



STATE OF NEW JERSEY

In the Matter of Angela Jones,
Atlantic City, Department of
Administration

CSC DKT. NO. 2014-1203
OAL DKT. NO. CSV 16286-13

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**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

ISSUED: OCTOBER 20, 2016 BW

The appeal of Angela Jones, Clerk 1, Atlantic City, Department of Administration, 30 working day suspension, on charges, was heard by Administrative Law Judge Bruce M. Gorman, who rendered his initial decision on May 9, 2016. Exceptions were 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 October 19, 2016, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision to modify the 30 working day suspension to a five working day suspension.

Since the penalty has been modified, the appellant is entitled to back pay, benefits, and seniority, pursuant to *N.J.A.C. 4A:2-2.10*, following the five working day suspension. However, the appellant is not entitled to counsel fees. Pursuant to *N.J.A.C. 4A:2-2.12(a)*, the award of counsel fees is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. See *Johnny Walcott v. City of Plainfield*, 282 *N.J. Super.* 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. March 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were

sustained. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12(a)*, counsel fees must be denied.

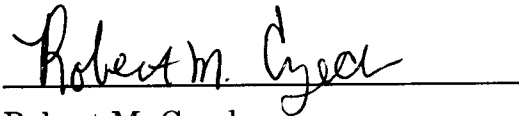
ORDER

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore modifies the 30 working day suspension to a five working day suspension. The Commission further orders that appellant be granted 25 days of back pay, benefits, and seniority. Per *N.J.A.C. 4A:2-2.10*, the amount of back pay awarded is to be reduced and mitigated to the extent of any income earned by the appellant during this period. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

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
OCTOBER 19, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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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 16286-13
AGENCY DKT. NO. 2014-2013

**IN THE MATTER OF ANGELA JONES AND
ATLANTIC CITY DEPARTMENT
OF ADMINISTRATION**

Robert F. O'Brien, Esq., for appellant, Angela Jones (O'Brien, Belland,
Bushinsky, attorneys)

John R. Dominy, Esq., for Atlantic City Department of Administration (Blaney &
Karavan, P.A., attorneys)

Record Closed: March 15, 2016

Decided: May 9, 2016

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant appealed the City's action suspending her for thirty days for conduct unbecoming a public employee. Originally, she was also charged with violation of N.J.A.C. 4A:2-2.3(a)12 other sufficient cause. However, in the Final Notice of Disciplinary Action, the charge of other sufficient cause was merged into the charge of conduct unbecoming a public employee. See Exhibit R-19.

The petitioner requested a fair hearing and the matter was filed at the Office of Administrative Law on November 12, 2013, 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 February 2, 2016, and the record closed on March 15, 2016.

FACTUAL SUMMARY

Appellant was employed as a Clerk 1 in the Atlantic City Municipal Court. The gravamen of this action is her alleged failure to complete a Family Involvement Form (FIF) in a timely manner. The FIF was utilized to notify court officials that a defendant in the municipal court was related to an employee. In this case, appellant's cousin Shauna Simpson faced a charge in the Atlantic City Municipal Court.

Cotteth Stafford (Stafford) testified for the City. Stafford is employed as Deputy Court Administrator of the Atlantic City Municipal Court. She has worked for Atlantic City for twenty-three years, all in the court system.

On June 26, 2013,¹ Stafford saw Simpson while Simpson was at the payment window, Stafford saw her wave to the appellant. Stafford knew from her years residing in Atlantic City that appellant was Simpson's cousin. After Simpson came to the municipal court window, Stafford saw appellant go outside in the hallway and speak with Simpson. At that point, Stafford told Yvette Davis, appellant's supervisor, to retrieve appellant and instruct appellant to get away from her cousin. Davis refused to do so, stating she would not baby appellant.

Stafford testified that when a municipal court employee's family member has a case in the municipal court, the employee is required to submit a FIF to her supervisor. Stafford had no knowledge as to whether appellant ever turned in the FIF form regarding her cousin.

¹ Testimony varied as to whether this event took place on June 27, 2013 or June 27, 2013. Neither side was able to establish which date was accurate.

Leslie Lewis (Lewis) testified for Atlantic City. Lewis is employed as a data entry machine operator in the municipal court. She has served there since 1991.

While serving as bench clerk, Lewis saw that Simpson was appearing in the municipal court. She suspected that Simpson was appellant's cousin and so informed Brian Jetter, the Court Director. Lewis asked Jetter whether Simpson's case should be sent to another court, and Jetter advised her that it would be transferred.

Lewis also identified a plea agreement dated July 2, 2013 (R-4). The plea agreement bore Simpson's name, and reflected an original charge of a violation of N.J.S.A. 2C:12-1a. The form did not reflect the new charge to which the matter was amended. Subsequent testimony established that Simpson faced two separate charges, one that was reflected in the plea argument of July 2, 2013, and another charge that was ultimately forwarded to a different municipal court.

Lewis never discussed the conflict issue with appellant. She further testified that appellant was not at work on July 2, 2013, the date of the plea agreement. Lewis confirmed Stafford's testimony that any employee in the municipal court who finds a family member facing a charge there must report the possible conflict by filing a FIF.

Brian Jetter (Jetter) testified for the City. Jetter has served as the Court Director of the Atlantic City Municipal Court for the past three years. Prior to that time, he served for six years as the Chief Court Administrator. He has been employed at the Municipal Court for a total of sixteen years.

Jetter testified that on July 3, 2013, Stafford reported to him that appellant's cousin had cases listed in the Atlantic City Municipal Court, and asked if appellant had filed the required FIF form.

Jetter met with appellant on July 8, 2013 and inquired about her relationship with Simpson. Appellant responded, "Oh, I forgot to turn in the slip but it is in my file folder, hold up, I will go get it" (R-2). According to Jetter, she also stated that she had asked

“Tanya” for the form. “Tanya” was Tanya Fonville, Jetter’s secretary. Ms. Fonville did not appear at trial to testify, and Jetter made no inquiry regarding when Ms. Fonville had printed out the form for appellant. According to Jetter, appellant returned half an hour later with the completed form.

Jetter opined that appellant had two opportunities to turn in the FIF: June 26 when Simpson waved to her at the violations window, and July 2 when Simpson appeared and negotiated her plea bargain. Jetter apparently was not aware that the appellant was not at work on July 2.

Having learned that appellant had a cousin who made frequent appearances in the Atlantic City Municipal Court, Jetter conducted a search to determine whether appellant had ever failed to turn in a FIF form in the past. His search revealed that on May 2, 2011, appellant had processed a time payment form Simpson in the computer system. Jetter concluded that once again, appellant had failed to file the required FIF.

Based upon these two offenses (June 2013 and May 2011), Jetter filed charges against appellant. He offered into evidence the Code of Conduct for Judiciary Employees (R-12), and Administrative Office of the Courts Directive 03-08 (R-13). Jetter testified that Canon 4 requires each court employee to avoid any conflict of interest and defines conflict of interest as something involving the employees’ immediate family. Immediate family is defined to include a first cousin. Directive 03-08 requires the employee to report any conflict of interest, and prohibits the employee from entering data about a family member in the judiciary computer system.

On cross-examination, Jetter admitted that he had no personal knowledge of what transpired on June 26 or July 2, 2013. He also admitted appellant provided him with the FIF and that it was dated June 27, 2013.

Yvette Lea-Davis (Lea-Davis) testified for the appellant. Lea-Davis retired from the Atlantic City Municipal Court as a Supervising Cashier on January 21, 2016 after twenty six and one half years of service.

On June 27, 2013, Lea-Davis returned from lunch and found appellant out in the hallway talking with Simpson. One inside the office, Stafford instructed her to retrieve appellant from the hallway. Stafford also told Lea-Davis to instruct appellant to fill out the FIF. To the best of her recollection, Lea-Davis instructed appellant to fill out the form. Appellant then said she was going down to administration and left the office. She returned with the FIF and began to fill it out. Later, Lea-Davis learned that appellant had not turned in the form on June 27.

Lea-Davis testified she saw the form that appellant filled out and recognized it as the FIF. However, she did not see what appellant wrote on the form. Lea-Davis herself had submitted a FIF when her first cousin was in court. Lea-Davis was shown the FIF appellant ultimately submitted (R-20), and identified it as the form she saw her filling out on June 27, 2013. Lea-Davis admitted that she was not certain of the exact date in June when this incident occurred (June 26 or June 27).

Appellant testified on her own behalf. She commenced her employment with the Atlantic City Municipal; Court on October 7, 2002. She worked in the municipal court for twelve years. On July 10, 2014, she transferred to the Atlantic City Prosecutor's Office.

Appellant examined the complaint status history dated July 8, 2013 (R-8). That document reflected that on May 2, 2011, the user with the identification code JUAXJ10 posted a payment from Shauna A. Simpson in the court's computer. Appellant agreed that JUAXJ10 was her identification code and acknowledged that she had posted a payment. She expressed no recollection of the payment, but stated that when she posted payments, the only thing she looked was the payment number and the amount. She never looked at the name on the ticket and had no idea that she was posting a payment for her cousin. On the date in question, the other two employees who handled these duties were not at work, and she was the only one posting payments.

On June 27, 2013 she was working when she saw her cousin Simpson at the window. She waved to her cousin, and Simpson mouthed something to her. At that point, appellant went out into the hall to see what Simpson wanted. It turned out that Simpson was attempting to obtain keys from appellant's aunt (Simpson's mother). The two women talked for five to ten minutes. As appellant was returning to her work station she was intercepted by Lea-Davis and told to fill out a FIF. At that point, appellant went down to administration and requested the form from Tanya Fonville. Fonville took a few minutes to figure out how to print the form off the computer, but eventually provided appellant with the form. Appellant returned to her desk and filled out the form.

At that juncture, someone appeared at her window to either post bail or seek a bail refund (appellant could not remember which). At that point, she turned to service the customer and put the FIF in a cubicle at the top of her work space. Her work window became busy with customers, and she forgot about the FIF form, failing to turn it in that day.

The next day was Saturday, and the following week appellant was on vacation. She returned to work on July 8, 2013, at which time Stafford told her Jetter wanted to speak with her. When she reached Jetter's office, he asked her if she had filled out the FIF. Appellant stood up immediately, and went back to her desk, retrieved the form, returned to Jetter's office and handed it to him. Appellant stated that this process took no more than five minutes. Jetter told her, don't forget next time.

At that time, appellant told Jetter that Tanya had printed the form out for her. Jetter then called Fonville and verified that appellant had obtained the form on June 27, 2013. Jetter orally reprimanded appellant, and she then left his office. She believed that the incident was closed.

LEGAL DISCUSSION

The agency brought a series of charges against the appellant. Four of those charges were sustained. But each of the charges arises out of one of two fact patterns. The first set of charges alleges that appellant did not turn the FIF in a timely manner. The second set of charges alleges that appellant entered a time payment submitted by her cousin into the municipal court computer system.

The first factor that must be noted in analyzing the events of June and July of 2013 is that appellant did not fail to turn in the FIF. Had she affirmatively attempted to hide her relationship with Simpson, she would have committed a serious breach of conduct. But it is undisputed that she did not turn in the FIF form on the date she learned that her cousin had a case in the municipal court (June 26, or June 27 depending upon which witness is to be believed). Appellant did not deny that she failed to turn in the FIF until called into Jetter's office on July 8, 2013. She offered as mitigation the fact that: 1) she was busy on the date in question and, because of work pressure, forgot to turn in the form; and 2) the following day was Saturday, and she was then on vacation for the subsequent week, returning to work on July 8, 2013. The fact remains, appellant had to be reminded to turn in the form.

Appellant is charged with a violation of N.J.A.C. 4A:2-2.3(a) 6 – conduct unbecoming a public employee. The definition of unbecoming conduct was considered in In the Matter of Craig Venson, City of Plainfield, CSV 7545-07, Initial Decision (June 9, 2009), aff'd, Civil Service Commission (August 6, 2009). In that case, the judge wrote:

“Unbecoming conduct” is broadly defined as any conduct that adversely affects the morale or efficiency of the governmental unit or that has a tendency to destroy public respect and confidence in the delivery of governmental services. In re Appeal of Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). Unbecoming conduct may include behavior that is not in accord with propriety, modesty, good taste or good manners, or behavior that is otherwise unsuitable, indecorous or improper under the circumstances. Conduct unbecoming a public employee may be less serious than a violation of the law, but it is inappropriate on the

part of the public employee. *Ferrogine v. State Dep't of Human Servs., Trenton Psychiatric Hosp.*, CSV 2441-98, Initial Decision (April 17, 1998), modified, MSB (July 6, 1998) <<http://lawlibrary.rutgers.edu/oal/search.html>>. It is a fact-sensitive determination rather than one based on a legal formula.

The term unbecoming conduct is not precisely defined in N.J.S.A. 11A or N.J.A.C. 4A. The courts of New Jersey have dealt with unbecoming conduct on a case-by-case basis. See, Maguire v. VanMeter, 121 N.J.L. 150 (E. & A. 1938) (county jail guard's intoxication was presumed to be conduct unbecoming a public officer); Smith v. Carty, 120 N.J.L. 335 (E. & A. 1938) (a teacher's misrepresentation and fraud in obtaining a loan was held to be unbecoming conduct warranting removal); Matter of Tanelli, 194 N.J. Super. 492 (App. Div. 1984), certif. den. 99 N.J. 181 (1984) (a teacher who repeatedly telephoned another for the purpose of annoying or molesting was found guilty of unbecoming conduct); Matter of Tenure Hearing of Cowan, 224 N.J. Super. 737 (App. Div. 1988) (a teacher who over a period of ten years committed various acts of verbal and physical abuse of his students, was found guilty of unbecoming conduct).

Examples of administrative decisions dealing with this issue are: Clark v. New Jersey Department of Agriculture, 1 N.J.A.R. 315 (1980) (an employee's removal of State property when she knew that the property was required to be kept at the worksite constituted unbecoming conduct); Patrick Carroll v. City of Elizabeth, 2 N.J.A.R. 26 (1979) (a police officer's action in shooting a dog and failing to report the discharge of a firearm constituted neglect of duty, serious breach of discipline and unbecoming conduct; in addition, his use of marijuana in his home was also unbecoming conduct). The dictionary defines the word "unbecoming" as unsuitable, indecorous, or improper. Webster's Third New International Dictionary.

Thus, unbecoming conduct may include excessive, violent, or other intemperate behavior, behavior which is not in accord with propriety, modesty, good taste or good manners, or behavior which is otherwise suitable, indecorous, or improper under the circumstances; it may be less serious than a violation of the law, but which is inappropriate on the part of a public employee because it is disruptive of governmental operations.

Had appellant never turned in the FIF, she would have been guilty of conduct unbecoming that has a tendency to destroy public respect and confidence in the delivery of government service. But appellant did not fail to turn in the FIF. She failed to turn in the form on the day she was told to do so, but submitted it on her next working day. Her delay in submission clearly constitutes inefficiency and neglect, but I am not satisfied that it rises to the level of unbecoming conduct. Accordingly, the City's action sustaining the charge of unbecoming conduct must be **REVERSED**.

However, although the City has failed to prove conduct unbecoming a public employee, the City has successfully proven the lesser included offense of a violation of N.J.A.C. 4A:2-2.3(a)7 – Neglect of Duty. Appellant should have turned in the FIF form immediately. By her own admission, she forgot to do so until reminded of her obligation by Jetter on July 8. Her failure to promptly turn in the FIF constitutes neglect of duty and warrants punishment. Accordingly, the lesser included offense of neglect of duty is **SUSTAINED**.

The charge of unbecoming conduct also included the fact that in 2011, appellant entered a payment for her cousin Simpson into the Court computer system. Appellant candidly admitted that the evidence showed she made this entry. Her defense was that she did not see her cousin's name when she made the entry; she testified that the only things she looked at when making the entry were the ticket number and the amount paid.

The question here is, did appellant take any action that favored her cousin or otherwise compromised the judicial system. Nothing in the proofs tends to show that she did so. The City did not contend that she made the entry erroneously. The violation here was technical only and caused no harm. For that reason, I **CONCLUDE** that this violation was de minimus, and that portion of the charge of unbecoming conduct must be **DISMISSED**.

There remains the issue of penalty. Progressive discipline is the law in the State of New Jersey. See West New York v. Bock, 38 N.J. 500, 522 (1962). In this case, the City seeks to impose a thirty day suspension on the appellant. But the City acknowledged that despite a career in City service that now spans over thirteen years, appellant has never previously been disciplined.

Under the precepts of progressive discipline, a thirty day suspension is excessive. Accordingly, I **MODIFY** the penalty to a five day suspension.

ORDER

I **ORDER** that the charge of unbecoming conduct be dismissed.

I **ORDER** that the lesser included charge of neglect of duty be **SUSTAINED**.

I **ORDER** that the penalty imposed be **MODIFIED** to a five day suspension.

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.

May 9, 2016
DATE


BRUCE M. GORMAN, ALJ

Date Received at Agency:

May 9, 2016

Date Mailed to Parties:

5/9/16

/jb

Evette Lea Davis

For respondent:

Cotteth Stafford
Leslie Lewis
Brian Jetter

EXHIBITS

For appellant:

None

For respondent:

None

Joint Exhibits:

- E-1 Jetter Memo, dated July 8, 2013
- E-2 Jetter Memo to Tucker
- E-3 Stafford Memo
- E-4 Request to Approve Please Agreement
- E-5 Route Sheet, dated July 5, 2013
- E-6 Conflicts Route Sheet
- E-7 NJ ACS Complaint Inquiry Shauna Simpson
- E-8 NJ ACS Complaint Inquiry Shauna Simpson
- E-9 Time and Attendance Ledger for Angela Jones
- E-10 Court Admin Certificate for Angela Jones
- E-11 Code of Conduct for Judiciary Employees

- E-12 Canon 4 of Code of Conduct for Judiciary Employees
- E-13 AOC Directive #3-08
- E-14 AOC Directive #03-06
- E-15 NJ Judiciary Receipt for Technology Policy
- E-16 NJ Judiciary Receipt Code of Conduct
- E-17 NJ Judiciary Receipt canon 5.C.1
- E-18 Intentionally omitted
- E-19 Intentionally omitted
- e-20 Conflict Form