Bruner, County Administrator, to Appellant, Regarding Conduct Unbecoming, dated January 21, 2015
- A-6 Disciplinary Memorandum, County Gloucester, Human Resources Manual, dated November 7, 2016
- A-7 Infraction Log dated January 12, 2017 through April 10, 2017

- A-8 Email from Trisha Brattelli to Kathleen Doyle, Regarding Appellant Not Calling in Timely Today, dated April 6, 2018
- A-9 Disciplinary Memorandum, County Gloucester, Disciplinary Memorandum, dated April 18, 2018
- A-10 Note from Laura Cornelis, APN, Advocare Sicklerville Internal Medicine Associates-Sicklerville, dated April 16, 2018
- A-11 Facsimile to Mike from Shirley Anderson, Executive Vice President, Social Services, Forty-Five Days of Suspension, dated April 20, 2018
- A-12 Preliminary Notice of Disciplinary Action (31-A) Civil Service Commission, State of New Jersey, N.J.A.C. 4A:2-2.3 General Causes, Insubordination and Chronic or Excessive Absenteeism or Lateness, Incident Date April 6, 2018, dated April 20, 2018
- A-13 Last Chance Agreement, dated May 8, 2018
- A-14 Settlement Agreement for Disciplinary Action, dated September 27, 2017
- A-15 Settlement Agreement for Disciplinary Action, dated September 27, 2017
- A-16 County of Gloucester, Human Resources Manual, Chapter 7 Conduct and Performance, Section 5 Absence and Tardiness, Adopted March 7, 2006
- A-17 Preliminary Notice of Disciplinary Action (31-A) Civil Service Commission, State of New Jersey, N.J.A.C. 4A:2-2.3 General Causes, Insubordination and Chronic or Excessive Absenteeism or Lateness, Infraction Date June 22, 2017, dated June 26, 2018
- A-18 Revised, Preliminary Notice of Disciplinary Action (31-A) Civil Service Commission, State of New Jersey, N.J.A.C. 4A:2-2.3 General Causes, Insubordination, and Conduct Unbecoming a Public Employee, Infraction Date June 22, 2018, dated June 26, 2018
- A-19 Letter from Terry Livorsi, CEAP, Member Assistance Counselor, HealthCare Assistance with Member Support, LLC, to Chad Bruner, Administrator/HR Director, Regarding Appellant's Rights, dated July 3, 2018
- A-20 Chapter 69 ANACT concerning employee assistance programs for certain public employees and supplementing P.L. 1941, c.100 (C.34:1A-1 et seq.).

- A-21 Letter from Mark Hernandez, M.D., Psychiatrist, Unity Behavioral Health, Regarding Treatment for a Behavioral Health Medical Condition, dated August 21, 2018
- A-22 Anthony W. Wilcox, Confidential Assistant, Human Resources, Gloucester County, 31A Hearing Outcome, dated September 20, 2018
- A-23 Order of Dismissal, Temporary Restraining Order, Superior Court of New Jersey, Chancery Division, Family Part, Gloucester County, Docket Number FV-08-000511-15, Honorable Colleen A. Maier, dated December 18, 2014
- A-24 Order of Dismissal, Temporary Restraining Order, Superior Court of New Jersey, Chancery Division, Family Part, Gloucester County, Docket Number FV-08-000635-18, Honorable Marybeth Kramer, dated November 30, 2017
- A-25 New Jersey Domestic Violence Civil Complaint and Temporary Restraining Order, dated December 11, 2017
- A-26 Order of Dismissal, Temporary Restraining Order, Superior Court of New Jersey, Chancery Division, Family Part, Gloucester County, Docket Number FV-000699-18, Honorable Mary K. White, dated December 10, 2017
- A-27 County of Gloucester, Human Resources Manual, Chapter 6 Leave Time, Section 11 Unpaid Leave, Adopted March 7, 2006
- A-28 Disciplinary Memorandum, County Gloucester, Human Resources Manual, dated April 6, 2017

For Respondent:

- R-1 Final Notice of Disciplinary Action (31-B), Civil Service Commission, State of New Jersey, Sustained Charges: N.J.A.C. 4A:2-2.3 General Causes Insubordination; Chronic or Excessive Absenteeism or Lateness; and Conduct Unbecoming a Public Employee, Infraction Date June 22, 2018, Violated of Last Chance Agreement (LC), dated May 8, 2018, dated September 20, 2019
- R-2 Last Chance Agreement, dated May 8, 2018
- R-3 County of Gloucester, Human Resources Manual, Chapter 7 Conduct and Performance, Section 4 Hours of Work, Adopted March 7, 2006, Revised April 2, 2014

- R-4 County of Gloucester, Human Resources Manual, Chapter 7 Conduct and Performance, Section 5 Absence and Tardiness, Adopted March 7, 2006
- R-5 Tardiness Log, dated June 22, 2018 at 9:02 a.m.
- R-6 Archived Timecard Report, Tardy, Friday, June 22, 2018
- R-7 Agreement between The Gloucester County Board of Chosen Freeholders and The Communications Workers of America, AFL-CIO, Local 1085, January 1, 2015-December 31, 2018
- R-8 Photograph, Camera Three, June 22, 2018 at 8:21:05 a.m.
- R-9 Request for Discipline, dated June 26, 2018