A-2

STATE OF NEW JERSEY

In the Matter of Terri Hannah Vineland Developmental Center, Department of Human Services CSC DKT. NO. 2014-516 OAL DKT. NO. CSV 12708-13	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

ISSUED: OCTOBER 19, 2017 BW

The appeal of Terri Hannah, Human Services Assistant, Vineland Developmental Center, Department of Human Services, removal effective July 9, 2013, on charges, was heard by Administrative Law Judge John S. Kennedy, who rendered his initial decision on September 14, 2017. No exceptions were filed.

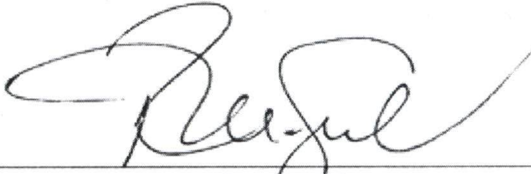
Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of October 18, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached 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 appeals of Terri Hannah.

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
OCTOBER 18, 2017



Robert M. Czech, Chairperson
Civil Service Commission

Inquiries
and
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Christopher S. Myers
Director
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. CSV 12708-13

AGENCY DKT. NO. 2014-516

IN THE MATTER OF TERRI HANNAH, DEPARTMENT OF HUMAN SERVICES, VINELAND DEVELOPMENTAL CENTER.

Joseph Waite, Jr., Associate Director, AFSCME Council 71, for appellant, Terri Hannah, appearing pursuant to N.J.A.C. 1:1-5.4(a)(6)

Christopher J. Hamner, Deputy Attorney General, for respondent, Department of Human Services, Vineland Developmental Center (Christopher Porrino, Attorney General of New Jersey)

Record Closed: September 12, 2017 Decided: September 14, 2017

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

STATEMENT OF THE CASE

On December 6, 2012, Vineland Developmental Center (Respondent) issued a Preliminary Notice of Disciplinary Action (PNDA) against Terri Hannah (Appellant). Respondent charged appellant with violations of (1) Aggravated Assault, N.J.S.A. 2C:12-1B(1), (2) Possession of a Weapon for Unlawful Purpose, N.J.S.A. 2C:39-4d, (3)

N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; (4) N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause; and (4) E.1 violation of a rule, regulation, policy, procedure or administrative order.

PROCEDURAL HISTORY

The matter was transmitted, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, to the Office of Administrative Law (OAL), where it was filed on September 5, 2013. The matter was initially assigned to the Honorable W. Todd Miller, Administrative Law Judge (ALJ). After Judge Miller's appointment to the Superior Court, the case was transferred to this ALJ. The matter was twice placed on the inactive list, first by Judge Miller on February 16, 2016, and again by the undersigned on November 14, 2016, because an appeal of the underlying criminal conviction had been filed. On May 17, 2017, appellant's representative advised the court that the criminal charge had not been overturned and no more appeals were pending. The respondent filed a Motion for Summary Decision on May 18, 2017. Appellant did not file an Opposition to the Motion for Summary Decision.

STANDARD FOR SUMMARY DECISION

Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). In Brill, the Court looked at the precedents established in Matsushita Electrical Industrial Co. v. Zenith Radio Corporation, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), Anderson v. Liberty Lobby, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), and Celotex Corporation v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), wherein the Supreme Court adopted a standard that "requires the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for a

directed verdict: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Brill, supra, 142 N.J. at 533 (quoting Liberty Lobby, supra, 477 U.S. at 251-52, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214). The Court stated that under the new standard,

> a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."
>
> [Brill, supra, 142 N.J. at 540 (quoting Liberty Lobby, supra, 477 U.S. at 249, 106 S. Ct. at 2511, 91 L. Ed. 2d at 212).]

The Brill standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. "To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed 'worthless' and will 'serve no useful purpose.'" Brill, supra, 142 N.J. at 541.

In addressing whether the Brill standard has been met in this case, further guidance is found in R. 4:46-2(c):

> An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

STATEMENT OF FACTS

As the appellant did not file an Opposition to the Motion for Summary Decision, I **FIND** that the following **FACTS** are not in dispute:

The appellant worked as a Human Services Assistant at the Vineland Developmental Center beginning December 20, 2008. On September 27, 2012, the appellant was arrested for Aggravated Assault, N.J.S.A. 2C:12-1b (1), and Possession of a Weapon for an Unlawful Purpose, N.J.S.A. 2C: 39-4d. She was issued a PNDA on December 6, 2012. The specifications of the PNDA stated:

> On or about 9/28/12, you were arrested for aggravated assault and possession of a weapon for unlawful purposes by the Vineland Police Department.

On December 6, 2012, a disciplinary hearing was held at the departmental level and the charges were sustained. As a result, appellant was suspended without pay effective December 6, 2012. The sanction of removal was also indicated. On July 8, 2013, appellant was convicted of Simple Assault. Appellant was issued a Final Notice of Disciplinary Action (FNDA) removing her from employment on July 9, 2013.

Following the Brill standard, after considering all papers and evidence filed in support of summary decision and considering that appellant failed to oppose the motion, I **CONCLUDE** that there are no issues of fact that require a plenary hearing and that this matter is ripe for summary decision.

LEGAL DISCUSSION

Respondent argues that appellant is disqualified from employment with respondent due to the offense she was convicted of pursuant to N.J.S.A. 30:4-3.5. This statute, commonly referred to as the "Codey" legislation, addresses the effect an individual's criminal history will have upon employment with respondent. The statute states in part:

> An individual shall be disqualified from employment under this act if that individual's criminal history background check reveals a record of convictions of any of the following crimes and offences:
>
> (1) In New Jersey, any crime or disorderly person's offense:
>
>> (a) Involving danger to the person, meaning those crimes and disorderly persons offenses set forth in 2C:12-1 et seq.

Appellant was convicted of simple assault, which falls within the list of crimes and offenses enumerated in N.J.S.A. 30:4-3.5. As a result, I **CONCLUDE** that the appellant is disqualified from employment with the respondent. The only exclusion from disqualification available to appellant is an affirmative demonstration of clear and convincing evidence of her rehabilitation. See N.J.S.A. 30:43.5(b). Appellant has not demonstrated any evidence of rehabilitation whatsoever. Appellant's behavior is clearly not the type of conduct expected of public employees who work with the developmentally disabled.

Appellant was also charged with violations of N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(12). "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 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)).

In this case appellant was charged with aggravated assault and unlawful possession of a weapon. While these charges were later reduced to simple assault, appellant's actions do not constitute the level of conduct expected of one who works with developmentally disabled adults. I **CONCLUDE** that the charges of conduct unbecoming a public employee are sustained pursuant to N.J.A.C. 4A:2-2.3(a)(6).

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "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 charge of other sufficient case pursuant to N.J.A.C. 4A:2-2.3(a)(12) is sustained.

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. "Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The question to be resolved is whether the discipline imposed in this case is appropriate.

In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense); see also, In re Herrmann, 192 N.J. 19, 33 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline):

> . . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.
>
> Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

Here, it is clear that appellant was convicted of simple assault, which falls within the list of crimes and offenses enumerated in N.J.S.A. 30:4-3.5. After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the behavior by appellant herein, I **CONCLUDE** that the removal of the appellant is appropriate.

ORDER

Accordingly, I **ORDER** that the action of the Appointing Authority is **AFFIRMED**, as set forth above.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

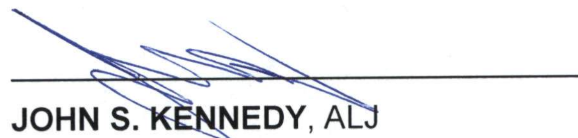
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise 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.

9/14/17

DATE



JOHN S. KENNEDY, ALJ

Date Received at Agency: September 14, 2017

Date Mailed to Parties: September 14, 2017

JSK/dm