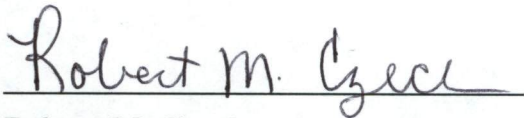


Re: Nadeyah Sarmad

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
MAY 17, 2017

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

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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 12825-14

CSC DKT. NO. 2014-629

(ON REMAND)

OAL DKT. NO. CSV 13733-13

CSC DKT. NO. 2014-629

NADEYAH SARMAD,

Petitioner,

v.

**DEPARTMENT OF CHILDREN
AND FAMILIES, PASSAIC NORTH,**

Respondent.

Laurie Taylor, Staff Representative, CWA Local 1037, for Petitioner pursuant to
N.J.A.C. 1:1-5.4(a)(6)

Diane Noboa, Employee Relations Officer, New Jersey Department of Children
and Families (Laurie M. Hodian, Director, Office of Employee Relations) for
Respondent pursuant to N.J.A.C. 1:1-5.4(a)(2)

Record Closed: June 27, 2016

Decided: May 2, 2017

BEFORE **LELAND S. MCGEE**, ALJ:

PROCEDURAL HISTORY

Petitioner is a former Family Service Specialist II with the Department of Children and Families. She was released at the end of her working test period effective September 9, 2013, following an unsatisfactory rating for the second half of the probationary period. Petitioner appealed this action to the Civil Service Commission (CSC) which transmitted the matter to the Office of Administrative Law (OAL). A hearing was scheduled in the matter for July 14, 2014. Neither Petitioner nor her union representative appeared at the hearing, nor did they attempt to contact the OAL. Based upon their absence, the OAL issued a "Failure to Appear" notice. On July 16, 2014, this matter was returned to the Commission for a Final Decision, with a notice giving the parties thirteen days to present any reason for the failure to appear.

On July 28, 2014, Petitioner submitted a request for reinstatement of her appeal and Respondent filed an objection to same. On October 1, 2014, the Commission concluded that it would be unjust to deny Petitioner a hearing on the merits of her appeal and remanded the matter to the OAL for hearing. On October 3, 2014, the Remand was transmitted to the OAL.

Hearings in this matter were held on August 6, 2015, October 26, 2015, and January 7, 2016. Post-hearing submissions were filed on or about June 2016 and the record closed.

FACTUAL DISCUSSION

The following background facts are undisputed. Accordingly, I **FIND** them to be the **FACTS** of this case.

On February 27, 2012, Petitioner was hired as a Family Service Specialist (FSS) Trainee with DCF, Division of Child Protection and Permanency. When hired, she entered into an extensive Pre-Service Training Program in which Petitioner received classroom training on how to complete the essential job functions of a Family Service Specialist. The Pre-Service Training included instructions in family engagement, safety

and risk assessment, case documentation, and learning how to detect the signs of child abuse and neglect. Petitioner was also instructed on Departmental policies, practices, and procedures. In addition to classroom instruction, Petitioner received hands-on field experience by serving as a “buddy” or “shadowing” experienced FSS’s on the job.

On March 9, 2013, Petitioner entered her Working Test Period for the title of Family Service Specialist II and was subjected to a WTP of four months. The WTP was extended during which time she received four progress reports. On three of the reports Petitioner received an “unsatisfactory” rating.

Credibility Determinations

In assessing a witness’s credibility, an Administrative Law Judge (ALJ) must consider his/her 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). A fact finder may reject a witness’s testimony “when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth.” In re Perrone, 5 N.J. 514, 521-22 (1950); see Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958) (rejecting testimony “inconsistent with other testimony or with common experience” or “overborne by other testimony.”); D’Amato by McPherson v. D’Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). An ALJ may consider the “interest, motive, bias, or prejudice of a witness” but “where such choice is reasonably made, it is conclusive on appeal.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952); Renan Realty Corp. v. State, Dep’t of Cmty. Affairs, 182 N.J. Super. 415, 421 (App. Div. 1981).

The evidence must “be such as to lead a reasonably cautious mind to the given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958.) Greater weight of credible evidence in the case – preponderance – depends not only on the number of witnesses, but “greater convincing power to our minds.” State v. Lewis, 67 N.J. 47, 49 (1975). Similarly, credible testimony “must not only proceed from the mouth of a credible witness, but it must be credible in itself.” Perrone, *supra*, 5 N.J. at 522.

Here, Petitioner does not dispute that she received unsatisfactory PAR reviews. In fact, in her letter of appeal, Petitioner outlined the specific corrective action that she developed for each of her “deficiencies.” Her assertion is that Respondent failed to properly train her, failed to adequately supervise and support her, and placed her in a position of having to perform duties that a more seasoned staff person would be required to perform. Petitioner acknowledged that Supervisor Krauser did offer “some” assistance by going into the field with her did some of her monthly visits for her and, as was common practice, had other workers complete some of her monthly visits. There were five (5) cases that he helped her to close. Petitioner acknowledged that Krauser gave her good advice about how to handle cases and how to manage time to reduce time required for some cases. One of her colleagues, Biatrice Reyes, was also very helpful and knowledgeable.

Respondent does not dispute that it was understaffed and was operating under a Modified Settlement Agreement (MSA). Respondent was required to adjust staff to meet the directives of the MSA. Respondent acknowledged that it had supervisors with six (6) workers, in violation of the MSA standard of not more than five (5) workers per supervisor. In fact, when Petitioner came into the permanency unit, Krauser was the supervisor for the litigation unit as well and therefore, supervised a total of eleven (11) workers. Conflicting and irreconcilable testimony requires credibility determinations, based on the totality of the evidence, prior to making findings as to the disputed facts. In re Final Agency Decision of Bd. of Exam'rs of Elec. Contractors, 356 N.J. Super. 42 (App. Div. 2002). The basic facts of this case are not in dispute.

I **FIND** the testimony of both parties' witnesses was credible.

ANALYSIS AND CONCLUSIONS OF LAW

Applicable Standard

The Civil Service Act and the implementing regulations govern the rights and duties of public employees. N.J.S.A. 11A:1-1 to 12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. An employee who commits a wrongful act related to his or her duties or who gives other just cause may be subject to major discipline. N.J.S.A. 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). In a civil service disciplinary case, the employer bears the burden of sufficient, competent and credible evidence of facts essential to the charge. N.J.S.A. 11A:2-6(a)(2), -21; N.J.S.A. 52:14B-10(c); N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. That burden is to establish by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

Civil Service matters are governed by N.J.A.C. 4A:2-4.3(b), which places upon the employee the burden of proving that a termination following a working test period was a decision reached by the appointing authority in bad faith.

The purpose of the working test period is to give an appointing authority the opportunity to determine whether an employee satisfactorily performs the duties of a particular job. A working test period is part of the examination process. The Civil Service Commission shall provide for:

- a. A working test period following regular appointment of four months, which may be extended to six months at the discretion of the commission, except that the working test period for political subdivision employees shall be three months and the working test period for entry level law enforcement, correction officer, and firefighter titles shall be 12 months;
- b. Progress reports to be made by the appointing authority and provided to the employee at such times during the working test period as provided by rules of the commission and a final progress report at the end of the entire working test period shall be provided to the employee and the commission;

- c. Termination of an employee at the end of the working test period and termination of an employee for cause during the working test period; and
- d. The retention of permanent status in the lower title by a promoted employee during the working test period in the higher title and the right to return to such permanent title if the employee does not satisfactorily complete the working test period, but employees removed for cause during a working test period shall not be so returned.

[N.J.A.C. 11A:4-15.]

The working test period shall begin on the date of regular appointment and in State service, shall extend for a period of four months of active service, which the Commissioner may extend on request of an appointing authority for an additional two months. Such request should be submitted to the Department of Personnel at least five working days before the end of the four-month period. The appointing authority shall notify the employee of the extension in writing on or before the last day of the four-month period.

N.J.A.C. 4A:4-5.2(b)(2)

After evaluating the testimony and supporting evidence, I **CONCLUDE** that no bad faith existed here. There was “no evidence of furtive design, ill will or other illicit motivation” in any of Petitioner’s progress reports. It is evident that the agency was insufficiently staffed, which may also have led to management and organizational challenges. There is no evidence that the burden of those problems was directed at Petitioner. I have every reason to believe that all of the staff bore the burden of the management and organizational problems that Respondent experienced at the time and there is no evidence that Petitioner’s experience was the result of any misdeeds or bad faith. The standard of review for this court is not whether the agency was mismanaged or whether it operated in compliance with the MSA. The issue in this case was whether Respondent acted in bad faith when it terminated Petitioner in bad faith. Perhaps if Petitioner had applied for the position and gone through the training for the position at a time when the agency was at full staff, she would have had a different result. That I cannot predict. However, the evidence presented here indicates a strained operation and an unfortunate circumstance for Petitioner but does not indicate bad faith.

I further **CONCLUDE** that there is no evidence to support a charge of insubordination by Petitioner.

ORDER

It is **ORDERED** that the decision of the appointing authority to terminate Petitioner following the end of her working test period is hereby **AFFIRMED**.

I further **ORDER** that the determination that Petitioner is guilty of insubordination against Petitioner is hereby **REVERSED**.

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.

May 2, 2017
DATE



LELAND S. MCGEE, ALJ

Date Received at Agency:

May 2, 2017

Date Mailed to Parties:

MAY 3 2017


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

lr

APPENDIX

LIST OF WITNESSES

For Petitioner:

Nadeyah Sarmad

For Respondent:

Victor Niedbalski

Karl Krauser

Maria Rios

LIST OF EXHIBITS

For Petitioner:

- P-1 Progress Report, 4/5/13
- P-2 Progress Report, 6/7/13
- P-3 Progress Report, 7/9/13
- P-4 Interoffice Memo, 3/13
- P-5 Interoffice Memo, 4/13
- P-6 Corrective Action 1, 6/30/13
- P-7 Corrective Action 2, 6/30/13
- P-8 Corrective Action 3, 6/30/13

For Respondent:

- R-1 Performance Assessment Review
- R-2 Working Test Period Reports for 6/7/13, 7/9/13, and 8/9/13
- R-3 Policy on Case Reporting on Family Assessments and Reassessments
- R-4 Policy on risk Assessments and Case Plans
- R-5 Sarmad Training Transcript
- R-6 Krauser Email on Protected Time – 6/11/13
- R-7 Memo Conference – 5/20/13
- R-8 Krauser Email on MVR – 5/31/13

- R-9 Krauser Email on NJ SPIRIT – 6/5/13
- R-10 Krauser Email on NJ SPIRIT – 7/10/13
- R-11 Krauser Email on Safe Measures 7/26/13
- R-12 Memo Conference – 7/31/13
- R-13 Memo Conference – 8/26/13
- R-14 Sarmad Case Plans in NJ SPIRIT
- R-15 J.B. Case in NJ SPIRIT
- R-16 Correction Action Memos
- R-17 Leadership meeting minutes of 3/9/12
- R-18 Leadership meeting minutes of 4/11/13
- R-19 Leadership meeting minutes 6/12/13
- R-20 Progress report for Ms. Sarmad
- R-21 Conference memos for March and April, 2013
- R-22 Modified Settlement Agreement
- R-23 Ms. Sarmad's caseload stats from February 2012 to August 2013