



In her initial decision, the ALJ found that the appointing authority had not met its burden based on the testimony of the witnesses. In this regard, the ALJ found the witnesses for the appellant, Roselle Betty and the appellant, to be credible. The ALJ noted that both of their testimonies were clear and consistent as to the event that occurred with client T.G. Both related that he ran out of the bathroom and he was about to fall when the appellant caught him by the shirt collar to prevent his fall. According to the ALJ, this sequence of events was consistent with the behavior of T.G., who is classified as having self-injurious behavior (SIB). Throwing oneself on the floor is one type of SIB. Contrarily, the ALJ found that the appointing authority's witness, Stacey Zimmerman, was not credible as she was vague in her recollection of many key factors, including the duration of the incident as, when it occurred, she was walking and talking with Elaina Fulcher, a colleague. Moreover, she did not know how T.G. got on the floor in the first place, so she could not dispute that the appellant grabbed T.G.'s shirt to prevent a fall. The ALJ noted that the appointing authority's remaining witnesses did not have firsthand knowledge of the incident, but that their statements were consistent with Betty and the appellant's testimony. Based on the foregoing, the ALJ concluded that the appointing authority did not prove by a preponderance of the evidence that the appellant mistreated T.G. in any way. Accordingly, she recommended that the removal be reversed and that the appellant be entitled to back pay, benefits, and seniority.

In the appointing authority's exceptions, it argues that the ALJ's decision to find Zimmerman's testimony as not credible was in error. The appointing authority maintains that Zimmerman was a credible witness because she consistently and clearly described the details surrounding the incident. Thus, the removal of the appellant from employment at the appointing authority should be affirmed.

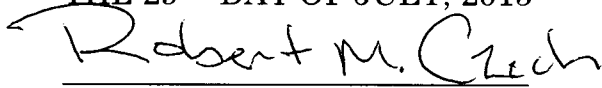
In the appellant's cross-exceptions, she argues that Zimmerman lacks credibility because she failed to disclose the existence of Elaina Fulcher in any of Zimmerman's written statements or investigative reports. The appellant argues that Fulcher's testimony is important as she would have traveled the same exact path, at the same exact time as Zimmerman when the alleged incident took place. Thus, Zimmerman's testimony was not credible.

Upon its *de novo* review of the record, the Commission finds that further information is needed to complete the record, and that Fulcher would be a critical fact witness. Fulcher could have provided valuable testimony on the details surrounding the incident and she could have a direct bearing on the credibility of the other witnesses. Therefore, the Commission remands the matter to the OAL so that Elaina Fulcher may be called to testify about the events that took place on March 13, 2014.

**ORDER**

The Commission orders that this matter be remanded to the Office of Administrative Law for further proceedings as set forth above.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 29<sup>TH</sup> DAY OF JULY, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment

c: Hon. Sarah G. Crowley, ALJ  
Kester Tannis  
Nicole M. DeMuro, DAG  
John F. McDonnell, Esq.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 10121-14

AGENCY DKT. NO. 2015-315

**KESTER TANNIS,**

Appellant,

v.

Respondent,

**DEPARTMENT OF HUMAN SERVICES,  
HUNTERDON DEVELOPMENT CENTER**

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**John F. McDonnell, Esq.**, for appellant (McDonnell Artigliere, attorneys)

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

Record Closed: May 26, 2015

Decided: June 25, 2015

BEFORE **SARAH G. CROWLEY**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Appellant, Kester Tannis, is a Cottage Training Technician for Hunterdon Development Center (HDC). Respondent seeks to remove appellant from his position because for an alleged incident of abuse to a client on March 13, 2014. On May 23,

2014, the respondent served a Preliminary Notice of Disciplinary Action on appellant. The appellant was suspended on that day pending the outcome of the matter. Following a hearing held on July 25, 2014, respondent served a Final Notice of Disciplinary Action seeking appellant's removal. The appellant requested a hearing and the matter was filed at the Office of Administrative Law (OAL), on August 12, 2014, to be heard as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on April 21, 2015. The parties submitted post hearing submissions on May 26, 2015, and the record closed on that date.

### TESTIMONY

#### For respondent:

**Stacey Zimmerman** is a clinical psychologist for the Hunterdon Development Center (HDC). She has worked for HDC for eleven years. Her responsibilities include observing and monitoring individuals in the cottages and at the hospital. Her office is located on the grounds of HDC, in Cottage 12. She testified that she knows the appellant, Kester Tannis and had worked with him over the years. She never had any problems with him. The population in Cottage 12 is males between with ages of thirty-five and sixty, who have intellectual and communication handicaps. They are all ambulatory, but have profound intellectual disabilities, ranging in IQ from six months old to three years old.

She testified that on May 13, 2014, she was walking from her office with another individual towards the exit, when she observed Mr. Tannis dragging a resident (T.G.) by the shirt collar. She was uncertain of the duration of the incident. Her prior statements varied as did her testimony regarding the duration of the incident. On cross-examination she testified that she did not really recall how long the incident lasted. She testified that she was approximately ten feet away when she saw the client on the floor and Mr. Tannis holding him by his collar. She did not see how he got to the floor. She did not know if he was wearing any shoes or if his shoe laces were untied. She testified

that she saw Mr. Tannis holding him by the shirt collar. She testified that she saw the client moving and Tannis was pulling him. Mr. Tannis then told the client it was time to get up and get into a chair. She testified that by the time she thought of intervening, it was over.

Ms. Zimmerman testified that the client did not seem in distress and did not make any unusual gestures. Mr. Tannis appeared calm and did not appear to be attempting to abuse him. She testified that the client is an "eloper" and has self-injurious behavior. Throwing yourself on the floor could be one type of self injurious behavior and an "eloper" tries to get out of the cottage. She testified that it may have been six or seven seconds, or it could have been more, she does not recall. She testified that she does not know how he got onto the floor. She reported the incident immediately and prepared a report.

**Roger Seguine**, worked at HDC prior to being transferred to New Lisbon Development Center. He has been with the department since January of 2010. He testified that in May of 2014, he was working at HDC. His office was located in Cottage 13. He testified that he never had any problems with Mr. Tannis and has no personal relationship with either Mr. Tannis or Ms. Zimmerman. He testified that on May 13, 2014, he was advised of an incident that was reported by the shift supervisor, Lauren Domin. She reported that there was an incident involving Mr. Tannis and a resident, T.G. in Cottage 12. I immediately went to Cottage 12 to do an investigation. Mr. Tannis was separated immediately and placed in the the head cottage training supervisor's office and T.G. was taken to the nurses' station for an evaluation. Mr. Seguine reported that T.G. did not appear to be injured and the nurse reported no injuries. He took some photographs of the site line from where the employee said she observed the incident. Within a short period of time, I had interviewed the witnesses and taken statements from them.

Mr. Seguine interviewed Ms. Betty, an employee who was working with Mr. Tannis at the time. Ms. Betty reported to him that T.G. had raced out of the bathroom

and was about to fall when Mr. Tannis grabbed him by the shirt collar to prevent a fall. She told Mr. Seguine that T.G. often puts his hands in his shirt so you cannot grab him by his arms. Mr. Seguine testified that Mr. Tannis' report of the incident was consistent with what Ms. Betty had reported. Mr. Tannis told him that the client had raced out of the bathroom and was falling so he grabbed his shirt to prevent him from falling. Mr. Tannis told him that he stabilized him and then helped him get into a chair. Mr. Sangine did not know if the client was wearing shoes or sneakers. He stated that it was normal protocol to wear socks and shoes but he does not recall asking this about the client. He was not aware that there were any other witnesses to the incident, so he only questioned, Ms. Zimmerman, Mr. Tannis and Ms. Betty.

**Harperdet Chahal** works in the investigations unit for HDC. She has been working for the state since 2007. Her job is to investigate incident or allegation of abuse. She is to review the incident report, all statements in the package and collect anything she thinks she will need to complete her investigation. She testified that she reviewed the documents and scheduled interviews with all the witnesses. She prepared a report dated May 27, 2014. She concluded that Ms. Zimmerman was credible so she disregarded the report and statements from Ms. Betty and Mr. Tannis. She was unable to articulate why she found Ms. Betty or Mr. Tannis not credible. She stated on cross examination that she thought that Ms. Zimmerman had a better view than Ms. Betty, but she does state this in her report. She also testified that she thought Ms. Betty was vague, but could not really point to anything in her report that was vague or inconsistent with her original statement taken immediately after the incident

**Arthur Serfass** is a supervisor of residential services at HDC. He has been in that position since 1992. He testified that he has written many policies concerning abuse and neglect of patients. He testified that a client does not have to be injured for there to be a finding abuse, nor is it relevant if there was intent to abuse. There was a great deal of testimony about how he would define abuse and that it is a matter of degree. He testified that in his opinion dragging, no matter how short would constitute abuse.

**For appellant:**

**Roselle Betty** has been employed at HDC for nine years. Mr. Tannis is a coworker of hers. She has no personal relationship with him outside of work. She testified that you are usually assigned to a group and you are a group leader or a floater. She testified that on the day in question, she was a floater. She testified that Mr. Tannis was very good with the clients and she never saw him mistreat anyone. She testified that she was in the room on the day in question and that she saw T.G. coming out of the bathroom and running too fast. He was about to fall down and Mr. Tannis grabbed him by the collar to prevent the fall. She testified that T.G. often puts his arms in his shirt so Mr. Tannis would not have been able to grab him by his arms or his shoulders to prevent the fall. She testified that she got to work at 3:00 on that day. Mr. Tannis was assigned to group 3 and she was working with group 4.

Ms. Betty testified that that she had to go check on a client in the bathroom, so she asked Mr. Tannis to watch her group for a minute. She testified that you could stand in the door and keep an eye on both, group 3 and group 4. She testified that when she was coming back and walking toward group 4, she saw T.G. run out of the bathroom and he stumbled. Mr. Tannis caught him as he was falling to the ground. He stabilized him and told him to sit in a chair. She testified that she did not see him drag T.G. He prevented him from falling and then helped to get into the chair. T.G.'s shoe laces were untied. She stated that he always unties his laces and never pulls his pant all the way up, so Mr. Tannis pulled his pant up for him and helped him into the chair. She testified that she did not see Ms. Zimmerman. The next thing she knew, the cottage training supervisor came to the door and told her she was needed in the office. She was unaware what was going on and reported what happened. She prepared a statement which was consistent with what happened and signed it.

**Kester Tannis** began working at HDC in 2009. He was assigned to Cottage 12. Prior to his suspension in May of 2014, he had never received any discipline in his five years of employment at HDC. He described T.G. as gentlemen in his thirties who is



somewhat aggressive and is an eloper. He is also classified as having SID (self injurious behavior). Mr. Tannis testified that he was working the 3:00 p.m. to 11:00 p.m. shift on the day in question. He testified that he was assigned to group 4, but at the time, he was in a position where he could see group 3 as well. He stated that Ms. Betty had to go check on a client so she asked him to keep an eye on group 3 for her for a minute. T.G. had gone to the bathroom and when he came out he was running and he tripped. Mr. Tannis testified that he grabbed him by the collar to keep him from falling. He had to grab his collar because he had his arms in his shirt, which he always did. He testified that he stabilized him and he was pulling away, so it might have appeared that he was dragging him. He helped him pull his pants up, and told him to go sit in a chair. He testified that T.G. always runs and he keeps his arms inside his shirt so he has no balance and there is no way to grab him by his arms since they are always in his shirt. He testified that he did not drag him and that he would have fallen if he did not grab him. He just tried to stabilize him and he was pulling away. Mr. Tannis testified that the next thing he knew, he was told to go to the office. He stated that during this period of time, he saw Ms. Zimmerman walk by with someone going from her office to the exit.

### **FINDINGS OF FACT**

The resolution of the charges against Mr. Tannis requires that I make a credibility determination regarding the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experiences and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718,749 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, 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 D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that Ms. Betty and Mr. Tannis were sincere and honest in their testimony. They both gave statements immediately after the event occurred and had no time to collaborate prior to giving their statements. Their statements and testimony were clear and consistent as to the event that occurred with client T.G. They both related that he ran out of the bathroom and he was about to fall when Mr. Tannis caught him by the shirt collar to prevent a fall. They both related the exact same story. Moreover, this sequence of events is entirely consistent with the behavior of T.G., who is classified as having SIB and being an eloper. They also both reported in their statements and their testimony that T.G. always keeps his arms in his shirt and never ties his shoes.

With respect to the testimony of Ms. Zimmerman, I **FIND** that her testimony was not credible. Ms. Zimmerman was unsure of the sequence of events and was very vague in her recollection of many key factors. She did not know if T.G. had his arms in his shirt, she did not know how he got on the floor in the first place, so she could not dispute that Mr. Tannis had in fact grabbed T.G.'s shirt to prevent a fall. She was unaware if T.G.'s shoe laces were untied, or if he even had shoes and socks on. Finally, Ms. Zimmerman was unclear and inconsistent in statements and testimony as to the duration of the event, and by her own admission was walking and talking with a colleague towards the door. It is more believable that she saw Mr. Tannis holding T.G. after he had caught him to prevent a fall, and that he may have appeared to be dragging him since he was likely pulling away after he caught him and was attempting to stabilize him. I **FIND** that the remaining witnesses had no first-hand knowledge of the event which occurred. However, the statements that they took from Ms. Betty and Mr. Tannis were consistent with and support the finding that T.G. was running and about to fall when Mr. Tannis caught him by the collar and prevented a fall.

Accordingly, I **FIND**:

1. On May 13, 2014, at approximately 3:20 pm, Kester Tannis was working the hours of 3:00 p.m. to 11:00 p.m. shirt at HDC and was working in cottage 12.
2. Client T.G. was coming out of the bathroom at a fast pace and stumbled. Mr. Tannis grabbed T.G. by his collar to prevent him from falling.
3. Mr. Tannis continued to hold T.G. by the shirt collar to stabilize him and directed him to get into a chair.
4. T.G. is known to run and stumble. T.G. routinely unties his shoe laces and puts his arms inside his shirt.
5. Mr. Tannis held T.G. by the collar for a short period of time to stabilize him and then directed him to a chair. T.G. was not injured.
6. Mr. Tannis did not abuse T.G.

### **LEGAL DISCUSSION AND CONCLUSION**

The Civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1971); Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provision of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employments. The general causes for such discipline are enumerated in N.J.A.C. 4a:2-2.3

In an appeal concerning major disciplinary action, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11:2-21; N.J.A.C. 4A:2-14 (a). This applies to both permanent career service employees or those in their working test period relative to such issues as removal, suspension, or fine and disciplinary demotion. N.J.S.A. 11A:2-14; N.J.S.A. 11A:2-6. The State has the burden 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 Licence Revocation, 90 N.J. 550 (1980).

This matter involves a major disciplinary action brought by the respondent appointing authority against appellant seeking his removal. Specifically, Kester Tannis has been charged with violating the following offenses:

<u>N.J.A.C.</u> 4A:2-2.3(a)1	Failure to perform duties
<u>N.J.A.C.</u> 4A2.2-3(a)6	Conduct unbecoming a public employee
<u>N.J.A.C.</u> 4A:2-2.3(a)12	Other sufficient Cause
C3.1	Physical or mental abuse of a client
C5.1	Inappropriate physical contact/mistreatment of a client
C11.1	Any improper conduct with violated common decency

Conduct unbecoming a public employee is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A. 2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v.

Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

Based upon the testimony and findings, I **CONCLUDE** that the respondent has not satisfied its burden of proving by a preponderance of the credible evidence that appellant mistreated T.G. in any way, engaged in any inappropriate physical contact or mistreatment, failed to perform any duties, or engaged in any conduct unbecoming a public employee.

Accordingly, I **CONCLUDE** that the charges have not been sustained and must be dismissed.

### **ORDER**

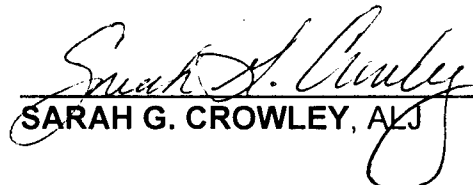
Therefore, I **ORDER** the action taken by the respondent in removing appellant from his position is **REVERSED**. Since the penalty has been reversed, I **ORDER** that appellant is entitled to back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10.

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.

June 25, 2015  
DATE

  
\_\_\_\_\_  
SARAH G. CROWLEY, ALJ

Date Received at Agency:

June 26, 2015  
\_\_\_\_\_

Date Mailed to Parties:

June 26, 2015  
\_\_\_\_\_

SGC/mel

**APPENDIX**

**WITNESSES**

**For appellant:**

Kester Tannis

Roselle Betty

**For respondent:**

Stacey Zimmerman

Harpreet Chahal

Roger Seguine

Arthur Surfass

**EXHIBITS**

**For appellant:**

- P-1 Confidential Incident Report dated 5/13/14 (Laura Domin)
- P-2 Confidential Incident Report dated 5/13/14 (Roger Seguine)
- P-3 Resident Accident Report
- P-4 Witness Report Laura Domin
- P-5 Confidential Incident Statement of Stacey Zimmerman(5/13/14)
- P-6 Confidential Incident Statement of Stacey Zimmerman(5/14/14)
- P-7 Confidential Incident Stated Rosalee Betty (5/13/14)
- P-8 Witness statement dated 5/14/14 Rosalee Betty
- P-9 Witness statement dated 5/20/14 Rosalee Betty
- P-10 Witness statement dated 5/20/14 Roger Seguine

- P-11 Confidential Incident Statement from Kester Tannis dated 5/14/14
- P-12 Witness statement dated 5/14/14 for Kester Tannis
- P-13 Witness statement dated 5/21/14 for Kester Tannis
- P-14 Witness Statement dated 5/14/14 from Nathan Koch

**For respondent:**

- Exhibit A PNDA dated 5/23/14
- Exhibit B Amended PNDA dated 5/23/14
- Exhibit C FNDA dated 7/25/14
- Exhibit D Administrative order 4:08
- Exhibit E Schematic of Cottage 12, first floor
- Exhibit F Confidential Incident Statements Stacy Zimmerman dated 5/13/14
- Exhibit G Investigation Witness statement of Stacey Zimmerman dated 5/14/14
- Exhibit H Investigation Witness Statement of Stacey Zimmerman, Dated 5/27/14
- Exhibit I Behavior Support Plan for T.G. dated 3/19/14
- Exhibit J Confidential Incident Report Roger Seguine
- Exhibit K Investigation Witness Statement for Roger Seguine dated 5/20/14
- Exhibit L Photograph of Reported View of Rosalee Betty
- Exhibit M Photograph of reported view of Stacey Zimmerman
- Exhibit N Photograph of reported d vies of Stacy Zimmerman
- Exhibit O Investigation Report of Harprett Chahal
- Exhibit P Policy Regarding Mistreatment of Clients
- Exhibit Q Acknowledgement of Receipt of Policy Regarding Mistreatment of Clients
- Exhibit R Kester Tannis on the job training checklist