

A-2



STATE OF NEW JERSEY

In the Matter of Abiola Aridegbe
Middlesex County Board of Social
Services

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

CSC DKT. NO. 2013-2355
OAL DKT. NO. CSV 4323-13

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ISSUED: MARCH 4, 2015 BW

The appeal of Abiola Aridegbe, Human Services Specialist 2, Middlesex County Board of Social Services, 30 working day suspension, on charges, was heard by Administrative Law Judge Robert Bingham II, who rendered his initial decision on January 20, 2015. 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, at its meeting on March 4, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

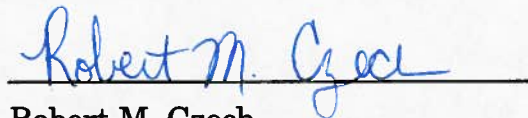
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Abiola Aridegbe.

Re: Abiola Aridegbe

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
MARCH 4, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
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 4323-13

AGENCY DKT. NO. 2013 2355

**IN THE MATTER OF ABIOLA ARIDEGBE,
MIDDLESEX COUNTY BOARD OF
SOCIAL SERVICES.**

Alberto Hernandez, President, CWA, AFL-CIO CLC Local 1082, for appellant
pursuant to N.J.A.C. 1:1-5.4(a)(6)

Robin McMahon, Esq., for respondent (Cleary, Giocobbe, Alfieri, Jacobs, LLC,
attorneys)

Record Closed: September 3, 2014

Decided: January 20, 2015

BEFORE ROBERT BINGHAM II, ALJ:

STATEMENT OF THE CASE

Appellant Abiola Aridegbe, a human services specialist 2 (HSS 2) at Middlesex County Board of Social Services (the Board), appeals a thirty-day suspension on charges of incompetency, inefficiency, and failure to perform duties; neglect of duty; conduct unbecoming an employee; and other sufficient cause, all based upon allegations that she failed to properly evaluate and process work, impairing the agency's ability to provide proper and accurate benefits to its clients.

PROCEDURAL HISTORY

Aridegbe was served with an Amended Preliminary Notice of Disciplinary Action (PNDA) dated February 22, 2013, issuing the above charges. On March 4, 2013, following a departmental hearing, a Final Notice of Disciplinary Action (FNDA) sustained the charges and imposed a thirty-day suspension. Aridegbe appealed and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on March 28, 2014, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 to -13 and N.J.S.A. 52:14B-1 to -15. The hearing was held on September 3, 2014, and the record closed at the conclusion of the proceedings. Extensions were granted until January 19, 2015, for issuance of this decision.¹

FACTUAL DISCUSSION

Many of the material facts are undisputed. Accordingly, I **FIND** as **FACT** the following:

By way of background, on March 13, 2011, appellant completed an initial three-month working test period (WTP) for the title of human services specialist 1 (HSS 1) at the Board (R-1), and on September 10, 2012, she began a three-month WTP for the title of HSS 2, working in the Supplemental Nutrition Assistance Program ("SNAP" or food stamp) unit. In the latter title, under the supervision of a designated supervisor, she was responsible for the collection, recording, analysis, and evaluation of data to determine applicants'/clients' eligibility for services. (R-3.)² An initial WTP performance

¹ January 19, 2015, falls on a holiday. Therefore, this decision is hereby issued on the next business day, January 20, 2015.

² The definition of the title in the pertinent civil service job specification (R-3) also indicates: "analyzes information on forms, applications and other financial assistance documents for completeness and accuracy; negotiates with absent parent to arrange a voluntary consent support agreement; conducts initial assessment of applicants [sic] employability and makes appropriate referrals; provides information to families and individuals to achieve self-sufficiency through employment opportunities and/or child support services; duties performed involves [sic] more discretion and independent judgment than those performed by the human services specialist 1; does other related work." (R-3.)

evaluation for her HSS 2 title, signed October 25, 2012, indicates satisfactory performance in nine of twelve areas evaluated,³ and marginal performance in the other three: (1) quantity of work (productivity), (2) initiative and creativity (adaptability), and (3) organization. In pertinent part, the evaluation summarized:

Abiola needs to maintain organizational skills and prioritize work so that clients receive their benefits timely. Overdues need to be avoided.

Goals for Abiola would be to have control over her pending list and use it to determine which cases need to be processed first and which cases will be coming overdue. . . . She also must increase her production to acceptable processing standards.

[R-9.]

The evaluation also included a handwritten addendum, "Abiola began training 9/24 3x a wk for 2 hrs. Please take this into account for her stats." (R-9.)

A second-month WTP performance evaluation signed November 28, 2012, for HSS 2 indicates an identical performance in the same twelve areas evaluated, and summarized in pertinent part:

Abiola needs to be more accepting of direction and guidance to ensure that her work is done timely and accurately. I reiterate the same goals as in the first working test period to include[:] organizational skills[:] keeping cases numerically in file cabinet drawers that are either pending or ready to go. Additionally, having the ability to maintain and utilize an accurate pending list to determine and prioritize which cases should be processed. Also, after some experience, Abiola is expected to increase her production rate.

Abiola was advised in writing and is expected to maintain an organized pattern of work to consist of:

³ Those areas were: quality of work; knowledge of job; response to supervision; cooperation with others (communication); attendance and reliability/adherence to personnel policies; and judgment.

1. Maintaining an accurate, up to date pending list and using it daily to prioritize her work schedule for the day and which cases need to be processed first[;]
2. Keeping her cases in her 2 drawer file cabinet, and changes on the change shelf[;]
3. Working on one case at a time on her desk[;]
4. Reviewing her pending list against her actual cases once a week to be sure the database has all her cases entered[;]
5. Returning phone calls daily.

[R-11.]

An annual performance evaluation, for the period of January 1 through December 31, 2012, signed December 13, 2012, indicates an identical performance in the same twelve areas evaluated, except appellant received a satisfactory rather than marginal rating in the area of organization. In pertinent part, the summary stated:

Abiola processed 2772 cases from January through October averaging 13.86 day. Abiola's production is less than the expected agency standard. Abiola was processing IRF's but recently transitioned to changes and some New, R/O and Recertifications. She is learning how to process these types of cases and the regulations that apply. Since I started this position in July and after working with Abiola, I have noticed changes for the better. She is working on her organizational skills and keeping her cases numerically in a two drawer cabinet. In addition, she has begun to use her pending list as instructed to prioritize her work.

Abiola will seek counsel from the specialist or supervisor when she is unsure how to proceed with a case.

Abiola's goals include:

1. Abiola needs to increase her production rate in order to process her caseload timely and meet agency goals.

2. Abiola needs to continue to use her pending list to prioritize, maintain her pending list by checking it weekly for accuracy.
3. Abiola needs to accept guidance and direction in order to succeed.
4. Abiola needs to review regulations to become proficient in her position.

[R-8.]

All of the evaluations were completed and signed by appellant's supervisor, Sara Eisner. The recommended action for the annual evaluation was "Grant Merit." Appellant thus achieved permanent civil-service status as an HSS 2 in or about December 2012.

During the last week in December 2012, appellant was on approved leave from work. In her absence, supervisor Eisner and another employee reviewed her work, and Eisner concluded that appellant's work was deficient. On the basis of Eisner's conclusions and remedial actions that she deemed necessary, she prepared a summary report for disciplinary action dated January 22, 2013, outlining the subject charges, and served it on appellant on February 4, 2013. (R-5.) Appellant was served with an Amended Preliminary Notice of Disciplinary Action (PNDA) dated February 22, 2013, issuing the above charges. On March 4, 2013, following a departmental hearing, a Final Notice of Disciplinary Action (FNDA) sustained the charges and imposed a thirty-day suspension. The parties stipulate that appellant has no prior disciplinary history.

I so **FIND** the above uncontested **FACTS**.

Testimony

Sara Eisner, a retired supervisor/HSS 4 who had worked at the Board since 1978, testified that in December 2012 she was responsible for work assignments, training and evaluations in the SNAP unit and supervised ten Board employees, including appellant. Eisner would assign cases and a "pending list" was maintained to

track cases assigned and completed. It was essential to keep the pending list updated and accurate. Eisner signed appellant's performance evaluations and developed their goals, which included regularly using the pending list to prioritize and maintaining it for accuracy.

On or about November 8, 2012, Eisner found twelve cases that were not in the access database, which would, for instance, track cases that appellant had on or around her desk. Eisner wrote an undated letter to appellant (R-10) indicating what she had found and outlining specific directions for managing cases from the pending list, keeping track of cases, accounting for processed cases daily, and noting and returning calls.⁴ The purpose of the letter was to ensure that appellant would maintain organization and get work done properly. Eisner had attempted to assist appellant during the second part of her WTP because, in Eisner's judgment, her organizational skills were marginal or, in other words, needed improvement.

Eisner explained the basis for the charges against appellant as follows. On December 24, 2012, the Board's computers were down and appellant was on vacation. Board worker Orianna Huertas volunteered to help with work at appellant's station. According to Eisner, Huertas found folders, marked in appellant's handwriting, containing: a substantial amount of mail, some of it from 2011; original letters to clients, including ten-day letters,⁵ that were never mailed; and electronic benefit transfer (EBT) cards that had been returned from the clerical unit and needed adjustment.⁶ Consequently, Eisner had to pull, catalog, and take action on each case. Based upon what had been discovered, appellant's work was not in compliance with State SNAP requirements for timeliness, something that Eisner had strived to have the unit maintain.

⁴ The pending list was supposed to be constantly updated and was typically kept in front of the employee, who was stationed in a cubicle with a two-drawer file cabinet. Cases were supposed to be maintained in the file cabinet in numerical order. Cases in the drawer should correspond to cases on the pending list. Notably, Eisner's office with windows was positioned catty-corner to appellant's work area.

⁵ Ten-day letters were significant because they notified clients of information and/or documents that were needed (within ten days) to complete the processing of their cases.

⁶ The EBT cards control clients' receipt of food stamps. They were returned by "clerical" because either the name was wrong or they had to be fixed.

As a result, some clients were not issued benefits, or not issued them timely, causing the need for the Board to then restore benefits. And there were cases of required recoupments, or clients' payback for unentitled benefits, resulting from work unattended relative to other documents that had been found.

Appellant's evaluations had been completed prior to this discovery. Eisner prepared a "typical" summary report that summarized what had occurred, for disciplinary purposes. In part, the summary report indicates that "[a] total of \$2,382 in SNAP benefits were issued to date" due to appellant's ignoring clients' mail, and "[a] total of \$5,947 in Food Stamp benefits improperly issued has to be recouped due to [appellant's] error in failing to review and process the documentation submitted by clients." (R-5.) Eisner had a good working relationship with appellant, who never alerted her to any problems. Eisner wanted her unit to succeed and had previously advised appellant, like everyone in her unit, to tell her if she (appellant) needed assistance.

On cross-examination, Eisner admitted that her department had three different administrators in less than three months, and also that all food stamp workers had access to input on the pending list. However, as to the possibility of other workers tampering with appellant's work, Eisner subsequently explained that the folders (with backlog documents) bore appellant's name and handwriting, and were in her possession. What's more, each employee is responsible for his or her station and work, and for maintaining control even if another employee covers temporarily.

Admittedly, appellant was retained permanently following her WTP. Eisner did not recommend disciplinary action during the WTP, as no discipline would have applied because at that juncture the employee would either "be retained" or "not be retained." According to Eisner, other employees, including another African-American employee, received discipline similar to appellant's (for like infractions). In other words, appellant was not discriminated against with regard to the discipline imposed.

Orianna Huertas, currently an HSS 3 at the Board, was on duty as an HSS 2 on December 24, 2012, when computers were down and she offered to help her

supervisor, Eisner. Appellant was on leave and Huertas assisted by clearing her area; as a more senior HSS 2, she would typically help with "overwhelming" caseloads in the unit. There were a couple of cases and "a lot of paperwork" on appellant's desk. At that time, Huertas found in appellant's area folders containing ten-day letters not mailed, EBT's not returned to clerical, and notification letters not mailed.

Huertas created a twenty-four-page catalog⁷ outlining the documents found, as well as the case status and remedial action that she took after processing each matter. (R-6.) Some of the noted deficiencies generally included: (1) inaction in cases where the benefit allotment should have been recalculated, resulting in a withholding of credit or benefits in some cases and overpayment in others, (2) inaction in cases where a client responded to a ten-day letter, (3) the pending list was not adequately maintained, and information was not entered into the database, and (4) client documentation, such as a photocopy rather than an original birth certificate, was not properly maintained. Huertas documented thirty-six cases in all, though twenty-five admittedly were designated "N/A," or not applicable, regarding "benefits issued by auditors."

It was not unusual for one employee to access another employee's file cabinet if need be. However, in "Sara's" unit, it (potential abuse) was under control.⁸ According to Huertas, no one tampered with appellant's work in order to subject her to disciplinary charges.

Joseph Jennings, chief of personnel and labor relations at the Board,⁹ testified that he prepared the PNDA (R-4) that was served on appellant by his supervisor. He also prepared the FNDA (R-12) and served it on appellant, along with Eisner's summary report (R-5) and Huertas' catalog (R-6). The fiscal department prepared an "Hours

⁷ Pages 18 through 24 are blank due to the reproduction process.

⁸ According to Huertas, employees were on a first-name basis with Eisner.

⁹ Jennings testified that he previously served as the Board's employee relations officer, Board member overseeing operations, budget and personnel for the Board, and assistant commissioner of the Department of Labor.

History Analysis Report" (timekeeping report) (R-7) that indicates dates and times that appellant worked between September 3 and December 31, 2012. It reflects that appellant was absent from work on December 24, 2012.

As chief of personnel, Jennings would be aware of any grievance filed by appellant alleging racial motive for the Board's disciplinary action but, to his knowledge, there was none. And since December 2012, four or five other employees also received what he believed to be thirty-day suspensions as discipline for similar backlog issues. On cross-examination, Jennings testified that promotions from HSS 1 to HSS 2 were not automatic, but rather based on performance assessment. Appellant, who would have gone through at least six working test periods and an annual evaluation, had never been denied a merit increment, as far as he knew. And, to his knowledge, she had never failed a 30-, 60-, or 90-day evaluation. Also, the decision from the departmental hearing was issued verbally rather than issued directly to appellant. Though he knows of corrective actions having been done generally, Jennings could not say to what extent they were done in the SNAP unit.

Appellant **Abiola Aridegbe** testified that she has been employed with the Board since December 2010 and had seven evaluations through December 2012. She was provisionally promoted to her current position as HSS 2 in December 2011. She has never been denied a 30-, 60-, or 90-day evaluation or an annual merit increment, including since December 2012. She further testified that on December 24, 2012, she was on approved vacation. She is not sure whether she received a summary from the director regarding her departmental hearing on February 28, 2013,¹⁰ and denied any prior knowledge of the documents alleged in Huertas' catalog (R-6).

¹⁰ Aridegbe explained that after receiving Eisner's summary report (R-5) she had an initial hearing where she was represented by a Ms. Smith, and then the subsequent (February 28) departmental hearing where she was represented by Mr. Hernandez.

Summary of Testimony

The trier of fact must weigh the credibility of the witnesses in a matter such as this in order to make factual findings concerning the disputed facts. Credibility, or value accorded a witness's testimony, contemplates an overall assessment of a witness's story 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). The term has been defined as testimony which must proceed from the mouth of a credible witness and must be such as our common experience, knowledge and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955). 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). Testimony, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

Each of the Board's witnesses appeared candid and forthright, and each offered consistent and credible testimony. Appellant's testimony was quite limited and, despite a degree of self-interest, it was credible with regard to her employment history.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I also **FIND as FACT:**

1. Proper execution of job responsibilities as an HSS 2 in the Board's SNAP unit required: systematic organization of the assigned caseload; the maintenance of a current and accurate "pending list"; keeping track of cases assigned and completed; timely processing documents for SNAP eligibility and benefit determinations and issuance of benefits; and noting and returning calls.

2. Though she was never denied a merit increment on the basis of any WTP or annual evaluation, appellant struggled with organizational skills, which were marginal, as well as properly maintaining files and a current pending list.

3. On or about November 8, 2012, Eisner found twelve cases that were not in the access database as they should have been, and issued written instruction to appellant specifying directions for managing cases from the pending list, to ensure that appellant would maintain organization and get work done properly.

4. It appeared that appellant was making progress. However, on December 24, 2012, when appellant was on approved leave, Huertas was authorized by supervisor Eisner to assist in clearing appellant's area. At that time, Huertas discovered in appellant's work area several folders containing letters, including ten-day/notification letters, that had not been mailed to clients, as well as EBT's not returned to clerical.

5. Huertas cataloged the documents found, the status of the related cases, and remedial action taken after processing each matter. Noted deficiencies generally included: (1) inaction in cases where the benefit allotment should have been recalculated, resulting in a withholding of credit or benefits in some cases and overpayment in others, (2) inaction in cases where a client responded to a ten-day letter, (3) the pending list was not adequately maintained, and information was not entered into the database, (4) client documentation, such as a photocopy rather than an original birth certificate, was not properly maintained. Huertas documented a total of thirty-six cases, though twenty-five were designated "N/A," or not applicable, regarding "benefits issued by auditors." In all, \$2,382 in SNAP benefits were issued, through January 22, 2013, due to appellant's ignoring clients' mail, and a total of \$5,947 in Food Stamp benefits improperly issued had to be recouped due to her error in failing to review and process the documentation submitted by Board clients.

6. By virtue of the above deficiencies, appellant failed to adequately perform her job and properly execute her job responsibilities.
7. On the same basis, she omitted the performance of acts required by her title, or at the very least was negligent in their discharge, such as the proper collection, recording, analysis, and evaluation of data to determine applicants'/clients' eligibility for services and/or continuation of benefits.
8. The same deficiencies adversely affected the efficiency of the Board, as they required other staff to marshal and catalog affected cases and take remedial action, including issuance of benefits overdue and recoupment for over-issued benefits.
9. There is no evidence that anyone tampered with appellant's work in order to subject her to disciplinary charges, or that discipline was imposed on the basis of her being a member of a protected class.
10. Corrective rather than disciplinary action was utilized at the Board, but it is unclear to what extent such action was used in similar cases or to what degree it was used in the SNAP unit. However, other similar cases have resulted in like discipline, though the individual particulars factoring into such discipline in those cases are unknown.

LEGAL ANALYSIS AND CONCLUSIONS

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6, including failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming an employee, N.J.A.C. 4A:2-2.3(a)(6); neglect of duty, N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12). On appeal from the imposition of such discipline, the appointing authority has the burden of proving justification for the action, N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a), and the employee's guilt by a preponderance of the competent,

credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). Preponderance may be described as the greater weight of the credible evidence. State v. Lewis, 67 N.J. 47 (1975).

The charge of incompetency, inefficiency or failure to perform duties applies to instances involving a lack of execution of job responsibilities and inadequate job performance. Klusaritz v. Cape May Cnty., 387 N.J. Super. 305 (App. Div. 2006), certif. denied, 191 N.J. 318 (2007). "Neglect of duty" has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

The charge of conduct unbecoming an employee includes actions that adversely affect the efficiency of a governmental unit. Karins v. City of Atl. City, 152 N.J. 532 (1998). No violation of a specific rule or regulation is required for a finding of such conduct. Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992); see In re Tanelli, 194 N.J. Super. 492 (App. Div.), certif. denied, 99 N.J. 181 (1984) (a teacher who repeatedly telephoned another for the purpose of annoying or molesting was found guilty of unbecoming conduct); In re Cowan, 224 N.J. Super. 737 (App. Div. 1988) (a teacher who over a period of ten years committed various acts of verbal and physical abuse of his students was found guilty of unbecoming conduct). Unbecoming conduct may include behavior that is improper under the circumstances; it may be less serious than a violation of the law, but it is inappropriate on the part of a public employee because it is disruptive of governmental operations.

The general causes for discipline set forth in N.J.A.C. 4A:2-2.3(a) include the present offense of other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12). Other sufficient cause may include, for instance, violation of a particular agency policy or procedure.

Here, appellant was responsible for systematic organization and maintenance of an assigned caseload, and timely processing of documents for determinations of SNAP eligibility and issuance of benefits. She failed to adequately maintain files, documentation, and updated case information, and to properly process numerous assigned cases in a timely fashion in and around December 2012. Consequently, the Board was required to take remedial action, including the issuance of benefits overdue and recoupment for over-issued benefits.

Therefore, I **CONCLUDE** that respondent has proved by a preponderance of the credible evidence that appellant committed: unbecoming conduct; incompetency, inefficiency or failure to perform duties; and neglect of duty. I further **CONCLUDE**, however, that respondent has not proved by a preponderance of the credible evidence conduct constituting other sufficient cause, as it has not identified any particular official policy or procedure that was violated by appellant's conduct.

Penalty

With regard to penalty, consideration must be given to the concept of progressive discipline, which takes into account prior disciplinary history. West 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 Prison, 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). As the Supreme Court held in In re Herrmann, 192 N.J. 19, 33 (2007):

[P]rogressive 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.

Appellant became employed at the Board as an HSS 1 in December 2010. She never failed a WTP and she gradually progressed to HSS 2. During that process, she had been advised and directed to cure specific deficiencies in her performance on multiple occasions over a period of time. However, as stipulated by the parties, she has no prior disciplinary record. Though progressive discipline is not automatic when, as here, the matter involves unbecoming conduct, the following is considered.

In this matter, the aggravating factors include consideration of the deprivation and potential deprivation to the Board's public clients, and to the Board, who owes a duty to the public, by appellant's omissions. Another aggravating factor is the adverse impact on Board operations occasioned by the need to allocate time and resources and take remedial measures. Yet another aggravating factor is the nature of the offenses that, though discovered in a short span of time, obviously transpired over a longer period of time. Also, appellant had been advised of both her deficiencies and the availability of assistance if needed, which she never requested.

Mitigating factors include consideration of the fact that no harm was contemplated by the appellant, as her overall conduct was that of omission. Yet another mitigating factor is the fact that appellant has no disciplinary history.

Thus, on balance, I find that the discipline imposed in this matter is appropriate. Therefore, I **CONCLUDE** that the sanction imposed by the Board is reasonable and should be sustained.

ORDER


Accordingly, I **ORDER** that the thirty-day suspension imposed by the respondent is hereby **SUSTAINED**.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

January 20, 2015
DATE


ROBERT BINGHAM II, ALJ

Date Received at Agency:

Jan 20, 2015

Date Mailed to Parties:

Jan 20, 2015

/bdt

APPENDIX

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 CAMPS New Hire Transaction form
- R-2 CAMPS Disciplinary Action form
- R-3 Job Specification for Human Services Specialist 2
- R-4 Preliminary Notice of Disciplinary Action, dated February 22, 2013
- R-5 Summary Report for Disciplinary Action, dated February 4, 2013
- R-6 Huertas' catalog, "Research related to Found Work—Abiola Aridegbe"
- R-7 Hours History Analysis Report covering the time period from September 3, 2012, to December 31, 2012, for appellant
- R-8 (Employee) Performance Evaluation covering the time period from January 1, 2012, to December 31, 2012, signed by employee and supervisor, December 13, 2012
- R-9 (Employee) Performance Evaluation, Working Test Period 1, signed by employee, October 25, 2012, and supervisor, October 9, 2012
- R-10 Undated memo to "Abiola"
- R-11 Working Test Period Report, Second Month, signed by employee, November 28, 2012, and supervisor, November 9, 2012
- R-12 Final Notice of Disciplinary Action, dated March 4, 2013

WITNESSES

For Appellant:

Abiola Aridegbe

For Respondent:

Sara Eisner

Orianna Huertas

Joseph Jennings