STATE OF NEW JERSEY

In the Matter of Ranique Woodson,
Newark, Mayor's Department

CSC Docket No. 2024-832
OAL Docket No. CSV 13275-23

DECISION OF THE CIVIL SERVICE COMMISSION

ISSUED: SEPTEMBER 4, 2024

The appeal of Ranique Woodson, Clerk 1, Newark, Mayor's Department, removal, effective August 10, 2022, on charges, was heard by Administrative Law Judge Daniel J. Brown (ALJ), who rendered his initial decision on August 6, 2024. Exceptions were filed on behalf of the appointing authority and a reply was filed by the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent, *de novo* evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on September 4, 2024, adopted the ALJ's recommendation to grant the appointing authority's motion for summary decision. However, the Commission disagreed with the ALJ that a six-month suspension was the proper penalty and imposed a 60 working day suspension.

In its exceptions, the appointing authority argues that the appellant's appeal should have been dismissed since it was not timely filed under *N.J.A.C.* 4A:2-2.8. In support, it argues that the appellant was sent, via certified mail, a Final Notice of Disciplinary Action (FNDA), dated June 26, 2023. Thus, it argues that her appeal in October 2023 was clearly late. It also argues that the appellant was inconsistent in indicating her actual receipt of the FNDA, at one juncture stating it was September 28, 2023, and later stating it was October 2, 2023. Further, it argues that, via her filings with other agencies and in communications with it she knew of her employment status significantly before her receipt of the FNDA. The Commission rejects these contentions. In its review of the submissions, while the appellant was apparently seeking relief in other forums, those submissions indicate her belief that she was still on indefinite suspension and was, essentially, attempting to be

reinstated. Moreover, the appointing authority has not persuasively demonstrated that the appellant either knew she was actually removed from employment until her receipt of the FNDA, or that she received the FNDA any date earlier than September 28, 2023. The Commission further notes that the FNDA was apparently mailed to the appellant's former address. Finally, whether the appellant received the FNDA on September 28, 2023, or October 2, 2023, her appeal to the Commission of that FNDA by submission postmarked October 13, 2023, is clearly timely under *N.J.A.C.* 4A:2-2.8..

That leaves the issue of the proper penalty to be imposed. In his initial decision, in recommending reducing the removal to a six-month suspension, the ALJ stated:

> progressive discipline can be bypassed when the work involves public safety, and the misconduct causes a risk of harm to persons or property. [citation omitted]. Respondent argues that progressive discipline should be bypassed in this case. I disagree. While appellant clearly committed misconduct, her work does not directly involve public safety. Additionally, appellant's failure to report her arrest and work from an unauthorized location did not create a risk of harm to persons or property. Thus, an analysis under progressive discipline is appropriate in this case.
>
> Respondent removed Appellant from employment, but I **CONCLUDE** that Appellant should receive a lesser penalty under progressive discipline. Appellant has been employed with the municipal court for the city of Newark since January 2020 and has only [one] other occurrence of discipline in her employment history. Further, the fact that the criminal charges were dismissed, and that appellant worked from an unauthorized location for a relatively a short period of time mitigate the penalty. Therefore, I **CONCLUDE** that a six-month suspension strikes a balance between Appellant's misconduct, the Respondent's need to ensure compliance with its rules, and the public interest.

Regarding the penalty, similar to its review of the underlying charges, the Commission's review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. 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 this matter, the Commission agrees with the ALJ's recommendation to modify the removal to a lesser penalty. However, it does not agree that a six-month suspension is the proper penalty. Notwithstanding the appellant's short tenure, the infractions committed are not so egregious as to support removal, nor a six-month suspension, which is the highest suspension permitted. Further, while the ALJ refers to a prior discipline, the record is unclear as to what that disciplinary action was. As such, and as well as based on the other reasons presented by the ALJ above, a further reduction in penalty is appropriate. Accordingly, while the Commission is in no way is minimizing the appellant's misconduct, it finds that a 60 working day suspension should serve as more than sufficient notice to the appellant that any future misconduct will result in more severe discipline.

Since the removal has been modified, the appellant is entitled to be reinstated with back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from 60 working days after the first date of separation without pay until the date of actual reinstatement.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to her permanent position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modifies that action to a 60 working day suspension.

The Commission orders that the appellant be granted back pay, benefits, and seniority from 60 working days after the first date of separation without pay to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the

appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF SEPTEMBER, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
OAL DKT.NO. CSV 13275-23
AGENCY DKT. NO. 2024-832

IN THE MATTER OF RANIQUE WOODSON, CITY OF NEWARK, MAYOR'S DEPARTMENT.

Ranique Woodson, appellant, pro se

Hugh A. Thompson, Assistant Corporation Counsel, for respondent City of Newark (Kenyatta Stewart, Corporation Counsel, attorney)

Record Closed: June 24, 2024 Decided: August 6, 2024

BEFORE **DANIEL J. BROWN**, ALJ:

STATEMENT OF THE CASE

From January 18, 2022, to January 22, 2022, appellant clocked in and out of work from an unauthorized location. On March 22, 2022, appellant was arrested and charged with aggravated assault and criminal mischief. The criminal charges were dismissed and appellant does not have an extensive disciplinary history. Should appellant be removed from her employment? No. Removal would be "so disproportionate to the offense[s], in

light of all the circumstances, as to be shocking to one's sense of fairness.'" In re Carter, 191 N.J. 474, 484 (N.J. 2007).

PROCEDURAL HISTORY

On March 23, 2022, respondent served appellant with a Preliminary Notice of Disciplinary Action (PNDA). In the PNDA, respondent charged appellant with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6)); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12).

The PNDA alleged that petition failed to report her March 22, 2022, arrest. The PNDA also alleged that, from January 18, 2022, to January 22, 2022, appellant clocked in and out of work from an unauthorized location. The PNDA called for appellant's removal.

On August 10, 2022, following a Loudermill proceeding, the departmental hearing officer indefinitely suspended appellant.

A Final Notice of Preliminary Disciplinary Action (FNDA) dated June 26, 2023, sustained all the charges against appellant and removed appellant from respondent's employment effective August 10, 2022.

On the same day, respondent mailed a copy of the FNDA to appellant at her last known address. Appellant no longer resided at that address and there was a delay in the postal service forwarding her mail to her. Appellant did not receive the correspondence containing the FNDA from respondent until October 2, 2023.

On October 13, 2023, appellant mailed an appeal of the FNDA to the Civil Service Commission (Commission). Appellant enclosed the FNDA as part of her appeal. The director of appeals and regulatory affairs determined that appellant's appeal was filed within 20 days of appellant's receipt of the FNDA, and that appellant should be granted a hearing.

On November 21, 2023, appellant appealed to both the Commission and to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On February 26, 2024, the OAL received respondent's motion to dismiss and motion for summary decision.

On the same day, appellant filed her opposition to respondent's motion. Respondent submitted its reply on March 17, 2020. Supplemental submissions were received from the parties on June 10, 2024. Oral argument on the motion occurred on May 21, 2024, and June 24, 2024. The record was closed as to the motion on June 24, 2024.

FINDINGS OF FACT

Based on the documents submitted in support of and opposition to respondent's motion, and when viewed in the light most favorable to the non-moving party, I **FIND** the following as **FACT** for purposes of this motion only:

Appellant has been employed with the municipal court for the city of Newark since January 2020. On March 22, 2022, appellant was arrested and charged with aggravated assault and criminal mischief. Those charges were ultimately dismissed. Appellant failed to report the arrest and the charges to respondent despite being aware that her position required that she do so. In fact, appellant admitted during oral argument that she never reported the arrest to respondent. Appellant argued that she did not report the arrest to respondent because she was on maternity leave at the time of the arrest and therefore wasn't an active employee. I reject appellant's argument that she was not required to report the arrest because she was on maternity leave. Even though appellant was on leave, she was still an employee of respondent and therefore was under an obligation to report her arrest.

In addition to failing to report the arrest, appellant knowingly logged in from a location other than the physical location of her office from January 18, 2022, to January 22, 2002. Respondent argued that appellant was not authorized to clock in or out at a location other than her office and that by doing so, appellant was stealing city time. In response, appellant argued that she was provided with a computer to login to and authorized to login to work remotely due to the COVID-19 outbreak and that she used that computer to login remotely from January 18 to January 22, 2022.

In response, respondent argued that the City of Newark mandated city employees to return to work on a full-time basis starting January 4, 2022, and to punch in and out at the employee's assigned physical location. Therefore, respondent argued that appellant punched in and out from an unauthorized location from January 18, 2022, to January 22, 2022. I agree with respondent.

Appellant's disciplinary history was also made part of the record. Respondent conceded that Appellant does not have an extensive record of discipline. In fact, appellant has one prior disciplinary complaint from 2020 for which she received a term of suspension.

DISCUSSION AND CONCLUSIONS OF LAW

Motion to Dismiss

Respondent moves for dismissal asserting that appellant has failed to comply with N.J.A.C. 4A:2-2.8. In their moving papers, respondent asserts that as the FNDA terminating appellant is dated June 26, 2023, appellant would have had to file her appeal within twenty days of the June 26 date. N.J.A.C. 4A:2-2.8 requires that an appeal from a FNDA be filed within 20 days of receipt of the FNDA by the employee or, if an FNDA is not received, within a reasonable time of notice of the disciplinary decision. It is well-settled that "the dictates of this [time limit] have been interpreted as jurisdictional and mandatory in its requirement.'" Mesghali v. Bayside State Prison,334 N.J. Super. 617, 621 (App. Div. 2000).

In the present case, appellant received correspondence containing the FNDA on October 2, 2023. Appellant filed her appeal on October 13, 2023. The director of appeals and regulatory affairs reviewed the filing and determined that appellant's appeal was filed in a timely manner. I agree. Therefore, respondent's motion to dismiss is denied.

Motion for Summary Decision

A party may move for summary decision upon all or any of the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion shall be served with briefs, with or without affidavits, and the motion may be granted if the papers and discovery that have been filed, together with any affidavits, show that no genuine issue of material fact exists and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). When such a motion is made and supported, an adverse party, in order to prevail, must submit an affidavit setting forth specific facts showing that a genuine issue of material fact exists that can only be determined in an evidentiary proceeding. Ibid.

Even where a statute calls for a "hearing," where a motion for summary decision is made and supported by documentary evidence, and where the objector submits no evidence to demonstrate that a genuine issue of material fact exists, the motion procedure constitutes a hearing and no trial-type hearing is necessary. Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120-21 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

To determine whether a genuine issue of material fact exists that precludes summary judgment, the motion judge must consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to demonstrate that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins., 142 N.J. 520, 540 (1995).

To avoid entry of summary judgment, the non-moving party must come forward with legally competent facts essential to proving an element of its cause of action. Ibid. at 536-537. If non-movant fails to do so, the moving party is entitled to summary judgment. Ibid. Moreover, even if the non-movant comes forward with some evidence, the court must grant summary judgment if the evidence is "so one-sided that [movant]

must prevail as a matter of law." Ibid at 536. If the non-moving party's evidence is merely colorable or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

In this case, no genuine issue as to the material facts exists. The only question presented is whether respondent can sustain the charges in the FNDA, and if so, what the appropriate discipline should be. More pointedly, no genuine issue exists that appellant failed to report her arrest and clocked in and out of work from an unauthorized location. Since these facts are clear and undisputed, I **CONCLUDE** that this case is ripe for summary decision.

Discipline

A civil service employee who commits a wrongful act related to their duties or for other just cause may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. Indeed, "[t]here is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

Under N.J.A.C. 4A:2-1.4(a), in appeals concerning major disciplinary action, the appointing authority bears the burden of proof. That burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing as to both guilt and the penalty is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); West New York v. Bock, 38 N.J. 500 (1962). 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 (1958). One can describe preponderance as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Respondent charged Appellant with conduct unbecoming a public employee, and other sufficient cause by violating the canons governing judiciary employees, specifically in failing to report her personal involvement in a criminal matter.

"Conduct unbecoming a public employee" is an elastic phrase encompassing conduct that adversely affects the morale or efficiency of a governmental unit or that tends to destroy public respect for governmental employees and confidence in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998). Further, misconduct does not require that the employee violates the criminal code, a written rule, or a policy. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). The complained-of conduct and its attending circumstances need only "'be such as to offend publicly accepted standards of decency.'" Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Appellant, in her capacity as a Municipal Court employee, had regular contact with the public and other municipal court employees. By not reporting her arrest and not clocking in and out of work from an approved location, appellant did not comply with the requirements of her job and did not follow rules that she and her fellow municipal court employees are bound by. This conduct undoubtedly had the capacity to reduce the morale of the other municipal court employees and to adversely impact the overall efficiency of the municipal court. By acting in a way that negatively impacted the efficiency of the municipal court, appellant's conduct also had the capacity to undermine the public's confidence and trust in the services provided by that municipal court. Therefore, I **CONCLUDE** that a preponderance of credible evidence exists to demonstrate that respondent sustained its burden on charge the charge of conduct unbecoming a public employee.

The Civil Service Act's regulations do not define the charge of "other sufficient cause". This charge has been described as other conduct, not delineated within that regulation, which would "violate 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." In re Boyd, Cumberland County Dept of Corrections, CSC Dkt. No. 2019-1198, OAL Dkt. No. CSR 15990-18, Hon. Catherine Tuohy, ALJ; affirmed in final decision, 2019 N.J. CSC Lexis 621. "Other sufficient cause" is essentially the catchall provision for conduct, otherwise not listed within the eleven causes cited in N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline.

While I find that appellant failed to report her arrest to her employer and failed to clock in and out from an authorized location, these actions are addressed by the charge

of "unbecoming conduct". Thus, I **CONCLUDE** that a preponderance of credible evidence does **NOT** exist to support a separate violation of N.J.A.C. 4A:2-2.3(a)(12).

Penalty

The next question is the appropriate level of discipline. A progressive discipline system has evolved in New Jersey to provide job security and protect employees from arbitrary employment decisions. Progressive discipline is an appropriate analysis for determining the reasonableness of the penalty. See West New York v. Bock, 38 N.J. 500, 523–24 (1962). The question upon appellate review is whether such punishment is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness. In re Carter, 191 N.J. 474, 484 (2007) (quoting In re Polk, 90 N.J. 550, 578, (1982) (internal quotes omitted)). Progressive discipline can be used to downgrade a proposed penalty for an employee who has a substantial record of employment that is largely or totally unblemished by significant disciplinary infractions Bypassing progressive discipline should occur when the misconduct is so severe that it renders the employee unsuitable for continuation in the position or when the application of progressive discipline would be contrary to the public interest. In re Herrmann, 192 N.J. 19, 33 (2007). For example, progressive discipline can be bypassed when the work involves public safety, and the misconduct causes a risk of harm to persons or property. Id. Respondent argues that progressive discipline should be bypassed in this case. I disagree. While appellant clearly committed misconduct, her work does not directly involve public safety. Additionally, appellant's failure to report her arrest and work from an unauthorized location did not create a risk of harm to persons or property. Thus, an analysis under progressive discipline is appropriate in this case.

Respondent removed Appellant from employment, but I **CONCLUDE** that Appellant should receive a lesser penalty under progressive discipline. Appellant has been employed with the municipal court for the city of Newark since January 2020 and has only other occurrence of discipline in her employment history. Further, the fact that the criminal charges were dismissed, and that appellant worked from an unauthorized location for a relatively a short period of time mitigate the penalty. Therefore, I **CONCLUDE** that a six-month suspension strikes a balance between Appellant's

misconduct, the Respondent's need to ensure compliance with its rules, and the public interest.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the motion to dismiss is denied, that the motion for summary decision is **GRANTED** and that appellant be suspended from her position for six months.

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.

August 6, 2024
DATE

Daniel J. Brown
DANIEL J. BROWN, ALJ

Date Received at Agency: August 6, 2024

Date Mailed to Parties: August 6, 2024
dr

APPENDIX

Exhibits

Appellant:

P-1 Opposition to Motion to Dismiss and Motion for Summary Decision

P-2 Supplemental Brief

Respondent:

R-1 Motion to Dismiss and Motion for Summary Decision with a Certification and Exhibits

R-2 Reply Brief to Opposition with Exhibits

R-3 Supplemental Brief