



STATE OF NEW JERSEY

In the Matter of Brenda Dolly,  
Woodbine Developmental Center,  
Department of Human Services

CSC DKT. NO. 2020-38  
OAL DKT. NO. CSV 09936-19

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

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ISSUED: JULY 2, 2021 BW

The appeal of Brenda Dolly, Residential Services Worker, Woodbine Developmental Center, Department of Human Services, 20 working day suspension, on charges, was heard by Administrative Law Judge Catherine A. Tuohy, who rendered her initial decision on June 2, 2021. Exceptions were filed on behalf of the appellant.

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 on June 30, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

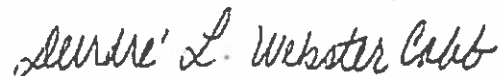
Since the penalty has been modified, the appellant is entitled to 15 days of back pay, benefits, and seniority, pursuant to *N.J.A.C. 4A:2-2.10*.

**ORDER**

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore modifies the 20 working day suspension to a five working day suspension. The Commission further orders that appellant be granted 15 days of back pay, benefits, and seniority. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

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 30<sup>th</sup> DAY OF JUNE, 2020



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

attachment



STATE OF NEW JERSEY

In the Matter of Daniel Carroll,  
Township of West Orange, Police  
Department

CSC DKT. NO. 2021-341  
OAL DKT. NO. CSV 10109-20

DECISION OF THE  
CIVIL SERVICE COMMISSION

ISSUED: JULY 2, 2021 BW

The appeal of Daniel Carroll, Police Officer, Township of West Orange, Police Department, 60 working day suspension, on charges, was heard by Administrative Law Judge Joann LaSala Candido, who rendered her initial decision on May 21, 2021. Exceptions and replies to exceptions were filed on behalf of both parties.

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 on June 30, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision to modify the 60 working day suspension to a 45 working day suspension.

Since the penalty has been modified, the appellant is entitled to 15 days of back pay, benefits, and seniority, pursuant to *N.J.A.C. 4A:2-2.10*. However, the appellant is not entitled to counsel fees. Pursuant to *N.J.A.C. 4A:2-2.12(a)*, the award of counsel fees is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. See *Johnny Walcott v. City of Plainfield*, 282 *N.J. Super.* 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. March 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained and major discipline was

imposed. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12(a), counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore modifies the 60 working day suspension to a 45 working day suspension. The Commission further orders that appellant be granted 15 days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as set forth in *N.J.A.C.* 4A:2-2.10. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R.* 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 30<sup>TH</sup> DAY OF JUNE, 2021



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 09936-2019

AGENCY DKT. NO. 2020-38

**IN THE MATTER OF BRENDA DOLLY,  
DEPARTMENT OF HUMAN SERVICES,  
WOODBINE DEVELOPMENTAL CENTER.**

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**Brenda Dolly, appellant, pro se**

**Hugo Ruiz, Esq., Administrator, Employee Relations, NJ Department of Human  
Services, Office of Human Resources, for respondent**

Record Closed: April 21, 2021

Decided: June 2, 2021

**BEFORE CATHERINE A. TUOHY, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Brenda Dolly, (Ms. Dolly), a Residential Service Worker (RSW) at the Woodbine Developmental Center (WDC), Department of Human Services (DHS), respondent, appeals a twenty working day suspension effective August 3, 2019, and ending September 7, 2019, for an alleged violation of a rule, regulation, policy, procedure, order or administrative decision (E1.2) – General Conduct While on Duty.

## PROCEDURAL HISTORY

On February 26, 2019, respondent issued a Preliminary Notice of Disciplinary Action (31-A) setting forth the charges and specifications made against the appellant. After a departmental hearing on June 6, 2019, the respondent issued a Final Notice of Disciplinary Action (31-B) on June 20, 2019, sustaining the charges in the Preliminary Notice and suspending appellant twenty working days beginning August 3, 2019, and ending September 7, 2019. Appellant filed an appeal on June 26, 2019, and the matter was transmitted by the Civil Service Commission Division of Appeals and Regulatory Affairs to the Office of Administrative Law (OAL) where it was filed on July 19, 2019, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13. The matter was heard via zoom on April 20 and 21, 2021. The record closed on April 21, 2021, following oral summations.

## FACTUAL DISCUSSION AND FINDINGS

### Testimony

**Wanda Gibson-Picott**, (Ms. Picott), Cottage Training Supervisor (CTS), testified on behalf of the respondent. She is employed by WDC and was the CTS of cottage 13, also known as "Morse" House on February 22, 2019. She worked the second shift that day, which was 7:00 a.m. to 3:30 p.m. She had been the CTS for three years at that time. Her duties were to supervise the staff and to make sure the cottages were run well and the individuals served were taken care of and provided with everything they were supposed to be provided with. Ms. Picott was Ms. Dolly's supervisor on February 22, 2019. Ms. Dolly was an RSW whose responsibilities included cleaning the cottage bathrooms and hallways, making beds, changing the linens, doing the laundry, ordering the linens and folding the laundry.

On February 22, 2019, Ms. Picott prepared a signed statement of an incident involving Ms. Dolly. (R-1.) February 22, 2019 was a Friday. Ms. Picott indicated in her statement that on February 22, 2018, central housekeeping dropped off extra linen to make sure the cottage did not run out during the weekend. The usual procedure is that every morning the

RSW checks the linen closet and then calls the laundry with a linen count as to what they need to make sure they have enough sheets, towels, blankets and wash clothes to last the weekend. Initially when the linens are delivered to the cottage, they are in bags and brought into the hallway on the first floor of the cottage. They are then placed in a rolling linen cart and transported to the linen closet on the first floor of the cottage and put away.

Ms. Picott stated that Ms. Dolly got upset when she saw there were extra linens delivered and Ms. Picott gave her a directive to put it away. The linens were still on the floor in the bags when she gave Ms. Dolly the directive. Ms. Dolly got upset and asked why Ms. Picott ordered extra linen. Ms. Picott stated that she did not order extra linens they just dropped off extra linens. She gave her a directive to put the linens away and then Ms. Dolly went to go get the linen cart. When she came back with the linen cart Ms. Dolly was very upset. Ms. Picott asked two of her direct care staff, Larry Jones and Brian Beachamp, to help Ms. Dolly place the bags of laundry on the cart and that is when Ms. Dolly started cursing and acting disrespectful and saying things she should not have been saying. Ms. Dolly said she did not need their help and Ms. Picott told them to walk away. She heard Ms. Dolly utter profanity "f- - k this" and "f- -k that". Ms. Dolly did not say it that loud but it was loud enough for Ms. Picott to hear. In Ms. Picott's statement she indicated that as Ms. Dolly was putting the linen on the cart, she started to push the cart really fast down the hallway almost hitting Mr. P., a resident of cottage 13, and Mr. Santiago Negroni. (R-1.) The cart almost tipped over but Ms. Dolly caught it. Mr. Beachamp pushed the cart out of the way because it would have hit him. In Ms. Picott's statement she stated that Ms. Dolly was having a "behavior" which meant that she was acting out and cursing. Her statement was initially made on February 22, 2019, and then she added it to it February 26, 2019, and stated that Ms. Dolly was cursing. Mr. Raphael worked in the main laundry and advised Ms. Picott that he never told Ms. Dolly that Ms. Picott ordered more linen and that he just decided to bring over the extra linen to cottage 13 to make sure they had enough for the weekend.

The Performance Assessment Review (PAR) Civil Service Commission rating form for employee Brenda J. Dolly for the period from March 1, 2018, to February 28, 2019, was prepared by Ms. Picott (R-2). Under "Job Expectations" there is a heading "Major Goals of the Unit/Work Group" which states "To support those who live at Woodbine Developmental Center by providing a foundation of respect that promotes learning, fosters independence,



optimizes growth/abilities; ensures/maintains health and safety; and enhances the quality of life. Your role with Woodbine Developmental Center is vital to this mission." (R-2, page 1.) As her supervisor, Ms. Picott, did not feel that Ms. Dolly's conduct on February 22, 2019, was consistent with the requirements of the job description. Job Responsibility #7 in the PAR was "maintains required supply of all linens and ensures proper laundering." (R-2, page 4.)

The last page of the PAR was electronically signed by Ms. Picott, dated February 26, 2019, and by Ms. Dolly on March 5, 2019, indicating that she agreed with the rating. (R-2.) There is an initial handwritten version of the PAR that is then put in electronic form. Ms. Picott admitted that she gave Ms. Dolly a satisfactory evaluation, however the incident should have gone on the PAR, she must have missed it.

The WDC has policies regarding general conduct of its employees while on duty. (R-3.) Paragraph V(A)1 indicates that all employees will display conduct that is befitting an employee of the DHS, the Division of Developmental Disabilities (DDD) and WDC. (R-3, page 1.) Paragraph V(B)5 indicates that all employees are not permitted to use profane, indecent or abusive language toward or in the presence of individuals served, co-workers or visitors. (R-3, page 3.) As a supervisor, she believes Ms. Dolly violated this policy.

A copy of a photograph of a laundry cart depicted in R-4 is the linen cart used by Ms. Dolly on the date in question.

The WDC daily sign in record for February 22, 2019, indicated that Mr. Jones was not at work that day and so he could not have helped Ms. Dolly with the linen. (R-9.) Ms. Picott indicated that she may have gotten confused but knows for sure it was Brian Beachamp.

Ms. Picott was not told anything about Ms. Dolly before she arrived at cottage 13 or after Ms. Picott arrived at cottage 13. Ms. Picott did not believe she had to ask Ms. Dolly if she called in the laundry count. Ms. Picott did not call and ask for additional linens to be delivered. Ms. Dolly had called in the linen count that day. Ms. Picott did not check the linen closet to see if they had enough. She called the laundry and was advised that Ms. Dolly did call in the linen count. She was just calling the laundry to make sure it was called in. Ms. Picott did not ask for more to be delivered. Ms. Picott said the laundry deliveryman said that

he had extra linen on the truck after he finished his deliveries and he took it upon himself to deliver more linen to cottage 13.

**Brian Beachaump**, (Mr. Beachaump), Senior Cottage Training Technician (now Cottage Training Supervisor) testified on behalf of the respondent. He was employed as a Senior Cottage Training Technician at the WDC, part of the DHS on February 22, 2019, and was assigned to cottage 13 also known as Morse House. He worked the second shift from 7:00 a.m. to 3:30 p.m. Mr. Beachaump was assigned to provide care as a 1:1 aide to a consumer. He had been a senior CTT approximately three years at that time. His responsibilities were to assist the clients in all activities of daily living including grooming, brushing teeth etc. Ms. Dolly was assigned as a RSW to provide laundry services to cottage 13 on February 22, 2019. He provided a signed statement as to what he witnessed on February 22, 2019, on February 26, 2019. (R-5.) Mr. Beachaump indicated at 2:45 p.m. he was standing in the hallway because the consumer he was watching was in his room. The consumers had just returned from programming, where they do their various assigned work assignments. There were no other consumers standing where he was in the hallway at that time.

As Mr. Beachaump was standing in the hallway, he witnessed Ms. Dolly coming down the hallway irate and pushing her cart very aggressively. She pushed her cart so hard that it flipped over at the feet of consumer L.P. as he was walking down the hallway. She was cursing saying that she was "f - - king pissed". On her second trip to the elevator she almost hit direct care staff member Jose Santiago Negron (Mr. Negron) with her cart saying, "move I'm pissed". She said it very angrily and you could tell she was mad. Mr. Beachaump did not know why Ms. Dolly was upset. The cart had two bags on top of it and flipped over at the feet of the consumer, L.P., who just stopped and stood there. The consumer did not have any reaction. He walked over to the consumer and turned him around and pointed him in the direction of his bedroom. L.P. is a developmentally disabled consumer. Mr. Beachaump is familiar with the general conduct policy for WDC employees and has received in service training for the policies.

On February 22, 2019, he did not recall how many men were in cottage 13. He did not pick up the men from programming as he had the direct care assignment. He does not

know who went to get the men from programming that day. When the cart fell on its side it was between the clinic and the nursing office door. Ms. Dolly was going from the office to the back room. (P-30, page 2.) He does not know where the CTS was when the cart fell. He did not see the CTS but he believes she was in the office. Ms. Picott did not direct him to help Ms. Dolly, but he did help her pick up the bags because they knew she had difficulty lifting heavy objects and they have helped her in the past. Ms. Dolly let him assist her. Mr. Beachamp was right outside of the office on the right side when you come in the building. The office is on the right and he was standing on the right side where it says 'Nicky's' bedroom, which was his direct care assignments room that day. (P-30, page 2.) The clinic is the nurses office shown in the floor plan. Ms. Dolly was between the utility door and the nurses door. (P-30, page 2.) She was coming from the area of the clinic making the left to the office. Mr. Negrón was coming in the office to sign in when she almost hit him. He jumped back. He was a direct care staff worker for the third shift. Ms. Dolly told Mr. Negrón to get out of her way and that she was pissed.

**Catherine Scott**, (Ms. Scott), testified on behalf of the petitioner. She is the head laundry worker at WDC. On February 22, 2019, she was a senior laundry worker in the laundry and did not supervise anyone at the time, although now she supervises three senior laundry workers.

The weekly linen count for cottage 13 on February 22, 2019, was prepared by Ms. Scott. (P-4.) On February 22, 2019, Ms. Dolly called in her linen count and Ms. Scott wrote it down. (P-4.) The CTS, Ms. Picott, called the laundry room in the afternoon, at approximately 2:00 p.m., and spoke with Ms. Scott. Ms. Picott asked if the laundry count had been called in and Ms. Scott had told her yes. Ms. Picott requested that additional linen be delivered to cottage 13 for the weekend because it was a holiday weekend. Ms. Scott explained that when a supervisor calls in and requests extra linen, they will deliver extra linen. The laundry was not delivered to the cottage on its own, Ms. Picott requested it be delivered. She said she was tired of running short on the weekends. If a supervisor calls in and asks for extra linen to be delivered, the laundry has to give them extra linen, unless the laundry supervisor says no.

**Ryan Broughton**, (Mr. Broughton), Employee Relations Coordinator at WDC, testified on behalf of the respondent. He has been employed by WDC for thirty two years, this June. He has held his current title since June of 2019. His duties are multi-faceted. He is the liaison between the bargaining unit and management. He oversees the 408 disciplinary program at WDC. He oversees the grievance process. He has held many titles at WDC including, Human Services Technician, Cottage Training Technician, Cottage Training Supervisor, Assistant Supervisor of Residential Services, Supervisor of Residential Services and Assistant Employee Relations Coordinator. As the Employee Relations Coordinator, he is familiar with Ms. Dolly's date of hire and current salary. The NJ DOP, screen 41, lists Ms. Dolly's title, salary and date of hire. (R-6.) He has reviewed Ms. Dolly's job specifications for her title as a RSW. (R-7.) As the employee relations coordinator, he is familiar with Ms. Dolly's disciplinary action under appeal in this action. He has reviewed the PNDA- 31A setting forth the violation of E1.2 and the charge specifications. (R-8.)

Ms. Dolly worked the second shift from 7:00 a.m. to 3:30 p.m. on February 22, 2019. The WDC daily sign in record shows Ms. Dolly worked an eight hour shift from 7:00 a.m. to 3:30 p.m. on February 22, 2019, as did Mr. Santiago and Ms. Picott. (R-9.) As duties of ERC at WDC, he reviewed the hearing officers report from the departmental hearing. Although the Hearing Officer's Report (R-10) was excluded from coming into evidence, the significance of the report is that it noted Ms. Dolly left before the hearing started and was yelling that everyone was lying and she was being set up. In his estimation, her actions at that moment reflected what brought her to that point to begin with, her irritation and frustration that caused her to storm out. She was not satisfied as to how the proceeding was to unfold.

The FNDA 31B was reviewed by Mr. Broughton and he is familiar with it. (R-11.) An addendum to the FNDA was issued listing the days of suspension which were held in abeyance pending this appeal. (R-12.) As the ERC, he is familiar with the statements provided by Ms. Dolly, Ms. Picott and Mr. Beachamp and he had to review all of the statements. He reviewed Ms. Dolly's statement that she prepared in connection with this incident. (R-13.) He reviewed all of these statements prior to the PNDA being issued. (R-1, R-5 and R-13.) Based on his review of the statements, Ms. Dolly took her frustrations out on the linen cart and shoved it down the hallway to the day room. She used profanity during her outburst of frustration and she failed to adhere to the genral conduct policy. Her conduct

violated the personal conduct of WDC which requires all employees conduct themselves in such a manner befitting an employee of the WDC. She failed to perform her duties in an appropriate manner that respects the rights of the individuals served at WDC by her conduct when clients were present. She failed to protect state property when she took her frustrations out on the cart. Anyone who conducts themselves in that manner, the facility has a responsibility to address such conduct and measures were taken by her supervisors to address her conduct on that day.

The administrative policies violated by Ms. Dolly were Administrative Order 408 E.1 violation and the general conduct policy. "E.1 2" indicates that this was her second E.1 violation. She previously had an E1 so the next step in the progression would be an E.1 2.

The New Jersey DHS Disciplinary Action Program manual advises the employees of the Department's standards for on-the-job performance. It also lists the Table of Offenses and Penalties for violations of Administrative Order 4:08. (R-14.) A second infraction for a violation of E.1 "Violation of a rule, regulation, policy, procedure, order or administrative decision" lists the range of penalties as being from a minimum of a five day suspension to a maximum penalty of removal. (R-14.) The range of penalty signifies some level of progression in line with the severity of the incident that occurred. A minor incident involving a cell phone would not warrant a higher penalty, whereas an egregious personal conduct issue displayed in front of individuals they are responsible to serve, respect and protect would warrant a twenty day suspension for a second offense. He basis this on the history of the disciplinary process at the WDC. Ms. Dolly would have received in service training as to the policy. The WDC event registration roster form indicates that Ms. Dolly signed in as attending training on personnel 26:8 policy on February 7, 2018, on the personnel policy. (R-15.) This conduct policy, Personnel 26:8 General Conduct While on Duty policy, has been in effect since April of 1986 and revised. (R-3.)

Mr. Broughton is familiar with Ms. Dolly's disciplinary action history chart which is maintained by the WDC in the Employee Relations Management System. (R-16.) It represents all of the discipline Ms. Dolly has received during the course of her employment. It also lists discipline that has been rescinded or modified. On September 25, 2014, Ms. Dolly received her first E.1 violation for which she received an official reprimand for injuring

herself doing floors in the building but failed to report the incident to her supervisor which requires an employee who has been injured report it. Also she was in serviced as to how to operate the scrubbing machine. She has been employed since November 2008. Ms. Dolly's employee training history was compiled by the staff education program and provided. (R-17.) Workplace Violence Prevention instruction was provided to Ms. Dolly on January 31, 2019, and October 19, 2010, (R-17), however she was not charged with any such violation.

Mr. Broughton believed Ms. Dolly did not display conduct becoming an employee of the WDC. All employees shall display personal conduct that is befitting an employee of the DHS, DDD and WDC. They are to be held responsible for the efficient performance of their duties and the supervision, comfort, welfare and safety of all individuals served. They are to perform their duties in a manner that respects the rights of individuals served and exercise a high regard for the proper use, safeguarding and preservation of state and personal property. He believes progressive discipline was followed in this case.

The performance evaluation (PAR) was not the appropriate document to reflect this incident. Her behavior and conduct was just cause for discipline.

An advertisement on the facilities' website gives an overview of what is offered to the consumers that live at WDC. (R-18.) The residents are provided with an array of services from training and support, medical and nursing services, therapeutic service such as OT and PT, employment opportunities, behavioral health and recreation services. They serve 215 consumers with different levels of disabilities from mildly disabled to profoundly disabled and all require individual care to live as normal as life as they possibly can at the center and in the community as well. They have fourteen cottages and an infirmary, which has been closed.

All of their employees must conduct themselves professionally and courteously in the presence of the clients and outside the presence of clients as employees of the State of New Jersey and are held to a professional level of conduct.

Mr. Broughton has known Ms. Dolly since she has been there. He has supervised areas where she was working. He never had an issue with her work ethic. He is aware of

other incidents where she has been explosive, aggressive, disrespectful and frustrated to the point she did not want to talk to those involved, including her superiors. She threatened a CTS and said she would kill her. She has a history of fair work performance but also has a history of resistance to her supervisors. Mr. Broughton is not aware of any statements made by the ASRL. Initially statements are collected to determine whether there is enough to substantiate some sort of charge. The only statements obtained were from Ms. Dolly, Mr. Beachamp and Ms. Picott. Mr. Broughton explained there is always a level of contention between a supervisor and a worker but he is not aware of any specific prior incident between Ms. Picott and Ms. Dolly. Ms. Picott was moved to cottage 13 due to personal issues with another employee. He did state that they discipline employees for employees who fail to conduct themselves appropriately in their clients homes, which is what the cottages are.

The imposition of discipline was made on the recommendation of Jennifer Cruz, the prior ERC and Nick Biauce, the Assistant Supervisor of Professional Services (ASPS). They decided on the twenty day suspension. Mr. Broughton explained that when a penalty is determined, it is understood that there is a settlement process. The penalty is made with the understanding that a settlement can be made and that they are okay with reducing the penalty.

**Brenda J. Dolly** testified on her own behalf. On February 22, 2019, her Supervisor, Ms. Picott came down to the breakroom where Ms. Dolly was about to go on her break at 2:45 p.m. to 3:00 p.m. to advise her that the laundry people, on their own decided to deliver extra linen to their building so that they would not run out over the weekend. Ms. Dolly advised her that she was about to go on her break, but Ms. Gibson told her she could go on her break after she put the linen away that was delivered upstairs in the hallway in the front of the nurses station. Ms. Gibson took the cart of clothes that Ms. Dolly had been folding outside of the break room and took it upstairs. Ms. Dolly grabbed the small gray laundry cart and took it upstairs to start putting the linen away. Ms. Gibson stated in her statement that Ms. Dolly refused to put the linen away but that is not true. The only thing she said was that she was about to go on her break. Ms. Dolly was denied her break time. She went upstairs and saw the amount of linen that was delivered and she believes Ms. Picott deliberately ordered the linen which they did not need in order to retaliate against Ms. Dolly for a previous incident. Ms. Dolly did not get written up because Ms. Picott was lying about what happened

and there were too many witnesses. Mr. Beachaump and Ms. Picott are lying and she would not have been written up and be at this hearing if it were not for their retaliation against her.

Ms. Dolly stated she feels that she is being bullied, harassed and given extra work. Her break times have been interrupted several times. Ms. Picott does not take responsibility for anything she does. Ms. Picott on another occasion interrupted Ms. Dolly's break to say the staff wanted her to clean a clients room when the staff would not do that. The staff would ask Ms. Dolly directly if they needed something done and she would do it. Ms. Picott was retaliating against Ms. Dolly for something Ms. Dolly did to another CTS who was using Ms. Picott to retaliate against her.

Ms. Dolly went upstairs and saw the linen and tried to pick up the sheets and the blankets and was unable to do so. She grabbed the towels and the washcloths and shoved the cart to the dayroom in order to fold the towels. She ordinarily would fold the washcloths too but she did not have the time as it was the end of the day. She folded twenty towels and then decided to call the laundry to tell them to come back and pick up the linen because they did not need it and they had no room for it in the linen closet. There were only six men in the building over the weekend who needed to take showers and they had forty towels which was more than enough. Ms. Dolly says she has OCD and separates the stained towels from the unstained towels and she also had stained towels. There was also another bag of stained towels in the basement if needed. The laundry advised that they would not come and get the extra linen because the supervisor, Ms. Picott herself, had called and ordered it. Ms. Dolly does not believe that Ms. Picott was truthful when she said they had run out of linens the past two weekends because Ms. Dolly is the only RSW who worked on Saturday and she never went to any buildings to get extra linen. Furthermore, Ms. Dolly washed all of the dirty linen that was in the blue bins so they did not run out of linens during those past weekends.

Ms. Picott has asked Ms. Dolly to do Ms. Picott's job such as pick up the mail from another building. One time, Ms. Dolly was in the process of doing a big job stripping and finishing all of the floors with her co-worker when Ms. Picott asked her to do something that was Ms. Wanda's job and Ms. Dolly was already too busy with her own job and she feels Ms. Picott got mad at her for that. After Ms. Dolly called Cathy Scott in the laundry and found out



that it was Ms. Picott who ordered the extra linen, Ms. Dolly called the ASRL's office, because she felt that since she ordered all of the extra linen Ms. Picott should help Ms. Dolly put it away. She did not know who she spoke to, but she advised someone in the ASRL's office that she had just returned from being out with surgery and had filled out ADA paperwork regarding the maximum amount she could lift and needed help lifting the bags since the bags of linen exceeded the weight limit. No one helped her lift the bags. No one returned her call from the ASRL. They wanted to speak to the CTS first.

Ms. Dolly does not know what was said to Ms. Picott by the ASRL. Meanwhile, Ms. Dolly continued folding the towels. Ms. Picott then came and screamed at Ms. Dolly for calling the ASRL. Ms. Picott said that the ASRL told her to give Ms. Dolly a directive to put the laundry away by herself. There were eighty towels on the cart – sixty on top and the rest on the bottom. She had another bag of towels she still had to fold on top of the folded towels. Ms. Picott followed her down the hall to the linen closet. When Ms. Dolly got in front of the bathroom, the bag of towels on top started to fall off and she grabbed the bag on top with her right hand to stop it from falling off the cart and continued pushing the cart with her left hand. Instead of helping her, Ms. Picott passed her continuing to yell at her and said if she could not do her job she should go to personnel and find another position. As Ms. Dolly was pushing the cart down the hallway, she had a clear view of the hallway and did not see Mr. Beachamp in the front hall. Mr. Beachamp in his testimony stated that he did not see Ms. Picott in the hallway when she was right there, so Ms. Dolly does not think Mr. Beachamp was present.

When Ms. Dolly got in front of the linen closet, she walked around the cart and tried to pick up the bag to put it back up on the cart and the cart started to fall over either from her banging in to it or the bag being put back on top. Ms. Picott yelled that she almost hit client L.P., who would have just been coming back from programming at the time, but Ms. Dolly did not see L.P. He was the first one to come back from programming.

Ms. Dolly let go of the bag of towels when the cart started to fall over. At no point during this entire incident did she ever curse. She does not curse. Ms. Dolly did say to the third shift direct care worker who crossed the hallway in front of her cart, who she almost hit by the elevator "Sorry I'm pissed off" or "They pissed me off" whatever she says she said in

her statement is what she said. Everything she wrote in her statement was absolutely 100% the truth. She did not expect him to cross the hallway in front of her cart. She expected him to go to the office and sign in. She had pushed her cart ahead three feet to the elevator.

When the bag fell off the cart, she had to rip the bag open and take all of the towels out of the bag because she could not lift the heavy bag because of her injury. No one helped her lift the bags back onto the laundry cart despite what Ms. Picott and Mr. Beachaump said. The supervisors and all of their friends are retaliating against her and she is being bullied repeatedly and the State does nothing to protect her.

After she took the rest of the linen to the basement to put it away on the table because she did not have any room in the linen room closet at approximately 3:15 she walked over to the "A" building to the ASRL's office. She went to cottage 13 and spoke to "Nadine" and Penny Marrone and told them what happened. They called for Wanda to come up and tell them what happened. Wanda handed them a piece of paper that Ms. Dolly did not see. At that time, all that Ms. Picott told them what happened was that the cart fell over and almost hit one of the clients. Ms. Dolly said that was true but she did not see the client. He was not in her field of vision. Ms. Picott tried to say the linen was delivered at noon, but it was not delivered until 2:35 because Ms. Dolly was buffing the hallway and the dayroom and she would have been upstairs when they were delivering the linen. If Ms. Dolly felt there was not enough linen she would have called in for more linen. They only had six men in the building and they had enough. The extra linen was only delivered to retaliate against Ms. Dolly, to make her upset, knowing she has OCD and a physical disability. They deliberately did things to make her upset which is why she got upset and shoved the cart down the hall. She was frustrated and knew they would get away with it again. They State only took statements from Mr. Beachaump and Ms. Picott and did not take statements from the other individuals with knowledge of this incident, such as Mr. Jose Santiago, Mr. Jose Negron or the ASRL and therefore they did not do a complete investigation.

Ms. Dolly had a previous supervisor, who was not allowing her to use the bathroom in her own building because Ms. Dolly complained about a staff member. Ms. Dolly has OCD and needs to use the bathroom in her own building. Ms. Dolly had ADA documents that allowed her to use the bathroom at 6:45 a.m. The Supervisor denied her repeated access to

the bathroom at 6:45 a.m. by waiting in her car until 7:00 a.m. to open the building, which was cruel.

Ms. Dolly told all of this to Penny, Nadine and Ms. Picott. They said Ms. Dolly and Wanda both did things they should not have done. Ms. Dolly thought that was the end of it. When she came in on the following Tuesday, February 26, 2019, she was told to write a statement. If all she did was shove a cart down the hall she feels she should not be punished when so many people are doing much worse and getting away with it. Ms. Dolly does her job to the best of her ability and is being retaliated against repeatedly because of it. When Ms. Dolly gets upset, she talks to herself and mumbles.

Ms. Dolly is a union employee. She is allowed two fifteen minute breaks and a half hour for lunch. Ms. Picott came down and ordered her to put linen away at 2:45 when she was about to take her break. She is familiar with the grievance process. She understands the concept of complying with a directive and grieving later. She did comply with the directive. She did not refuse to put the linen away. She was very emotional that day. She admitted in her February 26, 2019 statement that she was frustrated and shoved the cart down the hall to the dayroom. (R- 13, page 2, lines13-14.)

As an RSW, she has a supervisor. She did not feel that she had to follow a directive given when her supervisor orders extra linens knowing Ms. Dolly could not lift it. Ms. Dolly did not refuse any help because no help was offered. Ms. Dolly heard Mr. Jose Santiago and Mr. Beachamp discussing who would go to C6 to get the men from programming and who would stay with the 1:1 assignment. Mr. Beachamp was going to get coffee for the 1:1 because he gets agitated if he does not get his coffee as soon as he gets back from programming and then was going to get the men. That is why Ms. Dolly believes Mr. Beachamp was not present when this incident occurred.

She is familiar with the conduct policy that each employee behave in a manner befitting an employee of the State and refrain from using profanity in the work place. She believes she did not violate the policy. One of the requirements of the job PAR was that she behave with respect for the health and safety of the residents of the facility. Anyone who

knows her knows she would not curse or intentionally flip a cart and all the charges are based on the lies contained in the statements from Ms. Picott and Mr. Beachamp.

Ms. Dolly stated the only thing she did was shove the cart down the hall. The client L.P.'s room was next door to the linen closet and she did not see L.P. Shoving the cart she almost hit the other co-worker. She assumed he would continue to the office but he switched sides of the hallway and went in front of the elevator where she was pushing her cart. She almost hit him by the way she was pushing the cart and said she was sorry or whatever it was that she said in her statement.

### Discussion

In order to resolve the inconsistencies in the witness testimony, the credibility of the witnesses must be determined. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Throughout the hearing, Ms. Dolly was focused on her perception that Ms. Picott was trying to make things difficult for Ms. Dolly. Although it would appear from Ms. Dolly and Ms. Scott's testimony, that Ms. Picott did indeed order the extra linen to be delivered to cottage 13 on that date, it is not an excuse for Ms. Dolly's behavior.

Ms. Dolly maintains she does not, never has and most certainly did not use profanity during the incident of February 22, 2019. She does admit to saying she was "pissed" and being angry, but not to having used the "F" word. I believe Ms. Dolly to be credible in her testimony.

The only statement taken the day of this incident, February 22, 2019, was that of Ms. Dolly's supervisor, Ms. Picott. In her initial statement, there is no mention that Ms. Dolly used profanity. Ms. Picott's initial statement reads:

On 2/22/19 Central Housekeeping drop off extra linen for the cottage making sure the cottage won't run out thru the weekend. Ms. Dolly got upset when she realize she had to put the linen away. I had to give her a directive to move the linen out of the hallway. Then as she was putting the linen on the cart she started to push the cart real fast in the hallway almost hitting Mr. P. & Mr. Santiago Negrón . . . I told her she needs to calm herself down and stop throwing that cart down the hallway . . .

This is consistent with what Ms. Dolly testified was discussed between her and Ms. Picott in the presence of the supervisors following the incident and that Ms. Picott did not allege in that meeting that Ms. Dolly used profanity.

Ms. Picott added to her statement on February 26, 2019, "And when I told Ms. Nadine and Ms. Penny that Ms. Dolly was having a behavior that meant she was acting out & cussing. I thought they knew what that meant." Although in her later statement she indicates Ms. Dolly was "cussing", there is no specific mention of the profanity Ms. Dolly allegedly used.

If a supervisor is going to write up a subordinate for a specific violation of a policy prohibiting profanity it would be best practices for the supervisor to specifically document what was said by the employee to support the violation. The lack of any mention of the use of profanity by Ms. Dolly in Ms. Picott's initial statement of February 22, 2019, supports Ms. Dolly's position that she did not use profanity during the incident of February 22, 2019. Ms. Picott's testimony more than two years after this incident and at the hearing that Ms. Dolly said "F—k this and F—k that" during the incident when it is not mentioned in her written statements made at the time of the incident is suspect. Although Mr. Beauchamp's statement indicates that Ms. Dolly said "I'm f—king pissed", his written statement was not provided until four days later on February 26, 2021, and although Ms. Dolly admittedly said she said she was "pissed" I am not sure Mr. Beauchamp's

recollection four days later that she said she was “f—king pissed” is actually accurate as opposed to how he may have later interpreted the events, since his statement was not contemporaneous with the incident of February 22, 2019.

The most compelling reason that I find Ms. Dolly credible in her version of the events is that she admits that she was angry and frustrated and admits that she took out her anger and frustration on the linen cart and admits stating she was “pissed”. She admits apologizing to Mr. Negroni for almost hitting him with the cart. She admits she was not aiming for Mr. Negron, but that he unexpectedly crossed the hallway in front of the elevator where she was pushing her cart ahead three feet and almost hit him. However, she does not admit to using profanity.

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

Ms. Dolly has been employed as a RSW at WDC since November 22, 2008. (R-6.)

Ms. Dolly received in-service training on WDC Personnel Policy 26:8 “General Conduct While on Duty” on February 7, 2018. (R-15.) Pursuant to the policy, all employees will display personal conduct that is befitting an employee of the DHS, the Division of Developmental Disabilities and the WDC. (R-3.)

On February 22, 2019, at approximately 2:45 p.m. Ms. Dolly, a RSW at the WDC, in a state of anger and frustration, after being directed by her superior to put away extra linens that were delivered to the cottage, caused a linen cart to almost fall over and hit client, L.P. She then aggressively shoved the linen cart towards the elevator, almost hitting a direct care staff member, Mr. Santiago Negroni. Ms. Dolly said “Sorry, I’m pissed”.

Ms. Dolly did not use profanity during this incident on February 22, 2019.

Ms. Dolly's PAR for the rating period from March 1, 2018, through February 28, 2019, indicates she received a satisfactory evaluation. (R-2.)

Prior to the incident of February 22, 2019, Ms. Dolly had one prior disciplinary action for an E-1.1 Violation of a rule, regulation, policy, procedure order or administrative decision arising from an injury she sustained on September 24, 2014, while operating a scrubbing machine and failing to report her injury as required by Policy # 26:4:01. She had also received in-service training on the proper use of the scrubbing machine and was found to not be properly operating the machine at the time of her injury. Ms. Dolly received a Notice of Official Reprimand as discipline. (R-16.)

The New Jersey DHS Disciplinary Action Program, Administrative Order 4:08 sets forth a Table of Offenses and Penalties. For a first E.1 violation there is a range of penalties from a minimum penalty of counselling to a maximum penalty of removal. A second infraction of E.1 sets forth a range of penalties from a minimum penalty of a five day suspension and a maximum penalty of removal. (R-14.)

### **LEGAL ANALYSIS AND CONCLUSIONS**

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

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

Respondent has alleged that On February 22, 2019, Ms. Dolly was directed by her supervisor to put away cottage linens that were delivered. Upon being told, she began exhibiting uncontrolled outbursts of inappropriate behavior, cursing stating "I'm pissed, I'm f—king pissed" while shoving a bin filled with linens down the hallway until it flipped over nearly hitting a consumer. Respondent alleges that this behavior was unacceptable and violates respondent's policy for employee conduct. Ms. Dolly was charged with a violation of E1.2 violation of a rule, regulation, policy, procedure, order or administrative decision – General Conduct While on Duty. The General Conduct While on Duty policy requires employees to display conduct that is befitting an employee of the DHS, DDD and WDC and prohibits the use of profane, indecent or abusive language toward or in the presence of individuals served, co-workers or visitors. (R-3.)

Ms. Dolly had received in-service training on WDC Personnel Policy 26:8 "General Conduct While on Duty" on February 7, 2018. (R-15.) Pursuant to the policy, all employees will display personal conduct that is befitting an employee of the DHS, the Division of Developmental Disabilities and the WDC. (R-3.) As an employee, one of Ms. Dolly's major job expectations was to support those who live at Woodbine Developmental Center by providing a foundation of respect that promotes learning, fosters independence, optimizes growth/abilities; ensures/maintains health and safety; and enhances the quality of life. The WDC is a residential facility offering health care and supportive services to approximately 220 individuals with intellectual and developmental disabilities. The WDC is willing, dedicated and committed to supporting those living there in every aspect of their lives. (R-18.)

On February 22, 2019, at approximately 2:45 p.m. Ms. Dolly, a RSW at the WDC, in a state of anger and frustration after being directed by her supervisor to put away extra linens that were delivered to the cottage, caused a linen cart to almost fall over and almost hit a client. She then aggressively shoved the linen cart towards the elevator, almost hitting a direct care staff member. Ms. Dolly said "Sorry, I'm pissed".

Based on the foregoing, I **CONCLUDE** that the respondent has met its burden of proof that appellant failed to display personal conduct befitting an employee of the WDC



on February 22, 2019, by a preponderance of the credible evidence. I also **CONCLUDE** that respondent has failed to meet its burden of proof that appellant used profane language during the incident of February 22, 2019, by a preponderance of the credible evidence.

### PENALTY

The remaining issue is penalty. The Civil Service Commission's review of a penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Brock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The question to be resolved is whether the discipline imposed in this case is appropriate.

For her actions arising out of this incident, appellant has been found to have violated WDC Personnel Policy 26:8 "General Conduct While on Duty". Pursuant to the policy, all employees will display personal conduct that is befitting an employee of the DHS, the Division of Developmental Disabilities and the WDC. (R-3.)

Ms. Dolly has been an employee of the WDC since 2008 and has had only one prior disciplinary action wherein she received an Official Notice of Reprimand. Her PAR for the yearly rating period March through February of 2019, was satisfactory. The

penalties to be imposed on a second infraction for an E.1 violation range from a five day suspension to removal. In light of the facts of this case and Ms. Dolly's prior disciplinary history, a twenty day suspension is excessive. No one was hurt and there is nothing that suggests she should receive more than the minimum penalty for a second E.1 violation, that is, a five day suspension. Mr. Broughton's testimony that respondent routinely seeks a higher penalty knowing that negotiations will ensue to reduce the penalty further supports reduction of the penalty in this case.

After having considered all of the evidence submitted in this matter and considering the impact upon the WDC regarding the behavior by appellant herein, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that appellant's violation of the good conduct policy warrants a penalty of a five working-day suspension.


### **ORDER**

Accordingly, I **ORDER** that the action of respondent in suspending the appellant for twenty working days be **MODIFIED** and that appellant receive a five working day suspension.

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.



June 2, 2021  
DATE

\_\_\_\_\_  
CATHERINE A. TUOHY, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

CAT/tat

**APPENDIX**

**WITNESSES**

**For Appellant:**

Catherine Scott  
Brenda J. Dolly

**For Respondent:**

Wanda Gibson-Picott  
Brian Beachaump  
Ryan Broughton

**EXHIBITS**

**For Appellant:**

P-4 Linen Count (two pages)  
P-30 Floor Plan (Evacuation Route Cottage 13, First Floor)

**For Respondent:**

R-1 Wanda Gibson -Picott statement  
R-2 Brenda Dolly PAR (eight pages)  
R-3 Personnel 26:8 General Conduct While on Duty Policy (six pages)  
R-4 Copy of photograph of laundry cart  
R-5 Brian Beachamp statement  
R-6 NJ DOP Employee Master Inquiry Screen ID:41 Dolly  
R-7 NJ CSC Job Specification for Residential Services Worker (three pages)  
R-8 PNDA (31-A)  
R-9 WDC Daily Sign In Record 2/22/19 2<sup>nd</sup> shift  
R-10 Not admitted into evidence  
R-11 FNDA (31-B)  
R-12 Addendum FNDA – Specific Dates of Suspension

- R-13 Brenda J. Dolly statement (four pages)
- R-14 NJ DHS Disciplinary Action Program (three pages)
- R-15 WDC Event Registration Form (three pages)
- R-16 Employee Disciplinary History for Brenda Dolly (thirteen pages)
- R-17 Not admitted into evidence
- R-18 WDC brochure (two pages)