



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 12<sup>TH</sup> DAY OF MARCH, 2020

*Deirdre' L. Webster Cobb*

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**

**GRANTING**

**MOTION FOR**

**SUMMARY DECISION**

OAL DKT. NO. CSV 06914-19

AGENCY DKT. NO. 2019-3208

**IN THE MATTER OF ANTHONY HAGLER,  
MERCER COUNTY, TRANSPORTATION  
AND INFRASTRUCTURE.**

---

**Debbie Parks**, Associate Director, AFSCME NJ Council 63, for appellant pursuant  
to N.J.A.C. 1:1-5.4(a)(6)

**Stephanie D'Amico**, Assistant County Counsel, for respondent Mercer County  
(Paul R. Adezio, County Counsel)

Record Closed: December 20, 2019

Decided: February 4, 2020

BEFORE **SUSAN L. OLGATI**, ALJ

**STATEMENT OF THE CASE**

Appellant, Anthony Hagler, appeals the major disciplinary action resulting in his removal from his position as a laborer with the respondent, Mercer County Department of Transportation & Infrastructure (County) due to his inability to perform his job duties upon the expiration of his medical leave.

Respondent files the present motion for summary decision arguing that there is no genuine issue of material fact in dispute regarding appellant's failure to provide the necessary medical clearance upon the expiration of his medical leave. Appellant opposes the motion arguing that while the medical clearance was not provided until after his departmental disciplinary hearing, it was provided during the current appeal process and should be considered.

### PROCEDURAL HISTORY

By way of Preliminary Notice of Disciplinary Action (PNDA) dated, January 16, 2019, appellant was notified of the charge of inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a) and of his proposed removal. Following a departmental hearing, appellant was served with a Final Notice of Disciplinary Action (FNDA), removing him from employment, on the above referenced charges, effective December 18, 2018. Appellant timely filed an appeal with the Civil Service Commission, and the matter was transmitted to the Office of Administrative Law on May 22, 2019, for determination as a contested case. N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to-13. Thereafter, on or about October 7, 2019, respondent filed a motion for summary decision. On October 23, 2019, appellant filed opposition to the motion. On November 7, 2019, respondent filed its reply.

A telephone conference was held on December 17, 2019, where it was discovered that, due to an administrative oversight, the undersigned had not received respondent's reply papers. The record closed on December 20, 2019, upon receipt and review of same.

### FACTUAL DISCUSSION AND FINDINGS

The following facts set forth in respondent's letter brief are supported by the certification of Kya Grier, a senior personnel clerk for the County, and the documents attached thereto. These facts are uncontested by appellant. Accordingly, I **FIND** the following as **FACT**:

Appellant was hired as a laborer by the County in the Department of Transportation & Infrastructure.

By correspondence dated, February 16, 2018, appellant was approved for an unpaid medical leave of absence from December 18, 2017, through March 20, 2018. Exhibit "A" to Grier Cert.

Part of the medical leave, from December 18, 2017, through March 9, 2018, was covered under the Family Medical Leave Act (FMLA"). The remainder of the medical leave, from March 12, 2018, through March 20, 2018, was not covered as appellant had exhausted the maximum allotment of FMLA days within a one-year period. The February 16, 2018, correspondence advised appellant that he was expected to return to work March 21, 2018.

Thereafter, appellant requested an extension of his unpaid medical leave of absence and was approved from March 21, 2018, through May 30, 2018. Exhibit "B" to Grier Cert.

Appellant requested a second extension of his medical leave and was approved from June 1, 2018, through July 9, 2018. Exhibit "C" to Grier Cert.

Appellant requested a third extension of his medical leave and was approved from July 10, 2018, through September 6, 2018. Exhibit "D" to Grier Cert.

Appellant requested a fourth extension of his medical leave and was approved from September 7, 2018, through October 21, 2018. Exhibit "E" to Grier Cert.

Appellant requested a fifth extension of his medical leave and was approved from October 22, 2018, through December 9, 2018. Exhibit "F" to Grier Cert. Appellant's return to work date was December 10, 2018.

On or about December 7, 2018, appellant submitted an additional certification from his physician seeking a sixth extension of medical leave indicating that appellant was incapacitated through January 7, 2019. Exhibit "G" to Grier Cert.

The County provides its employees with a maximum approval period of one year for medical leaves of absences. It is the County's practice that when an employee reaches his one-year maximum approval period, he is required to submit a note from his physician clearing him to return to work.

Additionally, the employee may be sent for a Functional Capacity Evaluation ("FCE") for a second opinion to ensure he is able to return to work without restrictions.

The County uses Kinematic Consultants to perform its FCEs. On or about December 8, 2018, Kinematic Consultants advised Kya Grier, that in order for appellant to take the FCE, he would need a note from his physician clearing him to return to work.

On or about January 7, 2019, Kya Grier spoke with appellant and advised him that his medical leave had reached the one-year maximum and that he would need to be cleared by his physician to return to work and take an FCE.

On or about January 9, 2019, appellant was sent correspondence confirming that as of December 18, 2018, his medical leave of absence had reached its one-year maximum approval period. Exhibit "H" to Grier Cert. The correspondence further advised that the County was unable to extend his leave of absence beyond the December 18, 2018, date. Appellant was advised to contact the Office of Personnel to schedule a return to work physical. Finally, the letter advised that if appellant's doctor found him medically unfit to perform his job duties, his employment with the County would be subject to termination.

On January 10, 2019, appellant produced another physician certification indicating that he remained incapacitated and was unable to return to work until February 18, 2019. Exhibit "I" attached to Grier Cert.

Thereafter, appellant was issued a PNDA seeking his removal due to inability to perform job duties. Exhibit "J" to Grier Cert. Appellant requested a departmental hearing which was held on February 27, 2019. Following the departmental hearing, the County issued a FNDA removing appellant from employment. Exhibit "K" to Grier Cert.

### LEGAL ANALYSIS AND CONCLUSIONS

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact, which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Id. These provisions mirror the summary judgment language of R 4:46-2 (c) of the New Jersey Court Rules. The motion judge must "consider whether competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Insurance Company of American, 142 N.J. 520, 523 (1995). The essential question is "whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one sided that one party must prevail as a matter of law." Id. at 533.

Respondent argues there is no genuine issue of material fact in dispute. Following an initial grant of a medical leave of absence and multiple requests for extension, appellant was notified that he was due back to work on December 10, 2018. In January 2019, the County notified appellant verbally and by way of a January 9, 2019, letter that he had reached the one-year maximum medical leave approval period and that he needed to be cleared by his physician to return to work and submit to a work physical. Thereafter, appellant submitted an additional request for an extension of his medical leave until February 18, 2019. Without the required medical clearance, appellant was unable to perform his duties as a laborer. Thus, removal based on appellant's inability to perform his job duties was proper. As a result, respondent requests that the charges be

upheld and the penalty of removal be affirmed. In the alternative, respondent requests that the penalty be modified to a resignation in good standing.

Appellant, in his one-page letter brief in opposition to the motion, argues that he was cleared by his physician to return to work as of February 18, 2019. Appellant acknowledges that his medical clearance was not provided until after his departmental disciplinary hearing, but argues that because the clearance was provided during the current appeal process, it should be considered in deciding this motion. Appellant further argues that he has documented he is currently able to perform his job duties and that the penalty of removal is not appropriate.

In its reply letter brief, respondent argues that although appellant was eventually cleared to return to work, he was not cleared within one year of his leave of absence. In support of its position, respondent cites to In the Matter of Kamal Abdelall, Bayonne Housing Authority, 2012 N.J. CSC Lexis 517, OAL Docket No 12994-11. In that matter, appellant Abdelall was deemed medically unfit and had permanent restrictions which prevented him from performing his job duties as a laborer. The Bayonne Housing Authority sought to remove Abdelall from employment based on inability to perform duties. Eighteen days after his effective removal date, Abdelall produced medical documentation clearing him to return to work without restrictions. Thereafter, he was removed from his position based on charges of inability to perform duties. The Civil Service Commission upheld the Initial Decision which concluded that "the matter in issue is the medical fitness of the appellant as of the date of removal by respondent and not as of some late date." The Initial Decision noted that the effective date of Abdelall's removal occurred prior to the examination and medical clearance by his physician. Consequently, the charges were sustained. However, as Abdelall's inability to perform his job duties was based upon medical unfitness, rather than wrongdoing as in a traditional disciplinary matter, the penalty of removal was modified to a resignation in good standing.

Here, as in Kamal Adbelall matter, the issue is appellant's medical fitness as of the date of his removal, rather than some later date. As of December 18, 2018, the date of appellant's removal, he had not been medically cleared to return to work. Appellant's argument that he was later cleared for return to work as of February 2019 is unpersuasive.



As an initial matter, and aside from the fact that appellant's opposition is unsupported by required affidavit, caselaw or any other legal support, his argument ignores the fact that his medical clearance was not provided by the effective date of his removal (December 18, 2018). Moreover, despite any medical clearance as of February 18, 2019, appellant's physician thereafter submitted an additional letter stating that appellant was unable to return to work until March 1, 2019, --approximately three months after the date of his removal.

Accordingly, having considered the parties' submissions and the evidence in the record, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence, the charge of inability to perform duties. I further **CONCLUDE** that respondent is entitled to summary decision. However, as appellant's inability to perform his job duties was based on medical unfitness, rather than wrongdoing, I **CONCLUDE** that the penalty of removal should be modified to a resignation in good standing.

### **ORDER**

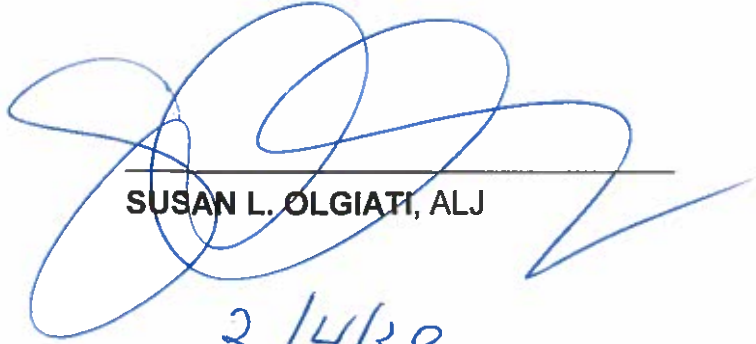
I hereby **ORDER** that respondent's motion for summary decision is **GRANTED**. I also **ORDER** that the charge of inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a) is **SUSTAINED**. Finally, based on the foregoing, I **ORDER** that the penalty of removal is **MODIFIED** to a resignation in good standing.

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.

February 4, 2020  
DATE



\_\_\_\_\_  
**SUSAN L. OLGATI, ALJ**

Date Received at Agency:

2/4/20

Date Mailed to Parties:

2/5/2020

SLO/vj

**APPENDIX**  
**Documents Relied Upon**

**For respondent:**

Letter brief in support of motion for summary decision, October 4, 2019, and accompanying Certification of Kya Grier with exhibits A-K

Reply letter brief, November 7, 2019

**For appellant:**

Letter Brief in opposition to respondents' motion for summary decision, October 23, 2019