



STATE OF NEW JERSEY

In the Matter of Christopher
Saunders, Vineland Developmental
Center, Department of Human
Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2022-2083
OAL DKT. NO. CSV 01896-22

ISSUED: OCTOBER 11, 2023

The appeal of Christopher Saunders, Repairer, Vineland Developmental Center, Department of Human Services, removal and resignation not in good standing, effective September 23, 2021, on charges, was heard by Administrative Law Judge Kathleen M. Calemno (ALJ), who rendered her initial decision on September 8, 2023. Exceptions were filed on behalf of the appellant.

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, the Civil Service Commission (Commission), at its meeting of October 11, 2023, accepted and adopted the ALJ's recommendation to grant the appointing authority's motion for summary decision and uphold the removal and resignation not in good standing.

The Commission makes the following comments. The appellant's exceptions present arguments as to why the matter should proceed to a hearing similar to those presented to the ALJ. For the reasons set forth in the ALJ's initial decision, the Commission finds those arguments unpersuasive and do not present any material issues of fact that require this matter to proceed to a full hearing. In this regard, based on the facts in the record, the Commission finds that the appointing authority acted in a reasonable fashion in this matter.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing and resigning the appellant not in good standing was justified. The Commission therefore affirms that action and dismisses the appeal of Christopher Saunders.

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 11TH DAY OF OCTOBER, 2023



Allison Chris Myers
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. CSV 01896-22

AGENCY DKT. NO. 2022-2083

**IN THE MATTER OF CHRISTOPHER
SAUNDERS, DEPARTMENT OF HUMAN
SERVICES, VINELAND DEVELOPMENTAL
CENTER.**

Arnold Shep Cohen, Esq., for appellant, Christopher Saunders (Oxfeld Cohen, P.C., attorneys)

Achchana Ranasinghe, Deputy Attorney General, for respondent, Department of Human Services, Vineland Developmental Center (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: July 27, 2023

Decided: September 8, 2023

BEFORE KATHLEEN M. CALEMMO, ALJ:

STATEMENT OF THE CASE

Appellant Christopher Saunders (Saunders) appeals the Department of Human Services (DHS), Vineland Development Center's (Vineland) Final Notice of Disciplinary Action (FNDA) sustaining the charges of violation of N.J.A.C. 4A:2-6.2(c) (Resignation Not in Good Standing) and N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Causes)—specifically, violations of Section A.O. 4:08; A-3 (Abandonment of job as a result of absence from work as scheduled without permission for five consecutive days), Section A.O. 408; C-9.1 (Insubordination, intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor), and A.O. 4:08; E-1.1 (Violation of a rule, regulation policy, procedure, order or administrative decision).

PROCEDURAL HISTORY

On October 7, 2021, a Preliminary Notice of Disciplinary Action (PNDA) was issued and mailed to the appellant via regular and certified mail. Saunders requested a hearing which was held on January 27, 2022. On February 16, 2022, Vineland issued a FNDA, sustaining all charges and removing Saunders effective September 23, 2021. Saunders appealed. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on March 14, 2022, as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

After the matter did not settle at the OAL, it was assigned to me on July 8, 2022. I scheduled the first conference call on July 15, 2023, but the matter was adjourned so Saunders could obtain an attorney. At the January 26, 2023, telephone conference, I set a briefing schedule for respondent's motion for summary decision. After those deadlines were not met, I scheduled the matter for a hearing for August 23, 2023, and August 29, 2023.

On July 5, 2023, respondent filed the instant motion for summary decision, letter brief, and Certification of Counsel (R. Cert.) with attached Exhibits A-R. On July 19, 2023, appellant filed an opposition brief with a Certification of Christopher Saunders (A. Cert.) and attached Exhibits 1 through 14. On July 27, 2023, respondent filed a letter brief in reply.

FACTUAL DISCUSSION AND FINDINGS

Based on the undisputed documents presented by the parties and for purposes of deciding the motion for summary decision, I **FIND** the following **FACTS**:

1. Appellant was employed by Vineland as a Repairer in the Electric Shop. (A. Cert., par. 1.)

2. On July 1, 2021, Saunders went on a Medical Leave of Absence from his job and submitted a request for medical leave on July 8, 2021. (A. Cert., par. 2 and 3.) By letter, dated July 9, 2021, Marilyn Colon-Zamot, Human Resource Officer for Vineland notified Saunders that his leave request was approved from July 1, 2021, through July 14, 2021, with an estimated return to work on July 15, 2021. The letter contained the following statement in bold: **“You must report to the Human Resources Office with a doctor’s note clearing you to return to full duty without restrictions 48 hours prior to returning.”** (R. Cert., Ex. D.)

3. When Saunders did not return to work on July 15, 2021, Vineland sent him a letter, dated July 20, 2021, allowing him to respond in writing and explain the nature of his continued absence to avoid the consequences of a job abandonment. (A. Cert., Par. 4 and R. Cert, Ex. 2.)

4. On July 23, 2021, Saunders submitted a note from his physician, asking that Saunders be excused “pending evaluation by a specialist” with a tentative return date of August 2, 2021. (A. Cert., Ex. 3.) By letter dated July 26, 2023, Vineland approved the extended leave of absence from July 15, 2021, until August 2, 2021. (R. Cert., Ex. F.)

5. By letter dated August 12, 2021, Vineland approved another extension of Saunder’s leave from August 3, 2021, through August 24, 2021, based on a similar note from Saunder’s doctor dated August 10, 2021. (A. Cert. Ex. 5, and R. Cert., Ex. G.)

6. By letter dated August 23, 2021, Vineland approved another extension from August 25, 2021, through September 3, 2023, based on another similar medical note from Saunders' doctor dated August 20, 2021. (A. Cert., par. 10, Ex. 7, and R. Cert., Ex. H.)

7. By letter, dated September 9, 2021, Vineland approved an extension of Saunder's leave from September 4, 2021, through September 22, 2021. This letter contained the following statement in bold and highlighted: "**Unfortunately, due to operational needs, management will not be able to grant you additional extensions, on your current leave of absence beyond September 22, 2021, until you established eligibility and entitlement under the applicable law.**" (R. Cert., Ex. I.) Saunders acknowledged that the September 9, 2021, letter informed him that no more extensions would be granted. (A. Cert., par. 12 and 15.)

8. Saunders sent Vineland a medical note dated September 20, 2021, requesting his leave be extended until October 1, 2021. (A. Cert., par. 13, Ex. 10.) As stated in the medical note, Saunders was still waiting for an evaluation by a specialist, which had been the reason in the prior three letters.

9. By letter dated September 21, 2021, Vineland denied the extension based on the information provided in its letter of September 9, 2021. (R. Cert., Ex. J.) Vineland advised Saunders that as of September 23, 2021, his absence would be considered unauthorized if he did not return for duty. Id.

10. Saunders did not return to work on September 23, 2021.

11. By letter dated September 27, 2021, Vineland advised Saunders that his work attendance records reflected that he had been absent without permission since September 23, 2021. In the letter, Saunders was directed to contact the Human Resource Office within five days with documents explaining his absence. (R. Cert., Ex. K.) On October 1, 2021, Saunders hand-delivered his response. His justification for not returning to work was that he was waiting for his appointment on September 30, 2021, with a specialist and waiting to be cleared by his doctor to return to work. Saunders also submitted an appointment confirmation for an October 5, 2021, medical appointment. (A. Cert., Ex. 13.)

12. Saunders saw the medical specialist on October 5, 2021, and received a clearance letter to return to work on October 11, 2021, without restrictions. On October 6, 2021, Saunders submitted the medical clearance to Vineland. (A. Cert., par. 19 and Ex. 13.)

13. In an email dated October 6, 2021, Vineland acknowledged receiving Saunders' medical clearance for October 11, 2021, with no restrictions but decided to proceed with discipline for job abandonment. (R. Cert., Ex. N.)

14. On October 7, 2021, Vineland issued a PNDA to Saunders due to his absence without authorization since September 23, 2021. The incident that gave rise to the charges included the letter dated September 9, 2021, from Vineland's Human Resources Department which advised Saunders "that due to operational needs management would not be able to grant any additional extensions on your current medical leave of absence beyond 9/22/21 until you established eligibility and entitlement under the applicable law (Family and Leave Act (FMLA) of 1993.)". (R. Cert., Ex. A.)

15. Vineland issued a FNDA dated February 16, 2022 (R. Cert., Ex. B), sustaining the following charges:

N.J.A.C. 4A:2-6.2(c):

An employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for extension of leave shall not be unreasonably denied.

N.J.A.C. 4A:2-2.3(a)12: Other sufficient cause

A.O. 4:08; A-3: Abandonment of job as a result of absence from work as scheduled without permission for five (5) consecutive days.

A.O. 4:08; C-9: Insubordination, intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority, disrespect, or use of insulting or abusive language to supervisor.

A.O. 4:08; E-1.1: Violation of a rule, regulation, policy, procedure, order, or administrative decision.

LEGAL ANALYSIS AND CONCLUSION

Summary decision is the administrative counterpart to summary judgment in the judicial arena. N.J.A.C. 1:1-12.5 provides that summary decision should 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. In order to defeat a summary decision motion, the adverse party must respond by affidavits setting forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary hearing. Use of the summary procedure is aimed at the swift uncovering of the merits and either their effective disposition or their advancement toward a prompt resolution by trial. Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954).

The New Jersey Supreme Court encouraged trial-level courts not to refrain from granting summary judgment when the proper circumstances present themselves. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541 (1995). While cautioning that a judge should not weigh the truth of the evidence or resolve factual disputes at this early stage of the proceedings, the court clarified that when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. Id. at 540. Appellate courts recognize that “[a]n evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 120 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

I **FIND** that under the Brill standards this matter is appropriate for summary disposition. The allegations are supported by tangible evidence and there is no material

factual dispute. In their Certifications, the parties relied on the same documents to support their arguments.

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereunder. N.J.A.C. 4A:1-1.1 et seq. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a) and removal as set forth under N.J.A.C. 4A:2-6.2(c).

In an appeal concerning major disciplinary action, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11A:2-21. The burden is to establish by a preponderance of competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1982).

Appellant's contention is that his leave extensions and return-to-work medical authorization notes were treated inconsistently. In support of this contention, appellant argued that four of the five extensions were approved retroactively. It appears without dispute, that Saunders had not complied with providing timely medical notes to Vineland. He waited until Vineland sent letters reminding him that his absence was considered job abandonment before compliance, resulting in retroactive extensions. Appellant also contends that Vineland knew he needed to see a specialist for clearance before he could return, yet they pursued disciplinary charges knowing he had an appointment on October 5, 2021. As a result, Vineland's actions were misleading. Vineland requested information from Saunders justifying his failure to return to work and when Saunders supplied the information, Vineland discounted it even though they had previously accepted the same information. Appellant asserts that respondent's actions were unreasonable and contrary to N.J.A.C. 4A:2-6.2(c) which state that a request for an extension of leave shall not be unreasonably denied.

Saunders was charged with violation of N.J.A.C. 4A:2-6.2(c), which states in pertinent part:

- (a) If an employee resigns without complying with the required notice in N.J.A.C. 4A:2-6.1, he or she shall be held as having resigned not in good standing.
- (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. Approval of the absence shall not be unreasonably denied;
- (c) An employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for extension of leave shall not be unreasonably denied.

With the above in mind, it is undisputed that Saunders was an employee at Vineland on September 9, 2021, when his last medical leave was approved. While four extensions had been granted, this was the only letter that advised Saunders that “due to operational needs, management will not be able to grant you additional extensions.” (R. Cert., Ex. I.)

Appellant would have me ignore the language in the September 9, 2021, letter on the basis that his retroactive requests had been granted in the past, and that Vineland’s actions were misleading. However, a closer look at the extension letters established that any reliance by Saunders was misplaced. The July 9, 2021, Leave of Absence Approval letter noted that Saunders had been granted leave under the Federal Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 et seq. Provided that Saunders would return to work by July 15, 2021, he would have used 26 FMLA days. (R. Cert., Ex., D.) By letter dated August 12, 2021, Saunders was again granted FMLA leave, which extended his FMLA days to 55. (R. Cert., Ex., G.) Although Vineland also approved a request to extend Saunders medical leave of

absence by letter dated August 23, 2021, this letter also advised Saunders that he had reached the end of his entitlement under FMLA. (R. Cert., Ex., E.)

As you have requested, your extension has been approved from August 25, 2021, through September 3, 2021, without pay. This leave will be designated as FMLA leave under the Federal Family and Medical Leave Act, 29 U.S.C. 2601 et seq. until August 31, 2021, when you will reach the end of your entitlement; the remainder of your leave shall be considered a personal medical leave of absence. Please be advised, the approval of personal medical leaves of absence are discretionary and subject to management approval. Therefore, until you re-establish FMLA entitlement, any future leave requests may or may not be approved.

[Id.]

By the final extension, approved by letter dated September 9, 2021, Saunders no longer had any FMLA eligibility. Vineland granted him a personal leave but also informed him that "due to operational needs" management would not grant him any additional extensions. (R. Cert., Ex., I.) Without FMLA eligibility, Saunders' future leave requests were within the discretion of management. Although Saunders had been absent without permission since September 23, 2021, the only explanation he presented to Vineland was in a letter dated October 1, 2021:

I was awaiting my appointment on September 30, 2021, with a specialist.
I was waiting to be cleared by my doctor to return to work.

[A. Cert., Ex., L)]

It is undisputed that Saunders submitted three previous letters dated July 23, 2021, August 10, 2021, and August 20, 2021, from Cooper Family Medicine which contained the same basic information as above. (A. Cert, Ex.3, 5, and 7.) When Vineland rejected the medical note dated September 20, 2021, which was in the same format as all the others, Saunders argued he was misled. (A. Cert, Ex.9.) The opposite was true. Vineland showed leniency in accepting and applying retroactive leave approvals. They also showed patience when Saunders submitted the same excuse with no other justification on three previous occasions. Their willingness to extend such courtesies to their employee should not be held

against them. Vineland acted within its discretion when Saunders failed to produce adequate information justifying his absence without authorization since September 23, 2021.

For the reasons cited above, I **CONCLUDE** that the respondent met its burden of proving the charges of N.J.A.C. 4A:2-6.2(c) - Resignation Not In Good Standing.

The charge of Other Sufficient Cause (N.J.A.C. 4A:2-2.3(a)12 is generally defined as all other offenses caused and derived from the other charges against appellant. The "other sufficient cause" set forth in the preliminary and final notices of discipline are Policy A.O. 4:08-A3 (Abandonment of job as a result of absence from work as scheduled without permission for five consecutive days) and A.O. 4:08-E1-1 (Violation of a rule, regulation, policy, procedure, order or administrative decision). It is undisputed that Saunders' approved leave of absence expired on September 22, 2021. Between September 23, 2021, and October 7, 2021, Saunders was absent for a total of eleven consecutive business days. On August 18, 2017, Saunders indicated that he had been provided with documents and materials explaining Vineland's Administrative Order 4:12 (FMLA & FLA), and Time Away from Work for Illness or Injury for Employees – Fact Sheet. (R. Cert., Ex. P, Q, and R.) Saunders had notice of Vineland's policies and procedures.

Therefore, I **CONCLUDE** that respondent has met its burden of proving the charge of Other Sufficient Cause (N.J.A.C. 4A:2-2.3(a)12), specifically, violations of Section A.O. 4:08; A3 and Section A.O. 4:08; E1.1.

The FNDA also charged Saunders with a violation of A.O. 4:08; C-9.1 for insubordination. As no evidence to support this charge was provided, I **CONCLUDE** that this charge must be **DISMISSED**.

Based on the foregoing, I **CONCLUDE** that the respondent has demonstrated, and the record reflects by a preponderance of credible evidence that the appellant was absent for more than five consecutive days following an approved leave, without authorization. I also **CONCLUDE** that Vineland acted reasonably and within its discretion when it failed to accept Saunders' medical note dated September 20, 2021, as lacking the requisite detail

regarding the nature of Saunders' continued absence. The respondent's motion for summary decision reflecting his resignation not in good standing should be and is hereby **GRANTED**.

ORDER

It is hereby **ORDERED** that the Department of Human Services, Vineland Developmental Center's motion for summary decision is **GRANTED** and the removal of Christopher Saunders, not in good standing is hereby **AFFIRMED**.

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.

September 8, 2023
DATE



KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/mph/ser

APPENDIX

EXHIBITS

For appellant:

Certification of Saunders

- Exhibit 1 Letter dated July 9, 2021, granting leave of absence
- Exhibit 2 Letter dated July 20, 2021, regarding failure to return to work
- Exhibit 3 Letter dated July 23, 2021, from Cooper Primary Care
- Exhibit 4 Letter dated July 26, 2021, leave extension approval
- Exhibit 5 Letter dated August 10, 2021, from Cooper Primary Care
- Exhibit 6 Letter dated August 12, 2021, extending leave
- Exhibit 7 Letter dated August 20, 2021, from Cooper Primary Care
- Exhibit 8 Letter dated August 23, 2021, extending leave
- Exhibit 9 Letter dated September 9, 2021, final extension
- Exhibit 10 Letter dated September 20, 2021, from Cooper Primary Care
- Exhibit 11 Letter dated September 21, 2021, denying extension
- Exhibit 12 Letter dated September 27, 2021, regarding failure to return to work
- Exhibit 13 Letter dated October 1, 2021, explaining failure to return to work
- Exhibit 14 Email acknowledging receipt

For respondent:

Certification of Counsel

- Exhibit A PNDA
- Exhibit B FNDA
- Exhibit C Timeline - Office of Human Resources
- Exhibit D July 9, 2021, letter
- Exhibit E Letter sent to Saunders, dated July 20, 2021
- Exhibit F Letter sent to Saunders, dated July 26, 2021
- Exhibit G Letter sent to Saunders, dated August 12, 2021
- Exhibit H Letter sent to Saunders, dated August 23, 2021
- Exhibit I Letter sent to Saunders, dated September 9, 2021
- Exhibit J Letter sent to Saunders, dated September 21, 2021

- Exhibit K Letter sent to Saunders, dated September 27, 2021
- Exhibit L Letter from Saunders, dated October 1, 2021
- Exhibit M Email sent by Marilyn Colon-Zamot, dated October 5, 2021
- Exhibit N Email sent by Jennifer Rue on October 6, 2021
- Exhibit O Saunders time review sheets
- Exhibit P Policy regarding time away from work for illness
- Exhibit Q Sick leave policy
- Exhibit R Saunders' signed receipt of documents