



A-2

STATE OF NEW JERSEY

In the Matter of David Bouldin
City of Atlantic City,
Department of Health and Human
Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-2352
OAL DKT. NO. CSV 2302-15

ISSUED: DECEMBER 17, 2015 BW

The appeal of David Bouldin, Security Guard, City of Atlantic City, Department of Health and Human Services, removal effective January 26, 2015, on charges, was heard by Administrative Law Judge Bruce M. Gorman, who rendered his initial decision on November 2, 2015. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on December 16, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of David Bouldin.

Re: David Bouldin

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
DECEMBER 17, 2015

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a solid horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 2302-15

AGENCY DKT. NO. 2015-2352

**IN THE MATTER OF DAVID BOULDIN,
CITY OF ATLANTIC CITY,
DEPARTMENT OF HEATH AND HUMAN SERVICES.**

Robert F. O'Brien, Esquire, for appellant (O'Brien, Belland, Bushinsky, LLC,
attorneys)

John R. Dominy, Esq., for respondent (Blaney & Donohue, P.A., attorneys)

Record Closed: October 27, 2015

Decided: November 2, 2015

BEFORE **BRUCE M. GORMAN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant appealed respondent's action terminating his employment as a Security Guard for conduct unbecoming a public employee.

PROCEDURAL HISTORY

The appellant requested a fair hearing and the matter was filed at the Office of Administrative Law on February 13, 2015, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on September 3,

2015. The record closed after the submission of closing documents on October 27, 2015.

FACTUAL SUMMARY

Appellant was employed for nearly ten years as a security guard at the Atlantic City PAL Facility. The PAL facility is a center for poor and troubled youth.

Richard J. Andrews (Andrews) testified for the City. Andrews is a Detective Sgt. with the Vice Unit of the Atlantic City Police Department. He has been employed by the police department for eighteen years. His unit deals primarily with drugs and gun activity.

On July 22, 2014, Andrews and his partner, Sgt. D. Corcoran, were dressed in plain clothes driving in an unmarked police vehicle on Mediterranean Avenue approaching New York Avenue in Atlantic City. At that time, Andrews observed a male and a female sitting in an enclosed brick stairwell area facing Mediterranean Avenue at a building located at 233 North New York Avenue. The building faced the PAL Center. As they were stopped for a red light, Andrews observed the male and the female engaged in what he called a hand to hand transaction. He saw the female hand the male what he termed a "marijuana cigarette". The male handed the female money. The female then counted the money.

The officers pulled the vehicle around the corner, exited the vehicle, and "snuck up" on the couple. At that time, Andrews observed the strong odor of PCP, a methamphetamine. Andrews notes that PCP has an odd but distinct odor.

The officers directed the couple to stand. At that time, a cigarette fell to the ground at the feet of the male. The male identified himself as the appellant, David Bouldin. The officers then examined the handbag of the female and found a second cigarette. The State Toxicology Lab ultimately identified one of the cigarettes as marijuana containing PCP (P-7). Andrews testified that the cigarette was WET, which

he stated indicated that it had been dipped into PCP. This sort of marijuana cigarette was known as "WET"

Appellant and the female were taken into custody and charged with possession of a controlled dangerous substance. Appellant was released on a summons and complaint. Andrews never went to trial with appellant and was not aware of the ultimate disposition of the case.

On cross-examination, Andrews confirmed that from fifteen to twenty feet away, he saw the female pass a blunt looking brown rolled cigarette to the appellant.

Michael Baily testified for the appellant. Bailey is the Executive Director of the Atlantic City Recreation Department. At the time of the incident, he was the Director of the PAL. He was employed by the PAL for thirty three years. He acted as the appellant's supervisor.

Bailey testified that appellant performed his duties well. He was timely, consistent, and major things were done as they were supposed to be. He got along well with the children at the center and encountered no major disciplinary problems.

On cross-examination, he admitted appellant had been given a three-day suspension for using the "f-word" in the lobby while children were present at the PAL center.

Bailey testified that appellant told him about his arrest but denied that he had been in possession of marijuana. He stated he was talking to the girl when the police came upon them and he did not know she had marijuana with her.

Bailey conceded that some of the children who utilize the PAL center are at risk.

Appellant testified on his own behalf. He has resided in Atlantic City for his entire life. He has been employed since November of 2004 as a security officer at the

PAL center. His job was to open the building, set up the facility, and ensure the safety of the children utilizing the facility. He worked under the direction of Michael Bailey.

On July 22, 2014, he worked 8:30 a.m. to 4:00 p.m. Appellant smoked cigarettes but was not permitted to do so inside or in front of the PAL building. Consequently, at a little after 3:30 p.m., he went outside and walked across New York Avenue to smoke a cigarette. At that time, he saw a childhood friend named Chenille Thomas. He took out a Newport 100 cigarette and began to smoke it while he spoke with her for two to three minutes. At that time, the police officers came up behind them. They asked them to put out the cigarette and told them to standup. He stood up and dropped the cigarette. No one picked up the cigarette. They then arrested appellant and Thomas and took them to the police station. Appellant was charged with a third degree crime of possession of a controlled dangerous substance, served with a summons and complaint, and released.

Following his arrest, he was suspended from his job. In December of 2014 he appeared in Superior Court in Mays Landing, New Jersey. His lawyer argued that the case should be dismissed because the police found no contraband on him. Appellant told the Judge he was eager to return to work. The Judge suggested that he plead to a disorderly person's offense. Appellant agreed and pled to a violation of N.J.S.A. 2C:35-10(c), failure to surrender a controlled dangerous substance. That charge was a disorderly person's offense. Appellant was fined \$75.00 and an additional \$50. To the VCCA. Appellant identified the sentence sheet. On that sheet the letters "PROB" are circled. The City's attorney suggested that appellant had been placed on probation. Appellant countered that "PROB" represented the place where he was to make his \$10 monthly payments.

Appellant testified that he never served the three days for using the f word at the PAL center. The previous recreation director vacated the penalty.

On cross examination, appellant admitted that he was still working when he walked across the street to talk to Thomas. His shift ended at 4:00 p.m., and the incident happened at 3:50 p.m.

On cross-examination appellant stated the Newport 100 is long and white. When he dropped it on the ground, the ground was wet from a sprinkler system that was spraying the grass.

LEGAL DISCUSSION

At first glance, this case would appear to be amount to a question of credibility. Detective Andrews saw the alleged marijuana cigarette at a distance of fifteen to twenty feet from his unmarked vehicle. He asserted that he could tell from that distance that the cigarette contained marijuana. Detective Andrews was unable to specify that the cigarette sent to the state lab was the same cigarette that appellant had dropped. He acknowledged that the police confiscated a second cigarette from the pocketbook of Thomas. Appellant affirmatively denied that the cigarette he was smoking contained marijuana. He contended that it was a Newport 100 containing only tobacco.

If only the testimony of Detective Andrews is considered, it would be necessary to find that proofs are insufficient to show that the appellant had a marijuana cigarette. The problem with appellant's case is that he pled guilty to a violation of N.J.S.A. 2C:35-10(c) Failure to Surrender CDS. By definition, by admitting that he failed to surrender a controlled dangerous substance he likewise admitted that he possessed CDS. While his argument that he only entered the plea to escape the indictable offense and get back to work is understandable, the fact remains that he entered the plea and thereby admitted the offense.

By making that admission, appellant conceded that Detective Andrews' testimony was accurate. He was in possession of at the very least marijuana

cigarette, if not, a PCP laced marijuana cigarette, during working hours. Consequently, he is guilty of unbecoming conduct.

There remains the issue of penalty. Appellant's disciplinary jacket shows the following:

Disciplinary History of David Bouldin with the City of Atlantic City

- 1/26/15 MAJOR - 31B – Removal related to arrest/conviction of CDS 0 7/22/14
Conduct unbecoming N.J.A.C. 4A:2-2.3(a)6, Other Sufficient Causes N.J.A.C. 4A:2-2.3(a)12 – violation of the Policy and Procedures, N.J.S.A. 2C:35-10(c) – Failure to make lawful disposition of CDS
- 7/28/14 MAJOR - 31B - Indefinite Suspension related to arrest for CDS on 7/22/14
Conduct unbecoming N.J.A.C. 4A:2-2.3(a)6, Other Sufficient Causes N.J.A.C. 4A:2-2.3(a)12 – violation of the Policy and Procedures
- 8/2/13 MINOR – 3-day Suspension for Conduct Unbecoming
- 3/8/13 WRITTEN WARNING – Insubordination
- 7/10/06 WRITTEN WARNING – Incompetency; Conduct Unbecoming

Progressive discipline is the law in New Jersey. See West New York v. Bock, 38 N.J. 500, 522 (1962). Progressive discipline may be ignored only if the conduct is egregious. See In Re Hermann, 192 N.J. 19 (2007). In this case, the City seeks to evade progressive discipline and move directly to termination.

The problem in this case is that appellant's primary function as a security guard is to protect children. In the course of his duties, he necessarily comes into contact with children. His use of drugs immediately outside the premises raises the specter that he could expose vulnerable children to drugs. New Jersey is not Colorado or Washington. Marijuana is still deemed a controlled dangerous substance here, and PCP is certainly considered to be a dangerous drug. Appellant's possession of such drugs in close proximity to the PAL center raises his conduct to the level of egregious. Accordingly, I have no choice but to **AFFIRM** the City's action terminating his employment.

ORDER

I **ORDER** that the action of respondent terminating appellant's employment be **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.

November 2, 2015

DATE



BRUCE M. GORMAN, ALJ

Date Received at Agency:

November 2, 2015

Date Mailed to Parties:

11/2/15

/jb

WITNESSES

For petitioner:

David Bouldin

Michael Bailey

For respondent:

Detective Richard J. Andrews

EXHIBITS

For petitioner:

P-1 Sentence Sheet

For respondent:

R-1 City of Atlantic City Police Department Report

R-2 31 A dated 7/23/14

R-3 31-B, dated 7/28/14

R-4 31-A, dated 12/10/14

R-5 31-B, dated 1/26/15

R-6 Discipline History

R-7 State Lab Report