



STATE OF NEW JERSEY

In the Matter of Oluwasegun Oladipo :  
Trenton Psychiatric Hospital, :  
Department of Human Services :  
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:  
CSC DKT. NO. 2014-806 :  
OAL DKT. NO. CSV 16161-13 :  
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FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: NOVEMBER 15, 2016 BW

The appeal of Oluwasegun Oladipo, Human Services Assistant, Trenton Psychiatric Hospital, Department of Human Services, removal effective May 1, 2013, on charges, was heard by Administrative Law Judge Patricia M. Kerins, who rendered her initial decision on August 16, 2016. No exceptions were filed.

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 10, 2016, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

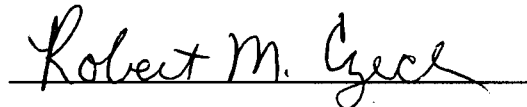
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Oluwasegun Oladipo.

Re: Oluwasegun Oladipo

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 10, 2016



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Assistant 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 16161-13

AGENCY DKT. NO. 2014-806

**IN THE MATTER OF OLUWASEGUN OLADIPO,  
DEPARTMENT OF HUMAN SERVICES,  
TRENTON PSYCHIATRIC HOSPITAL.**

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**Lawrence E. Popp, Esq.,** for appellant (Gaylord Popp, attorneys)

**Arupa Barua,** Deputy Attorney General, for respondent (Christopher S. Porrino,  
Attorney General of New Jersey, attorney)

Record Closed: February 19, 2016

Decided: August 16, 2016

BEFORE **PATRICIA M. KERINS, ALJ:**

**STATEMENT OF THE CASE**

Respondent Trenton Psychiatric Hospital (TPH) removed appellant, Oluwasgegun Oladipo (Oladipo), from his position of Human Services Assistant (HSA) for assaulting a patient. Oladipo denies that he engaged in such conduct and appeals his removal.

## **PROCEDURAL HISTORY**

On September 3, 2013, TPH, a psychiatric treatment facility within the Department of Human Services (DHS), filed a Final Notice of Disciplinary Action (FNDA) against Oladipo removing him from his position effective May 1, 2013, based on offenses related to the physical abuse of a patient. On September 13, 2013, he appealed that decision, and on November 7, 2013, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case pursuant to N.J.S.A. 11A:1-1 through 12.6 and N.J.S.A. 52:14B-2(b). An initial prehearing conference was held on December 6, 2013. The matter was heard on June 13 and August 20, 2014, and on March 26, 2015, at the OAL in Mercerville, New Jersey. The record remained open for post hearing submissions by the parties. The record then closed on February 1, 2016. The time for the filing of the Initial Decision in this matter was extended.

## **FINDINGS OF FACT**

### **General Background Facts**

Appellant Oladipo has been employed by the DHS at its TPH facility since June 2009 as an HSA. TPH is a psychiatric treatment facility operated by DHS, with a population made up of adults needing psychiatric care. He was responsible for the care and wellbeing of patients housed at the facility, including duties as a one to one aide. In April 2013, he was assigned to the Raycroft E2 (Raycroft) unit. As part of his training he received instruction in the handling of difficult patients.

R.P. was a patient residing in Raycroft in April 2013. Oladipo was familiar with him from his work on the unit and had been assigned as R.P.'s one to one aide at times.

### **Incident of April 23, 2013**

This disciplinary action arises out of an incident on April 23, 2013, in which Oladipo is alleged to have assaulted R.P. by punching him in the stomach. In support

of its case, respondent presented the testimony of TPH staff members HSAs Victor Ngiliyeze and Thomas DiNapoli, Dr. Lalita Lalla, Training Instructor Eugene Colvin and Director of Nursing Deborah Gorczycki. Respondent also placed in evidence exhibits R-1 through R-15 which included footage from a security camera in Raycroft. (R-5).

On April 23, 2016, Ngiliyeze was working the evening (3:00 p.m. to 11:00 p.m.) shift at Raycroft as an HSA. His assignment that evening was to monitor an area, including the hallway in which R.P.'s room was situated. He was familiar with R.P., whom he described as not generally aggressive and a patient who slept a lot. He did recall that R.P. had been agitated earlier in that day. Oladipo was stationed that evening as a one to one aide for the other patient in R.P.'s room. At approximately 8:20 p.m., he heard a commotion and loud voices coming from R.P.'s room. He then saw Oladipo come out of the room and a milk carton was thrown at him from the room. As another HSA, DiNapoli was responding to the situation he followed procedure to open the "quiet room" as a precautionary measure and returned to R.P.'s room. R.P. stated that Oladipo had been on his cell phone and speaking loudly so that R.P. could not sleep. Ngiliyeze stated that as Oladipo and R.P. continued to yell at each other, he and DiNapoli tried to get Oladipo to leave the room in order to de-escalate the situation. He testified that they are trained to walk away from an altercation with a patient.

Oladipo refused to leave and continued arguing with R.P., calling him a liar. R.P. then approached Oladipo and pushed him in the chest. Ngiliyeze said he and DiNapoli then moved in between them, to keep R.P. from Oladipo. Oladipo then approached and punched R.P. in the stomach. Ngiliyeze described it as a "pretty hard punch" to R.P.'s abdominal area and that R.P. grunted in pain. They again tried to remove Oladipo from the room but he was still not cooperating. He then was pulled from the room by staff and R.P. had to be restrained from going after him. Efforts were made to calm R.P. down by which time the charge nurse Ophelia Okebata had arrived. R.P. was treated at the emergency room of Capitol Health Hospital for an abdominal contusion the next day. As the charge nurse was present and responsible for reporting such incidents, Ngiliyeze did not file a report on the incident that evening but did so on his next working day when he realized the charge nurse had not reported it. He was not asked to

complete an incident report that night by the charge nurse nor did she provide him with the forms to do so that evening.

Ngiliyeze's testimony was corroborated by DiNapoli. He worked at TPH for two years as an HSA and was on duty with Ngiliyeze the evening of April 23, 2013. He too was familiar with R.P. and Oladipo from his work on Raycroft. He was monitoring the day room at approximately 8:20 that evening when he too heard the commotion from R.P.'s room. He looked down the hallway and he too saw Oladipo coming out of the room and a carton of milk thrown out after him. He then went to the room where he found Oladipo and the patient upset. He took the one to one monitoring clipboard from Oladipo but Oladipo would not leave. He and R.P. continued yelling at each other and R.P. approached Oladipo, pushing him. He and Ngiliyeze then stood on either side of the patient to keep him from Oladipo. Oladipo then approached and punched R.P. in the abdomen with "much force". Oladipo eventually left the room after being taken away by other staff. DiNapoli stayed with the patient and saw the charge nurse on the scene. He then related the incident to her. Additionally, R.P. told her he had been punched. It was not until a day or two later that the nurse gave him the incident report form and told him to file a report since she said she did not witness the assault.

Both witnesses reviewed R-5, a video of the hallway area in the incident, describing their movements and those of other staff. The video did not show the interior of R.P.'s room, but did show the activity outside of his room. Each correlated the contents of the tape to their testimony.

Respondent also presented the testimony of Dr. Lalita Lala, an internist who is the medical physician for the unit. She reviewed her notes (R-8) and the ER report (R-9) for R.P. related to the incident. Eugene Coldzin, an instructor at TPH who trains staff on managing patients and crisis situations, then testified. He reviewed the video of the hallway during the incident at the request of respondent's management. During his testimony he too discussed the tape (R-5), correlating the movements of staff, as well as the appropriate response to patients. He opined that staff is never to strike a patient.

The final witness presented by TPH was Deborah Garczycki, its Director of Nursing. She reviewed TPH's disciplinary policy and procedures, including its patient abuse and neglect policy. Not only is striking a patient prohibited, staff is to attempt to redirect the patient if assaulted. The charge nurse on a unit has the primary reporting responsibilities for an incident and a staff member who witnesses an assault is to report it to the charge nurse as soon as possible. She also described TPH's cell phone policy for staff and its prohibition on the possession or use of a cell phone while on duty with a patient.

In response to TPH's case, appellant presented the testimony of Oladipo, and his fellow HSA Argant Anglade (Anglade). On the evening in question Anglade was working on Raycroft. He had worked with Oladipo for several years and described him as a good worker. He also was familiar with R.P. whom he described as difficult. He too responded to the initial commotion in the room and told Oladipo to stay outside of the room. Anglade then went to get the charge nurse who was in the bathroom as the incident commenced. As other staff came to handle the situation between R.P. and Oladipo he went for cleaning materials to clean up the hallway and was gone about ten minutes. He does not know if Oladipo went back into the room. When he returned Oladipo had been relieved of his one to one clipboard and was going home. He testified he did not see what occurred between R.P. and Oladipo in the room and did not witness Oladipo punching R.P.

Oladipo testified on his own behalf. He described Raycroft as a difficult unit with lots of patient fighting, often resulting to injuries to staff, himself included. He was familiar with R.P., and had interacted with him on the unit. According to Oladipo, R.P. was a difficult and aggressive patient, for whom he had been a one to one at times. Although R.P. was not his one to one assignment that evening, he said the nurse had warned him earlier in his shift that R.P. was agitated that day and to be careful. He denied having his cell phone with him at work that night.

According to Oladipo's testimony, R.P. was loud, agitated and angry in the room that evening, and had thrown milk at a nurse earlier. When he began screaming at Oladipo to leave, he said he called for the nurse but no one came and R.P. threw urine

on him. After his one to one woke up, he calmed him down and again called for help. At that point other staff, including Ngiliyeze and DiNapoli came to help him. He testified he stayed at the door watching his one on one until Anglade took his board and he could leave to go home. He said he did not strike R.P. and that as his hand had been injured he couldn't use his right hand to strike anyone. Oladipo then asserted that R.P. had punched him several times while other staff was trying to restrain him. He attributed DiNapoli's and Ngiliyeze's testimony to antipathy toward him since they were newer on the unit and looked down on him because he was African.

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. In determining whether respondent has proven by a preponderance of the evidence that Oladipo abused a patient, and, therefore, warrants removal from his position, it is necessary to assess the credibility of the witnesses in light of their testimony, as well as in the context of the other evidence in the record. Credibility is the value that a fact finder gives to the testimony of a witness. It envisions 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 (9<sup>th</sup> Cir., 1963). It 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). Credibility, or more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself as well. Spagnulo v. Bonnet, 16 N.J. 546, 554-55 (1954). 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).

In this matter, Oladipo and TPH witnesses Ngiliyeze and DiNapoli have presented opposing versions of what occurred in R.P.'s room and whether Oladipo refused to leave the room then assaulted R.P. Reviewing the record and testimony



presented I **FIND** Ngiliyeze and DiNapoli's version to be the credible one. Both witnesses were direct and articulate in their testimony and corroborated the other's version of the events. Their testimony further was corroborated by the reports they filed after the incident and by the video depicting the events and the movement of staff in the hallway outside R.P.'s room, as well as by R.P.'s report of the assault and his treatment at the emergency room. Both men were familiar with the requirements of their job dealing with patients, and aware of the appropriate manner in which aggressive patients should be handled. Their descriptions of the events of that evening were coherent, linear and believable from their testimony and in light of the other corroborating evidence in the record.

Oladipo on the other hand, was not as credible in his version of events. He said urine was thrown at him by R.P. but there was no mention of urine in the testimony of other witnesses nor in the reports filed on the incident by those involved, all of whom mention milk and or juice. Although he said he first called for the nurse before getting into a verbal altercation with R.P. there is no mention of his call for the nurse. The first other staff were aware of a problem in R.P.'s room after 8:00 p.m. that evening was when they heard voices arguing in the room and responded as Oladipo exited the room as milk was being thrown at him. Additionally, his actions on the tape as he moved in and out of the room are more consistent with Ngiliyeze and DiNapoli's version of the incident than his own. While he insisted Ngiliyeze and DiNapoli harbored ill will toward him, he presented no evidence or facts to support his assertion.

Based on the record before me, I **FIND** that Oladipo assaulted R.P., a patient at TPH on April 23, 2013.

### **Disciplinary History**

As set forth on the record and stipulated to by the parties, appellant has no disciplinary infractions on his record.

## LEGAL DISCUSSION

The Civil Service Act and the regulations promulgated thereunder, 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 engages in misconduct related to his or her duties, or who gives other just cause, may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). When an employee appeals from a disciplinary action or ruling by an appointing authority, the burden of proof is on the appointing authority to show that the removal of appellant was justified. N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). That burden is 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, 90 N.J. 550 (1982).

In this matter, respondent TPH has met its burden of proving the allegations against Oladipo. Of the two opposing versions of the alleged incident which led to the charges, I determined TPH's version, in light of all the evidence, to be the credible one. I therefore **CONCLUDE** that TPH has met its burden of proof that Oladipo committed abuse of a patient. His action in striking the patient is compounded by his failure to leave R.P.'s room, in effect escalating the situation. The penalty requested by respondent for this infraction is removal as set forth in its "zero tolerance policy" on the abuse of patients. The assault in this matter was an egregious one, and despite Oladipo's clean disciplinary record, his removal is warranted under the facts of the assault and the policy asserted by DHS.

## ORDER

It is **ORDERED** that appellant's removal from his position is upheld and his appeal is dismissed.

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.

August 16, 2016  
DATE

Patricia M. Kerins  
PATRICIA M. KERINS, ALJ

Date Received at Agency:

August 16, 2016 (mailed)

Date Mailed to Parties:

August 16, 2016 (mailed)

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**APPENDIX**  
**WITNESSES**

**For Appellant:**

Argant Anglade  
Oluwasegun Oladipo

**For Respondent:**

Lalita Lalla  
Eugene Colvin  
Deborah Gorczycki  
Victor Ngiliyeze  
Thomas DiNapoli

**EXHIBITS**

**Court**

C-1 Protective Order

**For Appellant:**

A-1 Evaluation  
A-2 TPH Witness Form  
A-3 TPH Witness Form  
A-4 Risk Management Interview Form

**For Respondent:**

- R-1 Primary Notices of Disciplinary Action
- R-2 Final Notices of Disciplinary Action
- R-3 Victor Nagiliyeze Witness Statement Form
- R-4 Victor Nagiliyeze Rick Management Form
- R-5 Video
- R-6 Tom Dinapoli Witness Statement Form
- R-7 Tom Dinapoli Rick Management Form
- R-8 RP Interdisciplinary Progress Notes
- R-9 RP Capital Health ER Report
- R-10 Victor Nagiliyeze Training History
- R-11 Tom Dinapoli Training History
- R-12 Oladipo Training History
- R-13 DHS Disciplinary Action Program
- R-14 Policy and Procedure #1.901 (Patient Abuse and Neglect)
- R-15 Policy and Procedure # 3.501 (Code of Conduct)