



STATE OF NEW JERSEY

In the Matter of Anji Albis
 Ocean County Board of Social
 Services

DECISION OF THE
 CIVIL SERVICE COMMISSION

CSV DKT. NO. 2018-1948
 OAL DKT. NO. CSV 01389-18

ISSUED: JANUARY 18, 2019 BW

The appeal of Anji Albis, Human Services Specialist 1, Ocean County Board of Social Services, removal effective December 29, 2017, on charges, was heard by Administrative Law Judge Tricia M. Caliguire, who rendered her initial decision on December 10, 2018 reversing the removal. Exceptions were 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 (Commission), at its meeting on January 16, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

Since the removal has been reversed, the appellant is entitled to mitigated back pay, benefits and seniority from December 29, 2017 to the actual date of reinstatement. *See N.J.A.C. 4A:2-2.10.*

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Public Safety*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues

concerning back pay are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to her permanent position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Anji Albis. The Commission further orders that appellant be granted back pay, benefits, and seniority from December 29, 2017 to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF JANUARY, 2019



Deirdré L. Webster Cobb
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 01389-18

AGENCY DKT. NO. 2018-1948

**IN THE MATTER OF ANJI ALBIS, OCEAN
COUNTY BOARD OF SOCIAL SERVICES.**

Anji Albis, appellant pro se

Barbara A. O'Connell, Esq., for respondent (Sweeney & Sheehan, P.C., attorneys)

Record Closed: November 13, 2018

Decided: December 10, 2018

BEFORE TRICIA M. CALIGUIRE, ALJ:

STATEMENT OF THE CASE

Appellant Anji Albis (Albis) appeals the decision of respondent, Ocean County Board of Social Services (OCBSS, Agency) to terminate her employment effective December 29, 2017, as a result of her alleged violation of policies and procedures of OCBSS and of the Last Chance Agreement she entered with respondent on July 20, 2017.

PROCEDURAL HISTORY

On December 21, 2017, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) to appellant charging her with (1) insubordination in violation of N.J.A.C. 4A:2-2.3(a)2; (2) conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6; (3) neglect of duty in violation N.J.A.C. 4A:2-2.3(a)7; and (4) other sufficient cause, specifically unauthorized absence and poor judgment, pursuant to N.J.A.C. 4A:2-2.3(a)12. Albis did not request a departmental hearing. A Final Notice of Disciplinary Action (FNDA) was issued to appellant on December 29, 2017, sustaining the above charges and removing appellant from her position of Human Services Specialist 1 (HSS 1), effective December 29, 2017.

Appellant filed this appeal on January 9, 2018, which was transmitted by the Civil Service Commission to the Office of Administrative Law (OAL) on January 22, 2018, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On March 28, 2018, I held a prehearing telephone conference with the parties and scheduled the hearing for June 12 and 13, 2018. At the request of appellant, this hearing date was adjourned to September 19 and 27, 2018. The hearing was completed on September 19, 2018, and the second hearing date adjourned by consent of the parties. The record was left open for the parties to submit post-hearing briefs and responses following their receipt of the audio recordings of the proceedings. Respondent submitted a brief on November 5, 2018; appellant failed to submit a brief or to respond to respondent's brief within the allotted five-days. Accordingly, the record closed on November 13, 2018.

FACTUAL DISCUSSION AND FINDINGS

The issues in this case are whether on December 11, 2017, appellant left her assigned work station thirty minutes early without supervisor authorization and, if so, whether the penalty imposed on appellant by respondent is appropriate.

Respondent presented four witnesses; appellant testified on her own behalf and presented one additional witness. The following is not meant to be a verbatim report of the testimony and evidence presented in this matter but is intended to summarize the portions of the testimony and evidence which I found to be relevant to the above issues.

Gayle Spier (Spier), is the Assistant Administrative Supervisor of Social Work for the Community Care Waiver Unit (CCW) of OCBSS. She has been employed by OCBSS since 1982 and has held her current position since 2012. She supervised Albis from November 2015 through July 2017.

Albis began with the CCW in November 2015 and was assigned to the Jersey Assistance for Community Caregiving (JACC) program. JACC is a non-Medicaid program designed to assist seniors who live in the community and are at risk of placement in nursing homes. Albis was subsequently assigned to the New Jersey Easy Access, Single Entry (NJ EASE) program, which helps vulnerable senior citizens (ages sixty and over) get information on services in their local community, foster independence, and avoid nursing home placement.

As a case manager in both the JACC and NJ EASE programs, Albis's duties included investigating referrals of vulnerable adults; meeting with clients; making assessments of client needs, which includes determining which cases are better suited for referral to Adult Protective Services (APS); and developing, implementing and monitoring an appropriate plan of care for each client.

Desk files, which are hard copies of personnel records and any correspondence that OCBSS has with an employee, are kept on all employees of OCBSS. Spier described desk files as a "management tool"; employees are not able to see the contents of their desk files. Spier identified Albis's desk file, which Spier stated she reviewed before working with Albis and to which Spier added information while supervising Albis. (R-19; R-20.)

Spier stated that during the first year she supervised Albis, they had had discussions about Albis's work performance, including what Spier described as Albis's inability to do her job. Spier said that Albis failed to contact clients on a monthly basis, conduct certain home visits, check on client-related reports, verify client statements, manage her time properly, and document cases in the system properly.

In July 2016, Albis was reassigned from JACC to NJ EASE, but by November 2016, was still working on JACC cases. Spier stated that Albis should not have continued to work on JACC cases but conceded on cross-examination that while the Agency moved away from the JACC program, issues did come up with those cases to which the respective case managers needed to respond. Further, Spier stated that Albis did not receive formal training in NJ EASE and the entire NJ EASE caseload previously handled by Jennifer Deneman (Deneman) was given to Albis when Deneman left the Agency. Even so, Spier said that given Albis's experience, she should have known to ask for help and to follow the specific directions she was given but failed to do either.

On November 22, 2016, Spier met with Albis and her union representative. (R-1.) Spier described the specific issues discussed at this meeting as follows:

During our discussion on November 22, 2016 you took no responsibility for your poor work performance and apparent disregard for the work you are responsible to complete. During this discussion you stated you did not have to talk to me about the NJ Ease contract because you "thought it was done already." Regarding the inaccurate NJ Ease number and failure to follow procedures, you stated that you did not think you had to follow the NJ Ease procedures because "I know all the cases." You stated that you continued to assist the JACC cases, which prevented you from effectively managing the NJ Ease cases. You had no response for failing to provide feedback as directed on the proposed 105 taxonomy revisions.

[(R-1.)]

Spier gave Albis three months, until March 1, 2017, to bring all her cases (approximately fifty-four)¹ into compliance and stated that she encouraged Albis to come to her with any problems. On January 18, 2017, Spier discussed additional work-related issues with Albis, that being her failure to follow-up with clients to verify their statements and failure to use proper case tracking tools. (R-3.) On January 25, 2017, Spier recommended that Albis make a plan for improvement and Albis agreed, but Spier never saw this plan. (R-4.)

On January 25, 2017, Spier discussed a specific case with Albis. According to Spier, Albis should have called the case into APS, but Albis felt the client was making “bad choices” and elected not to advocate for her. The next day, when the bed-bound client called to report her decision to apply for Medicaid benefits, Albis mailed information to her rather than visiting her. On cross-examination, Spier conceded that this particular client was already being served by APS and the case should not have been given to Albis. Even so, Albis did not check with APS first thing, as she should have done. (R-4.)

On March 6, 2017, after the deadline for Albis to have brought all her cases into compliance, Albis told Spier she thought that she had until the end of March. Albis’s union representative asked Spier to give Albis additional time and Spier agreed to do so. (R-5.)

Spier identified a spreadsheet she had created to track Albis’s work. (R-6.) She explained the specific mistakes Albis made with respect to the first four cases on the list. Generally, Albis was not seeing clients as needed, not completing assessments or care plans on a timely basis, and not following up to ensure that services were being provided. Spier stated that given Albis’s twelve years of experience, she should have known how to perform in this position.

On July 6, 2017, respondent issued a PNDA to Albis charging her with (1) incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.2(a)1; (2)

¹ Later, Spier testified that Albis had fifty-eight cases, but that this was still less than the typical sixty cases handled by most case managers.

insubordination in violation of N.J.A.C. 4A:2-2.3(a)2; (2) conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6; (3) neglect of duty in violation N.J.A.C. 4A:2-2.3(a)7; and (4) other sufficient cause, specifically poor judgment, pursuant to N.J.A.C. 4A:2-2.3(a)12. (R-7.) Albis did not request a hearing on these charges; following the July 20, 2017, execution of a Settlement Agreement and General Release (the Settlement), respondent issued an FNDA to Albis sustaining all charges and demoting her to position of HSS 1. (R-9.)

By the terms of the Settlement, Albis admitted all charges in the PNDA of July 6, 2017, agreed to the disciplinary demotion to the title of HSS 1, and the OCBSS agreed not to pursue termination for the incidents which led to the charges in the PNDA. (R-9.) Further, Albis agreed that "termination will be the penalty for any future violations or disciplinary matters going forward." (R-9.)

Lisa Anastasio (Anastasio) is an Human Services Specialist 4 and Supervisor of the OCBSS Lakewood office Income Maintenance Unit. She has been employed by OCBSS for thirty years.

Albis joined the Lakewood office on December 7, 2017, as an HSS 1.² Anastasio reviewed Albis's desk file in advance, knew of her disciplinary history and that she was sent to Lakewood through a demotion. She met with Albis on her first day to welcome her, explain the functions of the unit, job duties of an HSS 1, and Anastasio's expectations. She gave Albis a memo on the hours of work, the names and numbers of all the other workers, and emphasized the importance of adhering to specific work hours to ensure all clients who come to the office are serviced. (R-10.) Anastasio told Albis that she wanted to start with a clean slate, asked her to follow all policies and said she has an open-door policy. Albis asked for accommodations in her break and lunch schedule because she was pumping breast milk for her newborn; Anastasio agreed that Albis would take fifteen-minute breaks at 10:00 a.m. and 4:00 p.m. and a thirty-minute lunch at 1:00 p.m. (R-11.)

² Between July 2017, the date of Settlement, and December 11, 2017, Albis was on maternity leave.

On Albis's first two days, Thursday and Friday, she was directed to observe intake interviews. The following Monday, December 11, 2017, she continued to observe intake interviews in the morning and was scheduled to attend a mandatory training session at the Toms River Library in the afternoon (with other employees, including Anastasio). On cross-examination, Anastasio stated that since Albis had to leave the office at 1:00 p.m., to travel to training, and she normally has a scheduled lunch break at 1:00 p.m., Albis should have taken lunch at 12:30 p.m. This, said Anastasio, is standard Agency procedure but she did not explain how Albis would have known about the policy.³ Further, Anastasio conceded that she did not issue an email to any of the employees whose lunch was impacted on that day (and never issued such emails). If, however, Albis had taken her lunch at 12:30 p.m., instead of at 1:00 p.m., when she was scheduled to take lunch, Anastasio said Albis would not have had to obtain authorization because the change was needed to attend the training. If taking the earlier lunch presented a hardship, then Anastasio said she would have allowed Albis to leave early at the end of the day. Again, Anastasio provided no explanation of how employees learned of this policy.

The OCBSS Toms River office does the same type of work as the Lakewood office, which is why Anastasio told Albis to report to the Toms River office after the training ended. Anastasio explained that Albis had about an hour left in her workday following training and, given the time in transit, it was acceptable that she got to the Toms River office at 4:15 p.m.

On December 12, 2017, when reviewing time sheets, Anastasio saw that Albis left at 4:30 p.m., even though she should have worked until 5:00 p.m. Since Albis never asked to leave early, and Anastasio never authorized her to leave early,⁴ Anastasio called Dew to confirm that Albis left the Toms River office at 4:30 p.m. Before speaking with Dew, Anastasio called Albis and union representative Michelle Salecki (Salecki) to her office. According to

³ Respondent introduced two sections of the OCBSS Personnel Handbook at hearing, but neither address this particular issue.

⁴ Despite not authorizing the early leave, Anastasio initialed Albis's time sheet next to where Albis wrote "adj lunch." (R-13.) This discrepancy was not discussed at hearing.

Anastasio, Albis admitted that she had not received authorization to leave early.⁵ (R-14.) Anastasio left this meeting briefly to allow Salecki and Albis to talk, and then spoke with Dew by telephone. Upon her return to the room, Anastasio recalled Albis then saying that she thought she had Anastasio's approval to adjust her lunch schedule by leaving at 4:30 p.m. and to take her morning break at 12:30 p.m.

After reviewing Albis's prior disciplinary history, including the Last Chance Settlement Agreement, (R-7; R-9; R-14), Anastasio recommended enforcement of the agreement on the grounds that Albis violated the alternate hours of work policy, (R-17), and unauthorized absence policy. (R-16.)

The OCBSS Policy on Unauthorized Absence is found in the OCBSS Personnel Handbook, Section 102.56, and states in pertinent part:

If an employee has not followed the applicable procedures . . . for taking the leave time sought and obtaining approval for same, the absence is unauthorized.

Any absence without agency approval is considered a serious infraction and constitutes cause for formal disciplinary action.

[(R-16.)]

The OCBSS Policy on Alternate Hours of Work is found in the OCBSS Personnel Handbook, Section 103.23, and Appendix XXIX, and states in pertinent part:

Certain employees may alter their work hours as provided in the applicable Board Resolutions or Labor Contracts.

The administration of Alternate Work Hours procedure must ensure that there is adequate staff to cover all job functions to meet the mission of the agency. Within this constant, it is the desire of the Agency to afford employees the opportunity to adjust their workday between 8:30 a.m. to 4:30 p.m.

⁵ Albis disputes this account, as described below.

A. Alternate Hours Request for Adjustments Within the Workday for Five Days or Less

1. Requests can be made prior to, or on, the day the adjustment is desired. Supervisor approval is required prior to implementation of the adjustment.
2. The only documentation required is the recording of the adjustment on the employee's time sheet and notated on the Unit calendar[.] The supervisor's initials indicates on the timesheet the alteration was approved.

[(R-17.)]

Gail Dew (Dew) is an Human Services Specialist 4, and Supervisor of the OCBSS Toms River Intake office. While she never supervised Albis, Dew met her on December 11, 2017, when Albis reported to her after the training session at the Toms River Library.

According to Dew, Albis arrived at 4:15 p.m. Since Albis was new to the Income Maintenance and Cash Assistance Unit, Dew told her to take a seat and observe. The intake desk was busy as the workers were trying to see the clients who were waiting before the 4:30 p.m. closing. (No one testified to the closing time of the entire office, only the intake desk.)

Albis told Dew she would be leaving at 4:30 p.m. and she did leave at that time. Anastasio called Dew the next day and asked when Albis left. Dew told Anastasio that Albis left at 4:30 p.m.

Christopher Bauer (Bauer) is the OCBSS Assistant Administrative Supervisor, Income Maintenance Unit, Lakewood office. He oversees all supervisory staff, including Anastasio. He has been employed by OCBSS for twenty years.

Bauer learned that Albis had been demoted and was reassigned to his office, starting December 7, 2017. He did not read her desk file prior to meeting her but knew that Anastasio had done so. On December 7, 2017, he agreed to allow Albis to use his office on her breaks when she was pumping as it offered privacy. He knew that she was scheduled

to take her breaks at 10:00 a.m. and 4:00 p.m., and to take lunch at 1:00 p.m., as he vacated his office at these times on December 7 and 8, 2017.

On December 11, 2017, Bauer attended the mandatory training session in Toms River, which lasted from 2:00 p.m. to 4:00 p.m. Albis came to his office at 12:30 p.m.; Bauer recalled packing up and leaving for the training session at that point. Albis did not ask Bauer to adjust her schedule. He did not learn of her early departure from the Lakewood office until December 12, 2017, when speaking with Anastasio.

On December 18, 2017, Bauer met with Albis to get additional information about the incident of December 11, 2017. (R-14.) Albis told him she thought she had authorization to adjust her hours. (R-14.) Bauer then reviewed the settlement agreement and found that Albis had violated Agency policies by adjusting her lunch schedule without authorization. (R-16; R-17.) At this time, he learned of Albis's earlier unauthorized absences. (R-8.) He recommended enforcement of the settlement agreement, by which the parties had agreed that the proper discipline for this infraction by Albis was termination. (R-14.)

Karena Sherwood (Sherwood) testified for appellant. Sherwood spent thirty-five years working in the field of social work, eighteen of which as a caseworker at OCBSS before retiring in 2015. Sherwood met Albis in about 2002, when both were handling JACC cases. Sherwood was assigned to mentor Albis and they worked side-by-side for ten years.

Sherwood worked for Spier for about one year, at which time Sherwood handled NJ EASE cases. She does not believe Spier was a "good" supervisor. For her part, Sherwood found the NJ EASE cases difficult to manage; the clients were often those who had been through the welfare system for years and had exhausted their eligibility for benefits. She admitted, though that the NJ EASE clients deserved a full level of care.

Sherwood retired on December 1, 2015, well before Albis was assigned to the NJ EASE program and therefore, Sherwood admitted that she has no personal knowledge of

either Albis's performance handling of NJ EASE cases or of Spier's management and/or supervision of Albis.

Albis gave testimony on her own behalf. She has been an employee of OCBSS since 2001, working continuously other than when on maternity leave with each of her three children. When Albis was initially transferred into Spier's unit, she declined to take on NJ EASE cases because of her understanding that NJ EASE case managers were over-worked and under-resourced. Albis continued to work on JACC cases; she stated that she had no problems keeping up with this work, with seeing these clients, and that Spier had no issues with her performance.

Approximately one month after Deneman left the Agency, Albis was given her NJ EASE caseload even though she also still had JACC cases. On cross-examination, Albis conceded that she probably did not specifically tell Spier that she still had JACC cases but believed that Spier was aware.

While a case manager may typically handle sixty NJ EASE cases, Deneman only had fifty; Albis said this was because NJ EASE was more difficult to administer. Besides the client visits, NJ EASE workers were required to file lengthy and time-intensive monthly reports. Albis stated that Spier usually gave new workers NJ EASE cases, but many of them did not "make it past" their working test period given the stress of this program.⁶

Albis described some of the issues with handling NJ EASE cases as the high stress problems, such as evictions, lack of housing options, medical problems ranging from strokes to suicides; the difficulty getting clients to make appointments; and the voluntary nature of the program. She stated that she was criticized for failure to verify client statements, but assumed that since clients contacted the program, they were being honest. Spier criticized Albis for making unnecessary client visits, but Albis explained that she planned

⁶ The working test period, or probationary period, for new employees is ninety days, after which an employee who has performed satisfactorily in his or her new position will become permanent in the respective title. See, N.J.S.A. 11A:4-13(a).

field visits geographically and sometimes it was easier to just check in on clients because she was in the neighborhood. Albis admitted, though, that she was not able to handle the NJ EASE caseload and that between November 2016 and March 2017, she did not ask Spier for assistance.

When asked about performance problems in 2010, long before she worked on NJ EASE cases, Albis stated that she did not have problems in 2010. (R-8.) When asked about a discipline she received on October 7, 2015, Albis responded that she filed a grievance at that time, expressing frustration about the procedures being used. (R-8.)

With respect to the Settlement, Albis stated that despite being demoted, she was happy to return to social work. Her mother had been ill, and the less-stressful job was a relief. Further, Albis was pregnant at the time, she needed health insurance and signed the Settlement to avoid being fired. Though Albis now disagrees that she was terminated prior to entering into the Settlement, she admitted to reading the document before signing it and that by the terms of the Settlement, she admitted to the charges and to the proposed discipline (termination).

On December 11, 2017, Albis spent the morning observing two of her colleagues conduct intake interviews. Rather than take a break in the middle of an interview, Albis did not take her morning break until 12:30 p.m. She went to Bauer's office at 12:30 p.m., and he left. She expressed breast milk for fifteen minutes, then prepared to leave for training. She left the office for training at 1:00 p.m. If she had taken a break plus lunch starting at 12:30 p.m., she would not have left the building until 1:15 p.m. Albis told Dew that she was leaving for the day at 4:30 p.m., because she thought she had authorization to adjust her schedule, not take lunch and leave the Lakewood office at 4:30 p.m. She filled out her time sheet with just that information and did not show times for "lunch in/out" on the timesheet. (R-13.)⁷

⁷ As stated above, Anastasio signed Albis's time sheet next to the words "adj lunch." There was no testimony as to when Anastasio signed the time sheet and why she signed it if she had not authorized the adjustment

Albis agreed that the only issue in dispute with respect to the incident of December 11, 2017, is whether she had prior authorization to adjust her schedule. She stated that she always told everyone that she thought she had authorization; she disagrees with Anastasio's testimony and Bauer's written statement that she admitted to not having authorization and then later contradicted herself. (R-14.)

Albis was aware of the OCBSS policies (R-16; R-17) but did not read every word of the manual and was not specifically aware of Section 102.56, Unauthorized Absence. She did know of the requirement to submit a request for alternate hours of work, either in writing or verbally. (R-8.)

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See, Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's 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). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

After carefully considering the testimonial and documentary evidence presented and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I make the following observations. Spier made clear that she considered Albis a low-performing worker and her testimony was supported by her detailed notes in Albis's desk file. Spier seemed exasperated by Albis's lack of knowledge of programs and Agency procedures, Albis's indifference to active case management and failure to ask for help, especially given that Albis had many years' experience at OCBSS. Albis's own testimony

confirmed Spier's complaints; she conceded to making mistakes because she made incorrect assumptions rather than asking questions.

The issue in this case, though, is not how Albis performed when supervised by Spier even though that led to the Last Chance Agreement which respondent seeks to use to terminate Albis's employment. The issue here is whether Albis left work early without authorization on December 11, 2017. This seemingly simple question is difficult to answer because of the information respondent did not provide at hearing.

To begin, the testimony of Anastasio was peppered with contradictions. Though she claimed to present Albis with a "clean slate," she recommended termination following a ~~very~~ minor incident. On Albis's third day in the Lakewood office, she was directed to leave the office at 1:00 p.m. to travel to a training session that started one hour later. Some uncertainty on Albis's part about taking time for lunch and being on-the-clock while traveling is not surprising. While Albis probably should have asked for clarity, one of the supervisors, Anastasio or Bauer, also probably should have told this new employee "standard" travel procedures. The memo Anastasio gave Albis on December 7, 2017, regarding hours of work does not cover this situation. (R-10.)

There was no testimony regarding who from the Lakewood office, besides Bauer, Anastasio and Albis, attended the training session and if work hours for other employees were also adjusted that day. If, however, any number of employees were attending "mandatory" training, and all but Albis knew the standard policy was to take lunch before leaving, it would seem that there would not have been adequate staff to cover all job functions because more than usual would have been taking lunch at the same time. This deviation from Section 103.23 of the Personnel Handbook was not explained.

If the employees were given one hour to travel to the training session, were they given one hour to travel back? If so, no one would have had time to return to the Lakewood office much before 5:00 p.m. Anastasio did not explain why the approximately one-hour

travel time back to Lakewood was not factored into the remainder of Albis's work day or whether Albis would receive overtime until 6:00 p.m.⁸

OCBSS policy makes clear that the "only documentation" of an adjustment to work hours required is a recording of the same on the employee's time sheet and "the supervisor's initials indicates on the timesheet the alteration was approved." (R-17.) Albis recorded her adjusted work hours on December 11, 2017, and Anastasio initialed her approval. (R-13.) Anastasio did not explain the discrepancy between the documentary evidence and her recollection at hearing of never authorizing the adjustment.

Albis testified credibly that she thought she had approval to take her morning break at 12:30 p.m., and to take her lunch at 4:30 p.m.⁹ Given Anastasio's testimony regarding the standard procedures to move your lunch time on a training day without prior authorization, Albis's presumption was reasonable. Significantly, Albis filled-out her time sheet showing that she changed her schedule. Respondent contends that Albis knew she was breaking the rules and then memorialized that violation on a document that she knew Anastasio would read.

The reasonableness of Albis's presumption of approval to change her schedule is further supported by Dew's testimony that the Lakewood intake desk closed at 4:30 p.m. Since Albis was sent to the Lakewood office to observe intake interviews, there would have been no interviews for her to observe after 4:30 p.m.¹⁰ At hearing, Anastasio said that Albis should have taken her morning break as scheduled, that Albis could have stepped away from observing an interview as she was not the person conducting it. If Albis was free to leave the interviews, she must not have had any other responsibility with respect to these cases once the interviews ended.

⁸ I note that there was no testimony regarding the precise travel time between the two locations, but there was testimony that employees left the Lakewood OCBSS office at 1:00 p.m., to arrive at the Toms River Library in time for training which began at 2:00 p.m.

⁹ At hearing, no one discussed Albis's forfeiting her second break on December 11, 2017. In its brief, however, respondent states that Albis took a thirty-minute lunch at 12:30 p.m., which must mean Albis forfeited both her breaks. Resp't. Letter Br. (November 2, 2018), p. 16.

¹⁰ Anastasio had already told Albis that she would be observing interviews for the first five days and then begin conducting interviews with guidance. (R-10.)

The procedures that Albis allegedly violated and the memo that Anastasio gave Albis emphasize the need to "ensure there is adequate staff to cover all job functions." (R-17.) On this particular day, Albis was not actually covering any job function, she was still observing and learning her new job. Notwithstanding the need to establish and enforce strict policies on time and attendance, Albis's alleged violation could not have had more than minimal impact on the routine functions of either the Toms River or Lakewood offices. Nevertheless, there was no testimony regarding that impact.

Anastasio reviewed Albis's desk file before she arrived, so was certainly well acquainted with the management issues that Albis could potentially present. For more than twelve years, Albis under-performed. Her desk file is replete with disciplines, complaints, meetings with union representatives, and second chances. But, OCBSS gave Albis one last chance and before she can be dismissed permanently, she must be found to have violated the regulations and/or OCBSS policy one more time.

Based on the foregoing, I **FIND** the following as **FACTS**:

1. Albis has been an employee of OCBSS since 2001.
2. On July 6, 2017, respondent issued a PNDA to Albis.
3. On August 10, 2017, respondent issued an FNDA to appellant with the penalty of termination of employment.
4. Albis appealed the FNDA and in settlement of that appeal, entered into a Last Chance Agreement wherein she admitted to all charges in the PNDA, accepted a demotion, and agreed that termination of employment would be the penalty for any future violations or disciplinary matters.

5. Albis acknowledged that she was advised by representatives of her union when the Last Chance Agreement was prepared and signed.
6. Albis began working in her new position at the OCBSS Lakewood office on December 7, 2017, where she was supervised by Anastasio.
7. On or about December 7, 2017, Anastasio gave Albis a memorandum outlining hours of work and the requirement that deviations from the schedule must be authorized by a supervisor. From that date, Albis was authorized to adjust her daily schedule to accommodate her need to periodically express breast milk.
8. The hours which Albis was scheduled to work on December 11, 2017, were from 8:30 a.m. to 5:00 p.m., with a thirty-minute lunch and two, fifteen-minute breaks. If, as respondent contends, Albis came in at 8:30 a.m., was off-the-clock from 12:30 p.m. to 1:00 p.m., and left for the day at 4:30 p.m., she worked a full day.
9. If Albis had simply moved her lunch break to 12:30 p.m. instead of to 4:30 p.m., she would not have been disciplined as Anastasio testified that approval of that change would not have been required. There was no evidence presented that this deviation from OCBSS policy—this “standard office procedure”—is documented and/or distributed to employees.
10. There is no dispute that on December 11, 2017, Albis reported to Dew at the OCBSS Toms River office shortly after the 4:00 p.m. conclusion of the mandatory agency training session.
11. There is no dispute that while at the Toms River office, Albis observed intake interviews until the intake desk closed at 4:30 p.m.

12. There is no dispute that on December 11, 2017, Albis told Dew that she would leave the office at 4:30 p.m., and that Albis did leave the Toms River office at 4:30 p.m.
13. Albis accurately reflected the change in her schedule on her time sheet and Anastasio initialed next to the change. OCBSS policy states that by initialing the change, Anastasio approved the change.
14. There was no evidence presented that by altering her schedule on December 11, 2017, Albis caused a negative impact on the routine operations of either the Toms River or Lakewood offices.
15. On December 12, 2017, Anastasio met with Albis and Salecki. Anastasio and Albis disagree as to Albis's statements during this meeting. According to Anastasio, Albis first acknowledged that she changed her schedule without authorization and later stated that she thought she had Anastasio's authorization. Albis testified that she always maintained that she believed that on December 11, 2017, she had authorization to change her schedule. Salecki was not called by either party to testify.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 ("Act"), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, are designed in part "to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance." N.J.S.A. 11A:1-2(c). An employee may be subject to discipline for several reasons, including conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a), and for failure to obey laws, rules and regulations of the appointing authority. N.J.A.C.4A:2-2.3(a)(11). Major discipline for such an infraction may

include removal, disciplinary demotion, or suspension or fine for more than five working days at any one time. N.J.A.C. 4A:2-2.2(a).

The Act protects classified employees from arbitrary dismissal and other onerous sanctions. See, In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), adopted, Comm'n. (September 3, 2014), <https://njlaw.rutgers.edu/collections/oal/>; Investigators Ass'n v. Hudson Cty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), <https://njlaw.rutgers.edu/collections/oal/>. "The evidence presented and the credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained; or whether there are mitigating circumstances, which . . . must be taken into consideration when determining whether there is just cause for the penalty imposed." Ibid. Depending upon the incident complained of and the employee's past record, major discipline may include suspension or removal. See, West New York v. Bock, 38 N.J. 500, 519 (1962) (describing progressive discipline).

As the Merit System Board has long maintained, "the OAL and the Board are not strictly bound by the terms set forth in [a Last Chance Agreement], since neither entity was a party to the settlement." In re Collins-Cole, CSV 7601-00, Final Decision (February 3, 2003), <http://njlaw.rutgers.edu/collections/oal>. However, a Last Chance Agreement in which the parties agree to a penalty for a subsequent offense is "a significant factor to be considered, along with . . . prior disciplinary history, when determining the appropriate penalty" for that subsequent offense. In re King, CSV 11696-08, 2009 N.J. AGEN LEXIS 904 at *6, Final Decision (March 25, 2009).

Respondent has charged Albis, as a result of her alleged action in altering her schedule without authorization, of insubordination in violation of N.J.A.C. 4A:2-2.3(a)2;

conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6; neglect of duty in violation N.J.A.C. 4A:2-2.3(a)7; and other sufficient cause, specifically unauthorized absence and poor judgment, pursuant to N.J.A.C. 4A:2-2.3(a)12. If the charges against Albis are sustained, the appropriate penalty will be determined with due consideration of the Last Chance Agreement she entered in July 2017.

Insubordination

The New Jersey Administrative Code definitions, N.J.A.C. 4A:1-1.3, does not provide a definition for insubordination; however, case law generally interprets the term to mean the refusal to obey an order of a supervisor. In re Shavers-Johnson, CSV 10838-13, Initial Decision (July 30, 2014), <https://njlaw.rutgers.edu/collections/oal/>. According to Webster's II New College Dictionary (1995) "insubordination" refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. In re Rudolph, CSV 5083-99 (consolidated), Initial Decision (October 23, 2000), adopted, Merit Sys. Bd. (December 18, 2000), <http://njlaw.rutgers.edu/collections/oal/>, the Merit System Board upheld the removal of a public works repairer for refusing to respond to the reasonable orders of his supervisor to complete an assignment. The Administrative Law Judge found that appellant's employment history evidenced a pattern of refusal to accept supervision and disrespect for those who attempted to supervise him and upheld appellant's removal. Ibid.

Here, respondent contends that Albis refused to obey OCBSS policies and Anastasio's memo of December 7, 2017, regarding change to Albis's work schedule. At the same time, respondent presented testimony regarding the exceptions routinely made to these policies on travel days, knowledge of which Albis was held to despite the absence of evidence that such standard procedures were ever communicated to her.

Conduct Unbecoming a Public Employee

There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. In re King, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. Atl. City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 [quoting In re Zeber, 156 A.2d 821, 825 (1959)]. Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) [quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)]. Unbecoming conduct may include behavior, which is improper under the circumstances; it may be less serious than a violation of the law, but which is inappropriate on the part of a public employee because it is disruptive of governmental operations.

In most cases, it would seem disruptive to Agency operations for any employee to make an unauthorized change to his or her schedule. But, in this case, without proof that Albis has been dishonest both with her employer and while under oath, I cannot conclude that her mistake in the circumstances of December 11, 2017, rises to the level of conduct unbecoming a public employee.

Neglect of Duty

There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of his or her job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). Neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961).

In the instant case, respondent determined appellant neglected her duty when she left the Toms River office without authorization to do so. Respondent presented no evidence, though, that Albis left without completing any work she was asked or expected to do. All evidence is that once the Toms River intake desk closed, Albis had completed the work she was sent to Toms River to do, which was to observe intake interviews.

Other Sufficient Cause

There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against respondent as all other offense caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when "[r]espondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 09122-99, Initial Decision (February 22, 2006), <https://njlaw.rutgers.edu/collections/oal/>. In the instant matter, respondent determined that sufficient cause charges are attributable to appellant for her unauthorized absence and exercise of poor judgement.

Respondent contends that appellant violated written OCBSS policies by failing to obtain supervisory approval of a change in her scheduled lunch from 1:00 p.m. to 4:30 p.m.

At the same time, respondent claims standard office procedure would have permitted appellant to move her lunch earlier in the day without supervisory approval. Further, Albis's supervisor signed and initialed the change on Albis's time sheet, which OCBSS policies deem proof of approval. Respondent provided no evidence that Albis failed to perform the duties of her job properly on December 11, 2017, nor that she caused disruption to the operations of the OCBSS offices on December 11, 2017. Despite Albis's work history and the reasonable expectation that anyone in her position should have of being under strict scrutiny, respondent failed to prove by a preponderance of the credible evidence that Albis had no reason to believe that her action on December 11, 2017, was authorized.

I **CONCLUDE** that respondent has not met the burden of proving that appellant's actions on December 11, 2017, were insubordinate, or conduct unbecoming a public employee, constituted neglect or abandonment of duty, or the exercise of poor judgement. Therefore, it is not necessary to review her disciplinary history and/or the application of the Last Chance Agreement with respect to the proposed penalty.

ORDER

For the foregoing reasons, I **ORDER** that the decision of respondent Ocean County Board of Social Services to terminate the employment of appellant Anji Albis be **REVERSED** and her appeal be **GRANTED**.


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 10, 2018

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

December 10, 2018

Date Mailed to Parties:

December 10, 2018

nd

APPENDIX

WITNESSES

For Appellant:

Anji Albis
Karena Sherwood

For Respondent:

Gayle Spier
Lisa Anastasio
Gail Dew
Christopher Bauer

EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 Notes of Gayle Spier, Regarding Appellant's Disciplinary Discussion and Written Reprimand, dated November 22, 2016
- R-2 Notes of Gayle Spier, Regarding Follow-up Discussion, dated November 29, 2016 and December 2, 2016
- R-3 Notes of Gayle Spier, Regarding Cases Reviewed, dated January 18, 2017
- R-4 Notes of Gayle Spier, Regarding Cases Reviewed, dated January 25, 2017
- R-5 Notes of Gayle Spier, Regarding Case Review Session, dated March 6, 2017 and March 7, 2017
- R-6 Chart of Appellant Albis's Files Reviewed
- R-7 Preliminary Notice of Disciplinary Action, dated July 6, 2017

- R-8 Appellant's Prior Corrective/Disciplinary Actions
- R-9 Final Notice of Disciplinary Action with Settlement Agreement and General Release, dated August 10, 2017
- R-10 Memo From Lisa Anastasio Regarding Work Hours, dated December 7, 2017
- R-11 Notes of Lisa Anastasio Regarding Initial Conference with Appellant, dated December 7, 2017
- R-12 Not Introduced
- R-13 Appellant's Time Sheet, dated November 30, 2017 to December 13, 2017
- R-14 Preliminary Notice of Disciplinary Action, dated December 21, 2017
- R-15 Written Reminder Regarding Adjusting Work Schedule, dated August 20, 2013
- R-16 Ocean County Board of Social Services Personnel Handbook, Section 102.56 Unauthorized Absence
- R-17 Ocean County Board of Social Services Personnel Handbook, Section 103.26 Alternate Hours of Work and Appendix XXIX
- R-18 Final Notice of Disciplinary Action, dated December 29, 2017
- R-19 Appellant's Desk File, Conferences, Meetings, and Notes, dated November 2015 through November 2017
- R-20 Appellant's Desk File, Demotion Documentation Section, Demotion Discipline