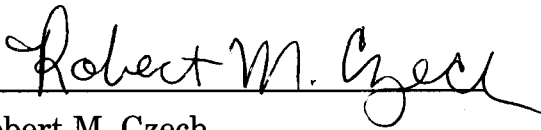




Re: Donnis Jackson

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  
NOVEMBER 18, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
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 15645-13

AGENCY DKT. NO. 2014-619

**IN THE MATTER OF  
DONNIS JACKSON, DEPARTMENT  
OF COMMUNITY AFFAIRS.**

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**Brett Richter**, Executive Vice President, CWA Local 1039, for appellant pursuant to  
N.J.A.C. 1:1-5.4(a)(6)

**Cameryn J. Hinton**, Deputy Attorney General, for respondent (John J. Hoffman,  
Acting Attorney General of New Jersey, attorney)

Record Closed: April 17, 2015

Decided: October 15, 2015

**BEFORE ELIA A. PELIOS, ALJ:**

**STATEMENT OF THE CASE**

Donnis Jackson (appellant) contends that the New Jersey Department of Community Affairs (respondent) acted in bad faith when it determined that he had not successfully completed his Working Test Period (WTP), and returned him to his previously held position.

Appellant seeks reinstatement and another WTP. Respondent denies that it acted improperly and contends that the appellant's case must be dismissed.

### **PROCEDURAL HISTORY**

On August 16, 2013 the respondent notified the appellant that he had not satisfactorily completed his WTP in the position of "Senior Field Representative Housing (HAP)," and returned him to his previously held position of "Field Representative Housing (HAP)." On September 4, 2013, appellant requested a hearing. On October 29, 2013, the Civil Service Commission transmitted the matter to the Office of Administrative Law (OAL) where it was filed as a contested case. The matter was heard on January 12, 2015 and February 25, 2015. The record was left open to permit the parties to submit post-hearing briefs. The record was closed on April 17, 2015. Orders of extension were entered to extend the time for filing the initial decision in this matter.

### **SUMMARY OF TESTIMONY**

Appellant testified on his own behalf. He is employed by the Department of Community Affairs (DCA) housing unit in the Somerset-Hunterdon field office in Somerville, New Jersey, as a field service representative. In September of 2012 he started work as a senior field service representative after his promotion in the same office. His supervisor since February of 2012 was Audrey Hopkins. Appellant knew that he would have a four-month working test period, with two reports. He was told that if he received satisfactory ratings after two months he would become permanent. Appellant has been a field representative since 1994, and started in the Somerset office in April 2009. Despite his numerous requests, Hopkins never provided him training. He was told that he was responsible for locking-in cases, a job unique to senior field representatives. That never happened.

When appellant first arrived he did not do field inspections. He was in the office three days per week and in the field two days a week. In 2012, he was given four problem cases even though he was in the field four days per week at that time. He had to cover a lot of ground and never took lunch. He never got into the office and often worked eight to ten hour days.

Appellant sent his supervisor an e-mail voicing concerns. The concerns were never addressed but he did not complain. Hopkins never replied to his e-mail but her supervisor, Edna McNamara, did reply and suggested a meeting to discuss the issues raised by appellant. No such meeting occurred. Appellant was expressing concern because he was unable to keep up with his assigned case load, and was not receiving any response to his e-mail or his concerns. On September 12, 2012, he was promoted. His closeout evaluation as a field rep gave him a satisfactory rating. He was upset that he received a failing grade in job knowledge skills after eighteen years on the job. He tried to discuss it with the supervisor but was told to write it up. He also failed "quality casework". He wrote a response with attached rebuttal documents.

Appellant discussed the differences between a senior field representative and a field representative. He noted that he would need to stand in for his supervisor in his or her absence. He also noted that he was to receive lock-in privileges after training was provided. He believed that he was not given enough time to complete work duties during work hours. Appellant then filed a grievance because he was getting no reply regarding his concerns. His first progress report in the senior field representative position reported an unsatisfactory rating. He noted that the phone at his desk was not working and he was also covering for his supervisor, Ms. Hawkins. His caseload was not getting done. After three weeks he followed up about the non-working phone, at which point Hawkins became upset. She went to human resources and appellant was agitated. He noted that workers had to take messages for him and that he went over a month without a phone. Office keys were also an issue for over three months.

Appellant tried to speak with his supervisor about these many issues and was told to get out of her office. She followed him out of her office and started talking to appellant. He told her to leave him alone since she had ordered him out of her office. She then threatened to call the police. Appellant told her to go ahead and she did. The police reported to the scene saying that appellant had been violent. They made him leave and go home. Subsequent to that incident appellant was reassigned to the Union County office.

Once reassigned to the Union County office, appellant's case files were to be reassigned. His work was not done and additional work was assigned to him. In early 2013, Charles Evans, appellant's supervisor in Union County, was reassigned to the Somerset-Hunterdon office and Hopkins was reassigned to the Union County office. Appellant then reported back to the Somerset office.

At the end of four months, appellant received an evaluation that was dated December 24, 2012. His working test period ended on January 8, 2013. Appellant did not raise that issue and does not recall if he signed that form. The report returned an unsatisfactory rating, and appellant was given an extension of his working test period.

Appellant attended a fitness for duty evaluation where the doctor found him to be paranoid with schizophrenic tendencies. He was placed on unpaid leave until a psychological evaluation could be completed. Appellant had to find his own doctor. He returned to work in August of 2013, after five months off. He was given sixty cases within the first two to three days back and twenty more cases within the week. He believes that twenty-five cases constitute a heavy caseload.

On August 15, appellant was told that he had failed his working test period and would be demoted. He refused to sign the evaluation. He is still employed as a field rep in the Somerset office, and Charles Evans is still his supervisor. They have an excellent relationship and there are no work issues.

On cross-examination he did note that in February of 2013, it was brought to his attention that twenty-seven of twenty-seven cases missed payment and in March of 2013, twenty-three of twenty-eight cases missed payment.

Frank Locey, Supervisor of Field Operations for the Division of Housing, testified on behalf of the DCA. He is immediate supervisor to 8 employees and indirectly supervises 180 employees in the Housing Assistance Program. He described a senior field representative as being a field representative on steroids, noting that they have all the same duties plus additional duties. Locey described the duties of field representatives and their expected case flow. He noted that cases have renewal dates. The representatives try

to get them done thirty days out on the twentieth of the month. The twentieth of the month must be met in order to get payment out for the first of the month which is the renewal date. He noted that lock-in is a computer privilege not available to all staff. He further added that an individual cannot lock in a case that they worked on. The data is reviewed and then the payment is locked in which means that the check will go out. He believes thirty cases per month is reasonable workload.

Locey noted that if the work is not done, payment cannot be locked in and payment cannot be made causing the clients to complain. The circumstances can also affect HUD funding. Senior field representatives get difficult cases. They also stand in if the supervisor is out. He noted that a working test period is usually six months—the same for a field representative as for a senior field representative. An employee is trained during the working test period if training is needed. He has supervised many working test periods for senior field representatives and has never had an employee fail. He is not very familiar with the appellant in this matter, especially during the first part of his working test period. Locey noted that appellant did receive an unsatisfactory report for the first two months and that a lot of cases were not getting done. He believed the assignment amounts were standard. He does recall assigning Jackson to report to the Union County office.

Although it was indicated that others would pick up his case files while he was in the Union County office, it was understood that if and when appellant was to return to the Somerset office he would either reclaim his work assignments or get new ones. Locey expressed that he believed that it is unusual for an employee to have two supervisors during the working test period, but that it is not problematic. He personally does not know if appellant is capable of being a senior field representative, as he has not worked directly with him. Based on the documentation provided, he believes that appellant's supervisors were justified in failing him. Moving from field representative to senior field representative does not necessarily require training. Locey was not aware that Jackson was locking in cases but he was made aware of his issues with Hopkins. He believes a person should be trained before locking in cases. He states that the Division is very careful about who they let commit federal funds. He was not aware that appellant was cleared to lock in cases and is not sure that he was.

Christopher Possessky, an administrator for employee relations with DCA, testified next on behalf of the appointing authority. Possessky described his job duties and the working test period process. He noted that the State requires progress reports on a form generated by human resources. A working test period can be extended if permission is given from the Civil Service Commission. An application must be supported with documentation and one of two progress reports must have been unsatisfactory.

In the current matter he noted that the change of supervisor and the bad relationship with the first supervisor informed the decision to extend the initial working test period. He further noted that disruptions in the office and the workplace incidents of violence and the transfer of office all informed the decision to fail the working test period. He described an incident where appellant went to a co-worker's home to collect documents unannounced on a Saturday evening. That incident led to a thirty-day suspension and a referral for medical examination. He described this as a tipping point in the decision to fail as appellant demonstrated extremely poor judgment.

That incident, which occurred in January of 2013, had been referred to Possessky. He worked with the acting director and supervisor to address the matter. He noted that a complaint is not treated as gospel, but that they did collectively determine that appellant did go visit a worker on a Saturday night. This is what led to referring the appellant for an Independent Medical Examination (IME) to determine his fitness for duty. Appellant was put out of work pending the IME, and the IME found appellant unfit for duty. Rather than disciplining the appellant they offered him a leave of absence which the appellant agreed to. His working test period was tolled until he returned from leave.

Possessky noted that appellant's working test period began before Possessky started in his current position. His review of the matter did indicate that there were issues between the appellant and his supervisor prior to the working test period. He did note that the evaluation provided by Hopkins did not include the last three and one-half weeks during which time appellant was in the Union County office. Possessky did participate in the decision to send appellant to an IME, but it was not his decision alone.



Appellant agreed to go on medical leave and was not charged with unfitness. He subsequently took his own medical leave on separate medical issues. Appellant returned to work in early August 2013. Possessky remembered that he was on vacation at that time and arrangements had to be made for appellant's return. Appellant was allowed to return because he was found fit for duty and cleared by his doctor as to his medical issues. A final progress report was issued August 13, 2013. Appellant had been out for three to four months and had been back for two weeks before he was given his final report. Possessky believes that it was fair because it was required for the Civil Service Commission. DCA had no choice. The working test period had already been extended and the extension tolled during the medical leave.

He described that the Civil Service Commission has very strict reporting requirements. If an appointing authority needs an extension, a request has to be in before the end of the working test period. There were stipulations attached to appellant's return from his leave for unfitness. Appellant was having trouble meeting them. Despite the troubles with a supervisor, the working test period was initially extended because Possessky was not going to rely solely on a bad relationship with just one supervisor.

Charles Evans, a Supervising Field Representative, testified on behalf of the DCA. He has been in his current position for seven years and supervises five full-time employees. He has supervised four working test periods. He described the senior field representative position as a field representative on steroids. He notes that a senior field representative does field representative work but also stands in for the supervisor when needed. It was Evans's job to determine if appellant passed or failed. Business hours were 8:30 a.m. to 4:30 p.m. and were not to be extended. Cases are assigned 120 days ahead of their due date. If a case is not submitted on time it is noted and an attempt is made to submit it the very next month. Evans described that he was not the appellant's official supervisor when the appellant transferred to his office in Union County for about a week and a half. When both returned to the Somerset-Hunterdon office, Evans then did become appellant's supervisor.

He stated that appellant was not supposed to lock in his own cases. Although Evans was not asked to train the appellant, he did train him. Appellant never asked Evans to work a weekend. He noted that the appellant's caseload became unmanageable. The

office was fielding calls from landlords wanting their money. Participants in the program need the rent paid. His heavy caseload was pending when appellant went on leave.

On cross-examination Evans stated that he believed that disagreement between the appellant and his prior supervisor led to the appellant's transfer. He did not know until later on that the police had been called. Appellant was not doing his Somerset workload while he was assigned to Union County. When appellant returned to the Somerset office he did resume his own caseload. It is true that he submitted thirty-plus cases in February but many of those cases were already late. Evans noted that the reason for the failure was twenty-seven late cases which originated in the Somerset office.

Evans stated that appellant is a very bright individual and believes he is more than capable of doing his work. His opinion was that appellant stopped doing work during the conflicts that he was having.

### **FINDINGS OF FACT**

At issue are the performance and evaluations of the appellant. Evans, Locey and Possessky testified as to appellant's poor performance, and appellant testified that he was not given a fair shake to succeed. Therefore, the credibility of the witnesses must be determined.

When the testimony of witnesses is in disagreement, it is the obligation and responsibility of the trier of fact to weigh the credibility of the witnesses in order to make factual findings. Credibility is the value that a fact finder gives to the testimony of a witness. The word contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). The term has been defined as testimony, which must proceed from the mouth of the credible witness and must be such as our common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955); see also, Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E. & A. 1934). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v.

United States, 412 U.S. 837 (1973). Credibility does not depend on the number of witnesses and the finder of fact is not bound to believe the testimony of any witness. In re Perrone, 5 N.J. 514 (1950).

The testimony of each witness was consistent and there was nothing inherently unbelievable about any testimony provided. Each witness answered questions directly and calmly. Evans, Possessky and Locey all testified as to the fact that appellant significantly fell behind in his caseload. They all testified credibly that his bad relationship with his prior supervisor was given consideration and led to the decision to extend the WTP. They also provided credible testimony that appellant's workload was appropriate for his position, and that many of the cases he was behind on predated his promotion. Appellant's statements, on the other hand, that he was given significantly larger caseloads than his co-workers, was not supported by any credible witness testimony or evidence beyond his own assertions.

Given the foregoing, I **FIND** that the testimony of Evans, Possessky and Locey is to be given more weight and is more likely credible.

Therefore, I **FIND** that appellant was performing unsatisfactorily in managing his caseload and acted inappropriately when going to the home of a co-worker unannounced on a Saturday night. I further **FIND** that the respondent approached evaluation of appellant's working test period in good faith and had legitimate concerns as to the appellant's performance. I finally **FIND** that there was no credible competent evidence produced that the respondent acted in bad faith or with bias toward the appellant.

### **CONCLUSIONS OF LAW**

The purpose of the working test period is to permit an appointing authority time to determine whether an employee satisfactorily performs the duties of a title. N.J.S.A. 11A:4-15 and N.J.A.C. 4A:4-5.1(a). For State positions, the working test period shall be for four months and may be extended an additional two months. N.J.A.C. 4A:4-5.2(b). N.J.A.C. 4A:4-5.4 provides that an employee may be terminated for unsatisfactory performance at

the end of the working test period. A party may appeal the termination, but the employee has the burden to establish that the separation was a result of bad faith. N.J.A.C. 4A:2-4.3(b). In Devine v. Plainfield, 31 N.J. Super. 300 (App. Div. 1954), it was made clear that a probationary employee who is terminated should be given a hearing to present evidence as to the limited issue of bad faith by the appointing authority. In Briggs v. New Jersey Dep't of Civil Serv., 64 N.J. Super. 351, 356 (App. Div. 1960), the court stated that the only issue in such a case is whether the appointing authority exercised good faith in determining the employee was not competent to perform satisfactorily the duties of the position.

There are no reported decisions in a case involving termination at the end of a working test period where the courts have specifically defined what is meant by good faith. In Smith v. Whitman, 39 N.J. 397 (1963), a non-civil service case, the New Jersey Supreme Court defined good faith as meaning honesty of purpose and integrity of conduct with respect to a given subject. In Lustrelon, Inc. v. Prutscher, 178 N.J. Super. 128, 144 (App. Div. 1981), it was observed that "bad faith" is the antithesis of good faith and must be a thing done dishonestly and contemplates a state of mind affirmatively operating with a furtive design or some motive of interest of ill-will. See, O'Connor v. Health Services Ctr. of Camden County, 91 N.J.A.R. 2d (CSV) 23.

If the evaluations and determination are based upon actual observations of the employee's performance of the duties of the position, and are honest assessments of whether the employee is capable of satisfactorily and efficiently performing those duties should appointment become permanent, it must be considered to have been made in good faith. If, on the other hand, the decision to terminate is not based upon actual observations of performance, or if it is made based upon dishonest motives, is based on bias, prejudice or self-interest, or is made with ill-will toward the employee, it must be set aside.

The appellant has not shown by a preponderance of the competent and credible evidence that respondent's returning appellant to his previously held position at the end of his working test period was made in bad faith. No evidence was offered as to bad faith except for appellant's own belief that he was given more work than his co-workers and set up to fail. The evidence reveals that the appellant is a good, capable and competent employee, who had difficulty adjusting to the job of senior field representative and

appropriately meeting the responsibilities required of that position. The record does not show any bad faith, bias or improper motives by the respondent.

**ORDER**

I **ORDER** the appellant's appeal be **DISMISSED**, and that respondent's action returning appellant to his previously held position 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.

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.

October 15, 2015  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
ELIA A. PELIOS, ALJ

Date Received at Agency: 10/15/15

Date Mailed to Parties:  
nd 10/16/15

**WITNESSES**

**For Appellant:**

Donnis Jackson

**For Respondent:**

Francis Locey

Christopher Possessky

Charles Evans

**EXHIBITS**

**Joint Exhibits**

- J-1 Jackson Senior Field Rep Rating
- J-2 Second Period Evaluation – December 24, 2012
- J-3 Evans' Evaluation of Jackson
- J-4 Unsatisfactory Evans to Jackson Evaluation
- J-5 Field Rep Final Pass
- J-6 Initial PAR
- J-7 PAR Agreement

**For Appellant**

- P-1 Job Specifications
- P-2 Jackson to Hopkins E-mail
- P-3 Jackson to Hopkins' Proposal
- P-4 Job Knowledge Rebuttal
- P-5 Senior Field Rep Job Specs
- P-6 Jackson to Hopkins' E-mail
- P-7 String of E-mails
- P-8 Grievance - October 24, 2012
- P-9 E-mail re: Broken Phone
- P-10 Caseload Status December 11, 2012
- P-11 Edna McNamara to Jackson E-mail
- P-12 E-mail

**For Respondent**

- R-1 Memo to Appellant October 26, 2012
- R-3 E-mail to Locey
- R-4 E-mail to Appellant February 11, 2013
- R-5 Possessky Letter to Jackson for  
Independent Medical Evaluation February 25, 2013
- R-7 E-mail from Locey to Appellant
- R-8 Perez First Step Grievance Letter of Denial November 23, 2012
- R-201 PES Committee Model
- R-202 E-mail from Appellant October 15, 2012
- R-203 E-mail to Appellant
- R-204 E-mail to Appellant