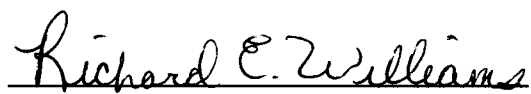




Re: Charles Allia

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  
AUGUST 19, 2015



Richard E. Williams  
Member  
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 7489-14

AGENCY DKT. NO. 2014-3082

**IN THE MATTER OF CHARLES  
ALLIA, MONMOUTH COUNTY  
DEPARTMENT OF ENGINEERING.**

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**Charles Allia**, petitioner, pro se

**Steven Kleinman**, Special County Counsel, for respondent

Record Closed: May 28, 2015

Decided: July 13, 2015

BEFORE **JOHN S. KENNEDY**, ALJ:

**STATEMENT OF THE CASE**

Respondent, Monmouth County Department of Engineering (hereinafter Appointing Authority), fined appellant Charles Allia \$3,662.68 equal to fifteen working days. The Appointing Authority alleges that appellant, a Senior Engineer, violated county policies or the New Jersey Administrative Code on five separate occasions in March 2013 and that a fine equal to fifteen working days was the appropriate penalty.

Appellant was charged with violations of N.J.A.C. 4A:2-2.3(a)(1), "Incompetency, Inefficiency or Failure to Perform Duty", N.J.A.C. 4A:2-2.3(a)(2), "Insubordination", N.J.A.C. 4A:2-2.3(a)(6), "Conduct Unbecoming a Public Employee", N.J.A.C. 4A:2-

2.3(a)(7), "Neglect of Duty", N.J.A.C. 4A:2-2.3(a)(8), "Misuse of Public Property" and N.J.A.C. 4A:2-2.3(a)(11), "Other Sufficient Cause" (R-1). Appellant was also charged with violations of Monmouth County Policy 701 regarding Employee Conduct and Work Rules, Policies 517 and 516 regarding internet and Computer and e-mail usage and Policy 104 regarding Business Ethics and Conduct.

### **PROCEDURAL HISTORY**

On August 07, 2013, the Appointing Authority issued a Preliminary Notice of Disciplinary Action (R-2) setting forth the charges and specifications made against appellant. After a departmental hearing on August 30, 2013, the Appointing Authority issued a Final Notice of Disciplinary Action (R-1) on May 28, 2014, sustaining the charges in the Preliminary Notice and assessing a fine upon the appellant an amount equal to fifteen working days. Appellant appealed, and the matter was filed at the Office of Administrative Law on June 16, 2014, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on April 16, 2015, and after permitting appellant an opportunity to submit additional documentation, the record closed on May 28, 2015.

### **FACTUAL DISCUSSION**

**Michael Aravich** has been employed by the Appointing Authority for approximately twenty years. He is currently a Principal Engineer assigned to the Engineering Department and is the appellant's immediate supervisor. Appellant, a Senior Engineer, handles environmental and capital improvement projects for the Appointing Authority. Appellant's duties include preparing bid packages for release to public bidders for county projects. On or about March 6, 2013, Aravich became aware that appellant issued reduced size plans to bidders for a county improvement project. Each bidder paid for original, full sized plans measuring twenty-four inches by thirty-six inches. Appellant issued plans that measure eleven inches by seventeen inches. When he became aware of the mistake, appellant emailed each of the bidders that picked up documents a PDF file that contained the full size plans without checking with Aravich or any other supervisor on the correct procedure to correct the error. While not

a written policy, it is general knowledge within the Engineering Department that full size plans are to be provided to bidders. The reduced size plans make it more difficult to read and could affect quantities and creates a potential that a successful bidder will make a claim for additional charges during the course of a project. On January 31, 2013, appellant and other employees of the Engineering Department received a memorandum outlining the procedure for charging bidders for bid packages that are picked up (R-3). This procedure provided a price per plan sheet that was to be charged. Plan sheets are the original, full size twenty-four by thirty-six inch plans. At the County's expense, full size plans were later sent to the bidders.

A second incident occurred on March 6, 2013. On that date, Aravich noticed that the plans and specifications for the sprinkler head replacement at the Correctional Institution were not stored in a required central location within the Engineering Department. It has been a long standing procedure to have at least one set of all current construction plans and specifications stored in a central location so that they can be accessed by any other department employee. Aravich has reminded appellant of this requirement in the past.

A third incident occurred on March 14, 2013, regarding the administration of the design contract for the redistribution of the connected loads to the 820 KW generator at the Correctional Institution that was assigned to appellant. On that date, an initial project kick off meeting was scheduled with the design professionals. Appellant left this meeting prior to the walk through portion of the meeting being completed which created the potential that he missed important information. This was a new assignment for appellant and included technical details. Appellant should have known the importance of his attendance at the entire meeting.

The County let a bid for improvement to the Police Academy's Outdoor Firing range knee wall and assigned it to appellant to oversee. Working in conjunction with the successful contractor, appellant developed an extremely aggressive schedule to develop construction documents and to construct the project. Aravich expressed concern to appellant regarding the aggressive time frame and advised that the only way to accomplish meeting the schedule was for appellant to closely monitor the project

schedule. Friday, March 15, 2013 was the deadline for the County to provide review comments back to the design professional on their four schematic designs which was to include supporting information indicating any alternatives and a cost benefit analysis of each alternative. On that day, Aravich asked appellant if he had completed his review of this information. Appellant informed him that he had not yet received the design information from the design professional. On Wednesday, March 20, 2013, appellant provided Aravich his review in draft form. Aravich had additional comments and asked appellant to get responses to those comments by Monday, March 25, 2013. As of March 27, 2013, the review that was supposed to be completed on March 15, 2013 had not been completed. The Appointing Authority was concerned about these four incidents occurring in such a close time period as it shows appellant's lack of attention to detail.

**Carol Doggett** next testified on behalf of the Appointing Authority. She is an information technology employee and has been employed with the County since 2008. Her duties include running monthly reports for internet activities for all county employees. She has access to a program that permits her to see all county employees' internet activity. She runs the reports upon all employees on a monthly basis. No one approached her to conduct a specific investigation into appellant's internet activity. She is not responsible for any discipline associated with internet activity. A review of appellant's computer internet access and usage determined that during the period from October 1, 2012 through April 1, 2013, unauthorized websites were accessed for a total of thirteen hours and forty-eight minutes during the appellant's normal working day (R-8). In order for the unauthorized websites to appear on the report she generates, they would each have to be opened from appellant's computer. If anyone was using his computer it would appear that appellant accessed as appellant since he was the individual that logged into the system.

**Ming Kao** is the Assistant County Engineer and has been employed by the Appointing Authority since 1988. Aravich reports directly to Kao. He described the county internet policy. Employees are not permitted to access the internet on county issued computer equipment for non-business use during business hours. This policy is provided to each employee in the Employee Guide to Policies, Benefits & Services (R-

12). Appellant's work station is in a cubicle along with other engineers and the office door does not get lock. While it is possible that another individual could access appellant's computer, appellant has never complained or witnessed another employee access his computer. He is in an open area and others would be able to see another employee sitting in appellant's work station.

**Charles Allia**, appellant, next testified on his own behalf. He started with the Appointing Authority in 2007. On August 7, 2013, he was notified that he was receiving a forty-five-day suspension. After a hearing the suspension was reduced to a fine equal to fifteen working days. With regard to the sizing of the bid document, this was a one-time event and it has not happened since. He now understands after it was explained to him why it is important to have the correct size documents delivered to bidders.

Allia was not aware that he needed to stay for the entire initial kickoff meeting on March 14, 2013. He was at the meeting for four hours and another Senior Engineer was present when he left. He did not advise anyone prior to leaving that he had another appointment. He could not use his phone in the jail but could have used the jail's phones to contact Aravich. There was no loss of county representation since the other Senior Engineer was present for the entire meeting.

The Police Academy Outdoor Firing Range project was completed on time and the construction did not interfere with the use of the range. He asked the outside consultant numerous times for the report that was late. He was also waiting for comments from the police academy which caused the delay. All of the requests for the report were by telephone and not documented. The project completed below budget.

Allia only uses his computer for work. Someone else must have been using his computer each time it was accessed inappropriately. The system does not "time out" once a user logs on and there is no way to tell who accessed the individual websites. There have been no other infractions after Allia was advised of the inappropriate use.

Regarding the filing system, Allia correctly filed the documents that were missing. The missing documents were for one of his projects but he put them in a drawer, not on

the book case. Someone else may have removed the documents as the entire Engineering Department has access to them. If this was a problem, someone should have spoken to him about it rather than charge him with discipline. All of the issues are minor and Allia feels that the County disciplines its employees too much. They should manage personnel better.

### FINDINGS OF FACT

The record in this matter includes documentary evidence and the testimony of the individuals who prepared the documents or had knowledge of the incidents they described. After carefully reviewing the exhibits and documentary evidence presented numerous times during the hearing, and after having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the relevant and credible **FACTS** in this matter: On or about March 6, 2013, Aravich became aware that appellant issued reduced size plans to bidders for a county improvement project. Each bidder paid for original, full sized plans measuring twenty-four inches by thirty-six inches. Appellant issued plans that measure eleven inches by seventeen inches. While not a written policy, it is general knowledge within the Engineering Department that full size plans are to be provided to bidders. On January 31, 2013, appellant and other employees of the Engineering Department received a memorandum outlining the procedure for charging bidders for bid packages that are picked up. This procedure provided a price per plan sheet that was to be charged. Plan sheets are the original, full size twenty-four by thirty-six-inch plans. At the County's expense, full size plans were later sent to the bidders. On March 6, 2013, Aravich noticed that the plans and specifications for the sprinkler head replacement at the Correctional Institution were not stored in a required central location within the Engineering Department. This was one of appellant's projects and he had been instructed in the past to ensure that the documents are properly stored. The entire Engineering Department has access to the storage location. On March 14, 2013, appellant left an initial project kick off meeting prior to the walk through portion of the meeting being completed. This was a project assigned to him. Another senior engineer was present during his absence. The County let a bid for improvement to the Police Academy's Outdoor Firing range knee wall and assigned it to appellant to oversee.



Appellant developed an extremely aggressive schedule to develop construction documents and to construct the project. Aravich expressed concern to appellant regarding the aggressive time frame and advised that the only way to accomplish meeting the schedule was for appellant to closely monitor the project schedule. Friday, March 15, 2013 was the deadline for the County to provide review comments back to the design professional on their four schematic designs which was to include supporting information indicating any alternatives and a cost benefit analysis of each alternative. On that day, Aravich asked appellant if he had completed his review of this information. Appellant informed him that he had not yet received the design information from the design professional. As of March 27, 2013, the review that was supposed to be completed on March 15, 2013 had not been completed. A review of appellant's computer internet access and usage determined that during the period from October 1, 2012 through April 1, 2013, unauthorized websites were accessed for a total of thirteen hours and forty-eight minutes during the appellant's normal working day. The computer system does not "time out" once a user logs on.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority shoulders the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant was charged with "Incompetency, inefficiency or failure to perform duty," N.J.A.C. 4A:2-2.3(a)(1). Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline).

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). (NOTE: Gaines had a substantial prior disciplinary history, but the case is frequently quoted as a threshold statement of civil service law.) "In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change." Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a county treasurer who couldn't balance the books, after the auditors tried three times to show him how).

In reversing the MSB's insistence on progressive discipline, contrary to the wishes of the appointing authority, the Klusaritz panel stated that "[t]he [MSB's] application of progressive discipline in this context is misplaced and contrary to the public interest." The court determined that Klusaritz's prior record is "of no moment" because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[In re Herrmann, 192 N.J. 19, 35-36 (2007) (citations omitted).]

There is no definition in the Administrative Code of the term "inefficiency," and therefore, it has been left to interpretation. In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980).

Here, the Appointing Authority asserts that appellant violated these standards on four separate occasions in March 2013. It is not disputed that Allia provided the incorrect size bid documents to bidders of a county project or that he left an initial kick

off meeting prior to its completion. Likewise, it is not disputed that appellant did not complete a review that was supposed to be completed on March 15, 2013 until after March 27, 2013. Based on these three incidents, I **CONCLUDE** that appellant's conduct did rise to a level incompetency, inefficiency or failure to perform duty. Appellant's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance.

I **CONCLUDE** that the Appointing Authority has not met its burden of proof regarding the incident involving the improper storage of the project documents. As the entire Engineering Department had access to these documents, there has not been sufficient evidence to show that appellant had not filed these documents properly.

Appellant has also been charged with "Misuse of public property." N.J.S.A. 4A:2-2.3(a)(8), as well as a violation of County Policy 517 regarding Internet Usage. Policy 517 makes it clear that employees may only use the internet for job-related activities. The County does not allow personal use of the internet (Exhibit 12). A review of appellant's computer internet access and usage determined that during the period from October 1, 2012 through April 1, 2013, unauthorized websites were accessed for a total of thirteen hours and forty-eight minutes during the appellant's normal working day. Therefore, I **CONCLUDE** that appellant violated this policy.

Appellant has further been charged with "Insubordination." N.J.S.A. 4A:2-2.3(a)(2). Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

"Insubordination" is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter. “Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department.” Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971). I **CONCLUDE** that the Appointing Authority has not met its burden of proof regarding the charge of Insubordination. There has not been sufficient evidence to show that appellant willfully disregarded the instructions of his employee.

Appellant was also charged with “Conduct unbecoming a public employee.” N.J.A.C. 4A:2-2.3(a)(6). “Conduct unbecoming a public employee” is an elastic phrase that 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 Atl. 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)).

I **CONCLUDE** that appellant’s behavior did rise to a level of conduct unbecoming a public employee. The basis for the charge of conduct unbecoming was appellant’s poor performance on four occasions as well as misuse of public property. Appellant’s

conduct was such that it could adversely affect the morale or efficiency of a governmental unit or destroy public respect in the delivery of governmental services.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(11), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Appellant's conduct was such that she violated this standard of good behavior. As such, I **CONCLUDE** that the Appointing Authority has met its burden of proof on this issue.

### PENALTY

In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for removal. See Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978); In re Herrmann, 192 N.J. 19 (2007). The question to be resolved is whether the discipline imposed in this case is appropriate.

For his actions arising out of these incidents, appellant has been found to have violated 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)(11), "Other sufficient cause." Appellant received a fine equal to a fifteen-day suspension for his actions relating to these charges. Appellant has been previously disciplined for similar incidents on two occasions. He received a five-day suspension in 2009 and a thirty-day suspension in 2012. After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the behavior by appellant herein, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that appellant's

violations are significant enough to warrant a penalty, which, in part, is meant to impress upon him, as well as others, the seriousness of any further infractions by him in that regard. Therefore, I **CONCLUDE** that the imposition of the fine equal to a fifteen-day suspension was an appropriate penalty.

### **DISPOSITION**

I **CONCLUDE** that the Appointing Authority has sustained its burden of proof as to the charge of violations of N.J.A.C. 4A:2-2.3(a)(1), "Incompetency, Inefficiency or failure to perform duty," N.J.A.C. 4A:2-2.3(a)(6), "Conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(8), "Misuse of public property" and Monmouth County Policy 517.


Accordingly, I **ORDER** that the action of the Appointing Authority is **AFFIRMED**. Appellant will receive a fine in the amount of \$3,662.68 equal to fifteen working days.

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.

July 13, 2015  
DATE

  
\_\_\_\_\_  
JOHN S. KENNEDY, ALJ

Date Received at Agency:

July 13, 2015

Date Mailed to Parties:

July 13, 2015

cmo

**APPENDIX**  
**LIST OF WITNESSES**

**For Appellant:**

Charles Allia, Appellant

**For Respondent:**

Michael Aravich, Project Engineer

Carol Doggett, Principal Engineer

Ming Kao, Assistant County Engineer

**LIST OF EXHIBITS**

**For Appellant:**

A-1 Bidder List

A-2 Photos of storage area for Specifications

**For Respondent:**

R-1 Final Notice of Disciplinary Action, dated May 28, 2014 (3,662.68 fine in lieu of fifteen-day suspension)

R-2 Preliminary Notice of Disciplinary Action, dated August 7, 2013 (Proposed forty-five-day suspension)

R-3 Email, dated January 31, 2013, from Ming Kao to Charles Allia and others with attached memorandum dated January 25, 2013 regarding charges for bid documents

R-4 Plans for installation of above-ground storage tanks at various fueling facilities for the Monmouth County Board of Chosen Freeholders, dated January 24, 2013



- R-5 Letter sending correctly sized drawings to prospective bidders, dated March 6, 2013
- R-6 Schedule for improvements to County's outdoor firing range, 2013 (undated)
- R-7 Draft recommendations report for improvements to County's outdoor firing range, dated March 2013
- R-8 Review of Charles Allia's computer Internet access and usage between October 1, 2012 and April 1, 2013
- R-9 Screen capture from ronhazelton.com, dated April 13, 2015
- R-10 Screen capture from usgovbid.com, dated April 13, 2015
- R-11 Screen capture from log-on screen for Monmouth County computers, dated April 15, 2015
- R-12 Monmouth County Policies 104, 516, 517 and 701 (from County of Monmouth Employee Guide), dated April 2006
- R-13 Final Administrative Action of the Civil Service Commission and related documents (upholding thirty-day suspension on Charles Allia)
- R-14 Decision of the Director of Administrative Services and Public Safety and related documents (upholding five-day suspension on Charles Allia)