



A-4

STATE OF NEW JERSEY

In the Matter of Marie Jeanpierre
North Jersey Developmental Center,
Department of Human Services

**DECISION OF THE
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2014-2755
OAL DKT. NO. CSV 06829-14

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ISSUED: NOVEMBER 5, 2105 BW

The appeal of Marie Jeanpierre, Human Services Assistant, North Jersey Developmental Center, Department of Human Services, removal effective October 8, 2013, on charges, was heard by Administrative Law Judge Imre Karaszegi, Jr., who rendered his initial decision on September 14, 2015 reversing the removal. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

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 November 5, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge’s initial decision.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division’s decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission’s decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to her permanent position.

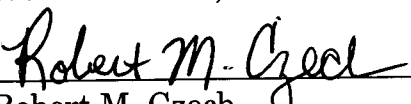
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Marie Jeanpierre. The Commission further orders that appellant be granted back pay, benefits, and seniority for the period of separation to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. 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.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
NOVEMBER 5, 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 06829-14

AGENCY DKT. NO. 2014-2755

**IN THE MATTER OF MARIE T. JEAN PIERRE,
DEPARTMENT OF HUMAN SERVICES,
NORTH JERSEY DEVELOPMENTAL CENTER.**

Nancy Mahony, Esq., for the appellant

**Nicole M. DeMuro, Deputy Attorney General for respondent (John J. Hoffman,
Acting Attorney General of New Jersey)**

Record Closed: May 15, 2015

Decided: September 14, 2015

BEFORE IMRE KARASZEGI, JR., ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The respondent, North Jersey Developmental Center (North Jersey), brings a major disciplinary action against appellant, Marie T. Jean Pierre (Jean Pierre), a human services assistant, removing her effective October 8, 2013. North Jersey alleges that Jean Pierre physically abused a patient, K.S., and intentionally misstated a material fact in a statement concerning the incident. North Jersey claims these acts constitute violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and

N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, specifically, violations of rules and regulations. Jean Pierre denies the allegations and requests dismissal of the charges.

On October 8, 2013, North Jersey prepared a Preliminary Notice of Disciplinary Action (PNDA) against appellant. After the conclusion of a departmental hearing on April 1, 2014, North Jersey issued a Final Notice of Disciplinary Action (FNDA) upholding the charges against Jean Pierre. On May 10, 2014, Jean Pierre requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL), for hearing pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. I heard the matter on May 15, 2015, and the record closed the same date. Orders were entered extending the time for filing this decision.

FACTUAL DISCUSSION

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following **FACTS**:

Appellant, Marie T. Jean Pierre, has worked at North Jersey since December 13, 2010. Since August 2011, she had been assigned to cottage ten where eighty-five percent of the residents have a psychiatric diagnosis. On September 16, 2013, Jean Pierre worked the 3:30 p.m. to 12:00 a.m. shift. She was assigned a client, S.W., in group five. As Jean Pierre proceeded to walk in the vicinity of the dining room, K.S., a level two, non-verbal patient with aggressive and assaultive tendencies, struck Jean Pierre in the face, resulting in a scratch and facial bleeding. Jean Pierre sought immediate treatment from a North Jersey nurse.

Coleen Thomas-Garwood (Thomas), a cottage training technician at North Jersey, testified that on September 16, 2013, she had been assigned to cottage ten, group five. Thomas noted that she had been demoted in April 2013, and this was her first day working at cottage ten. When questioned about her demotion, Thomas indicated that she was not "angry" because she "knew it was coming." When she

arrived for her assignment, Thomas indicated that she was not given any instructions as to the clients/patients prior to starting her shift.

Thomas recalled the events of her first day back. She noted how a "quite violent" client, K.S., attempted to hit another client. Thomas initially stated that she was approximately four feet from K.S. when K.S. "grabbed" Jean Pierre's face and Jean Pierre started to scream. She later corrected her statement noting that she had in fact been approximately six feet behind K.S. at the time. Thomas recalled Jean Pierre, with an open hand, slap K.S. in the shoulder, after which K.S. "just walked away." Thomas asked Jean Pierre, "Why did you hit her?" Thomas noted that Jean Pierre responded by pointing to her face and saying that K.S. "hit her in her passport," referring to Jean Pierre's face. Thomas reported the incident to Audrey Robinson, the cottage training supervisor at the time. Thomas indicated that she did not know of any witnesses present at the time of the incident between K.S. and Jean Pierre. She also added that she did not recall seeing Jean Pierre "bleeding." Thomas also could not recall asking Robinson, "What are you going to do about it?"

Audrey Robinson, a cottage training supervisor at North Jersey, cottage ten, on September 16, 2013, described Jean Pierre as having a "quiet temperament" who "dealt with problem clients well." Robinson recalled Thomas as new to cottage ten when Thomas reported for her assignment on September 16, 2013. After Robinson gave Thomas her assignment and told Thomas of the clients in her group, Robinson noted that Thomas "said nothing." Robinson added that she did not witness the incident between K.S. and Jean Pierre; however, she saw "scratches" on Jean Pierre and heard Thomas tell Jean Pierre, "You hit her." Robinson also recounted Thomas loudly exclaiming, "What are you going to do about this?" as she directed this comment to Robinson.

Tanya Mack, a human services assistant at North Jersey, cottage ten, stated that during the dinner period on September 16, 2013, she was walking behind a client, who was behind a staff member (Thomas), who, in turn, was escorting another client, K.S., from the dining area. Mack opined that Thomas was approximately four feet in front of her. As she was leaving the dining room area, Mack could see K.S.'s hand "coming

down” towards Jean Pierre’s face. Beyond this, Mack stated that she observed “nothing else” until the next moment when K.S. was about eight feet away from Jean Pierre.

Jean Pierre recalled the events of September 16, 2013, when she started her shift at 3:30 p.m., assigned to cottage ten, group five. Jean Pierre indicated that Thomas was newly assigned to cottage ten and appeared “very angry.” Jean Pierre stated that she started advising Thomas about the clients, specifically S.W., who they were assigned to. However, Jean Pierre noted that Thomas responded by stating, “I am not here for that.”

Jean Pierre indicated that at the completion of dinner, as the clients were being moved to the adjoining living area from the dining room area, a client had requested assistance with her shower. As Jean Pierre stood with this client, K.S. walked by and grabbed Jean Pierre’s face and scratched her nose. Jean Pierre put her hands on her face, saw blood, and ran to the nurse. Jean Pierre stated that she tried to block K.S.’s hand, however, she denies making any contact with K.S. Jean Pierre denies speaking to Thomas following the incident or using the word “passport” as a reference to her face.

Barbara Kaplan, the staff clinical psychologist at North Jersey, indicated that she was the psychologist assigned to K.S. in September 2013. Kaplan described K.S. as a level two client who needed a more restrictive approach to address her behavior. K.S. was described as “non-verbal” and “severely retarded.” K.S. also had a behavior support program (BSP). Kaplan also noted that K.S. could become “aggressive and assaultive for no reason.”

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. It requires an overall assessment of the witness’s story in light of its rationality, its internal consistency, and the manner in which it “hangs together” with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (8th Cir. 1963). A trier of fact may reject testimony as “inherently incredible” and may also reject testimony when “it is inconsistent with other testimony or with common experience” or “overborne” by the

testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

In view of the divergent testimony presented by Thomas and the other witnesses, the determination of the charges against Jean Pierre requires that I make a credibility determination with regard to the actual facts. After carefully considering the testimonial and documentary evidence presented and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I do not credit the testimony of Thomas. Her testimony regarding the incident of September 16, 2013, was at times inconsistent. While Thomas testified to conversing with Jean Pierre after the incident, neither Jean Pierre nor Mack, the only other eyewitness, could confirm any conversation taking place. While Robinson recounted Thomas loudly exclaiming "What are you going to do about this?" to Robinson, Thomas denies making such a statement. While both Robinson and Jean Pierre indicated that staff was advised at the start of their shift regarding their respective clients, Thomas denied being given any instruction as to the clients. In addition, Thomas's assertion that she was not angry as to her demotion strains credulity. Jean Pierre's version of events as to the alleged incident is both credible and convincing. Jean Pierre, a veteran employee in cottage ten was described by her supervisor as having a "quiet temperament" who "dealt with problem clients well." While not mentioning client S.W. in her prior statements, Jean Pierre testified as to her duties with S.W. on September 16, 2013. Jean Pierre's testimony appeared consistent with the statement that upon being scratched by K.S., Jean Pierre reacted by immediately having a nurse tend to her wound. Tanya Mack, the only other eyewitness, noted that after she saw K.S.'s hand "come down" toward Jean Pierre's face, Mack did not observe anything else. Thomas' exclamation that Jean Pierre "hit" K.S. could not be corroborated by any eyewitness testimony or physical evidence.

Taking all the testimony into consideration, I **FIND** that at the time K.S. unexpectedly scratched Jean Pierre on her face, Jean Pierre reacted by seeking immediate treatment from a North Jersey nurse. I **FIND** that Jean Pierre did not hit K.S. on her shoulder or physically abuse her or violate any rule or regulation on September 16, 2013.

ANALYSIS AND CONCLUSIONS OF LAW

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.

Based on the foregoing facts and applicable law, I **CONCLUDE** that respondent has not proven its case by a preponderance of the competent, credible evidence. North Jersey did not present clear proof or corroborating evidence that Jean Pierre abused K.S., or intentionally misstated a material fact or violated a rule or regulation as charged.

ORDER

It is **ORDERED** that the action of respondent, North Jersey, in removing the appellant, Marie T. Jean Pierre, was not justified and the penalties and charges be **DISMISSED**.

It is further **ORDERED** that the appellant be reinstated to her position as a human services assistant. Accordingly, it is **ORDERED** that the appointing authority pay back pay and benefits from the removal date of October 8, 2013. Consistent with the appellant's duty to mitigate her damages, I **ORDER** the appellant to submit to the appointing authority a certified statement detailing any employment and income for the period of her suspension, with copies of relevant tax and other records and names and addresses of employers. N.J.A.C. 4A:2-2.10; see also Phillips v. Dep't of Corr., No. A-5581-01T2F (App. Div. Feb. 26, 2003). Since the appellant has prevailed, I **ORDER** the appointing authority to pay reasonable attorney's fees to appellant's attorney. The appellant's attorney will submit to the appointing authority a certified bill itemizing her services. N.J.A.C. 4A:2-2.21.

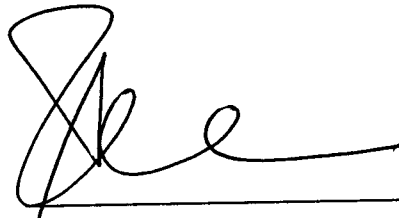
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

Sept. 14, 2015

DATE

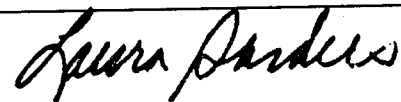


IMRE KARASZEGI, JR., ALJ

Date Received at Agency:

Date Mailed to Parties:

SEP 15 2015



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

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APPENDIX

LIST OF WITNESSES

For Appellant:

Marie T. Jean Pierre
Audrey Robinson
Tanya Mack

For Respondent:

Coleen Thomas
Barbara Kaplan
Hyacinth Wauchope

LIST OF EXHIBITS IN EVIDENCE

For Appellant:

P-1 Incident statement of Marie T. Jean Pierre dated September 16, 2013
P-2 Incident statement of Audrey Robinson dated September 16, 2013
P-3 Audrey Robinson witness statement dated September 18, 2013

For Respondent:

R-1 FNDA dated May 1, 2014
R-2 DHS Disciplinary Action Program
R-3 Marie T. Jean Pierre corrective/disciplinary history
R-4 Statement of Coleen Thomas-Garwood, dated September 16, 2013
R-5 Confidential Incident Report, dated September 16, 2013
R-6 Witness statement of Coleen Thomas-Garwood, dated September 17, 2013
R-7 Psychological BSP summary for K.S.
R-9 North Jersey policy number CEO-005, suspected/alleged abuse/neglect of clients
R-10 Class roster for training on abuse/neglect
R-11 Marie T. Jean Pierre statement dated September 20, 2013