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Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 03965-21

AGENCY DKT. NO. 2021-1449

**IN THE MATTER OF ALEXIS ANDERSON,  
NEW JERSEY DEPARTMENT OF  
CHILDREN AND FAMILIES.**

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**Alexis Anderson, appellant, pro se**

**Jalyssa Ivy, Employee Relations Officer, for the New Jersey Department of  
Children and Families, pursuant to N.J.A.C. 1:1-5.4(a)(2)**

Record Closed: October 14, 2022

Decided: July 12, 2023

BEFORE **JEFFREY N. RABIN, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Alexis Anderson (appellant or Anderson), appeals a twenty-day suspension for 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) (7) Neglect of Duty; and N.J.A.C. 4A:2- 2.3(a)(12) Other Sufficient Cause.

## **PROCEDURAL HISTORY**

A Final Notice of Disciplinary Action (FNDA) was issued on March 18, 2021, charging her with N.J.AC. 4A:2-2.3(a)(l) Incompetency, Inefficiency or Failure to Perform Duties; N.J.AC. 4A:2- 2.3(a)(2), Insubordination; N.J.AC. 4A:2-2.3(a) (7) Neglect of Duty; and N.J.A.C. 4A:2- 2.3(a)(12) Other Sufficient Cause, pursuant to which she served five days out of the twenty day suspension. On or about March 21, 2021, appellant filed an appeal with the Civil Service Commission, Division of Appeals and Regulatory Affairs, who transmitted the matter to the Office of Administrative Law (OAL), where it was filed on May 5, 2021, as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Hearings were held via Zoom, due to the continuing Covid-19 pandemic protocols, on July 11 and July 12, 2021. Respondent's summation brief was received on October 14, 2022. After delays caused by the pandemic, the date for issuance of this Initial Decision was extended nunc pro tunc until July 17, 2023.

## **FACTUAL DISCUSSION**

### **Testimony for respondent**

**Jason Clark** was one of appellant's direct supervisors from 2017 thru 2019. He has been employed as an Investigator 2, and was currently an Assistant Regional Supervisor, supervising four Institutional Abuse Investigations Unit (IAIU) investigators. He worked with the investigators throughout child abuse and neglect investigations.

Appellant was an Investigator 1 Child Protection, whose primary duties included conducting investigations of allegations of abuse or neglect involving children within institutions. She was assigned eight cases per month. She had to make contact with the individuals and facilities, and complete and submit thorough investigative reports in a timely manner, including specific documentation set out in the IAIU policy. She was responsible for performing her job independently, complying with DCF and IAIU policies, and acting professionally in her interactions with the public.

Appellant often failed to include required documentation, and her reports needed to be revised numerous times. This caused delays in the case review process. Appellant's investigative interviews did not comply with IAIU policies. As appellant was a veteran IAIU investigator, the expectation was that she would be compliant with their guidelines yet demonstrated behavior and performance contrary to DCF IAIU policies or supervisor's expectations. By example, her reports were to be submitted for supervisory review on the forty-fifth day, so as to close the investigation file by the sixtieth day. However, appellant often submitted cases to him close to the sixtieth day, leaving him insufficient time to review the cases and return the reports to appellant for corrections in time to meet the sixty-day requirement. Per Exhibit R-7, of forty-four appellant files checked by Clark, twenty-nine reports were handed in fifty days or longer, eleven were submitted fifty-five days or longer, and twenty-four of the forty-four files closed in more than sixty days.

Appellant's investigations often were not thorough. Clark went through specific cases, such as those in Exhibits R-8, R-9 and R-11, as examples of appellant's failure to comply with department policies. She often failed to comply with the policy regarding the order of interviews, often interviewing parties to an investigation out of order or failing to make diligent efforts to contact and interview all necessary parties within the policy timeframes. Appellant also failed to document pertinent case information in New Jersey Spirit (NJS) system within the required five business days. NJS was the official case record used by DCF. Appellant also failed to be diligent in meeting the requirement of updating a case every seven days after an interview. This resulted in gaps of inactivity in appellant's cases. IAIU guidelines required ongoing work on their investigations in order to comply with policy in a timely manner.

Clark gave appellant direction to help her catch up on her caseload, but she did not consistently comply with Clark's directives, and did not communicate to him any issues causing her to not comply with official guidelines. Investigators like appellant received field training on how to complete and document investigations so as to comply with DCF policies and procedures. Yet complaints were made to the IAIU Management team regarding appellant's behavior when engaging with public and facility employees.

Clark testified as to a letter received from the administrator of a facility that appellant had investigated, which discussed appellant's poor attitude towards the facilities staff during her investigation. (Exhibit R-12.)

These concerns of Clark's were reflected in appellant's 2018- 2019 Performance Assessment Review (PAR) (Exhibit R-2), as was a development plan to help her. Appellant reviewed the Interim PAR, yet her performance did not improve by the time the Final PAR was complete. She did not meet the performance goals and failed her Final PAR.

### **Testimony for appellant**

None.

### **Credibility**

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. 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 witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9<sup>th</sup> Cir. 1963). Also, "[t]he 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).

**Jason Clark** was a knowledgeable witness who displayed great familiarity with department policies. He had direct supervision of appellant and personally knew her work quality during this time period. He remained calm on cross-examination, despite appellant seemingly blaming him (and interviewees) for her failure to comply with report time frames. I ultimately found Clark to be a credible witness.

**LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

The issue is whether the respondent acted properly in assessing a twenty-day suspension without pay.

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6 and N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). 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, including removal. 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).

Appellant's filing of an appeal required the OAL to conduct a hearing de novo to determine the appellant's guilt or innocence, as well as the appropriate penalty, if the charges were sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent had the burden of proof to establish, by a fair preponderance of the credible evidence, that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence was found to preponderate if it established the reasonable probability of the fact alleged and generated a reliable belief that the tendered hypothesis, in all human likelihood, was true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds; Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

Appellant has been charged with 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) (7) Neglect of Duty; and N.J.A.C. 4A:2- 2.3(a)(12) Other Sufficient Cause.

Respondent has credibly shown that appellant repeatedly failed to include required documentation in her reports; submitted reports which needed to be revised numerous times, leading to delays; failed to comply with department guidelines requiring that her reports be submitted for supervisory review within forty-five days; failed to comply with department guidelines that her investigation files be completed and closed within sixty days; failed to always submit thorough reports; failed to comply with the policy regarding the order of interview; failed to make diligent efforts to contact and interview all necessary parties within the policy timeframes; failed to document pertinent case information into the NJS system within the required five business days; failed to update her cases every seven days after an interview; failed to comply with her supervisor's directives for addressing these failings; failed to communicate with her supervisor as to any obstacles she encountered that kept her from being in compliance; and displayed unacceptable behavior towards facility staff she was investigating.

I **CONCLUDE** that these failures met the statutory definitions of inefficiency and failure to perform duties, set forth in N.J.A.C. 4A:2-2.3(a)(1), and Other Sufficient Cause, set forth in N.J.A.C. 4A:2- 2.3(a)(12). I **CONCLUDE** that appellant's failure to comply with her supervisor's directives for addressing her shortcomings, and failure to communicate with her supervisor as to any obstacles preventing her from complying with departmental guidelines, met the definition of insubordination set forth in N.J.A.C. 4A:2- 2.3(a)(2).

Respondent was correct in arguing that neglect of duty may arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connoted a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" signified conformance to the "legal standard of reasonable conduct in light of the apparent risk." Wytupeck v. Camden, 25 N.J. Super 450,461 (1957). As stated herein, appellant failed to perform and act as required by agency policy and procedure, and such failures clearly met the definitions of "neglect of duty."



I **CONCLUDE** that appellant's failure to include required documentation in her reports, failure to comply with department guidelines requiring timelines for reports, failure to comply with the policy regarding the order of interview, failure to make diligent efforts to contact and interview all necessary parties, failure to document pertinent case information in the NJS system within the required five business days, failure to update her cases every seven days after an interview, and her failure to behave in an acceptable manner towards facility staff she was investigating, all met the definition of neglect of duty set forth in N.J.AC. 4A:2-2.3(a) (7).

I therefore **CONCLUDE** that respondent met its burden of proving by a preponderance of the credible evidence those charges set forth in the FNDA.

#### **PENALTY**

Having met its burden of proving the above-referenced violations, this Court may then look to whether respondent acted properly in applying discipline against appellant in the form of a twenty-day suspension.

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. West New York v. Bock, 38 N.J. 500, 523-24 (1962). Factors determining the degree of discipline include the employee's prior disciplinary record and the gravity of the instant misconduct. However, progressive discipline is not a fixed and immutable rule to be followed without question. In re Carter v. Bordentown, 191 N.J. 474 (2007). The determination of a penalty is subjective and follows no specific formula. One may consider the seriousness of the infraction, the length of employment, the amount of training received, as well as prior disciplinary matters. West New York v. Bock, 38 N.J. at 523-24.

Respondent's documentation, including a previous PNDA and respondent's summary brief, clearly established that appellant had previous disciplinary issues on her record. She had executed three settlement agreements, in 2014, 2016, and 2017, for

similar or the same violations of N.J.A.C. 4A:2-2.3(a)1, 2, 3, 4, 6, 7, and 12, as well as being issued a FNDA for a five-day suspension issued on July 29, 2013 (which was reduced to a three-day penalty pursuant to an appeal).

Having served a three-day suspension in 2013, and six, ten and fifteen-day suspensions, respectively, in 2014, 2016, and 2017, it is clear that respondent has imposed progressive discipline with regard to appellant. As such, I **CONCLUDE** that a twenty-day suspension in this matter complied with statutory guidelines for progressive discipline and is appropriate in light of the numerous repeated violations committed by appellant.

### **DECISION AND ORDER**

I hereby **ORDER** that the charges 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) (7) Neglect of Duty; and N.J.A.C. 4A:2- 2.3(a)(12) Other Sufficient Cause, be **SUSTAINED**.

I **FURTHER ORDER** that respondent's imposition of a twenty-day suspension be **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.**

July 12, 2023

DATE

  
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JEFFREY N. RABIN, ALJ

Date Received at Agency:

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Date Mailed to Parties:

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JNR/nn

**APPENDIX**

**WITNESSES**

**For appellant**

None

**For respondent**

Jason Clark

**EXHIBITS**

**For appellant**

A-6 (Identified as "P-6") Email chain and childcare webpage

**For respondent**

- R-1 DCF Clark summary, dated May 10, 2019
- R-2 Employee PAR form 2018-19
- R-3 DCF Policy Manual, effective July 22, 2013
- R-4 DCF Policy Manual, effective October 21, 2013
- R-5 2018 emails
- R-6 2019 emails
- R-7 Data Verification Log
- R-8 Investigation Summary (1)
- R-9 Investigation Summary (2)
- R-10 Investigation Summary (3)
- R-11 Investigation Summary (4)
- R-12 Precious Angels' letter
- R-13 PNDA, dated May 22, 2013

**BRIEFS**

**For appellant**

None

**For respondent**

Discovery documentation, including FNDA

Post-hearing Brief, dated October 14, 2022