



STATE OF NEW JERSEY

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

In the Matter of Betty Gene Johnson-Taylor

CSC Docket No. 2015-2424  
OAL Docket No. CSV 03143-15

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ISSUED: **FEB 08 2017** (SLK)

The appeal of Betty Gene Johnson-Taylor, an Assistant Personnel Director with the City of Paterson, of her removal, on charges, was heard by Administrative Law Judge Joann LaSala Candido (ALJ), who rendered her initial decision on December 14, 2016. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on January 18, 2017, accepted and adopted the Findings of Fact as detailed in the initial decision. However, the Commission did not adopt the ALJ's recommendation to modify the removal to a six-month suspension. Rather, the Commission upheld the removal.

**DISCUSSION**

The appellant was removed, effective January 16, 2015, on charges of conduct unbecoming a public employee and other sufficient cause. Specifically, the appointing authority asserted that the appellant misrepresented her income on an application for the Home Paterson Pride Program (Home Program). Upon the appellant's appeal to the Commission, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

The ALJ set forth in her initial decision that Barbara Blake-McLennon, Director of Community Development (Community Development), testified that the

appellant applied for grant money under the Home Program to help low-income residents in Paterson repair their homes. At the time of the appellant's application, her annual income was below the maximum allowable amount of \$53,750. However, just after her income was re-verified, the appellant's salary was increased to \$80,340. Blake-McLennon indicated that her loan was approved based on her initial income and the appointing authority did not re-verify her income at closing. She confirmed that the appointing authority prepared all of the loan documents.

Nellie Pou, Business Administrator, testified that the Passaic County Prosecutor's Office (Prosecutor's Office) and the Office of the Inspector General, U.S. Department of Housing and Urban Development (HUD) found no criminal intent on the part of the appellant. Pou stated that the appointing authority sought to terminate the appellant because of her position's high profile, her misrepresentation on her grant application, and the need to maintain the public trust. She reiterated that since the appellant's income exceeded the maximum allowable amount at the time of closing, the grant should not have been approved and the funds should not have been dispersed.

Domenick Stampone, Esq. testified that the Paterson Municipal Council and he (Committee) investigated certain monetary payments made to compensate elected and appointed officials for hours worked during Hurricane Irene and Tropical Storm Lee, which occurred in September 2011. The Committee found that the appellant lacked a fundamental knowledge of the department she managed, allowed overtime payments without proper documentation, allowed employees to receive overtime compensation when called into service even with the appointing authority being closed, and received inappropriate overtime payments herself. Although the appointing authority required these overtime payments to be returned, no formal or even informal disciplinary charges were ever brought against appellant.

Yvonne Scott, Senior Clerk, testified on behalf of the appellant. She indicated that she suggested to the appellant that she apply for the Home Program since she thought the appellant was eligible. Scott stated that Cheryl Brown at Community Development, who was in charge of eligibility, advised her that the appellant would still be eligible once her salary increased as she indicated that eligibility goes back to the original date of application.

Lanisha Danielle Mackle Ridley testified on behalf of the appellant. In September 2010, she was the Acting Director of Community Development. She stated that the Home Program needed re-certification at six-months intervals and she would not have signed the re-certification if appellant's income was not accurate.



The ALJ found that when the appellant submitted her application for the Home Program on December 22, 2009, she reported her income as \$52,811 which was under the maximum allowable annual income of \$53,750. In June 2010, Community Development verified that the appellant's income was below the maximum allowable amount. Thereafter, on July 13, 2010, the appellant was appointed Acting Director of Personnel and her annual salary increased to \$80,340. On December 1, 2010, the appellant signed a loan document indicating her annual salary as \$53,868.12. On December 10, 2010, a loan in the amount of \$43,141 was disbursed to the appellant based on her salary being \$53,868.12 annually. In October 2011, the appointing authority found that the appellant allowed overtime payments to be made without proper documentation and that she received improper overtime payments. The appellant was not threatened with any disciplinary action or termination, nor were charges ever filed against her. On June 14, 2012, the Paterson City Council passed a resolution to terminate her from her position as Acting Director of Personnel. However, she was returned to her permanent title, Assistant Personnel Director and was reinstated on July 23, 2012 with back pay.

The ALJ noted that the appellant signed her name to the final loan application and affidavit of income certifying that the estimated income of \$53,868.10 on her application was truthful and complete to the best of her knowledge. She did this even though she knew she was given a considerable pay raise in July 2010 and that the income stated on the closing documents, which she certified as correct, was in fact untrue. Based on the foregoing, the ALJ sustained the charge that the appellant engaged in conduct unbecoming a public employee. The ALJ indicated that since the appellant was never formally charged in regard to the allegations that she mismanaged funds in 2011, that she lacked any history of disciplinary action. The ALJ found that the appellant's offense was not so severe to warrant removal given that the appointing authority's own witnesses admitted that the appellant did not draft the loan documents herself. Additionally, the ALJ commented that the Prosecutor's Office and HUD found that the appellant did not have criminal intent and declined to bring charges. The ALJ stated that her signing a misleading loan application was action she took as a private citizen and that the appointing authority did not present sufficient evidence indicating that the appellant was unsuitable for her position. The ALJ emphasized that the appellant did not prepare the loan document and did not produce any false documents when her income was verified. Therefore, this being her first offense, under the principle of progressive discipline, the ALJ concluded that removal was not warranted. Accordingly, the ALJ recommended that the removal be modified to a six-month suspension.

In its exceptions, the appointing authority asserts that the ALJ ignored the appellant's misrepresentation on an affidavit and received \$43,141 to which she was not entitled. The appointing authority disagrees with the ALJ's findings that the appellant had an unblemished disciplinary record as she had to defend herself



against the charges of misappropriation of funds in 2011 to the Committee. Further, while represented by counsel, she testified under oath to the Committee, admitting that she approved overtime payments for exempt employees, including herself. Although the Paterson City Council resolved to terminate the appellant, the Commission directed that the appellant be restored to her permanent title of Assistant Personnel Director as she was not apprised of the charges against her in compliance with Civil Service law and rule. However, it emphasizes that she was removed from Acting Personnel Director, which is tantamount to a demotion.

Additionally, the appointing authority argues that the appellant's misconduct was so severe that it warrants termination. It represents that the appellant's duties included being in charge of payroll, processing all changes for all of the appointing authority's employees, and being responsible for income verification of loan applications, including verification of loan applications for the same grant loan received by the appellant. Consequently, by the appellant executing documents falsely representing her income and receiving \$43,141 to which she was not entitled, she brought into question her trustworthiness, honesty and truthfulness. It states that an Assistant Personnel Director who commits fraud and submits false documents cannot present an image of personal integrity and dependability to the public. Further, it indicates that the appointing authority will need to commence legal action against the appellant since she has not repaid the improper loan.

In reply, the appellant asserts that the appointing authority did not submit any evidence concerning its compliance with or adherence to her due process rights in regard to its Committee proceedings concerning misappropriation of overtime payments. The appellant emphasizes that the Committee's disciplinary hearing did not conform to Civil Services regulations and an employee cannot be found guilty of charges without proper notice by the appointing authority. She highlights that the ALJ correctly noted that the appointing authority prepared the mortgage packet and she did not submit any false or inappropriate documentation. The appellant presents that she submitted evidence that the affidavit in question was not required for the closing and although she signed an affidavit that incorrectly stated her income, the appointing authority knowingly prepared this affidavit and backdated her income to the date of her application. The appellant contends that her loan advisor knew or should have known that the appellant's income increased because of a promotion. Further, it can be inferred that the loan advisor prepared the affidavit so that her loan could withstand a HUD audit as this is the only reasonable explanation for including and requiring unnecessary documents in the file. Consequently, as the appointing authority admitted that the appellant did not prepare the loan documents, the ALJ was correct in determining that removal was not appropriate.

Upon its *de novo* review of the record, the Commission agrees with the ALJ regarding the charges. Clearly, the appellant's misrepresentation of or her failure



to correct the income on the final loan application and affidavit of income dated December 1, 2010 was conduct unbecoming a public employee. However, as discussed further below, the Commission does not adopt the ALJ's recommendation to modify the appellant's removal to a six-month suspension.

Although the appellant argues in her exceptions that the affidavit she signed was not even required for the loan and that it was prepared by the appointing authority, she clearly attested to the fact that her projected income in 2010 was \$53,868.12, but her salary was increased to \$80,340 in July 2010. It is irrelevant that she did not prepare the affidavit or even if it was necessary to perfect the loan as she attested to the veracity of the information. Indeed, if the information was not correct, it was incumbent upon the appellant to correct this information or not sign, swearing to its truthfulness.

In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In assessing the penalty in relationship to the employee's conduct, it is important to emphasize that the nature of the offense must be balanced against mitigating circumstances, including any prior disciplinary history. 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. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007).

In the instant matter, the Commission finds that the appellant's actions were sufficiently egregious to support removal. While the ALJ relied on the fact that the appointing authority appeared to bear some responsibility since it prepared the loan documents, it is clear that the appellant knew her income exceeded the threshold for the grant. Moreover, the fact that her improper actions occurred outside of her employment and did not result in criminal charges are of no moment. In this regard, it is clear that Civil Service employees are subject to disciplinary action for improper actions both in conjunction with and outside of their employment. Moreover, criminal charges are not required to sustain administrative disciplinary charges as the standards to prove guilt are significantly different. While said factors can be used to mitigate the penalty imposed, the Commission does not find these factors persuasive in this matter. Further, a review of the Examples of Work under the Job Specification for an Assistant Personnel Director indicate that incumbents in this title assist in the handling of personnel and employee relations problems and act as a liaison between the appointing authority and the Commission

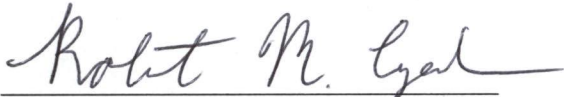
in personnel matters, including appointments, promotions, transfers, demotions, dismissals, and disciplinary matters. As such, her falsification makes it very difficult for the appointing authority to continue to trust her ability to do her job, which involves sensitive and confidential personnel matters. The Commission notes that it need not decide whether the appointing authority's Committee's findings that she had engaged in inappropriate conduct stemming from a 2011 incident constitutes discipline for the purposes of progressive discipline since her actions in this matter were clearly sufficiently egregious to support removal. Accordingly, based on the seriousness of the appellant's offense as it relates to her position, the Commission concludes that removal is the appropriate penalty.

### ORDER

The Commission finds that the appointing authority's action in removing the appellant was justified. Therefore, the Commission affirms that action and dismisses the appellant's appeal.

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 18<sup>th</sup> DAY OF JANUARY, 2017



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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 03143-15

**IN THE MATTER OF BETTY GENE  
JOHNSON-TAYLOR, CITY OF PATERSON,  
DIVISION OF BUSINESS ADMINISTRATION.**

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**Neal Brunson, Esq.,** for appellant

**Steven S. Glickman,** Assistant Corporation Counsel, for City of Paterson  
(Domenick Stampone, Corporation Counsel, attorney)

Record Closed: November 18, 2016

Decided: December 14, 2016

BEFORE **JOANN LASALA CANDIDO, ALAJ:**

**STATEMENT OF THE CASE**

This matter involves disciplinary charges filed against Betty Gene Johnson-Taylor (appellant), who was formerly employed by respondent, the City of Paterson ("City"), as an assistant personnel director. The appeal as transmitted to the Office of Administrative Law (OAL) arises from the Final Notice of Disciplinary Action, dated January 16, 2015. On November 3, 2014, appellant was issued a 31-A Preliminary Notice of Disciplinary Action charging her with violations of N.J.A.C. 4A:2-2.3(a)(6) and (12), conduct unbecoming a public employee and other sufficient cause, for misrepresenting her income on an application for the Home Paterson Pride

Rehabilitation Program ("HOME"), which resulted in the appellant's removal from employment effective January 16, 2015.

### **PROCEDURAL HISTORY**

In February 2015, Johnson-Taylor appealed her removal to the New Jersey Civil Service Commission (CSC). The case was transmitted to the Office of Administrative Law on March 3, 2015, and hearing dates were held on December 7, 2015, and February 2, and July 6, 2016. After months of waiting for transcripts, the parties were finally able to submit their respective post-submission briefs on November 18, 2016, on which date the record closed.

### **Issues Presented**

1. Did appellant violate N.J.A.C. 4A:2-2.3(a)(6) and (a)(12) by misrepresenting her income on an application for the Home Paterson Pride Rehabilitation Program ("HOME")?
2. If so, is removal the appropriate penalty?

### **TESTIMONY**

The following is intended to summarize the testimony of the witnesses relevant to the issues in this matter:

#### **Barbara Blake McLennon**

Barbara Blake-McLennon, director of Community Development, testified on behalf of the City. She oversees federal grant programs. Blake-McLennon testified that on December 22, 2009, appellant applied for the Paterson Pride Rehab Program that provides low-income residents of Paterson grant monies to help repair their homes. The amount of the grant depends upon the applicant's income and household size. At



the time of the application, appellant's annual income was below the maximum allowable of \$53,750 under the HOME program. She resided with her nephew in the same household.

Blake-McLennon described, in general terms, the application process. Once an application is submitted, it remains in review status, which is done every six months and until the funds are dispersed. The application and a booklet of instruction are given to the applicant. The applicant then meets with a loan officer to ensure that taxes, utilities, and any mortgages are paid to date. If satisfactory, then an inspector schedules a visit to the home. The City is then obligated to verify the applicant's income at six-month intervals until closing, using an income-verification form filled out by the Office of Personnel when the applicant is an employee of the City. Here, the appellant met with loan officer Sheryl Brown, and provided her with the requisite proofs. The application was then submitted to the program on December 22, 2009, for consideration.

Blake-McLennon stated that appellant's salary was increased from \$52,811 to \$80,340, effective July 13, 2010. This occurred just after the June 2010 re-verification of income. On December 1, 2010, Pearl Halestock, the chief loan officer of HOME, and Lanisha Makle, its community development director, approved appellant's application according to the June income verification, which showed a monthly income of \$4,489 and annual income of \$53,868. Because the loan closed in the beginning of December 2010 rather than at the end of the month when re-verification would have been necessary, the City did not verify appellant's income at the closing. On the approval documentation, there was an incorrect entry that stated that appellant was not an employee of the City, when in fact she was. This was not corrected. On December 9, 2010, the documents were again reviewed before the loan was dispersed. Blake-McLennon confirmed on cross-examination that the City prepared and typed all of the closing documents and that it did not verify appellant's annual income, since a review would not have been needed until December 22, 2010. She also stated that it was unclear if and when the City began applying the income limit set by the United States Department of Housing and Urban Development (HUD).



Nellie Pou

The City's business administrator, Nellie Pou, testified on its behalf. She has held that position since July 1, 2014. Pou explained that a memorandum was written by Blake-McLennon on August 6, 2014, as requested by the Paterson mayor Jose Torres concerning a review of appellant's HOME application file. (P-3.) The matter was referred to the Passaic County Prosecutor's Office for its review since appellant's annual income, at closing, exceeded the allowable maximum amount. The Prosecutor's Office determined that there was no criminal intent; no charges were brought. The Office of Inspector General, U.S. Department of Housing and Urban Development, also found no criminal intent on the part of appellant. (P-4.)

Pou testified that she felt that appellant misrepresented information on her application, although she did not request an investigation. Corporation counsel reviewed Blake-McLennon's memorandum. Pou testified that appellant's income in 2009, at the time of the application, was in excess of the \$51,200 annual maximum income allowed under the program and appellant's application should have been rejected. Her annual income in 2009 was \$53,846.

Pou further stated that the affidavit of income verification for the closing of the grant is filled out by the Department of Community Development before going to the personnel director. Blake-McLennon was asked by the mayor to prepare a memorandum to address the issue concerning appellant's application, which may have had a discrepancy. The memorandum was forwarded by Blake-McLennon to City corporation counsel Domenick Stampone. Stampone forwarded the findings to the Passaic County Prosecutor's Office, who found no criminal intent on behalf of appellant. HUD simultaneously also found no criminal intent.

Pou stated that the City sought to terminate appellant from her position as acting director of personnel because of the position's high profile, her misrepresentation of income on the HOME application, and the need to maintain the public trust.



Because Taylor earned \$53,846 at the time of the application and \$80,000 at the time of closing, which was above the program's allowable limit, appellant never should have been approved for the grant, nor should funds have been dispersed. Pou asked Stampone to prepare charges for appellant's removal. Accordingly, in November 2014 a Preliminary Notice of Disciplinary Action was prepared and signed by him.

Yvonne Scott

Yvonne Scott, a senior clerk in the Registry division of the City, testified on behalf of appellant. Scott worked for appellant in the Personnel division until sometime in 2013. Scott suggested to appellant that she should apply for the HOME program because she thought appellant would be eligible. Scott asked Cheryl Brown at Community Development, who was in charge of eligibility, if appellant was approved. Scott also asked Brown in July 2010 if appellant would still be eligible once her salary increased, since appellant was promoted to personnel director. Brown said it was fine, since eligibility goes back to the original date of application.

Domenick Stampone, Esq.

Domenick Stampone, corporation counsel for the City, testified on its behalf. He stated that he was contacted by Blake-McLennon sometime during the summer of 2014 to review documentation pertaining to appellant's application for a construction loan under the HOME program.

Prior to this, during October 2011, Stampone and the Paterson Municipal Council convened a Committee of the Whole ("Committee") to investigate certain monetary payments made to compensate elected and appointed officials for hours worked during Hurricane Irene and Tropical Storm Lee, which occurred in September 2011. (R-12.) Upon its review, the Committee found that appellant lacked a fundamental knowledge of the department she managed, allowed overtime payments to be made without proper documentation, allowed employees to receive overtime compensation when called into service even when the City was closed, and received inappropriate overtime payments

herself. As a result of the Committee's findings, in December 2011 appellant was accused of receiving inappropriate overtime payments of \$11,549.12 from July 1, 2010, to June 30, 2011, and \$3,326.29 from July 1, 2011, to December 15, 2011. (R-11 at 3-4.) Although the City required that these overtime payments be returned through immediate repayment or pursuant to a reasonable payment schedule, no formal or even informal disciplinary charges were ever brought against appellant and filed with the CSC.

Lanisha Danielle Mackle Ridley

Lanisha Danielle Mackle Ridley also testified on behalf of appellant. In September 2010, Ridley was employed as acting director of the City's Department of Community Development. Ridley testified that the HOME program needed re-certification at six-month intervals, and that she never would have signed the re-certification if appellant's income was not stated correctly.

**FINDINGS OF FACT**

Based upon consideration of the testimonial and documentary evidence presented and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following pertinent **FACTS**:

1. Appellant, Johnson-Taylor, was hired by the City of Paterson, Division of Personnel, on February 9, 2004.
2. On December 22, 2009, Johnson-Taylor submitted an application for acceptance to the HOME program to secure grant funding for home rehabilitation, after her meeting with loan officer Sheryl Brown. Johnson-Taylor reported her current wages as \$52,811. If any of the information supplied was false, she agreed, as part of the application, to repay any and all of the grant funds expended.



3. Under the HOME program, determination of the amount of the grant was based upon income and household size. According to the HOME brochure issued by the Paterson Department of Community Development, at the time Johnson-Taylor filed her initial application, the income limit for a household of two to qualify for grant assistance for home repairs and maintenance was \$53,750 per year. (R-3.) However, for the same period of time, the United States Department of Housing and Urban Development, which provided grant money for the program, listed the income limit for a household of two as \$51,200. (P-3 at 2.) In 2010, the applicable HUD income limit rose to \$51,500.

4. Pursuant to federal guidelines, income level remains important from the time of the application until the disbursement of the loan and must be verified every six months.

5. In June 2010, the Department of Community Development verified at the six-month recertification Johnson-Taylor's income at \$52,811, and, applying the income limit listed in the HOME brochure, found her qualified for the HOME loan program. On July 13, 2010, Johnson-Taylor was appointed acting director of Personnel. As a result of the appointment, her annual salary increased to \$80,340. (R-5.)

6. On December 1, 2010, Johnson-Taylor signed a loan document, prepared by a secretary, which listed her monthly income as \$4,489.01, for an annual salary of \$53,868.12. (R-8.)

7. On December 1, 2010, Johnson-Taylor signed an affidavit of income prepared by the City stating that her projected income for 2010 was \$53,868.12. (R-10.) Johnson-Taylor's bi-weekly salary was listed as \$2,071.85 as a full-time employee of the City of Paterson.

8. The annual income listed on the loan document and the projected income listed in the affidavit is above the income limit for eligibility set by both the HOME

program brochure and by HUD. The income estimate also fails to reflect Johnson-Taylor's salary increase from her appointment as acting director of Personnel in July 2010.

9. A loan in the amount of \$43,141 was disbursed to Johnson-Taylor on or about December 10, 2010. (P-1; R-9.) According to the final application signed by Johnson-Taylor on December 1, 2010, and by the chief loan officer and director of Community Development also on December 10, 2010, the application was approved based on Johnson-Taylor's monthly income of \$4,489.01 (\$53,868.12 annually). (R-8.)

10. Johnson-Taylor would have qualified for the program with \$52,811 in annual income on her initial application under the income limit provided by the HOME brochure, although under the HUD limit she would have been ineligible for the program from the very beginning.

11. The matter was referred by the City to the Passaic County Prosecutor's Office, which declined to take criminal action against Johnson-Taylor. The HUD Office of Inspector General also found no criminal intent as a result of its investigation.

12. In October 2011, the Paterson Municipal Council convened a Committee of the Whole to investigate monetary payments made to compensate elected and appointed officials as a result of hours worked during Hurricane Irene and Tropical Storm Lee, which occurred in September 2011. (R-12.) The Committee found that Johnson-Taylor allowed overtime payments to be made without proper documentation and that she received inappropriate overtime payments of \$11,549.12 from July 1, 2010, to June 30, 2011, and \$3,326.29 from July 1, 2011, to December 15, 2011. (R-11 at 3-4.) During the Committee's investigation, Johnson-Taylor was not threatened with disciplinary action or termination, nor were any charges ever filed against her.



13. On June 14, 2012, the Paterson City Council passed a resolution to terminate Johnson-Taylor from her position as acting director of Personnel. (R-13.) On July 12, 2012, business administrator Charles Thomas sent a memo to the municipal council president regarding Johnson-Taylor's employment status. (R-14.) Because she was returned to her permanent civil-service title of assistant personnel director, based upon the direction of the NJ CSC, Johnson-Taylor was reinstated on July 23, 2012, with back pay. (R-15.)

14. On November 3, 2014, Johnson-Taylor was issued a 31-A Preliminary Notice of Disciplinary Action alleging conduct unbecoming a public employee and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(6) and (a)(12). (R-1.) The possible penalties cited were suspension, removal, or demotion. A 31-B Final Notice of Disciplinary Action removing Johnson-Taylor was dated January 16, 2015, and served on January 23, 2015. Johnson-Taylor was removed from employment as an assistant personnel director for the City effective January 16, 2015.

### **LEGAL DISCUSSION AND CONCLUSION**

Under N.J.A.C. 4A:2-2.3(a)(6) a public employee can be disciplined for conduct unbecoming a public employee. Whether an employee's behavior "constitutes conduct unbecoming a public employee is primarily a question of law." Karins v. Atlantic City, 152 N.J. 532, 553 (1998). Conduct unbecoming is an extremely fact-specific issue and describes any conduct that undermines public confidence in municipal employees or services. Id. at 554. The appointing authority must establish that the employee engaged in conduct unbecoming a public employee by a preponderance of the credible evidence. Washington v. City of Trenton, CSV 4211-03, Initial Decision (November 3, 2005), adopted, Merit Sys. Bd. (December 13, 2005), <<http://njlaw.rutgers.edu/collections/oal/>>.

Here, although appellant did not prepare the loan documents herself, she knew that her income had increased since her initial application in December 2009. (Tr. 1 at



74:2–8). The final loan application contained a certification regarding truth and completeness under penalty of perjury, which appellant signed and dated on December 1, 2010. (R-8.) No evidence in the OAL hearing record indicates that she was instructed by the loan brochure itself or by any individual that her income needed to be updated throughout the application process. However, appellant signed her name to the final loan application and affidavit of income certifying that the estimated income of \$53,868.10 noted on the application was truthful and complete to the best of her knowledge. She did this even though she knew she was given a considerable pay raise in July 2010 and that the income stated on the closing documents, which she certified as correct, was in fact untrue. (R-10.)

Accordingly, I **CONCLUDE** that the City has established by a preponderance of the credible evidence that appellant engaged in conduct unbecoming a public employee based on the misrepresentation of or her failure to correct the income reported on the final HOME loan application and affidavit of income dated December 1, 2010.

We next turn to the disciplinary action of removal sought by the City. Since appellant was never formally charged in regard to the allegations that came to light in 2011 of her alleged mismanagement of funds, she lacks any history of disciplinary action. The theory of progressive discipline provides that “past misconduct can be a factor in the determination of the appropriate penalty for present misconduct.” In re Herrmann, 192 N.J. 19, 29 (2007) (citing West New York v. Bock, 38 N.J. 500, 522 (1962)). An employee’s past record includes “an employee’s reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously called to the attention of and admitted by the employee.” Bock, supra, 38 N.J. at 523–24. Although disciplinary issues may be informally adjudicated, “[i]t is elementary that an employee cannot legally be tried or found guilty on charges of which he has not been given plain notice by the appointing authority,” and “[t]he *de novo* hearing on the administrative appeal is limited to the charges made below.” Id. at 522. As the court said in Orange v. DeStefano, 48 N.J. Super. 407, 419 (App. Div. 1958), “where . . . an employee entitled



to notice and hearing before discharge is tried on specified charges, but is found guilty solely of other charges never specified nor actually tried before the original hearer or on appeal to the Civil Service Commission, the matter must be reversed.” Dep’t of Law & Pub. Safety, Div. of Motor Vehicles v. Miller, 115 N.J. Super. 122, 126 (App. Div. 1971).

“[P]rinciples of progressive discipline can support the imposition of a more severe penalty for a public employee who engages in habitual misconduct.” Herrmann, supra, 192 N.J. at 30. In In re Carter, 191 N.J. 474 (2007), the Court held that “some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.” See Rawlings v. Police Dep’t of Jersey City, 133 N.J. 182, 197–98 (1993) (upholding dismissal of police officer who refused drug screening as “fairly proportionate” to offense). Thus, the question for the courts 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.’” In re Polk License Revocation, 90 N.J. 550, 578 (1982) (considering punishment in license-revocation proceeding) (quoting Pell v. Bd. of Educ., 313 N.E.2d 321, 327 (1974)).

Unlike in Carter and Rawlings, the offense appellant committed was not so severe as to warrant removal. Given that the City’s own witnesses admitted that appellant did not draft the loan documents herself, removal was disproportionate to the offense. Additionally, the Passaic County Prosecutor’s Office and the HUD Office of Inspector General found that appellant did not have criminal intent and declined to bring charges. (P-4.)

As for past misconduct, the only example provided was appellant’s receipt of alleged improper overtime compensation in 2011 as found by the Committee. (R-11.) However, appellant was not charged with any official misconduct, nor were any formal disciplinary charges ever filed. No testimony or exhibits in the record indicate that she was ever charged. The Committee should have explicitly notified appellant that it was seeking to discipline her, citing the specific reasons for imposing such disciplinary action. Nothing in the record reflected such a disciplinary hearing, nor a hearing held by the Paterson City Council to address the Committee’s findings. In such instance,



appellant would have had an opportunity to contest those charges, present witnesses in her behalf, or cross-examine the City's witnesses. However, because no hearing ever occurred, the CSC set aside the penalty of removal and reinstated appellant to her position as assistant personnel director.

Accordingly, under the standards articulated in Bock, it must be considered that appellant has an unblemished disciplinary record. Her removal from her position for signing a misleading loan application, which by the way indicated that she was a private citizen, had nothing to do with her job performance or official duties. Since there had not been a formal instance of official misconduct prior to the issue of the loan application, no habitual misconduct existed. Therefore, the concept of progressive discipline, as noted above, became applicable. This being her first offense, removal was not warranted, and I so **CONCLUDE**.

That said, a disciplinary penalty should be imposed under the facts presented here. In In re Olivo, 95 N.J.A.R.2d (CSV) 223, a construction official was ultimately given a reprimand after appealing his removal for forging the signatures of a secretary and zoning official on a zoning permit given to an applicant. Similarly, in In re Haggerty, 95 N.J.A.R.2d (CSV) 240, a probation officer was reinstated with a six-month suspension on appeal from his removal for regularly placing sports bets with an illegal bookmaking operation. The Merit System Board reduced the penalty from removal to a six-month suspension given Haggerty's exemplary record of public service for twenty-two years. "[J]udicial decisions have recognized that progressive 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." Herrmann, supra, 192 N.J. at 33. The City has not proven that appellant's conduct was so severe as to ignore the principle of progressive discipline. In the cases cited above, forgery and illegal betting were more severe offenses than appellant signing documents, prepared by someone other than herself, that misstated an income estimate. Yet in both cases cited above, a reprimand



and suspension were deemed appropriate penalties rather than removal despite the severity of those offenses.

Since appellant lacked a disciplinary history, the City offered no credible evidence that appellant's improper signature of loan documents makes her unsuitable to continue as assistant director of personnel or that her continued employment will be contrary to the public interest. In fact, competency was not mentioned at all in the preliminary or final notices of disciplinary action. The only evidence proffered was testimony from Pou stating that the position is high profile and involves public trust and a letter from the State claiming that payroll function was "extraordinarily poor." (Tr. 1 at 99:1-7; R-11 at 3.) However, Pou's statement was not sufficient to establish by a preponderance of the credible evidence that appellant was unsuitable for the position. Additionally, the county prosecutor and HUD both determined that there was no criminal intent to defraud. Appellant did not prepare the loan documents, did not fill in the income figures, and did not produce any false documents when her income was verified in December 2009 or again in June 2010. Appellant's failure to provide additional documents prior to the closing of the loan did not provide sufficient grounds for removal since the City was unable to provide any evidence that she was asked to provide such documents. Furthermore, there was no evidence offered either in the loan brochure or by way of testimony establishing that appellant should have, on her own, produced updated income documents when they had never been requested.

For the reasons stated above, the City has established by a preponderance of the credible evidence that appellant violated N.J.A.C. 4A:2-2.3(a)(6) and (a)(12) when she failed to correct her estimated income on the HOME loan application. As a result, I **CONCLUDE** that appellant is subject to discipline. Removal is not appropriate under the principle of progressive discipline or under the particular circumstances of this case. Appellant should not have signed a document that did not reflect the correct pay information, nor should the City have prepared the incorrect salary amount, or accepted the application in the first place, since her income at the onset was above the maximum allowable under the program.



Accordingly, I **CONCLUDE** that a six-month suspension without pay is the appropriate penalty in this particular case. The City justifiably charged appellant with conduct unbecoming a public employee and other sufficient cause; however, for the reasons stated above, the penalty should be modified.

**ORDER**

Based upon the foregoing, I hereby **ORDER** that the charges of conduct unbecoming a public employee and other sufficient cause are **AFFIRMED**, but that the penalty of removal is **MODIFIED** to a six-month suspension without pay.

I further **ORDER** that appellant be restored to her position at the completion of the six-month suspension, with back pay due, if any.

I further **ORDER** that appellant has a duty to mitigate damages to receive any back pay due after completion of the six-month suspension without pay. Appellant shall file a certification with the appointing authority detailing her employment, if applicable.

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.

December 14, 2016  
DATE

Joann Lasala Candido  
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

Dec. 14, 2016

Date Mailed to Parties:  
ljb

DEC 14 2016

Laura Sanders  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

**APPENDIX**

**WITNESSES**

For Appellant

For Respondent

**EXHIBITS**

For Appellant

- P-1 Memorandum to approving officers from Cheryl Brown dated November 22, 2010
- P-2 Home Paterson Pride
- P-3 Memo to Domenick to Barbara Blake-McLennon dated August 6, 2014
- P-4 Report of Investigation dated March 27, 2012
- P-5 Same as P-4
- P-6 Memorandum of Interview dated August 4, 2011

For Respondent

- R-1 Preliminary Notice of Disciplinary Action dated November 3, 2014
- R-2 Home Paterson Pride Rehabilitation Program preliminary credit application
- R-3 Department of Community Development HOME program brochure
- R-4 General Program Rules
- R-5 Nine employee names and salaries
- R-7 Home Paterson Pride checklist
- R-8 Application of Betty Taylor for Home Pride dated December 10, 2010
- R-9 Borrower Affidavit dated December 1, 2010
- R-10 Affidavit of Income dated December 1, 2010
- R-11 Letter to Mayor and City Council dated December 15, 2011



R-12 Findings and recommendations, the Committee of the Whole, dated October 11,  
2011