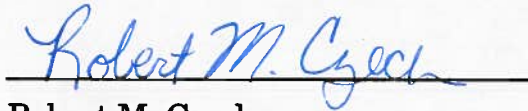


Re: Ann Osterman

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
NOVEMBER 19, 2014

A handwritten signature in blue ink that reads "Robert M. Czech". The signature is written over a 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 14902-13

2014-510

**IN THE MATTER OF ANN OSTERMAN,
MIDDLESEX COUNTY, DEPARTMENT
OF MEDICAL EXAMINERS.**

William G. Schimmel, Esq., for petitioner (Weissman & Mintz, attorneys)

Benjamin D. Leibowitz, Esq., for respondent

Record Closed: August 25, 2014

Decided: September 3, 2014

BEFORE BARRY E. MOSCOWITZ, ALJ:

STATEMENT OF THE CASE

From at least June 3 through June 19, 2013, Osterman, a clerk with the Middlesex County Medical Examiner's Office, made numerous errors in her work, threatened a co-worker who she thought reported her, and stopped taking direction from her superiors. Must Osterman be terminated? Yes. Under a Last Chance Agreement, Osterman agreed that she could be terminated if she failed to complete work satisfactorily, threatened a co-worker, or engaged in insolent behavior.

PROCEDURAL HISTORY

I.

On June 25, 2013, Middlesex County served Osterman, a keyboarding clerk 1 with the Middlesex County Medical Examiner's Office, with a Preliminary Notice of Disciplinary Action, charging Osterman with incompetency, inefficiency, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); other sufficient cause—including, but not limited to, violation of a Last Chance Agreement—in violation of N.J.A.C. 4A:2-2.3(a)(11); and unauthorized absences.

As such, Middlesex County removed Osterman from her position as a keyboarding clerk effective that day.

On August 13, 2013, Middlesex County served Osterman with a Final Notice of Disciplinary Action sustaining the charges. In its notice, Middlesex County was more specific about the allegations, which gave rise to the charges. In particular, Middlesex County alleged that on October 23, 2012, Osterman entered into a Last Chance Agreement, which resulted from a previous incident, and that on March 21, 2013, Osterman violated that agreement, including but not limited to paragraph four, which states that Osterman may be terminated for incompetency, inefficiency, or failure to perform duties, among other things, without the County being required to engage in progressive discipline, by Osterman having received a letter from the County Medical Examiner, which noted Osterman engaged in such misconduct, among other things.

A.

Regarding the charge of incompetency, inefficiency, or failure to perform duties, Middlesex County alleged that on May 3, 2013, Osterman had mistakenly listed the cause of death on an autopsy report as "natural" when it should have been "accidental" and an addendum was sent to the parties indicating the error.

In addition, Middlesex County alleged that on May 31, 2013, a supervisor brought errors Osterman had made to Osterman's attention, but following the conversation, Osterman approached a co-worker who she suspected had reported the errors to the supervisor, and confronted the co-worker, which was not the first time Osterman had confronted a co-worker when a co-worker had brought errors to her attention.

Moreover, Middlesex County included a list of all the errors that the County alleged Osterman had made since June 3, 2013.

B.

Regarding the charge of conduct unbecoming a public employee, Middlesex County alleged that Osterman not only confronted the co-worker who she suspected had reported the errors to their supervisor, but also threatened her by saying, "As the Italians say, an eye for an eye," when the co-worker had simply been instructed by her supervisor to report any mistakes Osterman had made.

Middlesex County further alleged that on June 17, 2013, Osterman again threatened a co-worker.

C.

Finally, regarding the charge of unauthorized absence, Middlesex County alleged that on June 5, 2013, Osterman left the office early and failed to submit a time request.

II.

On August 19, 2013, Osterman appealed her removal.

On October 17, 2013, the Civil Service Commission transmitted the case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law,

N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April 28, 2011, I held the hearing.

By August 25, 2014, the parties submitted their closing briefs and I closed the record upon their receipt.

DISCUSSION AND FINDINGS OF FACT

I.

Lanza

Leah Lanza began working with the Middlesex County Medical Examiner in June 2012, after she began nursing school, and Osterman began working with the Medical Examiner soon thereafter. Lanza testified that she had offered to help Osterman become acquainted with the protocols of the office but Osterman refused her help. For example, Lanza testified that Osterman was hired to transcribe the autopsy reports the medical examiner had recorded, that she had offered to help Osterman become familiar with the format for the reports, but that Osterman refused her help. According to Lanza, the format was often incorrect and the reports were often sloppy but Osterman was either defensive or dismissive about these mistakes when she pointed them out to her.

A.

In June 2013, the medical examiner, Andrew Falzon, was away on vacation, and his secretary, Jean Rogen, told Lanza to report any mistakes Osterman made to her.

On June 3, 2013, Lanza reported some mistakes Osterman made to Rogen, and Osterman confronted Lanza. Lanza testified that Osterman was angry and that her tone was firm. Lanza further testified that she was upset by the confrontation, and believing that Osterman had fomented a hostile work environment, emailed Falzon to put him on

notice of it. According to Lanza, Falzon encouraged her to wait for him to return before filing any formal complaint against Osterman.

More pointedly, Lanza testified that Osterman had created a hostile work environment by rolling her eyes at her or ignoring her whenever she tried to interact with Osterman. Similarly, Lanza testified that Osterman would bark "what" whenever the phone was for her. More significantly, Lanza testified that Osterman would further denigrate her by calling her "puppy" over the intercom whenever Osterman paged her over the system.

B.

On June 17, 2013, Falzon returned from vacation and spoke with Osterman. At the hearing, Lanza recounted the conversation Osterman had with her after Osterman had spoken with Falzon. According to Lanza, Osterman threatened her:

Osterman: "I know what you did . . . I don't think I'm going to forget about this."

Lanza: "Annie, don't threaten me."

Osterman: "Oh, it's not a threat; it's a promise."

[Tr. page 20, lines 10-15 (April 28, 2014).]

Once again, Lanza testified that that Osterman was angry and that her tone was firm. Lanza further testified that they were both standing when Osterman threatened her and that Osterman had her hand on her hip. On cross-examination, Lanza added that she and Osterman were both about the same height. Moreover, Lanza introduced on cross-examination all of the errors Osterman had made while Falzon was on vacation and that she had been instructed to report them to Rogen. A copy of that document is reproduced below.

II.

Howell

Ida Howell, one of the other secretaries, testified that Rogen had asked her to create the document of errors, which includes no less than eighteen mistakes, over no more than sixteen days, and includes such examples as finalizing autopsy reports without the toxicology reports, failing to color code the manner of death on a case, and using the wrong tracking number for an autopsy report:

6/3/2013

- Found a view V13-094 with an OPRA request buried in the back of the chart when the family came to see if report was finalized.

6/4/2013

- Registering Tox received while on vacation and found case A13-144 was finalized and copied without the toxicology in the chart, Dr. Zhang had looked at the toxicology results and placed them back into the mail envelope they came in. I had just registered the toxicology that day.
- Case A13-153 was not logged into the Autopsy log. When I asked, was told "The bones? It's just bones."
- When reviewing a view for distribution to RWJUH Trauma, the removal form and RIME history was found in the middle of the medical records.

6/5/2013

- Correspondent colored dots were not on 5 finalized cases. I had to look for the manner of death instead of a quick visual.
- V13-094 Closed view had the original update still attached to the outside of the envelope. Given to her to fix. When fixed a copy of update was just placed in the envelope and not stapled to the copy of the RIME.
- A13-109 Closed view had the original update still attached to the outside of the envelope. Given to her to fix. When fixed a copy of updates was just placed in the envelope and not stapled to the copy of the RIME.
- A13-086 Homicide. No copy of the update attached to the RIME or in the chart.
- Date sent to the Prosecutor not entered on front of

- chart on MVA. Requesting agency not noted on MVA hold list.
- A13-104 Homicide – Date sent to the Prosecutor not entered on front of chart. When asked if sent to Prosecutor was told yes.
- A13-132 No copies made of autopsy reports in closed out chart.
- A13-065 Homicide –
 - ORIGINAL Autopsy report stapled like copy, NOT stapled to the back of chart.
 - Date sent to Prosecutor not entered on front of chart.
 - No Tox info on back of RIME, but copies and stapled to RIMEs in chart.
 - Requestor not documented on Homicide Hold List.

6/6/2013

- A13-128 Specimen log sheet was found in the middle of hospital records on a finalized case.
- V13-124 Closed and filed on 5/30/2013 without the toxicology report. The toxicology report was received today 6/6/13. No yellow TOX sticker is on the outside of the folder.

6/11/2013 –

- ❖ Closed out reports with no errors.

6/12/2013 –

- V13-098 – 2 sets of toxicology attached to external exam. One was marked “keep in office.” I showed Annie and fixed the tox reports.

6/17/2013

- A13-122 – Monmouth Cty case in rack for filing, no update form & not given to me for closeout. “I didn’t know you get Monmouth cases.”

6/19/2013 –

- The wrong tracking record was used for and external examination, crossed out Autopsy, wrote View and filed in log book. Date of occurrence was 6/17/2013.

[R-1(h).]

On rebuttal, Howell testified that Osterman was accepting of criticism at the Medical Examiner’s Office when she first arrived, but soon tired of accepting it, even

though she kept making the same mistakes, and that she usually met such criticism with silence.

III.

Alai

Holly Alai has been the affirmative action specialist for Middlesex County for the past eight years but has been working in human resources for the past twenty-five. Alai testified that she considered the work environment to have been a hostile one in June 2013 because Lanza complained twice about Osterman—once generally when Lanza complained that Osterman was not accepting of her work mistakes, and once specifically when Lanza complained that Osterman had threatened her while Falzon was on vacation. More pointedly, Alia testified that she considered the work environment to have been a hostile one because Lanza complained that she had been “verbally assaulted.”

IV.

Falzon

Andrew Falzon has been the Middlesex County Medical Examiner since 2001. Falzon testified that he oversees fourteen employees: two assistant medical examiners, three full-time and three per-diem investigators, two morgue technicians, and four secretaries. Falzon further testified that Rogen, Howell, Lanza, and Osterman were the four secretaries in March 2013. According to Falzon, Rogen served as his personal secretary and Osterman replaced a retired transcriptionist.

More important, Falzon testified that he uses a particular format for autopsy reports and that he expects the secretaries to work together to complete them. But Falzon further testified that Osterman would not take direction from Lanza. As a result, Falzon asked Lanza to bring any mistakes Osterman made to the attention of his secretary, Rogen, who also served as the supervisor of the secretaries.

Regarding the email Lanza sent to him while he was on vacation, Falzon testified that he did receive it and that he did discuss it with Osterman when he returned but that he never told Osterman who had sent it.

Regarding what ensued after he spoke with Osterman, Falzon testified that Osterman threatened Lanza, that the work environment became quite tense because the secretaries stopped talking to one another, and that he decided to terminate Osterman as a result.

A.

On cross-examination, Falzon introduced a memorandum from March 21, 2013, which reminded Osterman that she was to act responsibly and professionally at all times. For example, the memorandum put Osterman on notice that she was to complete her reports accurately and file them properly. It also put Osterman on notice that she was to maintain a professional attitude and use the overhead paging system sparingly:

March 21, 2013

Anne Osterman
Middlesex County Medical Examiner Office
1490 Livingston Avenue
North Brunswick, NJ 08902

Dear Ms. Osterman:

I understand that the work environment in this office may be different than your previous places of employment, and I would like to draw your attention to certain issues. The cases we deal with have medic-legal ramifications and as such are subject to scrutiny by many professionals. In addition, the majority of the members of the public we deal with have lost a loved one and are often enduring financial and emotional hardship and can be very demanding/argumentative. In spite of this, it is our responsibility to deal with them professionally.

In view of this, please note:

- Tardiness is unacceptable. Employees need to be at their desk at the start of the day, ready to work/answer the phone. As per county policy, any smoking breaks must be taken within the time frame allotted for daily breaks. Access to smoking area should be from the administrative side of the building. Also, personal cell phone use should be kept to a minimum.
- It is critical that all cases are followed through accurately to completion and properly filed. Inaccurate work could result in lost/misplaced files and unnecessary criticism of the office.
- Again, because of the nature of our work, it is essential that we always maintain a professional attitude with the public whether they are present in the office, or on the phone. Use of the overhead paging system should be limited to when it is absolutely necessary, and messages made in a professional manner.

Yours truly,

Andrew L. Falzon, M.D.
County Medical Examiner

cc: File

[R-1(f).]

B.

Falzon also introduced a memorandum from May 3, 2013, which memorialized the fact that Osterman had still made a mistake on an autopsy report, when she mistakenly typed the cause of death as "natural" instead of "accidental," and an amended death certificate had to be issued to correct it:

MEMORANDUM

TO: File-Ann Osterman
Re: Clerical Error

On 5/3/13, I became aware that Anne Osterman had mistakenly typed "Natural" on the amendment page of the autopsy report of _____ A13-049, when all the paperwork

clearly stated "Accident." The signed report was sent to UMDNJ and South Brunswick Police Department, therefore, an addendum report was issued to correct this error. This incident was discussed with Ms. Osterman in my office in the presence of Ms. Howell.

Andrew L. Falzon, M.D.

Date May 3, 2013

ADDENDUM

Review of the case records reveal that the manner of death was inadvertently listed as "Natural" on the amendment page of the autopsy report. This is a typographical error and the manner of death should be classified as "Accident," as listed on the amended death certificate. The cause of death remains unchanged.

Andrew L. Falzon, M.D.
County Medical Examiner

May 3, 2013
Date

ALF/ao
Dist.: SMEO, Pros. Office & File

[R-1(g).]

III.

Osterman

Osterman had worked at the Middlesex County Prosecutor's Office for seventeen years before she was transferred to the Middlesex County Medical Examiner's Office. It was during the end of her tenure at the Prosecutor's Office when she entered into the Last Chance Agreement. According to Osterman, she did not get along with the County Prosecutor.

In short, Osterman was cavalier about her time in the Middlesex County Prosecutor's Office and her relationship with the County Prosecutor. She was also cavalier about the Last Chance Agreement she signed. Moreover, Osterman was

cavalier about her brief time in the Medical Examiner's Office and feigned that she got along with everyone in the Medical Examiner's Office—including Lanza.

Osterman asserted that she did not threaten Lanza when she said the phrase "an eye for an eye" and explained that she simply meant she was going to file a complaint against Lanza just as Lanza had filed a complaint against her. But this testimony is not to be believed. Similarly, Osterman admitted that she called Lanza "puppy" but explained that it was a pet name and that she thought it was cute. Osterman also said that she only gave pet names to people she liked. This testimony too is not to be believed.

Indeed Osterman testified that she "loved" her job at the Medical Examiner's Office, that she never threatened Lanza, that she was always nice to Lanza, and that she felt "hurt and betrayed" by Lanza.

As before, this testimony was self-serving and not to be believed.

As if there was any doubt, on cross-examination, Osterman revealed her true character. For example, she complained that Falzon, not she, was unprofessional. She also minimized her mistakes at the Medical Examiner's Office and then excused them. Moreover, Osterman asserted that she was forced to enter into the Last Chance Agreement by the County Prosecutor and blamed others at the Prosecutor's Office for her prior discipline there.¹

In contrast, I have no reason to disbelieve the testimony Falzon provided or the veracity of the documents he authored. Similarly, I have no reason to disbelieve the testimony Howell provided or the veracity of the documents she authored. Finally, I have no reason to disbelieve the testimony Alai provided. As such, I **FIND** that Middlesex County has proven by preponderance of the evidence all of the allegations

¹ On January 20, 2001, Osterman was demoted; on July 18, 2012, she received a warning; and on October 24, 2012, she was transferred from the Prosecutor's Office to the Medical Examiner's Office. As part of that transfer, Osterman signed the Last Chance Agreement of the same date. This prior discipline was admitted into evidence as R-1(j).

contained in the specifications attached to its Final Notice of Disciplinary Action, except for the allegations attached to the charge of unauthorized absence.²

DISCUSSION AND CONCLUSIONS OF LAW

I.

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). On such appeals, the Civil Service Commission may increase or decrease the penalty, N.J.S.A. 11A:2-19, and the concept of progressive discipline guides that determination, In re Carter, 191 N.J. 474, 483-86 (2007).

In this case, I found that Middlesex County proved by a preponderance of the evidence all of the allegations contained in the specifications attached to its Final Notice of Disciplinary Action.

Therefore, I **CONCLUDE** that Osterman engaged in incompetency, inefficiency, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and other sufficient cause—including, but not limited to, violation of a Last Chance Agreement—in violation of N.J.A.C. 4A:2-2.3(a)(11).

II.

When Osterman was transferred to the Medical Examiner's Office, she signed a Last Chance Agreement. Paragraph four of the Last Chance Agreement is reproduced below. Among other things, Osterman agreed that she could be suspended without pay

² No proof was submitted that on June 5, 2013, Osterman left the office early and failed to submit a time request.

and terminated without Middlesex County engaging in any progressive discipline if she failed to satisfactorily complete a work assignment in a timely manner. She could also be terminated for making hostile, threatening, insolent, or disrespectful oral or physical remarks or gestures to any supervisor, superior, co-worker, or peer:

4. Osterman agrees that if she engages in any of the following conduct that she may be suspended without pay and terminated without the County being required to engage in progressive discipline:
 - A. Insubordination,
 - B. Conduct Unbecoming a Public Employee;
 - C. Incompetence;
 - D. Failure or refusal to perform a job assignment within the scope of her job duties and consistent with her job title;
 - E. Shirking, or avoiding performing, or failing to satisfactorily complete a work assignment in a timely manner without good cause after one (1) prior Oral or Written Warning or having engaged in such conduct;
 - F. Wrongfully accusing another employee of some work misconduct, mistake, confusion, deficiency, or to make up an excuse without good cause, for why she has not satisfactorily completed an assignment;
 - G. Making a hostile, threatening, insolent, or disrespectful oral or physical remark or gesture at work to a supervisor, superior, co-worker or peer;
 - H. Making any hostile or threatening comment or communication on a social networking site, or off County premises, that is related to work and that upon being viewed or heard by any County employee, or otherwise made known to any County employee, foreseeably would cause and does cause alarm and fear in a County employee regarding their safety in the County workplace, of the safety of anyone else in a Middlesex County Workplace.
 - I. Failing or refusing to comply with any material policy in the County Personnel Policy.

[R-1(i).]

Osterman, however, argues that the Last Chance Agreement is unenforceable. Yet Osterman cites no binding authority in support of her argument. Indeed, the only authority she cites is from out-of-State arbitration decisions. Moreover, I find them unpersuasive.

Finally, Osterman argues that she never had a chance to succeed. More specifically, she argues that she arrived with a target on her back, that Falzon did not want her in his office, and that Lanza wanted her job. Even if these specific assertions were true, the fact remains that Osterman was given one last chance. But Osterman made the least of her last chance. As I found above, Osterman still made numerous errors, was unaccepting of criticism, and fomented a hostile work environment. Therefore, I **CONCLUDE** that the Last Chance Agreement is enforceable as written and that Osterman should be terminated under its express terms.

III.

Even if the Last Chance Agreement were unenforceable, the fact remains that Osterman made many mistakes at work, more than enough to support the charge of incompetency, inefficiency, or failure to perform duties. In addition, her confrontational behavior and insolent manner are more than sufficient to support the charge of conduct unbecoming a public employee. As Falzon testified, Osterman stopped taking direction and the secretaries stopped talking to one another. Given these circumstances, Falzon fired her and I see no reason to upset that determination. In short, the people of Middlesex County deserve better.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Osterman be terminated from her position as a keyboarding clerk 1 with the Middlesex County Medical Examiner's Office and that this appeal be **DISMISSED**.

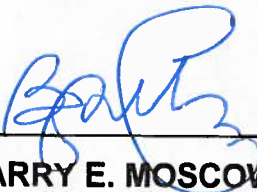
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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, P.O. 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.

9/3/14
DATE



BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

9-3-14

Date Mailed to Parties:
dr

SEP - 4 2014


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

Witnesses

For Appellant:

Ann Osterman

For Respondent:

Leah Lanza

Holly Alai

Andrew Falzon

Ida Howell

David Griffin

Documents

For Appellant:

None

For Respondent:

R-1(a) Transmittal form dated October 15, 2013

R-1(b) Major Disciplinary Appeal From dated August 14, 2013

R-1(c) Letter from Middlesex to Osterman dated August 14, 2013

R-1(d) Final Notice of Disciplinary Action dated August 13, 2013, with specifications attached

R-1(e) Preliminary Notice of Disciplinary Action dated June 25, 2013

R-1(f) Letter from Falzon to Osterman dated March 21, 2013

R-1(g) Memorandum from Falzon to file and Osterman re: clerical error dated May 3, 2013, with addendum attached

R-1(h) List of errors attributable to Osterman while Falzon was on vacation

R-1(i) Last Chance Agreement dated October 24, 2012

R-1(j) Job History for Osterman

R-2 Email from Osterman to Falzon dated June 18, 2013