

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF JULY, 2022

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 04835-21

AGENCY DKT NO. N/A

2021-1434

**IN THE MATTER OF CHRISTINA
TABORN, ESSEX COUNTY
DEPARTMENT OF CITIZEN SERVICES,**

Christina Taborn, appellant appearing pro se

Sylvia Hall, Esq. for respondent (Office of the County Counsel)

Record Closed: June 20, 2022

Decided: June 24, 2022

BEFORE KIMBERLY A. MOSS, ALJ:

STATEMENT OF THE CASE

Christina Taborn (Taborn or appellant) appeals her release at the end of a working test period by respondent, Essex County Department of Citizens Services (Essex or respondent), for unsuccessfully completing the working test period.

On or about March 15, 2021, Essex sent Taborn a notice stating that she did not successfully complete the working test period in the title of Juvenile Detention Officer (JDO). Following Taborn's appeal the matter was transmitted to Office of Administrative

Law (OAL) where it was filed with the OAL on June 2, 2021. The hearing was held on March 24, 2022. The parties submitted closing brief on June 20, 2022, at which time I closed the record.

TESTIMONY

Christina Taborn

Christina Taborn testified on her own behalf and stated that in July 2020, she returned to work, at Essex after being told to quarantine for fourteen days because she went to North Carolina. She stated that she was told this over the phone. She does not have a letter stating that she should quarantine. Taborn called out two days in July 2020 to her recollection and does not recall any absences in August 2020. On either September 23, or 24, 2020, she called out and sent either a fax or email to Ms. Howard. Taborn's daughter was sick at that time, but she does not have any documentation of that fact. She does not remember how many days that she called out in October 2020, but she always called to state that she would not be in. Taborn stated that she was exposed to Covid-19 in the end of October. However, she does not have any documentation that she had Covid-19 at that time. She states that she was cleared to return to work on January 13, 2021, which she did. She used two vacation days in January 2021. Taborn did not recall the days she was at work in February 2020 and March 2021. She does not recall if she called in when she did not come to work. She believes that she worked a few days in February 2021. Appellant does not have any documentation for her absences. She applied for personal leave but was denied.

Robin Howard

Robin Howard (Howard) is an employee of Essex. Her duties include interviewing employees, scheduling psychological evaluations, fingerprinting and evaluations. She has access to time and attendance records which she reviews. She is familiar with Taborn. Taborn's working test period was from March 16, 2020, to March 15, 2021. Taborn was sent a letter on March 15, 2021, stating that she did not

pass the working test period and her rating was unsatisfactory. The letter was signed by Director Dennis E Hughes and Superintendent Gina Saunders.

Essex employees punch in and out of work using a cell phone. Essex has 200 employees most of whom are officers.

Sergeant Joanna Sanchez-Cotto

Joanna Sanchez-Cotto is also employed by Essex. She keeps time and attendance, tracks sick, vacation and personal time as well as attendance issues. If an officer needs to call out for that day, the officer must call one and one half hours before their shift. If the officer does not call in it is recorded as an absence. There are three shifts the first shift is seven to three, the second shift is three to eleven and the third shift is eleven to seven.

Essex had rules for attendance. Abuse of attendance rules can lead to disciplinary action.

Gina Saunders

Gina Saunders is the Superintendent of the Essex County Juvenile Detention. She runs the facility and makes sure it is properly staffed. In 2020 there were one hundred forty to one hundred fifty JDO's. There were ninety to one hundred inmates. The facility has four floors. The second, third and fourth floor are used for housing.

The JDO's make sure that the residents are not harmed and that they do not harm anyone. JDO's have forty hours of training, plus, on the job training with a more seasoned officer. Before a JDO is on the floor, they have forty hours of training.

Saunders is familiar with Taborn who did not pass the working test period because of time and attendance issues. She stated that appellant was rarely at work. There is one officer to eight inmates on the first and second tour. There is one officer to sixteen inmates on the third tour. Absent With Out Pay (AWOP) and unapproved sick days are violations of policy. Essex expects the highest caliber officers.

Appellant violated the Human Resources policy and procedure of reporting to work punctually as scheduled and being ready to work and giving proper notice when you are unable to work. Taborn violated the standards of conduct for Essex County employees.

The officers and training officer sign a document which refers to the JDO's needing forty hours of training and JDO's needing to be at work.

On her September 16, 2020, to October 15, 2020, evaluation, Taborn received an unsatisfactory rating. On the final evaluation for December 16, 2020 to March 15, 2021, it states that appellant missed too many days for the year to rate her effectively.

Bryan Crawley

Bryan Crawley has been a training tech for Essex for ten years. He testified that new employees are given an employee manual and explained the attendance requirements.

FACTUAL DISCUSSION

Appellant began a working test period for Essex as a JDO on March 16, 2020. The working test period was scheduled to end on March 15, 2021. She began working in July 2020 because of lack of childcare due to Covid-19. Appellant had to punch in and out in the attendance system using her cell phone. The thirty-day evaluations from March 16, 2020, to April 15, 2020, April 16, 2020 to May 15, 2020, May 16, 2020 to June 15, 2020 and June 16, 2020 to July 15, 2020 all state that Taborn was unable to be evaluated because she did not report for duty.

May 2020 and June 2020 appellant was listed as being out due to having no childcare during covid. On July 9, 2020, she was marked for unpaid sick time. July 13,14, and 15, Taborn was marked as unpaid sick time. The sick time is prorated, and she had exhausted the sick time. On July 16, 2020, Taborn had earned sick time, so the date was marked as paid sick time. July 24 and 25, 2021 she was off. July 26 was Taborn's holiday. On July 27, 2020, was marked as an unpaid sick day for her.

August 1 through 3, 2020, Taborn was marked as AWOP. She did not call in to state that she would be out. Another officer had to cover for her those days. Sanchex-Cotto does not find out that officers are AWOP until the next day. August 4, 2020, Taborn was marked as sick, family day. On August 7, 2020, she was marked as unpaid sick. August 13, 2020, she was marked AWOP. August 23, 2020 was her holiday; August 24, 2020 was a paid sick day. On August 31, 2020, she had a balance of half of a sick day and AWOP three fourths of a day. On September 16, 2020, she was marked AWOP. On September 25, 2020, appellant had an absence, she called in late.

From October 2, 2020, to October 11, 2020, Taborn called out every day. She was marked as unpaid sick time. Three days off are included in that time. Taborn was off on October 16 and 17, 2020. She took a sick day on October 18, 2020 and had unapproved sick time for October 19, 2020. From October 27, 2020, thru November 8, 2020, she used unpaid sick time. From November 16, 2020, through January 13, 2021, appellant did not return to work. Most of these days were unpaid sick days. It appears that from December 8, 2020, to December 20, 2020, appellant was out due to Covid-19.

In January 2021 appellant worked for seven days. During that time, she had seven days of unpaid sick time, three days of sick time, one day of sick family leave and two AWOP days. In February 2021, Taborn did not work. She had two vacation days, she had ten sick days, three unpaid sick days, and five AWOP days. On March 1, 2021, appellant came to work. From March 2 to March 15, she had seven unpaid sick days and two AWOP days.

Taborn's Captain at Essex was Captain Mayo. She met with Captain Mayo regarding her evaluations. They went over the evaluations together and the thirty-day evaluation states that she needed to monitor her attendance. The evaluation for August 16, 2020, to September 15, 2020, also stated that she needed to monitor her time and attendance. Her quality of work was unsatisfactory. The three-month evaluation from June 16, 2020, to September 15, 2020, also states that she needs to monitor her time and attendance. Her evaluation for September 16, 2020, to October 15, 2020, also states that she needs to monitor her time and attendance. All the criteria were unsatisfactory. The evaluation for November 16, 2020, to December 15, 2020, lists she was unsatisfactory in all criteria. Her next three-month evaluation covering September 16, 2020, to December 15, 2020, has her final rating as unsatisfactory. Her evaluation for December 12, 2020, to January 15, 2021, is noted that she needs to improve her time and attendance. Her evaluation for January 16, 2021, to February 15, 2021, lists she was unsatisfactory in all criteria and that she needs to improve with time and attendance. Her February 16, 2021, to March 15, 2021, evaluation list all criteria as unsatisfactory. It states that the officer has missed too many days for the year to rate effectively.

Appellant's terminal leave report states that she owes Essex 11.25 in sick time, 10.00 vacation time and .75 personal days.

Appellant did not provide any documentation as to her absences. On several of the days she took off, the day before or after was a day she was not scheduled to work. Essex refers to this as a "hook up."

Essex had rules for attendance. Abuse of attendance rules can lead to disciplinary action. Taborn was aware of these rules. However, she violated the Human Resources policy and procedure of reporting to work punctually as scheduled and being ready to work and giving proper notice when you are unable to work.

LEGAL ANALYSIS AND CONCLUSION

One of the objectives of the civil service laws and regulations is to ensure the merit and fitness of public service employees. See N.J.S.A. 11A:1-2; State-Operated Sch. Dist. of City of Newark v. Gaines, 309 N.J. Super. 327, 332 (App. Div. 1998), certif. denied, 156 N.J. 381 (1998). Toward this end, a candidate for permanent employee status must successfully complete a probationary or working test period. N.J.S.A. 11A:4-15. The working test period is considered part of the examination process and designed to enable an appointing authority to evaluate whether an employee can satisfactorily perform the duties of the title meriting permanent status. N.J.S.A. 11A:4-15; N.J.A.C. 4A:4-5.1(a). It is intended "to supplement the examining process by providing a means for testing an employee's fitness through observed job performance under actual working conditions." Dodd v. Van Riper, 135 N.J.L. 167, 171 (E. & A. 1947).

It is well settled that "a basic condition of permanent or absolute appointment for any civil service employee is the favorable opinion of the employee's fitness as formed by the appointing authority during the probationary period." Dodd, supra, 135 N.J.L. at 171. "[T]he sole test is an opinion formed by observation of the employee's work," which opinion must be "formed in good faith . . ." Lingrell v. New Jersey Civil Serv. Comm'n, 131 N.J.L. 461, 462 (Sup. Ct. 1944). The function of the working test period is not for the purpose of providing the employee further training to qualify him for the position. Briggs v. Dep't of Civil Serv., 64 N.J. Super. 351, 355 (App. Div. 1960).

In an appeal from an employee's termination at the conclusion of a working test period, the employee shoulders the burden of proving that the appointing authority's "action was in bad faith." N.J.A.C. 4A:2-4.3(b). If bad faith is found, the employee is entitled to a new full or shortened working test period and, if appropriate, other remedies. N.J.A.C. 4A:2-4.3(c). The basic test is whether the appointing authority exercised good faith in determining that the employee was not competent to perform satisfactorily the duties of the position. See Briggs, supra, 64 N.J. Super. at 356;

Devine v. Plainfield, 31 N.J. Super. 300, 303-04 (App. Div. 1954); Lingrell, supra, 131 N.J.L. at 462. In general, good faith has been defined as meaning "honesty of purpose

In this matter, appellant began work in July 2020 after being out two months due to having no childcare during the Covid-19 pandemic. In July 2020, she used one paid sick day and five unpaid sick days. In August 2020, she used one paid sick day, one unpaid sick day, four AWOP days and one sick family day. In September 2020 appellant had one AWOP day and one absence. In October 2020 she had one paid sick day and ten unpaid sick days. In November 2020 she used one paid sick day, fourteen unpaid sick days and two AWOP days. In December 2020 she used ten unpaid sick days and eight covid days. In January 2021, appellant used three paid sick days, eight unpaid sick days, two AWOP days and one sick family day. In February 2021 she used eleven paid sick days, and four AWOP days. In March 2021, she used seven unpaid sick days and two AWOP days. Taborn used eighteen paid sick days, fifty-five unpaid sick days and fifteen AWOP days.

All of appellant's evaluations stated that she needed to work on time and attendance. From March 2020 to July 2020, Taborn could not be evaluated. Her July 2020 to August 2020 and August 2020 to September 2020 evaluations shows that she was unsatisfactory on two of the criteria and fair on three of the criteria. Her evaluations for September 2020 to October 2020, October 2020 to November 2020, November 2020 to December 2020, January 2021 to February 2021 and February 2021 to March 2021 were all unsatisfactory.

I **CONCLUDE** based on excessive absences paid and unpaid that Taborn did not successfully complete the working test period.

ORDER

Based on the foregoing findings of fact and applicable law, it is **ORDERED** that the determination of respondent of that appellant Christina Taborn did not successfully complete the working test period be and is 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.

June 24, 2022



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

June 24, 2022

Date Mailed to Parties:

June 24, 2022

WITNESSES

For Petitioner

None

For Respondent

Robin Howard

Joanna Sanchez-Cotto

Gina Saunders

Bryan Crawley

EXHIBITS

For Petitioner

None

For Respondent

- C-5 End of Working Test Period letter to Ms. Taborn from the Juvenile Detention Center effective March 15, 2021
- C-6 Final CAMP form- Removed at end of working test period effective March 15, 2021
- C-7 Report of Terminal Leave; employee owes county 11.25 Sick Days
- C-8 County's PD20 for 2020 regarding Ms. Taborn's time and attendance
- C-9 County Human Resources' Sick Policy
- C-10 County's PD20 for 2021 regarding Ms. Taborn's time and attendance
- C-11 County Human Resources' Attendance and Punctuality Policy
- C-12 County Juvenile detention Center Policy and Procedure, Code of Ethics
- C-13 County Human Resources' Standard of Conduct Policy
- C-16 County's Department of Citizen Services Employee Evaluation for March 16, 2020-April 15, 2020
- C-17 County's Department of Citizen Services Evaluation for May 16, 2020- June 15, 2020

- C-18 County Department of Citizen Services Employee Evaluation for May 16, 2020-
June 15, 2020
- C-19 County's Department of Citizen Services Employee Evaluation for March 16,
2020- June 15, 2020
- C-20 County's Department of Citizen Services Employee Evaluation for June 16,
2020-July 15, 2020
- C-22 County's Department of Citizen Services Employee Evaluation for August 16,
2020-September 15, 2020
- C-23 County's Department of Citizen Services Employee Evaluation for June 16,
2020-September 15, 2020
- C-24 County's Department of Citizen Services Employee Evaluation for September 16,
2020-October 15, 2020
- C-25 County's Department of Citizen Services Employee Evaluation for October 16,
2020-November 15, 2020
- C-26 County's Department of Citizen Services Employee Evaluation for November 16,
2020-December 15, 2020
- C-27 County's Department of Citizen Services Employee Evaluation for September 16,
2020-December 15, 2020
- C-28 County's Department of Citizen Services Employee Evaluation for December 16,
2020
- C-29 County's Department of Citizen Services Employee Evaluation for January 16,
2021- February 15, 2021
- C-30 County's Department of Citizen Services Employee Evaluation for February 16,
2021-March 15, 2021
- C-31 County's Department of Citizen Services Employee Evaluation for December 16,
2020-March 15, 2021