



STATE OF NEW JERSEY

In the Matter of Sara Lloyd
Woodbine Developmental Center,
Department of Human Services

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2016-4181
OAL DKT. NO. CSV 08397-16

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ISSUED: **SEP 07 2017** **BW**

The appeal of Sara Lloyd, Senior Laundry Worker, Woodbine Developmental Center, Department of Human Services, removal effective October 27, 2011, on charges, was heard by Administrative Law Judge John S. Kennedy, who rendered his initial decision on August 3, 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 September 6, 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 appeal of Sara Lloyd.

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
SEPTEMBER 6, 2017



Robert M. Czedz, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 08397-16

AGENCY DKT. 2016-4181

**IN THE MATTER OF SARA LLOYD,
DEPARTMENT OF HUMAN SERVICES,
WOODBINE DEVELOPMENTAL
CENTER,**

Lee J. Hughes, Esq., for appellant, Sara Lloyd (Gruccio, Pepper, Desanto & Ruth, P.A., attorneys)

Patrick Jhoo, Deputy Attorney General, for respondent, Department of Human Services, Woodbine Developmental Center (Christopher Porrino, Attorney General of New Jersey, attorney)

Record Closed: June 20, 2017

Decided: August 3, 2017

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

STATEMENT OF THE CASE

The appellant, Sara Lloyd (Lloyd), challenges her removal from the Woodbine Developmental Center (Woodbine). Woodbine removed her due to theft charges having been issued against her as well as Lloyd's consent to Civil Judgment by Confession (Civil Judgement).

PROCEDURAL HISTORY

On May 18, 2016, Woodbine issued a Final Notice of Disciplinary Action (FDNA) removing Lloyd effective October 27, 2011. Lloyd appealed her removal and the matter was transmitted to the Office of Administrative Law, where it was filed on June 6, 2016, as a contested case. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13. A hearing was conducted in this matter on May 17, 2017. The record closed on June 20, 2017, after the parties submitted written closing briefs.

FACTUAL DISCUSSION

Based on the testimony of the witnesses and examination of the documentary evidence, I **FIND** the following **FACTS** are undisputed:

Appellant was employed by Woodbine as a Senior Laundry Worker from June 2004, until her removal effective October 27 2011. In September 2011, Lloyd was charged in a series of criminal complaints stemming from her use of her elderly neighbor's ATM card. After learning of the pending criminal complaints, Woodbine suspended Lloyd indefinitely. On June 2, 2014, the criminal complaints were dismissed pending Lloyd's completion of a Pretrial Intervention Program (PTI). Lloyd consented to a Civil Judgment as a condition of PTI. On May 18, 2016, Woodbine issued a FDNA removing Lloyd effective October 27, 2011, on the basis of the underlying theft charges as well as Lloyd's consent to the Civil Judgement.

Testimony

Detective Charles Tortella (Tortella) of the New Jersey State Police testified on behalf of Woodbine. Tortella became involved in this matter when J.D., Jr., reported that his father, J.D., Sr., who was suffering from the early stages of dementia, had considerably less money in his bank account than normal. Tortella testified that during the investigation he was unable to interview J.D., Sr., because he was unable to remember the answers and seemed confused by the questions. Tortella was made aware of a suspicious check made out to cash for \$9,000 and that appellant had been

acting as caretaker to his father and he suspected that she might be the person responsible for taking the money. During his conversation with J.D., Jr., and his father, he found that J.D., Sr., was missing his USAA credit card and Tortella advised J.D. Jr., to check the USAA credit card statements to determine whether it had been used without authorization.

Tortella interviewed a representative from Millville Savings Bank and was able to obtain still images from video surveillance footage from the transaction cashing the \$9,000 check. He was able to identify Lloyd as the person withdrawing the \$9,000 check for cash. Tortella later questioned Lloyd at the State Police Station in Port Norris. Lloyd told him that she had always been afraid that someone would accuse her of stealing from J.D., Sr. She admitted that on several occasions she had used J.D., Sr.'s ATM card without his authorization. She also admitted that on other occasions she would withdraw more money than J.D., Sr., had asked for so that she could keep the extra money for herself. Through the course of his investigation, Tortella found that J.D., Sr.'s Millville Savings Account Statement from June 15, 2011, reflects twelve \$500 withdrawals. (R-4.) On June 6, two \$500 withdrawals were made at different ATMs. On several other dates, multiple \$500 withdrawals were made. The pattern of near daily \$500 withdrawals continued through July 14, 2011. (R-4.) J.D., Sr.'s USAA credit card statements reflect a similar trend of large withdrawals of cash advances. (R-6.)

Tortella noted that there was a series of checks written out to cash and to Lloyd. (R-7.) These checks were presumably signed by J.D., Sr.; however the other information, including who the check is made out to and amount, was completed in another's handwriting. These checks range from \$100 to \$9000. (R-7.) Criminal charges were made against Lloyd. (R-3.) Lloyd entered into a Civil Judgment in the amount of \$49,164 as a condition to her entry into PTI. (See PTA Order attached to petitioner's closing brief.)

Edith Cerracchio, (Cerracchio) Quality Assurance Coordinator at Woodbine testified next. Woodbine's clientele are intellectually disabled and mostly lower functioning. Woodbine has staff on a twenty-four-hour basis to assist the residents. Lloyd is a service worker and interacts with the residents by washing and putting away

laundry in their rooms. She has access to the living quarters where residents keep money and other valuables. In 2011, Cerracchio was a program assistant and would have no knowledge if any complaints were ever filed against the appellant.

Steven Katz, (Katz) Employee Relations Coordinator testified that Woodbine does not consider bringing back any employee charged with a crime until PTI is completed and all payments, if any are made. After that is completed the facility makes a determination whether to proceed with discipline. The criminal disposition is considered but does not control the determination if an employee will be disciplined. Based on appellant's conduct, it was determined that she should not return as Woodbine must look out for the best interest of the residents, some of which, have similar vulnerabilities and J.D., Sr.

Sara Lloyd testified on her own behalf and asserted that the terms and conditions of her suspension were that upon completion of her pending criminal matter, without conviction, she would be reinstated. Lloyd contends that she and her husband took care of the elderly neighbor and used the ATM card with his consent. They never charged him for their help and he was appreciative and generous. She did not deny confessing to unauthorized use of J.D., Sr.'s accounts, but claimed that her confession was coerced by Detective Tortella. She never questioned J.D., Sr.'s dramatically increasing spending in spite of the fact that she had access to his bank records. J.D., Sr., did not have any lavish possessions and lived modestly. She accepted PTI because she thought she would get her job back by completing the program. A Union representative advised her that she would be able to keep her job if she took PTI. She also agreed to repay the money because it was a condition of PTI and she thought it would get her job back.

When assessing credibility, inferences may be drawn concerning the witness' expression, tone of voice and demeanor. MacDonald v. Hudson Bus Transportation Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness' interest in the outcome, motive or bias should be considered. Credibility contemplates 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 (9th Cir. 1963).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). In this case, I do not deem appellant’s testimony to be credible. It is clear based upon a review of the evidence that appellant took advantage of her elderly neighbor for financial gain. She admitted using his ATM and writing checks from his account. He did not have any lavish possessions and lived modestly and appellant could not account for the daily cash withdrawals, nor did she question him regarding his finances despite having access to his bank accounts and considering herself his care giver. I do not find it credible that she would agree to repay in excess of \$49,000 if she did not take the money.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACT** that appellant took advantage of her elderly neighbor for financial gain. I further **FIND** as **FACT** that she admitted using J.D., Sr.’s ATM card without his authorization and that she would withdraw more money than J.D., Sr., had asked for so that she could keep the extra money for herself.

LEGAL ANALYSIS AND CONCLUSION

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 “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 the underlying theft charges as well as Lloyd’s consent to the Civil Judgement. Appellant’s conduct clearly compromises her ability to be trusted in the context of a facility serving developmentally disabled residents. Appellant took advantage of her position as a caretaker for her neighbor and her conduct serves as a breach of the trust and faith of the public.

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. I **CONCLUDE** that the

Appointing Authority has met its burden of proof that appellant violated N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Her conduct violated the implicit standard of good behavior and demonstrates that she cannot be trusted in a facility serving patients with similar needs and vulnerabilities.

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.

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. 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 snapped lighter in front of five-year-old):

. . . 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).

In this case, the egregious nature of appellant's conduct justifies her removal. Allowing Lloyd to remain at Woodbine would have the potential to destroy public confidence in Woodbine and similar facilities serving those with developmental disabilities across the state. Her removal is the appropriate penalty in light of the public interest in the well-being of Woodbine's clients and the interest in maintaining public confidence in the New Jersey Department of Human Services.

After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the behavior by appellant herein and in light of the seriousness of the offense, 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.

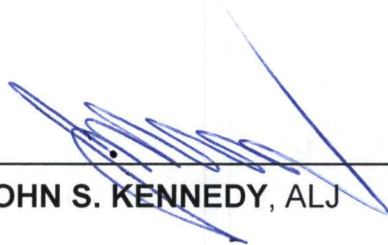
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

8/3/17
DATE



JOHN S. KENNEDY, ALJ

Date Received at Agency: August 3, 2017

Date Mailed to Parties: August 3, 2017

JSK/dm

WITNESSES

For Petitioner:

Sara Lloyd, petitioner

For Respondent:

Detective Charles Tortella, New Jersey State Police

Edith Cerracchio, Quality Assurance Coordinator, Woodbine

Steven Katz, Employee Relations Coordinator, Woodbine

EXHIBITS

For Petitioner:

- P-1 Letter to petitioner, dated March 2, 2012
- P-2 Letter, dated September 9, 2014, forwarding Consolidation Order
- P-3 Letter, dated January 15, 2015, regarding petitioner's return to work
- P-4 Letter, dated October 29, 2015, regarding pending criminal charges
- P-5 Letter, dated March 24, 2016, from petitioner's attorney
- P-6 Order of Dismissal

For Respondent:

- R-1 State Police Investigation Report
- R-2 State Police Supplemental Investigation Report
- R-3 Criminal Complaints filed against petitioner
- R-4 Bank Records of J.D., Sr.
- R-5 Additional Bank Records of J.D., Sr.
- R-6 USAA Credit Card Statement of J.D., Sr.
- R-7 Canceled Checks

- R-8 Surveillance video Photos
- R-9 Petitioner's Disciplinary Record
- R-10 Notice and Decision of Informal Pre-Termination Hearing
- R-11 FNDA and addendum