



STATE OF NEW JERSEY

In the Matter of Michelle Williams,
Hudson County, Department of
Health and Human Services

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

CSC DKT. NO. 2021-1645
OAL DKT. NO. CSR 04723-21

ISSUED: MAY 18, 2022

The appeal of Michelle Williams, Motor Vehicle Operator, Elderly and Handicapped Persons Hudson County, Department of Health and Human Services, 120 working day suspension, on charges, was heard by Administrative Law Judge William T. Cooper, III (ALJ), who rendered his initial decision on April 8, 2022. 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, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission, at its meeting of May 18, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Michelle Williams.

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 18TH DAY OF MAY, 2022

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 04723-2021

CSC DKT. NO. 2021-1645

**IN THE MATTER OF MICHELLE WILLIAMS,
HUDSON COUNTY, DEPARTMENT OF HEALTH
AND HUMAN SERVICES.**

Samuel Wenocur, Esq., for appellant

Daniel Sexton, Deputy Hudson County Counsel, for respondent

BEFORE WILLIAM T. COOPER, III, ALJ:

Record Closed: March 7, 2022,

Decided: April 8, 2022

STATEMENT OF THE CASE

Michelle Williams (appellant) appeals the 120 working days suspension from her position of motor vehicle operator with respondent, the Hudson County Department of Transportation (county) for incompetency, inefficiency, or failure to perform duties; insubordination; inability to perform duties; chronic or excessive absenteeism or lateness; conduct unbecoming of a public employee; neglect of duty; and other sufficient causes (sick leave call in procedure).

PROCEDURAL HISTORY

The county notified appellant of the charges by Preliminary Notice of Disciplinary Action dated January 27, 2021. The appellant requested a departmental hearing on these charges which was held on March 19, 2021. A Final Notice of Disciplinary Action (FNDA) was issued to appellant on April 20, 2021, sustaining the charges and suspending her for a period of 120 working days effective May 3, 2021.

Appellant timely appealed and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on May 25, 2021. N.J.S.A. 52:14 B-1 to-15; N.J.S.A. 52:14 F-1 to-13.

The hearing was conducted on January 28, 2022. The record remained open for the parties to submit closing statements and closed on March 7, 2022.

FACTUAL DISCUSSION AND FINDINGS

Testimony

For respondent:

Stephen Martinez ("Martinez") testified that he is the scheduling clerk responsible for scheduling the drivers' daily routes and pickups. The county provides transportation to medical appointments and food shopping for the at-risk population of the elderly as well as for disabled persons and veterans. The county has between thirty-five (35) and thirty-eight (38) drivers and that each driver, on average, would transport between seven and ten persons a day.

On November 24, 2020, Gary Gilchrist, the regular dispatcher, was out on vacation and Martinez was handling dispatch. Martinez explained that drivers begin their shifts at 7:00 A.M. and typically end around 3:00 P.M. Dispatch assigns drivers to routes and these are referred to as "manifests." Martinez explained how the manifests are created and used by the drivers. Appellant was scheduled to pull out at 7:05 A.M. on November

24, and her fourth run of the day was to pick up M.M.S. at 10:00 A.M. and transport her to cancer treatments at 166 South State Street, Hackensack, New Jersey. Martinez explained that this was a drive of less than thirty minutes but that he built in additional time so that the driver would not have to rush. Extra time is built into all the runs, and appellant's schedule allowed for breaks. The appellant was free to do whatever she wanted while the client was in the medical office being treated.

At about 7:15 A.M., he received a call from appellant in which she stated that she did not want to do the Hackensack run because she was not allowed to idle the vehicle and, therefore, she explained, she would get cold. Martinez told appellant that he would see what he could do in the future but instructed her to make the run. At 9:45 A.M., Martinez reached out to appellant to confirm that she was making the Hackensack run and she responded that he should have changed that assignment. He explained to the appellant that he could not change the assignment and again instructed her to make the pickup. Several minutes later, appellant contacted Martinez and told him that she was not going to make the run and said "You can write me up if you want to. I don't care but I'm going home."

Martinez testified that appellant's refusal to make the run on November 24 to Hackensack put a client with serious medical needs at risk. The appellant's refusal to perform her assigned duties caused havoc as he had to scramble to find someone to cover for her.

Candice Poomchongo ("Poomchongo") testified that she is an administrative analyst for the county. Because Gary Gilchrist was out on vacation on Wednesday, November 25, 2020, she covered dispatch. As part of her duties covering dispatch, she contacted appellant to confirm that appellant was covering the route for the day. Appellant had three clients to serve, including two who were scheduled for dialysis at Fresenius Kidney Care Center, in Jersey City, New Jersey. Poomchongo testified that she "checked the voicemail" and there were no messages left by appellant.

Poomchongo made numerous radio check-in calls up to about 9:00 A.M. Appellant, however, failed to respond to any of these radio check-in calls. Poomchongo

sent a message through "Route match" to the appellant's computer tablet and called the home telephone number on file. Poomchongo then informed the Motor Pool Supervisor, Abraham Deida, ("Deida") that appellant had failed to show for work and had failed to respond to efforts to contact her.

Abraham Deida is the Motor Pool Supervisor. He testified that on November 24, 2020, he received calls from Martinez indicating appellant had walked off the job and refused to transport a cancer patient for treatment. Deida was informed of the efforts made to ensure that all the clients were taken care of on November 24, 2020.

On November 25, 2020, Deida received a call from Poomchong who advised that appellant was not responding to radio calls, or to a message to her tablet or to a call to her home. Deida was advised that the work schedule had to be altered to make sure all the clients were serviced on November 25. Deida noted that because of the alterations some of the clients were late to their medical appointments.

Deida was advised that appellant had been seen at the parking lot on the morning of November 25, 2020. Deida noted that Wednesday November 25, 2020, was the eve of Thanksgiving and, therefore, a day where absences create staffing difficulties. Unapproved absences on the day before a holiday are grounds for discipline.

Deida testified about the sick leave call-in procedure, as it is set forth in the Collective Bargaining Agreement. An employee who is absent due to illness or injury must notify a supervisor or his/her designee at least sixty (60) minutes prior to the start of the employee's regularly scheduled workday.

Deida testified that appellant had a pattern of unexcused absences resulting in "excessive absenteeism". On November 10, 2020, he issued a written warning to appellant for her excessive absenteeism. The warning specified that on October 26, 29, 30, and November 4, 5, 2020, appellant had called out of work although she had already exhausted her sick and vacation time. The warning also stressed that appellant was an early shift driver and covering and/or cancelling her scheduled assignments is very difficult. The warning advised appellant that it was being issued to provide her an

opportunity to take corrective action so that disciplinary charges need not be brought against her. Despite receiving the written warning appellant called out on November 25 resulting in another unexcused absence.

Deida testified that appellant had unexcused absences on January 5, 14, 20, 22 and February 4 and 8, 2021,¹ and she had failed to call in at least an hour before her shift began.

For appellant:

Michelle Williams

Appellant testified that her assignments varied every day, but they typically involved stops in or around Jersey City and Bayonne. Approximately a week before November 24, 2021, appellant performed a stop in which she drove out to Hackensack and had to wait around the premises while the patient received radiation treatment. She explained that county rules prohibit leaving the bus idle and because of limited parking, her unfamiliarity with the area, and COVID protocols restricting where she could wait for the patient, appellant remained with her bus even though it was cold. Appellant has been diagnosed with an anxiety disorder and waiting in a cold vehicle triggered her condition. However, she was able to complete her assignment without suffering a full-blown panic attack. A few months earlier she had suffered a panic attack while at work which necessitated Emergency Medical Service and for her to be picked up early from work by a family member.

After her experience with the Hackensack assignment, appellant notified her supervisor, Abraham Deida, and requested that he not assign the Hackensack stop to her. As a result, appellant believed she had an arrangement with the county that she would not have to perform the Hackensack run again.

¹ The county requested a directed dismissal of the specifications that related to unexcused absences on January 7 and 8, 2021.

When the appellant arrived at work on November 24, 2021, she noticed that she had been assigned to go back to Hackensack as her fourth assignment of the day. Appellant contacted the dispatcher's office to notify the county as to her issue with the assignment. During appellant's initial call with Martinez, Martinez responded to appellants' concern about the assignment by indicating "not to worry about it, that he got her". Appellant believed Martinez's comment to mean that he would remove the Hackensack assignment from her schedule.

During the next two and a half hours, appellant completed her first three assignments while maintaining the belief that the county would at some point remove the Hackensack stop from her schedule. At around 8:00 A.M. appellant radioed Martinez for an update. She understood Martinez's response that she again need not to worry about it to mean that the Hackensack stop would be taken off her schedule at some point. As a result, she did not stop to pick up food to take with her to the Hackensack stop. Her prescribed anxiety medicine required that it be taken with food.

When appellant completed her third assignment at around 9:30 A.M., she saw that Hackensack was still listed as her next assignment so she reached out to the dispatcher to figure out what she should do next. Martinez was not immediately available, so appellant spoke to other staff members, but they were not able to advise appellant on what she should do. Finally, at approximately 9:45 A.M. Martinez radioed appellant and asked her if she was going to Hackensack. This was the first time that she realized that the Hackensack run was not in fact going to be removed from her schedule.

After this conversation, the appellant had less than fifteen minutes until her scheduled pickup for Hackensack. She had not picked up any lunch, and she was required to take her anxiety medication with food, so, she believed that she would be unable to take her medication. She was thinking about the Hackensack trip from the prior week and the panic attack from the summer and was concerned that she was not going to be physically able to complete her shift. As a result of this fear, appellant called Martinez back a few minutes later and told him that she had to go home. After bringing the county bus back to the county facilities, she went home.

Appellant did not report to work the following day, Wednesday, November 25, 2021. She called the county before work to notify it of her expected absence, producing a telephone record of her call to the County at 5:32 A.M. on November 25, 2021. (A-1). Appellant explained that she would only be calling the county dispatch number that early in the morning to be calling out sick. When reviewing the phone records, appellant noted that she would have been on the phone with the dispatch office for fifty (50) seconds at 5:32 A.M, to leave a voicemail. Appellant did not answer any calls from the county that day, because she believed that she had followed the county callout procedure.

Appellant acknowledged that the county requires an employee to call out at least one hour prior to the start of their shift if they are going to be absent from work. Appellant produced text messages, call logs and voicemails for each of the dates included in the FNDA. For each day, appellant either left a message with the dispatch office, messaged Gary Gilchrist or contacted Deida. Appellant testified calling out prior to her 7:00 A.M. shift as follows;

January 5, 2021, called in at 6:28 A.M.

January 14, 2021, called in at 6:08 A.M.

January 20, 2021, called in at 5:59 A.M.

January 22, 2021, called in at 6:09 A.M.

February 4, 2021, called in at 6:17 A.M.

February 8, 2021, called in at 6:07 A.M.

FINDINGS

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the

[trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

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).

In this matter four of the charges concern the incident that occurred on November 24, 2020, to which appellant admits that she walked off the job but submits that there are extenuating circumstances that may justify or excuse her actions. As to the violation of chronic absenteeism there is no dispute that petitioner exhausted all her sick and vacation time in 2020. Finally, as to the violations of the county sick leave call in procedure there is no dispute that petitioner is required to call out from work at a minimum of one hour prior to the start of her shift, which all agree is 7:00 a.m.

As far as credibility is concerned, Martinez, Poomchongo and Deida were very credible. Martinez easily recounted his activities acting as the dispatcher on November 24, 2020. His version of events matches with the emails he submitted after appellant left the job without permission. Similarly, Poomchongo, was also credible in relating the events that occurred on November 25, 2020, when she was acting as the dispatcher. Lastly, Deida, was clear in explaining the difficulties the department had in dealing with appellant's unexcused absences. The testimony of these witnesses was well supported by the appellants time sheets, related emails, and county documents.

The testimony from appellant concerning why she left the job in the middle of her assigned route on November 24, 2020, was not convincing. Appellant's testimony was an elaborate excuse for not having to wait in a vehicle that would get cold because she was prohibited from idling while parked. During her contacts with Martinez on November 24, 2020, the appellant complained to Martinez that she didn't want to sit in a cold vehicle and never mentioned her anxiety disorder or the need to take food with her medication.

Petitioner admitted that she dealt with the situation poorly and should have handled herself with more composure. However, she fails to recognize the negative impact her actions had not only on the resident relying upon the county for transportation to a medical appointment, but also, her coworkers who had to cover for her and her employer who had to scramble to find coverage for the remainder of her route. This lack of insight was also evident in petitioner's testimony concerning her unexcused absence on November 25, 2020, and the alleged failure to call out within one hour of the start of her shift. As such I cannot accept petitioner as wholly credible.

Specifically, as to these charges:

November 24, 2020 (incompetency, inefficiency, or failure to perform duties, insubordination, neglect of duty, and conduct unbecoming)

I **FIND** that on November 24, 2020, petitioner was assigned a route that included transporting resident M.M.S. at 10:00 A.M. to cancer treatment at 166 South State Street, Hackensack, New Jersey. Petitioner attempted to have this stop removed from her route but was advised by her superior that she had to transport the resident to the appointment. I **FIND** that petitioner, was unhappy that she would have to make the stop and disregarded the reasonable instructions from her superior to complete her route. I **FIND** that instead of picking up the resident petitioner abandoned her route, left the job without notification to her superior and went home for the day. I **FIND** that while petitioner may not have intended it, her actions jeopardized the resident's medical treatment as well as the efficient operations of county transportation.

November 25, 2020 (chronic or excessive absenteeism 2020 and failure follow county call out policy)

For calendar year 2020, the parties agree, and I **FIND** that appellant had exhausted all her sick and vacation time, yet she continued to call out of work. The parties also agree, and I so **FIND** that appellants repeated unexcused absences from work resulted in a written warning being issued to her on November 10, 2020. I **FIND** that on

November 25, 2020, petitioner failed to call out of work at least one hour prior to the start of her shift. I also **FIND** that petitioner had an unexcused absence on November 25, 2020. I **FIND** that appellant's unexcused absences together with her failure to follow the sick leave call in procedure create scheduling difficulties for the county.

Appellant alleges that she contacted the county and left a message regarding the unexcused absence, however, Poomchongo testified that she checked for phone messages on November 25, 2020 but found no message from appellant. Further, Poomchongo made numerous attempts to contact appellant, but all were unsuccessful. Appellant acknowledges the contact attempts but since she allegedly called out, she felt no responsibility to communicate further that day with the county. This unexcused absence is highly suspect as it occurs the day after she abandoned her route and the day before a long holiday weekend. Further, appellant's testimony and cell phone records are unconvincing that she followed the sick leave call in procedure. Based upon her actions on November 24, 2020, it is more than likely appellant did not want to have any contact with her superiors.

January 5, 14, 22, February 4, 8, 2021 (violating county sick leave call in procedure)

Appellant admits and I so **FIND** that she called out of work on the following days at the following times as follows;

January 5, 2021, called in at 6:28 A.M.

January 14, 2021, called in at 6:08 A.M.

January 20, 2021, called in at 5:59 A.M.

January 22, 2021, called in at 6:09 A.M.

February 4, 2021, called in at 6:17 A.M.

February 8, 2021, called in at 6:07 A.M.

I **FIND** that on January 5, 14, 22, and February 4, 8 of 2021 appellant failed to follow the sick leave call in procedure prior to the start of her 7:00 A.M. shifts. Appellant

is fully aware of this requirement and her responsibility yet failed in her obligation to call in on time.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 et seq., governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act sets forth that State policy is to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). To carry out this policy, the Act authorizes the discipline (and termination) of public employees. N.J.S.A. 11A:2-6.

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 561 (1982).

The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). Therefore, the judge 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. Delaware, Lackawanna, and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933).

The appellant herein is charged with violations of N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(2) insubordination; N.J.A.C. 4A:2-2.3(a)(4) chronic or excessive absenteeism or lateness;

N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause (for violating county sick leave call in procedure).

"Incompetence" is defined as "[t]he state or fact of being unable or unqualified to do something." Black's Law Dictionary 833 (9th ed. 2009).

"Inefficiency" has been defined as the act of being incapable or indisposed to do things required in a timely and satisfactory manner. Glenn v. Twp. of Irvington, CSV 5051-03, Initial Decision (February 25, 2005), adopted, MSB (May 25, 2005), <<http://njlaw.rutgers.edu/collections/oal/>>. Inefficiency, incompetence, or failure to perform duties exists where conduct fails to meet, obtain, or produce the effects or results intended for the necessary and adequate performance of the job.

While not defined specifically, "failure to perform duties" can be understood to mean failure to take an action reasonably anticipated from the duties of the position as set forth in the civil service regulations and job description.

In this matter, appellant has been charged with insubordination, namely, refusal to accept the reasonable order to complete her route on November 24, 2020. Black's Law Dictionary 870 (9th ed. 2009) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." *Id.* at 802. Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

"Insubordination" is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended. Deerhurst Estates v. Meadow Homes, Inc., 64 N.J. Super. 134, 150, 165 A.2d 543 (App. Div. 1960), certif. denied, 34 N.J. 66, 167 A.2d 65 (1961).

[Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

As to conduct unbecoming a public employee, this term has been described as an "elastic" phrase that includes "'conduct which adversely affects the morale or efficiency'" of the public entity or "which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (citation omitted); see Karins v. City of Atl. City, 152 N.J. 532 (1998).

"Neglect of duty" has been interpreted to mean that an "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "'the legal standard of reasonable conduct in the light of the apparent risk.'" Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

Conduct that occurs over a period of time, or frequently recurs, is considered "chronic," and may be the basis of discipline or dismissal. N.J.A.C. 4A:2-2.3(a)(4).

"Just cause for dismissal can be found in habitual tardiness or similar chronic conduct." West New York v. Bock, 38 N.J. 500, 522 (1962). While a single instance may not be sufficient, "numerous occurrences over a reasonably short space of time, even though sporadic, may evidence an attitude of indifference amounting to neglect of duty." Ibid.

The appellant has also been charged with "other sufficient cause," in this case violating the county sick leave call in procedure that requires an employee to alert county at least one hour prior to the start of the employee's shift if they are going to be absent or late. Violating a rule or policy means failure to adhere to the standards set forth by the particular institution, in this case the county, by failing to call out of work at least one hour prior to the start of a shift.

There are three events to that were addressed in this matter. One is a serious charge and is a major infraction (incompetency, inefficiency, or failure to perform duties, insubordination, neglect of duty, and conduct unbecoming); the other two are not major infractions standing on their own (chronic absenteeism, and violating county call out procedure). But taken as a whole, these actions were indicative of the attitude of the appellant and her disrespect for the county for which she worked

November 24, 2020 (incompetency, inefficiency, or failure to perform duties, insubordination, neglect of duty, and conduct unbecoming)

I accepted the testimony of the county employees as credible, and the appellant admitted that on November 24, 2020, she refused to perform her assigned duty and disregarded a direct order from her superior to complete her route and drop off a resident at a medical appointment in Hackensack. Rather than complete a task she was unhappy with appellant abandoned her assigned route without permission and left work for the day. The appellants' conduct was unbecoming of a public employee, as it showed a blatant disregard for the county's mission of service to its at risk and elderly residents. By leaving

the job in the middle of her route on November 24, 2020, the appellant neglected her duty to both the county and its residents.

Applying the law to the facts, I **CONCLUDE** that the county has sustained the charges for violations of N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(2) insubordination; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty.

November 25, 2020 (chronic absenteeism, and violating county sick leave call in procedure)

The appellant admittedly exhausted all of her sick and vacation time for 2020 yet continued to call out from work. Her repeated unexcused absences from work resulted in the issuance of a written warning on November 10, 2020. The warning was issued so that she had an opportunity to take corrective action and avoid disciplinary action. Nevertheless, on November 25, 2020, appellant called out yet again. This absence was suspect as it occurred the day after appellant had walked off the job and the day before the start of a holiday weekend. These repeated absences are chronic and make scheduling appointments difficult for the county and places an unnecessary burden on other county drivers. Further, appellant's absenteeism is not only evidencing a disregard for her employer but also a disregard for the at risk and elderly residents who rely upon the county for transportation.

As to the other sufficient cause for violating county sick leave call in procedure, I accept that appellant failed to call into the county to advise that she would be absent from work at least one hour prior to the start of her shift at 7:00 A.M.

Applying the law to the facts, I **CONCLUDE** that the county has sustained the charges for violations of N.J.A.C. 4A:2-2.3(a)(4) chronic or excessive absenteeism or lateness and N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause (for violating county sick leave call in procedure).

January 5, 14, 20, 22, February 4, 8, 2021 (violating county sick leave call in procedure)

Appellant by her own admission had violated county policy when she failed to call out at least one hour prior to the start of her shift on five occasions on January 5, 14, 22 and February 4, 8 of 2021. On January 20, 2021, appellant called in at 5:59 A.M. in compliance to the county procedure.

Applying the law to the facts, I **CONCLUDE** that the county has sustained the charge for violation N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause (for violating county call out procedure).

PENALTY

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline requires consideration. In re Stallworth, 208 N.J. 182.195-96 (2011); Bock, 38 N.J. at 523. When deciding what disciplinary action is an appropriate penalty, the fact finder shall consider the nature of the sustained charges and the appellant's past record. Bock, 38 N.J. at 523-24. The employee's past record is said to encompass their reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Ibid. Consideration as to the timing of the most recently adjudicated disciplinary history should also be given. Id. at 524.

However, the theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Ibid. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all the circumstances, to shock one's sense of fairness. Ibid. Removal has been upheld where the acts charged, with or without a prior disciplinary history, have warranted imposition of that sanction. Ibid. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Ibid.; in re Herrmann, 192 N.J. 19, 33-34 (2007). Indeed, progressive

discipline "is not a necessary consideration when ... it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest." Herrmann, 192 N.J. at 33.

Here, appellant's actions on November 24, 2020, was egregious as it needlessly jeopardized a resident and caused the county to scramble to find another driver to cover her route. Further, the appellant's chronic absenteeism is detrimental to county operations. Taken together these infractions are evidence of disrespect that appellant has toward both her employer and county residents.

Appellant also has a significant disciplinary history that includes a four-day suspension, (by way of settlement), on June 28, 2017, a 90-day suspension, on June 10, 2014, and a 45-day suspension, (by way of settlement), on September 2, 2010. In addition, appellant received a written warning for excessive absenteeism on November 10, 2020, which clearly had no effect in curtailing her conduct.

Based upon the severity of the sustained charges together with the significant disciplinary history, I **CONCLUDE** that the imposition of a suspension of a 120-work day is appropriate.

ORDER

For the reasons set forth above, it is **ORDERED** that the charges entered on the FNDA, dated April 20, 2021, by the respondent, County of Hudson Department of Transportation, against the appellant, Michelle Williams, are hereby **SUSTAINED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

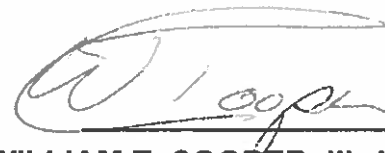
This recommended decision may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify, or reject this decision

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.

April 8, 2022

DATE



WILLIAM T. COOPER, III, ALJ

Date Received at Agency:

April 8, 2022

Date E-Mailed to Parties:
lr

April 8, 2022

APPENDIX

Witnesses

For Appellant:

Michelle Williams

For Respondent:

Stephen Martinez

Candice Poomchongo

Abraham Deida

Exhibits

For Appellant:

MW-1 Phone screen 11/25/20

MW-2 Phone screen 1/5/21 to 1/14/21

MW-3 Phone screen 11/4/20

MW-4 Phone screen 1/20/21

MW-5 DVD of 1/22/21 phone message

For Respondent:

- A. Michelle Williams Driver Manifest Schedules for October 26, 29, 30, 2020, November 4, 24, 25 2020 and January 20, and 22, 2021.
- B. 2020 annual calendar- Note overuse of sick time & excessive absenteeism. 2021 annual calendar- Note excessive absenteeism dates; January 5, 7, 8, 14, 20, and 22 and February 4, 8, 2021.
- C. Written Warning 11/10/20
- D. Written statements of employees Abraham /Deida, Supervisor of Motor Pool, Stephen Martinez, and Candice Poomchongo

E. Timecards for 10/24/20-11/6/20, 11/21/20-12/4/20 and 1/02/21 – 1/15/21

F. Prior Disciplinary Action received by employee

G. Personnel printout summarizing employee's career.