



STATE OF NEW JERSEY

In the Matter of Wayne Green
New Jersey Veterans Memorial
Home, Vineland, Department of
Military and Veterans Affairs

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2020-2445
OAL DKT. NO. CSV 04758-20

ISSUED: DECEMBER 1, 2021 BW

The appeal of Wayne Green, Residential Services Worker, New Jersey Veterans Memorial Home, Vineland, Department of Military and Veterans Affairs, removal effective January 6, 2020, on charges, was heard by Administrative Law Judge William T. Cooper, who rendered his initial decision on November 5, 2021. 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, and having made an independent evaluation of the record, including a thorough review of the submissions of the parties, the Civil Service Commission, at its meeting of December 1, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ'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 Wayne Green.

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
THE 1ST DAY OF DECEMBER, 2021

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris 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 04758-20

CSC DKT. NO. 2020-2445

**IN THE MATTER OF WAYNE GREEN,
NEW JERSEY VETERANS MEMORIAL
HOME, VINELAND, DEPARTMENT OF
MILITARY AND VETERAN AFFAIRS.**

Arnold S. Cohen, Esq., for appellant

**Kendall J. Collins, Deputy Attorney General, for respondent, (Andrew J. Bruck,
Acting Attorney General of New Jersey, attorney)**

BEFORE WILLIAM T. COOPER, III, ALJ:

Record Closed: October 15, 2021

Decided: November 5, 2021

STATEMENT OF THE CASE

Appellant, Wayne Green appeals his February 27, 2020, termination by the Department of Military and Veterans Affairs Home of Vineland ("DMAVA") for charges stemming from the alleged theft of "monies" from two residents' rooms at the NJ Veteran's Memorial Home ("Memorial Home") on December 26, 2019.

PROCEDURAL HISTORY

On January 6, 2020, DMAVA issued a Preliminary Notice of Disciplinary Action ("PNDA") to the appellant, alleging that he had stolen money from resident R.S.'s room. (R2). On that same date, an Amended PNDA was issued, reflecting an additional incident involving resident J.D. of the Memorial Home. (R3).

The appellant requested a departmental hearing on these charges which was held on February 12, 2020. All the charges were sustained, and a Final Notice of Disciplinary Action (FNDA) was issued to Green on February 27, 2020, removing him from employment effective January 6, 2020. (R1).

Appellant appealed the FNDA, and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on May 20, 2021. N.J.S.A. 52:14 B-1 to-15; N.J.S.A. 52:14 F-1 to-13.

ALJ John Kennedy conducted a one-day hearing on June 9, 2021. Thereafter, he was appointed to the Superior Court of New Jersey and was unavailable to render an initial decision.

The matter was conferenced on September 24, 2020, before ALAJ Edward Delanoy at which time the parties agreed to the matter being reassigned to render an initial decision utilizing the audio recording of the hearing, written transcript, and exhibits placed into evidence. The parties were directed to furnish closing statements no later than October 15, 2021. The record was closed on that date.

FACTUAL DISCUSSION

For respondent:

R.S.

R.S., a resident at the Memorial Home testified that he has a three-drawer chest on the side of his bed which he kept valuables in the top drawer, namely a flashlight, necessary equipment, and his money. On December 26, 2019, he had \$80.00 cash in a money clip attached to an envelope in the drawer.

R.S. left his room at approximately 11:15 A.M. on that date to spend time with his family. As R.S. was leaving his room, he saw the "cleaning guy" was at the door and he told him he could go in. R.S. and his family members went to the conference room to talk and then to lunch. He estimated that he was out of his room for approximately two hours.

When R.S. returned to his room, he did not notice anything amiss right away. However, when R.S. went to give his son the \$80.00 he noticed that the top drawer of the chest was open. R.S. looked in the top drawer and noticed that his money and the envelope were missing. The money clip was still there and nothing else had been disturbed. R.S.'s son, who was with him at the time reported the money missing to the head nurse at the nurse's station. R.S. later gave a statement regarding the incident to, Amanda Nagle, a Licensed Social Worker. (R-5).

R.S. did not know whether his roommate had entered the room between the time R.S. left for lunch and when he returned.

J.D.

J.D. testified he has been a resident at the Memorial Home for approximately five years. On December 26, 2019, he had two checks in two Christmas cards in a chest of drawers next to his bed. J.D. placed one of the envelopes containing the card with a check on top of the chest of drawers because he planned to give it to one of his sons, who was expected to visit that day. J.D. left his room to go to breakfast on that morning and afterward, he played poker; he was gone from around 9:00 A.M. to 11:00 A.M. When he went back to his room, either after playing poker or after lunch, the envelope with the card and a check in the amount of \$150.00 were missing. When J.D. opened his drawer the next morning, on December 27, 2019, the card and check for \$150.00 were back in

the drawer, but the envelope in which they had been placed was still missing. J.D. reported the incident to Memorial Home staff and gave a statement. (R-26).

J.D. testified that the two cards and checks were given to him by his daughter on Christmas Day (the day before the incident) to give to his sons. He placed the checks in the second drawer in the chest of drawers. J.D. also testified that he had cash in his room, which was in the safe.

J.D. testified that the check that was gone had been made out to his son and not to "cash."

Cindy Kruse

Cindy Kruse testified that she works for the Memorial Home through a contracted agency. Her present title is Nurse Investigator. She has been employed in this capacity since 2018. Ms. Kruse was previously employed by the State of New Jersey, Department of Program Accountability, OPI, operations and accountability, as an Investigator. In that position, Ms. Kruse received training in how to conduct investigations and write investigatory reports. In her capacity as an Investigator for the Memorial Home, she receives incident reports daily, including those involving theft or loss and she prepares investigative reports for administration.

Ms. Kruse investigated after she became aware of an incident involving resident R.S. that occurred on December 26, 2019, where money was gone missing from his room. She spoke to staff and obtained written statements from those employees who were working on that date. She also contacted the Vineland Police Department. Ms. Kruse was also made aware of the incident involving J.D.'s missing card and check and she investigated that incident as well. J.D.'s room is located directly across the hall from R.S.'s room.

As part of her investigation, Ms. Kruse reviewed eight (8) hours of surveillance footage with respect to the timeframes that the money and check went missing from both resident rooms, from 7:00 A.M. until 3:00 P.M. She noted that when R.S. left his room at

11:15:51 A.M., the appellant was standing in the hallway with his housekeeping cart. After R.S. left the area, the appellant positioned the cart in front of the door to R.S.'s room. The witness found the placement of the cleaning cart in this fashion as odd as she has never seen housekeepers do this before. Appellant then exited and re-entered the room several times.

Ms. Kruse testified that the video depicts the hallway on which residents R.S. and J.D. live. According to her R.S. roommate left the room at 7:15 am for breakfast and did not return to the room during the video. Kruse testified that the only person other than R.S. to enter his room during the entire eight hours of video that she reviewed was appellant.

Ms. Kruse then testified that J.D. left his room at 9:30 A.M. for breakfast and that at 10:09 A.M., a nurse entered the room and came right back out pushing J.D.'s wife (in a wheelchair), who lives with him in the facility. Ms. Kruse stated that appellant entered J.D.'s room on several different occasions during the relevant time-period when the card and check went missing from J.D.'s room. The witness testified that, other than J.D., the only other persons who entered his room during the applicable window of time were one nurse who came to get J.D.'s wife and J.D.'s family members.

Ms. Kruse said that she believed that residents R.S. and J.D. were credible because their reports and statements in terms of what had occurred were consistent. Conversely, she did not believe appellant because he claimed that he had mopped the floor in R.S.'s room on the date in question but the video surveillance showed that he had not.

Ms. Kruse noted that appellant left work around 3:00 P.M. so she did not review any video beyond that time. She also testified that Green was off the next day and the day after that he was placed off duty.

For appellant:

Wayne Green

Wayne Green testified that he had been a Residential Service Worker at the Memorial Home since 2018. His primary duties included cleaning, mopping and sanitizing residents' rooms. Appellant admitted that he was working on December 26, 2019, and that he went in and out of the residents R.S. and J.D.'s rooms on multiple occasions on that date as part of his normal duties. He stated that he placed the housecleaning cart in front of residents' doors so they could not enter their rooms while it was being cleaned. He further testified that he was not sure whether he had mopped the floor of either residents' rooms on the date in question, even though he had provided written statements on December 26, 2019 (R-8) and on January 3, 2020 (R-9) in which he stated that he "swept and mopped" both rooms.

Appellant denied taking anything from either residents' rooms.

FINDINGS

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. 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 witnesses' story in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

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).

As to the credibility of respondents' witnesses, I accept the testimony of both R.S. and J.D. as credible. These witnesses easily recounted their activities on December 26, 2019. The surveillance video confirms their versions. I also accept Ms. Kruse as credible. Her investigation of the thefts was thorough, as it involved the review of eight hours of surveillance video as well as the interviews of numerous witnesses.

Appellant confirmed his duties were to clean and sanitize the resident's rooms. He stated that he placed the cleaning cart in front of residents' doors so they could not enter their rooms while it was being cleaned. Upon viewing the surveillance video, it appears that this maneuver was impractical since by placing the cart in this fashion the appellant would have to reach over the top of the cart to access the broom or mop which were located at either end of the cart. Also, it would be impossible to obtain anything on the outward side of the cart without having to relocate it

The credibility of the appellant was further impacted negatively by his written statements made on December 26, 2019 (the date the first theft was reported) and again on January 3, 2020. Appellant stated that he had no knowledge as to the missing monies and that he only entered the rooms to perform his duties. Those duties included sanitizing or mopping the rooms. When the theft from R.S. was reported on December 26, 2019, all staff members on duty were requested to provide written statements. (See R-8, R-10 to R-17). The appellant stated that he had "swept and mopped the resident's room". (R-8). After J.D. reported the theft from his room appellant was again requested to provide a second written statement. On January 3, 2020, appellant again wrote that he had "swept and mopped both rooms". The surveillance video reveals that both statements are false, as appellant did not bring the mop or bucket into the rooms. The video reveals that petitioner did not mop the floors as he stated.

The appellants testimony concerning the events of December 26, 2019, was less than credible.

Based upon the testimony of the witnesses, and documentary evidence, I **FIND:**

1. Appellant was employed as a Residential Services Worker at the Memorial Home from 2018 until his removal in February 2020.
2. Appellant was working from 6:30 A.M. to 3:00 P.M. on December 26, 2019, when the thefts occurred.
3. R.S. was a resident of the Veterans Memorial Home who reported cash in the amount of \$80 went missing from his room on December 26, 2019.
4. J.D. was a resident was a resident at the Veterans Memorial Home who reported check in a card inside an envelope went missing from his room on December 27, 2019.
5. J.D. and R.S. are in rooms that are in the same hall and directly across from each other. The Petitioner was assigned to clean and sanitize both resident's rooms on December 26, 2019.
6. On December 26, 2019, R.S. exited his room at 11:15 A.M.; at that time the appellant was in the hallway. He immediately entered the room and positioned his cart in front of the door. At 11:19, appellant exited the room. At 11:23 he went back in and came out at 11:25.
7. At 12:56 P.M., R.S. returned to his room. (T 46, 17-24). When R.S. went to give his son the \$80.00, he noticed that the top drawer of his chest of drawers was open. When he looked in the drawer, he noticed that his money and the envelope were missing. The money clip was still there and nothing else had been disturbed.
8. On December 26, 2019, J.D. had two envelopes with Christmas cards in them and in each card was a check for \$150.00 to each of his sons. He placed one of the envelopes on top of a chest in his room because he planned to give it to that son when he came to visit later that day. J.D. left his room around 9:00 A.M. and returned at approximately 11:00 A.M. and he saw that the card with the money in it was missing. (T 29-17 to 30-3).
9. J.D. discovered the card and check in the drawer on December 27, 2019, and it was no longer in the envelope. (T 39, 12-15).
10. The video showed that the appellant was in both rooms at and around the time the monies went missing and while the residents were not present. The surveillance video does not show any anyone else entering the rooms at the time that the monies went missing.

LEGAL ANALYSIS

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 through 2-20; N.J.A.C. 4A:2-2.2, through 2.3. Major discipline includes removal, or fine, or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, failure, or inability to perform duties, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3.

The appointing authority has the burden of establishing the truth of the allegations by a 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). 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); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v Ford Motor Co, 36 N.J. 487 (1962).

Here, the DMAVA has charged the appellant is charged with conduct unbecoming a public employee 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), specifically; the Falsification: Intentional misstatement of material fact in connection with work, employment, application, attendance, or in any record, report, investigation, or other proceedings; the Actual or attempted theft of State property or equipment or the property of other employees, residents, clients, or patients.

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 (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 upon the violation of the implicit standard of good behavior of that 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)).

Here, \$80 in cash was taken from R.S. room and an envelope with a Christmas card containing a check was taken from J.D.’s room. during the morning hours of December 26, 2019. The appellant was assigned to service both rooms which are located across the hall from each other. Security video from the hallway on that date showed that the appellant was the only person to enter the rooms at the time the money and check were taken. The appellant denied taken any items from the rooms, however, when he provided a written statement on December 26, 2019, detailing his activities on that date, he falsified his statement by claiming he mopped the floors of the rooms. The video showed that he did not mop the rooms and that the mop and bucket were never removed from the housecleaning cart. He repeated the same false claim that he had mopped the floors of the rooms in his second statement. I have not accepted his denial of the theft as credible given that he made these false statements.

The credible evidence in this case shows that the appellant was the only person who had an opportunity to remove the \$80 cash from R.S. 's room and the check from J.D.’s room. While no one saw the thefts taking place, the credible circumstantial evidence leads to the reasonable conclusion that appellant removed these items from the rooms. The room residents were credible in describing how the money and check were left in the rooms on the date in question; the appellant was the only one seen entering the rooms where the money was located during the applicable period of time; the appellant claimed he had mopped the floors in the rooms when he had not; the video confirmed that he was the only one who had access to the money.

Applying the law to the facts, I **CONCLUDE** that the DMAVA has sustained, by a preponderance of the credible evidence, the charge of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), specifically by committing the theft of personal items from residents rooms and the charge of other sufficient cause, in violation

of N.J.A.C. 4A:2-2.3(a)(12) specifically by providing a false statement in connection with the investigation of the thefts.

PENALTY

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v Bock, 38 N.J. 500 (1962). However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v Rahway State, 81 N.J. 571 (1980). Progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v Bordentown 191 N.J. 474,484 (2007). Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid.

The charges of conduct unbecoming public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), specifically by committing the theft of personal items from resident's rooms and the charge of other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12) specifically by providing a false statement in connection with the investigation of the thefts, having been proven, a determination must be made as to the appropriate penalty.

Here, the appellant had been employed as a residential service worker since 2018. In mitigation his only discipline was a prior written warning on September 25, 2019, for "Absent from work as scheduled without written permission and without giving proper notice." (R-35).

The aggravating factors are significant: the appellant's behavior involved the theft of \$80 cash from the room of resident R.S. and the attempted theft of a check from the room of resident J.D. on Dec. 26, 2019; providing false written statements of his activities on Dec 26, 2019, and on January 2, 2020. Such conduct is egregious and requires the appropriate penalty of removal of the appellant from his position as a residential services worker.

ORDER

I **ORDER** that the charges of conduct unbecoming a public employee, 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), are sustained, and that the action of the DMAVA removing the appellant from his position as a residential services worker is hereby **AFFIRMED**. The Appeal is **DISMISSED**.

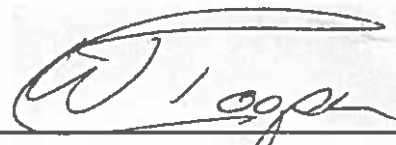
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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. 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.

November 5, 2021

DATE



WILLIAM T. COOPER, III, ALJ

Date Received at Agency:

November 5, 2021

Date E-Mailed to Parties:

November 5, 2021

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APPENDIX

Witnesses

For Appellant:

Wayne Green

For Respondent:

R.S.

J.D.

Cindy Kruse

Exhibits

- R-1 Final Notice of Disciplinary Action (2/27/2020)
- R-2 Preliminary Notice of Disciplinary Action (1/6/2020)
- R-3 Amended Preliminary Notice of Disciplinary Action (1/6/2020)
- R-4 Notice of Informal Pretermination Hearing
- R-5 Resident Statement (12/26/2019)
- R-6 Individual Statement Form of Jennifer Hayes (12/26/2019)
- R-7 Grievance Form (12/26/2019)
- R-8 Individual Statement Form of Wayne Green (12/26/2019)
- R-9 Individual Statement Form of Wayne Green (1/02/2020)
- R-10 Individual Statement Form of Crystal Brown (12/26/2019)
- R-11 Individual Statement Form of Toshma Allen (12/26/2019)
- R-12 Individual Statement Form of Kimberly Robbins-McClinton (12/26/2019)
- R-13 Individual Statement Form of Suheily Matas (12/26/2019)
- R-14 Individual Statement Form of Elba Hamen (12/26/2019)
- R-15 Individual Statement Form of Cynthia L. Nelson (12/26/2019)
- R-16 Individual Statement Form of Amanda Naegele (12/26/2019)

- R-17 Individual Statement Form of C.L. Wise (12/26/2019)
 - R-18 Facility Reporting Incident (1/9/2020)
 - R-19 Handwritten Report (12/26/2019)
 - R-20 Handwritten Surveillance Review (12/26/2019)
 - R-21 Reportable Event Record/Report (12/27/2019)
 - R-22 Vineland Police Report
 - R-23 E-Mail to Keith Chance from Cindy Kruse dated 12/31/2019
 - R-24 E-Mail to Keith Chance from Cindy Kruse dated 1/2/2020
 - R-25 Inter Office Memo from Cindy Kruse to Carmen Jackson
 - R-26 Resident Statement dated 12/27/2019
 - R-27 Individual Statement Form of Nicole Granatos (12/27/2019)
 - R-28 Individual Statement Form of Cindy Kruse (12/27/2019)
 - R-29 Individual Statement Form of Amanda Naegele (1/10/2020)
 - R-30 Statement from Richard Hughes (1/15/2020)
 - R-31 Employee Code of Conduct signed by Wayne Green (7/30/2019)
 - R-32 Job Specification for Residential Worker
 - R-33 Learning Transcript for Wayne Green
 - R-34 Letter dated 5/10/2018 from Susan Bell
 - R-35 Vineland Memorial Home Employee Disciplinary Action Report (1/12/2021)
 - R-36 Video Evidence
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- J-1 Stipulated Facts dated June 7, 2021
 - J-2 Transcript of Proceedings June 9, 2021