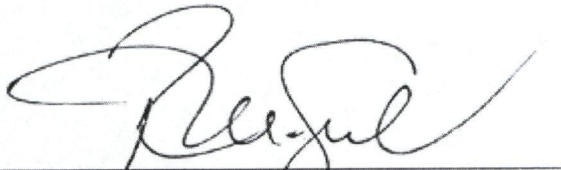


Re: Julissa Del Gaudio

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
JULY 13, 2017



Robert M. Czech, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
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

OAL DKT. NO. CSV 09823-16

**IN THE MATTER OF JULISSA DELGAUDIO,
BERGEN COUNTY, BOARD OF SOCIAL
SERVICES.**

Julissa DelGaudio, petitioner, pro se

Yaacov Brisman, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs,
attorneys)

Record Closed: May 1, 2017

Decided: June 6, 2017

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter appellant, Julissa DelGaudio, appeals her release by the Bergen County Board of Social Services (the Board) at the end of her working test period, effective June 3, 2016. On July 1, 2016, the Civil Service Commission transmitted the matter to the Office of Administrative Law (OAL) in accordance with N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The hearing was scheduled for February 6, 2017, and was held on that date. At the conclusion of the hearing, appellant asserted that she was not aware that she had the ability to bring witnesses with her. This matter had been scheduled on July 13, 2016, to commence on February 6, 2017, and nothing had been

heard from petitioner in the ensuing seven months. Nevertheless, over the strenuous objections of respondent, the appellant was provided with one week to advise whether she intended to call witnesses, and in that event to provide their names. Two weeks later appellant advised that she wished to call three witnesses, and once again over the strenuous objection of respondent, a date to continue the hearing was scheduled.

On May 1, 2017, respondent appeared with potential rebuttal witnesses and the appellant also appeared, advising that no additional witnesses would be testifying. As such the record was closed on that date.

TESTIMONY

Robert Calocino

Mr. Calocino is the Acting Director of the Bergen County Board of Social Services and has been the Chief Personnel Officer since 2012. Prior to that he served as the Senior Personnel Technician. He is familiar with hiring practices and the training and evaluation processes for determining whether someone would be permanently hired.

Mr. Calocino advised appellant by letter dated October 9, 2015, (R-1) that she had been offered the position as a temporary part-time Human Services Aide. During the first month, there is training for the SNAP program (food stamps; review of regulations; the code; and the interview process). During the first thirty days, temporary part-time employees are given several tests based upon objective criteria. Employees are advised how they are doing via a training progress report.

Appellant's thirty-day training progress report (R-2) dated November 30, 2015, indicated that she had scored a 74% on the food stamp program eligibility test where the average score had been 84%, indicating she scored below average. She scored a 72% on the financial eligibility test and the average for the class was 82%, indicating a level of difficulty understanding the financial eligibility requirements. Finally, for the FAMIS and DOVE inquiry test, she scores a 92%, indicating a satisfactory understanding of how to access those systems and interpret the information. The average for the class was 96%.

There was concern at the time that appellant had scored below average in all of her tests, and it was suggested that she utilize the handouts to better understand the program.

Thereafter, on January 14, 2016, a memo was sent to appellant from the training supervisor (R-3) complimenting appellant's professional manner and initiative, as well as her ability to work independently and be organized. It was reported, however, that she needed to review her work more carefully to avoid the number of errors and to ask more questions. Mr. Calocino indicated that appellant's issues were holding up the process. He indicated she could have asked for help from her training supervisor; she had also never said that her training was insufficient. He indicated that at this juncture, some of the other aides from her group were moved into the unit to start working the position under supervision.

Thereafter, on February 29, 2016, appellant was offered the part-time Human Services Aide position and advised that there was a ninety-day working test period starting on that date. (R-4.) However, appellant's status remained as temporary as Board approval had not yet been secured. (R-5.)

Following Board approval, appellant was advised her ninety-day working test period began as of March 7, 2016. (R-6.) At this juncture, she was considered to be a regular employee with a ninety-day working test period.

The first evaluation appellant received, covering the thirty days between March 8, 2016, and April 7, 2016, reveals that the quality of appellant's work was scored as a 1 out of a possible 6. She had an error rate of 30.6% and the average of the trainees was 17.6%. The quantity of her work was deemed to be a 3.5 out of a possible 6. She completed 108 intake and recertification interviews, which was higher than the average of 103.7. However she had a higher error rate. Her job knowledge and skill was scored a 1 out of a possible 6.

Taking all of her scores combined, she earned a 23 out of a possible 50 indicating that she meets the job requirements, but only barely. At a subsequent conference with appellant to discuss the evaluation, her supervisor indicated that her error rate needed to improve because she simply made too many errors. No comments were offered by appellant at that time under the employee comment section.

Mr. Calocino testified that the training department is always available to help employees and that a supervisor and specialist in the unit are available to answer questions.

Appellants next review, a sixty-day evaluation, covered the period of April 8, 2016, to May 7, 2016. The quality of her work was now rated a zero out of a possible 6 with an error rate of 30.5% at a time when the average for the trainees was 13.3%. This was deemed to be an unacceptable error rate. The quantity of her work was once again determined to be a 3.5 out of a possible 6. Appellant completed 118 interviews when the trainee average was 108.8. Her job knowledge and skill at this time was rated a .5 out of 6, down from a 1 out of 6 at her last review. Several other scores were lower, and during the working test period they should be increasing as she had been on the job, had the training and was getting more experience. This was a cause for concern for respondent and the reviewer noted in the comments that appellant has had no improvement in her error rate, and continued to make careless errors. (R-8.) Her total was now 19.5 out of a possible 50 indicating she was not meeting the job requirements. At an evaluation conference on May 13, 2016, with her supervisor she was advised that she needed to improve the quality of her work before her next evaluation or she was at risk of failing the ninety-day evaluation period. Once again the evaluation reflects no employee comments.

Appellant's ninety-day evaluation dated June 3, 2016, and covering the period of May 8, 2016, through June 2, 2016, reflected a .5 out of 6 score on the quality of her work. This is an extremely poor score and appellant's error rate was 19.6% at the time when the average was 12.2%. The quantity of her work still rated at 3.5 out of 6 and the job knowledge and skill was a 1 out of 6, still extremely poor. Other scores showed no change including those for professional conduct, self-motivation, communication and team work and flexibility, which actually went down as of this last evaluation. (R-9.) Her final score

was 19.5 out of a possible 50 for her ninety-day evaluation, indicating that she still was unable to meet the job requirements. Her inability to demonstrate that she was able to complete the quality of work necessary led to appellant's termination. (R-10.)

Julissa DelGaudio

Appellant testified that there were thirteen trainees in her class and she felt that she did the job properly. She indicated there were other issues and that although she knows her "scores weren't that high" she felt she had better scores than others. She indicated she had to train under stress and that the professionalism was not there at the agency. She stated that no one sat next to her to evaluate her and that her error rate was much better at the end despite what the evaluations indicate.

On May 1, 2017, when petitioner was to return with witnesses, she provided a written narrative to be included with her testimony which was admitted without objection. (P-1.)

ANALYSIS

In this matter, Ms. DelGaudio has appealed her release at the end of her working test period, effective June 3, 2016. A candidate for permanent-employee status must successfully complete a working test period so that an appointing authority may determine whether the employee can satisfactorily perform the duties of that title. N.J.S.A. 11A:4-15. "A working test period is part of the examination process which shall be served in the title to which the certification was issued and appointment made." Ibid. It supplements the examination process "by providing a means for testing an employee's fitness through observed job performance under actual working conditions." In re Stringer, CSV 4341-09, Initial Decision (March 16, 2011) (citing Dodd v. Van Riper 135 N.J.L. 167, 171-72 (E. & A. 1947)), adopted, CSC (June 15, 2011), <<http://njlaw.rutgers.edu/collections/oal/>>. The purpose of the working test period is not to provide the employee further training to qualify him for the position, but rather "to further test a probationer's qualifications." Briggs v. N.J. Dep't of Civil Serv., 64 N.J. Super. 351, 355 (App. Div. 1960). During the working test period, the appointing authority evaluates the employee's "work performance and

conduct . . . in order to determine whether he merits permanent status,” while the employee “is entitled to a fair opportunity to demonstrate his ability to fulfill the requirements of the position.” Vegotsky v. Office of Admin. Law, 92 N.J.A.R.2d (CSV) 162, 167.

At the end of the working test period, an appointing authority may terminate the employee or return that employee to his or her former permanent title if the employee’s job performance was unsatisfactory. See N.J.S.A. 11A:2-6(a)(4); N.J.S.A. 11A:4-15(c); N.J.A.C. 4A:2-4.1; N.J.A.C. 4A:4-5.4(a). “The only requirement necessary to justify release at the end of the working test period is that the opinion of the Appointing Authority be formed in good faith.” Mabson v. City of Monmouth, CSV 2164-05, Initial Decision (Jan. 26, 2006) (citing Devine v. Plainfield, 31 N.J. Super. 300, 302-03 (App. Div. 1954)), adopted, MSB (March 9, 2006), <<http://njlaw.rutgers.edu/collections/oal/>>. In an appeal concerning the release of an employee at the end of a working test period, the burden of proof is on the employee to show that the appointing authority acted in bad faith when it determined that the employee was incapable of satisfactorily performing the duties of the position. N.J.A.C. 4A:2-4.3(b); Briggs, supra, 64 N.J. Super. at 356; Devine, supra, 31 N.J. Super. at 303. Bad faith contemplates dishonesty and a state of mind affirmatively operating with a furtive motive, self-interest or ill will. See O’Connor v. Health Servs. Ctr. of Camden Cnty., 91 N.J.A.R.2d (CSV) 23, 25.

In this context, good faith means that “the appointing authority has actually observed the probationer’s performance and found it to be unsatisfactory,” and “[a] fair evaluation period is further evidenced by the giving of guidance and advice due to a probationer, as well as a notification of any deficiencies in performance.” Sokolowsky v. Twp. of Freehold Dep’t of Code Enforcement, 92 N.J.A.R.2d (CSV) 155, 157.

Based upon the foregoing, I **FIND** that appellant has presented no argument regarding any purported bad faith by the respondent. In fact, the preponderance of the evidence established that the appointing authority exercised good faith by evaluating appellant at required intervals over the course of her working test period, and by giving her specific feedback on the deficiencies in her job performance. The record is devoid of any evidence of ill will or dishonest motive by the appointing authority; to the contrary, the

undisputed evidence demonstrated that appellant's performance ratings declined during the course of her working test period and she offered no evidence to rebut the veracity of the appointing authority's evidence of her deficiencies.

It is further evident that while Ms. DelGaudio received extensive training, she had significant and wide-ranging problems during her working test period, all of which are amply manifest in the most recent progress reports issued in this matter.

I am therefore satisfied that the respondent acted in good faith in the manner in which it assessed appellant's capabilities during the working test period, and that it made a valid determination regarding her ongoing unsatisfactory performance. Despite the Board having given appellant notice in a timely fashion regarding her interim failures during the working test period, she nonetheless failed to measure up and meet minimum standards of acceptable performance thereafter.

CONCLUSION AND ORDER

Based upon all of the foregoing, I **CONCLUDE** that the Board has correctly determined that the release of Julissa DelGaudio at the end of her working test period was appropriate under the circumstances and that it was done in good faith.

It is therefore **ORDERED** that the release of Julissa DelGaudio, at the end of her working test period, effective June 3, 2016, 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.

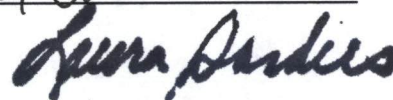
June 6, 2017
DATE


LESLIE Z. CELENTANO, ALJ

Date Received at Agency:

June 6, 2017

JUN 7 2017



Date Mailed to Parties:

**DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE**

dr

APPENDIX

Witnesses

For Appellant:

Julissa DelGaudio

For Respondent:

Robert Calocino

Exhibits

For Appellant:

P-1 Appellant's Written Narrative

For Respondent:

- R-1 Letter from Robert Calocino to Julissa DelGaudio dated October 9, 2015
- R-2 30 Day Training Progress Report
- R-3 Memorandum dated January 14, 2016
- R-4 Letter from Robert Calocino to Julissa DelGaudio dated February 29, 2016
- R-5 Memorandum dated February 29, 2016
- R-6 Letter from Robert Calocino to Julissa DelGaudio dated March 7, 2016
- R-7 Employee Performance Review dated April 19, 2016
- R-8 Employee Performance Review dated May 13, 2016
- R-9 Employee Performance Review dated June 3, 2016
- R-10 Memorandum dated June 3, 2016