

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF DECEMBER, 2019

Deirdre L. Webster Cobb

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Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 13826-18

AGENCY DKT. NO. 2019-414

**IN THE MATTER OF WILLIAM A. WILSON,
ATLANTIC COUNTY, DEPARTMENT OF
ADMINISTRATOR.**

Melanie Griffin, Field Representative, AFSCME-NJ Council 63, for appellant, William A. Wilson, appearing pursuant to N.J.A.C. 1:1-5.4(a)(6)

Daniel J. Solt, Esq., Assistant County Counsel, for respondent, Atlantic County, Department of Administrator (James F. Ferguson, County Counsel, attorney)

Record Closed: October 30, 2019

Decided: November 20, 2019

BEFORE TAMA B. HUGHES, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

William A. Wilson (Appellant) (Wilson) appeals the imposition of a ten-day suspension from his job as an Employment Specialist with Atlantic County (respondent) for violations of N.J.A.C. 4A:2-2.3(a)6 (Conduct Unbecoming a Public Employee) and N.J.A.C. 4A:2-2.3(a)12 (Other Sufficient Cause - specifically, violation of Atlantic County Policies and Procedures - P.S.

302 (Workplace Standards); P.S. 402 (Non-Discrimination Policy); and P.S. 408 (Violence in the Workplace)). The charges arise from petitioner's allegedly assaulting a co-worker, Beverly Oliver (Oliver) while at work.

Appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) on or about April 25, 2018. (Respondent Brief, Exhibit A) Appellant requested a departmental hearing which was held on June 25, 2018. Thereafter, on July 23, 2018, a Final Notice of Disciplinary Action (FNDA) was issued with the "Sustained Charges" of violation of N.J.A.C. 4A-2.2.3(a)6 and N.J.A.C. 4A-2.2.3(a)12. The disciplinary action taken was a ten-working-day suspension. Appellant filed an appeal, and the Civil Service Commission (CSC) transmitted this matter to the Office of Administrative Law (OAL), where it was filed on September 24, 2018, 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.

On July 11, 2019, respondent filed a Motion for Partial Summary Decision, pursuant to N.J.A.C. 1:1-12.5 seeking Summary Decision as to the liability only. The Motion was granted by Order, dated September 16, 2019.¹ The hearing on the penalty phase was held on October 1, 2019, and thereafter on October 30, 2019, the record closed upon receipt of supplemental documentation and summation briefs.

TESTIMONY

Beverly Oliver (Oliver), a Senior Employment specialist with the County, testified that as a result of the incident of April 13, 2018, her arm was injured. She went to Urgent Care who referred her back to her employer due to the fact that the injury occurred in the course of her employment and was covered by Workmen Compensation (WC). She followed up with her supervisor the next business day and filled out the necessary paperwork. Upon seeing the WC doctor, she was referred to physical therapy which she received for the next several weeks. Due to the ongoing pain in her arm and lack of range of motion, an MRI was obtained. Based upon the results and given the extent of her injury, she underwent surgery

¹ The Motion for Summary Decision was unopposed by the appellant.

at the end of November 2018. After the incident, she was out of work for several weeks and upon her return, both pre and post-surgery, was placed on light duty.

William Wilson testified that he had one prior incident approximately ten years prior for using inappropriate language. While he has not received any formal commendations, over his twelve years in service with the county he has received a lot of praise from people to who whom he has provided services for and positive reviews.

On cross-examination, Wilson was questioned about an incident in 2016 wherein he received a verbal warning for failure to perform duties, incompetency and inefficiency and another for unspecified charges in 2010. In response, Wilson stated that while he recalled the disciplinary action, he thought that it had been removed from his file because the charge resulted from the county's failure to train.²

FINDINGS OF FACT

In addition to the findings of **FACT** as set forth in the Order Granting Partial Summary Decision, which is incorporated herein, based on the testimonial and documentary evidence presented in this matter, I find as **FACT** that in April 2018, Oliver sustained injury due to appellant hitting her in the arm. As a result of the injury, Oliver was placed out of work for a period of time and required surgery.

I **FIND** that appellant has a minimal prior disciplinary history having received a verbal warning in 2016 for failure to perform duties, incompetency and inefficiency, and prior to that in 2010, cited for using inappropriate language. No personnel files substantiating any of the aforementioned disciplinary action was admitted into evidence.

I **FIND** that the respondent does not have a policy in place outlining progressive disciplinary action that the county follows based upon the alleged conduct and/or the number of instances.

² No disciplinary history documentation was entered into evidence. Additionally, based upon respondent's counsel representation, the county does not have a policy or procedure in place for progressive disciplinary action.

LEGAL DISCUSSION

Civil service employees' rights and duties are governed by the Civil Service Act (The 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 County 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 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. Metropolitan 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).

For the reasons cited in the Order Granting Partial Summary Decision which are incorporated herein, I **CONCLUDED** that the respondent met its burden as it related to violations of N.J.A.C. 4A:2-2.3(a)(6) (Conduct Unbecoming a Public Employee) and N.J.A.C. 4A:2-2.3(a)12 (Other Sufficient Cause – specifically P.S. 3.02; 4.02 and 4.08). Therefore, the only issue at this time before the tribunal is that of the appropriateness of the penalty imposed – specifically, the ten-day suspension.

PENALTY

N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. In general,

principles of progressive discipline apply to the discipline of officers. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board (now the Commission) considers numerous factors, including the nature of the 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).

Here, the respondent suspended the appellant for ten days for assaulting Oliver. Appellant's prior disciplinary history consists of two instances - one in 2016 and the other in 2010. Neither prior disciplinary action involved conduct similar to the instant matter and one of the instances is almost a decade old. According to respondent's counsel, the county does not have a progressive disciplinary policy and the ten-day suspension was based upon the severity of the appellants' conduct in assaulting his co-worker.

Appellant argues that the departmental hearing and final determination was tainted from the start. One reason cited was that the hearing officer was biased due to her prior employment history/relationship with the county representatives. Another reason provided was that one of the witnesses that testified against the appellant in the Municipal Court hearing was personal friends with Oliver and had her own personal vendetta against him. With regard to the penalty, which is the only issue left at this time, appellant argues that the respondent failed to provide a basis for the ten-day suspension given their lack of a progressive disciplinary policy.

I am unpersuaded by appellant's argument. Despite the fact that the respondent does not have a progressive disciplinary policy, I **CONCLUDE** that appellant's violations are significant enough to warrant a penalty, which, in part, is meant to impress upon him the overall

seriousness of his actions and more importantly, to emphasize the county's absolute zero-tolerance policy of physical contact and/or harassment in the workplace.

As such, I **CONCLUDE** that the action of the respondent in suspending the appellant for ten-working-days was reasonable and should be affirmed.

ORDER

I hereby order that the charges of Conduct Unbecoming a Public Employee and Other Sufficient Cause are **SUSTAINED**. I **ORDER** that the action of the Atlantic County, Department of Administrator imposing a ten-working-day suspension is **AFFIRMED**, and the appellant shall be suspended for ten-working-days.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

11/20/19
DATE

Tama B. Hughes
TAMA B. HUGHES, ALJ

Date Received at Agency:

November 20, 2019

Date Mailed to Parties:

November 20, 2019 (Sent via E-Mail)

/dm

APPENDIX

WITNESSES

For appellant:

William Wilson

For respondent:

Beverly Oliver

EXHIBITS

For appellant:

None

For respondent:

Motion for Summary Decision and Supporting Exhibits