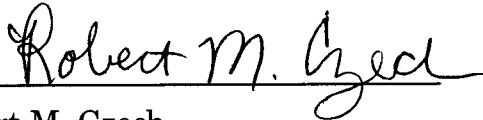


Re: Anne Marie Jeudy

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
NOVEMBER 18, 2015

A handwritten signature in black ink that reads "Robert M. Czech". The signature is written in a cursive style and is positioned above a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02443-14
AGENCY REF. NO. 2014-2026

**IN THE MATTER OF ANN MARIE JEUDY,
MORRIS COUNTY, DEPARTMENT OF
HUMAN SERVICES.**

William P. Hannan, Esq., for appellant Ann Marie Jeudy (Oxford Cohen,
attorneys)

Stephen E. Trimboli, Esq., for respondent Morris County, Department of Human
Services (Trimboli & Prusinowski, attorneys)

Record Closed: March 3, 2015

Decided: October 26, 2015

BEFORE **KELLY J. KIRK, ALJ**:

STATEMENT OF THE CASE

The Morris County Department of Human Services suspended Institutional Attendant/Certified Nurse Aide Ann Marie Jeudy for 180 days for chronic and excessive absenteeism, neglect of duty, and other sufficient cause.

PROCEDURAL HISTORY

Jeudy was served with a Preliminary Notice of Disciplinary Action on or about January 2, 2014. (R-1.) The Morris County Department of Human Services held a hearing on January 17, 2014, after which it issued a Final Notice of Disciplinary Action, sustaining all charges and suspending Jeudy for 180 days. (R-2.)

Jeudy appealed and the Civil Service Commission transmitted the contested case to the Office of Administrative Law (OAL), pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on February 28, 2014. The matter was assigned to the undersigned on June 14, 2014, and a hearing was held on January 16, 2015. The record remained open for post-hearing submissions and closed on March 3, 2015.

EVIDENCE AND FINDINGS OF FACT

Background

Ann Marie Jeudy testified on behalf of appellant. Maureen Callery-Giordano testified on behalf of respondent. Based upon a review of the evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following preliminary **FACTS**:

Maureen Callery-Giordano has been employed by the Morris County Department of Human Services at the Morris View Healthcare Center (Morris View) as the assistant director of nursing for approximately 12.5 years. She oversees resident care and staffing for the 7:00 a.m. to 3:30 p.m. shift, consisting primarily of certified nurse aides, work clerks, licensed nursing personnel, and the staff in the nursing office (time keepers). Ann Marie Jeudy is a certified nurse aide (CNA) on the 7:00 a.m. to 3:30 p.m. shift. According to the Civil Service Commission, CNAs are also known as institutional attendants, and Jeudy's duties are reflected in the job specification for institutional attendant. (R-4.) Jeudy began working at Morris View on December 29, 1999.

Morris View is a 283-bed facility with one dementia unit and one subacute unit that primarily handles long-term care residents requiring care twenty-four hours per day, seven days per week. CNAs play a critical role and provide all the direct care to the residents they are assigned to. CNAs typically have 10 to 12 residents on the long-term care side, and their responsibilities include feeding, dressing, covering day rooms to prevent falls, and assisting with recreational activities. Judy also assists the residents in toileting, showering, and washing.

Reliable attendance is critical. In the event of an unanticipated absence, the nursing supervisor has to try to decide between six nursing units where help will be assigned that day, taking into consideration such factors as which unit has more feeders or clinics going out for the day. With respect to feeders, one aide may need to feed two or three residents, or one resident may take 45 minutes to eat, and all residents have a CNA or aide go with them to all clinical appointments.

The union contract in effect in 2012, reflects the following:

1. Each employee may request no more than four (4) holidays during the period from January 1st through August 31st and these requests shall be granted subject to the needs of the service. Holiday requests will not be unreasonably denied. Holidays not requested by July 1 shall be scheduled by the Department Head.
2. Each employee may request no more than two (2) holidays during the period from September 1st through December 31st and these requests shall be granted subject to the needs of the service. Holiday requests shall not be unreasonably denied. Holidays not requested by October 1 shall be scheduled by the Department Head.
3. All holidays must be used by December 31st and shall not be carried forward to the following year.

[R-10.]

Inclusive of the foregoing six floating holidays, an employee has a total of fourteen holidays per year. Additionally, two personal days are permitted per year, based on staffing, and also with time requirements. The Time Detail reflects leave time and when an

employee punches in and out of Morris View. (R-8.) In 2013, Jeudy received fourteen holidays. The Sign In Sheet for Holiday Schedule (Holiday Sign In) is utilized because employees' schedules get changed to accommodate the holidays. Effort is made to honor the employees' requests. Callery-Giordano sent the schedule out to each unit for each shift so that each employee would know what his or her schedule would be during the holiday time. Jeudy signed the Holiday Sign In. (R-9.)

Since approximately April 2010, KRONOS has been the time and attendance system utilized at Morris View. Each employee was given their own KRONOS code to access the system, and when the employees scan in and out daily, or work a double-shift, it shows up in KRONOS. On December 9, 2013, at 10:21 p.m., a KRONOS request was received from Jeudy, requesting a floating holiday for December 16, 2013. (R-5.) Requests for floating holidays, vacation days, or personal days are delivered to the timekeeper and to Callery-Giordano. A KRONOS request must either be approved or rejected. On December 11, 2013, at 10:39 a.m., Jeudy's request was rejected by Callery-Giordano because there were no floating holidays available and the request was late. (R-6.) If an employee requests a day off, but does not receive a response, the employee should contact either Callery-Giordano or the timekeeper about the request. The employee cannot assume the request was granted.

On December 16, 2013, at 8:01 a.m., Kathleen McNeil, a day-shift supervisor, sent a K-mail (KRONOS email), reflecting that Jeudy was not in and that McNeil had entered a no call/no show, but also stating "but perhaps she got a benefit day Please check." (R-7.) Jeudy did not receive a benefit day for December 16, 2013. Jeudy did not request a personal day for December 16, 2013. Jeudy never explained to Callery-Giordano why she did not report to work on December 16, 2013.

Jeudy's schedule varies. Jeudy was not scheduled to work on December 17, 2013, because Jeudy had previously sent Callery-Giordano a K-mail requesting to change her days off that week for childcare reasons. Jeudy had every other Wednesday off and had needed her day off changed to Tuesday that week, which Callery-Giordano had accommodated.

Jeudy did not report to work as scheduled on December 18, 2013. On December 18, 2013, at 5:59 a.m., Rufina Gonzales sent a K-mail reflecting that Jeudy called out at 5:56 a.m. for the 7:00 a.m. shift and was using sick time, and reflects that Jeudy denied having gastrointestinal or respiratory illness.¹ (R-13.) There is always a nurse supervisor on duty. However, supervisors do not make the decision regarding whether an employee has time in the bank. Article 4 (Sick Leave) of the 1199 union contract reflects at Section 3 that “[e]ach employee is required to notify his/her supervisor two (2) hours before starting time on each day of absence, giving the specific reason for the absence” (R-14.) On December 18, 2013, at 9:21 a.m., Callery-Giordano sent a K-mail to Jeudy reflecting that Jeudy would have to provide documentation for the December 18, 2013, call out, as she failed to give the required two-hour notice. (R-15.) Callery-Giordano never received documentation from Jeudy for the call out.

Jeudy has eighteen prior disciplinary actions, inclusive of verbal and written warnings, and nine suspensions. The suspensions consist of two one-day suspensions; one three-day suspension; three five-day suspensions; one ten-day suspension; one twenty-day suspension, and, most recently, one thirty-day suspension. (R-2, R-3, R-16.)

Testimony

Maureen Callery-Giordano

Callery-Giordano and her staff address questions from employees with regard to schedules. When asked if Jeudy was told in any other way that the request had been denied, Callery-Giordano testified that she was not, because they go back and forth with KRONOS and K-mails, by which employees can send a note to the supervisor or timekeeper. A response to a KRONOS request is made in the original request. It is not done by separate K-mail, so it is not necessary to type the employee’s name to send a response.

¹ It was required by the Board of Health that the name, address, and signs and symptoms be documented for every call out for a respiratory or gastrointestinal illness.

CNAs are required to know how to use KRONOS to put in their own benefit time and send K-mails to Callergy-Giordano and the timekeeper. Training was provided, but people had some difficulty and those people were able to go to the personnel officer for additional training. Employees were responsible for learning to use KRONOS, and the personnel officer was available during Jeudy's shift, and also stayed late to accommodate people on the late shift.

Ann Marie Jeudy

Ann Marie Jeudy testified that personal days could be requested a few days in advance in order to know if it is accepted or not. She further testified that she asked "Arlert Jean," a ward clerk, to request a personal day for her for December 16, 2013, because Jeudy cannot use the computer herself. Jeudy did not know how to communicate with her supervisor via the KRONOS system. Jean did not want anyone to see her and Jeudy sitting at the computer, so Jeudy stood there and gave Jean her number and told her what she wanted. Jeudy had personal days available, and she was requesting a personal day. She was not requesting a floating holiday because she knew the floating holidays were finished. Jeudy did not review the request before Jean sent it. She does not know why Jean requested a floating holiday instead.

Jeudy never logged into KRONOS to verify whether the request was approved or rejected because she does not know how to use the computer. She asked someone to check it for her. She does not remember who she asked to check KRONOS for her. She just gave someone her number to check the system, and that person told her it was okay. That person did not tell her about a floating holiday, because she was not asking for a floating holiday. Jeudy did not go to work on December 16, 2013, because she thought her request for leave time was approved. If it had been rejected, she would have reported to work. Jeudy initially testified that she does not remember if she later went back to the person who told her it was okay to ask why that person had told her it was approved. She thereafter testified that she did not ask because she had already been suspended.

Jeudy also did not report to work on December 18, 2013. She called out because of a problem with her shoulder. When she was getting dressed that morning, she

determined she could not go to work and called out. She realized when she got out of bed that she would not be able to go to work that day because her shoulder was hurting and her job requires lifting and pushing residents. Jeudy normally wakes at 5:00 a.m. It takes 40-45 minutes to get to Morris View from her home. Jeudy later testified that although her shoulder hurt when she awoke, she did not call as soon as she awoke because she thought she could shower and go to work. She did not see a doctor on December 18, 2013. Her shoulder was not hurting her as much on December 19, 2013, and she reported to work.

Jeudy is now learning about how to work the KRONOS system. She had received training, but still cannot use the system. When asked if she is allowed to give another employee her KRONOS access number, she repeatedly failed to answer the question and instead testified that she did not know how to use the computer. She later testified that she did not know she could not give another employee her access number and was never told she could not do so.

Factual Discussion

A credibility determination requires an overall evaluation of the testimony in light of its rationality or internal consistency and the manner in which it “hangs together” with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). It must be such as the common experience and observation can approve as probable in the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). “The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

“Arlert Jean,” the ward clerk that Jeudy claims requested the day off in the computer for her, did not testify, and Jeudy’s testimony relative to her request for leave time for December 16, 2013 was simply not credible. Even if Jean had made the request

for her, it is implausible that Jean had requested the wrong type of leave with Judy standing right there. Further, even accepting that Jean had made the request and had requested the wrong type of leave – a floating holiday rather than a personal day – there is no evidence in the record that Judy contacted a supervisor or timekeeper about the alleged error. Additionally, further damaging Judy's credibility was her testimony that she could not recall the name of the person who she claims advised her that her leave was approved for December 16, 2013.

With respect to December 18, 2013, Judy initially testified that her shoulder hurt upon waking at 5:00 a.m. and she knew she would not be able to go to work. Yet, she later testified that she did not call until 5:56 a.m. because she was making an effort to go to work. Given the unreliability of her testimony, it seems more likely that she already knew she was not going to work, but simply did not call until almost an hour before her shift was scheduled to start.

Judy's testimony was inconsistent and implausible, and she lacked credibility. Conversely, Callery-Giordano's testimony was clear, concise and consistent with the documents in the record. Accordingly, I credit only the testimony of Callery-Giordano, and **FIND** the following additional **FACTS**:

Judy's request relative to December 16, 2013, was for a floating holiday. Said request was denied by Callery-Giordano on December 11, 2013. Without approval or authorization, Judy failed to report to work on December 16, 2013.

On December 18, 2013, Judy called out sick at 5:56 a.m., only 1 hour and 4 minutes before her shift was scheduled to start, in violation of the sick policy.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary

action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for a number of reasons enumerated in N.J.A.C. 4A:2-2.3(a), including “chronic or excessive absenteeism or lateness” and “neglect of duty.” N.J.A.C. 4A:2-2.3(a)(4) and (7). In appeals concerning such major disciplinary actions, the burden of proof shall be on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

Jeudy is employed in a 283-bed facility with one dementia unit and one subacute unit. The residents of the facility require care twenty-four hours per day, seven days per week. CNAs, like Jeudy, provide all the direct care to the residents, including feeding, dressing, toileting, showering, washing, assisting with recreational activities, and attending clinical appointments. Reliable attendance is critical in providing such care. Jeudy failed to report to work as scheduled and failed to comply with the sick call-out policy. In so doing, she placed an undue burden upon the healthcare center operations and other employees, which can only negatively impact the residents of the facility.

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

Jeudy's disciplinary history is extensive and troubling. She has been disciplined eighteen times. Nine of those times have resulted in suspensions, three of which were considered major discipline. Moreover, she has already been suspended multiple times for her attendance record, most recently for thirty days.

In view of the totality of the circumstances, I **CONCLUDE** that the Morris County Department of Human Services met its burden of establishing that Jeudy was chronically and excessively absent and neglected her duties. Further, given the nature and extent of her prior disciplinary history, I **CONCLUDE** that a suspension of 180 days was appropriate.

ORDER


I hereby **ORDER** that the charges against Jeudy are **SUSTAINED** and that the penalty of 180 days imposed by the Morris County Department of Human Services is **AFFIRMED**.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. 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.

10/26/15
DATE


KELLY J. KIRK, ALJ

Date Received at Agency: October 26, 2015

Date Mailed to Parties: October 26, 2015

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APPENDIX

WITNESSES

For Appellant:

Ann Marie Jeudy

For Respondent:

Maureen Callery-Giordano

EXHIBITS IN EVIDENCE

For Appellant:

None

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action, dated January 3, 2014
- R-2 Final Notice of Disciplinary Action, dated January 30, 2014
- R-3 Initial Decision and Final Administrative Decision for CSV 00970-12
- R-4 Institutional Attendant Job Specification
- R-5 Kronos Message, dated December 9, 2013
- R-6 Kronos Message, dated December 11, 2013
- R-7 Kronos Message, dated December 16, 2013
- R-8 Time Detail
- R-9 Sign-In Sheet for Holiday Schedule 7-3
- R-10 Collective Negotiations Agreement Excerpt re: Holidays
- R-11 (Not in Evidence)
- R-12 (Not in Evidence)
- R-13 Kronos Message, dated December 18, 2013 (5:59 a.m.)
- R-14 Collective Negotiations Agreement Excerpt re: Sick Leave
- R-15 Kronos Message, dated December 18, 2013 (9:21 a.m.)
- R-16 Employee Discipline Report
- R-17 (Not in Evidence)