STATE OF NEW JERSEY

In the Matter of Shola London-Bostic, Juvenile Justice Commission CSC DKT. NO. 2022-3282 OAL DKT. NO. CSR 05320-22	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

ISSUED: JANUARY 18, 2023

The appeal of Shola London-Bostic, Senior Correctional Police Officer, Juvenile Justice, Juvenile Justice Commission, removal, effective June 7, 2022, on charges, was heard by Administrative Law Judge Tricia M. Caliguire (ALJ), who rendered her initial decision on December 7, 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, including a thorough review of the exceptions and reply, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of January 18, 2023, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

The Commission makes the following comments. In her exceptions, the appellant argues that the ALJ should have recused herself from this matter based, in essence, on the format of the appointing authority's motion for summary decision. She argues that since the appointing authority referred to the appellant's past history of discipline, that it could "predispose the ALJ in formulating its [sic] Initial Decision." The Commission rejects this argument. Initially, the ALJ rejected this argument in an October 18, 2022, order specifically rejecting that she could not preside over the matter in an unbiased manner given the presentation of the appellant's disciplinary history. Further, the appellant's tenuous argument to the contrary, there is not a scintilla of evidence in this matter that would lead the Commission to question that the ALJ's determination was based on any bias, conflict of interest or other improper reason.

The remainder of the appellant's exceptions fail to persuade the Commission that there is a genuine issue of material facts in this matter that would warrant

further hearing proceedings. In this regard, the Commission agrees with the ALJ that the appellant clearly violated the appointing authority's leave policy and, based on that infraction and her previous lengthy disciplinary history related to absenteeism, including a Last Chance Agreement, the penalty of removal is appropriate.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Shola London-Bostic.

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 JANUARY, 2023

Allison Chris Myers

Allison Chris Myers
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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
SUMMARY DECISION
OAL DKT. NO. CSR 05320-22
AGENCY DKT. NO. ~~N/A.~~ 2022-3282

IN THE MATTER OF
SHOLA LONDON-BOSTIC,
JUVENILE JUSTICE COMMISSION.

Arthur J. Murray, Esq., for appellant, Shola London-Bostic (Alterman & Associates, LLC, attorneys)

Kathryn B. Moynihan, Deputy Attorney General, for respondent, Juvenile Justice Commission (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: October 24, 2022 Decided: December 7, 2022

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Appellant Shola London-Bostic (appellant) appeals the decision of respondent, the New Jersey Juvenile Justice Commission (respondent or JJC), to remove appellant from her position as a Senior Correctional Police Officer on charges of chronic or excessive absenteeism or lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically violation of DL & PS Sick Leave Policy

5-2019; and in violation of the Settlement and Last Chance Agreement appellant entered with respondent on June 27, 2021.

PROCEDURAL HISTORY

On January 20 and 31, 2022, respondent served appellant with a Preliminary Notice of Disciplinary Action (PNDA) and first amended PNDA, respectively, charging her with chronic or excessive absenteeism or lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically violation of DL & PS Sick Leave Policy 5-2019. On April 18, 2022, respondent served appellant with the second amended PNDA, corrected with respect to certain specifications. Appellant did not request a departmental hearing, and on June 7, 2022, respondent issued a Final Notice of Disciplinary Action (FNDA), sustaining all charges against her, with notice that she would be removed from employment effective June 7, 2022.

Appellant filed an appeal on June 28, 2022, with the Civil Service Commission (CSC) and the Office of Administrative Law (OAL) pursuant to N.J.S.A. 40A:14-202(d). The parties appeared for a telephone prehearing conference on August 15, 2022, during which respondent stated its intention to file a motion for summary decision. A briefing schedule was issued.

On August 29, 2022, respondent filed a motion for summary decision in its favor claiming there are no genuine issues of material fact in dispute and seeking a finding that appellant is guilty of the charges described in the FNDA and that she was properly removed from employment. On September 19, 2022, appellant filed her response in opposition to the motion for summary decision which included a motion for me to recuse myself. Respondent replied on September 29, 2022.

By order dated October 18, 2022, the motion for recusal was denied. As of October 23, 2022, five days after appellant's receipt of the order on recusal, appellant had not filed for interlocutory review, the record closed and the motion for summary decision is now ripe for review.

FACTUAL DISCUSSION AND FINDINGS

Based on the papers filed by the parties in this case, including the certifications of appellant, and counsel, and attached exhibits[1], I **FIND** the following undisputed **FACTS**:

Appellant was hired by respondent on March 16, 2019, in the position of Senior Correctional Police Officer.

The JJC Attendance, Overtime and Leave Policy (Leave Policy) is found in the document titled "[JJC] New Jersey Training School Standard Operating Procedures," effective January 1, 2021. Certification of Kathryn B. Moynihan, Esq. in Support of Respondent's Motion for Summary Decision (August 29, 2022) (Moynihan Cert.), Ex. H.

Pursuant to the Leave Policy, newly hired employees earn one sick day each month during their first year of employment. In each year of continued employment, employees are granted fifteen sick days at the beginning of the calendar year. Id. at p. 5/13. To "call off sick," an employee must call the Operations Unit or Center Control "at least one hour before the start of [his or her] work shift." Ibid. Employees are required to provide medical certification to the Human Resources Department (HR) after:

- Absences of five or more consecutive days;
- When sick leave abuse is suspected;
- When chronic absence patterns and excessive absences occur;
- Sick leave for an aggregate of more than fifteen days in a calendar year;
- Sick leave due to exposure to a contagious disease[.]

[Id. at p. 6/13.]

[1] In a preliminary statement, appellant notes that despite her position as a law enforcement officer, respondent neglected to redact her personal contact information, including her home address, from exhibits submitted in this matter. Ltr. Br. of Appellant in Opposition to Motion for Summary Decision (September 19, 2022), at 2. Appellant is correct regarding this error and all such personal information was redacted from the exhibits included with this file.

The failure to provide medical certification (as described above) "upon return from absence" is reason for employee disciplinary action. Ibid.

The Leave Policy further provides that if an employee has used all her sick leave, she "may request approval . . . to use vacation or administrative leave if an illness should occur. If not approved, the absence will be considered unauthorized," the employee shall be placed in "Unauthorized No Pay Status, [and] must contact the Captain's office within 72 hours, documenting the reason for their absence." Ibid. Although approval of an absence "shall not be unreasonably denied[,]":

> In accordance with Title 4A:2-6.2(b), any employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing.
>
> [Ibid.]

Between October 28, 2020, and May 7, 2021, appellant was disciplined ten times for chronic or excessive absenteeism or lateness. Id., Ex. B. On June 27, 2021, in resolution of pending disciplinary charges, appellant entered a Settlement and Last Chance Agreement with respondent, which provides, in pertinent part:

> The parties agree that this Settlement Agreement is a "Last Chance Agreement." Appellant will strictly adhere to administrative and departmental policies; including but not limited to conduct that may violate the Attendance and Leaves policy. **The parties agree that a breach of this standard of behavior shall authorize the appointing authority to seek removal** regardless of any contrary policies, regulations, or orders.
>
> [Id., Ex. A (emphasis added).]

Appellant took approved medical leave related to COVID-19 from August 8, 2021, through October 30, 2021. Id., Exs. C and I.

On December 2, 2021, appellant was notified by her son's school that he had come in contact with a person suffering with COVID-19 and would not be permitted to return to school until December 14, 2021. Certification of Shola London-Bostic (September 19, 2022), ¶ 25, Ex. 3. On December 3, 2021, appellant submitted the school notice to HR and requested COVID-19 family leave through December 13, 2021. Id., Ex. 3.

On December 7, 2021, HR notified appellant by email that her request for COVID-19 family leave was denied as her shift (10:00 p.m. to 6:00 a.m.) does not coincide with school hours; her absences from work between December 3 and 6, 2021, were approved, but she was required to use her own sick leave for all further absences. Cert. of Moynihan, Ex. J.

On December 10, 2021, HR notified appellant by letter that she had used five hours in excess of her sick leave entitlement. An attachment to this letter showed that appellant had twenty-four hours of vacation time and no hours of administrative leave remaining in 2021. Id., Ex. K.

On or about December 7–13, 2021, appellant renewed her request for COVID-19 leave and submitted additional documents in support of that request. Cert. of London-Bostic, Exs. 6, 10.

Appellant called out sick on December 19 and 20, 2021, although she had no sick leave available. Id., Exs. C, D, L. While respondent claims appellant failed to report for her work shift on December 18, 2021, appellant submitted a copy of her phone bill showing a call to JJC at 8:22 p.m. Cert. of London-Bostic, Ex. 9.

By letter dated December 21, 2021, respondent granted appellant up to three days per week intermittent family leave under the federal Family Medical Leave Act (FMLA) and State Family Leave Act (FLA). In this letter, appellant was directed as follows:

> When unable to report to work due to your family member's medical condition, you must indicate when contacting your supervisor that your absence is due to your FMLA/FLA medical condition. All reporting procedures must be followed

> in accordance with contractual and/or unit procedures when reporting your absence.
>
> [Cert. of Moynihan, Ex. M.]

This statement is consistent with the direction found in the JJC Leave Policy:

> In order to apply FMLA to your absences, you must indicate when reporting your absence to your supervisor that it is related to your FMLA condition. All reporting procedures must be followed in accordance with contractual and/or unit procedures when reporting your absence (see page 5 of this policy – *Reporting Off Sick*). Additionally, if the medical condition continues beyond six months, you will need to renew your request.
>
> [Id., Ex. H, p. 9/13.]

On December 23, 2021, appellant called out sick but failed to state that she was using FMLA/FLA time. Id., Ex. L.

On December 24, 2021, appellant failed to report to work and failed to call out sick. Ibid.

On December 25, 2021, appellant called out sick but failed to state that she was using FMLA/FLA time. Ibid.

From December 26 through 31, 2021, appellant called out sick using FMLA/FLA but exceeded the leave parameters. Id., Exs. L, M.

Appellant returned to work on January 8, 2022. She did not submit a medical certification to HR supporting her use of sick leave until January 27, 2022. Id., Ex. N.

POSITIONS OF THE PARTIES

Respondent contends that summary decision is appropriate as there is no dispute that appellant violated the Leave Policy and therefore, respondent was authorized by the

terms of the Last Chance Agreement to seek her removal. Appellant was aware of the Leave Policy, having used it over the course of her three-year tenure with the JJC. She knew that she had exhausted her sick leave by December 2021; that absence due to contact with a contagious disease (such as COVID-19) and/or an absence of five consecutive days required submission of a Physician's certificate upon return to work; and that the use of FMLA/FLA time had to be reported to her supervisors when she was calling out under FMLA/FLA leave. Appellant, however, did not comply with the above requirements.

Appellant contends that respondent used as exhibits alleged policies of the JJC but fails to include certifications of the author(s) of such policies to authenticate the exhibits. Respondent states that the exhibits, and in particular, the policies of the JJC, speak for themselves. They are not hearsay; a credibility analysis of the author(s) is not needed, and appellant fails to cite to the authority for such a requirement.

Appellant next states that respondent told her she did not qualify for the COVID-19 Leave Policy but did not provide that policy with its motion, which raises the issue as to the content of that policy. Respondent counters here that appellant is trying to raise an issue where one does not exist as appellant was not disciplined for violation of the COVID-19 Leave Policy.

Appellant argues that respondent was prohibited from terminating her employment during the public health emergency and state of emergency declared by Governor Phil Murphy because she took time from work on the "recommendation of a medical professional licensed in New Jersey" because she had or was likely to have COVID-19. See N.J.S.A. 34:11D-12. "[T]he absences at issue in this matter were caused in part on an 'electronically transmitted recommendation of a medical professional licensed in New Jersey'." Ltr. Br. of Appellant in Opposition to Motion for Summary Decision (September 19, 2022), at 10, quoting N.J.S.A. 34:11D-12. Respondent states that this statute is inapplicable here as the public health emergency was not in effect at the time appellant took unauthorized leave.

Finally, appellant states that "a plethora of genuine issues of material fact exist." Ltr. Br. of Appellant, at 10. In reply, respondent argues that it is not enough to make a general statement regarding facts in dispute and appellant fails to specify any issues sufficient to defeat a motion for summary decision. Ltr. Br. of Respondent in Reply to Opposition of Appellant to Motion for Summary Decision (September 29, 2022), at 5.

LEGAL ANALYSIS AND CONCLUSIONS

Standards for Summary Decision

Summary decision is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute. By applying the applicable law and standard of proof to the undisputed facts, a decision may be reached in a case without the necessity of a hearing at which evidence is presented and testimony taken. The procedure is equally applicable in judicial as well as executive branch administrative proceedings. N.J.A.C. 1:1-12.5.

The regulations provide that the decision sought by the movant "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). Here, the parties agree that the absence of disputed facts makes summary decision appropriate.

The standards for determining motions for summary judgment are found in Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74-75 (1954), and later in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). A motion for summary decision may only be granted where the moving party sustains the burden of proving "the absence of a genuine issue of material fact," and all inferences of doubt are drawn against the movant. Judson, 17 N.J. at 74-75. Summary decision is appropriate when "the evidence . . . is so one-sided that one party must prevail as a matter of law.'" Brill, 142 N.J. at 541 [quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)]. In reviewing the proffered evidence to determine the motion, the judge must be

guided by the applicable evidentiary standard of proof that would apply at trial on the merits.

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 (Act), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, are designed in part "to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance." N.J.S.A. 11A:1-2(c). An employee may be subject to discipline for several reasons, including chronic or excessive absenteeism or lateness, , N.J.A.C. 4A:2-2.3(a)(4), and for failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C.4A:2-2.3(a)(11). Major discipline for such an infraction may include removal, disciplinary demotion, or suspension or fine for more than five working days at any one time. N.J.A.C. 4A:2-2.2(a). In an appeal of major disciplinary action, such as involved here, the burden is on the appointing authority to establish by a preponderance of the credible evidence that the employee is guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962).

The Act protects classified employees from arbitrary dismissal and other onerous sanctions. See, In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), adopted, Comm'n. (September 3, 2014), https://njlaw.rutgers.edu/collections/oal/; Investigators Ass'n v. Hudson Cty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. "The evidence presented and the credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained; or whether there are mitigating circumstances, which . . . must be taken into consideration when determining whether there is just cause for the penalty imposed." Shavers-Johnson, Initial Decision, https://njlaw.rutgers.edu/collections/oal/. Depending upon the incident complained of and the employee's past record, major discipline may include suspension or removal. See, West New York v. Bock, 38 N.J. 500, 519 (1962) (describing progressive discipline).

As the Merit System Board (predecessor to the Commission) has long maintained, "the OAL and the Board are not strictly bound by the terms set forth in [a Last Chance Agreement], since neither entity was a party to the settlement." In re Collins-Cole, CSV 7601-00, Final Decision (February 3, 2003), http://njlaw.rutgers.edu/collections/oal. However, a Last Chance Agreement in which the parties agree to a penalty for a subsequent offense is "a significant factor to be considered, along with . . . prior disciplinary history, when determining the appropriate penalty" for that subsequent offense. In re King, CSV 11696-08, 2009 N.J. AGEN LEXIS 904 at *6, Final Decision (March 25, 2009).

Respondent has charged appellant, as a result of her alleged failure to follow JJC policies regarding sick leave, administrative leave and FMLA/FLA, with chronic or excessive absenteeism or lateness in violation of N.J.A.C. 4A:2-2.3(a)(4); and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically violation of DL & PS Sick Leave Policy 5-2019. If the charges against appellant are sustained, the appropriate penalty will be determined with due consideration of the Settlement and Last Chance Agreement she entered with respondent on June 27, 2021.

Chronic or Excessive Absenteeism

A civil service employee may be subject to discipline, including removal, for chronic or excessive absenteeism or lateness. 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. at 522. 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.

However, approval of an absence shall not be unreasonably denied. N.J.A.C. 4A:2-6.2(b). In Cumberland County Welfare Board v. Jordan, 81 N.J. Super. 406 (App. Div. 1963), a classified employee was initially granted a leave of absence and while still hospitalized, applied for an extension of that leave (without pay). Although the appointing authority had discretion to deny her application, the Civil Service Commission correctly found the denial to be an abuse of discretion under the circumstances. Cf. In re Bishop,

2009 N.J. Super Unpub. LEXIS 152 (App. Div. 2009) (removal of incarcerated employee upheld for excessive absenteeism even though employer had notice of incarceration unrelated to employment).

Considering the facts stated above in the light most favorable to appellant, there is some question as to whether she called out properly on dates she did not work prior to December 21, 2021. There is no dispute however, that appellant failed to call out and did not report for work on December 24, 2021. While it is a close call, on its own without consideration of the many earlier instances by appellant of absenteeism, I **CONCLUDE** that the undisputed evidence of a single date on which appellant failed to report to work is not sufficient for respondent to meet the burden of proving by a preponderance of the evidence that appellant violated N.J.A.C. 4A:2-2.3(a)(4), chronic or excessive absenteeism or lateness.

Other Sufficient Cause

There is no definition in the New Jersey Administrative Code for other sufficient cause; it is generally defined as all other offenses caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when "[r]espondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 09122-99, Initial Decision (February 22, 2006), adopted, Merit System Bd. (April 5, 2006), https://njlaw.rutgers.edu/ collections/oal/.

Respondent determined that sufficient cause charges are attributable to appellant for her alleged violations of DL & PS Sick Leave Policy 5-2019, quoted above. Considering again the facts stated above in the light most favorable to appellant, there is no dispute that after December 21, 2021, the date she was approved for FMLA leave::

- Between December 26 and 31, 2021, appellant took four days of FMLA time but she was approved for intermittent FMLA leave of no more than three days each week;

- Appellant was required to notify respondent that she was using FMLA time when she called in to say she would not be working and she failed to do so on December 23 and 25, 2021; and

- Appellant was required to submit medical documentation upon her return to work, on January 8, 2022, and she did not submit her doctor's certification, dated January 4, 2022, until January 27, 2022.

Appellant is critical of JJC HR, stating that HR delayed processing her FMLA application and HR acted unreasonably in denying her COVID-19 leave application. But appellant offers no evidence to counter respondent's proof that once appellant's FMLA request was approved, December 21, 2021, she did not comply with the Leave Policy regarding the use of FMLA time off from work.

Appellant is also critical of the application by respondent of its COVID-19 leave policy, specifically the decision of respondent that appellant did not qualify under that policy. She argues against my accepting the conclusion that she was not eligible, even though respondent has not charged appellant with a violation of the COVID-19 leave policy. Further, appellant did not appeal respondent's decision that she was not eligible for COVID-19 leave and is therefore precluded from doing so here.

There is no dispute that on or about the date of her employment, March 16, 2019, appellant was provided the Leave Policy of which she is accused of violating. I **CONCLUDE** that appellant knew she was not eligible for COVID-19 leave and knew that she had exhausted her sick leave. I **CONCLUDE** that on at least four occasions, she failed to properly take FMLA leave and then failed to timely provide medical documentation supporting her use of FMLA leave. I **CONCLUDE** that respondent has met its burden of proof by a preponderance of the evidence that appellant violated N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, by her violations of the Leave Policy.

PENALTY

The Civil Service Commission's review of 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. 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. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. West New York v. Bock, 38 N.J. at 523-24. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4. Here, respondent urges application of the penalty agreed to by the parties, that being removal from employment, when they entered the Last Chance Agreement on June 22, 2021.

The New Jersey Supreme Court has established that an employee who enters into a last chance agreement is bound by its terms despite the fact that termination may be the agreed upon penalty for its violation. Watson v. City of East Orange, 175 N.J. 442 (2003) (despite some ambiguity, last chance agreement upheld where employee failed to meet his obligations under the agreement). The Supreme Court stated that last chance agreements are construed in favor of appointing authorities because to do otherwise "would discourage their use by making their terms meaningless." Id. at 445 citing Golson-El v. Runyon, 812 F.Supp. 558, 561 (E.D.Pa.) (while the penalty appeared harsh in relation to the infraction given the employee's medical condition, the court should not reinterpret the terms of the last chance agreement that the employee voluntarily entered and instead, must abide by its terms and consequences).

In the Last Chance Agreement at issue here, appellant agreed to "strictly adhere" to the JJC Leave Policy. She presented no evidence that she was coerced into signing; she signed the agreement with "full understanding [of] and agreement" to all the terms of the agreement and she was represented in settlement discussions by her union. I **CONCLUDE** the Last Chance Agreement is clear as to its requirements and as to the consequences of a violation and is enforceable.

The record reflects that appellant's conduct was not in compliance with the Last Chance Agreement by her failure to comply with the JJC Leave Policy, specifically with respect to her use of FMLA leave. I **CONCLUDE** that the penalty of removal from employment is appropriate and should be **SUSTAINED**.

ORDER

For the reasons stated above, I hereby **ORDER** the motion of respondent for summary decision in its favor is **GRANTED** and I hereby **ORDER** that the penalty of removal from employment imposed by respondent against appellant is **AFFIRMED** and the appeal of appellant is **DENIED**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, 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.

December 7, 2022
DATE

Tricia M Caliguire
TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/nn