

In the Matter of Yvonne Bundy
CSC Docket No. 2008-2526
OAL Docket No. CSV 724-08
(Merit System Board, decided July 16, 2008)

The appeal of Yvonne Bundy, an Institutional Attendant with Salem County (County), of her removal effective December 19, 2007, on charges, was heard by Administrative Law Judge Bruce M. Gorman (ALJ), who rendered his initial decision on June 4, 2008. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on July 16, 2008, accepted and adopted the Findings of Fact as contained in the attached initial decision, but did not adopt the ALJ's recommendation to modify the removal to a six-month suspension. Rather, the Commission upheld the removal.

DISCUSSION

The appellant, who worked in the Salem County Nursing Home, was removed on charges of conduct unbecoming a public employee and other sufficient cause. Specifically, the appointing authority asserted that the appellant was required to submit medical documentation authorizing her off duty on November 5, 2007 and November 6, 2007, the dates she was absent from work, or she would be sent home. Further, the appointing authority asserted that the appellant falsified medical documentation and submitted it in order to circumvent the requirement when she returned to work on November 7, 2007. Upon the appellant's timely appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

In the initial decision, the ALJ sets forth that the appellant contended that she was legitimately sick, but admitted falsifying the medical note so she would not lose any more time on the job. Accordingly, the ALJ determined that the appellant was guilty of the charges presented. Regarding the proper penalty, while the ALJ indicated that the appellant's infraction was "extremely serious," nevertheless he decided that it did not warrant termination. In this regard, the ALJ found that since the appellant was legitimately ill, her intention was not to present false information regarding the medical note. Accordingly, he determined that the appellant's infraction was not so egregious as to warrant removal, and, since she had only a minor disciplinary history, he recommended reduction to a six-month suspension.

In its exceptions, the appointing authority contends that the ALJ erred in finding that the appellant was legitimately ill on the dates in question and thus, intended to deceive it by submission of a false medical note. Additionally, it contends that even if the Commission agrees with the ALJ's conclusions that the appellant was ill on the dates in question, removal is warranted given the breach of trust created by the appellant's egregious misconduct.

Upon independent review of the record, while the Commission agrees with the ALJ's determination regarding the charges, it disagrees with the ALJ's ruling that the appellant's actions were not so egregious as to warrant termination. Rather, the Commission finds that the removal should be upheld. In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). Although the Commission applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's prior disciplinary history may be outweighed if the infraction at issue is of a serious nature. *Henry v. Rahway State Prison*, 81 N.J. 571, 580 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. *See Carter v. Bordentown*, 191 N.J. 474 (2007).

In the present matter, the appellant is responsible for a vulnerable population and holds a position of trust, *i.e.*, the maintenance of patient records. Further, the appellant's admitted falsification of a medical note is clearly of great concern given her position. The appellant is expected to conduct herself with maturity and integrity, in keeping with the mission of the institution in which she is employed. The incident clearly demonstrates the appellant's propensity for inappropriate conduct and lack of judgment. Further, the appellant is not a long-term employee; she has only been employed for six years and she has received minor discipline on two prior occasions. Therefore, given the nature and seriousness of the incident, and the short-term employment history of the appellant, the penalty of removal imposed by the appointing authority is neither unduly harsh nor disproportionate to the offense, and should be upheld.

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 Yvonne Bundy.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.