



STATE OF NEW JERSEY

In the Matter of Karen Sales
Union County, Department of Human
Services

DECISION OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2018-3366 & 2018-
3365
OAL DKT. NOS. CSV 08825-18 &
08827-18
(Consolidated)

ISSUED: November 24, 2020 (NFA)

The appeals of Karen Sales, Human Services Specialist 2, Union County, Department of Human Services, two removals effective July 16, 2014, on charges, were heard by Administrative Law Judge Jude-Anthony Tiscornia (ALJ), who rendered his initial decision on September 17, 2020. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, as well as the exceptions and reply, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of November 24, 2020, remanded the matter back to the Office of Administrative Law (OAL).

In brief, this matter involved two disciplinary removals based on charges that Sales inappropriately utilized the New Jersey Kids Deserve Support (NJKiDS) system on several occasions. The hearing at OAL spanned four days and included three witnesses, including the appellant. The ALJ's initial decision only briefly summarized the testimony of the witnesses and somewhat summarily concluded that the charges and the penalty should be upheld.

After review, the Commission cannot make a final determination based on the initial decision as presented. In this regard, the Commission requests a more explicit recitation of each witnesses' testimony as well as more fully reasoned credibility determinations. Additionally, the Commission requires a more detailed description of how the appellant's sustained misconduct supports upholding each separate charge found in the Final Notice of Disciplinary Action. Finally, the

Commission requests that the ALJ provide further detail and rationale regarding how the sustained charges support the recommended removal. In undertaking these tasks, unless otherwise determined by the ALJ, he need not convene any further proceedings and may utilize the current underlying record. To facilitate this remand, the Commission will return the entire underlying file materials to the ALJ, including the transcripts of the underlying hearing, for further review.

ORDER

The Civil Service Commission remands this matter to the Office of Administrative Law as described above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF NOVEMBER, 2020



Deirdré L. Webster Cobb
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

(CONSOLIDATED)

OAL DKT. NOS. CSV 08825-18

and CSV 08827-18

AGENCY DKT. NOS. 2018-3366

and 2018-3365

**IN THE MATTER OF KAREN SALES,
UNION COUNTY DEPARTMENT OF
HUMAN SERVICES.**

**Aaron Mizrahi, Esq. (Mizrahi Warren & White, attorneys) for appellant Karen
Sales**

**Allen C. Roth, Esq. (Ruderman & Roth, attorneys) for respondent Union County
Department of Human Services**

Record Closed: July 1, 2020

Decided: September 17, 2020

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Appellant, Karen Sales, (appellant or Sales) appeals removal from her position as

a human services specialist 2 (HSS2) at respondent Union County Department of Human Services, Division of Social Services, Child Support and Paternity Unit (CSP). Appellant was terminated because of her misuse of the New Jersey Kids Deserve Support (NJKiDS) system, which is the State of New Jersey's automated public-records computer system that tracks child-support accounts.

PROCEDURAL HISTORY

Karen Sales was served with a Final Notice of Disciplinary Action (FNDA) on May 3, 2018. This FNDA was based upon two prior Preliminary Notices of Disciplinary Action (PNDA), which sought Sales' removal from employment effective July 16, 2014, for the following violations of the New Jersey Administrative Code:

- (1) N.J.A.C. 4A:2-2.3(a)(2): Insubordination;
- (2) N.J.A.C. 4A:2-2.3(a)(6): Conduct unbecoming a public employee;
- (3) N.J.A.C. 4A:2-2.3(a)(12): Other sufficient cause: Violation of County and NJKiDS policies regarding proper entry of information into the NJKiDS system;
- (4) N.J.A.C. 4A:2-2.3(a)(3): Inability to perform duties.

Appellant filed the instant appeal at the Office of Administrative Law (OAL) on June 21, 2018 . A plenary hearing was held on June 25, 2019, July 30, 2019, August 20, 2019, and January 3, 2020.

Closing arguments were received on July 1, 2020, at which time the record was closed.

ISSUE

Did appellant misuse the NJKiDS system and, if so, may respondent remove appellant based on her misuse of the NJKiDS system?

SUMMARY OF TESTIMONY

Robert MacGibeny

Robert MacGibeny (MacGibeny) is the CSP coordinator and one of appellant's supervisors. MacGibeny, who has been extensively trained in the NJKiDS system, credibly testified regarding the procedures and protocols of utilizing the NJKiDS program. MacGibeny testified regarding the various policies and procedures that must be strictly followed by all employees, and he testified that Sales misused the NJKiDS system on several occasions. MacGibeny explained that any misuse of NJKiDS, as in the case at bar, must be immediately reported by the county welfare agency to the State. As a result of Sales' actions being reported in this case, Sales' access to NJKiDS was withdrawn by the State. This precluded Sales from performing her essential responsibilities as an HSS2.

Michele Miller

Michele Miller is the assistant personnel officer for the Union County Division of Social Services, a position she has held for fifteen years. As such, she is very familiar with procedures regarding disciplinary proceedings. Miller testified that prior to any disciplinary proceedings being initiated an investigation is conducted encompassing a review of all relevant documents.

Miller was one of the managerial employees who reviewed the underlying incidences regarding the current disciplinary action against Sales. Miller conferred with both the director and the deputy director of the agency, and also with MacGibeny prior to initiating any disciplinary action against Sales. Miller stated that if the documentary evidence is sufficiently supportive of a disciplinary action, the agency's practice is to initiate the disciplinary proceeding without first conferring with the employee. In this case, the deputy director, MacGibeny, and Miller conducted a review of the Sales matters and

recommended that the agency proceed with discipline. Miller and her colleagues concluded that the acts were egregious enough to justify major discipline and removal.

Karen Sales

Sales began working for Union County on June 26, 2000. She eventually was promoted to HSS2, which is a caseworker in the Child Support Unit processing child-support cases. Sales testified that she was trained and retrained on how to properly utilize the NJKiDS system between 2000 and 2010. As a caseworker, Sales has direct access to NJKiDS, and to the Paternity Opportunity Program (POP) office.

Sales testified that she followed all proper protocols and guidelines when processing the three cases at the heart of the current disciplinary proceeding. She further testified that she entered all information accurately as it was provided to her by the client.

FINDINGS OF FACT

Based on a review of the evidence and testimony presented at the hearing, I FIND the following to be the facts of the case.

Ms. Sales has been employed by respondent Union County Department of Human Services since June 2000. On July 15, 2014, Ms. Sales was served with a Preliminary Notice of Disciplinary Action ("2014 PNDA" or J-1) seeking her suspension from her position as an HSS2, without pay, effective immediately and for an indefinite period of time, as the PNDA indicates "TBD" for the length of the suspension. See J-1.

The 2014 PNDA specifically charges Ms. Sales with: insubordination under N.J.A.C. 4A:2-2.3(a)(2); conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)(6); and other sufficient cause under N.J.A.C. 4A:2-2.3(a)(12) based on alleged violations of Union "County and NJKiDS policies regarding proper entry of information into the NJKiDS system." The 2014 PNDA asserts the basis for those charges as follows:

It has been discovered that on at least 2 occasions, for two different client matters, Ms. Sales entered false information into the NJKiDS system, including but not limited to, the summary report, CSP 163, and notes section, indicating that she conducted interviews that did not occur and obtained information from the POP office, when she never contacted the POP office. These actions are a deliberate falsification of official case file records in the NJKiDS system. Ms. Sales [sic] actions to falsify records jeopardizes the Agency's ability to maintain order and the effective direction of public services, necessitating an immediate suspension to allow for a complete investigation into Ms. Sales [sic] entries in the NJKiDS system.

[ibid.]

As a result of the above-referenced investigation conducted by the agency, the State of New Jersey Department of Human Services permanently suspended appellant's access to NJKiDS.

The NJKiDS system is the State of New Jersey's child-support automated public-records computer system that tracks child-support accounts. The information contained in the forms is not only relied upon by the Child Support Division, but also by other State and federal agencies. Failure to accurately complete the forms could result in inappropriate civil and criminal actions against the putative father or incorrect support for the client.

As a result of the suspension of appellant's access to NJKiDS, respondent issued a separate Preliminary Notice of Disciplinary Action to Ms. Sales, dated January 14, 2016 ("2016 PNDA" or J-2), which repeated the three charges alleged in the 2014 PNDA (J-1), and added a fourth charge alleging "inability to perform duties" under N.J.A.C. 4A:2-2.3(a)(3), providing the following description in the specifications:

As a result of the CWA determining that Sales had misused NJKiDS, a Security Incident Report was filed with the State of

New Jersey. The State determined that a breach of confidential information occurred, namely, that Ms. Sales misused the NJKiDS system by falsifying information. The State then suspended Ms. Sales' access to the NJKiDS system & indicated that a local decision to permanently suspend access is supported, making her unable to complete the required duties of her position.

I **FIND** that Sales' ability to access the NJKiDS system was an essential function of her position. I further **FIND** that appellant cannot perform her duties as an HSS2 at the Union County Department of Human Services, Division of Social Services, Child Support and Paternity Unit, while her access to the NJKiDS system is suspended.

Once Sales was suspended, her prior case work in the NJKiDS system was scrutinized by the agency. This review found another instance of apparent misinformation being entered into the NJKiDS system by Sales on July 14, 2014. In this instance, while entering information on behalf of a client, Sales noted in the system that the client refused to cooperate and, thus, Sales generated a 162 Notice of Non-Cooperation. Approximately two minutes later, Sales generated a 163 Notice of Initial Cooperation, directly contradicting the previous document. Shortly thereafter, Sales generated a 160 Child Support Questionnaire, which the client signed, followed by a 161 Notice of Cooperation. Furthermore, Sales entered a note into the file indicating that the client refused to cooperate and refused to sign the 161. Normal protocol is that when a client refuses to cooperate with CSP regulations, a 162 Notice of Non-Cooperation is generated and the interview ends; there would be no need to generate the other forms.

As a result of this finding, a Security Incident Report was filed with the State of New Jersey. This report asserted that there was no valid reason for Ms. Sales to generate the 163, 160, and 161 forms after the client refused to cooperate and the 162 Notice of Non-Cooperation was generated, and, thus, the information Sales entered into NJKiDS was inaccurate. The State once again determined that Sales had caused a breach of confidential information to occur.

In all, the agency identified three individual cases wherein Sales was found to have violated protocol by entering factually incorrect information into NJKiDS. As the identities of the clients are confidential, the identifying information on the record was sealed by the OAL.

LEGAL DISCUSSION AND CONCLUSION

In a disciplinary action, the burden of proof is on the appointing authority, which must prove its case by a preponderance of the believable evidence. In re Polk, 90 N.J. 550, 560 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). In order for evidence to meet that threshold, it must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). That is to say, the tribunal must “decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth.” Jackson v. Del., Lackawanna & W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). “The term ‘fair preponderance of the evidence’ means the greater weight of credible evidence in the case. It does not necessarily mean the evidence of the greater number of witnesses but means that evidence which carries the greater convincing power to our minds.” State v. Lewis, 67 N.J. 47, 49 (1975) (citation omitted). Similarly, credible testimony “must not only proceed from the mouth of a credible witness but must be credible in itself.” In re Perrone, 5 N.J. 514, 522 (1950).

In the case at bar, the appointing authority offered the testimony of two witnesses, Robert MacGibeny and Michele Miller. The testimony of both witnesses tended to show that Sales had entered factually incorrect information into the NJKiDS system on at least three separate occasions, and that Sales’ access to NJKiDS was revoked by the State as a result. As the testimony of each of the appointing authority’s witnesses tended to corroborate the other, I determine the testimony of both witnesses to be credible. As the testimony of Karen Sales tended to be largely self-serving, I determine her testimony to be less credible.

Appellant's rights and duties are governed by the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20.

Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Among the stated types of just cause for major discipline are insubordination, inability to perform duties, conduct unbecoming a public employee, and other sufficient cause. N.J.A.C. 4A:2-2.3.

Appellant argues in her closing brief that, even if it is found by this tribunal that she did commit some bad act and should be disciplined, the theory of progressive discipline, if applied, should bar her removal. The theory of progressive discipline, however, is not a fixed rule to be followed, and it has long been 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, 484 (2007). Thus, progressive discipline has been bypassed when an employee engages in severe misconduct. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980). Here, it is clear that falsifying government records is a severe action. Further, "there is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

In the case at bar, Sales entered misinformation into the NJKiDS system, which resulted in her being denied access to that system. As she cannot perform her duties as a human services specialist 2 without access to NJKiDS, I **CONCLUDE** that removal was proper, and I **CONCLUDE** that all counts listed in the FNDA and the corresponding removal should be upheld.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that appellant's appeal be and is hereby **DISMISSED**.

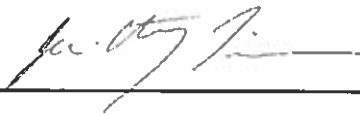
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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, P.O. 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.

September 17, 2020

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

9/17/20

Date Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Appellant:

Robert MacGibeny

Michele Miller

For Respondent:

Karen Sales

LIST OF JOINT EXHIBITS

J-1 2014 PNDA

J-2 2016 PNDA

LIST OF EXHIBITS IN EVIDENCE

For Appellant

None

For Respondent:

None