



STATE OF NEW JERSEY

In the Matter of Denise Campbell-Owens, New Jersey Veterans Memorial Home – Vineland, Department of Military and Veterans Affairs

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2021-1338 OAL Docket No. CSV 03341-21

ISSUED: MARCH 20, 2024

The appeal of Denise Campbell-Owens, Human Services Assistant, New Jersey Veterans Memorial Home – Vineland, Department of Military and Veterans Affairs, removal, effective December 10, 2020, on charges, was heard by Administrative Law Judge Catherine A. Tuohy (ALJ), who rendered her initial decision on February 20, 2024. Exceptions were filed on behalf of the appellant and a reply was filed on behalf of the appointing authority.

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 and reply, the Civil Service Commission (Commission), at its meeting on March 20, 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 initial decision as well as the entire record, including the exceptions filed by the appellant and the reply, 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. 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 v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, there is nothing in the record of the appellant's exceptions to demonstrate that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. Accordingly, the Commission finds nothing in the record to question those determinations or the findings and conclusions made therefrom.

The only other issue in this matter is the proper penalty to be imposed. 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. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 *N.J.* 474 (2007).

In the initial decision, while the ALJ indicated that the appellant's disciplinary history "was stipulated into evidence," she did not provide details. She also indicated that the removal was in accordance with the appointing authority's disciplinary policy as a second infraction for a fighting or creating a disturbance in the workplace under that policy "requires removal." Initially, the Commission notes that its review of the penalty is *de novo*, and while it can be guided by, it is not bound by the appointing authority's penalty schedule in determining the proper penalty. See *In the Matter of Gregory McDaniel*, Docket No. A-5583-02T2 (App. Div. May 24, 2004); *In the Matter of Leonard Wilson* (MSB, decided April 6, 2005); *In the Matter of Patricia Everingham* (MSB, decided March 13, 2003); *In the Matter of George Roskilly* (MSB, decided November 20, 2002). Regardless, the Commission agrees that removal is warranted, notwithstanding the appellant's argument in her exceptions that the infraction was *de minimis*. A review of the appellant's disciplinary history in her less than five years with the appointing authority indicates that in January 2019, she received a 20 working day suspension for, among other things, fighting or creating a disturbance in the workplace. Given this history, coupled with the misconduct displayed in this matter, and the fact that the appellant was not a long-term employee, the Commission finds the penalty of removal neither disproportionate to the offenses 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 Denise Campbell-Owens.

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 20TH DAY OF MARCH, 2024



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 03341-21

AGENCY NO. 2021-1338

**IN THE MATTER OF DENISE
CAMPBELL-OWENS, NEW JERSEY
VETERANS MEMORIAL HOME-VINELAND,
DEPARTMENT OF MILITARY AND
VETERANS AFFAIRS.**

William A. Nash, Esq., for appellant, Denise Campbell-Owens (Nash Law Firm, LLC, attorneys)

Mikhaeil Awad, Deputy Attorney General, for respondent, New Jersey Veterans Memorial Home-Vineland, Department of Military and Veterans Affairs (Matthew J. Platkin, Attorney General, New Jersey, attorney)

BEFORE CATHERINE A. TUOHY, ALJ:

Record Closed: January 5, 2024

Decided: February 20, 2024

STATEMENT OF THE CASE

Appellant, Denise Campbell-Owens, a Human Services Assistant (HSA) employed by the New Jersey Veteran's Memorial Home-Vineland, Department of Military and Veterans Affairs, respondent, appeals her removal, effective December 10, 2020. The Final Notice of Disciplinary Action (FNDA), issued February 26, 2021, charged appellant

with violations of: N.J.A.C. 4A:2-2.3(a)6 - Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)12 - Other sufficient cause; C-7(2nd) - Fighting or creating a disturbance on state property; C-20(2nd) - Discourtesy of public, visitors, patients, residents or clients; and E-1(2nd) - Violation of a rule, regulation, policy, procedure, order or administrative decision. (R-2.)

The incident giving rise to the charges and the date on which it occurred were specified as follows:

“On 12/1/20, you engaged in a verbal altercation with a coworker on the Liberty Square Nursing Unit that started on Wing 2 and continued up to the Nurses’ Station area. This behavior was disruptive to the residents and staff. Employees had to stop passing trays and the medication nurse had to stop her med pass in order to stop the altercation and address the incident. However, the altercation still continued and both of you had to be removed from the unit at a time when residents needed their breakfast trays distributed and assistance with feeding. Both of you were reported to Nursing Supervision for arguing and yelling at each other.”

(R-2.)

At issue is whether appellant is guilty of the charges presented and if so, is removal the appropriate penalty.

PROCEDURAL HISTORY

On December 9, 2020, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) (31-A) setting forth the charges and specifications made against the appellant. After a departmental hearing on February 18, 2021, the respondent issued a Final Notice of Disciplinary Action (FNDA) (31-B) on February 26, 2021, sustaining the charges in the PNDA and removing appellant effective December 10, 2020. By letter, dated March 9, 2021, appellant filed an appeal with the Civil Service Commission Division of Appeals and Regulatory Affairs. The matter was transmitted to the Office of

Administrative Law (OAL) where it was filed on March 31, 2021, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13.

Numerous telephone status conferences were conducted concerning discovery issues. An order was entered January 20, 2023, denying appellant's motion to dismiss the FNDA for spoliation of evidence or in the alternative, for an adverse inference.

The matter was heard via zoom audio and video technology on August 15, 16 and 24, 2023. The record closed on January 5, 2024, following receipt of written summations.

FACTUAL DISCUSSIONS AND FINDINGS

Testimony

Verna Scurry testified on behalf of the respondent. She currently works for Inspira Health Network as a patient care technician and has been there almost two years. Prior to her current employment she worked for respondent from 2018 to December 2020 as a Human Service Assistant (HSA). As an HSA she would pass out food trays, assist residents with feeding, getting them dressed, bathing, changing and other activities.

On December 1, 2020, she was involved in an incident with her coworker, Ms. Campbell-Owens. She had a previous dispute with her in October 2020 concerning feces being on a resident's sling from the previous shift that Ms. Campbell-Owens worked. Ms. Scurry showed Ms. Campbell-Owens the sling and she immediately got defensive and said it was not her and she was not going to be blamed for it. When they were leaving work that day, Ms. Campbell- Owens nudged Ms. Scurry with her shoulder to get out of the door first and they exchanged words. Ms. Scurry had to write a statement about it because she reported it to the charge nurse, but after that did not hear anything else about it.

On December 1, 2020, she started her shift at 7:00 a.m. The breakfast trays come on a cart at 7:30 a.m. Ms. Campbell-Owen had an empty cart that she was putting her trays on so she could pass them out. The milk cart was side by side with the tray cart.

Ms. Campell-Owens was trying to make a bridge between the carts, and she was taking up both sides of the hallway. When she was doing that Ms. Scurry said excuse me so she could get around her. She does not know if Ms. Campbell-Owens heard her, but she thought she had enough room to get around her, so she went to go around her, and her hip bumped into Ms. Campbell-Owens' hip. Ms. Campbell Owens was bent down at the time. When she bumped into her, Ms. Campbell-Owens stood up and said we could take this outside if you want to. Ms. Scurry asked her 'what did you say' because she could not believe she said it. After that they started arguing as they were walking down the hallway. The other coworkers heard them arguing and tried to separate them, but it did not work. Then one coworker separated Ms. Scurry and they went to the solarium, and she was talking to the coworker. After Ms. Scurry left the solarium, she went to tell the charge nurse Tanya what happened but she and Ms. Campbell-Owens were both talking at the same time and Tanya told them to go upstairs because it was too much for her to handle. The argument started a little after 7:30 a.m. and lasted about ten minutes. Ms. Campbell-Owens tone was aggressive, and she said we could take it outside and we could fight outside. Ms. Scurry told her if she wanted to, they could.

Ms. Scurry provided a signed, handwritten statement, dated December 1, 2020, as to what occurred between her and Ms. Campbell-Owen on December 1, 2020:

"Today I had to walk pass Ms. Denise to get to the other side to get the other milk carton. When I tried to walk pass her I said excuse me and tried to go by her. She didn't move and I bumped her. She stood up and said if you have a problem with me we can take this outside. I looked at her and said what did you say. She repeated it again. Then we started arguing. We first had an argument a couple of weeks ago. She pushed me and Ms. Gurrioto over a sling that had poop on it. We handled it on the floor and that was the end of it. Ever since then she's been having a problem with me."

(R-3.)

The December 1, 2020, video (R-4) from camera two starts at 7:38 a.m. and shows the hallway at Liberty Square. The video shows Ms. Campbell-Owens in pink and black and the janitor Daryl wearing a blue shirt and khaki pants. At 7:38:53 her coworker Shonda Burroughs, wearing blue pants and white scrubs appears. At 7:39:54 you can

see Daryl and Shonda. Ms. Scurry forgot the name of the other girl on her right-hand side, but Ms. Scurry is there, and Ms. Campbell-Owen is on her left-hand side. They were arguing and it was aggressive and intense. They both were being aggressive, yelling at each other, and being smart with each other. Ms. Burroughs was telling them to stop yelling and arguing and trying to separate them and defuse the situation. At 7:40:08 they are going to the nurse. The video from camera 95 shows the nurses station at Liberty Square and starts at 7:39:59. At 7:40:09 Ms. Scurry is in the video on her right side closer to the wall is Ms. Campbell-Owens with the pink and black on and Ms. Burroughs is pushing the milk cart. She forgot the other girl's name shown on the far left. They were coming from the hallway in wing one on Liberty Square and were still arguing. The argument was still aggressive. At 7:40:14 they were separated, and Ms. Campbell-Owens walks away down the hallway and Ms. Scurry went to the solarium room with Ms. Burroughs. Camera 7 video is shown at 7:40:05 of the solarium. At 7:40:24 Ms. Scurry is in the dark blue and Ms. Burroughs is in the light blue and white and Ms. Scurry is explaining the story to Ms. Burroughs. She told her she was passing trays out and that Ms. Campbell-Owens was taking up the hallway making the bridge. Ms. Scurry said excuse me as she tried to squeeze around Ms. Campbell-Owen and that is when Ms. Campbell-Owens stood up and told Ms. Scurry they could take it outside if she wanted to. She was explaining this to Ms. Burroughs. At 7:41:07 Ms. Scurry went to tell the charge nurse Tanya what Ms. Campbell-Owens did. The video from camera 95 at 7:40:22 shows the nurses station and Tanya wearing a light blue hoodie jacket and gray scrubs. At 7:41:13 Ms. Scurry is in the video with dark blue scrubs. Tanya is there and Ms. Campbell-Owens is in the nutrition room with the pink and black scrubs on. Ms. Scurry was telling the charge nurse Tanya what was going on. She and Ms. Campbell-Owens were both trying to talk to Tanya at the same time and they were still loud and aggressive trying to talk over each other as they were talking to Tanya. Tanya told them it was too much for her to deal with and to just take it upstairs to Ms. Jackson's office or the supervisor's office. At 7:42:03 the video shows Ms. Campbell-Owens and Tanya and Ms. Scurry is shown in the upper left in the hallway. The video was stopped at 7:43:19. After leaving the nurses' station, Ms. Scurry then went upstairs to the supervisor's office and told the supervisor what happened. The supervisor told her to wait and go to Ms. Jackson's office. Ms. Jackson wasn't there so they told her to sit outside in the hallway and while waiting, Ms. Scurry saw Ms. Campbell-Owens come off the elevator and go to

the supervisor's office. Ms. Jackson then arrived and told her to go into an empty office and write a statement. She gave the statement back to her and she told her to go home, and she would call her. Ms. Jackson called her about five or six days later and told her that they were terminating her.

Ms. Scurry stated that she was upset but not that upset about the prior incident with the sling when Ms. Campbell-Owens nudged her in the shoulder. Ms. Campbell-Owens was working doing her job when this incident occurred. Ms. Campbell-Owens brought an empty cart to the area and parked it against the wall across from the food cart on the opposite side of the hallway.

Ms. Scurry said she said excuse me to Ms. Campbell-Owens before she tried to pass by her, but she did not stop so Ms. Scurry tried to squeeze through, and her hip touched her hip. Ms. Scurry did not have time to say excuse me before Ms. Campbell-Owens said they could take it outside. She did not have a chance to say that she was sorry and did not mean to do that.

In her statement (R-3), Ms. Scurry said she bumped Ms. Campbell-Owens when she meant to write that her hip touched her hip. She was upset that day and wrote bumped, but if she had more time and was thinking clearly, she would have written that her hip touched her hip.

Ms. Scurry knew what Ms. Campbell-Owens meant when she said they could take it outside.

Ms. Campbell-Owens had previously posted something on Facebook, following the incident with the sling, not mentioning Ms. Scurry by name but referring to "these hoes at my job" which Ms. Scurry assumed she was talking about her. They then blocked each other on Facebook, when they had previously been 'friends'.

After Ms. Scurry asked her what she was talking about, 'taking it outside', Ms. Campbell-Owens said if she had a problem, they can go out in the parking lot. This is not

mentioned in Ms. Scurry's statement. Ms. Scurry did not call the police because she was not really afraid of her. She knew she did not know where she lived.

Ms. Scurry never apologized for bumping Ms. Campbell-Owens during the ten minutes the argument lasted. She denied that she was trying to get Ms. Campbell-Owens fired. She denied she bumped her in retaliation for Ms. Campbell-Owens nudging Ms. Scurry's shoulder in October because they had worked together many times after the October incident. Ms. Jackson told Ms. Scurry to include the previous incident. Ms. Scurry's statement refers to the previous incident as taking place on November 2, 2020, and not October, but that is the same incident. Ms. Scurry's statement states that ever since the prior incident Ms. Campbell-Owens has had a problem with her. Ms. Scurry stated that because they did not speak to each other again after the sling incident that she assumed that Ms. Campbell-Owens did not like her after that because she never spoke to her again.

The video at 7:39:51 is after she bumped Ms. Campbell-Owens. At 7:39:53 Ms. Campbell-Owens is seen pushing her cart. Ms. Scurry says they were still arguing with each other while she was pushing her cart. Ms. Scurry could have left but she is walking side by side with her because she was going to the nurses' station. She could have sped up and passed her but they were arguing the entire way. At 7:40:01 Ms. Campbell is walking straight, and Ms. Scurry is looking back at her, and they were both arguing, not just Ms. Scurry arguing with Ms. Campbell-Owens.

The video from camera 95 at 7:40:10 shows Ms. Campbell-Owens exiting the hallway into the nurses' station and then she bears right, and Ms. Scurry is attempting to follow her until Ms. Burroughs intervenes and puts her right arm out and tells Ms. Scurry let's go in the solarium because they were yelling, and she was telling Ms. Scurry to come over and cool down. They were both yelling.

The first time Ms. Scurry saw the video was when she reviewed it with the DAG, Mr. Awad yesterday.

Ms. Scurry is suffering from Bell's Palsy which is a facial paralysis. It does not affect her memory, but she is still recovering, and it sometimes affects her hearing. She did not indicate that she had any problems with hearing the questions asked of her.

She was fired from her job because of this incident between her and Ms. Campbell-Owens. She had to turn in her badge after she gave the statement to Ms. Jackson. She was a per diem worker and not a civil service employee.

Tanya Olinda testified on behalf of the respondent. She has been employed by respondent for five years and is a Licensed Practical Nurse (LPN). Her duties include taking the vitals of the residents including their blood pressure, temperature, respiration and pulse oxygen rates, and making rounds to make sure they are doing well. She distributes medications to the residents at the appropriate times and does finger prick/ blood sugar checks for those on insulin. Most of the people they care for have served their country at one time or another and now need assistance with their daily living.

Ms. Olinda is familiar with both Ms. Campbell-Owens and Ms. Scurry as she has worked with both. She is aware of an incident involving the two on December 1, 2020. Ms. Olinda was working that day as the nurse on hallway two and was distributing medications at the time. When she came to the nurses' station, she saw them both yelling at each other. She did not know what it was about and tried separating them, but they kept arguing back and forth with each other. It is never appropriate for one employee to yell at another employee.

Ms. Olinda provided a handwritten statement, dated December 1, 2020, of what she witnessed between appellant and Scurry on December 1, 2020:

"I was coming back to the nurses station from wing 2 when I heard a bunch of yelling going on between Ms. Scurry & Ms. Campbell-Owens. I was not aware of any issues between the two of them and did not know what they were arguing about. I asked both of them to stop but they kept going on. I told them both to go upstairs."

(R-6.)

The video from camera 95 (R-4) on December 1, 2020, at 7:39:59 showed the nurses' station on Liberty Square, which is where she is assigned every day. She identified Ms. Campbell-Owens, Ms. Scurry, Ms. Burrough, and Ms. Suarez in the video. At 7:40:13 Ms. Olinda is in the video. She is wearing a light jacket with her scrub uniform and was coming from hallway two getting vitals and finger sticks done. At 7:41:04 seconds the video shows Ms. Olinda getting her cart ready with the necessary juices and things that she needs to go down the hall to pass out the medications. At 7:41:15 Ms. Olinda is trying to get her med pass cart ready and has Ms. Scurry standing to her left and Ms. Campbell-Owens in the kitchenette on Ms. Olinda's right. At 7:41:17 Ms. Olinda is seen raising her hand. They were yelling over the top of each other, and she was trying to diffuse the situation by telling them to relax and calm down. Their argument was pretty heated. At 7:41:33 they are still yelling back and forth at each other. At 7:41:39 and at 7:41:50 Ms. Olinda is raising her hand again and asking Ms. Campbell-Owens to go upstairs to the supervisor's office to take it off the floor. At 7:41:56 Ms. Campbell-Owens is still talking to Ms. Olinda, and she raised her hand and was telling Ms. Campbell-Owens to please go upstairs and take it to the supervisor's office. Ms. Olinda explained that some of the medications have to be given to residents on an empty stomach, which would be before breakfast between 7-7:30a.m. At 7:42:10 Ms. Olinda is seen in the video talking to Ms. Campbell-Owens. At 7:43:08 Ms. Campbell-Owens is seen walking towards the day room. At 7:43:32 Ms. Olinda is seen trying to get her finger sticks taken care of so she can do the insulin. The video was stopped at 7:44:04.

Ms. Olinda stated that the incident delayed her from getting the things she needed to take care of before the breakfast trays arrived and before the residents started going to the dining room.

Ms. Olinda's statement does not indicate that the yelling was loud, just that she heard yelling (R-6). She was not aware that Ms. Scurry bumped Ms. Campbell-Owens. It is not appropriate for respondent's employees to bump or push each other. The workplace violence policy specifically prohibits this. Her statement indicates that she asked both of them to go upstairs. She did not observe any physical altercation between the two while they were in front of Ms. Olinda at the nurses' station. It is not unusual to direct employees to the supervisor's office if something happens on the floor.

It was estimated that Ms. Olinda had to stop what she was doing for approximately thirty-two seconds to deal with this incident between Ms. Campbell-Owens and Ms. Scurry which delayed her from getting her job done when there were thirty residents that needed specific care and medication before they could eat. She considered this amount of time a lot of time.

Ms. Olinda stated that she felt threatened, which is why she sent them up to the supervisor's office, yet she did not include that in her statement or called security of the place.

Everybody got their medication and sugar levels checked that morning.

At 7:41:17 Ms. Olinda was talking to both Ms. Campbell-Owen and Ms. Scurry but does not recall what they were talking about. She was talking to them until 7:41:28. Between 7:41:34 and 7:41:38 she believed she was just telling Ms. Scurry to go upstairs. Between 7:41:28 and 7:41:40 Ms. Scurry was walking headed towards hall one. At 7:41:47 Ms. Olinda is talking to Ms. Campbell-Owens. Between 7:41:47 and 7:41:53 she was talking to both of them to go upstairs to the supervisor's office because she could not diffuse the situation. At 7:41:57 Ms. Campbell-Owen is shown touching Ms. Olinda, which is not appropriate. Between 7:41:57 until 7:42:17 she was talking to Ms. Campbell-Owens.

Someone touching you on the elbow can be inappropriate to get your attention because they can call your name to get your attention. She and Ms. Campbell-Owens were close enough that she would have heard her call her name even with a face mask and face shield on. Nevertheless, Ms. Olinda did not include this in her statement that she was touched inappropriately or made a complaint about it.

Shonda Burroughs testified on behalf of the respondent. She is employed by respondent as a Human Service Technician (HST) and has held that title for eight years. She was previously a human service assistant (HSA) for ten years. As an HST she takes

care of the elderly military veteran residents and their spouses, and does what they cannot do for themselves, whether it is showering, brushing teeth, getting dressed.

She is familiar with Ms. Campbell-Owens and Ms. Scurry, both of whom were HSAs and were her coworkers. She recalls the incident of December 1, 2020, and she was working that day as an HST on wing one. Her duties that day were patient care and feeding the residents. She recalls that there was an argument between the two of them which started on wing one, Liberty Square, during breakfast. She was coming from wing two and had the food cart and went back to wing one for the milk cart and heard the two of them arguing and tried to separate them. She did not recall what they were arguing about, but the argument was very loud and intense.

She provided a handwritten, signed statement, dated December 1, 2020, as to what she witnessed occurred between appellant and Scurry on December 1, 2020. She also provided a second statement on December 2, 2020. She did not recall why she gave two statements. (R-5):

"I was on wing 2 with the breakfast cart went back to wing 1 to get the milk. Went I got there Scurry was say why you calling out blood of Jesus. You don't want none of this. I took Scurry to the back to have her calm down. Then she said she's calling upstairs. I don't remember what D. Campbell Owens was saying because I was talking to Scurry."

(R-5.)

Ms. Burroughs gave another statement on December 2, 2020:

"I was on wing 2 with food cart went back to wing 1 to get milk cart. When I got there Scurry was yelling saying why you calling out the blood of Jesus you don't want none of this both Scurry and Owens tempers was high. I took Scurry to the back to calm her down. She then said she was calling upstairs didn't see both of them after that."

(R-5.)

The December 1, 2020, video (R-4) at 7:38 a.m. showed wing one on Liberty Square. She recognized Ms. Campbell-Owens in the black pants and Daryl in the blue shirt. At 7:38 minutes and 51 seconds Ms. Burroughs is seen with blue pants and a white

shirt on and with the milk cart. At 7:39:53 the video shows Daryl in the blue shirt, Ashley in the dark colored scrubs, Verna in black and Ms. Campbell-Owens in a flowered shirt in the back and to the left. Ms. Burroughs is coming from wing two to get the milk cart. At 7:39:56 Ms. Scurry and Ms. Campbell-Owens are arguing. Both were getting loud. The video at 7:39:58 shows Ms. Burroughs trying to diffuse the situation by trying to get in between the two to separate them. She does not recall if she said anything. At 7:40:04 they were still arguing, and it was louder. The video was stopped at 7:40:08 and the witness was shown video from camera 95 from December 1, 2020, starting at 7:40 a.m. This showed the nurses' station between wing one and wing two. At 7:40:10 the video shows Ms. Scurry in the black, Ms. Campbell-Owens in the flowered shirt, Ms. Burroughs with the white shirt and the milk cart and Ashley in the dark colored scrubs. They are all coming from wing one. At 7:40:11 Ms. Burroughs is separating Verna Scurry and taking her away from the situation. At 7:40:13 she is seen separating Verna from Ms. Campbell-Owen and Verna is seen walking away. At 7:40:19 Ms. Burroughs is going to the solarium behind the nurses' station with Ms. Scurry. The video is stopped at 7:40:21 and video from camera 7 from December 1, 2020, at 7:40:01 is shown which depicts the solarium behind the nurses' station on Liberty Square. At 7:40:24 the video shows Ms. Burroughs and Ms. Scurry in the solarium. She did not recall what was happening here. The video was stopped and then video was again shown from camera 95 at 7:41:06 showing Ms. Burroughs going back to wing two to finish passing trays out. She does not recall seeing Ms. Campbell-Owens and Ms. Scurry after that. Camera 95 at 7:41:16 shows Tanya and Ms. Scurry and she does not recall who is in the burgundy. Ms. Burroughs was coming from the solarium going to Wing Two. The video was stopped at 7:41:24.

This incident slowed her down from giving the residents their food, but she does not recall for how long. She has been employed by respondent for almost nineteen years and it is never appropriate for employees to yell at other employees.

The two statements she gave (R-5) differ in that she referred to the food cart as the breakfast cart, but they are the same thing. Also, in the first statement she gave she wrote that Scurry was saying "Why you calling out Blood of Jesus. You don't want none of this." In her second statement, she wrote that Scurry was yelling, not saying this. She also added in her second statement that "both Scurry and Owens tempers was high."

Which was not in her previous statement. In the second statement she also added "Didn't see both of them after that." Ms. Burroughs did not recall any of the circumstances surrounding who instructed her to give her initial statement on December 1, 2020, or the second statement the next day.

Ms. Burroughs was going between hallway one and hallway two that morning when she was pulling the food/breakfast cart and there were no doors closed and she was able to travel freely between the hallways. This incident happened during COVID. Ms. Campbell-Owens had a blue mask and a face shield on. Ms. Scurry had a blue face mask on but no face shield.

The video at 7:40:04 shows Ms. Burroughs standing very close to Ms. Campbell-Owens with her right hand on Ms. Campbell-Owens' back guiding her. To her left and ahead of them is Ms. Scurry who is walking straight ahead but she is looking at Ms. Campbell-Owens.

At 7:40:08 Ms. Burroughs is pushing the milk cart and taking it back to wing two to serve the residents. Camera 95 at 7:40:09 shows Ms. Burroughs entering the nurse station area and she is doing her job pushing the milk cart. At 7:40:11 she appears to be redirecting Ms. Verna. In this screen you can see Ms. Campbell-Owens pushing the food cart and doing her job. At 7:41:09 the video plays and at 7:41:11 Ms. Burroughs is seen entering the area coming back from the solarium where she was with Ms. Scurry. She resumed her work at this point. The amount of time that Ms. Burroughs spent on this incident was one minute and eleven seconds.

Ms. Burroughs was not friends with either Ms. Campbell-Owens or Ms. Scurry outside of work. She is a HST, and they were both HSAs, so she is at a higher level than they are and it would be her obligation to diffuse the situation. She does not know what precipitated the situation because her statement says when she got there Scurry was yelling. She did not know that Ms. Scurry bumped Ms. Campbell-Owens. Nobody called the police or security. None of the residents came out of their rooms to see what was going on.

Ms. Burroughs was distracted from her job for one minute and eleven seconds as a result of this incident. Everybody was fed that morning.

Brenda Ackley testified on behalf of the respondent. She is currently the assistant director of nursing for respondent and has held that position for two years. In 2020, she was the supervisor of nursing services and oversaw the entire building, taking care of the residents, handling the staff and any issues that arose with the staff, as well as handling any emergencies. They serve veterans that need twenty-four-hour nursing care, spouses of veterans and Gold Star Mothers.

She is familiar with Ms. Campbell-Owens as she was a HSA and was a primary care giver for the residents. She has not had any personal dispute with Ms. Campbell-Owens, nor has she any personal relationship with her. She is also familiar with Verna Scurry who was also an HSA there. She has never had any personal disputes or personal relationship with Ms. Scurry.

Ms. Ackley recalls working on December 1, 2020, and recalled an incident involving Ms. Campbell-Owens and Ms. Scurry. She had worked the night before and was supposed to be done by 8:30 a.m. on December 1, 2020. At approximately 7:40 a.m. Ms. Scurry came up to the supervisor's office which is on the third floor. She came to the office, and she was upset and said there was an incident that had occurred between her and Ms. Campbell-Owens and that Ms. Campbell-Owens was threatening her. It was breakfast time, and they were trying to get the trays out to the residents. The truck comes in the hallway and then they open the doors, and they take the trays from the food truck to distribute. Ms. Scurry said that Ms. Campbell-Owens was trying to get a tray out of the truck and sometimes, they are low so you kind of have to bend over. Ms. Scurry said that she was passing by Ms. Campbell-Owens and accidentally bumped into her. Ms. Campbell-Owens immediately stood up and turned around and said "Do you have a problem with me? I'm not going to fight you in here but let's go outside." Ms. Ackley told her to write a statement. Just at that time, Ms. Campbell-Owens came in and she was also upset. Ms. Ackley had Ms. Scurry go to the conference room which is near the supervisor's office so she could privately write her statement because both of them were still visibly upset and arguing. Ms. Ackley wanted to hear Ms. Campbell-Owens side of

the story as to what happened. Ms. Campbell-Owens said that Ms. Scurry charged at her and purposely tried to knock her over. Apparently, there had been something between them before about a piece of equipment being left dirty or something. Both of them indicated that incident was not reported. There was some animosity between them about the prior incident. Ms. Campbell-Owens was trying to talk but was still very upset and very heated. Ms. Ackley told her that she needed her to also write a statement and tried to get her to go to a separate room across the hall that had a door to close because she wanted to keep them separated. Throughout the time, they both kept coming out of their rooms trying to talk to Ms. Ackley and trying to talk to each other. Even while Ms. Campbell-Owens was in the supervisor's office she was being very loud and saying 'let's take this outside.

Ms. Ackley kept telling them to please go to their area and stay separated. She tried to have someone call an assistant director of nursing to inform her of what was going on and then when Ms. Jackson, the director of nursing came in, she took over from there.

The supervisor would be the one to handle the problem if they were being disruptive and trying to fight and they would have to report to the supervisor's office because they could not stay on the unit if they were being disruptive and trying to fight.

Ms. Campbell-Owens came upstairs approximately five minutes after Ms. Scurry, and she was upset. She said Ms. Scurry had charged at her and was trying to purposely hit her, whereas Ms. Scurry said she just accidentally bumped her, and Ms. Campbell-Owens got very upset and turned around right away aggressively and said "let's take this outside". Ms. Scurry was still upset but had quieted down but when she and Ms. Campbell-Owens were trying to encounter each other in the hallway they both got loud again. Ms. Scurry was saying that I am not going to fight you about this, but Ms. Campbell-Owens kept saying I am not going to fight you in here but let's take it outside. Ms. Ackley felt that if they both had gone outside together at that time, they probably would have gotten into a physical altercation because they both were upset, and Ms. Campbell-Owens was very upset and heated.

It is never appropriate for an employee to yell at another employee. They have a strict code of conduct that every employee signs twice a year when they get their performance evaluation. This is the veteran's home, and the employees have to behave as guests in their home and the employees cannot make them afraid to be in their home. The purpose of the code of conduct is to ensure employees behave appropriately and they cannot be yelling or causing a disruption. It is not acceptable as this is a workplace and the resident's home.

Ms. Ackley estimated she was with Ms. Scurry and Ms. Campbell-Owens for at least twenty minutes or so before Ms. Jackson came to take over. Ms. Ackley continued to do her work and finished before she left but it was a busy time with the shift change and she had to stop what she was doing to deal with this because it was a priority at the time because she could not let them fight and had to try to intervene.

Ms. Ackley prepared a handwritten statement dated December 4, 2020, three days after the incident. She was not a witness to the incident itself but met with both appellant and Scurry after the incident and wrote down what each of them told her and what they were doing while in her office. (R-7.)

"Sometime between 7:20 & 7:40 a.m. I walked into the nurse's office & Ms. Scurry was in the office with Mr. Tokarz SNS. He said to her, 'here is Ms. Ackley – you can explain to her' & he walked out of office. Ms. Scurry was visibly upset & started explaining to me that she & Ms. Campbell-Owens had an altercation. She states that they had both had another incident a few weeks earlier but it was not reported. She stated that in that incident, she had pointed out that a specific resident sling had BM on it & who would leave it on there to get dried up like that – she said that Ms. Campbell-Owens became very defensive & accused her of blaming her. She said it escalated a bit at that time but neither of them reported it to SNS. On the day of 12/1/20, Ms. Scurry told me that she had accidentally bumped Ms. Campbell-Owens while attempting to squeeze by her in the hallway because she stated that it appears like she was blocking the hall on purpose. She states the food truck was there and another cart & Ms. Campbell-Owens was bending over taking trays out of truck & that when she accidentally bumped her. Ms. Campbell Owens got very loud & started yelling at her "Seems like you

have a problem with me – we can take this outside if you have a problem – I am not going to fight you in here but we can go outside-Ms. Scurry stated she attempted to speak to Ms. Campbell Owens but Campbell Owens just continued to threaten her. I do not recall if she stated Ms. Campbell Owens pushed her this time or last time but she did say there was a push. She also stated to me of the incidents another aide was present “Dulce Guarretos” & saw everything. I attempted to calm Ms. Scurry down and explained to her that I needed her to write everything down on a statement – I handed her the statement sheets & she continued to say that the last time there was an issue Ms. Campbell Owen posted derogatory comments about her “dealing with this ho at work” on Facebook because they are Facebook friends. Around this time Ms. Campbell Owens came to the SNS and attempted to enter & Mr. Tokarz who had returned briefly told her to wait out in the hallway. I asked Ms. Scurry to come with me & took her to the conference room to write her statement. When I returned to office, Ms. Campbell Owens immediately started telling her side of the story which was that Ms. Scurry charged her from behind and pushed her on purpose & then was threatening to take her outside – Ms. Campbell Owens said that she was not the aggressor here that Ms. Scurry has had it out for her since the last time Ms. Scurry argued with her & attempted to push her. I handed Ms. Campbell Owens statement sheet & asked her to please sit in the hallway near the table in front of SNS window to write the statement but then she just kept repeating her story and that this was OT for her & she was just going to leave – go home – “Everytime I try to be nice & come in something happens” – I got her to stay and sit down & write her statement but several times kept trying to come into the office or have contact with Ms. Scurry. Ms. Scurry who was supposed to be in the conference room was also trying to come into office when Ms. Campbell Owens was in the office and then was attempting to leave also because she said her babysitter just called. At one point another SNS Ms. Kornegay intervned to tell them both to just sit where they were told & wait. Once I had them both separated & seated initially I called Mrs. Jackson DON to inform her of incident. She instructed me to remove both of them from the unit, keep them separated, & have them wait for Mrs. Mason AND. In the meantime, Ms. Kornegay had phoned the NIC E.Patinante? on Liberty Square & instructed them all to write statements regarding what they may have seen or heard. Ms. Mason came into office & I gave her a brief account of what occurred. She & Mrs. Jackson took from that point.”

(R-7.)

It is never appropriate for a staff member to bump into another staff member, but it does happen because sometimes they operate in tight quarters depending on how many people are involved and what they are doing. It is never acceptable for one staff member to push another staff member even if they are working in close quarters.

There was no physical fighting between the two of them in Ms. Ackley's presence.

Carmen Ellis Jackson testified on behalf of the respondent. She is currently the Director of Nurses/Clinical Section Chief at the New Jersey Veterans Memorial Home at Vineland, Department of the Military and Veterans Affairs. She has worked at the facility for forty-eight years and has been director of nursing since 1990 and was in her first year as clinical section chief. As director of nursing, she oversees all nursing employees and six nursing units. Her administrative duties include performance evaluations, administrative actions, auditing resident information and employee information. Clinically, she makes rounds on the nursing units for resident and staff issues. They serve a population of elderly residents who come with military veteran backgrounds – either they are retired veterans themselves or their wives or husbands.

When new employees are hired, an orientation is provided as to specific protocols, policies and administrative letters that are in effect at the facility and a checklist receipt is given to the employee. Ms. Campbell-Owens, HSA, received a check list receipt which she signed on January 11, 2016. (R-8.)

An employee Code of Conduct Receipt is provided to all employees indicating that they were advised as to their responsibilities and what the facilities' position is on policies as it pertains to abuse of residents, reporting responsibilities, and behavior while on duty. This is reviewed by the employee and their direct supervisor. Ms. Campbell-Owens signed this receipt January 18, 2019. (R-9.)

The Employee Code of Conduct is a personnel procedure policy that goes out to employees on employment and then yearly with their annual reviews or any other time that it may be needed. It goes over how employees should conduct themselves while on

official duty and even if not on duty, they should not be taking certain information about residents outside the facility. It is the policy that guides how employees should be working and in compliance with the facility policies and protocols. (R-10.)

The purpose of the employee code of conduct was to establish a guide that delineates an acceptable level of conduct/behavior from employees, in accord with Department Policy, Department of Personnel and appropriate Union Contracts. Any employee having knowledge of any unusual incidents or violations of the standards set forth shall report all such matters to their immediate supervisor without delay to ensure a timely administrative intervention. Failure to report violations may result in administrative/criminal penalties. (R-10.) Administrative actions refer to corrective or disciplinary action the facility takes when an employee's conduct warrants same. The guidelines for administrative and disciplinary action are set forth in departmental directive 230.05.

Paragraph 3 of the Code of Conduct states "Employees are required to understand and abide by those laws, regulations, policies, and procedures that are applicable to them in the performance of their job duties." (R-10, paragraph 3.)

Paragraph 13 of the Code of conduct states "Employees will be respectful and courteous at all times when communicating and or interacting with residents, families, visitors and other employees; and shall introduce/identify themselves as required or necessary. Employees will refrain from the use of profanity, vulgarity, and immorality during the course of discharging their duties. ("The customer is always right" approach shall prevail.) (R-10, paragraph 13.) The employees are instructed to be respectful and courteous at all times and to treat people the way they want to be treated. They explain to them if a resident prefers to be addressed as Mr. to do so and not use their first name, unless they prefer to be called by their first name then use their first name. You have to be respectful and do what they ask. If a visitor, resident or co-worker is visibly upset, yelling and screaming, you have to remain respectful and say that I see you're upset, walk away and go report it to someone, but do not get into a back and forth with them. The purpose is to prevent disturbances from taking place.

Paragraph 14 of the Code of Conduct states "Employees are required to communicate to, and in the presence of residents, families, visitors and colleagues in a courteous, respectful manner and in a language that can be effectively understood." Employees need to communicate to do their job here and the way to communicate is in a civil manner and courteous manner. Always be respectful of the other person and they in turn will communicate the same way with you.

Paragraph 15 of the Code of Conduct requires "Employees are to act with regard to Veterans Home residents treating them with courtesy, consideration, and respect for their dignity and individuality. Actions that constitute any form of mistreatment, i.e., physical/verbal abuse, teasing, threatening, pushing, slapping or striking, neglect, or exploitation of a resident will not be tolerated." (R-10, paragraph 15.) They have to remember that even though they are employed, and this is their job, this is the residents' home and the employee has to conduct themselves as servants in the resident's home and always treating them with respect and dignity and you cannot have any form of mistreatment on any level whether it is intended for the resident or it is intended for your co-worker. If you are yelling and screaming or cursing, it is the resident's home and that is a form of mistreatment.

Respondent has a personnel policy entitled "Workplace Violence Prevention Plan" (R-11). They have a zero tolerance for workplace violence. When you are working in a healthcare facility, you are working and interacting with all levels of staff, with visitors, with residents and people coming and going and there is always potential for someone to become upset and angry and take their anger and frustrations out on others around them. So, to prevent that from occurring, staff are informed that this facility has zero tolerance for workplace violence. If there is something that occurs, it needs to be reported immediately to your supervisor so that it can be addressed. When you take matters into your own hands, it may start out as an argument and then mounts up and can become a physical situation. So, whether it is verbal arguing and threats or physical, neither one is tolerated. The workplace needs to be a place where you can come and be free to do your job without fear of violence.

All facility personnel must refrain from engaging in acts of violence and are responsible for maintaining a work environment free from acts or threats of violence. All employees shall be held accountable for reporting incidents of violence through appropriate channels. (R-11, page 3.)

The prior disciplinary history log of appellant was stipulated into evidence (R-13).

Respondent maintains a Corrective and Disciplinary Action Booklet. (R-14.) Whenever it is necessary to take administrative action against an employee, they use this booklet which contains the guidelines that have been adopted so that every employee is treated the same objectively. The booklet sets forth the charge and then sets forth the discipline for a first offense, then for a second and a third offense. This is what the administrators and managers follow if discipline is to be imposed. The employees all receive a copy of this booklet at orientation, and it applies to every employee in the facility. The Table and Offenses and Penalties at page 8 of R-11 indicate that for the offense of "Fighting or creating a disturbance on State property" the guidelines indicate for a first infraction the minimum penalty is an official reprimand and the maximum penalty is removal. For the second infraction, the penalty is removal. (R-11, page 8, #7.) Fighting or creating a disturbance on public property includes verbal, physical and threatening behavior.

The table of offenses for an E 1. General violation of a rule, regulation, policy, procedure, order, or administrative action has a range of penalties for a first infraction from counseling to removal; for a second infraction a minimum penalty of a five-day suspension to removal; and for a third infraction the penalty is removal. (R-11, page 14.)

Ms. Jackson recognized R-15 as the statement prepared by CNA Ashley Suarez who witnessed this incident. She was given a blank form and asked to provide a statement in her own words about what occurred. She printed and signed her name on the bottom of the statement dated December 1, 2020. Ms. Jackson received this statement and later interviewed Ms. Suarez regarding her statement. She asked Ms. Suarez to indicate in the diagram where the carts were, where the employees were and where she was when the incident occurred. Ms. Suarez drew the diagram and gave it to

Ms. Jackson. In interviewing Ms. Suarez, she had additional information, so Ms. Jackson requested Ms. Suarez to provide an additional statement and she did. (R-15.)

The table of offenses and penalties incorporated in Departmental Directive 230.05 represents the Department's policies of corrective rather than punitive actions, progressive disciplines, or progressive range of penalties for specific types of offenses, and the consideration of appropriate and demonstrable mitigating factors.

All penalties imposed must be within the range of penalties set for in the Table for the particular type of offense and the number of the infraction, unless consideration of mitigating factors would cause the penalty to be deemed inappropriate. Mitigating factors can be length of service, disciplinary record, or other legitimate reasons. (R-11, page 3.)

The employee code of conduct does not permit one employee to bump into another. (R-10.) The workplace violence prevention plan does not permit an employee to bump into another employee or push them. (R-11.)

Ms. Jackson did not personally witness this incident and the video of the incident does not have any audio.

Ashley Suarez was subpoenaed by respondent and called as a witness by appellant. She has not spoken to Mr. Nash, aside from this morning before the proceeding. Ms. Suarez was employed by respondent as a CNA at the time of this incident. She provided two written statements to respondent. (R-15.) Her statement indicated Ms. Scurry accidentally bumped into the appellant. She was not aware of any history between Scurry and appellant when she wrote her statements. She did not know they had a history between them and had she known, her statement may have been different. She had no independent recollection of the incident. She did provide two written statements which were accurate on the date she wrote them.

Ms. Suarez handwritten statement of December 1, 2020, (R-15) stated:

"I went to grab the milk cart and Campbell-Owens was grabbing a breakfast tray then Scurry tried to get in between us and bumped Campbell-Owens by accident. Then they proceeded to yell at each other. Owens initiated the threat to take it outside if Scurry wanted to fight. Campbell-Owens was yelling blood of Jesus I'm just trying to do my job. They were separated after that point."

She also attached a diagram to her statement showing where the carts and individuals were located at the time of the incident. (R-15.)

On December 2, 2020, Ms. Suarez prepared an addendum to her initial statement that stated:

"After Scurry bumped Owens and Owens threatened to take it outside so they could fight. That is when Scurry used profanity towards Owens." (R-15.)

Denise Campbell-Owens testified on her own behalf. She is fifty years old and was hired by the State of New Jersey in 2016. She worked at the Vineland Veteran's Memorial Home as a HSA. She was also a Certified Nurses Aide (CNA). She provided personal care to the elderly including dressing and bathing them, feeding them, or assisting with feeding. She enjoyed taking care of the elderly and always went above and beyond in caring for them. To be a CNA she was required to take a six-week course where they learn proper procedures as to how to take care of the veterans, how to properly make a bed, the use of personal protective equipment (PPE) as well as proper cleanliness procedures in dealing with a virus or something like that. At the end of the course, she had to take a state test and received her state certification when she passed.

Ms. Campbell-Owens was assigned to the Liberty Square unit on December 1, 2020. She was familiar with Verna Scurry as she was her coworker. Prior to the incident there had been an incident in November where Ms. Scurry accused Ms. Campbell-Owen of leaving feces on a resident's sling, which Ms. Campbell-Owen denied. Ms. Scurry was aggressive with her and trying to make trouble, so Ms. Campbell-Owens was going to

leave the room. Another young lady was standing in the doorway and as Ms. Campbell-Owen was leaving, trying to remove herself from the situation, her hip accidentally bumped the other young lady because she was standing next to the door, and they were all trying to come out the door at the same time. Ms. Scurry continued to argue with Ms. Campbell-Owens and they took it to the nurse, 'Debbie' and Tanya Olinda and they resolved it on the floor without taking it up to Ms. Jackson and that was that. Ms. Campbell-Owens posted a statement on her Facebook page that people at her job were making trouble. She did not remember how long after the initial incident with Ms. Scurry was that she posted this statement, but Ms. Scurry posted that she was talking about her. They had been Facebook friends and Ms. Campbell-Owens blocked Ms. Scurry from her page so she could not be Facebook friends after that. She continued to see Ms. Scurry at work but never said anything to her and tried to avoid all contact with her.

Ms. Campbell-Owens was shown the FNDA (R-2) and recognized it as the document she appealed. She reviewed the violations listed and testified that she did not commit any of these violations. She did not fight, she was not discourteous to any resident or visitors, and she did not create a disturbance. She appealed the FNDA because she did not start an altercation with Ms. Scurry. She was doing her job the entire time. She does not feel that she created a disturbance as she was in the process of doing her work and was provoked by Ms. Scurry. This incident occurred December 1, 2020, during COVID and she was wearing personal protection equipment (PPE). She wore a mask over her mouth and nose and a plastic face shield which covered her entire face.

Ms. Campbell-Owens was on wing one getting the residents' breakfast trays out to distribute to them when this incident occurred.

Earlier in the morning, before the incident occurred, Ms. Scurry was trying to bump into Ms. Campbell-Owens in the hallway and Ms. Campbell-Owen avoided her and walked around her. Ms. Campbell-Owens was using a snack cart that she got from behind the nursing station in the snack room, because she wanted to avoid Ms. Scurry at all costs since she was trying to make problems with her all morning. She was going to use the snack cart and put all of her trays on the cart so they would not be bumping into each other or interact while she was taking out her trays, as opposed to getting one tray

out at a time and distributing it. The food truck is usually delivered to the end of the hallway, and they move it up as they deliver the trays to each resident's room making their way down the hallway. There are residents' rooms on both sides of the hallway in wing one.

As Ms. Campbell-Owens was getting her trays from the food cart, she noticed Ms. Scurry standing a few feet away from her on her right, leaning against the wall. At that time, they did not have any conversation and Ms. Campbell-Owen was just doing her job. Ms. Scurry was assigned as a one-on-one aide to a particular resident and had that resident all day, but sometimes she assisted with distributing the food trays.

Ms. Campbell-Owens said that the next time she saw Ms. Scurry was when she felt Ms. Scurry 'push through' Ms. Campbell-Owens and Ms. Campbell-Owens looked up and said "Verna, you could have said excuse me" and Ms. Scully said "I did, I did say excuse me" and Ms. Campbell-Owens said "You didn't say excuse me." Ms. Campbell-Owens was facing the food cart and was bent down taking a tray out to put on the snack cart when Ms. Scurry 'pushed through her'. Ms. Campbell-Owens described the push as "Like when somebody's bumping you out of the way, like pushing you, like, you know, get out the way type of you know." Ms. Campbell-Owens felt it was intentional because she would have said excuse me, but Ms. Campbell-Owens did not hear Ms. Scurry say anything. She explained that she was upset when she wrote her statement and used the words 'pushed through me' because she felt Ms. Scurry was pushing her out of the way. Ms. Scurry said she did say excuse me and Ms. Campbell-Owens said she didn't say excuse me.

Ms. Scurry was being very aggressive, and Ms. Campbell-Owens said to her "Verna, you might not need your job, but I need my job, I'm not doing to do this with you- I'm not going to do this with you." And, she said "Denise, you don't want none of this, you don't want none of this and going like that, ready to fight me." That is when Ms. Campbell-Owens was trying to avoid her and proceeded to go to the nurses' station to talk to the charge nurse and Ms. Scurry was following her down the hall still engaging in an argument with her.

Ms. Campbell-Owens provided a handwritten statement which she signed and dated December 1, 2020, which read as follows:

"I was on hall one taking my residents trays off the food truck when Verna push her way right through me. I asked why did she do that. You could have said excuse me. She said to me I don't want none of her. I said Verna you are looking for trouble girl. This is my job and I am not going to do this on my job. I am here to work not fight. Then she proceeded to get loud with me yelling what she will do to me. I said to her this is the Devil the blood of Jesus this morning." (P-1.)

When Ms. Scurry was saying "you don't want none of this Denise" her right hand was punching her open left hand. Ms. Campbell-Owens took this to mean she was threatening to fight her and hit her. Ms. Campbell-Owens told Ms. Scurry that she was there to do a job and not get into a fight with her on the job. When Ms. Campbell-Owen wrote in her statement that Ms. Scurry got loud with her, Ms. Scurry was saying she was going to hit and fight Ms. Campbell-Owens.

In her statement Ms. Campbell-Owens states "I said to her this is the devil, the blood of Jesus, this morning." She is a Christian woman and that is something that she always says, and her church people use this expression, and she says this when she sees the devil operating.

The video from camera 2 from December 1, 2020, was played for the witness. (R-2.) At 7:38:17 hallway 1 is shown and Ms. Campbell-Owens is seen pulling the snack cart and wearing a flowered pink, white, black and grey top. At 7:38:47 she pulled the snack cart up to the food cart. Shonda Burroughs is seen wearing blue pants. At 7:38:50 Shonda is pulling the second food cart over to wing two. At 7:38:59 Ms. Campbell Owens sees Ms. Scurry walking towards her. At 7:39:02 Ms. Campbell-Owens sees Ms. Scurry arguing and Ms. Suarez is there also. At 7:39:31 Ms. Campbell-Owens is trying to get out of Ms. Scurry's way because she is still arguing with her, and she is trying to keep her distance. At 7:39:44 Ms. Campbell Owens is in back of Ms. Suarez to the left and Ms. Scurry is on the side and to the right of Ms. Suarez. At 7:39:50 Ms. Suarez is in front with the milk cart, Ms. Campbell-Owens is to the left of Ms. Suarez, and Ms. Scurry is to the right across from Ms. Suarez and Ms. Campbell-Owens. At 7:39:50 Ms. Campbell-Owens

is pushing the snack cart with the trays on it and at the same time, she is going towards the charge nurse to let her know what is going on. Ms. Scurry is arguing with her and not doing her job at this point.

At 7:39:51 Ms. Scurry is telling Ms. Campbell-Owens that she is old and what she could do to her. Ms. Campbell-Owens is trying to avoid her and at the time, Shonda is saying to Ms. Campbell to just go ahead and ignore Ms. Scurry. Ms. Campbell-Owens is 'fanning' her off and is annoyed because she is trying to do her job and Ms. Scurry is trying to engage in a fight with her. At 7:40 Shonda is seen touching Ms. Campbell-Owens guiding her along the way. At 7:40:03 Ms. Campbell-Owens is probably saying "this ain't nothing but the devil, you know, from the pit of hell, the blood of Jesus" and one of Ms. Campbell-Owens' arms is up in the video. She explained she was 'fanning' Ms. Scurry off saying "this ain't nothing but the devil, I don't have time for this." At 7:40:05 Ms. Scurry is engaged, and she wants to fight. Ms. Campbell-Owens never said to Ms. Scurry that if you want to fight, we'll take it outside or something to that effect.

The video from camera 95 was played. At 7:40:06 Ms. Burroughs is seen pushing the milk cart with Ms. Suarez and Ms. Campbell-Owens is pushing the snack cart with the breakfast trays and Ms. Burroughs is guiding Ms. Scurry to the solarium. Ms. Campbell-Owens was trying to talk to the charge nurse Tanya to let her know what was going on with Ms. Scurry. At 7:40:20, Tanya the charge nurse is seen on the video. Ms. Campbell-Owens is seen pushing her cart and she is talking to Ms. Suarez and saying, "Did you see what she did, did you see her push me?" She shook her head and said yes. At 7:40:48 Ms. Campbell-Owens is attempting to pass the trays out but realized she should speak to Tanya. Ms. Campbell-Owens testified, "at this point because I wanted to tell what's going on because, you know, usually things always make it look like I'm the one creating the problem. So, I'm trying to just explain to her what took place."

At 7:40:12 Ms. Campbell-Owens is shown waiting to talk to Tanya and Ms. Scurry enters the room and is talking to Tanya and 'fussing' at Ms. Campbell-Owens at the same time. Ms. Campbell-Owens does not think she was loud, she was just standing there trying to explain her side of the story to Tanya but kept her distance from Ms. Scurry because she wanted to fight her. Tanya is seen waiving her hands because she really

did not want to hear anything from either of them, and said they should go upstairs to Ms. Jackson.

At 7:41:56 Ms. Campbell-Owens is still trying to get the charge nurse to hear her side, but she really did not want to hear it and told her to go upstairs to Ms. Jackson. It is standard procedure if there is a problem with a coworker to go through the chain of command – the charge nurse, then the supervisor, then the director of nursing. At 7:42:17 Tanya did not want to hear it and said to go upstairs to Ms. Jackson. Ms. Campbell-Owens left this area to go down the hallway on her way up to Ms. Jackson's office. Ms. Campbell-Owens did not know who was feeding or taking care of the residents at this point.

At 7:42:52 Ms. Campbell-Owens is coming back into the area because she is trying to avoid Ms. Scurry who is still trying to engage in a fight with her, so she turned around to take the stairs behind the nurses' station that goes upstairs.

Ms. Campbell went upstairs to see Ms. Jackson but she was not in her office, so she went to the supervisor's office, but Ms. Scurry was already in with her and she was trying to talk to the supervisor who told her to go sit outside. Ms. Campbell-Owens was very upset and asked to go home because she was upset and was on overtime. She wanted to cool down before she wrote her statement because she was very upset about the situation. The supervisor was listening to Verna and Ms. Campbell-Owens felt like she was not trying to hear what Ms. Campbell-Owens had to say.

Brenda Ackley was the shift supervisor at the time and either she or the assistant director of nursing, Vicky Mason, told her to write a statement. She sat in a room across from the director of nursing's office and wrote her statement. (P-1.) She eventually saw Ms. Jackson who took her badge and told security to escort her out. She was upstairs for approximately a half hour. She did not have any further altercation with Ms. Scurry while upstairs. It was just Ms. Campbell-Owens, Ms. Scurry and the supervisors that were there, there were no residents.

Ms. Campbell-Owens is a fifty-year-old Christian woman who has never been a troublemaker. She believes Ms. Scurry is in her twenties.

From the time Ms. Campbell-Owens entered the nursing station to report the incident to the charge nurse until she went to go upstairs, she did not engage in any type of behavior that was disruptive. Before she entered the nurses' station, she did not engage in any action that created a disturbance of any kind. She was not yelling or screaming but she just said: "This ain't nothing but the devil from the pit of hell, the blood of Jesus," I wasn't – I wasn't on top of my voice screaming or, you know, yelling out like a crazy person, no."

To the best of Ms. Campbell-Owens' knowledge, no veterans were in any way disturbed by what happened between herself and Ms. Scurry.

The video from camera 2 at 7:38:42 was played. At 7:38:51 Ms. Scurry is still leaning against the wall. She is then standing next to Ms. Suarez and walks off from Ms. Suarez at 7:38:59 and Ms. Campbell-Owens testified that is when Ms. Scurry bumped into her right there at 7:39:02. The video keeps playing and that is when Ms. Campbell-Owens said she should have said excuse me. Ms. Campbell-Owens was talking in a normal tone at this point, which was 7:39:17, even after Ms. Scurry pushed through her. At 7:39:34 Verna is pulling the milk cart and Ms. Campbell-Owens is pushing the snack cart and Ms. Suarez is on the left.

On the day of the incident, she and Ms. Scurry were involved in a loud argument while both were on duty.

The video at 7:40:02 shows Ms. Scurry and Ms. Campbell-Owens walking along side each other heading towards the nurses' station. At 7:40:06 Ms. Scurry is ahead of Ms. Campbell-Owens. Ms. Campbell-Owens was going to the nurses' station, but she doesn't know where Ms. Scurry was going.

HSA's are trained to communicate with colleagues in a respectful manner. They are also instructed to report to their supervisor any verbal altercation with another

employee. Ms. Campbell-Owens was not disrespectful to anyone during the incident of December 1, 2020.

Both Ms. Campbell-Owens and Ms. Scurry were terminated because of this incident.

Discussion

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). "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.) (citation omitted), certif. denied, 10 N.J. 316 (1952). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App Div. 1958). Testimony, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

Ms. Campbell-Owens and Ms. Scurry were both terminated from their HSA positions at the Vineland Memorial Veteran's Home for engaging in a verbal altercation while on duty on December 1, 2020. Ms. Campbell-Owens has appealed her termination and is the appellant in this case and as such her interest and motive in portraying herself as the innocent victim, rather than an active participant in the verbal altercation with Ms. Scurry on December 1, 2020, is suspect. There was no audio in the video footage reviewed (R-4), but there were several witnesses who testified as to what occurred and

the interactions between the two of them during and following the incident. Ashley Suarez was the only independent witness as to what started the altercation between the two and she indicated that Scurry bumped into Campbell-Owens while trying to get by Suarez and Campbell-Owens. Scurry also testified she bumped into Campbell-Owens. Campbell-Owens' testimony that Scurry "pushed through her" as if to push her out of the way and her statement to Ms. Ackley that Scurry 'charged her from behind and pushed her' would appear to be an exaggeration.

Both Scurry and Campbell-Owens admit to a previous dispute between them at work regarding the condition of a resident's sling and then a subsequent negative Facebook posting. Both make reference to that history as a motive for the contact and subsequent escalation into a verbal altercation between the two of them. Nevertheless, the testimony was clear that both of them became engaged in a verbal altercation and disturbance on that day.

Ashley Suarez' statement indicates that after Scurry bumped into Campbell-Owens, they both started yelling at each other and that Campbell-Owens initiated the threat to take it outside if Scurry wanted to fight. Suarez further indicated in her statement that Campbell-Owens was yelling 'blood of Jesus I'm just trying to do my job.' (R-15.) Ms. Burroughs, a nineteen-year employee of respondent, not friends with either Scurry or Campbell-Owens outside of work, indicated that she did not know what precipitated the incident between them. She was coming from wing two and went back to wing one to get the milk cart and when she got there, Scurry was yelling saying 'why you calling out the blood of Jesus, you don't want none of this'. She indicated that both Scurry and Campbell-Owens' tempers were high.

Ms. Campbell-Owens testified that she did not engage in any action that created a disturbance of any kind. She was not yelling or screaming but she just said: "This ain't nothing but the devil from the pit of hell, the blood of Jesus," I wasn't – I wasn't on top of my voice screaming or, you know, yelling out like a crazy person, no." However, this is contrary to what the other witnesses stated and is contrary to her previous statement contained in her December 19, 2022, certification wherein Campbell-Owens previously

admitted to screaming "Blood of Jesus" (December 19, 2022, certification of Campbell-Owens at paragraph 10.)

Shonda Burrough also testified that the argument between Scurry and Campbell-Owens was very loud and intense. Likewise, Tanya Olinda, the charge nurse at the nurses' station testified that Campbell-Owens and Scurry were yelling over the top of each other, and their argument was pretty heated. She could not diffuse the situation and sent them both upstairs to the supervisor's office. Brenda Ackley, the supervisor testified that the two of them continued to argue and attempt to get at each other while they were upstairs in the supervisor's office.

Respondent's employee witnesses were impartial and consistent in their testimony.

Therefore, I deem Ms. Campbell-Owens' testimony that she did not engage in any verbal altercation with a coworker or engage in disruptive behavior on October 1, 2020, to not be credible.

Based upon due consideration of the testimonial, documentary and video evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

The New Jersey Veteran's Memorial Home in Vineland serves a population of elderly residents who come with military veterans' backgrounds – either they are retired veterans themselves or their wives or husbands.

Appellant, Denise Campbell-Owens was employed as a HSA by the New Jersey Veteran's Memorial Home in Vineland from January 2016 until this incident on December 1, 2020, which resulted in her removal.

Ms. Campbell-Owens executed receipts acknowledging that she received various employment documents including the Corrective and Disciplinary Action Guidelines-

Department of Military and Veterans Affairs and the Employee Code of Conduct Policy
#43-03-002. (R-8 and R-9.)

The Employee Code of Conduct (R-10) requires the following:

Employees are required to understand and abide by those laws, regulations, policies, and procedures that are applicable to them in the performance of their job duties. (R-10, paragraph 3.)

Employees will be respectful and courteous at all times when communicating and or interacting with residents, families, visitors and other employees (R-10, paragraph 13).

Employees are required to communicate to, and in the presence of: residents, families, visitors and colleagues in a courteous, respectful manner and in a language that can be effectively understood. (R-10, paragraph 14.)

Employees are to act with regard to Veteran Home residents: treating them with courtesy, consideration, and respect for their dignity and individuality. Actions that constitute any form of mistreatment, i.e. physical/verbal abuse, teasing, threatening, pushing, slapping or striking, neglect, or exploitation of a resident will not be tolerated. (R-10, paragraph 15.) Ms. Jackson testified that employees are instructed and have to remember that even though they are employed and this is their job, this is the residents home and the employee has to conduct themselves as servants in the resident's home and always treating them with respect and dignity and you cannot have any form of mistreatment on any level whether it is intended for the resident or it is intended for your co-worker. If you are yelling and screaming or cursing, it is the resident's home and that is a form of mistreatment.

Employees are required to report all unusual incidents, generally defined as occurrences not ordinarily encountered in facility routine in which the safety of a resident/employee is affected. (R-10, paragraph 35.)

Employees who violate the aforementioned conditions of conduct, or rules, regulations, policies or procedures governing the operation of the New Jersey Veterans Memorial Home in Vineland may be subject to Disciplinary action in accord with the Departmental Directive 230.05, as well as the

governing authorities of the respective investigating agencies.
(R-10, paragraph 43.)

Respondent also has a "Workplace Violence Prevention Plan" which states:

"All facility personnel must refrain from engaging in acts of violence and are responsible for maintaining a work environment free from acts or threats of violence. All employees shall be held accountable for reporting incidents of violence through appropriate channels." (R-11, page 3.)

On December 1, 2020, at approximately 7:30 a.m., Ms. Campbell-Owens was working on the Liberty Square nursing unit wing one and was in the process of distributing breakfast trays to the residents of the facility. Her coworkers, Verna Scurry and Ashley Suarez were also present and distributing breakfast.

Verna Scurry bumped into Campbell-Owens as Scurry was trying to go between Campbell-Owens and Suarez.

Campbell-Owens and Scurry began yelling at each other.

Ashley Suarez' written statement indicated that Campbell-Owens initiated the threat to take it outside if Scurry wanted to fight and that Campbell-Owens was yelling blood of Jesus I'm just trying to do my job. (R-15.)

Shonda Burroughs testified that she was coming from wing two and had the food cart and went back to wing one for the milk cart and heard the two of them arguing and tried to separate them. She did not recall what they were arguing about, but the argument was very loud and intense. Her written statement from December 1, 2020, stated that she was on wing two with the breakfast cart and went back to wing one to get milk and when she got there, Scurry was saying "why you calling out blood of Jesus, you don't want none of this." (R-5.)

The December 1, 2020, video (R-4) at 7:38 a.m. showed wing one on Liberty Square. Ms. Burroughs testified that she recognized Ms. Campbell-Owens in the black

pants and Daryl in the blue shirt. At 7:38 minutes and 51 seconds Ms. Burroughs is seen with blue pants and a white shirt on and with the milk cart. At 7:39:53 the video shows Daryl in the blue shirt, Ashley in the dark colored scrubs, Verna in black and Ms. Campbell-Owens in a flowered shirt in the back and to the left. Ms. Burroughs is coming from wing two to get the milk cart. As the video was reviewed, Ms. Burroughs testified as to what was transpiring since there was no audio. At 7:39:56 Ms. Scurry and Ms. Campbell-Owens are arguing. Both were getting loud. The video at 7:39:58 shows Ms. Burroughs trying to diffuse the situation by trying to get in between the two to separate them. She does not recall if she said anything. At 7:40:04 on the video Ms. Burroughs testified they were still arguing, and it was louder. The video was stopped at 7:40:08 and Ms. Burroughs was shown video from camera 95 from December 1, 2020, starting at 7:40 a.m. which showed the nurses' station between wing one and wing two. At 7:40:10 the video shows Ms. Scurry in black, Ms. Campbell-Owens in the flowered shirt, Ms. Burroughs with the white shirt and the milk cart and Ashley in the dark colored scrubs. They are all coming from wing one. At 7:40:11 Ms. Burroughs is seen separating Verna Scurry and taking her away from the situation. At 7:40:13 she is seen separating Verna from Ms. Campbell-Owens and Verna is seen walking away. At 7:40:19 Ms. Burroughs is going to the solarium behind the nurses' station with Verna Scurry. The video is stopped at 7:40:21 and video from camera 7 from December 1, 2020, at 7:40:01 is shown which depicts the solarium behind the nurses' station on Liberty Square. At 7:40:24 the video shows Ms. Burroughs and Ms. Scurry in the solarium. She did not recall what was happening here. The video was stopped and then video was again shown from camera 95 at 7:41:06 showing Ms. Burroughs going back to wing two to finish passing trays out. She does not recall seeing Ms. Campbell-Owens and Ms. Scurry after that. Camera 95 at 7:41:16 shows Tanya Olinda and Scurry at the nurses' station on the Liberty Square unit.

This incident between Scurry and Campbell-Owens delayed Ms. Burroughs from distributing the breakfast trays to the residents.

The amount of time that Ms. Burroughs spent on this incident was one minute and eleven seconds.

The video from camera 95 (R-4) on December 1, 2020, at 7:39:59 showed the nurses station on Liberty Square, which is where Tanya Olinda, the charge nurse was assigned. Ms. Olinda testified and identified Ms. Campbell-Owens, Ms. Scurry, Ms. Burrough and Ms. Suarez in the video. At 7:40:13 Ms. Olinda is in the video wearing a light jacket with her scrub uniform and was coming from hallway two, getting vitals and finger sticks done. At 7:41:04 seconds the video shows Ms. Olinda getting her cart ready with the necessary juices and things that she needs to go down the hall to pass out the medications. At 7:41:15 Ms. Olinda is trying to get her med pass cart ready and has Ms. Scurry standing to her left and Ms. Campbell-Owens in the kitchenette on Ms. Olinda's right. At 7:41:17 Ms. Olinda is seen raising her hand. Ms. Olinda testified that Campbell-Owens and Scurry were yelling over the top of each other, and she was trying to diffuse the situation by telling them to relax and calm down. Their argument was pretty heated. At 7:41:33 they are still yelling back and forth at each other. At 7:41:39 and at 7:41:50 Ms. Olinda is seen in the video raising her hand again and testified she was asking Ms. Campbell-Owens to go upstairs to the supervisor's office to take it off the floor. At 7:41:56 Ms. Campbell-Owens is still talking to Ms. Olinda and she raised her hand and was telling Ms. Campbell-Owens to please go upstairs and take it to the supervisor's office. At 7:42:10 Ms. Olinda is seen in the video talking to Ms. Campbell-Owens. At 7:43:08 Ms. Campbell-Owens is seen walking towards the day room.

Ms. Olinda, provided a handwritten statement, dated December 1, 2020, of what she witnessed between appellant and Scurry on December 1, 2020:

"I was coming back to the nurses station from wing 2 when I heard a bunch of yelling going on between Ms. Scurry & Ms. Campbell-Owens. I was not aware of any issues between the two of them and did not know what they were arguing about. I asked both of them to stop but they kept going on. I told them both to go upstairs."

(R-6.)

Ms. Olinda explained that some of the medications have to be given to residents on an empty stomach, which would be before breakfast is served between 7:00 a.m.-7:30 a.m. Tanya Olinda had to stop what she was doing for approximately thirty-two seconds to deal with this incident between Ms. Campbell-Owens and Ms. Scurry which delayed

her from getting her job done when there were thirty residents that needed specific care and medication before they could eat. She considered this amount of time a lot of time.

Brenda Ackley was the supervisor of nursing services on December 1, 2020. Both Scurry and Campbell-Owens came to her office on December 1, 2020, regarding an incident between them. Ms. Ackley had worked the night before and was to be done by 8:30 a.m. on December 1, 2020. At approximately 7:40 a.m. Ms. Scurry came up to the office and was upset and said there was an incident that had occurred between her and Ms. Campbell-Owens. Ms. Ackley told her to write a statement. Ms. Campbell-Owens came upstairs approximately five minutes after Ms. Scurry, and she was upset. She said Ms. Scurry had charged at her and was trying to purposely hit her, whereas Ms. Scurry said she just accidentally bumped her, and Ms. Campbell-Owens got very upset and turned around right away aggressively and said "let's take this outside". Ms. Ackley had Ms. Scurry go to the conference room which is near the supervisor's office so she could privately write her statement because both of them were still visibly upset and arguing. Ms. Ackley wanted to hear Ms. Campbell-Owens side of the story as to what happened. Ms. Campbell-Owens was trying to talk but was still very upset and very heated. Ms. Ackley told her that she needed her to also write a statement and tried to get her to go to a separate room across the hall that had a door to close because she wanted to keep them separated. Throughout the time, they both kept coming out of their rooms trying to talk to Ms. Ackley and trying to talk to each other and would get loud again. Even while Ms. Campbell-Owens was in the supervisor's office she was being very loud and saying 'let's take this outside. Ms. Ackley kept telling them to please go to their area and stay separated. She tried to have someone call an assistant director of nursing to inform her of what was going on and then when Ms. Jackson, the director of nursing came in, she took over from there.

It is never appropriate for an employee to yell at another employee. They have a strict code of conduct that every employee signs twice a year when they get their performance evaluation. This is the veterans' home and the employees have to behave as guests in their home and the employees cannot make them afraid to be in their home. The purpose of the code of conduct is to ensure employees behave appropriately and

they cannot be yelling or causing a disruption. It is not acceptable as this is a workplace and the resident's home.

Ms. Ackley estimated she was with Ms. Scurry and Ms. Campbell-Owens for at least twenty minutes or so before Ms. Jackson came to take over. Ms. Ackley continued to do her work and finished before she left but it was a busy time with the shift change and she had to stop what she was doing to deal with this because it was a priority at the time because she could not let them fight and had to try to intervene. She as the supervisor would be the one to handle the problem if they were being disruptive and trying to fight and they would have to report to the supervisor's office because they could not stay on the unit.

Ms. Ackley prepared a handwritten statement dated December 4, 2020, three days after the incident. She was not a witness to the incident itself but met with both appellant and Ms. Scurry after the incident and wrote down what each of them told her and what they were doing while in her office. (R-7.)

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority shoulders the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant has been charged with N.J.A.C. 4A:2-2.3(a)6 Conduct unbecoming public employee. "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic 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, supra, 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)).

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. The charges constituting "other sufficient cause" are for violations of C-7 Fighting or creating a disturbance on state property; C-20 Discourtesy of public, visitors, patients, residents or clients; and E-1 – Violation of a rule, regulation, policy, order or administrative decision.

I have found as fact that on December 1, 2020, appellant was engaged in a continued, loud verbal altercation with her coworker Vera Scurry while working as an HSA assigned to the Liberty Square Nursing unit. The verbal altercation started on wing one and continued up to the nurses' station area and beyond to the supervisor's office. This behavior was disruptive to the staff who had to intervene between Campbell-Owens and Scurry to stop them from arguing. Ms. Burroughs was delayed in passing out the breakfast trays to the residents. LPN Tanya Olinda was interrupted and delayed in passing out the resident's medications and doing blood sticks which had to be done before breakfast. Supervisor Ackley was almost done her shift and had to stop to deal

with Scurry and Campbell-Owens continued fighting, even when they reported to the supervisor's office.

The New Jersey Veterans Memorial Home in Vineland provides twenty-four-hour care to elderly military veterans and their spouses. It is their home and employees are instructed to behave as guests in their home. Engaging in a continued loud verbal altercation with Scurry in the veterans' home is discourteous and is a C-20 violation. Appellant is a direct service care provider to the residents as an HSA and is aware of her obligations to behave appropriately and in accordance with respondent's policies and procedures and the Employee Code of Conduct. Her behavior in engaging in a continued verbal altercation with Scurry was unprofessional and disruptive to the facilities operations and a C-7 offense violation for fighting or creating a disturbance on public property. Ms. Campbell-Owens conduct in engaging in a continued verbal altercation with her coworker Scurry in a residential health care facility that cares for elderly military veterans and their spouses is a 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 and therefore is conducting unbecoming a public employee. Appellant's behavior in engaging in a continued verbal altercation with her coworker is also an E-1 offense violation which is a violation of a rule, regulation, policy, order or administrative decision. Appellant is guilty of the E-1 offense for violating the employee code of conduct paragraph 13 which requires employees to be respectful and courteous at all times when communicating and or interacting with resident, families, visitors and other employees. It is also a violation of paragraph 14 which requires employees to communicate to, and in the presence of resident, families, visitors and colleagues in a courteous, respectful manner and is also a violation of paragraph 15 requiring employees to treat residents with courtesy and consideration. Appellant is also guilty of an E-1 offense for violation of the respondent's Workplace Violence Prevention plan which requires all personnel to refrain from engaging in acts of violence and being responsible for maintaining a work environment free from acts or threats of violence.

Based on the above, I **CONCLUDE** that respondent has sustained its burden of proving by a preponderance of the credible evidence that appellant violated 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 – for violations of C-7 Fighting or creating a disturbance on state property; C-20 Discourtesy of public, visitors, patients, residents or clients; and E-1 – Violation of a rule, regulation, policy, order or administrative decision, for violations of the employee code of conduct and workplace violence policy.

Penalty

The remaining issue is penalty. The Civil Service Commission's review of a penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Brock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Appellant has been found to have violated 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 – for violations of C-7 Fighting or creating a disturbance on state property; C-20 Discourtesy of public, visitors, patients, residents or clients; and E-1 – Violation of a rule, regulation, policy, order or administrative decision, for violations of the employee code of conduct and workplace violence policy. Respondent seeks appellant's removal from her position as an HSA.

Respondent maintains a Corrective and Disciplinary Action Booklet. (R-14.) Whenever it is necessary to take administrative action against an employee, this booklet contains the guidelines that have been adopted so that every employee is treated the same objectively. The booklet sets forth the charge and then sets forth the discipline for a first offense, then for a second and a third offense. This is what the administrators and managers follow if discipline is to be imposed. The employees all receive a copy of this booklet at orientation, and it applies to every employee in the facility.

The Table and Offenses and Penalties at page 8 of R-11 indicate that for the offense of "Fighting or creating a disturbance on State property" the guidelines indicate for a first infraction the minimum penalty is an official reprimand and the maximum penalty is removal. For the second infraction, the only penalty is removal. (R-11, page 8, #7.) Fighting or creating a disturbance on public property includes verbal, physical and threatening behavior.

The table of offenses for a C-20 violation, Discourtesy to public, visitors, patients, residents or clients has a range of penalties for a first infraction from an official reprimand to a one-day suspension; for a second infraction, a one-day suspension to a ten-day suspension; and for a third infraction, removal. (R-11, page 10.)

The table of offenses for an E 1. General violation of a rule, regulation, policy, procedure, order, or administrative action has a range of penalties for a first infraction from counseling to removal; for a second infraction a minimum penalty of a five-day suspension to removal; and for a third infraction the penalty is removal. (R-11, page 14.)

The prior disciplinary history log of appellant was stipulated into evidence. (R-13.)

This is appellant's second violation for a C-7 offense which requires removal.

This is appellant's second violation for a C-20 offense which requires a minimum suspension between one day and a maximum suspension of ten days.

This is appellant's second violation for an E-1 offense which requires a minimum of a five-day suspension to removal.

Therefore, I **CONCLUDE** respondent's actions in removing appellant from her position is appropriate and in accordance with the guidelines set forth in the NJDMVA Corrective and Disciplinary Action Booklet.

ORDER

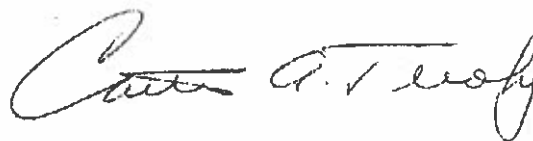
It is **ORDERED** that the charges as set forth above are **SUSTAINED**.

It is also **ORDERED** that the penalty of removal is **AFFIRMED**. Appellant's appeal is **DISMISSED**.

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.



February 20, 2024

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

Date Mailed to Parties:

CAT/gd

APPENDIX

WITNESSES

For appellant

Denise Campbell-Owens

For respondent

Verna Scurry

Shonda Burroughs

Tanya Olinda

Brenda Ackley

Carmen Jackson

Ashley Suarez

EXHIBITS

For appellant

P-1 Handwritten statement of Denise Campbell-Owens dated December 1, 2020

For respondent

R-1 PNDA dated December 9, 2020

R-2 FNDA dated February 26, 2021

R-3 Handwritten statement of Verna Scurry, dated December 1, 2020

R-4 Video of December 1, 2020, incident

R-5 Handwritten statement of Shonda Burroughs, dated December 2, 2020

R-6 Handwritten statement of Tanya Olinda, dated December 1, 2020

R-7 Handwritten statement of Brenda Ackley, dated December 4, 2020

R-8 Receipt of employment documents, dated January 11, 2016

R-9 Employee Code of Conduct receipt, dated January 18, 2019

R-10 Employee Code of Conduct Policy

OAL DKT. NO. CSV 03341-21

R-11 Workplace Violence Prevention Plan

R-12 not in evidence

R-13 Prior Disciplinary History log

R-14 Disciplinary action booklet

R-15 Handwritten statement of Ashley Suarez, dated December 2, 2020