



STATE OF NEW JERSEY

In the Matter of Muhammad
Gonzalez, Hudson County,
Department of Health and Human
Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-2931
OAL Docket No. CSV 04101-22

ISSUED: JANUARY 17, 2024

The appeal of Muhammad Gonzalez, Hospital Attendant, Hudson County, Department of Health and Human Services, removal, effective April 26, 2022, on charges, was heard by Administrative Law Judge Kelly J. Kirk (ALJ), who rendered her initial decision on November 24, 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 on January 17, 2024, adopted the ALJ's Findings of Facts and Conclusions and her recommendation to uphold the removal.

Upon its *de novo* review of the ALJ's thorough and well-reasoned 95-page initial decision as well as the entire record, including the exceptions filed by the appellant, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the testimony of the witnesses, as well as other documentary and video evidence. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission

has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appellant are not persuasive in demonstrating that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. In this regard, the ALJ made detailed credibility determinations and corresponding findings based on those determinations. Upon its review, the Commission finds nothing in the record or the appellant's exceptions to question those determinations or the findings and conclusions made therefrom.

Similar to its assessment of the charges, the Commission's review of the penalty is also *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. Regarding the penalty, by the ALJ stated:

Gonzalez has been employed by MPH since 2015 and his disciplinary history reflects that he was suspended for two days in 2017 for neglect of duty; suspended for forty-five days in 2019 for conduct unbecoming a public employee; and suspended for three months in 2020 for insubordination. (J-3.) Notwithstanding the already considerable disciplinary history, Gonzalez's conduct in February 2022 and March 2022 violated hospital policies, and was insubordinate and unbecoming a public employee. As credibly testified to by multiple witnesses, his behavior is of significant concern given that Gonzalez works with vulnerable psychiatric patients at MPH, and his failure to appear for an FFD exam—the rationale for which was clearly established—is indefensible. Accordingly, I **CONCLUDE** that Gonzalez's conduct in February 2022 and March 2022 unfortunately rendered him unsuitable for continuation in the position of psychiatric hospital attendant and warranted his termination.

The Commission wholeheartedly agrees that the appellant's actions in this matter fall well short of what is expected of a public employee and given the appellant's substantial history of major discipline, and in accordance with the tenets of progressive discipline, are more than deserving of removal from employment. As such, the Commission finds the penalty of removal neither disproportionate to the offense nor shocking to the conscious.

ORDER

The Civil Service Commission finds that the action of the appointing authority

in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Muhammad Gonzalez.

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 17TH DAY OF JANUARY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

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and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 04101-22

AGENCY REF. NO. 2022-2931

**IN THE MATTER OF MUHAMMAD GONZALEZ,
HUDSON COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES—MEADOWVIEW
PSYCHIATRIC HOSPITAL.**

Samuel Wenocur, Esq., for appellant Muhammad Gonzalez (Oxfeld Cohen, attorneys)

Nidara Y. Rourk, Assistant County Counsel, for respondent Hudson County (Donato J. Battista, County Counsel, attorney)

Record Closed: October 10, 2023

Decided: November 24, 2023

BEFORE KELLY J. KIRK, ALJ:

STATEMENT OF THE CASE

The Hudson County Department of Health and Human Services—Meadowview Psychiatric Hospital terminated hospital attendant Muhammad Gonzalez for incompetency, inefficiency, or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause.

PROCEDURAL HISTORY

Muhammad Gonzalez was served with Preliminary Notices of Disciplinary Action (PNDA) dated March 21, 2022, and amended April 1, 2022, for insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause, as a result of his conduct in February 2022 and March 2022. The County of Hudson held a hearing on April 20, 2022, after which it issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges of incompetency, inefficiency, or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause, and terminating Gonzalez's employment.

Gonzalez appealed, and the Civil Service Commission transmitted the contested case to the Office of Administrative Law (OAL), pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on May 20, 2022. The hearing was scheduled for September 9, 2022, and September 16, 2022, but was adjourned at appellant's request, with consent, due to a scheduling conflict. The hearing was rescheduled for November 2, 2022, and November 15, 2022. On October 20, 2022, appellant's attorney filed a motion to withdraw as counsel due to an inability to contact the appellant. Said motion was not opposed and was granted on October 28, 2022. Appellant appeared pro se for the November 2, 2022, hearing, at which time he requested an adjournment so that he could contact his former attorney. The hearing was adjourned, and by letter dated November 3, 2022, appellant's former attorney requested to resume representation of appellant, and requested, with consent, adjournment of the November 15, 2022, hearing date to allow time to discuss the case with appellant, exchange discovery, and prepare for the hearing. The hearing was rescheduled for January 30, 2023, and February 2, 2023. By letter dated January 5, 2023, appellant requested, with consent, adjournment of the hearing dates due to appellant's emergent personal matters. By email dated January 19, 2023, appellant agreed to waive back pay for the period between January 30, 2023, and the new hearing date, and the adjournment request was granted. The hearing was held on March 15, 2023, March 16, 2023, and March 29, 2023. Respondent wanted to obtain transcripts, so the parties agreed to submit post-hearing briefs on July 14, 2023. Appellant submitted his post-hearing brief on July 14, 2023, but respondent did not submit its post-hearing brief until October 10, 2023, so appellant was

permitted to submit a response. Appellant's response was submitted on October 17, 2023, on which date the record closed.

EVIDENCE AND FINDINGS OF FACT

Background

Muhammad Gonzalez testified on behalf of appellant. Acheampongmaa Edwin, Ernest Akwaboah, Diana Stevens, Bruno Anthony Martinez, Tonia Torres, Chinwe Okeke, and Virginia Flint-Montenegro testified on behalf of respondent. Based upon a review of the evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Gonzalez was hired at Meadowview Psychiatric Hospital (MPH) as a hospital attendant in 2015 and became full time in 2016. Beginning in July 2020, Gonzalez was out of work for approximately two and one-half years. When Gonzalez returned to MPH on February 22, 2022, he was required to attend retraining/reorientation before he could resume working with patients. His shift was from 3:00 p.m. to 11:00 p.m.

On February 22, 2022, and February 23, 2022, Gonzalez was scheduled only for training. Acheampongmaa Edwin has been the training coordinator at MPH since May 2015, and she conducts orientation and annual mandatory training on hospital policies and procedures, and trains staff in cardiopulmonary resuscitation (CPR), basic life support (BLS), crisis prevention, and Handle With Care. On February 22, 2022, she was conducting CPR and BLS training for a group of four, including Gonzalez, from 8:00 a.m. to 12:00 p.m. in the MPH multipurpose room. Current CPR certification is required, and Gonzalez's certification had expired while he was out of work. A video was utilized, which was intermittently stopped several times for practice modules. After the group training and lunch, Gonzalez reported to Edwin's office, where she conducted his individual training on hospital policies and procedures. Edwin specifically reviewed with Gonzalez Policy LD-009, Maintaining Professionalism in Patient Care, revised June 9, 2021. Per Policy LD-009, "[p]ersonal cell phones are not to be used in clinical and treatment areas or in front of patients for personal use or to listen to music" and "[a]ny exception may be approved by

the employee's supervisor." Additionally, per Policy LD-009, "[s]taff may only use their personal cell phones during work time during their two 15-minute breaks or meal times." (R-1.) Edwin also specifically reviewed with Gonzalez Policy LD-001, Code of Conduct, effective February 1, 2012. Policy LD-001 references conduct unbecoming a public employee, and the Code of Conduct includes, inter alia, the following: "[c]omply with the Hospital's Mission, Vision & Values and all Policies & Procedures"; "[c]reate and maintain a culture of safety and quality throughout the Hospital"; "[f]acilitate interdepartmental collaboration through open and respectful communication"; "[p]ractice teamwork within and across all disciplines"; "[a]ct in a professional manner"; "[p]ractice self-control in verbal and non-verbal communications"; "[m]aintain good and punctual attendance"; and "[a]ssert a positive attitude that fosters a professional work environment and effective teamwork." (R-1.) Additionally, per the Code of Conduct: "All individuals working at MPH must refrain from inappropriate behaviors that could undermine a culture of safety as they negatively impact on patient care and staff morale and create a hostile work environment." (R-1.) Such behaviors include but are not limited to, the following: intimidation; harassment and sexual harassment; retaliation and retribution; deliberate lack of cooperation; disrespectful language and behavior; intentionally degrading or demeaning comments; violence or threats of violence towards others; and persistent inappropriate behaviors, repeated threats of litigation and acts of slander and libel. (R-1.) Edwin reported her observations of Gonzalez during training to director of nursing (DON) Lois Pinta and assistant director of nursing Virginia Flint-Montenegro.

Ernest Akwaboah has been a nurse educator at MPH since 2017. He conducts orientation and mandatory training for the registered nurses and hospital attendants. Akwaboah provided individual training and re-orientation to Gonzalez on February 23, 2022, in Edwin's office from 8:00 a.m. until 4:00 p.m. The training consisted of a presentation and some hands-on training for equipment and physical restraints. On February 25, 2022, Akwaboah reported his observations of Gonzalez to Edwin, Pinta, and Flint-Montenegro via email. (R-2.)

Tonia Torres has been employed as a personnel aide at MPH for approximately one year, and she processed the paperwork for Gonzalez's return to work. On March 3, 2022, she asked Gonzalez to report to her office to complete a form to reactivate his

payroll. Gonzalez knocked on her office door and she and Gonzalez then walked to the multipurpose room to complete the paperwork. Torres's door is always locked, and as she unlocked her door upon her return from the multipurpose room, she saw ink smeared on the wall that had not been there before. Torres reported the ink to her supervisor, Lucy Rubino. MPH administrator Joanne Reilly checked the camera, and Gonzalez was observed wiping his hand down the wall and leaving the ink on the wall. Diana Stevens has been employed by MPH for eighteen years and is a senior personnel technician (supervisor of personnel). Reilly called Stevens to her office, and thereafter called Gonzalez to her office, at which time Reilly questioned Gonzalez about the ink. Gonzalez denied that he smeared ink on the wall, so Reilly and Stevens escorted Gonzalez to Torres's office, where they all observed the ink on the wall.

On March 4, 2022, Reilly requested via email a fitness-for-duty (FFD) exam for Gonzalez as follows:

Yesterday 3/3//22 [sic] R 15:13:57 Hours Muhammad Gonzalez on video can be seen walking down the 1st floor NW corridor to the . . . Assistant County Counsel Office to meet Tania [sic] Torres, Personnel, in order to sign required employee documents, including W4.

. . . .

While outside the office door, Mr. Gonzalez can be seen wiping his right hand down the wall, to the left of the office door. This left a corresponding smear of pen ink on the wall.

Mr. Gonzalez was brought down to the Administrator's Office, and was asked by the Administrator about the matter. Mr. Gonzalez denied having marked the wall. The Administrator and the Sr. Personnel Tech walked with Mr. Gonzalez down to the office, where Mr. Gonzalez re-enacted what he had done [sic] while waiting, then he turned over his hand and immediately began crying and offering to clean the wall, saying that he had a leaking pen which he had thrown out. As Administrator, I asked Mr. Gonzalez to please calm himself, and he sat down. I assured him he did not need to clean the wall. I asked him to first take care of himself, then take care of the patients and do his job and that he clearly was having a difficult time upon re-entry to his position. I asked him to look at me which he had great difficulty doing. After we

finished talking, we walked him down the hallway, and he was to return to work on the patient floor.

Mr. Gonzalez appears gaunt, fidgeting, shifting his stance, with poor eye contact. He keeps pulling his KN95 mask, and also had a wool hat which he was donning and taking off. He is extremely thin and seems to this writer very guarded and fragile.

For these reasons, and the behaviors observed and documented from other instances above, . . . I am asking Lois Pinta, DON of MPH Nursing to request a Fitness for Duty for this employee so that he can be psychiatrically and/or otherwise evaluated and possibly offered [the Employee Assistance Program (EAP)] so that he may be helped as determined necessary. He currently is clearly having a very difficult time conducting himself in an [sic] manner appropriate to a workplace, particularly as his role as Hospital Attendant to Psychiatric Patients.

[R-8.]

A Fitness for Duty Observation Checklist, dated March 4, 2022, completed by Pinta, with witness Flint-Montenegro, reflects the following observations of Gonzalez: shouting, crying, talkative, excited, hyperactive, erratic, fumbling, jerky, and nervous. Per a Fitness for Duty Form, dated March 7, 2022, Gonzalez was referred for a physician's evaluation by Pinta for the following: "hyperactive, inappropriate for the workplace, erratic behaviors, fidgety, unable to sit still, fragility, changes clothes, long sleeves, jacket, hat then taking them off (see attached)." (R-9.) The attachment to the Fitness for Duty Form states as follows:

Mr. Gonzalez returned to Meadowview Psychiatric Hospital for orientation on 2/22/22. Since his return to work he has presented with erratic behaviors. He is hyperactive, fidgety, hypervocal and easily loses his concentration. During a 4-hour CPR class he changed his seat multiple times, left the class to change his clothes, took his sneakers off, and ate multiple pieces of fruit.

Once on the units he repeatedly was reminded to wear his mask. He was seen with the mask on his head like a party hat, wearing the mask under his nose, around his chin or not wearing it at all. He continues to not follow the policy for wearing masks. He has been hyperactive on the units,

dancing in the dayroom, jumping up on the elevator ledge to do pull ups, walking around with his cell phone, and leaving the unit to go to the locker room to get his backpack.

On 2/24/22 Mr. Gonzalez worked the evening shift. That shift, the charge nurse lost her wallet. She asked all staff working on the Unit if they had seen her wallet including Mr. Gonzalez. Mr. Gonzalez followed the nurse into the patient pantry stating he didn't have her wallet and dropped his pants to show her he did not have it. He called the Director of Nursing the next day stating he cried all night and did not sleep because the nurse accused him of taking the wallet. He stated he could not work that day, and he had called his lawyer because he was so upset.

On Friday 3/4/22 he went to the personnel office and it was later seen that large ink marks were on the wall by the door of the office. CCTV footage was reviewed and it was seen that Mr. Gonzalez wiped the side of his hand on the wall. Mr. Gonzalez was brought down to the Administrator's Office and was asked by the Administrator about the matter. Mr. Gonzalez denied having marked the wall. The Administrator and the Sr. Personnel Tech walked with Mr. Gonzalez down to the office, where Mr. Gonzalez re-enacted what he had done [sic] while waiting, then he turned over his hand and immediately began crying and offering to clean the wall, saying that he had a leaking pen which he had thrown out.

Mr. Gonzalez is clearly having a difficult time upon re-entry to his position. I am requesting a fitness for duty exam so he can be evaluated and possibly be offered an EAP referral to assist him.

[R-9.]

Bruno Anthony Martinez has been employed as a registered nurse (RN) at MPH for approximately sixteen years. He is a charge nurse and supervises other staff, including hospital attendants. On March 17, 2022, he was working the 3:00-p.m.-to-11:00-p.m. shift on the fourth-floor acute unit with Gonzalez. Gonzalez was moved to the acute unit on February 26, 2022, after the February 24, 2022, incident with Julie Yao, RN. Chinwe Okeke (C.Okeke) has been employed as a nursing supervisor since 2016, and she supervises the nurses and hospital attendants at MPH. C.Okeke was contacted via telephone by Martinez about an incident that occurred between Gonzalez and Martinez on

the acute unit due to a money issue and Gonzalez playing music on his personal cell phone. C.Okeke spoke to Gonzalez briefly via telephone, but Gonzalez then showed up at C.Okeke's office. C.Okeke spoke with Gonzalez, but he wanted to speak to Flint-Montenegro. C.Okeke contacted Flint-Montenegro to notify her of the incident between Martinez and Gonzalez. While C.Okeke was still on the phone with Flint-Montenegro, Gonzalez arrived at Flint-Montenegro's office. Flint-Montenegro spoke to Gonzalez about the incident. Flint-Montenegro instructed Gonzalez to write a statement about what happened and advised him that she would speak with Martinez and investigate. Flint-Montenegro spoke with Martinez and instructed Martinez to write a statement about what happened. Flint-Montenegro thereafter spoke with Gonzalez again. Martinez wrote a statement, but Gonzalez did not. Martinez's written statement, dated March 17, 2022, stated as follows:

Attendant, M. Gonzalez, constantly coming to me, and harassing me, for \$50.00. I told him several times, no. But constantly [and] consistently refuses to accept that as a reason. After each attempt he begins to act out, turning on music, and refusing to listen to nurses. I refuse to allow anyone to try and strong arm me, or harass me on the unit of my job. At 350 [sic] pm M. Gonzalez came to the unit and said your [sic] stupid. I'm not comfortable with this attendant on my unit.

[R-4.]

C.Okeke's written statement, dated March 18, 2022, stated as follows:

Yesterday Thursday 3/17/22 at about 3:39pm, Charge nurse on the Acute unit, Anthony Bruno Martinez, called me and complained that Mr. Mohammed [sic] Gonzalez, HA was walking about on the unit with a speaker and phone in his pocket and playing music very loudly. He told him to stop the music while on the unit, but he refused to comply. I asked to speak to him and when he got to the phone, he became very loud telling me that he has done nothing wrong. I asked him if he could stop playing the music off his pocket, he said he will not because the music is not loud, stating, "The patients need the music." I told him to use the unit-provided radio/stereo to play music for the patients. He said when he uses that, "they complain that it is too loud." I advised him to reduce the

volume if it is too loud. He hung up the phone while I was still talking to him. About 2 minutes later, he showed up by the nursing office. He started talking very loudly. When I told him to reduce his voice he said "you have always known me to have a loud voice." He told me he does not need to listen to Anthony. I explained to him that he needs to follow the charge nurse's directions on the unit especially when his directions promote the patients' welfare and safety. Mohammed [sic] at this point could not let me say much, he interrupted me continuously at every word I said, he remained very verbally agitated, yelling, and threatening, saying he will sue the county. He stated he has had issues with Anthony, Lloyd, D.Okeke, and J. Yao. He stated that he does not get along with anyone, and with that he said he will have to talk to Virginia. While I was still talking to him, he got up and walked away to Virginia's office.

[R-7.]

By Notice of Immediate Suspension (NOIS), dated March 18, 2022, Gonzalez was notified that he was suspended from duty effective immediately to "maintain safety, health, order or effective direction of public services." (R-5.) Additionally, the NOIS states that the facts in support of the NOIS are as follows:

On this date 3/17/22 at approximately 3:50pm, the nursing supervisor on duty, Ms. Chinwe Okeke RN called me from the nursing office to report that hospital attendant Muhammad Gonzalez was having an issue with the acute unit nurse, Bruno Martinez. Ms. Okeke reported that she was trying to speak with Mr. Gonzalez in the nursing office, and that he would not allow her to speak and was yelling. As I was on the phone with Ms. Okeke, Mr. Gonzalez knocked on my office door. I asked him to explain what happened. He reported that Mr. Martinez yelled at him on the unit, in front of patients, because he was playing music. He also reported that Mr. Martinez brought up a personal loan he had given to Mr. Gonzalez, 2 and a half years ago. Mr. Gonzalez stated that Mr. Martinez should have pulled him aside to discuss this matter privately. Mr. Gonzalez reports that when he tried to report this issue with Ms. Okeke she would not let him speak. I advised him to please put all of what he reported to me in writing and that nursing leadership would investigate. I called Mr. Martinez to my office at approximately 4:00pm to gather additional information. He reported, and submitted a written statement of the same, that Mr. Gonzalez has been harassing

him to borrow money on several occasions. Mr. Martinez reported that he has declined to give Mr. Gonzalez money each time he has asked, and that when Mr. Gonzalez receives the negative response, he begins to "act out" and "turn on music" "refusing to listen to nurses." Mr. Martinez reports that he feels Gonzalez is trying to "strong arm" him, and that he does not feel comfortable working with him. He also reports that Gonzalez returned to the unit, presumably after my meeting with him, and called Martinez "stupid." In light of the events that have transpired today, as well as receipt of the written complaint from Mr. Martinez alleging harassment, I consulted with the Assistant Hospital Administrator and directed the nursing supervisors to reassign Mr. Gonzalez to the transitional unit. Mr. Gonzalez again reported to my office after the reassignment had been given, stating that he has "had problems" with one of the nurses on that floor and did not want to be moved. I explained to Mr. Gonzalez that currently, due to an active investigation of an incident between he [sic] and the nurse on the continuing unit, and the receipt of the complaint today, that I currently had no other assignment available to him. I advised him to complete his statement about today's events, and if he had any additional issues with the staff on his reassigned unit, that should be written up as well. I stressed the importance of Mr. Gonzalez submitting his statement before he left at the end of his shift today and he agreed.

At approximately 4:25pm, the nurse on the transitional unit, Dorothy Okeke called and reported that she also is not comfortable working with Mr. Gonzalez. Ms. D. Okeke had been a witness for the County in a prior disciplinary hearing against Mr. Gonzalez, and per Ms. D. Okeke, Gonzalez has been "telling the other staff that he brought me to court" and that he "keeps talking about me to the other staff." I asked Ms. Okeke to provide a written statement to me as well.

[R-5.]

Additionally, a handwritten note on the NOIS reflects: "The fitness for duty attachment is an indication that a suspension is necessary for the effective direction of governmental services." (R-5.)

On March 18, 2022, at 3:00 p.m., Torres met with Gonzalez and served him with the NOIS and supporting documents, and with an FFD-exam appointment notice. Gonzalez refused to sign the NOIS and FFD-exam appointment notice. (R-5; R-6.) The

FFD exam was scheduled for Monday, March 21, 2022, at 1:00 p.m. at Primary Care Medical Group, 450 Bergen Street, Harrison, New Jersey. (R-6.) Gonzalez did not go to the FFD exam.

On March 25, 2022, Gonzalez went to MPH to pick up his paycheck. Due to his suspension, he was not allowed inside. Stevens met Gonzalez outside MPH to have him sign for his paycheck. At that time, Gonzalez advised Stevens that he did not go to the March 21, 2022, FFD exam because he had no money or cell phone, and that he would go on March 28, 2022. Stevens advised Gonzalez that he could not walk in without an appointment, and that she would contact central personnel to see if his appointment could be rescheduled for March 28, 2022. Stevens went inside MPH and called central personnel. She explained what happened and was given a new appointment for March 28, 2022. While she was on the phone with central personnel, she received a call from the security guard outside who advised that Gonzalez had to leave but would call her in twenty minutes. Gonzalez never called Stevens. Stevens advised Gonzalez's union organizer of the new FFD-exam appointment for March 28, 2022, at 10:00 a.m. so that Gonzalez would not miss the appointment. Stevens emailed a summary of the incident to Pinta, Reilly, and Rubino. (R-3.)

The PNDA, dated March 21, 2022, and amended April 1, 2022, reflects the following specifications:

Mr. Gonzalez returned to work at Meadowview Psychiatric Hospital on February 22, 2022. Since that date his behavior has been erratic, his judgement impaired, and he has had difficulty interacting with multiple staff members.

During orientation on 2/22/22 and 2/23/22 he was hypervocal, had difficulty concentrating, frequently left class, changed his seat multiple times, left class to change his clothes, took his shoes off, and interrupted the lecturer. (see #1 email from E. Akwaboah nurse educator and Acheampongmaa Edwin training coordinator.)

PNDA Continuation

On 2/24/22 he was reminded by this writer twice to wear his mask on the unit and I explained COVID masking protocol only to return to the Unit and observed him again with his

mask off. Additionally, on 2/24/22 there was an incident with charge nurse Julie Yao RN where her wallet went missing (see #2 attached Julie Yao). Ms. Yao asked all the staff working that evening if they had seen her wallet. Mr. Gonzalez became agitated after he was asked and while in the patient pantry with Ms. Yao, he emptied his pockets and pulled his pants down to show her he did not have her wallet. Ms. Yao described his behavior as inappropriate, offensive, and threatening. On 2/25/22 Mr. Gonzalez called to tell this writer he felt violated by Ms. Yao, cried all night, didn't sleep, was calling out for his shifts, and had called his lawyer. I requested he write a statement as I was investigating what happened. (see #2 attached Investigation.) Ms. Yao has requested not to work with Mr. Gonzalez at this time.

On 3/3/22 Mr. Gonzalez reported to the Personnel Department to sign papers. After his departure it was noted that there were large ink marks on the wall outside the PD door. Mr. Gonzalez was called down to the Administrators office to discuss this matter. Mr. Gonzalez became tearful during the interview; he was fidgety and had poor eye contact. As a result of this and the previous issues outlined, a fitness for duty was requested.

On 3/17/22, the nursing supervisor on duty, Ms. Chinwe Okeke RN called Virginia Montenegro RN the Assistant Director of Nursing to report that Muhammad Gonzalez was having an issue with the Acute Unit Charge Nurse, Bruno Martinez. Ms. Okeke reported that she was trying to speak with Mr. Gonzalez in the nursing office, and that he would not allow her to speak and was yelling. Ms. Montenegro was on the phone with Ms. Okeke when Mr. Gonzalez knocked on the door. He reported that Mr. Martinez yelled at him on the unit, in front of patients, because he was playing music. He also reported that Mr. Martinez brought up a personal loan he had given to Mr. Gonzalez, two and a half years ago. Mr. Gonzalez stated that Mr. Martinez should have pulled him aside to discuss this matter privately. Mr. Gonzalez reports that when he tried to report this issue to Ms. Okeke, she would not let him speak. He was advised to put all of what he reported in writing and that nursing leadership would investigate. Ms. Montenegro called Mr. Martinez to her office to gather additional information. He reported, and submitted a written statement of the same, that Mr. Gonzalez has been harassing him to borrow money on several occasions. Mr. Martinez reported that he has declined to give Mr. Gonzalez money each time he has asked, and that when Mr. Gonzalez receives the negative response, he begins to "act out" and "turn on music" "refusing to listen to nurses."

Mr. Martinez reports that he feels Mr. Gonzalez is trying to "strong arm" him, and that he does not feel comfortable working with him. He also reports that Mr. Gonzalez returned to the unit, presumably after Ms. Montenegro's meeting with him, and called Mr. Martinez "stupid." Considering the events that have transpired that day, as well as receipt of the written complaint from Mr. Martinez alleging harassment, and in consultation with the Assistant Hospital Administrator, the nursing supervisor was directed to reassign Mr. Gonzalez to the Transitional Unit. Mr. Gonzalez again reported to Ms. Montenegro's office after the reassignment, stating that he has "had problems" with one of the nurses on that floor and did not want to be moved. It was explained to Mr. Gonzalez that currently, due to an active investigation of an incident between he [sic] and the charge nurse on the continuing unit (Ms. Yao), and the receipt of the complaint on that day from the charge nurse of the acute unit Mr. Martinez, no other assignment was available to him. He was requested to complete a statement about the day's events, and if he had any additional issues with the staff on his reassigned unit, that should be written up as well. It was stressed the importance of Mr. Gonzalez submitting his statement before he left at the end of his shift today and he agreed. At approximately 4:25pm on 3/18/22, the nurse on the transitional unit, Dorothy Okeke called and reported that she also is not comfortable working with Mr. Gonzalez. Ms. D.Okeke had been a witness for the County in a prior disciplinary hearing against Mr. Gonzalez, and per Ms. D.Okeke, Mr. Gonzalez has been "telling the other staff that she brought me to court" and that he "keeps talking about me to the other staff." Ms. Okeke was also asked to provide a written statement which she did. No statements were received from Mr. Gonzalez. (see attached #4).

....¹

Mr. Gonzalez's behavior since his return to MPH has been and continues to be erratic. He has difficulty making appropriate decisions and has exhibited poor boundaries with ... staff ... by requesting money from them. Mr. Gonzalez's behavior and demeanor negatively effects [sic] the therapeutic environment established by MPH to safely treat patients. He has violated multiple Policy's [sic] LD-001 Code of Conduct, LD-009 Maintaining Professionalism in Patient Care, and²

¹ Incident omitted because the FNDA reflects that the County did not prove those allegations.

² Omitted because the FNDA reflects that the County did not prove those allegations.

Mr. Gonzalez is unfit to care for psychiatric adult patients. His lack of professional conduct and poor boundaries creates an exploitative and unsafe environment for the patients and staff.

We feel it is in the best interest of all parties involved, most especially the patients, if he were terminated from work at the Meadowview Psychiatric Hospital.

Mr. Gonzalez returned to work at Meadowview Psychiatric Hospital on February 22, 2022. Since his return, he was observed to be hyperactive, fidgeting, erratic, with gaunt-like appearance. He was referred to fitness for duty by the Director of Nursing and was given, in writing, an appointment on March 21, 2022 at 1PM. Mr. Gonzalez failed to report as scheduled.

On March 25, 2022 at 10AM, a Loudermill Hearing was scheduled, via Zoom, which Mr. Gonzalez's [sic] was notified of the date and time and did not attend. At approximately 1PM that same date, Mr. Gonzalez reported to Meadowview to retrieve his paycheck. He spoke with Senior Personnel Technician, Ms. Diana Stevens, and advised her that he was unable to make his fitness for duty appointment due to no transportation/lack of funds. He advised Ms. Stevens that he would go on Monday 3/28/22. Ms. Stevens asked Mr. Gonzalez to wait briefly so that she could obtain an appointment time for him on Monday 3/28/22. Security notified Ms. Stevens that Mr. Gonzalez left Meadowview stating he would call her in 20 minutes. Mr. Gonzalez did not call Ms. Stevens as he stated he would. Ms. Stevens then communicated the date and time of Mr. Gonzalez's new appointment for Fitness for Duty to 1199J Union Leader Hassan Malone as Gonzalez failed to provide contact information to the hospital since his return. Mr. Gonzalez failed to report for his appointment on Monday 3/28/22.

[R-10.]

The FNDA reflects that the charges of incompetency, inefficiency, or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause were sustained, and that Gonzalez's employment was terminated. (J-1.)

Testimony

Acheampongmaa Edwin

Gonzalez's behavior was erratic during CPR and BLS training. He was fidgeting and shifting around a lot in his seat, changing seats, and donning and doffing his shoes. No one else commented on the temperature, but Gonzalez said he was hot and needed to go change, which she allowed. When he returned, she commented that he did not look any different, but he said that he had been wearing two pairs of pants. Gonzalez had outbursts where he was directing comments at the video as it was playing. After lunch she and Gonzalez sat side-by-side in her office to go over hospital-wide policies, including, but not limited to, professionalism, patient care, and code of conduct. Gonzalez nodded that he understood and sometimes repeated things she said, but he sometimes fell asleep until she repeated his name and then he would wake up and they would go over policies again. Gonzalez talked about personal things, including his life, family, and marriage, and about how he was set up by the hospital and coworkers who did not like his interactions with patients and who are out to get him, and about how he is a good worker, good with patients, and that patients love him, and he was the only one who properly cared for patients. Cell phones are only to be used at lunch time and break time and never when working with patients because it can trigger patients and cause employees to not pay attention to patients.

Ernest Akwaboah

During training, Gonzalez was hypervocal—talking consistently—and sometimes asked questions not relevant to the topic being discussed. When asked a simple question, Gonzalez brought up irrelevant topics like why he had been out of work, and he repeatedly stated that he been treated unfairly, that he did not do anything wrong, that they are just after him, that patients and everyone at the hospital love him, and that he does his work and goes home. It was distracting and prolonged the training. Akwaboah observed some minimal hyperventilation or rapid breathing, shaking, an inability to sit still, and loss of concentration. Gonzalez persisted in talking for such an extended period that Akwaboah had to tell him that they needed to continue with training. Gonzalez sometimes got up and

stood for a bit and sometimes requested to step out to get water. There were some updated, changed policies that he explained to Gonzalez. Gonzalez constantly challenged and disputed the policies and brought up what he thought was better. He appeared to not accept the new policies. Gonzalez made comments like "this is not realistic," "it is not practical to the floor," "this hasn't worked," or "I have been working here this way." He had previously trained Gonzalez, at which time Gonzalez was able to present himself appropriately.

Diana Stevens

While outside Torres's office, Reilly again asked Gonzalez about the ink and he appeared shocked and looked at his hand and said that he may have had ink on his hand and when he was wiping his hand it got on the wall. He became very upset and offered to clean it. Gonzalez was overly emotional, fidgety, and not himself. Reilly told Gonzalez that he did not have to clean it and to get himself together. Reilly kept telling Gonzalez to keep his mask up, but he kept pulling it down. He was also wearing a hat, which he repeatedly donned and doffed and squished in his hands. Employees are not allowed to wear hats, especially not on the unit with patients. His appearance was unusual. His behavior was weird, abnormal, unprofessional, very odd, and out of character. He would not make eye contact. Stevens had prior interactions with Gonzalez and had never seen him that way before. Gonzalez previously was a very positive, professional employee and he loved his job and the patients. When he returned to work, he was a totally different employee—his behavior, demeanor, everything, was totally different and she had concerns.

On March 25, 2022, since Gonzalez did not have money or a cell phone, she told him to wait while she went inside to try to get his FFD exam rescheduled for March 28, 2022, for him. He said he would wait. She was shocked when the security guard called her because she had really stressed to Gonzalez the importance of the appointment and to let her make sure she could get him another appointment, and not even ten minutes had passed before he left. Gonzalez never called her. Employees are required to provide up-to-date addresses and phone numbers. It is policy. Other suspended employees have had to sign for checks outside MPH and their behavior was pleasant and totally different

from Gonzalez's behavior, which was totally bizarre. He was jittery, fidgety, and hyperverbal. She had interactions with him in the past that were very pleasant and professional, and this was totally different and out of character. Something else was going on with him, but she did not know what it was.

Bruno Anthony Martinez

On March 17, 2022, he spoke to Gonzalez about his belligerent behavior and demeanor. Gonzalez was wearing a large tie and a cap, almost like an Irish costume, and not a uniform. Gonzalez arrived late and told him he was a "sucker," and Gonzalez was not listening to anything he said. He showed complete disregard for hospital policy and chain of command. Gonzalez walked in with a Bluetooth speaker and turned it on without asking permission because he did not want to hear what Martinez had to say to him. Gonzalez laughed in his face and said, "I don't have to listen to you." He asked Gonzalez to shut it off, but Gonzalez refused. Bluetooth speakers are only allowed when authorized by the charge nurse. Playing loud music could agitate patients and create a chain reaction and pandemonium. Additionally, it could prevent staff from hearing a phone call for an emergency on another unit. There are occasions when music is played, but it is played on the MPH Bluetooth speaker and phone. Employees are not supposed to use their personal cell phones to play music, though there have been times when they have done so. Earlier that week he had worked with Gonzalez for the first time since Gonzalez returned to work. Gonzalez had asked him for \$50 several times that week, which he refused to give him. He told Gonzalez to leave him alone, but Gonzalez said he needed the money. Gonzalez tried to strong-arm him and said, "You're giving me that money." He told Gonzalez that was not going to happen and to get out of his face and do his job and earn his money. Prior to his leave, Gonzalez asked him for a \$2,000 loan and he loaned Gonzalez \$500. As of March 2022, Gonzalez still had not paid him back. He worked with Gonzalez prior to 2022 and socialized with him prior to 2022, but never hung out with him outside of MPH.

Tonia Torres

After she met with Gonzalez on March 3, 2022, there was ink all over the wall by her office door. The ink smear was probably twelve inches in height by three to four inches wide. She thought it was odd and she reported it.

She met with Gonzalez for approximately ten to fifteen minutes on March 18, 2022. She served Gonzalez with the NOIS, but he refused to sign it, which she noted on the notice. She also served Gonzalez with the FFD-exam appointment notice, but he refused to sign it. She did not serve him with any subsequent FFD-exam appointment notices. She did not go through every single page of the documents—which were all given to Gonzalez—but she read him the NOIS and the date, time, and location for the FFD-exam appointment.

Chinwe Okeke

On March 17, 2022, Martinez called her at 3:39 p.m. and complained that Gonzalez was playing loud music via a speaker and his cell phone and was not listening or following instructions to maintain peace and order on the unit. She asked to speak to Gonzalez. When Gonzalez got on the phone, she explained that there was a complaint that he was being disruptive, and she instructed him to not play music from his cell phone. She told Gonzalez that if he felt like patients need music he should use the hospital speaker, but he said he did not want to do that and that it is too loud. She told Gonzalez if he felt it was too loud to turn it down. She explained that he had to listen to the charge nurse. Gonzalez basically hung up on her. She contemplated going upstairs to speak with him in person, but then Gonzalez showed up at her second-floor office to explain himself. He said that he does not get along with several nurses and felt he was being picked on being told not to use his speaker and cell phone. She tried to explain to him why it was important to follow chain of command, on which they went back and forth, and he tried to explain that patients need music. She agreed, because at that time the hospital director had agreed that music should be used on the unit for the patients, but it cannot be used to the point where it becomes a nuisance. They were still talking when Gonzalez decided to take the issue to the next level up, which was to Flint-Montenegro. She prepared a statement about the

incident at the request of Flint-Montenegro. There is hospital policy on use of cell phones, which are not allowed to be on near patients and not allowed on the third- and fourth-floor units, though a blind eye is turned to them being on the unit if they are not being used. Staff is allowed to dress up for St. Patrick's Day.

Virginia Flint-Montenegro

She received reports from Edwin and Akwaboah about Gonzalez's behavior during training. She had concerns about those reports because of the nature of the population at MPH, but since she and Pinta had not personally observed Gonzalez, he completed orientation and returned to work. The decisions to send Gonzalez for an FFD exam and to discipline Gonzalez were based upon all the reports of Gonzalez's behavior, including the incident with Yao. She was informed by Reilly of the ink incident, and she had discussions with Pinta and Rubino. They wanted to send Gonzalez for an FFD exam because of his behavior and appearance, including that he was gaunt, unable to make eye contact, fidgety, and unable to sit still, and he looked unwell. There were also reports that he was talkative, excited, shouting, and crying. She knew Gonzalez for several years and his behavior was inappropriate for the job. He did not want to wear the masks required and wore his mask on his head like a birthday hat. He did pull-ups on the elevator with his back to the patients when returning from taking patients out for fresh air. His behavior during orientation also played a role, and that same behavior carried over when he was working with patients. He was all over the place. She observed the behavior noted on the FFD exam referral. Yao, Martinez, and D.Okeke had all reported incidents with Gonzalez, and it affected where he could be assigned in the hospital. It was determined that it was appropriate to send him for an FFD exam for the safety and welfare of the patients. The patients are very vulnerable, and Gonzalez should not be working with them. It would be a violation of patient safety and patient rights. Her assessment as a health professional is that he is unstable, and his behavior was inappropriate for the workplace and presents a danger to patients. His behavior was unpredictable, and he has potential to go off the handle. He appeared physically unwell—very thin, skin color did not look good—and was hyperactive, all over the place, and seemed under the influence of something. His behavior was a red flag. She felt he could benefit from the EAP.

Muhammad Gonzalez

Training Incidents

On February 22, 2022, he wore a button-down shirt and blue jeans with long johns shirt and pants underneath because in the winter he always wears long johns or sweatpants under his pants. He was sitting under the heat vent. He was anxious and nervous about returning to work after being out so long that he dozed off once or twice because the room was so hot. After he removed the layer of clothes in the bathroom, he put the clothing in his bag and returned to training. Since childhood his habit has always been to slip his heels out of his sneakers while sitting.

His training with Akwaboah was about the MPH policies and everything that changed at the hospital. It was no longer permissible to touch patients so he asked Akwaboah why, and how he should respond if a patient acts up or comes at him or how he can restrain a patient if he cannot touch the patient. He was not challenging the policies. He was not shaking; he was just trying to get comfortable in the chair because he was in the room almost three hours.

Yao Incident

At 10:00 p.m., after he returned from his hour lunch, he asked both his coworkers if Yao asked them again about her wallet, and they said no. Two seconds later Yao approached him and asked him again about the wallet. He had asked his coworkers if Yao asked twice because he knows how Yao is. He believed Yao singled him out and really thought he had her wallet. He never pulled his pants down. He was not written up for showing Yao his other pants. He called out the day after the Yao incident. He spoke to Pinta and explained how upset he was about the Yao incident. Pinta told him to write a report, but he did not write a report. He told Pinta he was not comfortable writing a report because he had just returned to work in February 2022, and it would not look good that he already had an issue. He thought the safest thing to do was not write a report because his job was on the line. He had a previous incident with Yao.

Ink Incident

When he knocked on Torres's door he leaned against the wall. He did not know that a pen had burst in the bottom left pocket of his uniform shirt or that he had ink on his hand. It put a little bit of ink on the wall, and when he noticed, he tried to clean it and smeared it from a dot to a small mark. He went upstairs and was later called by Reilly. When Reilly and Stevens showed him the ink, he looked at his hand and admitted it. The ink was a spot—less than a penny in size. He offered to clean it, but when Reilly said no, he got a little paranoid and cried. It was a mistake and he had just returned to work and Reilly had said he was damaging Hudson County property and he was afraid he would lose his job. Reilly is the boss and could fire him, so he was nervous around her. She told him to get himself together, so he went outside and smoked a cigarette and returned to the fourth floor. He previously had a good relationship with Stevens and when he spoke to her several days prior about his pay rate, they talked about his personal life, including that his wife had left him and “cleaned” him out, and he was having problems seeing his children.

The ink incident happened before he spoke with Torres. He had put his hand on the wall and noticed ink on his hand and tried to wipe it off, but when Torres came out of her office he did not tell her about the incident. He tried to clean it up afterwards with his hand. When he first did it, he did not realize it, and only realized it after he was walked down to Torres's office, and he noticed his hand. That is when he tried to wipe it.

Martinez Incident

He never asked Martinez for money in March 2022. When he first started to work with Martinez, he told Martinez to give him a little time and he would repay the \$500 Martinez loaned him two years ago by giving Martinez \$50 from each paycheck. They were friends before his leave, and he has been to Martinez's home. He got to work on March 17, 2022, at 2:45 p.m. and got to his floor at 2:50 p.m. He said hi to Martinez but Martinez did not respond so he left him alone until 3:30 p.m., when he asked Martinez if he was going to give out assignments. Martinez said no. Gonzalez was wearing his blue uniform but had borrowed a green plastic tie for Saint Patrick's Day from a morning-shift coworker. He was not wearing a hat and was not dressed like a clown. He went to speak

with Torres about his pay rate and returned to his floor and stood in front of the camera. Since his return to work he always stands in front of the camera so they always know where he is. He again asked Martinez if he was going to give out assignments, but Martinez said no. He wanted to use the Bluetooth speaker at the nurses' station to play music to comfort patients and keep them happy so he asked Martinez if he could turn the patient Bluetooth speaker on, but Martinez said no. He instead turned on music via the speaker on his cell phone. They always use their cell phones with the Bluetooth speaker. He did not have permission to use his cell-phone speaker. He could hear the music for himself and there was no issue with this when they had done it on Monday and Tuesday and were singing and dancing with patients. Martinez flipped out when he turned his cell-phone music on. Martinez just went off and started yelling and screaming and said he was going to lose his job and it would be Gonzalez's last day working for Hudson County. After Martinez told him twice to turn it off, he turned the music off. It was so low he does not even understand how Martinez heard it. Martinez is not his supervisor, but the hospital attendants are supposed to listen to the charge nurse. He told Martinez that he should have pulled him aside instead of saying personal things about the \$500 loan in front of patients. He did not call Martinez stupid.

He was talking to C.Okeke on the phone, but when Martinez realized who Gonzalez was talking to, Martinez left the nurses' station and got on the elevator. Gonzalez hung up the phone and got in the elevator with Martinez. He did not hang up on C.Okeke. He told her he was going downstairs to talk to her. He was not upset. He was confused about why Martinez was acting the way he was acting when they were friends. He explained the incident to C.Okeke and then told her he wanted to speak to someone higher because C.Okeke was not understanding him and was already judging him, so he spoke to Flint-Montenegro. It did not happen like C.Okeke said. He did not talk over her. He does not get upset or angry and he was not upset when he spoke with Flint-Montenegro and he did not mention C.Okeke. He told Flint-Montenegro that Martinez should not have spoken to him like that in front of patients. He and C.Okeke were really good friends when she was a charge nurse. C.Okeke did her job the way she was supposed to and he wanted to see if someone higher than her thought differently about the incident. After speaking with Flint-Montenegro he returned to work on the fourth floor, but ten minutes later he was assigned to the third floor to work with D.Okeke. He worked

with D.Okeke in the past and did not recall any negative prior incidents with her. He did not tell people at MPH that D.Okeke brought him to court and tried to get him fired. He always had a great relationship with D.Okeke and she was like his second mother.

He always followed directions at work and always did his work the right way and with the intention of helping the patients so they can have a productive life. Every time he was suspended it was because he was doing something for a patient. His patients are everything to him and he does not say no to his patients when it comes to his job duties for them.

Mask Incident(s)

When he returned from leave MPH did not have a mask mandate that he knew of. On the patient floor, he was required to wear a mask. He had his own mask. They wanted him to wear an N95 mask, but the pressure was really hard on his nose and it was uncomfortable to wear. He had his mask over his mouth, but not his nose. Pinta called him and gave him a different mask—like a duck mouth—which was better, so he wore that mask. It only happened the first day he went back to the floor.

FFD Exam

On March 18, 2022, Torres had a whole stack of papers in a yellow envelope, but she only showed him the FFD-exam appointment notice and told him to sign it. He did not sign it because it did not have his name on it, and he wanted his lawyer to review it first. He read the FFD-exam appointment notice. There was no communication or conversation about any of the documents. Torres just told him to sign it. He told Torres that he would have no money to get to the appointment until his first paycheck on March 25, 2022, because his ex-girlfriend took all his money. Torres did not respond to that. After he told her he was not going to sign, she walked him to the front entrance and told him to have a great day and he left. He called Stevens on March 21, 2022, from his neighbor's phone and let her know he did not have a phone or money to get to the FFD exam. He tried to borrow money from his only friend in New Jersey, but his friend had no money. Stevens did not respond, and his neighbor was leaving for work so he had to give the phone back.

Stevens said she would try to get him a new appointment. He said he only had ten minutes for her to call him back at this number before his neighbor leaves for work or he would call her back. Stevens said she would call him back, but she never did. His number came up in her caller ID. He talked to her about that. He had issues outside work. His wife had just left him, he had not seen his children in two months, and he was crying every day and trying to survive.

The next time he spoke with anyone about the FFD exam was on March 25, 2022, when he picked up his check from Stevens. He was working three days a week for a store near his house and the store owner, Juan, gave him a ride to MPH because he was going to Restaurant Depot in Secaucus. The security guard called Stevens. Stevens came outside and gave him a yellow envelope with his check in it and then she said, "Hold on, I will be right back. I need to give you something." Stevens took more than twenty minutes, so he gave the security guard Juan's number and told him to give the number to Stevens and tell her to call him at that number because he did not have a phone and he needed to leave to go with Juan. The security guard went inside and got a piece of paper and wrote the number down. He told the security guard to please be sure to give Stevens the number because it is for his life. Stevens never called him. He did not call Stevens after he left because he was too busy working and he already explained everything to the security guard and expected Stevens to call him back. He never received any information about rescheduling the FFD exam and he did not know he had an appointment on March 28, 2022, because Stevens never told him. Two or three weeks later he received an FFD-exam appointment notice with his name on it and a card for March 28, 2022. He previously had a good relationship with Stevens at work. He let her know things about him at work and she offered to give him a gift card from her church but he never received it.

He was driving Juan's van and Stevens told him to wait and she would try to get him another FFD appointment. But he was already there twenty minutes and Juan was getting agitated that they were there for so long, so he had to leave. He asked the security guard to let Stevens know he was leaving and the security guard said to hold on and he came back with a piece of paper and a pen. He wrote down Juan's number and gave it to the security guard and told him to please tell Stevens to call him.

After March 25, he did not reach out to MPH about the FFD exam because he had so much going on outside of work. His girlfriend had breast cancer and she left him after twenty-one years. He did not know where she and his children were, so his focus was on his family. He is homeless and lost everything because he was not working. What little money he had was used to care for his family. His mother was sick and was asking him to send money for medication and an operation, but he did not have any money. His brother and uncle were deported. After he received his check on March 25, 2022, which was approximately \$600, he had to pay shelter of \$345 per night and utility bills. He had no lights. He reached out to Hassan a thousand times, but Hassan never reached out to him.

If his ability to return to work is dependent upon an FFD exam, he would 100 percent go right now and submit to an FFD exam.

Factual Discussion

A credibility determination requires an overall evaluation of the testimony 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). Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). It must be such as the common experience and observation can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). "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).

Edwin and Akwaboah testified credibly and concisely about Gonzalez's behavior during training, and shortly after training each of them reported their observations to MPH supervisors. Further, their testimony was consistent with their prior reports. Likewise, Torres testified credibly and concisely about the ink incident and serving Gonzalez with the FFD-exam appointment notice and NOIS and supporting documents. C.Okeke testified credibly and concisely about the incident with Martinez, and her testimony was consistent with her report of the incident. Stevens and Flint-Montenegro testified credibly and

consistently with prior reports. Moreover, Stevens's testimony was complimentary of Gonzalez's attitude and conduct earlier in his employment at MPH. However, unlike the other witnesses for the County, Martinez demonstrated considerable animus toward Gonzalez and his testimony was not entirely consistent with his written statement. Accordingly, I credit the testimony of all the County's witnesses except for Martinez.

Gonzalez's testimony was often inconsistent with the evidence and with his own prior testimony, and was not plausible under the circumstances.

Although Gonzalez offered explanations for the various behaviors reported to be of concern by Edwin and Akwaboah, several of his explanations were implausible and many similar behaviors were subsequently observed by Reilly, Stevens, and Flint-Montenegro. His behavior during the training/orientation was unprofessional and distracting, and while he denies that he challenged the changed policies and asserts that he was only questioning how he was to comply, that was not the impression left with Edwin or Akwaboah, and based on the testimony and documents, is not the impression left in the record.

There was conflicting testimony about the size of the ink smear left on the wall. Gonzalez testified that it was smaller than a penny, while Torres testified that it was several inches wide by almost a foot high. Gonzalez's testimony about its size and when and how it came to be there was neither consistent nor credible. It was clearly sizeable enough to have caused Torres to report it and for Reilly and Stevens to have addressed it with Gonzalez. Moreover, at one point Gonzalez testified that he attempted to clean the ink when he smeared it, but at another point he testified that he was unaware of the ink smear until Reilly and Stevens showed it to him. That said, irrespective of whether the ink smear was intentional or not, or Gonzalez was aware of it or not, his behavior in response to being questioned by Reilly, as credibly testified to and corroborated by the evidence, was unusual and unprofessional—even accepting that Gonzalez may have been fearful about losing his job.

Gonzalez and Martinez offered widely divergent testimony about their interactions in 2022, and there appeared to be considerable conflict and animus between the two—

perhaps the result of the unpaid loan. Thus, while little weight is afforded to the testimony of either witness, there clearly was a conflict between the two on March 17, 2022. In this regard, it is noted that hospital attendants are required to follow the instructions of the charge nurse, and Gonzalez ignored Martinez's instruction not to play music. Further, it is observed that the MPH policy specifically prohibits use of a cell phone to play music without a supervisor exception, and Gonzalez did not obtain approval for an exception.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including "incompetency, inefficiency or failure to perform duties," "insubordination," "inability to perform duties," "conduct unbecoming a public employee," "neglect of duty," and "other sufficient cause." N.J.A.C. 4A:2-2.3(a)(1), (2), (3), (6), (7) and (12).

N.J.A.C. 4A:2-2.3(a)(2) does not define insubordination. Black's Law Dictionary 953 (11th ed. 2019) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Likewise, N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming. However,

courts have held that conduct unbecoming a public employee is “any conduct which adversely affects . . . morale or efficiency . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (quoting In re Zeber, 156 A.2d 821, 825 (1959)); Karins v. Atl. City, 152 N.J. 532, 554 (1998). A finding of conduct unbecoming need not be predicated upon violation of any rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re Emmons, 63 N.J. Super. at 140. What constitutes conduct unbecoming a public employee is primarily a question of law. Karins v. Atl. City, 152 N.J. at 553.

In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The Final Notice of Disciplinary Action reflects that Gonzalez was charged with incompetency, inefficiency, or failure to perform duties, insubordination, conduct unbecoming a public employee, neglect of duty, and other sufficient cause as a result of his conduct in February 2022 and March 2022.

Gonzalez did not have approval from his supervisor for an exception and used a personal cell phone “in clinical and treatment areas or in front of patients for personal use or to listen to music.” Gonzalez exhibited a deliberate lack of cooperation and persistent inappropriate behaviors, and he failed to “create and maintain a culture of safety,” “act in a professional manner,” “practice self-control in verbal and non-verbal communications,” “assert a positive attitude that fosters a professional work environment and effective teamwork,” and “refrain from inappropriate behaviors that could undermine a culture of safety as they negatively impact on patient care and staff morale and create a hostile work environment” in violation of MPH policies and procedures.

C.Okeke—a nursing supervisor—credibly testified that Gonzalez was loud and talking over her, and Flint-Montenegro—the assistant director of nursing—credibly testified that Gonzalez was instructed at least twice to submit a written statement about the incident, yet he refused to do so. Gonzalez also conceded that Pinta—the director of nursing—had instructed him to submit a written statement about the Yao incident, yet he refused to do so. Although Gonzalez testified that his reason for not submitting the statements was that the optics of having an incident so soon after returning to work would not be good and he was concerned about his job, that is not a valid reason to refuse to comply with instructions from a supervisor.

The record reflects that incidents with various coworkers resulted in reassignments to separate Gonzalez from those coworkers. Additionally, the record reflects that Gonzalez's behavior in February 2022 and March 2022 was unprofessional, erratic, abnormal, and a "red flag." It appears that early on in his employment, Gonzalez had conducted himself in a professional manner and asserted a positive attitude—corroborated even by a County witness who was complimentary of Gonzalez's performance prior to his return in 2022—and there appears to be no dispute that he genuinely cared about the MPH patients. However, while the cause of the change is not clear, it is evident that at some point during the course of Gonzalez's employment there was a marked change in his demeanor and behavior. In this regard, an NOIS was issued before any notice of disciplinary action, and Gonzalez was referred for an FFD exam not only for the safety and welfare of the patients but also because it appeared to MPH administration that Gonzalez might benefit from an employee assistance program. Yet, Gonzalez unfortunately never reported for an FFD exam.

Gonzalez works with a vulnerable patient population and there were significant causes for concern raised by his behavior, so the request for an FFD exam was not unreasonable. While there was considerable testimony about what MPH personnel did or did not do in terms of following up with Gonzalez about his FFD-exam appointment, the fact remains that Gonzalez was aware that he was suspended and an FFD exam was required. He failed to report for the first FFD-exam appointment, citing no cell phone and no money for transportation. Yet, there was no credible evidence that after receipt of the initial FFD-exam appointment notice he contacted MPH or the clinic to reschedule for a

date after he received a paycheck. Further, it is noted that he picked up his paycheck on March 25, 2022, at which time he would have had money for transportation, but he still did not contact MPH to verify that his appointment had been rescheduled for March 28, 2022, as he had requested. He unexpectedly left while Stevens was attempting to have his missed appointment rescheduled, and then failed to contact her or anyone else at MPH or the clinic thereafter. It was incumbent upon Gonzalez—not his employer—to confirm and appear for the FFD-exam appointment. Although Gonzalez cited several personal and family issues, none negate his responsibility to have reported for an FFD exam.

In sum, the record reflects that Gonzalez failed to comply with instructions from supervisors, and failed to report for an FFD exam, and I **CONCLUDE** that such conduct was insubordinate. I further **CONCLUDE** that the foregoing, as well as his failure to comply with MPH policies and procedures and his conduct in February 2022 and March 2022, was unbecoming a public employee. As such, I **CONCLUDE** that the charges of insubordination, conduct unbecoming a public employee, and other sufficient cause are **SUSTAINED**.

With respect to the penalty, the Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must utilize the evaluation process set forth in West New York v. Bock, 38 N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations, and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated.

Since West New York v. Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct: to support the imposition of a more severe penalty for a public employee who engages in habitual misconduct, and to mitigate the penalty for a current offense. In re Herrmann, 192 N.J. 19, 30–33 (2007). However, in an instance where an employee commits an act sufficiently egregious, removal may be appropriate notwithstanding the lack of a prior history of infractions. See, e.g., In re Herrmann, 192 N.J. 19. According to the Supreme Court, progressive discipline is a worthy principle, but it is not subject to

universal application when determining a disciplined employee's quantum of discipline. Id. at 36.

Although progressive discipline is a recognized and accepted principle that has currency in the [Civil Service Commission's] sensitive task of meting out an appropriate penalty to classified employees in the public sector, that is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, 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.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306, 633 A.2d 577 (App.Div. 1993), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

[Id. at 33–34.]

The theory of progressive discipline is not a fixed and immutable rule to be followed without question, as some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007). The Supreme Court has noted that "the question for the courts is 'whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" Ibid. (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)). The Supreme Court also noted that the Appellate Division has likewise acknowledged and adhered to this principle, upholding dismissal where the acts charged, regardless of prior discipline, warranted the imposition of the sanction. Id. at 485.

Gonzalez has been employed by MPH since 2015 and his disciplinary history reflects that he was suspended for two days in 2017 for neglect of duty; suspended for forty-five days in 2019 for conduct unbecoming a public employee; and suspended for three months in 2020 for insubordination. (J-3.) Notwithstanding the already considerable disciplinary history, Gonzalez's conduct in February 2022 and March 2022 violated hospital policies, and was insubordinate and unbecoming a public employee. As credibly testified to by multiple witnesses, his behavior is of significant concern given that Gonzalez works with vulnerable psychiatric patients at MPH, and his failure to appear for an FFD exam—the rationale for which was clearly established—is indefensible. Accordingly, I **CONCLUDE** that Gonzalez's conduct in February 2022 and March 2022 unfortunately rendered him unsuitable for continuation in the position of psychiatric hospital attendant and warranted his termination.

ORDER

I hereby **ORDER** that the charges of insubordination, conduct unbecoming a public employee, and other sufficient cause are **SUSTAINED**, and that the penalty of termination is **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.



November 24, 2023

DATE

KELLY J. KIRK, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

List of Witnesses

For Appellant:

Muhammad Gonzalez

For Respondent:

Acheampongmaa Edwin

Ernest Akwaboah

Diana Stevens

Bruno Anthony Martinez

Tonia Torres

Chinwe Okeke

Virginia Flint-Montenegro

Exhibits In Evidence

Joint

J-1 FNDA

J-2 Attendance Record

J-3 Disciplinary History

For Appellant:

None

For Respondent:

R-1 Meadowview Policy & Procedures

R-2 Email, dated February 25, 2022

R-3 Email, dated March 29, 2022

R-4 Written Statement of Bruno Martinez

R-5 Notice of Immediate Suspension

R-6 Fitness for Duty Appointment

OAL DKT. NO. CSV 04101-22

R-7 Written Statement of Chinwe Okeke

R-8 Email, dated March 4, 2022

R-9 Fitness for Duty Observation Checklist

R-10 PNDA