



STATE OF NEW JERSEY

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

In the Matter of Fatu Rimbert, Essex
County, Department of Citizen
Services

CSC Docket No. 2019-578
OAL Docket No. CSV 13513-18

ISSUED: NOVEMBER 12, 2019 (ABR)

The appeal of Fatu Rimbert, Family Service Worker, Essex County, Department of Citizen Services of her removal, effective November 28, 2017, on charges, was heard by Administrative Law Judge Julio C. Morejon (ALJ), who rendered his initial decision on September 18, 2019. No exceptions were filed by the parties.

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 October 23, 2019, did not adopt the ALJ's recommendation to modify the appellant's removal to a six-month suspension. Rather, the Commission upheld the appellant's removal.

DISCUSSION

The appointing authority presented the appellant with a Final Notice of Disciplinary Action (FNDA), removing her on charges of inability to perform duties, conviction of a crime, conduct unbecoming a public employee, violation of policies and procedures, and other sufficient cause. Specifically, the appointing authority asserted that on November 16, 2017, the appellant was indicted by a State Grand Jury on two counts of insurance fraud (second and third degree), two counts of impersonation (third degree), and theft by deception (third degree). On December 4, 2017, the appellant pled guilty to insurance fraud – false claim for payment, in violation of *N.J.S.A. 2C:21-4.6A*, a third-degree crime. Upon the appellant's appeal,

the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

In his initial decision, the ALJ noted that most of the facts were not in dispute. The appellant began her employment with the appointing authority in 2010. Her duties as a Family Service Worker included evaluating clients, forming an assessment of benefits, and assessing eligibility determinations. To carry out these responsibilities, the appellant was routinely required to review confidential documents, including medical information, financial information, federal tax information, Social Security numbers, birth certificates, addresses and family information. On December 4, 2017, the appellant pled guilty to *N.J.S.A. 2C:21-4.6A*, insurance fraud, a third-degree crime. On April 13, 2018, she was sentenced to probation for three years and ordered to pay \$9,276.33 in restitution to two insurance companies. The judgment of conviction did not require the appellant to forfeit her position pursuant to *N.J.S.A. 2C:51-2*. The ALJ sustained the charges of conviction of a crime, conduct unbecoming a public employee and other sufficient cause. In sustaining the charge of conduct unbecoming a public employee, the ALJ found that the appellant's conviction for insurance fraud had a tendency to destroy public respect for public employees and confidence in the operation of public services. The ALJ sustained the charge of other sufficient cause based upon findings that the appellant's conviction constituted a violation of the appointing authority's Human Resources Policies and Procedures, Chapter VI-1, Work Rules and Standards - Standards of Conduct and that, pursuant to *N.J.S.A. 40A:9-2.1(e)*, it required the appointing authority to bar her from accessing federal tax information. The ALJ dismissed the charge of inability to perform duties, finding that the appointing authority failed to demonstrate that the appellant could not be placed in another position that did not require access to clients' personal and financial data.

In weighing the appropriateness of the penalty, the ALJ found that the appellant's criminal conviction did not automatically render her unable to perform her duties. The ALJ also considered the appellant's disciplinary record, noting that it included the following: an official written reprimand for chronic and excessive tardiness and willful violations of agency time and attendance policies in February 2014; a five working day suspension for chronic and excessive tardiness and willful violations of agency time in March 2015;¹ and a nine working day suspension for chronic and excessive absenteeism and tardiness in violation of County time and attendance policies in June 2016. The ALJ found that because the appellant's prior disciplinary history concerned lateness and absenteeism, rather than conduct involving fraud, insubordination or dishonesty, her removal would not adhere to progressive discipline principles. Based upon the foregoing, the ALJ recommended

¹ Agency records indicate that the appellant ultimately served a two working day suspension based upon these charges.

that the appellant's removal be modified to a six-month suspension and that she be subjected to a one-year probationary period upon her reinstatement.

Upon its *de novo* review of the record, the Commission agrees with the ALJ's upholding of the charges of conviction of a crime, conduct unbecoming a public employee and other sufficient cause and dismissing the charge of inability to perform duties. However, the Commission does not agree with the ALJ's recommendation to modify the removal to a six-month suspension. In this regard, the Commission observes that the appropriate inquiry in evaluating the charge of inability to perform duties is whether the employee is able to perform all of the essential duties which may be assigned to an incumbent in the employee's job title and that it does not require an appointing authority to prove that it has no other jobs the subject employee could perform. Here, the record supports the charge of inability to perform duties because the appellant would be unable to perform her above-noted responsibilities as a Family Service Worker given that, pursuant to *N.J.S.A. 40A:9-2.1(e)*, she would be barred from accessing federal tax information due to her conviction. 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 utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. Moreover, 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).

The charges that were sustained are serious. In particular, as noted by the ALJ, the appellant's insurance fraud conviction constitutes conduct unbecoming a public employee because it undermines the public's respect for public employees and its confidence in the operation of public services and, pursuant to *N.J.S.A. 40A:9-2.1(e)*, the appellant's conviction bars the appointing authority from allowing her to handle clients' federal tax information. As noted in the job specification for the title of Family Service Worker, the duties for an incumbent in that title include determining financial eligibility for public assistance programs. It is undisputed that in connection with this and other related responsibilities, incumbents are routinely required to review confidential documents, including medical information, financial information, federal tax information, Social Security numbers, birth certificates, addresses and family information. The appellant's insurance fraud

conviction raises significant questions about her ability to be trusted with access to such sensitive information. Against this backdrop, even if the appellant had an unblemished disciplinary record, removal would be an appropriate penalty. However, the Commission notes that the appellant's record during her seven-year tenure contains multiple disciplinary actions, including two minor disciplinary sanctions in February 2014 and March 2015, and a nine working day suspension in June 2016. Such a disciplinary record over such a relatively short period is significant, particularly as her June 2016 suspension was major discipline which occurred less than one-and-one-half years prior to the effective date of the appointing authority's disciplinary action. Accordingly, the Commission finds that the appellant's removal is also consistent with principles of progressive discipline.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was appropriate. 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 23RD DAY OF OCTOBER, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment