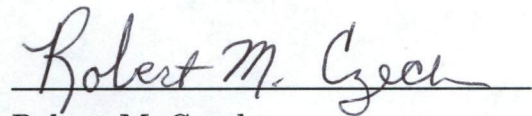


Re: John Williams

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
MAY 3, 2017

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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 14860-12

AGENCY DKT. NO. 2013-963

**IN THE MATTER OF JOHN WILLIAMS,
TRENTON PSYCHIATRIC HOSPITAL**

William A. Nash, Esq., for appellant John Williams (Nash Law Firm, attorneys)

Peter H. Jenkins, Deputy Attorney General, for respondent Trenton Psychiatric Hospital (Christopher S. Porrino, Attorney General of New Jersey, attorney)

Record Closed: February 13, 2017

Decided: March 21, 2017

BEFORE **EDWARD J. DELANOY, JR.**, ALAJ:

STATEMENT OF THE CASE

Appellant John Williams was removed from his position as a human services technician (HST) at the Trenton Psychiatric Hospital (TPH) after charges pertaining to a physical altercation with another employee of TPH on February 20, 2012, were sustained. The specifications underlying the charges set forth:

Through a review of the video, on 2/20/12, you violated Executive Order 48, and TPH's zero tolerance of violence in the workplace by physically assaulting another employee.

The video revealed that you used a clipboard as a weapon when you threw a clipboard with the intent to injury [sic] another employee. In fact, you caused injury to Charge Nurse, MK which required medical attention. Your behavior was threatening, intimidating and caused intentional injury to MK. Behaviors that comprise [sic] safety of employees and patients will not be tolerated. This is not the conduct one would expect from a TPH employee that is responsible for the well being of patients. Your conduct reflects negatively on TPH and is in violation of the policies prohibiting violence in the workplace.

[R-1.]

PROCEDURAL HISTORY

On April 18, 2012, appellant was charged in a Preliminary Notice of Disciplinary Action. (R-1.) A departmental hearing was held and all charges were sustained. A Final Notice of Disciplinary Action was filed on October 1, 2012, removing appellant from his position effective April 18, 2012. (R-2.) Appellant appealed on October 10, 2012, and on October 23, 2012, the matter was filed at the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was assigned to Administrative Law Judge John F. Russo, Jr. on December 20, 2012. On March 26, 2013, the appellant passed away while the case was pending before Judge Russo and by request of appellant's counsel, the matter was held open while the parties applied for an administrator of the estate. On March 26, 2013, John Paul Dickerson was appointed as co-administrator of the Estate of John Williams. By letter dated September 30, 2014, the State requested this matter be placed on the inactive list for a period of sixty days to provide sufficient time to determine whether appellant's estate would enter an appearance in this case. No written order of inactivity was issued by Judge Russo; however, a motion to reinstate the appeal was submitted by appellant's counsel on January 8, 2015. The State opposed the motion and requested the motion be denied and dismissed as no documentation was produced nearly one year later as to whether appellant's estate was pursuing the appeal. Judge Russo granted appellant's order on August 13, 2015. Prior to the conclusion of this matter, Judge Russo was appointed to Superior Court and the case was reassigned to me on January 5, 2016. The Estate of John Williams

determined to continue this matter to a hearing. After several conference calls with the parties, a hearing date was scheduled and held on January 10, 2017. Summation briefs were fully submitted on February 13, 2017, and on that date the record closed.

FACTUAL DISCUSSION

Mary Kuriakose has been employed as a charge nurse by TPH for sixteen years. Kuriakose worked with HST Williams for ten years at TPH. Kuriakose knew Williams to have anger management issues, and he would slam doors and kick items in TPH.

On February 20, 2012, Williams arrived late for his shift. He was angry for some unknown reason. Kuriakose assigned Williams a temporary 1:1 observation of a difficult elderly female patient who had confusion issues, as well as a propensity to undress and touch herself inappropriately. Williams was unhappy with this assignment, and as he began observing the patient, he began screaming loudly. Williams was requesting to switch off the 1:1 of this patient, and for assignment to another patient. When Kuriakose responded negatively, Williams answered with profanity. Kuriakose requested Williams to quiet down, and he responded by throwing a hard clipboard at Kuriakose. The clipboard struck Kuriakose in her upper left arm, and Kuriakose later produced a statement and informed her supervisor of the incident. As a result of being struck by the clipboard, Kuriakose received a two-inch-long by half-inch-wide black mark on her upper left arm. Her left arm was not injured before the incident. She was treated and released from a local emergency room. Kuriakose did not call the police or file criminal charges against Williams. It was not against TPH policy for a male HST to undertake a 1:1 observation of a female patient.

Kuriakose viewed a video recording taken on February 20, 2012, showing an angle from inside TPH where the incident occurred. (R-10.) The video does not have audio. The video shows Williams at 1:42 a.m. At 1:45 a.m., Williams is seated and Kuriakose is standing. At 1:47 a.m., Williams stands and then sits, so that he can observe the patient. At 1:48, Williams is cursing at Kuriakose, and he throws a

clipboard at Kuriakose. The video is unclear as to whether it struck Kuriakose. Williams then stands up and retrieves the clipboard.

John Paul Dickerson is the co-administrator of his father's (John Williams) estate. Dickerson has worked at TPH for fifteen years. On February 20, 2012, Williams requested Dickerson to meet him. Williams discussed the incident with Dickerson. Williams told Dickerson that he requested to be switched to another patient, and that he exchanged words with Kuriakose. Kuriakose advised Williams that she would not make the switch, and that if he did not like it, he could retire. Williams stated that he never struck Kuriakose with the clipboard, and that he was very upset about the incident.

Audrey Houston worked with Williams at TPH for fifteen years. Williams was not a violent man, but he was outspoken. The day after the incident, Williams spoke to Houston. He advised her that he requested to be switched to another patient because his patient was stripping off her clothes and touching herself. Kuriakose advised Williams that she would not make the switch, and Williams was upset. Williams stated that he did throw the clipboard at Kuriakose, but that he never struck Kuriakose with the clipboard.

FINDINGS OF FACT

Given that the Estate of John Williams has challenged the credibility of Kuriakose, it is my obligation and responsibility to weigh the credibility of the witness in order to make a determination. Credibility is the value that a fact finder gives to a witness's testimony. The word contemplates an overall assessment of a witness's story 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, 749 (9th Cir. 1963). Credible testimony has been defined as testimony that must proceed from the mouth of a credible witness and must be such as 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) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)). In assessing credibility, the interests, motives or bias of a witness are relevant, and a fact finder is expected to base decisions of credibility on his or her common sense,

intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (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's Estate, supra, 5 N.J. 514.

The respondent's evidence was the testimony of Kuriakose and the recorded video of the incident. The recording was from a camera located above the room where the incident occurred. This camera angle does clearly show a view of what occurred, and what actions were undertaken by Williams. (R-10.) Kuriakose subsequently filed a report confirming the incident. (R-6.) Respondent's position is that the video revealed that Williams threw a clipboard at Kuriakose, and that he hit Kuriakose with the clipboard. Williams had a responsibility to refrain from this type of action. The altercation was sufficiently egregious as to require the removal of Williams.

The Estate of John Williams did not produce any evidence refuting the respondent's evidence. Their position is that the clipboard did not hit Kuriakose, and that the video confirms this. They submit that the video reveals that Kuriakose does not react to the clipboard hitting her, and her left arm must have been injured prior to this incident. Although Kuriakose testified that she immediately reported the incident to her supervisor, the statement of Kuriakose's supervisor, Inese Conklin, reveals that Kuriakose did not report the matter to her supervisor until 3:00 a.m. (R-9.) Finally, the Estate of Williams argues that Williams was improperly assigned to a watch a female patient who was disrobing in front of him.

After my review of the video, I note that it is recorded with relatively high-definition clarity, and it does provide a sufficient view of the incident. Although audio is not provided, the camera shows Williams addressing Kuriakose for several minutes before throwing a hard clipboard at Kuriakose. The video is unclear as to whether it struck Kuriakose, and Williams then stands up and retrieves the clipboard. Based simply on that video, it is clear that John Williams throws a hard clipboard at Kuriakose. Unfortunately, because of his untimely death, John Williams could not share his version of what occurred on that day. Nevertheless, the Estate of John Williams urges that the clipboard did not hit Kuriakose, and the Estate argues that Kuriakose lacks credibility.

The Estate offers as proof the fact that Kuriakose does not react in the video to the clipboard allegedly hitting her. However, the unrefuted credible testimony of Kuriakose was that the clipboard did hit her, and that it caused bruising on her left arm. There is also no evidence in the record that the left arm of Kuriakose was injured prior to this incident. Although Kuriakose testified that she immediately reported the incident to her supervisor, the statement of Kuriakose's supervisor, Inese Conklin, reveals that Kuriakose did not report the matter to her supervisor until 3:00 a.m. I attribute this inconsistency in the testimony of Kuriakose to the passage of time and the dimming of her memory because of such time passage. Finally, the fact that Williams was assigned to a watch a female patient who was disrobing in front of him was not against TPH policy, according to the unrefuted testimony of Kuriakose. As such, this is also not an issue herein. For all of the aforementioned reasons, I give credibility to the testimony of Kuriakose.

The record in this matter includes video evidence and the credible testimony of an individual who witnessed or had knowledge of the incident they described. After carefully considering the testimonial and video evidence presented, and having had the opportunity to review the video on numerous occasions and 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 February 20, 2012, Williams arrived late for his shift and angry for some unknown reason. Kuriakose assigned Williams a temporary 1:1 observation of a difficult elderly female patient who had confusion issues, as well as a propensity to undress and touch herself inappropriately. Williams was unhappy with this assignment, and as he began observing the patient, he began screaming loudly. Williams was requesting to switch off the 1:1 of this patient, and for assignment to another patient. When Kuriakose responded negatively, Williams answered with profanity. Kuriakose requested Williams to quiet down, and he responded by throwing a hard clipboard at Kuriakose. The clipboard struck Kuriakose in her upper left arm, and Kuriakose later produced a statement and informed her supervisor of the incident. As a result of being struck by the clipboard, Kuriakose suffered a two-inch-long by half-inch-wide black mark

on her upper left arm. Her left arm was not injured before the incident. It was not against TPH policy for a male HST to undertake a 1:1 observation of a female patient.

LEGAL ANALYSIS

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). Such a civil service employee 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).

In appeals concerning major disciplinary actions brought against classified employees, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is a preponderance of the credible evidence. In re Polk License Revocation, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). The preponderance may also be described as the greater weight of credible evidence in a case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Testimony, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). An appeal to the Civil Service Commission requires the Office of Administrative Law to conduct a de novo hearing and to determine the appellant's guilt or innocence, as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987); Cliff v. Morris Cnty. Bd. of Soc. Servs., 197 N.J. Super. 307 (App. Div. 1984).

Based on the specifications in the charges, John Williams was charged with unbecoming conduct, in violation of N.J.A.C. 4A:2-2.3(a)(6); and other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(11). In addition, John Williams was charged with violations of Department of Human Services Disciplinary Action Program (DAP) C3-1, physical or mental abuse of a patient, client, resident, or employee; C5-1, inappropriate physical contact or mistreatment of a patient, client, resident or employee; and E1-1, violation of a rule, regulation, policy, procedure, or administrative decision. John Williams was removed from his duty as a result of this incident.

John Williams has been charged with violating N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee. Conduct unbecoming a public employee has been described as an elastic phrase that includes any conduct that adversely affects the morale of governmental employees or the efficiency of a public entity or conduct that has a tendency to destroy public respect for governmental employees and confidence in public entities. Karins v. City of Atl. City, 152 N.J. 532, 554–57 (1998); In re Emmons, 63 N.J. Super. 136 (App. Div. 1960). A finding or conclusion that a public employee engaged in unbecoming conduct need not be based upon the violation of a particular rule or regulation and may be based upon the implicit standard of good behavior governing public employees consistent with public policy. City of Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955); Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992).

The video showed John Williams throwing a hard clipboard at his supervisor. Whether or not the clipboard struck Kuriakose, and I have found that it did, the actions of John Williams represent conduct that could adversely affect the morale of governmental employees or the efficiency of a public entity or conduct that has a tendency to destroy public respect for governmental employees and confidence in public entities. Such actions do not reflect the implicit standard of good behavior governing public employees consistent with public policy. Therefore, as to this charge, respondent has met its burden of proof that John Williams did commit an act of unbecoming conduct. I do so **CONCLUDE**.

John Williams has 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 standards of good behavior which devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct. As to the charge of other sufficient cause, respondent has met its burden of proof that John Williams threw a hard clipboard at his supervisor. Therefore, respondent has proven that John Williams committed an act that violated standards of good behavior for an HST, and I do so **CONCLUDE**.

John Williams has been charged with violating DAP section C3-1, physical or mental abuse of a patient, client, resident, or employee. As to this charge, respondent has met its burden of proof that John Williams threw a hard clipboard at his supervisor, who is an employee of TPH. Therefore, respondent has proven that appellant committed an act of physical abuse of an employee, and I do so **CONCLUDE**.

John Williams has been charged with violating DAP section C5-1, inappropriate physical contact or mistreatment of a patient, client, resident or employee. As to this charge, respondent has met its burden of proof that John Williams threw a hard clipboard at his supervisor, and that the clipboard physically contacted her. The supervisor is an employee of TPH. Therefore, respondent has proven that appellant committed an act of inappropriate physical contact or mistreatment of an employee, and I do so **CONCLUDE**.

John Williams has been charged with violating DAP section E1-1, violation of a rule, regulation, policy, procedure, or administrative decision. Respondent alleges that appellant has violated TPH Policy and Procedure 3.500 ("Procedure"). The Procedure sets forth that:

The safety and security of all employees at Trenton Psychiatric Hospital is of the utmost importance. It is the policy of the Hospital that threats and threatening behavior, harassment, intimidation, physical acts of violence, and intentional property damage committed on hospital property will not be tolerated.

Any intent to use or use of, any object as a weapon is also a violation of this policy.

[R-4]

Respondent has proven that appellant intended to use the clipboard as a weapon, in violation of the Procedure. Appellant also harassed and threatened a fellow employee of TPH. Therefore, respondent has proven that appellant committed a violation of the Procedure, and I do so **CONCLUDE**.

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). The question to be resolved is whether the discipline imposed in this case is appropriate.

John Williams has been found guilty of unbecoming conduct, in violation of N.J.A.C. 4A:2-2.3(a)(6); and other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12). In addition, appellant has been found guilty of violations of DAP C3-1, physical or mental abuse of a patient, client, resident, or employee; C5-1, inappropriate physical contact or mistreatment of a patient, client, resident or employee; and E1-1, violation of a rule, regulation, policy, procedure, or administrative decision. John Williams has been removed for his actions on February 20, 2012.

The parties have stipulated that appellant has no prior disciplinary action on his record. While I am aware that the penalty of removal is substantial, I am satisfied that appellant's actions herein were egregious.

Appellant did physically abuse an employee of TPH. If an action of abuse is found, then the appropriate discipline is found in the DAP of the New Jersey Department of Human Services. (C-1.) This document calls for removal of an employee when abuse is found. (C-1 at 10.) There is no discretion allowed in the document. Concepts of progressive discipline or discussions of a range of disciplines are not to be considered. Such action from an employee in the position of appellant is unacceptable. It is impossible to see how the appointing authority could have continued to allow appellant to remain in his position. The removal of appellant was not inappropriate, and it was necessary to maintain the diligence and integrity of the appointing authority staff. I **CONCLUDE** that the finding of abuse requires removal, and that the action by the appointing authority was acceptable.

Appellant also committed inappropriate physical contact or mistreatment of a employee. The DAP calls for a penalty for a first offense ranging from official reprimand to removal. (C-1 at 11.) There is discretion allowed in the document for this violation. Concepts of progressive discipline or discussions of a range of disciplines may be considered for this violation. However, such action from an employee in the position of appellant is unacceptable. It is again impossible to see how the appointing authority could have continued to allow appellant to remain in his position. The removal of appellant was not inappropriate, and it was necessary to maintain the diligence and integrity of the appointing authority staff. I **CONCLUDE** that the finding of inappropriate contact requires removal, and that the action by the appointing authority was acceptable.

Finally, appellant violated the Procedure. The DAP calls for a penalty for a first offense ranging from counseling to removal. (C-1 at 16.) There is discretion allowed in the document for this violation. Concepts of progressive discipline or discussions of a range of disciplines may be considered for this violation. However, such action from an employee in the position of appellant is unacceptable. The appointing authority could not be expected to have continued to allow appellant to remain in his position. The removal of appellant was not inappropriate, and it was necessary to maintain the diligence and integrity of the appointing authority staff. I **CONCLUDE** that the finding of

the Procedure requires removal, and that the action by the appointing authority was acceptable.

Given the actions of appellant on February 20, 2012, imposition of major discipline is necessary to maintain the diligence and integrity of the appointing-authority staff. Appellant's behavior was serious and unprofessional. As a public employee, the appellant's actions must be above reproach.

Having considered all the proofs offered in this matter, and the impact upon the institution of the behavior by appellant herein, and having given due deference to the concept of progressive discipline, I **CONCLUDE** that appellant's misbehavior on February 20, 2012, was so significant as to warrant his removal. which, in part, is meant to impress upon TPH employees, as well as others, the seriousness of his infractions. Therefore, based on the totality of the record, I **CONCLUDE** that the imposition of removal was appropriate.

ORDER


I **ORDER** that the appeal of John Williams is **DENIED**, and that the disciplinary action of the TPH removing appellant is **AFFIRMED**.

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.

March 21, 2017
DATE


EDWARD J. DELANOY, JR., ALAJ

Date Received at Agency:

3/21/17

Date Mailed to Parties:

3/21/17

mph

APPENDIX

LIST OF WITNESSES

For appellant:

John Paul Dickerson
Audrey Houston

For respondent:

Mary Kuriakose

LIST OF EXHIBITS

Court exhibits:

C-1 Disciplinary Action Program of the New Jersey Department of Human
Services

For appellant:

None

For respondent:

R-1 Preliminary Notice of Disciplinary Action, dated April 18, 2012

- R-2 Final Notice of Disciplinary Action, dated October 1, 2012
- R-3 New Jersey Executive Order 49
- R-4 TPH Policy #3.500 Violence in the Workplace
- R-5 For identification only
- R-6 Mary Kuriakose written statement, dated February 20, 2012
- R-7 For identification only
- R-8 For identification only
- R-9 Inese Conklin written statement, dated February 20, 2012
- R-10 Video surveillance DVD

MEMORANDUM

DATE: April 26, 2017

TO: Civil Service Commission

FROM: Christopher S. Myers, Director
Division of Appeals and Regulatory Affairs

SUBJECT: Initial Decision on the Appeal of John Williams A-~~8~~⁶

John Williams, Human Services Technician, Trenton Psychiatric Hospital, Department of Human Services, removal effective April 18, 2012, on charges of conduct unbecoming a public employee and other sufficient cause.

The appointing authority alleged that the appellant physically assaulted another employee.

Recommendation of the Administrative Law Judge – Uphold the removal.

The following materials are provided for your review in order that you may render your final decision at the next Civil Service Commission meeting on May 3, 2017.

Initial Decision rendered by ALJ Edward J. Delanoy, Jr., dated March 21, 2017.

Exceptions filed by William A. Nash, Esq., dated April 14, 2017, on behalf of the appellant.

Reply to exceptions filed by Peter H. Jenkins, DAG, dated April 19, 2017, on behalf of the appointing authority.



1001 MELROSE AVENUE, SUITE A
BLACKWOOD, NJ 08012

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April 14, 2017

VIA FAX AND REGULAR MAIL

Director Henry Maurer
Merit System Practices and Labor Relations
Civil Service Commission, Unit H
44 South Clinton Avenue, PO Box 312
Trenton, NJ 08625-0312

ATTENTION: EXCEPTIONS UNIT

Re: **ESTATE OF JOHN D. WILLIAMS V. DHS/TRENTON PSYCHIATRIC HOSPITAL**
OAL Docket Number : CSV 14860-2012S
Agency Ref Number : 2015-1107

Dear Director Maurer:

Please accept the following letter in lieu of a more formal brief as Respondent's exceptions to the Initial Decision of The Honorable Edward J. Delanoy, Jr., ALAJ in the above referenced matter. It is respectfully requested that the order in the Initial Decision be rejected and that Appellant, Estate of John D. Williams be awarded back pay and counsel fees.

PRELIMINARY STATEMENT

A preponderance of the credible evidence presented in this matter consisting of a surveillance video tape confirms that on February 20, 2012, John D. Williams¹ ("Williams") did

¹ John D. Williams died in March 2013.

ESTATE OF JOHN D. WILLIAMS V. DHS/TRENTON PSYCHIATRIC HOSPITAL

OAL Docket Number : CSV 14860-2012S

Agency Ref Number : 2015-1107

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NOT strike Charge Nurse Mary Kuriakose with a clip board and Kuriakose's testimony as she reviewed the said video clearly supports this conclusion. Had Williams struck Charge Nurse NK with a clipboard, this would have been depicted by the video which it was not.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Williams was hired by Respondent on December 2, 1991 and removed from employment on April 18, 2012 after working two decades with an unblemished record. On October 1, 2012, DHS-Trenton Psychiatric Hospital ("Respondent") issued a Final Notice of Disciplinary Action charging Williams with the following:

- 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 – Other sufficient cause;
- AO:08 C-3.1 – Physical/mental abuse of employee;
- AO:08 C-5.1 – Inappropriate physical contact w/ employee;
- AO:08 E-1.1 – Violation of a rule, regulation or policy; and
- 3.500 – Violence in the Workplace;

Respondent presented testimony from Charge Nurse Kuriakose and a video tape as its sole evidence. The video tape evidence did not support or corroborate Nurse Kuriakose's

ESTATE OF JOHN D. WILLIAMS V. DHS/TRENTON PSYCHIATRIC HOSPITAL

OAL Docket Number : CSV 14860-2012S

Agency Ref Number : 2015-1107

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testimony. The matter was heard before The Honorable Edward J. Delanoy, Jr., ALAJ on January 10, 2017 and the charges against Williams were sustained.

LEGAL ARGUMENT

It is respectfully submitted that upon its *de novo* review of the record, including viewing the video of the incident, the Commission should disagree with the OAL's recommendation to sustain the charges against Williams as the video does not support the testimony of Charge Nurse Kuriakose that Williams struck her with a clipboard. Respondent offered Kuriakose as its only witness. On direct examination, Kuriakose testified that on February 20, 2012, she assigned Williams to a 1:1 special observation of a female patient. She testified that after he began watching the patient, Williams became upset as the patient was disrobing and he insisted that a female staff be assigned to replace him. Kuriakose refused to replace him with a female staff to watch the female patient who was disrobing. Kuriakose then alleges that as she was leaving the area, Williams threw a clipboard in the air striking her in the arm. The video tape shows that Williams threw a clipboard in the air but does not show that the clipboard struck her in the arm. Kuriakose conceded she assigned Appellant for a 1:1 observation of a female patient who stripped down naked and conceded that a female was on staff that evening. Most importantly, when asked to identify, on the video, the point at which the clip board hit her

ESTATE OF JOHN D. WILLIAMS V. DHS/TRENTON PSYCHIATRIC HOSPITAL

OAL Docket Number : CSV 14860-2012S

Agency Ref Number : 2015-1107

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shoulder, she was unable to do so. Kuriakose testified that she showed her injury to the other staff yet when asked to point out on the video the point at which she complained to other the staff who enters the areas (1:49:05), she was unable to do so. Kuriakose testified that Appellant hit her with the clipboard at 1:44 AM and that she immediately reported this to her supervisor. However, when examined with R9, her supervisor's written statement, Kuriakose could not reconcile her supervisor's statement that the injury was not reported until 3AM – approximately 2 hours later.

John Paul Dickerson, son of Williams testified stated that he lived minutes away from Williams who called him to stop by to discuss an incident at work. Williams told him that he was on a 1:1 with a female client who was masturbating and had asked the charge nurse to switch him. In response, the charge nurse refused to switch him and told him if he was unhappy he could "retire". Dickerson testified that Appellant said Kuriakose accused him of hitting her with a clipboard but denies that he ever did that.

Audrey Houston testified that she was a close personal friend of Williams. They met at work and worked together for 15 years at TPH. She described Williams as being very outspoken but not violent at all. Williams discussed the incident with her the following day. She testified Williams told her that he was assigned a 1:1 on a female patient who was "stripping" and

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OAL Docket Number : CSV 14860-2012S

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“feeling herself.” She testified that Williams told her he was very uncomfortable sitting with a female patient who was doing that and requested that he be removed by the nurse but she refused to remove him. Williams told her that he threw the clipboard but it never touched her.

Clearly, by accusing Williams of striking her with a clipboard, Kuriakose successfully pivoted any criticism regarding her judgment of assigning a male staff to a female patient who was disrobing and engaging in sexually inappropriate conduct. Common sense would suggest that Kuriakose should have immediately switched Williams with the female staff but she did not. To cover her poor judgment, Kuriakose accused Williams of striking her with a clipboard. Yet the video does not show her being struck with a clipboard (or anything else).

Respondent fails to meet its burden that Williams’ conduct arose to a level of unbecoming a public employee or was workplace violence. While Williams did in fact fling a clipboard in the air, the video proves that the clipboard never hit Kuriakose. The facts show that Williams had no intent to strike anyone with the clipboard and his actions were caused by his mere frustration at being improperly instructed to perform a 1:1 observation of a female patient who stripping and who was being sexually expressive when such an assignment under such circumstances should have been delegated to the female direct care employee. This is corroborated by Kuriakose’s own testimony where she stated that Williams was upset and said “I

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am Black man." The facts further show that Williams was not known to hit anyone, to be crude or to be insubordinate (R9).

Also, it is respectfully submitted that even if the Commission were to find that Appellant has violated any policies, the Commission's review of the penalty is *de novo* and the Commission should utilize the concept of progressive discipline. West New York v. Bock, 38 N.J. 500 (1962). While it is settled that the principle of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See Carter v. Bordentown, 191 N.J. 474 (2007). Therefore, it is respectfully submitted that the Commission should find that removal is too harsh a penalty and should modify the penalty to reinstatement. See e.g., In the Matter of Isaiah Knowlden, Docket No. A-4963-11T2 (App. Div. April 30, 2014). In Knowlden, the appellant punched a patient in the course of an altercation, but the ALJ found that the action was reflexive and the appellant's conduct during the rest of the incident was proper. The Commission concluded that the appellant was guilty of inappropriate physical contact, which warranted only a six-month suspension. Upon DHS' petition for reconsideration, the Commission upheld the charge of physical abuse based on DHS's revised definition, but reaffirmed the modification to a six-month suspension. The Appellate

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Division affirmed, quoting with approval from the Commission's conclusion: "While malicious intent is not necessary to sustain a finding of physical abuse, the employee's intent is certainly relevant to the penalty to be imposed." See also, In the Matter of Nicholas Manla, Docket No. A-6118-T3 (App. Div. April 28, 2014). In Manla, the Appellate Division affirmed the decision of the Commission, which accepted the ALJ's recommendation to modify the appellant's removal to a 20-day suspension. While the Commission found that the appellant's "horseplay" with the resident constituted "abuse" under DHS' revised definition of that term, nevertheless, due to the appellant's lack of malicious intent, his employment record, and the nature of the incident, a 20-day suspension was appropriate in that matter.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the removal of Williams was harsh and should be reversed and the charges against him should be dismissed. His Estate should be awarded back pay and counsel fees.

Respectfully yours,

William A. Nash

By: William A. Nash, Esquire

cc: Administrators of the Estate of John D. Williams

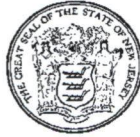
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The Honorable Edward J. Delanoy, Jr., ALAJ
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Via Fax (609 984-0442)

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 Division of Appeals and Regulatory Affairs
 Civil Service Commission, Unit H
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Attention: Opposition to Exceptions

Re: Estate of John Williams v. Trenton Psychiatric
 Hospital
 OAL DKT. No. CSV 14860-12
 Agency Reference No. 2015-1107

Dear Director Myers:

Please accept the following as Respondent Trenton Psychiatric Hospital's opposition to Appellants' exceptions dated April 14, 2017. It is respectfully requested that the order in the Initial Decision of The Honorable Edward J. Delaney, Jr., ALJ be accepted and the penalty of removal for the decedent/appellant, John Williams, be upheld.

A preponderance of the credible evidence confirms that on February 20, 2012, Williams intentionally threw a clipboard at Charge Nurse Mary Kuriakose and berated her with insults and profane language. Williams' assault on Ms. Kuriakose injured



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her left arm and resulted in her receiving medical treatment. Therefore, ALJ Delaney correctly sustained the charges against Williams and found that removal is the appropriate penalty for his egregious misconduct.

Williams' verbal and physical assault on Ms. Kuriakose was captured on video surveillance, and that video was played during the hearing before ALJ Delaney. (Exh. R-10). A review of the video clearly indicates the following:

- 1:43 am: John Williams enters the frame and receives a 1:1 patient's clipboard from a co-worker. Williams places the clipboard on a chair near the patient's room and the co-worker leaves the area.
- 1:44 am: Mary Kuriakose enters the frame. Kuriakose and Williams appear to speak, with Williams using numerous hand and arm gestures.
- 1:45 am: Williams sits in a chair with his back to the camera but facing Kuriakose. Williams appears to be speaking with Kuriakose, again using hand and arm gestures such as pointing his finger and extending his arm towards Kuriakose.
- 1:46 am: Kuriakose exits frame.
- 1:47 am: Williams moves to a different chair, then stands and approaches Kuriakose. Williams approaches Kuriakose and circles behind her. Kuriakose moves away from Williams. Williams repositions his chair and sits. Kuriakose exits frame.
- 1:48 am: Williams retrieves clipboard from back of chair. Kuriakose enters frame. Williams moves clipboard from one hand to the other and throws the clipboard at Kuriakose. The

clipboard hits Kuriakose in her upper left arm and deflects out of frame.

1:49 am: Williams exits frame to retrieve the clipboard.

2:02 am: Kuriakose enters frame and shows Williams her upper left arm. The two appear to speak, with Williams again using hand and arm gestures.

[Ibid.]

In its exceptions, The Estate argues that the video demonstrates Williams threw the clipboard but that it did not actually strike Kuriakose. However, Kuriakose's unrefuted testimony was that the clipboard struck her in the left arm, causing a bruise. Kuriakose also described the clipboard with which she was struck in detail, noting that at that time the hospital used standard, hard-edged clipboards that have since been changed to a padded model for safety. Kuriakose further testified that she received medical treatment for her upper left arm, which was deeply bruised when struck by the clipboard.

The remainder of Kuriakose's testimony was consistent with what is seen on the video. She described Williams as being agitated upon arrival at the hospital that night. As Williams was the last staff member to arrive on the shift, he was assigned to a difficult female 1:1 patient. Williams angrily told Kuriakose that he did not want to be assigned to that patient as her behaviors included removing her clothes.

However, Kuriakose testified that hospital policy allows for male staff members to conduct 1:1 observation of female patients and that she rotates staff throughout the shift so that no one spends their entire shift monitoring the 1:1 patient.

During the hearing, the Estate presented no evidence contesting either the video footage or Kuriakose's testimony. Williams' son, John Paul Dickerson, testified that Williams called him to say that he had been dissatisfied with being assigned the 1:1 patient and deny hitting Kuriakose with the clipboard. Williams' friend, Audrey Houston, testified that Williams told her that he did not like being assigned the difficult patient. Houston also confirmed that Williams admitted throwing the clipboard at Kuriakose.

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 experience 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 witness's 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 (9th Cir. 1963). When determining which version of an incident is

true, a fact finder considers the "interests, motive bias, or prejudice of a witness may affect [her] credibility and justify [the fact finder], whose province it is to pass upon the credibility of an interested witness, in disbelieving [her] testimony." State v. Salimony, 19 N.J. Super., 600, 608 (App. Div. 1952). A fact finder may also draw inferences as to credibility from the witness' expression, tone of voice, and demeanor. MacDonald v. Hudson Bus Transportation Co., 100 N.J. Super. 103, 106 (App. Div. 1968).

Here, the ALJ made such determinations of credibility after assessing all the pertinent, relevant, and admissible evidence. ALJ Delanoy noted in his Initial Decision that the video tape supported Kuriakose's testimony that Williams struck her with the clipboard. (Initial Decision at 6-7). ALJ Delanoy's findings were supported by the credible evidence in the record. Additionally, N.J.S.A. 52:14B-10(c) states in pertinent parts that:

In reviewing the decision of an administrative law judge, the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witnesses' testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by

sufficient, competent, and credible evidence in the record.

ALJ Delanoy's credibility determination was not arbitrary, capricious or unreasonable and was supported by sufficient, competent, and credible evidence in the record. Therefore, the ALJ's credibility determination should be given its due deference.

The penalty of removal is appropriate in this case, where Williams assaulted Kuriakose by throwing a clipboard at her, striking her arm and causing injury. The imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history, when the underlying nature of the conduct is sufficiently egregious. In re Carter, 191 N.J. 474 (2007); Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962). The State of New Jersey and Trenton Psychiatric Hospital do not tolerate harassment, intimidation, or violence by or against their employees. (Exhs. R-3, R-4). Employees of Trenton Psychiatric Hospital are made aware that using any object as a weapon violates the prohibition of violence in the workplace and may result in their termination. (Exh. R-4).

Williams' verbal and physical assault of Kuriakose on February 20, 2012 clearly violated both the State's and the hospital's ban on workplace violence and cannot be tolerated.

Hard-working employees like Kuriakose have the right to pursue their careers in public service without fear of being threatened with injury and death. ALJ Delanoy was correct in deeming removal the appropriate penalty for Williams' egregious misconduct. That reasonable decision should be adopted by the Civil Service Commission.

Respectfully submitted,

CHRISTOPHER S. PORRINO
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