



STATE OF NEW JERSEY

In the Matter of Jeanette Simmons	:	
Essex County, Department of Citizen	:	FINAL ADMINISTRATIVE ACTION
Services	:	OF THE
	:	CIVIL SERVICE COMMISSION
	:	
CSC DKT. NO. 2015-3240	:	
OAL DKT. NO. CSV 11276-15	:	
	:	
	:	
	:	
	:	

ISSUED: NOVEMBER 15, 2016 BW

The appeal of Jeanette Simmons, Family Service Worker, Essex County, Department of Citizen Services, removal effective May 29, 2015, on charges, was heard by Administrative Law Judge Michael Antoniewicz, who rendered his initial decision on August 22, 2016. 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 Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on November 10, 2016, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

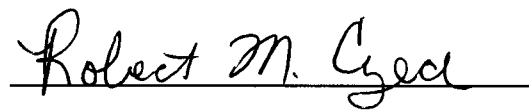
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Jeanette Simmons.

Re: Jeanette Simmons

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
NOVEMBER 10, 2016

A handwritten signature in cursive script that reads "Robert M. Czech". The signature is written in black ink and is positioned above a solid horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Assistant Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 11276-15

AGENCY DKT. NO. 2015-3240

**IN THE MATTER OF JEANETTE SIMMONS,
ESSEX COUNTY DEPARTMENT OF
CITIZEN SERVICES.**

Colin M. Lynch, Esq., for appellant Jeanette Simmons (Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys)

Kecia M. Clarke, Assistant County Counsel, for respondent Essex County
(Courtney M. Gaccione, County Counsel)

Record Closed: July 7, 2016

Decided: August 22, 2016

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Department of Citizen Services, Essex County (the County), seeks to remove Family Service Worker Jeanette Simmons (Simmons). The County alleges that Simmons neglected and did not perform her duties; was insubordinate; failed to follow County policies and procedures; and engaged in conduct unbecoming a public employee when she was assigned two slips and was asked to service clients.

Simmons told her supervisor to assign it to someone else, she used vulgar language, entered into arguments with co-workers, was unprofessional, failed to follow directions and complete her work assignments in a timely manner. Also at issue is the appropriate penalty.

The County issued an Amended Preliminary Notice of Disciplinary Action (PNDA) on March 30, 2015. Simmons appealed to the Civil Service Commission on June 10, 2015, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on July 24, 2015. An Amended Final Notice of Disciplinary Action (FNDA) was issued on January 20, 2016. (R-1.) Following the adjournment of the hearing, a hearing was conducted on June 8, 2016, and July 7, 2016. No post-hearing submissions were filed and the record was closed on July 7, 2016.

THE SPECIFICATIONS

The County's charges all arise from the following factual allegations:

The employee, a Family Service Worker, with the Department of Citizen Services has a history of insubordination, inappropriate and unprofessional behavior and conduct unbecoming a public employee. This employee has been disciplined for these types of infractions. Specifically, this employee has exhibited insubordination, unprofessional behavior, mistreatment of clients and co-workers, neglect of duty and conduct unbecoming a public employee.

On December 26, 2014, Ms. Simmons was assigned two slips and was asked to service the clients by her supervisor Anita Thomas. She informed supervisor to "assign it to someone else." Ms. Simmons used vulgar language and stated she wasn't going to see the client. She became so agitated and was asked to remove herself from her supervisor's area. She then said, "look little girl" and at that time was asked again to leave the area. A co-worker stepped in and directed her out of the area and at that time she informed her co-worker to get off of her. Several attempts were made by co-workers to diffuse the situation but Ms. Simmons continued with her behavior and wanted to

argue. Her behavior was very unprofessional and cannot be tolerated in the workplace.

On January 28, 2015, approximately 10:45 a.m., Ms. Simmons informed a supervisor that she was taking her break and heading to Dunkin Donuts, Simmons did not return until 11:21 a.m. When told that her cases need to be completed by day's end, she left the cubicle area again for some time socializing with other. On same date, she did not complete her workload and blatantly refused to work on a matter assigned to her.

On January 29, 2015, upon checking the cases that Ms. Simmons submitted, there were four unprocessed cases from the day before which were reassigned to her along with her daily assignment. Approximately 9:15, a supervisor went into Ms. Simmons cubicle to speak with her regarding the uncompleted cases and other submitted cases that had errors. She stated, "I don't want to deal with you today, get out of my cubicle." In an attempt to compromise, her supervisor asked her if she wanted to set up an alternative time. She stated, "No! Just get out of my cubicle," then she stomped off. Later, a memo was issued to her, at which time she threatened her supervisor by stating "You will make me lose my job, if you come into my cubicle one more time." She did not attend the meeting in violation of a superior's request. In an attempt to resolve the issue, she was reminded about the meeting, she began to raise her voice claiming that I am harassing her and stomped off.

Ms. Simmons ignored cases that required immediate attention. In addition, the cases that were assigned to Ms. Simmons on January 29, 2015 were incomplete and had to be reassigned to another worker. Ms. Simmons negative attitude, insubordination and unprofessional behavior make it difficult to conduct a meeting, difficult to run a department and difficult to manage her behavior.

On January 30, 2015 the following was written in a request for discipline by Family Service Supervisor Lillian Iheme-Duru:

"There has been several incidents which Ms. Simmons' attitude and behavior towards work is unprofessional as well as her attitude towards me being demeaning. I have tried patiently to work with her without success. She is insubordinate, does not follow directives and confrontational especially when given a directive."

On January 30, 2015, six Medicaid applications cases were completed wrong because of her failure to use the appropriate tools and maps.

On January 31, 2015, employee only completed 16 out of the 30 IRF's that were assigned to her. In addition, upon receipt of a written memo from Lillian Iheme-Duru, FSS, detailing the requirements and due date, employee threw the cases to the floor then proceeded to broadcast that I am "picking" on her and "harassing" her. Between the week of November 17, 2014 – employee received a memo from Lillian Iheme-Duru, regarding "occasions of being disrespectful, belligerent, had outburst of vulgarity and continuously refused to follow a superior's directives."

Accordingly, for the abovementioned reason, this employee's insubordination arises to the level of inability to perform duties, conduct unbecoming a public employee, neglect of duty, failure to follow County Policies and Procedures. Therefore, this employee's termination is necessary to maintain the efficient operation of the Department of Citizen Services.

FACTUAL DISCUSSION AND FINDINGS OF FACT

The County of Essex operates an agency called the Department of Citizen Services whereby welfare benefits (including food stamps/SNAP) and Medicaid benefits applications are reviewed and when appropriate given out. Simmons had been employed by the County as a family service worker for over fourteen years. Beginning in 2014, Simmons failed to properly perform her job, failed to follow directives, was unprofessional, combative and disrespectful to those around her, including her supervisors.

TESTIMONY

Lillian Iheme-Duru

Lillian Iheme-Duru (Duru) was a Family Service Supervisor in the Essex County Department of Citizen Services. Duru was Simmons' supervisor for a period of time.

On January 28, 2015, Duru gave Simmons a directive to complete certain cases by the end of the day and Simmons failed to follow the directive.

Duru recalled that Simmons was going to Dunkin Donuts on her break on January 28, 2015. A standard break is fifteen minutes long. Simmons on that date had fifteen to twenty cases and was required to complete these cases. Duru advised Simmons to get these cases done. Simmons said she would, however, she did not get these cases done. Simmons did not complete four cases as she was required to do. On January 29, 2015, Simmons was assigned four additional cases. Duru went to talk to Simmons on the January 29, 2015. Simmons threatened Duru by saying, "I don't want to deal with you today, get out of my cubicle," and "You will make me lose my job, if you come into my cubicle one more time." When Duru handed the additional cases to Simmons, Simmons threw the cases on the floor in a disrespectful manner.

As a result of Simmons' behavior, Duru drafted a memo to Simmons requesting to meet with her; however, Simmons refused to meet with Duru. Duru had reviewed the cases done by Simmons and Duru discovered that Simmons has incorrectly completed several cases. Duru described that the process used by Simmons was incorrect as client information was missing. The result of such errors is the client will experience a delay in getting their benefits and cause undue strain on the clients.

Previously, a meeting with Simmons and Duru (and Tention) took place on November 13, 2014. The topic of this meeting was to discuss what Simmons will do and will not do, the fact that Simmons should be more cooperative and will not use profanity. As a result of this meeting, a memo dated November 13, 2014, was drafted and forwarded to Simmons. (R-4.) The parties agreed that Simmons would correct her behavior and she would be provided with a "fresh start."

On November 13, 2014, right after the aforementioned meeting, Simmons had a conflict with a co-worker named Johnson. During this conflict, Simmons again used vulgarity in a loud voice. The conflict was the result of a shared printer where co-worker, Johnson, picked up her printed work and accidentally picked up some of

Simmons work. Witnesses to this fight were supervisors Roberts, Thomas, and Tention. On November 17, 2014, a new memo was drafted and given to Simmons as a result of her continued poor behavior.

On January 29, 2015, there was a scheduled meeting between Duru and Simmons; however, no meeting occurred despite Simmons being served with a notice of the meeting. The topic of the meeting was the fact that Simmons' cases had to be reassigned to other workers due to her failure to complete same. (R-6.) On January 30, 2015, a memo was drafted by Duru to Carla Tention (superior supervisor) wherein there was a review of the incidents with Simmons and a recommendation of discipline against Simmons. (R-7.)

In addition, a memo dated February 2, 2015, was sent from Duru to Tention (with a copy to Dwayne Barr, AASFS) requesting a change due to a hostile work environment created by Simmons. (R-9.) Duru found Simmons to be unpredictable and Simmons was unable to take a directive. Furthermore, Duru stated that Simmons made false accusations against her and made threats to her. Duru recalled that Simmons had a prior disciplinary history.

Duru stated that she became Simmons' supervisor in 2013 and experienced trouble with Simmons soon after becoming her supervisor. A memo dated January 30, 2015 (R-8), was sent to Simmons advising her to complete her files, however, Simmons failed to complete these files, and thus the files had to be re-assigned.

On cross-examination, Duru admitted that Tention arranged and attended the November 13, 2014, meeting with Simmons. Simmons did bring up problems with Duru as her supervisor. Simmons came back to work on Monday November 17, 2014. It was Ms. Johnson who experienced the problem with Simmons regarding the printer issue. It was admitted that Johnson did not file charges against Simmons after the fight. Duru stated that she heard Simmons say to Johnson that, "You are taking my prints!" Duru also heard Johnson say that she was sorry and that she did not know because it was an accident. Duru also testified that Simmons used a vulgarity by

saying that Johnson was “taking my fu**ing paper.” Duru also recalled that Johnson did not curse in response. Duru also recalled that Simmons was advised to no longer provide intake with clients because of the problems she had with the clients.

Duru also recalled that the memo (R-5) was given to Simmons on November 17, 2014, in the morning because of the printer fight Simmons had right after the “fresh start” meeting that morning of November 13, 2014. Duru also witnessed that Simmons did not stop fighting with Johnson when she was directed by Duru to stop fighting. Duru did admit that there was no reference to the printer issue in the memo of January 30, 2015. (R-7.) However, R-7 was a request by Duru for major discipline. In the Simmons’ memo, dated November 19, 2014 (P-1), there was no printer issue reference either.

Duru further testified that on January 28, 2015, Simmons was headed to Dunkin Donuts and left work at 10:45 a.m. and she did not see Simmons again until 11:21 a.m. No one would punch out for breaks but they would punch out for lunch. Duru did recall that she looked for Simmons at this time and recorded the times on a sticky note. Duru saw Simmons at her desk at 11:21 a.m.

Duru also recalled the fact that Simmons had a problem with a closed case. This case was closed since 1999. Simmons wanted to send the case back to Intake, but that was not correct. In addition, Duru remembered that Simmons did not complete four cases on January 29, 2015. These cases also had errors and missing information.

In addition, Duru stated that Simmons did have access to the Magi for Medicaid cases but the Medicaid cases were done wrong by Simmons. Duru recalled that all employees (including Simmons) were trained on the Magi system. Duru saw the Magi system on the computer system. Duru was sure that Simmons knew how to use the Magi. Duru further stated that when she gave files to Simmons, she threw them on the floor and Simmons made a show on putting them on the floor.

On re-direct, Duru stated that Johnson was not disciplined as a result of the fight with Simmons; however, Duru did speak to Johnson. Duru remembers telling Simmons to stop the argument, but she continued. At this time Johnson simply walked away. As Johnson walked away, Simmons continued to yell. Duru also stated that Simmons disregarded the meeting memo. (R-6.) It was Duru's position that Simmons created a hostile work environment. (R-9.)

Siaeng Roberts

Siaeng Roberts (Roberts) worked for the respondent as a Family Service Supervisor. Roberts was a back-up supervisor. Her testimony was direct, consistent and compelling, which made her a very credible witness.

Roberts was familiar with the charges against Simmons. Roberts's desk was next to Simmons and, with that position, she was able to observe and be aware of Simmons' actions. Roberts was aware that there was a meeting with supervisors (not Roberts) and Simmons in January 2015.

Roberts was at her desk on the day (November 13, 2014) of the incident and heard the argument between Simmons and Johnson regarding the printer. The printer was located in Simmons' cubicle and Johnson came into the cubicle to pick up paperwork. Roberts stated that Simmons began cursing as she did not want Johnson in her cubicle. Roberts told Simmons to "calm down." Simmons continued to keep talking and cursing. Because Simmons kept ranting, Roberts believed that it was best to walk her away in order to defuse the situation.

In addition, Roberts heard the events set forth in the memo (R-1) regarding the incident which took place on January 29, 2015. Roberts interpreted Simmons comments to be a threat when Simmons stated "You will make me lose my job, if you come into my cubicle one more time" to her supervisor, Duru.

Roberts described how cases were given out in the agency. Roberts stated that there was a "Bank" and about five to seven cases would be given out to workers and a list would be typed out with these assignments. Once assigned, the supervisors would hand the files out to the workers.

Roberts was also aware of the events set forth in the memo dated February 2, 2015, (R-9) where Duru reassigned cases to Simmons for corrections. When Simmons received those reassigned cases, she threw the files on the floor. Simmons became agitated, stating loudly that Duru was picking on her. It was Roberts's opinion that Simmons was rude and that was why she could no longer meet with clients.

Roberts was also aware that in January, Simmons was unable to complete her cases. It was Roberts's belief that Simmons was unable to handle her time correctly. Simmons had time-management issues. Roberts often found that Simmons was often not at her desk and was often on break or lunch. Thus, Simmons could not finish her cases. Roberts stated that a worker should be able to finish fifteen General Assistance (GA) cases in one day. However, Roberts often flatly refused to work. Roberts spoke to Simmons about handling her cases. Roberts observed Simmons telling the supervisor no when assigned work.

Anita Thomas (Thomas) was a co-supervisor and Roberts saw the memo created by Thomas which requested discipline against Simmons. Roberts had no first-hand knowledge regarding the events in this memo; however, Roberts did recall that Simmons stopped seeing clients in 2013–2014 because there were customer complaints regarding Simmons' behavior.

On cross-examination, Roberts admitted that no reference was made regarding customer complaints in the PNDA or FNDA. Roberts stated that in early 2015, Simmons was handling mostly GA cases. In the event that a worker received too many hard cases, the procedure was to inform the worker's supervisor so adjustments could be made. It was generally felt that the GA cases were easier cases to process. In addition to GA cases, Simmons also got Medicaid cases. Roberts also confirmed that

Simmons had the Magi program on her computer. A worker would use Magi for Medicaid cases only. If Simmons did not have a password to enter Magi, she could have used a co-worker's password.

Roberts admitted that at times the agency's computer would not work. In the event that the computer system went down, the whole system would go down. Roberts also admitted that there were grievances against Duru; however, it was commonplace for supervisors to get grievances. The basis for the one grievance was based on workers not being happy for the number of cases they had to work on.

With regard to the argument between Simmons and Johnson, Roberts admitted that both workers were yelling. Roberts told Johnson to walk away, which she did and she told Simmons to walk away, but Simmons kept "fussing." Roberts had to resort to escorting Simmons from the area. Roberts recalled that Simmons was yelling very loudly.

On redirect, Roberts confirmed that if a worker fell behind, it was perfectly acceptable to have a supervisor take away some cases. This was a commonplace event. Roberts also reconfirmed that Simmons had access to the Magi program.

Anita Thomas

Anita Thomas (Thomas) is also a Family Service Supervisor at the agency. Thomas did not directly supervise Simmons. Thomas did write the memo dated December 29, 2014, with a request for disciplinary action against Simmons. (R-11.) This memo was directed to Carla Tention, who headed the agency. Thomas did recall that Simmons often became irate and vulgar. Thomas stated that she heard Simmons say, "I am not doing this shit!" Thomas often heard Simmons say inappropriate things, screaming and cursing. Thomas found Simmons to be combative and she would pick and choose what work she wanted to do. Thomas also remembered the fight between Simmons and Johnson regarding the printer. Thomas confirmed that Roberts intervened to calm the parties down.

On cross-examination, Thomas stated that after she wrote the December 29, 2014 memo to Tention, she had no idea what happened next. Thomas did not follow-up with Tention on this matter. Thomas was sure that Simmons got a copy of this memo because she gave a copy to her even though there was no courtesy copy indicated on the memo. Thomas knew that there were issues with Simmons screening clients and thus they stopped her from seeing clients. Processing workers normally see clients.

Carla Tention

Carla Tention (Tention) is the Assistant Supervisor for Family Service Workers and thus managed the overall office. Tention recalled the meeting with Duru and Simmons on November 13, 2014, with the issues being Simmons being rude and vulgar and generally acting in a manner unbecoming a public employee. Duru gave notice to Simmons to have this meeting. The end result of the meeting was giving Simmons a "fresh start" and to have an improvement in her work procedures. Tention recalled that she did most of the talking at the meeting. After the meeting, a memo (R-4) from Duru to Simmons (with a copy to Dwayne Barr, AASFS), dated November 13, 2014, set forth the expectations of Simmons regarding work performance and conduct. Tention stated that Simmons' conduct was discussed at this meeting. Simmons replied that she understood and that such events would not happen again. Despite this meeting, another event occurred literally the same day as the meeting. This event occurred between Simmons and co-worker Johnson over the use of a printer. Tention stated that Simmons was very loud in this argument. After the argument ended, Simmons' voice was the only one heard by Tention. Based on this event, Tention met with Duru and advised that something should be put in writing which resulted in the memo, dated November 17, 2014 (R-5), which is the first date Simmons returned to work after the argument with Johnson.

Tention did recall that a memo was written by Simmons to Duru, with a copy to Tention, regarding an allegation of harassment by Duru, in response to the November 17, 2014 memo. Tention did not recall getting this memo.

Tention's description of Simmons was that she did her work unless she did not agree with you, then there was a problem. When Simmons was given a directive, Simmons would often not follow the directive. Tention further described Simmons as insubordinate. Tention described Simmons interaction with the staff as being filled with vulgarity and cursing.

On cross-examination, Tention stated that the November 13, 2014, meeting took place because of Duru's complaint. This complaint centered on Simmons' cursing, belittling, and being vulgar. Duru also felt that when Simmons got a directive, she would not follow that directive. Tention also recalled that Simmons came to her about Duru. At the meeting, general harassment between the parties was not discussed. The main focus of the meeting was use of proper language by Simmons and insubordination by Simmons (not following directives).

After Tention got the memo, dated December 29, 2014, from Thomas, she did not recall what action, if any, was taken. Tention did recall asking Simmons for her version of the events, but does not recall what Simmons' version was. Tention did recall that there was an investigation of the events, but could not recall who was interviewed, but believed it was Thomas and Simmons. Tention does not recall what happened after the investigation. Tention stated that a PNDA, dated March 30, 2015, was served on Simmons and that Simmons continued to work after the memo from Tention to Lucia Guarini, Deputy Director, dated February 2, 2015, was sent requesting Major discipline against Simmons.

Jeanette Simmons

Jeanette Simmons (Simmons) was an employee for the agency for fourteen years. She worked as a family service worker for eight years (2006-2015). Her duties

included interviewing clients in order to assist those clients to get benefits and then process those cases. The benefits processed were food stamps, cash welfare benefits, and Medicaid. To process those cases, she would get information in the computer. Simmons' supervisor would review her work.

Simmons would get her cases from the "bank" and would process about fifteen cases a day. In the event that she did IRF cases, she would do up to thirty cases a day. In November 2014, Simmons started doing mainly IRF cases. Simmons stated that she could get GA and IRF cases together.

Simmons also testified that she had no major discipline on her record but she did go through the disciplinary process. Simmons did see the memo, dated November 13, 2014. (R-4.) The memo set forth Duru's expectations of her. Simmons said she did not know what happened to cause this memo. Simmons did recall that there was a meeting on this date with her, Tention, and Duru. It was Simmons' testimony that she called for this meeting. Simmons described Duru's actions as standing over Simmons and being rude and belligerent. Based on this behavior, Simmons went to Tention to complain about Duru's behavior. Tention would say, "I am sorry about that." In the meeting, Duru did not say anything about Simmons' behavior.

On November 17, 2014, Duru wrote a memo regarding her behavior. Simmons, after getting this memo, went to Tention and showed her the memo. Simmons made similar complaints about Duru. In response, Simmons drafted a response to Duru complaining about Duru's behavior. (P-1.)

Simmons also described the printer incident with co-worker Johnson, but stated that it did not occur in November 2014. Simmons stated that Johnson took her documents out of the printer; that this occurred so often; and that it was ridiculous. This would cause Simmons to have to re-print her documents. The printer was on Simmons' side of the cubicle and Johnson was two cubicles away. Johnson would come into her cubicle and pick up her prints and Simmons' prints.

Simmons testified that as a result of the above, she unclicked the extension cord out of the printer in order to cause it not to function. Simmons explained that she wanted to show Johnson what it felt like not to be able to get her prints. When Johnson showed up at her cubicle, Simmons lied to Johnson about the non-functioning printer. Simmons admitted that the policy was for her and Johnson to share the printer. Simmons further testified that Johnson returned and cursed at her. Simmons denied that she stomped out of the cubicle. In addition, Simmons denied that Roberts walked her out of the cubicle. Simmons also denied that R-5 was the result of the Johnson incident because it did not occur around that time frame.

Simmons did not receive any discipline notices in November or December 2014 or January 2015. It was Simmons' position that she did not do anything to warrant discipline. Simmons identified R-1 as an Amended FNDA. Simmons admitted that there may have been an incident on December 26, 2014, regarding Thomas, but she recalled that the computer system was down. When Thomas gave her a second case, Simmons asked if it could be re-assigned. Simmons described Thomas as running at her. A Ms. Green got in between Thomas and Simmons. Simmons described this event as no big deal and the day went on.

Simmons denied cursing at anyone at work and did not use any vulgarity while at work. Simmons did say to Thomas, "look little girl." When Thomas asked her to leave, Simmons left the area. Simmons did get the memo dated January 30, 2015, to Tention which was a request for discipline. Simmons stated that she was never called into a meeting regarding her interaction with Thomas. In addition, Tention never spoke to Simmons regarding the Thomas issue.

With regard to the January 28, 2015 issue with going to Dunkin Donuts, Simmons stated that she usually does not do this. Simmons says that she does not punch a clock for breaks. Simmons says she normally does not take a break. Simmons described her work activities, coming into work and does her job and does not talk to co-workers. Simmons did recall asking Duru for help on a case; because it was the first time she was asked to process an old case. Simmons found that the case was

not in the system. Duru went into the system in order to check, but Duru refused to help Simmons. Accordingly, Simmons went to Barr to get help. Simmons stated that there was no disagreement with Duru on this case. The only result was a waste of time because she had to explain the problem to Barr all over again. Simmons denied that she suggested that the client go to Intake, because she would never do such a thing.

Simmons did recall that she was reassigned four unprocessed cases and there were errors on those cases. Simmons testified that she did not make too many errors, but if she did they would be assigned back to her. Simmons did not recall seeing Duru about these cases. Simmons also did not recall Duru asking for a meeting because there was no need for a meeting and no need to discuss anything. Simmons further denied saying, "You will make me lose my job." Simmons did not make any threat.

Simmons denied ever getting memo dated January 30, 2015, requesting major discipline. Simmons denied that there was a meeting and that there was an investigation. Simmons also denied ever getting memo dated January 29, 2015, regarding a meeting and a list of certain cases. Simmons stated that she never saw these pages. Simmons was unaware of any requested meeting. Simmons stated that she did not remember if some cases were not completed, but that "it may have been."

Simmons also testified that she did not have the Magi tool. Certain co-workers had the Magi tool and she would ask those workers to handle her Medicaid cases. Simmons did not recall if there were any Magi passwords. With reference to the memo dated February 2, 2015, regarding Simmons throwing files on the ground, Simmons testified that she had no interaction with Duru on that date. Simmons did not see this memo, but it has false statements in it. Simmons did state that she was in a small cubicle and thus was required to keep files on the floor. Simmons stated that she "dropped" them on the floor. Simmons stated that she did not get her R-9 memo. Simmons stated that Duru walked into her cubicle and gave her a "threatening" stare. Simmons described Duru as being a poor manager. Accordingly to Simmons, Duru had a bad attitude and was not a good person.

On cross-examination, Simmons admitted that she was not permitted to see clients and was assigned to processing cases. Simmons admitted that workers generally saw clients, but a supervisor put Simmons on GA cases. Simmons continued to maintain that she was not rude or disrespectful.

Simmons did admit that she received memo dated November 13, 2014, from Duru. (R-4.) Simmons did admit on cross-examination that she did receive a written reprimand dated August 23, 2014, and a Notice of Minor Discipline dated April 25, 2006. (R-14; R-15.) Simmons denied that there was any settlement of the charges. In addition, there was a written reprimand received by Simmons for poor work performance, but Simmons says they were withdrawn. Simmons also said that she had no idea why she got the November 17, 2014, memo. (R-5.) It was Simmons' testimony that the printer incident happened in February/March 2015.

Simmons stated that she requested the November 13, 2014, meeting with Tention and not Duru. Simmons incredibly testified that she believed that unplugging the printer was "professional behavior." Simmons described Johnson as ranting and raving. It was Simmons' testimony that her supervisors were lying and that she did not yell or scream at work. With reference to the allegations contained in the memo, dated December 29, 2014, Simmons denied being vulgar or rude and that she simply asked Thomas to reassign the matter to someone else. Simmons stated that she did not refuse to see the client. Simmons stated that she never displayed disrespectful behavior. Simmons said she never exhibited unprofessional behavior. Simmons further denies the allegation contained in the memo of January 30, 2015. (R-7.) Simmons did state that she "may" have stomped off. Simmons stated that she was forced to go to Barr for help, because Duru would not help her. Simmons maintained that she did not have the Magi system and never had the Magi system. The cases listed on the memo dated January 30, 2015 (R-8) were completed by "another worker." There was no delay in issuing benefits as they were issued the next day.

Simmons further denied receiving the meeting notice (even though her name appeared on the memo) of January 29, 2015, and that was why she did not appear at

the meeting. Simmons also testified that the allegations on page two of the memo, dated January 30, 2015, (R-7) were generally not true. In the end, Simmons stated that Duru had “something against her.”

On redirect examination, Simmons stated that the written reprimand contained in Exhibit R-17, was withdrawn at the hearing that followed the receipt of the written reprimand.

CREDIBILITY

After hearing all of the testimony, it is clear that Simmons’ testimony lacked credibility. I can only describe her testimony as disjointed, inconsistent, and lacking a structure of truth. On many points, Simmons simply denied the events, which were otherwise supported by documents and other credible testimony.

Our courts have held that “credibility findings . . . are often influenced by matters such as observations of the character and demeanor of witnesses . . . that are not transmitted by the record.” State v. Lourito, 157 N.J. 463, 474 (1998). A credibility determination requires an overall assessment of the witness’ story in light of its rationality, internal consistency and the manner in which it “hangs together” with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Simmons was a witness whose testimony was based mainly on denials of previous testimony, even when the answer to the question was simple, noncontroversial and obvious. Furthermore, her demeanor diminished her believability to a great extent.

Moreover, Simmons’ narrative did not hold together. For example, her meeting with Tention and Duru was confirmed in a memo from Duru (R-4) and only addresses the expectations of what the agency wanted from Simmons and nothing regarding Simmons’ concerns. In addition, Simmons testified that she had no disciplinary history and then tried to explain away the documents she was presented with which confirmed a disciplinary history. Her attorney attempted to explain that his client “was confused” as to what was the definition of discipline. Similarly, Simmons readily stated that she

kicked the electric plug to the printer out of the wall and then stated on the record that it was her belief that such behavior was professional. Such an opinion by Simmons is totally incredulous. Simmons denied actions supported by numerous witnesses and then attempt to blame others for the conflicts, unprofessionalism and shortcomings her behavior clearly exhibited. And, Simmons offered flimsy excuses for her failure to follow the directives of supervisors and of her failure to properly deal with the clients or to finish her work in a professional manner. Simmons' inability to properly deal with clients lead her to be banned from further personal contact with the clients.

Simmons' testimony was similarly devoid of any appreciation for the important work she was doing and the profound affect her work has on the clients who depend on the benefits processed by this agency. Her conflicts with her co-workers had a direct effect of slowing the agency's value to the community and passing her work on to other co-workers.

FINDINGS OF FACT

Based on the testimony presented and the documentary evidence submitted and having had an opportunity to observe the witnesses and to assess their credibility, I make the following **FINDINGS OF FACT**:

1. Simmons was employed by the Essex County Department of Citizen Services as a Family Service Worker.
2. Simmons has a history of discipline having been discipline on three prior occasions.
3. On November 13, 2014, a meeting occurred between Simmons, Duru, and Tention (who were Simmons' supervisor) in order to discuss Simmons' work habits, including her use of profanity and uncooperative behavior, and to provide her with a "fresh start."

4. On the same day as the above meeting, Simmons entered into an argument with co-worker, Johnson, about the cooperative use of the printer.
5. This argument included Simmons use of profanity and excessive yelling and also included Simmons kicking the plug out of the printer in order to teach Johnson a lesson about the use of the printer.
6. On December 26, 2014, after having been assigned certain files for processing, Simmons told her supervisor to assign the work to other co-workers.
7. Often when speaking with her supervisors and co-workers, Simmons used vulgar and unprofessional language when conversing with them.
8. On January 28, 2015, Simmons took an excessively long break and neglected the work assigned to her on that day.
9. On January 29, 2015, Simmons, when speaking with her supervisor regarding unprocessed cases which were assigned to her, used disrespectful and unprofessional language when speaking with her and made a threat to that supervisor to stay out of her cubicle.
10. On January 29, 2015, Simmons' supervisor requested to have a meeting with her and Simmons simply ignored her supervisor's request for a meeting and did not attend the scheduled meeting.
11. On January 30, 2015, Simmons improperly completed six Medicaid cases as a result of her failure to use the proper computer tools and map.
12. On January 31, 2015, Simmons received back several files because of her failure to properly complete the work on same and when the files were returned, Simmons threw the files on the floor and in a loud voice openly complained that her supervisor was picking on her and harassing her.

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

Here, the County has charged Simmons with inability to perform duties, neglect of duty, conduct unbecoming a public employee, insubordination, failure to follow County Policies and Procedures and other sufficient cause. "Neglect of duty" has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title. Ortiz v. City of Newark, CSV 12056-04, Initial Decision (February 8, 2006), modified, Merit Sys. Bd. (April 6, 2006), <<http://njlaw.rutgers.edu/collections/oal/>> (citing Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564). "Neglect of duty" includes official misconduct as well as negligence. Clyburn v. Twp. of Irvington, CSV 7597-97, Initial Decision (September 10, 2001), adopted, Merit Sys. Bd. (December 27, 2001), <<http://njlaw.rutgers.edu/collections/oal/>>. Inefficiency has been defined as the failure of an employee to adhere to proper procedures. See Okosa v. Union County Human Servs., CSV 5279-99, Initial Decision (July 20, 2000), modified, Merit Sys. Bd. (September 15, 2000), <<http://njlaw.rutgers.edu/collections/oal/>>.

I **CONCLUDE** that the County has met its burden of proving its charges of insubordination, inability to perform duties, conduct unbecoming a public employee, neglect of duty and failure to follow County Policies and Procedures against Simmons. Simmons' attempt to shift the blame for the consistent and extended history of such behavior on her assorted supervisors and co-workers is unavailing. It was her responsibility to review and understand her duties, and her requirement to professionally deal with clients, co-workers, and supervisors. Simmons clearly seems ill-equipped to be working in this field where personal skills of getting along with people (co-workers, supervisors, and clients) are so needed and valuable.

Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." I **CONCLUDE** that Simmons ignored several supervisors' explicit directions, and as a result, was insubordinate. In addition, I further **CONCLUDE** that Simmons exhibited unprofessional language (vulgarity) which was inappropriate in the workplace and by being combative with supervisors and co-workers. Such behavior by Simmons only causes inefficiency and a general less productive Agency.

PENALTY

In this de novo review of the County's disciplinary action I am required to re-evaluate the penalty on appeal. N.J.S.A. 11A:2-19; Henry, supra, 81 N.J. 571; Bock, supra, 38 N.J. 500. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522-24. Major discipline may include removal, disciplinary demotion, suspension or a fine of no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. But 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. Progressive discipline is not "a fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 531 (2007). The question to be

answered is "whether such punishment is 'so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness'" Ibid.

I must regrettably agree with the County that Simmons has demonstrated an utter lack of understanding of her role as a Family Service Worker and, as a result, removal is the appropriate penalty. I must add that the County has given Simmons numerous latitude to correct her behavior and I am astounded that on the very same day that Simmons participated in a "fresh start" meeting, she was involved in a confrontation with a co-worker over a printer and incredibly described her behavior, at the hearing, in kicking a plug out from the printer as being "professional." Simmons' testimony and demeanor at the hearing leads me to believe that, to this day, she does not entirely understand what she should have done differently during her tenure at the agency.

ORDER

Based on the foregoing, it is **ORDERED** that the charges by the County against Jeanette Simmons, and its action removing her as a Family Service Worker, are **AFFIRMED**.

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, 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.

August 22, 2016
DATE



MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency: August 22, 2016

Date Mailed to Parties: August 22, 2016
jb

APPENDIX

WITNESSES

For Appellant:

Jeanette Simmons

For Respondent:

Lillian Iheme-Duru

Siaeng Roberts

Carla Tention

Anita Thomas

EXHIBITS

For Appellant:

- P-1 Memorandum from Jeanette Simmons to Lillian Iheme-Duru dated November 19, 2014
- P-2 Final Notice of Disciplinary Action dated November 3, 2014, and Preliminary Notice of Disciplinary Action dated April 20, 2010

For Respondent:

- R-1 Amended Final Notice of Disciplinary Action dated January 20, 2016, and Amended Preliminary Notice of Disciplinary Action dated March 30, 2015
- R-2 Memorandum from Carla Tention to Lucia Guarini dated February 2, 2015
- R-3 Not in Evidence
- R-4 Memo from Lillian Iheme-Duru to Jeanette Simmons dated November 13, 2014
- R-5 Memo from Lillian Iheme-Duru to Jeanette Simmons dated November 17, 2014
- R-6 Memo from Lillian Iheme-Duru to Jeanette Simmons dated January 29, 2015
- R-7 Memo from Lillian Iheme-Duru to Carla Tention dated January 30, 2015
- R-8 Memo from Lillian Iheme-Duru to Jeanette Simmons dated January 30, 2015

- R-9 Memo from Lillian Iheme-Duru to Carla Tention dated February 2, 2015
- R-10 Not in Evidence
- R-11 Memorandum from Anita Thomas to Carla Tention dated December 29, 2014
- R-12 Not in Evidence
- R-13 Not in Evidence
- R-14 Written Reprimand dated August 23, 2004
- R-15 Notice of Minor Disciplinary Action with Settlement Agreement dated April 27, 2006
- R-16 Not in Evidence
- R-17 Written Reprimand dated November 4, 2009