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STATE OF NEW JERSEY

In the Matter of Daniel Rodriguez
City of Hoboken,
Department Environmental Services

CSC DKT. NO. 2012-3496
OAL DKT. NO. CSV 08825-12

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

ISSUED: OCTOBER 22, 2014 BW

The appeal of Daniel Rodriguez, Laborer, City of Hoboken, Department Environmental Services, removal effective April 24, 2012, on charges, was heard by Administrative Law Judge Joan Bedrin Murray, who rendered her initial decision on September 16, 2014. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on October 22, 2014, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

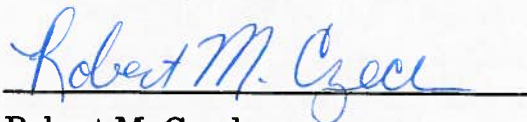
ORDER

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

Re: Daniel Rodriguez

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
OCTOBER 22, 2014

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

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 08825-12
AGENCY DKT. NO. 2012-3496

**IN THE MATTER OF DANIEL RODRIGUEZ,
CITY OF HOBOKEN.**

Merick H. Limsky, Esq., for appellant (Loccke, Correia, Limsky & Bukosky,
attorneys)

Alysia M. Proko, Esq., Assistant Corporation Counsel, appearing for
respondent City of Hoboken (Mellissa L. Longo, Corporation Counsel)

Record Closed: June 16, 2014

Decided: September 16, 2014

BEFORE JOAN BEDRIN MURRAY, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The City of Hoboken (City or respondent) removed Department of Environmental Services Laborer Daniel Rodriguez (Rodriguez or appellant) effective April 24, 2012, for allegedly interfering, in a confrontational and aggressive manner, with a Stephens Institute of Technology (SIT) police matter as he emerged from the Little League ballpark on 5th Street across from SIT. Rodriguez contends that he did not interfere with the SIT police matter in any way; instead, he merely came upon the scene while

performing his work duties. At issue is whether Rodriguez engaged in said conduct, and, if he did, whether his actions constitute insubordination, conduct unbecoming a public employee, and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(2), (6) and (11) so as to warrant removal by the City pursuant to N.J.A.C. 4A:2-2.2(a)1. Of particular importance is whether a "Last Chance Agreement" entered into by Rodriguez and the City on October 4, 2011 is triggered by Rodriguez's actions in the within matter, (if found to have taken place), thereby warranting removal as stated above.

On April 24, 2012, the City prepared a Preliminary Notice of Disciplinary Action (PNDA) against appellant, suspending him immediately and seeking his removal. After a departmental hearing on May 9, 2012, the City prepared a Final Notice of Disciplinary Action (FNDA) on May 22, 2012, removing Rodriguez effective April 24, 2012. After Rodriguez requested a hearing on May 29, 2012, the Civil Service Commission transmitted the contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 TO -13, to the Office of Administrative Law (OAL), where it was filed on June 28, 2012. After being adjourned twice by the parties, the matter was heard on May 21, 2014, by the undersigned. The record closed on June 16, 2014, after the receipt of post-hearing submissions. The time for filing the Initial Decision was then extended until September 15, 2014.

FACTUAL DISCUSSION AND FINDINGS

BACKGROUND

The following is undisputed, and therefore **FOUND** to be the **FACTS** of this case. Rodriguez was a laborer in the Parks Department of the City of Hoboken. On October 4, 2011, he entered into a Last Chance Agreement with the City. It provided that he had engaged in serious prior misconduct. He therein acknowledged "that any future misconduct, relating to misconduct of any kind, other than excessive absenteeism or lateness, no matter how minor, shall result in his immediate discharge." He also agreed to attend anger management counseling immediately upon execution of the agreement. He failed to comply with this provision. On the morning of April 22, 2012, Rodriguez was working in his capacity as laborer. He had been employed by the City for 13 years. Rodriguez was working in and around the Little League ballpark (Park) on 5th Street

changing the garbage bags in the trash cans there and on 5th Street. At approximately the same time, SIT Chief of Police Timothy Griffin (Griffin) was readying the SIT campus for an accepted students event. Griffin had been SIT Chief of Police for 7 years prior to the within incident. As set forth more fully in a summation of his testimony below, Griffin made a motor vehicle stop on 5th Street just outside the Park where Rodriguez was working. In dispute is the nature of the interaction between Rodriguez, Griffin, and SIT Police Officer Dennis Long (Long).

TESTIMONY

The testimony of both Griffin and Long conflicts with that of Rodriguez as to what occurred on the morning of Sunday, April 22, 2014. Griffin stated that at about 8:20 a.m., he was heading over to check the SIT parking lot at the corner of Sinatra Drive and 5th Street in preparation for the arrival of the accepted students. He was in an unmarked police vehicle and dressed in full uniform at the corner of 5th Street and Sinatra Drive when a car sped past his vehicle and turned up 5th Street, a one-way street, in the wrong direction. The speeding car stopped at the top of the hill, and Griffin brought his vehicle to a stop behind it, with his emergency lights activated. As he proceeded to confront the driver, her passenger, later identified as John Hennessey (Hennessey), got out of the car and said he was going to work. As he began walking away, Griffin directed Hennessey to remain on the scene. Hennessey engaged in a verbal confrontation with Griffin, essentially ignoring Griffin's directive. Griffin then called for backup assistance from other SIT police officers. He was unaware that Hennessey was an employee of the City and a co-worker of Rodriguez. At about this time, Kevin McCort (McCort), a Hoboken Human Services employee and Hennessey and Rodriguez's supervisor, appeared on the scene.

McCort was able to get Hennessey under control while Griffin finished questioning the driver of the car. Griffin stated that at that point, things began to calm down, and that McCort told Hennessey to cooperate with him. By the time Griffin turned his attention back to Hennessey, Hennessey was ready to apologize to Griffin and in fact, did so. Griffin was then explaining to him that you don't ignore a uniformed police

officer when another voice chimed in behind him, later identified as belonging to Rodriguez. Although Griffin initially only heard Rodriguez's voice but did not see him, Long, an SIT police officer for over 2 years and previously a Jersey City police officer for more than thirty-two years, testified that he saw Rodriguez come out of the Park. Long had arrived at the scene in response to Griffin's call for backup. He testified that when he first exited his vehicle, Rodriguez was not on the scene. He then observed Rodriguez emerge from the recessed Park and get onto the sidewalk in view of the incident, with garbage bags in his hand. At that point, Long stated that Rodriguez looked him in the face while saying loudly to Hennessey and the driver: "You don't have to listen to him, he's not a real cop. You don't have to listen to those guys." Rodriguez then began using profane language. Long told Rodriguez to be quiet and mind his own business, that it was none of his concern. Long told him three times to back off, to no avail. Griffin testified to substantially the same words emanating from Rodriguez. Griffin then approached Rodriguez and asked him for identification. Rodriguez told him: "F---You [quoting directly from Griffin's testimony]; I don't have to show you anything, it's a free country. I can say whatever I want." Griffin then asked him for his identification again, and noticed that Rodriguez was wearing a City shirt. The confrontation ended when McCort came over. McCort gave Griffin the requested information, as Rodriguez still refused to cooperate. Rodriguez then went back to emptying the garbage cans.

Griffin stated that he did not arrest Hennessey or Rodriguez because SIT enjoys a good working relationship with the City, and he did not want to create an embarrassing situation for Hoboken. However, on the following day, Griffin did write a letter to Director Leslie Shenkler of Hoboken's Environmental Services Department.

Rodriguez stated that on April 22, 2012, he was working in and around the Park. At about 8:00 a.m., he was assigned to change the garbage bags, and then drive around with Hennessey. He came out of the Park and changed the bag in the first barrel. Rodriguez saw the police car when he emerged from the Park. His co-worker, Mr. Thompson, proceeded down 5th Street toward Sinatra Drive. Rodriguez stated that he could see only Long. He told his co-worker what he was going to do, but did not testify as to what that statement to the co-worker was. Long then said to Rodriguez: "Why don't you just shut up and mind your own business, this has nothing to do with

you.” Rodriguez stated that he responded back: “I’m not speaking to you right now. I was never speaking to you. I’m doing my job. You’re doing your job.” Rodriguez then walked up the hill in the direction of the police activity to replace the other garbage bags. He stated that he was unable to see the police activity because there was a wall blocking his way. Rodriguez further testified that he never told Hennessey and the driver that they didn’t have to listen to Griffin. Suddenly, Griffin approached Rodriguez and asked him for his name. Griffin was yelling but never touched Rodriguez. Rodriguez testified that he wouldn’t give Griffin his name, telling him: “I don’t know why you’re asking me this, I have nothing to do with this situation.” Rodriguez then proceeded up the hill because he needed to change the garbage bags in that area. Even though Griffin asked him again for identification, Rodriguez continued to change the bags. Rodriguez stated that the reason for his refusal was because whatever Griffin was doing had nothing to do with him. When asked why he didn’t simply wait for the activity to subside and then change the garbage bags, Rodriguez had no explanation. He further testified that both Griffin and Long were lying when they described his behavior on that date.

FINDINGS OF FACT

In view of the contradictory testimony presented by Rodriguez and the witnesses for the appointing authority, Griffin and Long, the determination of the charges against Rodriguez requires that I make credibility determinations with regard to the critical facts. 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).

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 credit the testimony of Griffin and Long rather than that of Rodriguez.

Both Griffin and Long testified in a clear and concise manner. It is significant that although these two witnesses observed Rodriguez's behavior from different vantage points, their testimony, when taken together, gives a complete and credible snapshot of the incident. I dismiss any suggestion that Long was merely acting as a loyal subordinate by supporting Griffin's contention that Rodriguez interfered with the motor vehicle stop involving his co-worker Hennessey. Long's testimony was precise and candid, and aptly corroborates that of Griffin.

In contrast, I do not view Rodriguez's testimony as credible. His statements were disjointed. When he related Long's words to him, they simply don't make sense in the context of a response to Rodriguez. For example, Rodriguez testified that when he came out of the Park, he told his co-worker what he was going to do. In response, Long told him to shut up and mind his own business—this has nothing to do with him. Clearly, Rodriguez changed his own words at the hearing, while testifying to the actual words of Long.

Also not credible is Rodriguez's assertion that despite a uniformed police officer telling him to back off, he continued to move toward the fray because he was bound to change the remaining garbage bags. Rodriguez was unable to explain why he simply could not wait for the police activity to die down and then finish his assignment. He offered no testimony that his duties that morning were of an emergent nature and therefore preempted uniformed police officers from doing their job. Further, Rodriguez conceded that Griffin asked him twice for identification, but that he didn't cooperate because he had nothing to do with whatever Griffin was doing. Again, it is more believable that Rodriguez was trying to avoid getting into trouble with the City, or simply believed he owed no duty to answer to the authority of the SIT police force. In any event, I determine that both Griffin and Long were truthful and credible. Rodriguez's testimony doesn't "hang together" with the other evidence, nor does it contain the requisite rationality to be deemed credible.

In view of the above credibility determinations, I make the following **FINDINGS** of critical **FACTS**:

At approximately 8:15 a.m. on April 22, 2012, SIT Police Chief Timothy Griffin was in the process of investigating a motor vehicle incident on 5th Street in Hoboken. While he was lecturing the passenger for not listening to a uniformed police officer, Daniel Rodriguez, a Hoboken laborer, came out of the Park on 5th Street to change the garbage bags there. Upon seeing his co-worker being spoken to by Griffin, Rodriguez interfered with and injected himself into the motor vehicle stop by loudly saying: "You don't have to listen to him, he's not a real cop. You don't have to listen to those guys." Rodriguez then began using profane language. Long told Rodriguez to be quiet and mind his own business; that it was none of his concern. Long told him three times to back off, to no avail. Griffin then approached Rodriguez and asked him twice for identification. Rodriguez told him: "F---You [quoting directly from Griffin's testimony]; I don't have to show you anything, it's a free country. I can say whatever I want." Kevin McCort, Rodriguez's supervisor, then gave Griffin the information he asked for. Rodriguez then went back to changing the garbage bags.

LEGAL ANALYSIS AND CONCLUSIONS

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

Appellant has been charged with insubordination, conduct unbecoming a public employee, and other sufficient cause. "Insubordination" is not defined in the regulation. Assuming that its presence is implicit, courts generally apply its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a

different meaning was intended. Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45-46 (App. Div. 2001). Black's Law Dictionary (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." To give one other example, Webster's New International Dictionary 1288 (2d Ed. 1943) defines insubordinate as "not submitting to authority; disobedient; mutinous." See also Jeffrey F. Ghent, J.D., Annotation, What Constitutes "Insubordination" As Ground for Dismissal of Public School Teacher, 78 A.L.R.3d 83 (1977); A.L. Schwartz, Annotation, Employee's Insubordination as Barring Unemployment Compensation, 26 A.L.R.3d 1333 (1969).

"Unbecoming conduct" is broadly defined as any 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. City of 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, supra, 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)).

Regarding the charge of conduct constituting "other sufficient cause", appellant entered into a Memorandum of Agreement with respondent on October 4, 2011 (R-1, pages 5 through 8). Therein, appellant acknowledged that "any future misconduct, relating to misconduct of any kind, other than excessive absenteeism or lateness, no matter how minor, shall result in his immediate discharge" (Paragraph 9). In addition, Paragraph 2(d) of said Agreement requires appellant to undergo at least eight consecutive weeks of anger management counseling in relation to the claimed events of the PNDA, said counseling to begin immediately upon execution of the agreement. At the hearing of this matter, Rodriguez testified that he failed to attend anger management counseling, thereby violating the Agreement. Failure to perform, as

contemplated by the parties, pursuant to a letter of conditional employment or a last chance agreement, warrants removal. Watson v. City of East Orange, 175 N.J. 442, 445 (2003).

Based on the foregoing, I **CONCLUDE** that the City has proven by a preponderance of the credible evidence that Rodriguez engaged in insubordination by refusing to submit to the proper authority of Griffin and Long in refusing to back off when Long directed him to do so, and continuing to interfere in the motor vehicle incident. He was also insubordinate in twice refusing to identify himself to Griffin. In addition, I **CONCLUDE** that Rodriguez was insubordinate in his obvious attempts to induce Hennessey into disobeying the officers' authority.

Based on the same behavior, I **CONCLUDE** that Rodriguez also engaged in conduct unbecoming a public employee. Finally, I **CONCLUDE** that Rodriguez's conduct violated the terms of his Last Chance Agreement. Accordingly, I **CONCLUDE** that termination is the appropriate remedy.

ORDER

It is hereby **ORDERED** that the City's removal of Rodriguez be **AFFIRMED**. It is further hereby **ORDERED** that Rodriguez's appeal be **DISMISSED**.

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.

September 16, 2014

DATE

Joan Bedrin-Murray
JOAN BEDRIN-MURRAY, ALJ

Date Received at Agency:

9/16/14
Lucia Sanders

Date Mailed to Parties:

SEP 17 2014

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

sej

APPENDIX

WITNESSES

For Appellant:

Daniel Rodriguez

For Respondent:

Leo Pelligrini

Timothy Griffin

Dennis Long

EXHIBITS

For Appellant:

P-1 Jon Tooke Letter dated May 17, 2012

For Respondent:

R-1 Packet Containing Preliminary Notice of Disciplinary Action dated 3/24/12, Letter from Timothy Griffin dated 4/23/12, and Memorandum of Agreement dated 10/4/11 with cover letter attached.

R-2 Final Notice of Disciplinary Action dated May 22, 2012