



STATE OF NEW JERSEY

In the Matter of Courtney Brown
Department of Children and Families

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-683
OAL DKT. NO. CSV 11874-14

ISSUED: DECEMBER 16, 2020 BW

The appeal of Courtney Brown, Family Service Specialist 2, Department of Children and Families, of her release at the end of the working test period, was heard by Administrative Law Judge (ALJ) Elia A. Pelios, who rendered his initial decision on November 23, 2020. Exceptions were filed on behalf of the appointing authority and the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on December 16, 2020, accepted and adopted the Findings of Fact as contained in the attached Administrative Law Judge's initial decision.

However, the Commission does not adopt the ALJ's statement that the appointing authority's "returning the appellant to her previously held position be AFFIRMED." In this regard, the appellant was in the primary title of Family Service Specialist 2 after having successfully completed her tenure in an underlying trainee title. Once an individual is advanced from a trainee title to a primary title, they lose any rights to that trainee title. In this regard, *N.J.A.C. 4A:3-3.7(j)4* states that trainees who are advanced to a primary title, shall be required to complete a working test period in the primary title and those who fail to successfully complete a working test period in the primary title have no right to return to the trainee

title.¹ Thus, the appointing authority in this matter properly separated the appellant from employment after her failure to successfully complete her working test period.

ORDER

The Civil Service Commission finds that the action of the appointing authority in releasing the appellant at the end of the working test period was justified. The Commission therefore affirms that action and dismisses the appeal of Courtney Brown.

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 16TH DAY OF DECEMBER, 2020



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Attachment

¹ It is also noted that *N.J.A.C.* 4A:3-3.7(j)2 indicates that in State service, advancement to a primary title shall coincide with the beginning of a pay period.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 11874-14

AGENCY DKT. NO. 2015-683

**IN THE MATTER OF COURTNEY S. BROWN,
DEPARTMENT OF CHILDREN AND FAMILIES,
MERCER NORTH.**

Albert Van-Lare, Esq., for appellant (The Law Offices of Albert Van-Lare., attorneys)

Andy Jong, Deputy Attorney General, for respondent (Gurbir S. Grewal, Attorney
General of New Jersey, attorney)

Record Closed: August 3, 2018

Decided: November 23, 2020

BEFORE **ELIA A. PELIOS, ALJ:**

STATEMENT OF THE CASE

Appellant, Courtney S. Brown (Brown) contends that respondent, Department of Children and Families, Mercer North (DCF North), acted in bad faith when it determined that she had not successfully completed her working test period (WTP) as a Family Services Specialist 2 (FSS 2), and resulted in termination. Respondent denies that it acted improperly and contends that the appellant's case must be dismissed.

PROCEDURAL HISTORY

On August 22, 2014 the respondent notified the appellant that she had not satisfactorily completed her WTP in the position of FSS 2, and terminated Brown. On September 3, 2014, appellant requested a hearing. On September 17, 2014, the Civil Service Commission transmitted the matter to the Office of Administrative Law (OAL) where it was filed as a contested case. The matter was scheduled to be heard on July 17, 2017, July 24, 2017 and December 14, 2017. The matter was heard on these dates and the record was left open to permit the parties to submit post-hearing briefs. The record was closed on August 3, 2018.

FACTUAL DISCUSSION AND FINDINGS

Matilda Howell (Howell) testified on behalf of the appellant. She lives in Bensalem, Pennsylvania, and holds a Masters in Public Administration from Rutgers University since 2013. Howell is currently employed by a community umbrella association in Pennsylvania, but previously worked for the Communication Workers of America (CWA) Local 1039 in Trenton, New Jersey, as a staff representative in which she represented the Department of Children and Families (DCF) staff members, and disciplinary hearings. Prior to her position at CWA Local 1039, Howell had a number of positions in the DCF.

Howell is familiar with the appellant and has known her for a long time. She first met Brown through appellant's mother, as they grew-up together. Howell also represented the appellant in disciplinary case, as her representation was provided by the Union at the initial local hearing.

In Howell's representation, she reviewed the allegations against appellant. She met with the appellant and reached out to Delphine McKinnis to obtain documents to assist in the representation. Howell reviewed and identified the WTP progress reports twelve and three (A-1) from the appellant's WTP in the position of FSS 2. She stated that counsel shared the documents with her as to Brown, and that they had been provided to her by McKinnis.

Howell stated that she had spoken to Ms. McKinnis about the dates on the appellant's WTP. She believes the WTP date is incorrect as Brown began her work as a trainee on February 11, 2014 and completed her WTP in the trainee position on June 11, 2014. Howell believes that February 22, 2014, is not the correct start date of the WTP as a FSS 2.

Brown then testified on her own behalf. Appellant lives in Ewing Township, New Jersey. She has a bachelor's degree in social work and works in assisting seniors helping them with errands such as shopping and housecleaning. Brown currently earns \$11 per hour. Appellant described her time working for DCF, she would investigate and perform on-site visits, draft reports, attend conferences, and attend court proceedings. At the time she left employment, she was a FSS 2, having been a family service specialist trainee. Brown stated that Wanda Thomas (Thomas) was designated as her supervisor during the training. Thomas was supposed to supervise the appellant for one year but was often absent. Brown stated that Thomas left the job temporarily in August, did not provide supervision to the appellant, and she was not assigned a new supervisor. Brown was told that she would be going to a different unit, that it was not a particularly good unit, but that she would do well because she was a good worker. She stated that she did not get the supervision she needed, was not getting weekly conferences, and that the team leader was not around. Brown stated that she would disregard appellant whenever she had concerns. Brown's supervisor Thomas had taken a leave to get her Master's degree.

Appellant also stated that she was blocked from attending trainings because others would not "do court," and that the appellant had to cover court hearings which required her to skip training sessions. It is noted that this was also during the time the appellant was still at the training stage, and had not begun her WTP as a FSS 2. Brown noted she had seen reports one through three (A-1). Appellant advised that the first report, number one, which covered February 22 through April 22, 2014, rated her job performance as satisfactory. Brown noted that report number two, which covered from February 22 to June 22, 2014, rated her as unsatisfactory, and sought to extend her WTP. She stated that she was informed by Thomas that the WTP period needed to be extended because Thomas had not had enough time to observe her due to her being out, and that she had done nothing wrong.

Thomas assured Brown that there was no real problem. Brown stated to Thomas that it was not right that she was extended because Thomas did not have time to do her job and observe her. It is noted that subsequent pages of report number two did actually spell-out issues that needed addressing (A-1 Bates 1963) and denotes reasons why the job performance is unsatisfactory. Brown wanted to keep her job, so she agreed to sign the extension with Thomas. Report number three covers February 22 through July 22, 2014, and it is noted that it was initially marked that the WTP was to be extended, but this was removed. Brown was concerned and brought the document to Thomas who she said looked like she had seen a ghost, and asked her to provide the document to her. The appellant was not comfortable doing so, she is certain that white out correction fluid was placed on the document because she was accidentally sent the original document. Brown stated that her WTP period was not extended as a result of report number two. She was told that was the initial idea, but that the Agency subsequently learned that a second extension cannot be done. Appellant now understands that working test periods can only be extended once.

Appellant produced her original report number three, which was on blue paper and clearly had a concealing material over the box where it had stated extending the WTP, a form of white out correction fluid was clearly applied. It is noted that appellant did sign the attachments to report number three (A-1, Bates 1970 to 1971), although she notes that at the time that she signed the documentation, she was under the impression that she was going to be extended. This document also had an attachment which stated the reasons for the unsatisfactory work performance, which appellant stated were not true, although it is noted that she did sign them.

Appellant took issue that Thomas described her as disorganized, she disagrees and stated that Thomas is the one who was disorganized, and she termed her as a liar. Brown also stated that it was not true that she had been told since March to close three cases. She believes the cases that are being discussed were S.P., F.G., and S.G. cases. Brown stated that some of these cases were still in litigation, missing collaterals, or safety issues existed at the home, and therefore would not have been able to be closed as of March. She reviewed

a document which spelled-out case termination criteria (A-2), she believes that these criteria had not been met with regard to the cases, but she believes the document refers to.

Brown reviewed contact notes from one of the cases she believed was the subject of the criticism, the "S.G. case" (A-3). The document noted that the S.G. case was going to be assessed for closing in late June, and appellant noted that if that was the case in a note that had been completed by Thomas, then she could not have been asked to close it back in March. Another page of the note, which was completed by Thomas, stated that the case was to be closed by June 20, 2014. Subsequent notes in the file that were created in periods in April and May stated that the risk-level was high, which appellant stated as a barrier to closing a case, and also noted that the court was remaining involved, which also prevents a case from being closed. In late April, a note indicated that the case was going to be assessed for the next ninety-days with a high risk. The notes all appear to have been authored and/or approved by Thomas.

Appellant stated that there were some trainings that she missed. She stated that she went to advise Latoya of her training schedule, which she resented having to do, feeling that the supervisor should be aware of her training schedule, but she was told that since Latoya did not do court, the appellant had to cover, and so she missed those training sessions. Brown referenced a document that identified her attendance and absences at training sessions during the period of 2013 and 2014. She noted that she was absent on December 4, December 2, November 12, October 15, October 1 and September 26.

Appellant also reviewed her probationary reports from training. Reports number one and two (A-5) from part-time as a FSS training in which she had received satisfactory ratings. It was noted that on June 11, 2013, she was advised that she had completed her training WTP, and that her permanent status would begin on February 11, as a FSS 2.

Appellant also reviewed a policy manual which covered policies for the training unit (A-7). Brown noted that it stated that the unit had the responsibility to develop new workers into well-rounded permanent caseworkers. Appellant stated she was denied this opportunity.

On cross-examination, appellant stated that her training WTP went from February 11, 2013 to June 11, 2013. She acknowledged that Thomas did not leave to get her Masters in social work until August 2013. Brown acknowledged that at the time of the transfer to Latoya's unit, she had six-months experience. She stated that she acknowledged that Thomas did return in January 2014, before appellant began as a FSS 2 and noted that the issue here is pertaining to her time in the WTP for the FSS 2. She stated that she did not request specifically to go back under Thomas's supervision, but that that is what occurred. Appellant believes that she was in the role of FSS 2 in June 2013, but that the WTP did not begin until February, and acknowledged that a WTP began in February 2014. Appellant stated that she did not make-up all of the training courses she missed, however reviewing the training schedule (A-4) with respondent's counsel, it became apparent that every training that was missed was subsequently made-up, and that she had received all training. She acknowledged that her caseload had been reduced, although she stated she did not have a problem that she was carrying too many cases. Brown was asked to complete specific tasks, and she was asked to complete weekly plans. She acknowledged that she was given protected time, which was time carved out specifically to work on cases and not to do anything else, not answer any phones or do other administrative work.

Appellant denies that she had any issue with decision-making. Brown did acknowledge that supervisors help with specific cases, but there were instances where she disagreed with their decision. She stated that they were intent on closing cases that she believed were not yet ready to be closed. Appellant believes that she is organized, Howell acknowledged that page 1,963 of her WTP reports (A-1) indicated otherwise. She reviewed an email in which her supervisor did specifically ask her to organize her work area (R-1), and she did respond to the email that she would. Appellant acknowledged that she was warned for being late to work and acknowledged that her WTP was extended. After first denying so, Brown acknowledged that she was given opportunity to complete her extension, although she stated that she was only made aware after-the-fact that the regulations only allow her one extension, and acknowledged that that is what the regulations allow. She stated that if she had known that she was only allowed one extension, she would have made a stronger

case to be marked as satisfactory. She reviewed her WTP, report number four (R-4) which included the notice of her termination from the position. Brown again stated that Thomas told her that she did not have time to observe her but acknowledged that the reports did in-fact have written-up reasons for the unsatisfactory rating, and an improvement plan that was to be followed.

On redirect, Brown stated that she did provide weekly updates as requested by her supervisors.

Andrea Maxwell (Maxwell) testified on behalf of the respondent. She has been employed by DCF for seventeen years. For two years at the time of hearing she was a manager to human resources, prior to that she was a manager one for three years. Maxwell stated that FSS trainees have a WTP for six months and at one year they get a promotion to FSS 2 and they automatically get a new WTP. Evaluations are made at two and four months and at the end of four months they are either terminated or extended another two months. If a FSS trainee is not satisfactory, Civil Service Rules allow only one extension to their WTP, which comes after the second evaluation report in the fourth month. Maxwell is familiar with WTP. Reports have due dates and they should be completed around the time of the due date. With regards to the WTP progress reports, dated March 7, 2014 (A-1, Bates stamp 1961), it is noted that if there is an unsatisfactory finding the report has to be delivered to the human resources early because Civil Service needs five working days to process an extension. Human resources review the evaluation report to make sure that the documents are sufficient, and extensions are for two months. For termination, the evaluation reports are submitted on the actual date they are due. Maxwell is familiar with the appellant who started as a trainee on February 11, 2013. Brown was promoted on February 22, 2014, which is the first day of the pay period (a Saturday), and stated that a promotion can only start on the first day of the pay period and February 22, 2014 was that first day. A promotion cannot start in the middle of a pay cycle, which is what the February 11 was. A pay period is fourteen days long. A second extension is not allowed. Maxwell is familiar with the job description of a FSS 2, she talked about the essential jobs factors of the job drawing conclusions as part of the job specification was the ability to engage families, is critical in decision-making, the ability to demonstrate strong organizational skills is important as is the ability to remain calm

and decisive in emergent situations.

On cross-examination, Maxwell stated it is the Civil Service Commission who actually approves an extension of WTP. Appellant worked as a trainee for one year which completed on February 11, in the middle of a pay period. For the period of February 11 through February 22, Brown was still a trainee, which is common for a one-year appointment. She was still paid as a trainee. Her promotion took effect at the start of the next pay cycle.

Maxwell explained that she signed WTP progress report three, although noted that the employee and the supervisor sign the report before she signs. The original report goes to the employee. While reviewing the original report, Maxwell acknowledged that she saw white out correction fluid and assumed the white out was there by the time that it got to her. She stated that if a report comes in incorrect it is sent back. She did not remember if this report was sent back and assumed that the office should notice the employee that they cannot do another extension and needed to correct the report. Maxwell stated that she could not have given a second extension even if she wanted to. She did not know who marked the document or what was under the white out correction fluid.

Wanda Thomas (Thomas) testified next on behalf of the respondent. She is employed by DCF for eighteen years and was currently a supervisor FSS 2. She supervises five to eight workers. She has supervised twenty-five to thirty trainees, and she supervised FSS 2s in 2011. She had been a training supervisor for five years and discussed the field training unit policy. Thomas noted that employees are trainees for one year. She knows the appellant and had a cordial relationship with her. She indicated that their only issues were work-related and there was no ill will. Thomas supervised appellant as a trainee until she took education leave. She noted that appellant passed her WTP.

Thomas took education leave from August to December 2013 and resumed her supervisory duties upon her return. Appellant became a FSS 2 for the permanency unit. The permanency unit involves family-based services. Thomas was appellant's supervisor at the time of her promotion to FSS 2. She also performed evaluations of the WTP. She observed

and completed progress reports. She gave appellant a satisfactory evaluation in the first report because appellant deserved it, at this point she had issues but none that rose to the level of unsatisfactory. Thomas indicated that Brown had trouble getting to work on-time and trouble getting services to families in a timely manner. Ultimately, appellant's cases were reduced. She had many cases, which could be hard to manage. They were produced prior to the WTP progress report. Appellant's case load was reduced from fourteen to seven or eight cases. No new cases were assigned to her. Brown had training to assist her in organization.

With regard to the second progress report, Thomas testified that appellant received an unsatisfactory rating due to the same issues which had progressed: service delays, referral delays, and time management issues. Brown still had about seven cases which were the same cases from her first WTP report. It appeared that it was hard for appellant to make decisions, especially out in the field. Thomas tried to help, she believed that appellant did not feel confident enough to make decisions and stated that it was uncommon for employees to have this degree of difficulty. Thomas identified time management as a big issue for appellant.

The "S.G." case was a matter that Thomas told appellant to close in May and she did not have contact sheets in front of her when she prepared the report. She reviewed the contact sheet for April 21 (A-3) and told her to assess the matter for closing by June 1, 2014. The S.G. case was not completed by the time that the progress report was to be issued, but this was not the only reason for the unsatisfactory rating.

Thomas stated that weekly work plans were submitted to describe what appellant would accomplish in the upcoming week. Work plans are important because they keep the worker organized and it keeps the supervisor informed. Work plans were due by Friday at 5:00 p.m. to the supervisor or Monday by 9:00 a.m. Appellant completed her weekly work plans, but they were often late.

Thomas is familiar with protected time which is uninterrupted time to get work done.

Appellant was given protected time of two hours per day. A lot of her job was not usually at her desk, so she did not always take advantage of this time. Brown often came in late, which came out of protected time, and appellant was not organized. Brown's workspace was very unorganized, meetings were had to address these issues. Thomas acknowledged that appellant's performance initially started to improve with the decreased workload but then it started to trail off again. Attendance issues were also discussed as Thomas felt that appellant sometimes just showed-up whenever she wanted to. She reviewed a document (R-4), which is an email addressing an 1:50 hour late arrival on May 29, 2014. Appellant did not request leave and did not call in—in this instance she was allowed to use leave time but was advised that in the future she would be docked.

The S.G. file was chosen to be reviewed. Thomas indicated that the reviewer asked her for the file and the file was in disarray. She had a trainee pull out the file and organize it. An improvement plan was signed by Thomas and the appellant, and they extended her WTP. Ms. Cathee Chichester and Thomas made the decision to extend the WTP because they did not want to fire appellant, they wanted to see her succeed. A two-month extension was granted, and appellant was made aware that she could be terminated. Both appellant and Thomas were upset, they informed appellant that the extension was granted. After the extension there was some notable improvement but there were still major issues regarding tardiness and organization. Appellant still had difficulty having discussions with families, and still no new cases were assigned. There were still issues with task completion and decision-making and Thomas still helped the appellant.

The S.G. case was open a few years and was ready to be closed as there were no services left with the family. Thomas directed the appellant to close the file and she did not follow the directive. Appellant was still receiving two hours of protected time daily, but her productivity did not increase. Appellant was given a warning for lateness, an oral warning on July 11, 2014 (R-5), which Thomas drafted, and appellant signed. There were still issues with the weekly work plans so new improvement plans were drafted. Although it was mostly the same requirements in the new improvement work plans, there was a reduced caseload as some cases had closed. Appellant's caseload was down to five or six cases because new

cases were never assigned.

Thomas tried to extend appellant's WTP a second time because she still did not want to terminate her, and appellant was pregnant. She wanted the appellant to improve but the extension was denied. Maxwell informed Thomas who was sad that she could not provide a second extension. She informed Brown and explained that the next step is to terminate appellant. Appellant was upset and indicated that she wanted to improve. Thomas drafted report number four and prepared a notice of termination (R-2) due to an unsatisfactory review. Brown was given numerous opportunities to improve and yet continued to struggle. Appellant had five to six cases and did not improve her decision-making skills, she still had protected time and was still disorganized. Although appellant's productivity improved it was not enough as she was still not completing tests. Thomas, the supervisor Chichester, and the office manager Kennedy made a decision to terminate. Thomas and Chichester met with the appellant and told her she was terminated. Brown became upset and refused to continue the meeting without a union representative, refused to sign the form, and it was a very hard day. Thomas stated they were both upset. She denied that she ever told appellant that she did not have time to supervise her. Thomas believes that four trainees, including the appellant, have failed a WTP as a FSS 2 under her supervision and noted that thirty to forty have passed.

On cross-examination, Thomas reiterated there is no animosity towards the appellant, and she spoke to Brown the same day that Maxwell informed her she cannot extend the WTP. Thomas then met with Chichester, and the two of them met together with appellant. It was either the same day or the day after - she did not document the meeting. She did not put "white out" on the form. She did check "extend" and Maxwell sent it back to her. She only became aware that the box was "unchecked" when she was testifying and notes that she did not "white out." The original goes back to the worker and it goes directly in a sealed confidential envelope.

She noted that if collaterals are outstanding it's because workers are not following up with the cases. It does not constitute reason to delay closing the case. Reviewing a contact sheet for the S.G. case it occurred on April 18, 2014 and was entered on June 18, 2014. Thomas believes it is appropriate to close that case as the child is with the grandmother and the father was elsewhere. The father's issues did not impact the child's safety with regard to the S.G. case. It was closed on July 1. Thomas noted she became involved with that case when she returned at the end of December. She reviewed the entire file and made a notation that all tasks were closed, and the case should be closed effective June 22. Even after reviewing the contact sheets from May Thomas still believes the case was appropriate to be closed. Outstanding tasks remain because the appellant did not do her job. Thomas reviewed collaterals in another case (P-13). This was a high-risk case. The client had difficulty paying their PSE&G bill. The boyfriend was serving time. Still the case was approved to be closed as to the boyfriend did not live in the home. DCF may assist but does not pay the bill. The assessment was brought to Thomas. She reported to her supervisor and they made the decision to close the case. Appellant was instructed to give the case to the supervisor for closing.

Thomas stated that a WTP is for four months and that appellant's was extended. A WTP can only be extended on a second progress report and the regulations only allow for one - two month WTP extension. She acknowledged that the first evaluation was satisfactory. The second evaluation was unsatisfactory and resulted in an extension. The third report saw some improvement but an insufficient amount. It was noted that the S.G. case was to be submitted for closing by July 31, 2014

While Thomas was out on leave Brown was supervised by another individual. Brown was just starting as a FSS 2 when Thomas returned from leave.

Thomas stated that cases have to be closed within thirty days. If you missed a thirty day window than a new visit has to be performed. With the S.G. case the boyfriend was shot, and the mother was having trouble with PSE&G. This was all addressed with appellant. Questions needed to be answered. The family was deemed safe the case was ready to

close however the thirty day window was missed after it was deemed ready to close so now a new contact sheet was required. The family was deemed safe on January 29 yet since the case was not close the return visit was required. By June 2, 2014 again the case was not closed in thirty days.

When Thomas returned from leave, she learned that appellant had missed training. She met with her and the supervisor to determine what happened and how training could be made up. They rearranged appellant's schedule and made sure she made up training. Thomas states the high-risk cases still may be closed out when appropriate. She has been with DCF for sixteen years and has been closing high risk cases for fifteen of those years. Collaterals are important in all cases

She noted major issues between the first and second report, specifically poor decision-making, timeliness and arriving to work, the callout policy, closing cases on time and the disarray of her work area. Thomas said that appellant did eventually complete make up training. With regard to the S.G. case the paperwork did not stay where the shooting occurred, and Thomas acknowledged that if the shooting was at the house then the house might not be deemed safe. As for trouble with PSE&G it needs to be determined if the electric or gas was turned off. If it was turned off the house would be deemed unsafe.

She acknowledged that is only documented two times that appellant was late to work but she states that she let it slide many times because appellant was pregnant. It was not uncommon that she would show up forty minutes late without calling.

The state called Nkyo Isuk. She has worked for DCF for nineteen years. She is presently working at the Mercer North local office where she is the supervisor of FSS 2s from 2006 to the present. She has been a supervising family service specialist. She supervises case managers including FSS 2s. She has been fourteen years at the Mercer North office. She knows the appellant as appellant was assigned to her unit in September 2013 as a case manager. They basically had a professional relationship. There was no ill will or personal animosity between her and the appellant. The appellant was assigned to her because

Thomas went on education leave. Appellant was done with her WTP as a trainee. At the time of the reassignment another worker was also assigned from Thomas's group to Isuk.

She denies that she ever told Brown to not attend training. She states the appellant came to her and had a court date and a training day on the same day. Isuk told her that nothing could be done the day of. Since it was the same day, she was told she had to go to court. Appellant never came back to her with a similar issue. Isuk stated that the appellant is responsible to attend training.

She stated that on December 13 Thomas came back and appellant went back to be under Thomas's supervision. They had no interaction after Thomas's return. Once appellant became a FSS 2 Isuk had no say in appellant's training or her progress reports. On cross-examination she stated she never performed an evaluation of the appellant.

The respondent then called Cathy Chichester. Chichester is employed by DCF. She has worked with DCF for thirty-four years. She is a casework supervisor supervising family service specialist. She had been fourteen years in her current job at the time of her testimony. Her position is a second level supervisor in the Mercer North office. She knows Thomas and used to supervise Thomas for four to five years. She believes it was between 2011 and 2015. Chichester also knows the appellant as appellant worked in the Mercer North office. She had professional relationship with appellant and no animosity. Essentially, she was appellant's supervisor's supervisor. Sometimes they would conference cases together. She was present during appellant's FSS 2 WTP. She met with Thomas to discuss the appellant at least once a month. There was concern that her work was not being processed timely and that she was not following directions and was having difficulty with decision-making. A FSS 2 should not be deferring to her supervisor for every decision. It is not common with other FSS 2's. She was given a reduced caseload during her WTP to seven or eight cases. A normal FSS 2 workload is fifteen cases but at that time it was more like thirteen.

Thomas and Chichester made the decision to reduce appellant's workload when Thomas returned from education leave and appellant returned to her supervision. Cases

taken were reassigned. Thomas and appellant conference regularly. Specific tasks were assigned. They frequently were not completed timely. When assignments were incomplete cases don't move forward and families do not get services and DCF is involved with a family longer than they should be.

Appellant was given protected time, but she did not fully take advantage of it. An employee is not supposed to answer their phone or respond to email during protected time. Appellant did. Chichester observed that caseworkers submit weekly report plans to their supervisor. They are due Friday afternoon, at the latest Monday morning. These are also submitted for safety reasons so that the office knows of potential issues or where the employees are. Appellant did not submit her plans on time. Chichester did not know why appellant's workspace was not organized. Cases were not filed properly; material was kept on the desk - not in files - and this affected her work. When records are not filed properly this causes delay in the closing of files. Thomas had to assign a trainee to help organize appellant's case files. Chichester described a particular survey that potentially could have affected federal funding if not completed within three days. Appellant submitted hers late. She was late several times in a month.

Chichester and other supervisors tried to work with the appellant to avoid terminating her, so they extended her WTP. They wanted to see her succeed. However, the performance did not improve sufficiently after the extension. She still had a reduced caseload. They tried to give her second extension but HR informed Chichester and Thomas that that was not an option. They were unable to extend her further. Once HR told them that cannot occur they met with appellant to try to help her with her cases. They took cases away, tried to close them. It's not fair to the families of cases that are deemed ready to close to have DCF keep coming out month after month during her FSS 2 WTP. She was never given any new cases and was still getting protected time. At the end her rating was unsatisfactory.

The matter was discussed with Thomas and the office manager at that time they met with appellant to review the last report. There were no issues between Thomas and the appellant. Appellant never came to Chichester with issues about Thomas that Chichester

recalls. In her experience at Mercer North 3 to 4 FSS 2s have failed the WTP. About 100 have passed.

On cross-examination she wouldn't say that she rarely spoke with appellant but noted that they didn't have cause to interact regularly. The last time she had spoken to Thomas was about a month prior to her testimony. They never discussed Thomas or Chichester's testimony in this matter other than mentioning that they would be present on the date of hearing. They did have phone conversations on other unrelated matters on occasion. Cases are assigned as evenly as possible. Chichester saw appellant on the phone during protected time although she does not know the nature of the phone call. She was not the person to document issues with the weekly work plans. She knew of appellant's tardiness based on what Thomas told her. Her recollection was that it was several times a month - certainly more than two times. She was not aware of what the records would reflect. She reiterated that it is not fair to the family to not close a case that is ready to be closed.

On redirect she reiterated that performance issues were to be documented by Thomas not by herself. Ripeness for closing cases decisions were made between the worker and the supervisor during the regular conferences. Closing a higher risk case must be approved by Chichester. High-risk cases can be closed as long as Chichester is informed.

At issue are the performance and evaluations of the appellant. The appointing authority's witnesses testified as to appellant's poor performance and difficulties meeting the requirements of her new position, and appellant testified to the contrary. Therefore, the credibility of the witnesses must be determined.

When the testimony of witnesses is in disagreement, it is the obligation and responsibility of the trier of fact to weigh the credibility of the witnesses in order to make factual findings. Credibility is the value that a fact finder gives to the testimony of a witness. The word contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). The term has been defined as

testimony, which must proceed from the mouth of the credible witness and must be such as our common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955); see also, Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E. & A. 1934). A fact finder is expected to base decisions on credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837 (1973). Credibility does not depend on the number of witnesses and the finder of fact is not bound to believe the testimony of any witness. In re Perrone, 5 N.J. 514 (1950).

The testimony of each witness was consistent and there was nothing inherently unbelievable about any testimony provided. Each witness answered questions directly and calmly. Although the appellant sincerely believed her own testimony, and while nothing she testified to, beyond not being aware of any dissatisfaction with her performance, was inherently unbelievable, when balancing the respective interests in their testimony appellant appears to have more to gain or lose by this proceeding. Her supervisors and her supervisors' supervisors all concurred that work was not being completed timely, that she was not keeping up with a reduced workload, and that cases that were deemed appropriate to close were not closed, and I so FIND.

CONCLUSIONS OF LAW

The purpose of the working test period is to permit an appointing authority time to determine whether an employee satisfactorily performs the duties of a title. N.J.S.A. 11A:4-15 and N.J.A.C. 4A:4-5.1(a). For State positions, the working test period shall be for four months and may be extended an additional two months. N.J.A.C. 4A:4-5.2(b). N.J.A.C. 4A:4-5.4 provides that an employee may be terminated for unsatisfactory performance at the end of the working test period. A party may appeal the termination, but the employee has the burden to establish that the separation was a result of bad faith. N.J.A.C. 4A:2-4.3(b). In Devine v. Plainfield, 31 N.J. Super. 300 (App. Div. 1954), it was made clear that a probationary employee who is terminated should be given a hearing to present evidence as to the limited issue of bad faith by the appointing authority. In Briggs v. New Jersey Dep't of

Civil Serv., 64 N.J. Super. 351, 356 (App. Div. 1960), the court stated that the only issue in such a case is whether the appointing authority exercised good faith in determining the employee was not competent to perform satisfactorily the duties of the position.

There are no reported decisions in a case involving termination at the end of a working test period where the courts have specifically defined what is meant by good faith. In Smith v. Whitman, 39 N.J. 397 (1963), a non-civil service case, the New Jersey Supreme Court defined good faith as meaning honesty of purpose and integrity of conduct with respect to a given subject. In Lustrelon, Inc. v. Prutscher, 178 N.J. Super. 128, 144 (App. Div. 1981), it was observed that "bad faith" is the antithesis of good faith and must be a thing done dishonestly and contemplates a state of mind affirmatively operating with a furtive design or some motive of interest of ill-will. See O'Connor v. Health Services Ctr. of Camden County, 91 N.J.A.R. 2d (CSV) 23.

If the evaluations and determination are based upon actual observations of the employee's performance of the duties of the position, and are honest assessments of whether the employee is capable of satisfactorily and efficiently performing those duties should appointment become permanent, it must be considered to have been made in good faith. If, on the other hand, the decision to terminate is not based upon actual observations of performance, or if it is made based upon dishonest motives, is based on bias, prejudice or self-interest, or is made with ill-will toward the employee, it must be set aside.

The appellant has not shown by a preponderance of the competent and credible evidence that respondent's action at the end of her working test period was made in bad faith. No evidence was offered as to bad faith except for appellant's own verbal contradiction of respondent's assertions. The evidence reveals that the appellant had been a good, capable and competent employee, who after her promotion had difficulty adjusting to the job of FSS 2 and appropriately meeting the responsibilities required of that position. The record does not show any bad faith, bias or improper motives by the respondent. Accordingly, I **CONCLUDE** that appellant has not sustained her burden and that her appeal should be

DISMISSED. I further **CONCLUDE** that the appointing authority's action must be **AFFIRMED**.

ORDER

I **ORDER** the appellant's appeal be **DISMISSED**, and that respondent's action returning appellant to her previously held position be **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, 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.

November 23, 2020

DATE

Date Received at Agency:

Date Mailed to Parties:

EAP/mel



ELIA A. PELIOS, ALJ

November 23, 2020 (emailed)

APPENDIX

LIST OF WITNESSES

For Appellant:

Courtney S. Brown
Matilda Howell

For Respondent:

Andrea Maxwell
Wanda Thomas
Cathy Chichester

LIST OF EXHIBITS

For Appellant:

- A-1 Department of Children and Families, Office of Human Resources and Labor Relations, Inter-Office Communications, To Michelle Kennedy, Mercer North L.O., CC:673, From Paula Cardo, PMIS UNIT-CC:941, Subject: Enclosed Working Test Period Progress Reports, dated March 7, 2014
- A-2 New Jersey Department of Children and Families, Policy Manual, Effective Date, May 28, 2013
- A-3 State of New Jersey, Department of Children and Families, Division of Child Protection and Permanency, Contact Sheet, "The S.G. Case"
- A-4 Training Transcript, dated February 3, 2015

- A-5 Report on Progress of Probationer, State of New Jersey, Department of Children and Families, Office of Human Resources, dated March 8, 2013
- A-6 Withdrawn by Counsel
- A-7 New Jersey Department of Children and Families, Policy Manual, Effective Date, March 19, 2012
- A-8 New Jersey Department of Children and Families Policy Manual, Effective Date: May 21, 2012
- A-9 Redacted State of New Jersey, Department of Children and Families, Division of Child Protection and Permanency, Contact Sheet Completed by Appellant, Revised July 2012, Date Occurred: April 18, 2014, Date Entered: June 18, 2014
- A-10 Redacted Letter from Courtney Brown, Family Service Specialist II, and Wanda P. Thomas, Supervising Family Services Specialist II, State of New Jersey, Department of Children and Families, Terminating Agency's Involvement, dated July 1, 2014
- A-11 Redacted State of New Jersey, Department of Children and Families, Division of Child Protection and Permanency, Contact Sheet Completed by Appellant, Revised July 2012, Date Occurred: July 1, 2014, Date Entered: July 1, 2014
- A-12 Withdrawn by Counsel
- A-13 Withdrawn by Counsel
- A-14 Redacted State of New Jersey, Department of Children and Families, Division of Child Protection and Permanency, Contact Sheet Completed by Appellant, Revised July 2012, Date Occurred: January 23, 2014, Date Entered: January 29, 2014
- A-15 Redacted State of New Jersey, Department of Children and Families, Division of Child Protection and Permanency, Contact Sheet Completed by Appellant, Revised July 2012, Date Occurred: January 14, 2014, Date Entered: January 31, 2014

For Respondent:

- R-1 Email from Courtney Brown to Wanda Thomas Concerning Work Area, dated February 21, 2014
- R-2 Report on Progress of Probationer, State of New Jersey, Department of Children and Families, Office of Human Resources, dated July 11, 2014
- R-3 New Jersey Civil Service Commission, Job Specification, Family Service Specialist 2
- R-4 Email from Wanda Thomas to Courtney Brown, Concerning Timesheet, dated June 2, 2014
- R-5 Interoffice Memorandum from Courtney Brown to Wanda P. Thomas, Concerning Corrective Action-Oral Warning, dated July 11, 2014
- R-6 State of New Jersey, Department of Children and Families, Division of Children Protection and Permanency, Worker/Supervisor Conference, Contact Sheet, dated February 18, 2014