



STATE OF NEW JERSEY

In the Matter of Deborah Richardson,
Mercer County, Department of
Human Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-1668
OAL Docket No. CSV 02391-23

ISSUED: NOVEMBER 27, 2024

The appeal of Deborah Richardson, Site Manager, Nutrition Program, Mercer County, Department of Human Services, removal, effective January 17, 2023, on charges, was heard by Administrative Law Judge Michael R. Stanzione (ALJ), who rendered his initial decision on October 25, 2024. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on November 27, 2024, adopted the ALJ's Findings of Facts and Conclusions and his recommendation to uphold the removal.

The Commission makes the following comment. The ALJ's decision in this matter regarding both the charges and the penalty imposed is thorough and comprehensive. The Commission, therefore, affirms the initial decision in its entirety.

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 Deborah Richardson.

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 27TH DAY OF NOVEMBER, 2024

Allison Chris Myers

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

OAL DKT. NO. CSV 02391-23

AGENCY DKT. NO. 2023-1668

**IN THE MATTER OF DEBORAH RICHARDSON,
MERCER COUNTY DEPARTMENT OF
HUMAN SERVICES.**

Deborah Richardson, appellant, pro se

**Michael Anthony Amantia, Esq., Mercer County Counsel, for respondent, Mercer
County Department of Human Services**

Record Closed: September 10, 2024

Decided: October 25, 2024

BEFORE MICHAEL R. STANZIONE, ALJ:

STATEMENT OF THE CASE

Appellant Deborah Richardson (appellant or Richardson) appeals the decision of respondent appointing authority, Mercer County Department of Human Services (Appointing Authority or County), to remove her from her position as a part-time site manager for alleged violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, as defined by the Mercer County Table of Offenses and Penalties, A10, Leaving assigned work area without permission but not creating a danger to persons or property, and E1, Violation of a rule,

regulation, policy procedure, order or administrative decision, specifically violation of the 2017 Drug and Alcohol Testing Policy. Appellant denies the charges and asserts that the Appointing Authority failed to meet its burden of proving them. Should the removal be sustained? Yes. The Appointing Authority established by a preponderance of the competent, relevant, and credible evidence that appellant committed the offenses by failing to comply with the 2017 Drug and Alcohol Testing Policy.

PROCEDURAL HISTORY

On September 15, 2022, the Appointing Authority issued a Preliminary Notice of Disciplinary Action (PNDA) to appellant. R-1. After a departmental hearing in which the charges were sustained, a Final Notice of Disciplinary Action (FNDA) encompassing all the disciplinary actions was issued. The FNDA imposed a penalty of removal effective January 17, 2023. The appellant filed a timely appeal, and the matter was transmitted to the Office of Administrative Law, where it was filed on March 17, 2023, for hearing as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The case was originally assigned to a different Administrative Law Judge, who held teleconferences on May 16, 2023, June 20, 2023, July 25, 2023, September 14, 2023, October 19, 2023, December 7, 2023, January 25, 2024, February 6, 2024, and March 20, 2024. The case was reassigned to me. The case was heard on June 29, 2024. The record remained open for the receipt of written summations by the parties. Both summations were received by September 10, 2024, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed, and I, therefore, **FIND** the following as **FACT**:

1. Appellant served as a "site manager" for the County's Nutrition Program, a program that serves older adults. As a site manager, the appellant supervised other County employees and interacted with the senior citizens who patronize the program.

2. On September 14, 2022, the following observations regarding the appellant's behavior and/or demeanor were made by the Appointing Authority's witnesses:
 - a. The appellant was swaying;
 - b. The appellant was "shaking a bit;"
 - c. The appellant was slow in her movement;
 - d. Appellant's eyes were watery;
 - e. Appellant's speech was slow;
 - f. The appellant was slightly argumentative;
 - g. The appellant was lethargic; and
 - h. The appellant was observed slumped over her workstation with a blanket over her head. R-5.
3. Based on these observations, as recorded in the Reasonable Suspicion Checklist (R-4), the County recommended drug testing pursuant to the County's written policy. R-6.
4. Appellant did not agree to testing and did not comply with the testing requirement.
5. The County's Drug and Alcohol Testing Policy is disseminated to all employees at the time of hiring and when amendments are promulgated. The policy clearly states that an employee may be subject to drug testing based on reasonable suspicion. It also states that any employee who refuses to submit to testing will be deemed positive and will be subject to discipline.
6. The County suspended the appellant pending further hearing.
7. The County filed disciplinary charges as confirmed in the PNDA dated September 15, 2022. R-1.
8. Following a department-level hearing, the respondent issued an FNDA dated January 23, 2023. R-12.

Testimony

For the respondent:

Alejandra Silva is the Deputy Director of the Mercer County Office of Human Resources. Ms. Silva stated that she was the Acting Director for Personnel. She testified regarding the County's Drug and Alcohol Testing Policy. R-6. An employee would be subject to testing for a variety of reasons, i.e., new hire pre-employment, commercial driver's license (CDL) testing, reasonable suspicion, and post-accident testing.

Ms. Silva opined that the provisions regarding reasonable suspicion applied to the appellant based upon the observations of her demeanor. An employee who refuses to submit to testing may be subject to discipline, up to and including removal. An employee who refuses to submit to testing is deemed positive, resulting in a recommendation for removal. Whether or not an employee is subject to testing depends on whether an employee's "observed behavior" suggests that an employee is under the influence of some drug or alcohol.

The appellant was observed, and a recommendation for testing was issued. Testing was to have been conducted at Robert Wood Johnson Occupational Health Center, the County's contracted health provider (RWJ Occupational Health). Appellant refused to attend the appointment at RWJ Occupational Health. As far as the Office of Personnel is concerned, based upon the written policy, that refusal was the equivalent of a positive test result. As a result, the appellant was subject to discipline.

Ms. Silva testified regarding the appellant's disciplinary history. She noted one prior attendance offense, which resulted in a written reprimand, the lowest form of discipline the respondent may impose. The decision to seek appellant's removal stemmed from the County's concern for the safety, health, and well-being of its employees and the patrons that interact with County employees, namely senior citizens.

Ms. Silva further explained the additional reasons for the County's decision to seek removal. She stated that as a supervisor, appellant is held to a higher standard.

However, had she submitted to a drug test and tested positive for a controlled substance, the Appointing Authority would have worked with her as it has done in the past. With other employees in similar situations, the Appointing Authority offered them a last chance agreement; sent them to the Employee Advisory Service for assistance; and subjected them to random drug testing moving forward.

Jennifer Williams heads the County's Nutrition Program for Older Adults. She identified the appellant as a program employee, hired in 2016, and later promoted to site manager in 2021. The witness testified that on September 14, 2022, she received a telephone call from the director of the John O. Wilson Neighborhood Center in Hamilton Township (Wilson Neighborhood Center). The County uses the Wilson Neighborhood Center as one of the twelve program sites for the nutrition program. The director expressed concern for the appellant, who was hunched over her desk with a blanket over her head. The director snapped a photograph of the appellant and forwarded the photograph to Ms. Williams. R-5. Based on the telephone call and photograph, Ms. Williams and a colleague drove to the Wilson Neighborhood Center. When they arrived, Ms. Williams observed the appellant in the same condition as the director had photographed. Ms. Williams approached the appellant and tried to speak with her. She asked if the appellant needed emergency services, to which the appellant answered "no." Ms. Williams asked the appellant if she was sick. The appellant did not say she was sick; she said she was cold. Ms. Williams inspected the room's environment. There were no vents blowing air on the appellant. Ms. Williams asked the appellant if someone could pick her up, to which she replied "no."

Ms. Williams observed the appellant's condition. The appellant was not very responsive. When she did speak, there was a "drag in her speech." Her eyes were glassy. She was having trouble communicating with Ms. Williams. Based on that, Ms. Williams contacted the Personnel Office (Personnel) to complete a "Reasonable Suspicion Checklist," a questionnaire to assist managers in assessing an employee's condition. R-4. Based on the assessment, Personnel advised Ms. Williams to take the appellant to RWJ Occupational Health for a drug screen. Ms. Williams advised the appellant of the assessment. The appellant refused to attend the screening. She

retrieved her belongings, entered her vehicle, and drove away. To the best of the witness' knowledge, the appellant never reported to RWJ Occupational Health for the drug screen.

Edward Meara is the Social Services Coordinator for the County's Nutrition Project for Older Adults. Ms. Williams asked the witness to meet her at the Wilson Neighborhood Center. When Mr. Meara arrived, he observed Ms. Williams speaking to the appellant. Despite it being a warm late-summer day, Mr. Meara observed the appellant draped in a blanket complaining of being cold. He witnessed Ms. Williams ask the appellant if she needed emergency services and if someone could pick her up.

Mr. Meara observed the appellant to be shaky, and her eyes seemed to be glassy. She seemed to be "shaking a little bit and sort of a slow draw to her speech," and then her gait seemed to be a little bit slow and unsteady. The witness testified that Ms. Williams contacted Personnel and relayed their observations. Based on the assessment, Personnel determined that the appellant should submit to a drug screen. Mr. Meara testified that the appellant refused and that she entered her vehicle and drove away.

For the appellant:

Deborah Richardson, appellant, denied being under the influence of any drug. She claimed that she was hospitalized for pulmonary aneurysms. She claimed to have medical records but acknowledged that she did not provide them in discovery or at hearing. She claimed that she was never provided the County's Drug and Alcohol Testing Policy.

Additional Findings

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the Appointing Authority's witnesses during their testimony concerning their understanding of the Appointing Authority's relevant policies and procedures. They testified clearly and convincingly about their observations of the appellant and her behavior. They also testified professionally and without equivocation concerning the

policies and procedures for obtaining statements from employees. I find their testimony to be credible.

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the appellant during her testimony and throughout the proceeding. The appellant comported herself in a manner that suggested she was not credible. She did not offer documentary or other evidence to support an assertion that she had underlying medical conditions or had never received the Drug and Alcohol Testing Policy. Given the absence of evidence supporting the appellant's assertions, I cannot afford her testimony equal weight to that of respondent's witnesses.

Having considered the testimony and documentary evidence and the credibility of the witnesses, I **FIND** the following as **FACT**:

1. On September 14, 2022, the appellant was observed at work in a suspected distressed state.
2. The Appointing Authority satisfied the reasonable suspicion criteria as laid out in the 2017 Drug and Alcohol Testing Policy to have the appellant submit to a drug and alcohol screening.
3. Appellant was aware of the 2017 Drug and Alcohol Testing Policy.
4. Appellant's refusal of the test constituted a positive test.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 (Act), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, are designed in part "to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance." N.J.S.A. 11A:1-2(c). An employee may be subject to discipline for several reasons, including conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12). Major discipline for such infractions may include removal, disciplinary

demotion, or suspension for more than five working days at any time. N.J.A.C. 4A:2-2.2(a).

The Act protects classified employees from arbitrary dismissal and other onerous sanctions. See, In re Shavers-Johnson, 2014 N.J. AGEN LEXIS 439 Initial Decision (July 30, 2014), adopted, Comm'n., 2014 N.J. AGEN LEXIS 1049 (September 3, 2014); Investigators Ass'n v. Hudson Cty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). To determine if a penalty is reasonable, the employee's record may be reviewed to determine the appropriate penalty for the current specific offense. "The evidence presented and the credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained; or whether there are mitigating circumstances, which . . . must be taken into consideration when determining whether there is just cause for the penalty imposed." Shavers-Johnson, 2014 N.J. AGEN LEXIS 439, Initial Decision. Major discipline may include suspension or removal, depending upon the incident complained of and the employee's record. See, West New York v. Bock, 38 N.J. 500, 519 (1962) (describing progressive discipline).

The issue to be addressed here is whether a preponderance of the credible evidence establishes that appellant has committed the violations enumerated in the FNDA, and, if so, whether these violations warrant a removal or another penalty, if any.

The appellant is charged with violating N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, as defined by the Mercer County Table of Offenses and Penalties, A10, Leaving assigned work area without permission but not creating a danger to persons or property, and E1, Violation of a rule, regulation, policy procedure, order or administrative decision, specifically violation of the 2017 Drug and Alcohol Testing Policy. R-10.

Conduct Unbecoming a Public Employee

There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. In re

King, CSV 02768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. “Conduct unbecoming a public employee” is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or tends to destroy public respect in the delivery of governmental services. Karins v. Atl. City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular 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.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)). Unbecoming conduct may include improper behavior under the circumstances; it may be less serious than a violation of the law, but it is inappropriate on the part of a public employee because it disrupts governmental operations.

The appellant reported to work. She slumped over her desk and draped herself in a blanket. R-5. When confronted by her superiors, the appellant presented as someone under the influence of some substance. Per the policy, the appellant was assessed and deemed eligible for drug testing. Ms. Williams advised the appellant that she was to report for drug testing. Instead of complying, the appellant refused. She retrieved her belongings and left the premises without permission. Because of the presumptive positive drug test results, the appellant was deemed unfit to perform her duties. Cumulatively, the appellant’s behavior constitutes conduct unbecoming a public employee. It demonstrates a level of conduct totally opposite from what the County expects from its employees, and especially from those in a supervisory role. The appellant was supposed to appear to work and perform her duties.

I **CONCLUDE** that the Appointing Authority has met its burden of proving that appellant’s actions of refusing the test and subsequent assumed positive test were conduct unbecoming a public employee, violating N.J.A.C. 4A:2.3(a)(6).

Other Sufficient Cause

There is no definition in the New Jersey Administrative Code for other sufficient cause; it is generally defined as all other offenses caused and derived from all other charges against the appellant. There have been cases when the charge of other sufficient cause has been dismissed when “[r]espondent has not given any substance to the allegation.” Simmons v. City of Newark, 2006 N.J. AGEN LEXIS 68, *113, Initial Decision (February 22, 2006), adopted, Merit System Bd. 2006 N.J. AGEN LEXIS 565 (April 5, 2006).

Appellant is charged with violating Mercer County Table of Offenses and Penalties A10, Leaving assigned work area without permission but not creating a danger to persons or property, and E1, Violation of a rule, regulation, policy procedure, order or administrative decision, specifically violation of the 2017 Drug and Alcohol Testing Policy. The policy spells out the circumstances that justify actions towards employees who are subject to testing. The policy clearly states that an employee may be subject to drug testing based on reasonable suspicion. It also states that any employee who refuses to submit to testing will be deemed positive and will be subject to discipline.

The appellant was subject to the County’s drug testing policy because she satisfied the objective criteria of the “Reasonable Suspicion Checklist.” When she refused, the County deemed her to have tested positive. After the appellant refused to submit to testing, she retrieved her belongings and left the premises without permission, in violation of A10. I thus **CONCLUDE** that appellant violated Mercer County Table of Offenses and Penalties A10 and E1, specifically the Appointing Authority’s Drug and Alcohol Testing Policy, and therefore violated N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

PENALTY

When addressing the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and “penalty” on appeal based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J.

571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). Several factors must be considered in determining the appropriateness of a penalty, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Dev. Ctr., 96 N.J.A.R.2d (CSV) 463. According to Bock, progressive discipline concepts involving increasingly severe penalties are used where appropriate. See In re Parlow, 192 N.J. Super. 247 (App. Div. 1983). Major discipline may include suspension, removal, or demotion depending upon the incident complained of and the employee's record. Bock, 38 N.J. at 522–24.

The appellant has a clean disciplinary history. There was only one prior action of disciplinary history that only resulted in a written reprimand. However, the appellant was fully aware that the penalty for testing positive for a controlled dangerous substance is removal. With her refusal to submit to the drug test, the appellant was presumed positive. That positive test result means that she reported for duty intoxicated. The Appointing Authority cannot have an employee neglect her duties when she routinely interacts with senior citizens at the County's Nutrition Program.

Here, appellant is subject to major discipline for the violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, due to violations of Mercer County Table of Offenses and Penalties A10 and E1, specifically the drug and alcohol testing policies. Major discipline for such infractions may include removal, disciplinary demotion, suspension, or fine for more than five working days at any time. N.J.A.C. 4A:2-2.2(a). The respondent removed the appellant due to these charges.

Based upon the totality of the evidence and the appellant's awareness of the Drug and Alcohol Testing Policy, I **CONCLUDE** that the penalty of removal is reasonable, appropriate, and consistent with the policy of progressive discipline.

ORDER

I hereby **ORDER** that the appeal of appellant Deborah Richardson of charges of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and other

sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12), specifically as defined by the Mercer County Table of Offenses and Penalties, A10, Leaving assigned work area without permission but not creating a danger to persons or property, and E1, Violation of a rule, regulation, policy procedure, order or administrative decision, specifically violation of the 2017 Drug and Alcohol Testing Policy, is **DENIED**, and the decision of the Appointing Authority, the Mercer County Department of Human Services, to remove the appellant for violating those charges 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 the other parties.

October 25, 2024
DATE


MICHAEL R. STANZIONE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

Witnesses

For appellant:

Deborah Richardson

For respondent:

Alejandra Silva

Jennifer Williams

Edward Meara

Exhibits

For appellant:

A-1 Summation Brief submitted in the form of a handwritten note.

For respondent:

R-1 Preliminary Notice of Disciplinary Action dated September 15, 2022.
R-2 Statement of Jennifer Williams
R-3 Statement of Edward Meara
R-4 Reasonable Suspicion Checklist
R-5 Photograph: Deborah Richardson
R-6 Mercer County Drug and Alcohol Testing Policy dated March 2017
R-7 Notice of Informal Suspension Hearing
R-8 Notice of Decision for Immediate Suspension
R-9 Disciplinary History: Deborah Richardson
R-10 Mercer County—Table of Offenses and Penalties
R-12 Final Notice of Disciplinary Action dated January 23, 2023
R-13 Summation Brief