



STATE OF NEW JERSEY

In the Matter of Karen Sales
Union County, Department of Human
Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2018-3365 & 2018-
3366
OAL DKT. NO. CSV 11153-20 (on
remand from CSV 08825-18 & CSV
08827-18)

(Consolidated)

ISSUED: APRIL 28, 2021 BW

The appeals of Karen Sales, Human Services Specialist 2, Union County, Department of Human Services, two removals effective July 16, 2014, on charges, were heard by Administrative Law Judge Jude-Anthony Tiscornia, who rendered his initial decision on March 24, 2021. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of April 28, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms those actions and dismisses the appeals of Karen Sales.

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 28TH DAY OF APRIL, 2021



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
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 11153-20

AGENCY DKT. NO. CSC 2018-3365 AND
2018-3366

(ON REMAND, CSV 08825-18 and CSV
08827-18, Consolidated)

**IN THE MATTER OF KAREN SALES,
UNION COUNTY DEPARTMENT OF
HUMAN SERVICES.**

Aaron Mizrahi, Esq., for appellant Karen Sales (Mizrahi Warren & White,
attorneys)

Allan C. Roth, Esq., for respondent Union County Department of Human Services
(Ruderman & Roth, attorneys)

Record closed: January 11, 2021

Decided: March 24, 2021

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Appellant Karen Sales (appellant or Sales) appeals removal from her position as

a human services specialist 2 (HSS2) at respondent Union County Department of Human Services, Division of Social Services, Child Support and Paternity Unit (CSP). Appellant was terminated because of her misuse of the New Jersey Kids Deserve Support (NJKiDS) system, which is the State of New Jersey's automated public-records computer system that tracks child-support accounts.

PROCEDURAL HISTORY

Karen Sales was served with a Final Notice of Disciplinary Action (FNDA) on May 3, 2018. This FNDA was based upon two prior Preliminary Notices of Disciplinary Action (PNDA), which sought Sales' removal from employment effective July 16, 2014, for the following violations of the New Jersey Administrative Code:

- (1) N.J.A.C. 4A:2-2.3(a)(2): Insubordination;
- (2) N.J.A.C. 4A:2-2.3(a)(6): Conduct unbecoming a public employee;
- (3) N.J.A.C. 4A:2-2.3(a)(12): Other sufficient cause: Violation of County and NJKiDS policies regarding proper entry of information into the NJKiDS system;
- (4) N.J.A.C. 4A:2-2.3(a)(3): Inability to perform duties.

Appellant filed the instant appeal at the Office of Administrative Law (OAL) on June 21, 2018. A plenary hearing was held on June 25, 2019, July 30, 2019, August 20, 2019, and January 3, 2020. Closing arguments were received on July 1, 2020, at which time the record was closed. An Initial Decision was issued by the undersigned on September 17, 2020.

On November 24, 2020, the Civil Service Commission (Commission) remanded the matter so that the undersigned may add a more explicit recitation of witness testimony and more fully reasoned credibility determinations for each witness. The Commission also requests that the undersigned provide further detail and rationale regarding how the sustained charges support the recommended removal. The Commission noted that there

was no need to convene any further proceedings, as the undersigned may utilize the current underlying record. A conference call was conducted between the parties and the undersigned on January 11, 2021, at which point the parties confirmed that no further proceedings would be required.

SUMMARY OF TESTIMONY

Robert MacGibeny

Robert MacGibeny (MacGibeny) is the CSP coordinator and one of appellant's supervisors. MacGibeny, who has been extensively trained in the NJKiDS system, credibly testified regarding the procedures and protocols of utilizing the NJKiDS program. MacGibeny testified regarding the various policies and procedures that must be strictly followed by all employees, and he testified that Sales misused the NJKiDS system on several occasions. MacGibeny explained that any misuse of NJKiDS, as in the case at bar, must be immediately reported by the county welfare agency to the State.

MacGibeny testified that Sales' immediate supervisor, Sonia Gonzalez (Gonzalez), was the first to discover that Sales was making false and misleading entries into NJKiDS. MacGibeny first testified regarding the "A. Family" case, which was a case that Sales had worked on that was brought to his attention by Gonzalez. MacGibeny generated a memorandum on July 11, 2014 (R-1) regarding the A. Family case. MacGibeny testified to his memorandum, which indicated that Ms. A. had come into the agency on June 18, 2014, to apply for public assistance. As Ms. A. had legal custody of the minor child for whom she requested assistance, Ms. A. was legally required to apply for child support, which required Sales to interview Ms. A. to ascertain details regarding the putative father. MacGibeny explained that the putative father is a man who is not married to the biological mother, has not been adjudicated to be the legal father, and has not signed a certificate of parentage or undergone DNA testing, but who is deemed most likely to be the child's father based on information supplied by the applicant during the

interview. The putative father is also sometimes referred to as the non-custodial parent, or NCP.

MacGibeny testified that Sales had indicated in her case notes in NJKiDS (R-9) that Ms. A. "claims to know nothing about the NCP" and otherwise failed to provide any information regarding a putative father. MacGibeny further testified that he and Gonzalez called Ms. A. directly to confirm Sales' entry into NJKiDS, only to find out that not only had Sales not conducted an interview of Ms. A. as her case notes indicated she had, but contrary to Sales' NJKiDS entry, Ms. A. actually knew all of the pertinent information regarding the putative father, including name, address, date of birth, etc. Upon further investigation, MacGibeny found that Ms. A. actually had provided pertinent information regarding the putative father to the NJ Superior Court, Family Division, in order to file a complaint for paternity against the putative father.

MacGibeny then testified to several more conflicting entries Sales entered into NJKiDS regarding the A. Family case. As MacGibeny had testified prior, agency records indicated that Ms. A. came into the agency on June 18, 2014, to apply for assistance. However, Sales made no entry regarding the A. Family file into the NJKiDS system on June 18, 2014, which, as MacGibeny explained, meant Sales could not have interviewed Ms. A. when she came in that day (as is protocol). This corroborated what MacGibeny had been told by Ms. A. when he called her to investigate the file. Sales did make an entry on July 3, 2014, indicating that "the client reapplied for assistance," though MacGibeny testified that no such reapplication was made by Ms. A. on July 3, 2014.

MacGibeny then testified that on July 10, 2014, Sales entered the following: "All vital info obtained from Lexis, client responded to CS-164 with partial info on NCP. Client scheduled for an appointment on 7/16 to conduct formal interview, sanction to follow if she does not respond, 7/10/14 K.M.S." See R-10. MacGibeny explained that Sales entering "Client scheduled for an appointment on 7/16 to conduct formal interview" tends to show that no formal interview had been conducted prior. This is supported by the fact that there is no mention of any prior interviews anywhere in the case notes. See R-10.

MacGibeny then testified that Sales generated an appointment letter on July 10, 2014, addressed to Ms. A., instructing her to come in for an interview on July 16, 2014. This was noteworthy, because agency records indicated that Ms. A. had already come in to be interviewed on June 18, 2014, at approximately 9:30 a.m., and Sales was assigned the case. MacGibeny testified that, notwithstanding Sales having ample time to conduct an interview with Ms. A., an interview was apparently not conducted on June 18, 2014.

As a result of the above-mentioned discrepancies uncovered in the A. Family case, MacGibeny generated an incident report (R-15) which was sent to the Division of Family Development (DFD) in Trenton. MacGibeny testified that, prior to sending the report to the DFD, he reviewed all pertinent documents and made an in-depth review of the file. MacGibeny noted that sending an incident report to the DFD is a very serious action, and should only be done where there is evidence of a serious breach of security, and not an innocent mistake on the part of a worker. MacGibeny further testified that Sales' actions as reported in the A. Family case resulted in Sales' access to NJKiDS being withdrawn by the State, which precluded Sales from performing her essential responsibilities as an HSS2.

MacGibeny then testified with regard to Sales' involvement in the "C. Family" case. Sales' actions here provided the basis for the charge of insubordination against Sales. On July 2, 2014, Gonzalez instructed Sales to call the NJ Paternity Opportunity Program (POP) office to see if POP had any information regarding a putative father in the C. Family matter. The POP office logs the date, time, and agency name of any telephone call that it receives from a county agency. The POP office has no record of Sales ever calling the office on July 2, 2014, as instructed. To the contrary, the call logs provided to MacGibeny by the POP office indicated that Sales did not call the POP office until July 9, 2014.

MacGibeny testified that notwithstanding Sales' apparent failure to call the POP office when instructed, Sales entered a note into NJKiDS on July 8, 2014, indicating that she called the POP office on July 3, 2014, and that there was "no record in New Jersey

POP office of father being present at birth." She initialed the entry "K.M.S." See R-22. This entry suggests that Sales did call the POP office at some point between July 2 and July 3, 2014 (contrary to the POP office's own call logs) and that no pertinent information was available.

Subsequent to Gonzalez instructing Sales to call the POP office, Gonzalez called the POP office herself and was successfully able to obtain the information sought on the putative father, thereby contradicting Sales' entry into NJKiDS that the POP office had no such information.

On cross-examination, MacGibeny admitted that Sales' entry into NJKiDS did not explicitly state that she called the POP office, but simply mentions the POP office as the source of information.

The final incident to which MacGibeny testified was Sales' involvement in the "S. Family" case. MacGibeny explained that, after Sales' ability to access NJKiDS was revoked by the State due to her mishandling of the A. Family case, Sales' other cases were scrutinized.

On July 14, 2014, Sales issued an NJKiDS Summary Report indicating that the client, Ms. S., did not wish to cooperate with child-support requirements because she felt they were too onerous, and that she withdrew her application. In such a situation, MacGibeny explained, the caseworker is required to open the case on NJKiDS and generate a notice of non-cooperation (CSP 162), which is then forwarded to the Income Maintenance Unit. The non-compliant individual will then be rendered ineligible for public assistance.

On July 14, 2014, Sales entered a note in NJKiDS stating the following:

Client applied for assistance. NCP is the father of both children, New York birth certificates for children. Client refused to sign affidavit of cooperation. She was given a [CSP

form] 162 and told if she should change her mind she knows what to submit for co-op. She was told she has 30 days to make a decision. No co-op as long as the client applied for assistance. NCP is the father of both[,] . . . no cooperation as long as the refusal continues.

[See R-26.]

MacGibeny then testified to R-27, an NJKiDS screenshot of the notice reprint request screen which lists all the documents produced or generated during a given time period on the S. Family case. The list shown in R-27 indicated that on July 14, 2014, Sales generated a notice of non-cooperation (CSP 162); two minutes later, she inexplicably generated a notice of initial cooperation (CSP 163), followed by a completed questionnaire; and, finally, Sales generated a notice of cooperation (which completely contradicts the notice of non-cooperation generated just a few minutes earlier). MacGibeny testified that all these documents were generated within a time span of approximately twelve minutes, and that said documents should not have been generated together, as they are conflicting. He further noted that these documents could not possibly have been completed during that time span, noting that the questionnaire alone could not have been completed in such a short amount of time. MacGibeny testified that the interview to gather the information needed generally takes between forty-five minutes and one hour. Thus, he opined, completing an interview and generating the forms on NJKiDS in the stamped time period shown in R-27 is an impossibility.

MacGibeny added that, since other government employees rely on the information in NJKiDS, Sales' entering conflicting and inaccurate information into NJKiDS is very serious misconduct. Many government agencies depend on the information in NJKiDS, and the information is permanent. Entering wrong information may have an adverse effect on the client. MacGibeny recommended that appellant's misconduct here warrants termination.

After hearing the testimony of the witness, reviewing the substance thereof, and considering the amount of detail and the accuracy of recall, and having viewed the witness' general demeanor at the hearing, I determine the witness to be credible.

Michele Miller

Michele Miller is the assistant personnel officer for the Union County Division of Social Services, a position she has held for fifteen years. As such, she is very familiar with procedures regarding disciplinary proceedings. Miller testified that prior to any disciplinary proceedings being initiated an investigation is conducted encompassing a review of all relevant documents.

Miller was one of the managerial employees who reviewed the underlying incidents regarding the current disciplinary action against Sales. Miller conferred with both the director and the deputy director of the agency, and also with MacGibeny, prior to initiating any disciplinary action against Sales. Miller stated that if the documentary evidence is sufficiently supportive of a disciplinary action, the agency's practice is to initiate the disciplinary proceeding without first conferring with the employee. In this case, the deputy director, MacGibeny, and Miller conducted a review of the Sales matters and recommended that the agency proceed with discipline. Miller and her colleagues concluded that the acts were egregious enough to justify major discipline and removal.

After hearing the testimony of the witness, reviewing the substance thereof, and considering the amount of detail and the accuracy of recall, and having viewed the witness' general demeanor at the hearing, I determine the witness to be credible.

Karen Sales

Sales began working for Union County on June 26, 2000. She eventually was promoted to HSS2, which is a caseworker in the Child Support Unit processing child-support cases. Sales testified that she was trained and retrained on how to properly

utilize the NJKiDS system between 2000 and 2010. As a caseworker, Sales had direct access to NJKiDS, and to the Paternity Opportunity Program office.

Sales testified that she believes that she followed all proper protocols and guidelines when processing the three cases at the heart of the current disciplinary proceeding. She further testified that, to her recollection, she entered all information accurately as it was provided to her by the clients.

With regard to the A. Family matter, Sales asserts that she was simply following her supervisor's directive when she opened the matter in NJKiDS on July 3, 2014, and that she included the prior history in the Summary Report so that the records would be accurate and complete.

Regarding the C. Family matter, Sales testified that she was never directed to call the POP office on July 2, 2014, and she asserts that she never stated or otherwise implied that she had called the POP office on July 2 (or July 3 2014, as indicated in NJKiDS). Instead, Sales testified that on July 3, 2014, Gonzalez advised Sales that she (Gonzalez) had contacted the POP office the day prior (July 2) and learned that no Certificate of Parentage was on file for the purported father. Gonzalez, then, directed Sales to note that information in NJKiDS. Sales testified that she did, subsequently, contact the POP office on July 9, 2014, but only to confirm the information Gonzalez had previously provided to her.

Regarding the S. Family matter, Sales testified that she conducted an interview with Ms. S. on July 14, 2014. Sales added that Ms. S. appeared irate, complaining that the welfare agencies in New Jersey asked too many questions on the assistance application compared to New York. Sales further testified that Ms. S. refused to complete the Affidavit of Cooperation (CSP 161), which caused Sales to issue a Notice of Non-Cooperation Status (CSP 162).

Sales testified that, in accordance with her training, she did not terminate the interview due to Ms. S.'s initial refusal to cooperate. Instead, she encouraged Ms. S. to comply, and informed Ms. S. that she had thirty days under the regulations to provide follow-up information. Sales testified that Ms. S.'s attitude then improved, and she indicated that she was willing to move forward with the application. Based on Ms. S.'s newfound willingness to cooperate, Sales created a Notice of Initial Cooperation with Child Support (i.e., CSP 163), checking off the option indicating "initial cooperation satisfied pending new or additional information as requested," and listing the missing information needed to complete the application. Sales asserts that her actions were proper and in accordance with her training and the regulations.

After hearing the testimony of this witness and reviewing the substance thereof, and having viewed the witness' general demeanor at the hearing, I determine the witness to be incredible, for the following reasons.

Regarding the A. Family matter, Sales testified that she was simply following orders when she opened the matter in NJKiDS on July 3, 2014, yet she failed to explain why she did not open the matter on June 18, 2014, when the client was physically present at the agency.

With regard to the C. Family matter, Sales testified that, contrary to the agency's position, she was never directed to call the POP office by her supervisor on July 2, 2014. Instead, she testified that she called the POP office several days later, of her own volition, and simply to double-check information her supervisor had already gathered. Assuming Sales was never instructed to call the POP office on the C. Family matter, she provided no reasoning for double-checking the information provided to her by her supervisor. It does not appear that Sales had any reason to doubt the information her supervisor communicated to her, nor did Sales indicate that her actions were in accordance with some sort of standard procedure or protocol.

Finally, with regard to the S. Family matter, Sales stated that Ms. S. refused to complete the Affidavit of Cooperation (CSP 161), which caused Sales to issue a Notice of Non-Cooperation Status (CSP 162). Sales claimed that she was ultimately able to convince Ms. S. to cooperate, so she then generated a Notice of Initial Cooperation with Child Support (CSP 163). It seems both improbable and unreasonable for a worker to so hastily generate a Notice of Non-Cooperation Status (CSP 162) when the conversation/interview is still ongoing. Clearly, a dialogue continued between Sales and Ms. S. at that interview, as a Notice of Initial Cooperation (CSP 163) was generated mere minutes later. Even if Sales, by her own admission, did prematurely issue the CSP 162, her explanation still does not account for the other conflicting forms that were generated in the proceeding minutes.

Based on the foregoing, I find Sales' testimony to be not credible.

FINDINGS OF FACT

The findings of fact set forth in the undersigned's Initial Decision in CSV 08825-18 and CSV 08827-18, dated July 30, 2020, are hereby incorporated by reference.

LEGAL DISCUSSION AND CONCLUSION

The legal discussion set forth in the undersigned's Initial Decision in CSV 08825-18 and CSV 08827-18, dated September 17, 2020, is hereby incorporated by reference, with the addition of the following:

Penalty

As noted in the above-referenced Initial Decision, Sales entered misinformation into the NJKIDS system, which resulted in her being denied access to that system, thereby preventing Sales from performing her duties as a human services specialist 2. In

addition, Sales failed to contact another government agency as directed by her supervisor.

The NJKiDS system contains the personal information of private individuals. This information is gathered and entered into NJKiDS by government workers from multiple agencies and courts, including county welfare agencies and the New Jersey Superior Court. The information compiled and stored in NJKiDS is heavily relied on by multiple government agencies. The information contained in NJKiDS must be as accurate as possible, as any inaccuracies may result in a myriad of negative consequences, such as misappropriation of government resources or government actions based on wrong information that may have adverse effects on private citizens.

Any lack of care on the part of a public employee in handling the sensitive, personal information of private individuals may be cause for some form of discipline. In the case at bar, the respondent agency seeks appellant's removal, a form of major discipline. A civil service employee who commits a wrongful act related to his or her employment, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6, 2-20; N.J.A.C. 4A:2-2.2, -2.3. Sales' actions of entering misinformation into NJKiDS in two instances, and failing to follow her supervisor's instructions in another, show a continued lack of care in furtherance of her duties. I **CONCLUDE** that Sales' continued lack of care displays her inability to perform her duties, which is one of the listed causes for major discipline. See N.J.A.C. 4A:2-2.3(a)(3). I further **CONCLUDE** that the aforementioned continued lack of care and failure to follow her supervisor's instructions exhibit conduct unbecoming a public employee and insubordination, respectively. I, therefore, **CONCLUDE** that removal was proper in the current matter, and I **CONCLUDE** that all counts listed in the FNDA and the corresponding removal should be upheld.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that appellant's appeal be, and hereby is, **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.

March 24, 2021

DATE



JUDE ANTHONY TISCORNIA, ALJ

Date Received at Agency:

3/24/21

Date Mailed to Parties:

3/24/21

id



STATE OF NEW JERSEY

In the Matter of Karen Sales
Union County, Department of Human
Services

DECISION OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2018-3366 & 2018-
3365
OAL DKT. NOS. CSV 08825-18 &
08827-18
(Consolidated)

ISSUED: November 24, 2020 (NFA)

The appeals of Karen Sales, Human Services Specialist 2, Union County, Department of Human Services, two removals effective July 16, 2014, on charges, were heard by Administrative Law Judge Jude-Anthony Tiscornia (ALJ), who rendered his initial decision on September 17, 2020. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, as well as the exceptions and reply, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of November 24, 2020, remanded the matter back to the Office of Administrative Law (OAL).

In brief, this matter involved two disciplinary removals based on charges that Sales inappropriately utilized the New Jersey Kids Deserve Support (NJKiDS) system on several occasions. The hearing at OAL spanned four days and included three witnesses, including the appellant. The ALJ's initial decision only briefly summarized the testimony of the witnesses and somewhat summarily concluded that the charges and the penalty should be upheld.

After review, the Commission cannot make a final determination based on the initial decision as presented. In this regard, the Commission requests a more explicit recitation of each witnesses' testimony as well as more fully reasoned credibility determinations. Additionally, the Commission requires a more detailed description of how the appellant's sustained misconduct supports upholding each separate charge found in the Final Notice of Disciplinary Action. Finally, the

Commission requests that the ALJ provide further detail and rationale regarding how the sustained charges support the recommended removal. In undertaking these tasks, unless otherwise determined by the ALJ, he need not convene any further proceedings and may utilize the current underlying record. To facilitate this remand, the Commission will return the entire underlying file materials to the ALJ, including the transcripts of the underlying hearing, for further review.

ORDER

The Civil Service Commission remands this matter to the Office of Administrative Law as described above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF NOVEMBER, 2020

Deirdre L. Webster Cobb

Deirdre 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
Trenton, New Jersey 08625-0312

Attachment

7874



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

(CONSOLIDATED)

OAL DKT. NOS. CSV 08825-18
and CSV 08827-18

AGENCY DKT. NOS. 2018-3366
and 2018-3365

**IN THE MATTER OF KAREN SALES,
UNION COUNTY DEPARTMENT OF
HUMAN SERVICES.**

**Aaron Mizrahi, Esq. (Mizrahi Warren & White, attorneys) for appellant Karen
Sales**

**Allen C. Roth, Esq. (Ruderman & Roth, attorneys) for respondent Union County
Department of Human Services**

Record Closed: July 1, 2020

Decided: September 17, 2020

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Appellant, Karen Sales, (appellant or Sales) appeals removal from her position as

a human services specialist 2 (HSS2) at respondent Union County Department of Human Services, Division of Social Services, Child Support and Paternity Unit (CSP). Appellant was terminated because of her misuse of the New Jersey Kids Deserve Support (NJKiDS) system, which is the State of New Jersey's automated public-records computer system that tracks child-support accounts.

PROCEDURAL HISTORY

Karen Sales was served with a Final Notice of Disciplinary Action (FNDA) on May 3, 2018. This FNDA was based upon two prior Preliminary Notices of Disciplinary Action (PNDA), which sought Sales' removal from employment effective July 16, 2014, for the following violations of the New Jersey Administrative Code:

- (1) N.J.A.C. 4A:2-2.3(a)(2): Insubordination;
- (2) N.J.A.C. 4A:2-2.3(a)(6): Conduct unbecoming a public employee;
- (3) N.J.A.C. 4A:2-2.3(a)(12): Other sufficient cause: Violation of County and NJKiDS policies regarding proper entry of information into the NJKiDS system;
- (4) N.J.A.C. 4A:2-2.3(a)(3): Inability to perform duties.

Appellant filed the instant appeal at the Office of Administrative Law (OAL) on June 21, 2018. A plenary hearing was held on June 25, 2019, July 30, 2019, August 20, 2019, and January 3, 2020.

Closing arguments were received on July 1, 2020, at which time the record was closed.

ISSUE

Did appellant misuse the NJKiDS system and, if so, may respondent remove appellant based on her misuse of the NJKiDS system?

SUMMARY OF TESTIMONY

Robert MacGibeny

Robert MacGibeny (MacGibeny) is the CSP coordinator and one of appellant's supervisors. MacGibeny, who has been extensively trained in the NJKiDS system, credibly testified regarding the procedures and protocols of utilizing the NJKiDS program. MacGibeny testified regarding the various policies and procedures that must be strictly followed by all employees, and he testified that Sales misused the NJKiDS system on several occasions. MacGibeny explained that any misuse of NJKiDS, as in the case at bar, must be immediately reported by the county welfare agency to the State. As a result of Sales' actions being reported in this case, Sales' access to NJKiDS was withdrawn by the State. This precluded Sales from performing her essential responsibilities as an HSS2.

Michele Miller

Michele Miller is the assistant personnel officer for the Union County Division of Social Services, a position she has held for fifteen years. As such, she is very familiar with procedures regarding disciplinary proceedings. Miller testified that prior to any disciplinary proceedings being initiated an investigation is conducted encompassing a review of all relevant documents.

Miller was one of the managerial employees who reviewed the underlying incidences regarding the current disciplinary action against Sales. Miller conferred with both the director and the deputy director of the agency, and also with MacGibeny prior to initiating any disciplinary action against Sales. Miller stated that if the documentary evidence is sufficiently supportive of a disciplinary action, the agency's practice is to initiate the disciplinary proceeding without first conferring with the employee. In this case, the deputy director, MacGibeny, and Miller conducted a review of the Sales matters and

recommended that the agency proceed with discipline. Miller and her colleagues concluded that the acts were egregious enough to justify major discipline and removal.

Karen Sales

Sales began working for Union County on June 26, 2000. She eventually was promoted to HSS2, which is a caseworker in the Child Support Unit processing child-support cases. Sales testified that she was trained and retrained on how to properly utilize the NJKiDS system between 2000 and 2010. As a caseworker, Sales has direct access to NJKiDS, and to the Paternity Opportunity Program (POP) office.

Sales testified that she followed all proper protocols and guidelines when processing the three cases at the heart of the current disciplinary proceeding. She further testified that she entered all information accurately as it was provided to her by the client.

FINDINGS OF FACT

Based on a review of the evidence and testimony presented at the hearing, I **FIND** the following to be the facts of the case.

Ms. Sales has been employed by respondent Union County Department of Human Services since June 2000. On July 15, 2014, Ms. Sales was served with a Preliminary Notice of Disciplinary Action ("2014 PNDA" or J-1) seeking her suspension from her position as an HSS2, without pay, effective immediately and for an indefinite period of time, as the PNDA indicates "TBD" for the length of the suspension. See J-1.

The 2014 PNDA specifically charges Ms. Sales with: insubordination under N.J.A.C. 4A:2-2.3(a)(2); conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)(6); and other sufficient cause under N.J.A.C. 4A:2-2.3(a)(12) based on alleged violations of Union "County and NJKiDS policies regarding proper entry of information into the NJKiDS system." The 2014 PNDA asserts the basis for those charges as follows:

It has been discovered that on at least 2 occasions, for two different client matters, Ms. Sales entered false information into the NJKiDS system, including but not limited to, the summary report, CSP 163, and notes section, indicating that she conducted interviews that did not occur and obtained information from the POP office, when she never contacted the POP office. These actions are a deliberate falsification of official case file records in the NJKiDS system. Ms. Sales [sic] actions to falsify records jeopardizes the Agency's ability to maintain order and the effective direction of public services, necessitating an immediate suspension to allow for a complete investigation into Ms. Sales [sic] entries in the NJKiDS system.

[ibid.]

As a result of the above-referenced investigation conducted by the agency, the State of New Jersey Department of Human Services permanently suspended appellant's access to NJKiDS.

The NJKiDS system is the State of New Jersey's child-support automated public-records computer system that tracks child-support accounts. The information contained in the forms is not only relied upon by the Child Support Division, but also by other State and federal agencies. Failure to accurately complete the forms could result in inappropriate civil and criminal actions against the putative father or incorrect support for the client.

As a result of the suspension of appellant's access to NJKiDS, respondent issued a separate Preliminary Notice of Disciplinary Action to Ms. Sales, dated January 14, 2016 ("2016 PNDA" or J-2), which repeated the three charges alleged in the 2014 PNDA (J-1), and added a fourth charge alleging "inability to perform duties" under N.J.A.C. 4A:2-2.3(a)(3), providing the following description in the specifications:

As a result of the CWA determining that Sales had misused NJKiDS, a Security Incident Report was filed with the State of

New Jersey. The State determined that a breach of confidential information occurred, namely, that Ms. Sales misused the NJKiDS system by falsifying information. The State then suspended Ms. Sales' access to the NJKiDS system & indicated that a local decision to permanently suspend access is supported, making her unable to complete the required duties of her position.

I **FIND** that Sales' ability to access the NJKiDS system was an essential function of her position. I further **FIND** that appellant cannot perform her duties as an HSS2 at the Union County Department of Human Services, Division of Social Services, Child Support and Paternity Unit, while her access to the NJKiDS system is suspended.

Once Sales was suspended, her prior case work in the NJKiDS system was scrutinized by the agency. This review found another instance of apparent misinformation being entered into the NJKiDS system by Sales on July 14, 2014. In this instance, while entering information on behalf of a client, Sales noted in the system that the client refused to cooperate and, thus, Sales generated a 162 Notice of Non-Cooperation. Approximately two minutes later, Sales generated a 163 Notice of Initial Cooperation, directly contradicting the previous document. Shortly thereafter, Sales generated a 160 Child Support Questionnaire, which the client signed, followed by a 161 Notice of Cooperation. Furthermore, Sales entered a note into the file indicating that the client refused to cooperate and refused to sign the 161. Normal protocol is that when a client refuses to cooperate with CSP regulations, a 162 Notice of Non-Cooperation is generated and the interview ends; there would be no need to generate the other forms.

As a result of this finding, a Security Incident Report was filed with the State of New Jersey. This report asserted that there was no valid reason for Ms. Sales to generate the 163, 160, and 161 forms after the client refused to cooperate and the 162 Notice of Non-Cooperation was generated, and, thus, the information Sales entered into NJKiDS was inaccurate. The State once again determined that Sales had caused a breach of confidential information to occur.

In all, the agency identified three individual cases wherein Sales was found to have violated protocol by entering factually incorrect information into NJKiDS. As the identities of the clients are confidential, the identifying information on the record was sealed by the OAL.

LEGAL DISCUSSION AND CONCLUSION

In a disciplinary action, the burden of proof is on the appointing authority, which must prove its case by a preponderance of the believable evidence. In re Polk, 90 N.J. 550, 560 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). In order for evidence to meet that threshold, it must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). That is to say, the tribunal must “decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth.” Jackson v. Del., Lackawanna & W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). “The term ‘fair preponderance of the evidence’ means the greater weight of credible evidence in the case. It does not necessarily mean the evidence of the greater number of witnesses but means that evidence which carries the greater convincing power to our minds.” State v. Lewis, 67 N.J. 47, 49 (1975) (citation omitted). Similarly, credible testimony “must not only proceed from the mouth of a credible witness but must be credible in itself.” In re Perrone, 5 N.J. 514, 522 (1950).

In the case at bar, the appointing authority offered the testimony of two witnesses, Robert MacGibeny and Michele Miller. The testimony of both witnesses tended to show that Sales had entered factually incorrect information into the NJKiDS system on at least three separate occasions, and that Sales’ access to NJKiDS was revoked by the State as a result. As the testimony of each of the appointing authority’s witnesses tended to corroborate the other, I determine the testimony of both witnesses to be credible. As the testimony of Karen Sales tended to be largely self-serving, I determine her testimony to be less credible.

Appellant's rights and duties are governed by the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20.

Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Among the stated types of just cause for major discipline are insubordination, inability to perform duties, conduct unbecoming a public employee, and other sufficient cause. N.J.A.C. 4A:2-2.3.

Appellant argues in her closing brief that, even if it is found by this tribunal that she did commit some bad act and should be disciplined, the theory of progressive discipline, if applied, should bar her removal. The theory of progressive discipline, however, is not a fixed rule to be followed, and it has long been 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, 484 (2007). Thus, progressive discipline has been bypassed when an employee engages in severe misconduct. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980). Here, it is clear that falsifying government records is a severe action. Further, "there is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

In the case at bar, Sales entered misinformation into the NJKiDS system, which resulted in her being denied access to that system. As she cannot perform her duties as a human services specialist 2 without access to NJKiDS, I **CONCLUDE** that removal was proper, and I **CONCLUDE** that all counts listed in the FNDA and the corresponding removal should be upheld.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that appellant's appeal be and is hereby **DISMISSED**.

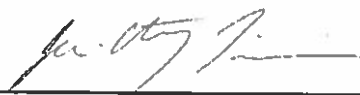
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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. 40A:14-204.

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

September 17, 2020

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

9/17/20

Date Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Appellant:

Robert MacGibeny

Michele Miller

For Respondent:

Karen Sales

LIST OF JOINT EXHIBITS

J-1 2014 PNDA

J-2 2016 PNDA

LIST OF EXHIBITS IN EVIDENCE

For Appellant

None

For Respondent:

None