



STATE OF NEW JERSEY

In the Matter of Derek DeBlaker
Gloucester County, Department of
Emergency Response

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

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CSC DKT. NO. 2020-589
OAL DKT. NO. CSV 13050-19

ISSUED: JUNE 4, 2021 BW

The appeal of Derek DeBlaker, Public Safety Telecommunicator, Gloucester County, Department of Emergency Response, removal effective August 7, 2019, on charges, was heard by Administrative Law Judge Carl V. Buck, III, who rendered his initial decision on May 6, 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 June 2, 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 that action and dismisses the appeal of Derek DeBlaker.

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 2ND DAY OF JUNE, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 13050-2019

AGENCY DKT. NO. 2020-589

**IN THE MATTER OF DEREK DEBLAKER,
GLOUCESTER COUNTY, DEPARTMENT
OF EMERGENCY RESPONSE.**

Derek DeBlaker, appellant, pro se

Michael J. DiPiero, Esq., for respondent (Brown and Connery, LLP attorneys)

Record Closed: February 8, 2021

Decided: May 6, 2021

BEFORE: **CARL V. BUCK III**, ALJ:

STATEMENT OF THE CASE

Respondent, Gloucester County Department of Emergency Response (respondent or Department), removed appellant, Derek DeBlaker, from his position as a Public Safety Telecommunicator (PST) effective August 7, 2019. Respondent alleges there was just cause for the penalty imposed under N.J.A.C. 4A:2-2.3(a)(2) and (6), general causes, because appellant had (for the third time) used an unauthorized device in the communications room in violation of respondent's policies and in violation of the terms of a "Last Chance Agreement" (Agreement) previously executed by appellant.

Appellant contests his removal and seeks consideration for extenuating circumstances for reinstatement to position.

PROCEDURAL HISTORY

On July 8, 2019, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) setting out charges against appellant.

A departmental hearing was conducted on July 19, 2019 and the hearing upheld the penalty of dismissal. Respondent issued a Final Notice of Disciplinary Action (FNDA) on August 7, 2019, imposing the penalty of removing appellant from his position effective August 7, 2019. Appellant appealed and the matter was transmitted to the Office of Administrative Law (OAL) on September 18, 2019, to be scheduled for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on December 3, 2020. The parties were given time to submit post-hearing summation briefs and the record closed on February 8, 2021.

On March 9, 2020, the Governor of the State of New Jersey issued Executive Order 103, declaring a public health emergency, due to the COVID-19 pandemic. The Governor's Executive Order 127 authorized the extension of time for the completion of administrative decisions, after the public health emergency. Subsequent Executive Orders have extended the public health emergency, which continues as of the date of this initial decision.

FACTUAL DISCUSSION

The following has been presented and not contested. I therefore **FIND** them as **FACTS**:

1. DeBlaker was a PST for Gloucester County in the Department of Emergency Response for approximately 4 years and worked in a telecommunications room.

2. PST employees have access to confidential law enforcement and medical information within the telecommunications room.
3. The Department has a standard operating procedure (SOP) prohibiting the use of personal cellular telephones (classified as unauthorized equipment) in communications rooms. (R-3.)
4. The Department may permit employees to possess cellular telephones in a communications room, provided that the Department administration gives prior approval to the accommodation. (R-3.)
5. DeBlaker had been disciplined for violations of the cellular telephone policy on four prior occasions. (R-6.)
6. The most recent disciplinary action resulted in appellant signing a "Last Chance Agreement" on May 14, 2018 whereby appellant agreed under Section 1. (b) that if he had another violation of the cell phone rule it would be cause for termination. (R-2.)
7. Appellant admits that he had his cellular telephone "out" in the communication room when seen by Diane Morgan.

TESTIMONY

Reed Merinuk, Deputy Public Safety Director, testified that he has been employed by the respondent for approximately six years. He is the liaison between the emergency operations center and the County police Chiefs, he also handles discipline and related matters. Are in a room with equipment provided by the County for their use. The PST's take initial information regarding the emergency and process the call. Most of the information within the area is personal data or confidential. Standard operating procedure for: 3.7 regarding unauthorized equipment prohibits use of a cellular telephone in the communications room. Merrick also testified to the last chance agreement dated May 14,

2018, and the relation it had to appellant. He stated that he believed Chief Diane Morgan was the person who saw appellant with the cellular telephone on May 30, 2019. He also stated that exceptions within the standard operating procedure can be made if individuals submit a request which is reviewed by the director and the individual gets permission. To the best of his knowledge appellant did not follow that procedure. Merinuk further stated that if appellant had followed the procedure requesting authorization for an exception, and if such exception were granted, the action would not have resulted in disciplinary action. The County followed the HR manual specifically and the witness testified to the disciplinary history for appellant.

Diane Morgan, Chief Public Safety Telecommunicator, testified on behalf of the respondent that she oversees the Fire and EMS and the police communications room. She is involved in scheduling, discipline, evaluations, and makes sure that policies and procedures are enforced. She was working on May 19, 2019 and appellant was working in the Fire and EMS room and she observed appellant on his cellular telephone. She advised appellant that she saw him on his cellular device and was going to write him up. He said he was sorry.

Morgan also identified the disciplinary document which was presented to the appellant and then sent to human relations.

Derek DeBlaker testified on his own behalf that his mother had had a knee replacement the prior week and needed assistance from a fall. He answered his telephone, saw it was his mother and had intended to ask for permission to go and assist his mother when he was seen by Morgan.

FINDINGS OF FACT

In this instance no credibility of the witnesses is required as appellant does not contest the fact that he had his cellular telephone "out" in the 911 communication room.

Based upon a review of the documentary evidence and having had the opportunity

to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following as **FACTS** in this matter:

1. The Department's internal policy specifically prohibits use of cellular telephones in the communications room.
2. Appellant had signed a "Last Chance" agreement on May 14, 2018 acknowledging that use of a cellular telephone again could result in an action for his termination.

LEGAL ANALYSIS AND CONCLUSIONS

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified people to public service. Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 147 (1965). A civil service employee who commits a wrongful act related to his or her employment, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

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

Here, the County has the burden to demonstrate by a preponderance of the evidence that the appellant violated the cellular telephone policy and the second chance agreement, to justify the disciplinary action of removal. N.J.A.C. 4A:2-2.3(a)(2) and (6).

This, however, is not necessary as the appellant has admitted to the action.

Therefore, I **CONCLUDE** that the appellant is required under the "Last Chance Agreement" to comply with the agreement's requirement that he not violate the cellular telephone policy.

I **CONCLUDE** the appellant has violated that term and condition of the "Last Chance Agreement" in addition to the standard operating procedures of the respondent.

Petitioner contends that this violation was due to him monitoring his mother's health condition. An admirable cause, but petitioner had been disciplined multiple times for the same issue. Further, the 911 communications room had a "hard line" telephone for use in emergencies and an accommodation could have been made for appellant's use of the cellular telephone if he had requested it of his supervisor; however, he did not request such accommodation.

I **CONCLUDE** that the appellant's action constitutes a violation of his Last Chance Agreement as well as standard operating procedures and therefore constitutes "just cause for his permanent removal from employment". Therefore, I **CONCLUDE** the respondent has sustained its burden by a preponderance of the evidence that removal of the appellant is warranted pursuant to N.J.A.C. 4A:2-2.3(a)(2) and (6).

DECISION AND ORDER

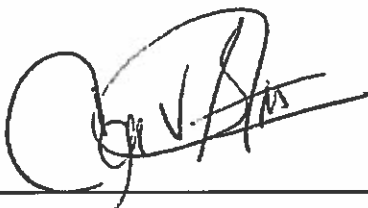
Based upon the foregoing, in light of the facts and the law, the appellant's appeal is **DISMISSED**, and the penalty of removal by the County is **AFFIRMED**.

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.

May 6, 2021
DATE



CARL V. BUCK III, ALJ

Date Received at Agency: May 6, 2021

Date Mailed to Parties: May 6, 2021

CVB/cb

APPENDIX

WITNESSES

For appellant:

Derek DeBlaker

For respondent:

Reed Merinuk, Deputy Public Safety Director

Diane Morgan, Chief Public Safety Telecommunicator

EXHIBITS

For appellant:

None

For respondent:

- R-1 Final Notice of Disciplinary Action (31B), dated August 7, 2019
- R-2 Last Chance Agreement, dated May 14, 2018
- R-3 Gloucester County Public Safety Communications S.O.P. 4:3.7
Unauthorized Devices
- R-4 Gloucester County Human Resources Manual Section 7.3 Discipline
- R-5 Gloucester County Human Resources Manual Section 7.3 Disciplinary
Report, dated June 27, 2019
- R-6 Request for Discipline Form with Disciplinary History for Appellant, dated
July 3, 2019
- R-7 Email to Reed Merinuk and Diane Morgan from Andrew Gallo re: DeBlaker
Hearing, dated July 26, 2019