



STATE OF NEW JERSEY

In the Matter of John Wiley
Rowan University

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

CSC DKT. NO. 2013-1336
OAL DKT. NO. 48-13

ISSUED: December 17, 2014 BW

The appeals of John Wiley, Senior Building Maintenance Worker, Rowan University, 15 working day suspension and two removals effective October 24, 2012, on charges, was heard by Administrative Law Judge Jeff S. Masin, who rendered his initial decision on November 3, 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 December 17, 2014, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge’s initial decision.

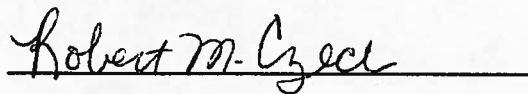
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending and removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeals of John Wiley.

Re: John Wiley

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
DECEMBER 17, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 48-13

AGENCY DKT. NO. 2013-1335

1336

**IN THE MATTER OF JOHN WILEY, ROWAN
UNIVERSITY.**

John Wiley, appellant, pro se

**Geoffrey N. Stark, Deputy Attorney General for respondent Rowan University (John
J. Hoffman, Acting Attorney General of New Jersey, attorney)**

Record Closed: October 3, 2014

Decided: November 3, 2014

BEFORE JEFF S. MASIN, ALJ:

John Wiley, a Senior Building Maintenance Worker who was employed by Rowan University, appeals a determination of the appointing authority to remove him from his position, based upon its determination that Mr. Wiley had violated N.J.A.C. 4A:2-2.3(a)7 (Neglect of Duty), for reasons specified in a Preliminary Notice of Disciplinary Action issued on October 24, 2012. In addition, on that same date, Rowan issued a second Preliminary Notice, in which it sought his removal for his alleged violation of N.J.A.C. 4A:2-2.3(a)4 (Chronic and Excessive Absenteeism). Mr. Wiley waived a hearing at the University level as

to each of these charges and the institution issued two Final Notices of Disciplinary Action on October 24, 2012, removing Mr. Wiley at the end of business on that date.

In addition to these removal actions, Rowan had charged in a Preliminary Notice of Disciplinary Action dated September 7, 2012, that Mr. Wiley had violated both N.J.A.C. 4A:2-2.3(a)7 (Neglect of Duty) and N.J.A.C. 4A:2-2.3(a)4 (Chronic and Excessive Absenteeism), for reasons set forth in the Specification in the Notice. The University sought to suspend Wiley from his employment for fifteen days. On October 24, 2012, Rowan issued a Final Notice of Disciplinary Action, in which it did suspend him for fifteen days.

Mr. Wiley appealed each of these three disciplinary actions to the Civil Service Commission. The Commission accepted the appeals and transferred the contested cases to the Office of Administrative Law, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. A status conference was held on July 16, 2014, and a hearing was held on October 3, 2014, at which time the record closed.

The Specification for the Preliminary Notice dated September 7, 2012, noted that since Mr. Wiley had last been disciplined in May 2012; he had been late on nineteen occasions, as listed in the Notice. The dates of these episodes ran between June 18 and September 4, 2012. In addition, the Specification alleged that on September 4, 2012, Mr. Wiley had clocked in late, at 9:25 a.m., and then had gone on break at 11:30 a.m. and failed to return in a timely manner, returning over one hour beyond the time when he should have returned from his break. In support of this last charge, John Davis, Assistant Director of Custodial Services for Rowan, testified that he is responsible for all academic, administrative and athletic facilities at Rowan. He has a housekeeping staff that operates on three shifts, twenty-four hours a day, seven days a week. There are sixty housekeepers and eleven supervisors. On September 4, 2012, Mr. Davis sent a written request to Kenneth L. Kuerzi, Assistant Vice President for Labor Relations at Rowan, seeking the institution of disciplinary action against Mr. Wiley, based upon information provided by e-mail to Davis by Carl Derrick Fullard, an Assistant Supervisor of Facilities, who testified at the hearing. Fullard's e-mail reported that Mr. Wiley had clocked in at 9:25 a.m. (R-2, a printout for the Kronos Timekeeping System, confirms this time of arrival on September 4). Wiley had advised Mr.

Fullard that he had to sign his son up for school. Fullard's e-mail notes that when Wiley arrived at work he was not properly dressed for work, and was told to go home and change into a Rowan-issued shirt and to bring along his University-issued identification. In the e-mail Fullard explained information he had received from Charlene Bullen, a crew supervisor, who indicated that she had determined that Wiley had taken excessive time off for his break that morning. Ms. Bullen also testified. She ordinarily did not supervise Wiley, unless Wiley's regular supervisor was not at work. As such, she supervises him possibly a couple of times a week. She explained that on the shift that starts at 7:30 a.m. and ends at 4 p.m., there are breaks at 9:00 a.m. to 9:15 a.m. and 11:30 a.m. to 12:00 p.m. or 12:00 p.m. to 12:30 p.m. An employee is expected to let his supervisor know which of these latter breaks he is taking. On September 4, 2012, Ms. Bullen observed Mr. Wiley leave his post at 11:30. He should have returned at 12 noon, but instead he did not return until 1:15 p.m. He claimed that he had to register his child for school. She told him that if that were the case, he should have called her. She advised Mr. Fullard of what had occurred.

Mr. Davis also discussed the charge contained in the October 24, 2012, Preliminary Notice charging Neglect of Duty, specifically as it related to Sunday, October 14, 2012, a day on which the University hosted an Open House described as a major event held at the Esby Gymnasium. This is an event for prospective Rowan students and their families and is of significant importance. Mr. Davis described it as a "big deal." Usually on Sundays, two employees and one supervisor are on duty, but for the Open House four more employees are assigned. All areas of the facility must be covered, the bathrooms "policed" and the event must be broken down and cleaned up from after it is completed. The University must maintain the "proper image" for prospective students and their families.

Mr. Davis explained that on October 14, Mr. Wiley was fifteen minutes late for duty. When he arrived he was instructed to go to Esby Gym. However, as Cordell Dodge, an Assistant Housekeeping Supervisor II and previously a crew chief, testified, she went to the gym and could not locate Wiley. She was at Esby for one and one-half hours and never encountered Wiley. She attempted to contact him by phone on the two numbers that she had for him, but she had no success and apparently these were no longer valid numbers for reaching Wiley. Ms. Dodge went to Wilson Hall and did not see him there either. She was at

Wilson between one and two hours. She also sought him at the library, his usually assigned building, and at James, Rowan and Robinson Hall. Ms. Dodge finally saw him at Wilson at around 2:00 p.m., doing the trash. According to her handwritten report, which she wrote that day, when she asked him where he had been, Wiley "had no response." She testified that he "had no direct answer." He was told to report to Esby to assist with the breakdown, and he claimed that Ms. Bullen had "just asked me."

The Preliminary Notice seeking removal that included reference to the October 14 Open House also noted that Mr. Wiley had neglected his duty on September 17, 2012. He allegedly failed to clean the Bursar's Office and other areas as instructed by his supervisor, and supervisors were unable to locate him at his assigned work site from approximately 10:45 a.m., until 1:30 p.m. According to an e-mail dated September 17 from Mr. Davis to Mr. Kuerzi, on September 17, Mr. Wiley was twelve minutes late for work. He had been on leave without pay status on September 9 and 16, each a Sunday, which Davis explained fit a pattern of Sunday absences. Davis recalled that Wiley had claimed "car trouble" for the Sunday, September 16 absence. The September 9 and 16 absences were the subject of the other Preliminary Notice, issued on October 24, 2012, which also sought removal.

On September 17, Mr. Fullard reported by e-mail that he had assisted Ms. Bullen in looking for Wiley. She called him at 11:00 a.m. after she had searched for Wiley since 10:45 a.m. According to his report, the two then searched for Wiley, looking in stairwells, closets, offices, and outside areas. A phone call to his cell was unanswered. Fullard told Bullen to take her break at 12 noon and at 1:30 she reported that she had talked to Wiley and he claimed to have been in the restroom for about forty-five minutes while they were searching for him. The necessary amount of cleaning had not been accomplished as of 1:30 p.m. Ms. Bullen's testimony confirmed that after she could not find Wiley for two hours, she discovered him wandering and found that his work was not done.

Mr. Davis identified e-mails, such as one dated September 10, 2012, in which he advised Mr. Kuerzi that Wiley had missed work on Sunday, September 9. Another person had called to advise Wiley would not be at work. On September 17, Wiley arrived, again late for duty, and told Davis that he had been in jail on the 16th for missing a court date. He had

a document attesting to this reason for this absence. A second e-mail, dated September 17, again from Davis to Kuerzi, related that on September 16, Wiley failed to appear for work and claimed that he had car trouble. Then on the 17th, he arrived twelve minutes late.

John Wiley testified that prior to September 9, he "had a letter to be in court." However, he claimed he did not receive it. He was held in contempt of court and jailed for one day. On the 16th, he did not report for work. He went to his mother's house in Bridgeton on Saturday, the 15th, and his car would not start. He had to leave it at his mother's house. He called out due to this. He did not recall that he was late to work on the 17th. He claimed that the contentions about his activities on the 17th were "false." He knows what he has to do at work. He was told to clean the Bursar's area first. However, he claimed that the area was locked and he could not get in so he cleaned the second floor. When Ms. Bulen came and asked why the Bursar's area was not cleaned as she had directed, he told her it was locked. She told him that it was now open and he should go vacuum it and she would pull the trash.

With reference to the Open House on October 14, Mr. Wiley denied that he was late for work. When he arrived he spoke to Cordell Dodge and was told to report to Esby Gym and then to his permanent building. He took his car to Esby. The trash was already pulled. He filled the toilet paper and paper towels. There was nothing else to do there. He went to Wilson Hall, "his building." He did not see Dodge there until Bullen called her. She came in around 12 noon and called him at 12:30, telling him that she had tried to call him and he did not answer. He saw Dodge enter Wilson Hall and when she asked if he had talked to Bullen, he said that he had. As for the phone numbers that were used to call him, these were never his numbers. Every other supervisor had his personal cell phone number. Bullen had it. He does not know where the numbers Dodge called him came from. He was cleaning the stage "way back" and perhaps Dodge came looking for him when he was doing this.

Wiley recalled that on September 17, 2012, he was in his assigned building and in the restroom. When he was going back to his cart he encountered Ms. Bullen. Otherwise, he had not seen her in the building that day.

Mr. Wiley acknowledged that he has been late "quite a few times" and "a bunch of Sundays." He had been involved in a nasty divorce. His wife was keeping him from seeing his children. He was offered counseling by Jacqueline Bayard. He explained that "maybe in June, but before September," he was referred to the Employee Advisory Service (EAS).

Ken Kuerzi told him that he had no more chances. Although he was unsure when it happened, he then stopped missing time and being late, until "the Dodge incident." He was a hard worker, but the divorce caused him problems. He wants his job back.

Kenneth Kuerzi testified that he had "numerous conversations" with Mr. Wiley in late September and October 2012. He never guaranteed Wiley that he would get a "last chance." Indeed, he told him that he had been given "last, last, last" chances. He had referred Wiley to EAS after an earlier five-day suspension. He was aware, "since 2009," that Wiley was having divorce problems, also involving his children. He had been referred to an in-house counselor.

Discussion

Civil service employees are subject to disciplinary action if the appointing authority is able to meet its burden of establishing, by a preponderance of the credible evidence, that the employee has engaged in conduct that fits within a series of specified disciplinary charges authorized by the New Jersey Administrative Code. N.J.A.C. 4A:2-2.3(a); Matter of Polk, 90 N.J. 550 (1982). Here, the appointing authority has disciplined Mr. Wiley for neglect of duty and chronic and excessive absenteeism. He has appealed, and the Civil Service Commission, and this judge, will determine the guilt or innocence of the appellant de novo, not bound in any sense by the results below that sustained the charges, or by the penalties imposed.

The initial event in the series of events purportedly occurring in the early fall of 2012 that are the subject of these charges was Mr. Wiley's alleged lateness of September 4, which followed upon a lengthy series of prior incidents of lateness spread out from June 18 through September 2, 2012. These form both the background and the essence of the allegation that

Mr. Wiley was commonly, chronically and excessively late. The printout of the time keeping system shows that Mr. Wiley was indeed late on the various occasions, sometimes around ten minutes late, other times around twenty, and yet other times over an hour. Then, on September 4, with this lengthy record behind him, including even previous discipline in May 2012, he was again late, in fact, nearly two hours late. Mr. Wiley tried to suggest in his testimony that he had stopped being late, thanks perhaps to counseling he had received, but there is a demonstrated pattern of lateness on thirteen days in August before the episode on September 2 and 4. Thus, as to the charge of chronic and excessive lateness in the September 7, Preliminary Notice, I **FIND** that the allegations with regard to the series of listed late arrivals is supported by the preponderance of the credible evidence and I **CONCLUDE** that Mr. Wiley was guilty of the charge. As for the neglect of duty charge, which apparently is most directly related to the incident on September 4, when the witnesses spoke of Wiley's departure for a break and his return, not the expected one-half hour later, but instead one hour and forty-five minutes later, I **FIND** that the evidence of his having taken an extended and unauthorized break is credible. Mr. Wiley claimed that he had to register his child in school. This might have been the case, but he apparently did not have permission to be away so long, and no evidence to support that he was indeed involved for such a lengthy period in such an endeavor has been produced. I **CONCLUDE** that his unauthorized extension of the allowable break time constituted neglect of his duty to be on the job during the expected hours of work.

As for the removal matters, taking them in chronological order of the events alleged in the two October 24 Preliminary Notices, Mr. Wiley has acknowledged that he did not appear for work as scheduled on either September 9 or 16, 2012. He offered as the reason for his September 9, absence his being in jail, a jailing he attributed to a charge of contempt of court for failure to appear in court on a scheduled date. He claimed he did not receive the notice. It is not clear if he pled that excuse to the municipal court judge. However, his absence from court was apparently not excused. His incarceration was not the fault of the employer, and to the extent it appears to have been Mr. Wiley's fault for having been jailed, his absence from his job is hardly to be excused. Likewise, his claim about car trouble the following Saturday, which he claims forced him to be absent from work on Sunday, September 16, falls short of a reasonable excuse. He could have made other arrangements so that he could report as

scheduled. His history of absences and lateness, which itself is not admissible to prove that he was absent on the 16th, nevertheless should have made it even more imperative for him to do whatever was reasonably necessary to get to work on the 16th. He did not do so, without good excuse. Then, he failed to call in to indicate that he would be in court on the 11th of October. And, the credible evidence from documentation made at the time and the testimony of credible witnesses establishes that Wiley was late for work on both Monday, September 10 and Monday, September 17, 2012. Given all this, the employer reasonably determined that it had to discipline Wiley. I **FIND** that he was absent on the 9th and 16th, failed to call in on October 11, and was late to work on September 17. Given these facts, I **CONCLUDE** that Mr. Wiley was chronically or excessively absent or late.

This leaves the other removal, which involves a charge of neglect of duty. In each instance, I **FIND** that the credible, experienced employees and supervisor witnesses, detailed how Mr. Wiley was given an assignment and failed to do it. Instead he seems to have disappeared from his expected work area for lengthy periods. His excuses, that he was in the bathroom for a long period, that he was in a remote area, that he did not see those looking for him, do not ring true. They are not credible. I **FIND** that on September 17, 2012, Mr. Wiley failed to clean the Bursar's area as directed and disappeared from expected work areas. Likewise, I **FIND** that on the important occasion of October 14, he absented himself from where he was expected to be. In each case, I **CONCLUDE** that he neglected his duty.

Sanctions

Mr. Wiley's lengthy past disciplinary record has been admitted in evidence under West New York v. Bock, 38 N.J. 500 (1962). This record demonstrates without any doubt that Mr. Wiley's most recent series of absences without authority and latenesses are just the most recent of an ongoing saga. Even if the reason for at least a part of all this, past and more recent, is the result of the stresses related to a divorce and the impact of such an event regarding children, an employer has a fundamental right to expect an employee to report for work as scheduled and on time. Mr. Wiley has already received his share of progressive discipline, and the employer's desire to cut ties with him based upon the most recent series of violations of N.J.A.C. 4A:2-2.3(a)4 is completely understandable, and I **FIND**, warranted.

Added to this is the neglect he showed for his responsibilities even when at work, which, in a sense, is no more than another form of "absence," at least from the responsibility of the work.

Based upon the findings and conclusions made herein as to the present violations charged in the two Final Notices of October 24, 2012, and the past disciplinary record, I **CONCLUDE** that removal is the appropriate sanction. And with regard to the suspension rendered in the September 7, 2012, Final Notice, I **CONCLUDE** that a fifteen-day suspension as issued there by the appointing authority was, while fully appropriate to the circumstances, perhaps a generous result, given the lengthy series of late arrivals detailed in the charge and supported in this record. While a more severe discipline might have been imposed, I am satisfied that imposing a fifteen-day suspension is sufficient.

ORDER

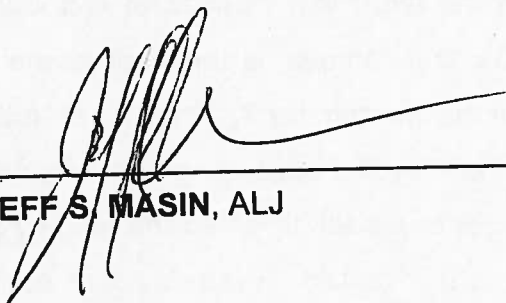
It is **HEREBY ORDERED** that Mr. Wiley is suspended for fifteen days for the violations contained in the Final Notice of Disciplinary Action dated September 7, 2012, and sustained in this de novo hearing. It is **FURTHER ORDERED** that Mr. Wiley is **REMOVED** from his position based on the charges contained in the two Final Notices dated October 24, 2012, and sustained in this hearing.

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 3, 2014
DATE



JEFF S. MASIN, ALJ

Date Received at Agency:

11/3/14

Date Mailed to Parties:

11-5-14

mph

LIST OF WITNESSES:

For appellant:

John Wiley

For respondent:

John Davis

Carl Derrick Fullard

Charlene Bullen

Cordell Dodge

Kenneth Kuerzi

LIST OF EXHIBITS:

For appellant:

- P-1 Letter re appointment for September 25, 2012 with Employee Advisory Service
- P-2 Letter re appointment for October 3, 2012 with Employee Advisory Service
- P-3 Memorandum to Facilities, Rowan University, Housekeeping commending John Wiley's performance, dated October 25, 2012
- P-4 Memo to Rowan University Housekeeping, commending John Wiley, dated October 26, 2012

For respondent:

- R-1 September 4, 2012 e-mail from J. Davis to K. Kuerzi requesting appropriate disciplinary action
- R-2 Time detail for range of dates January 1, 2012 to September 4, 2012

- R-3 September 7, 2012 Preliminary Notice of Disciplinary Action, seeking fifteen-day suspension for chronic or excessive absenteeism or lateness and neglect of duty
- R-4 October 24, 2012 Preliminary Notice of Disciplinary Action, seeking fifteen-day suspension for chronic or excessive absenteeism or lateness
- R-5 September 10, 2012 e-mail from John Davis to K. Kuerzi re: continued behavior
- R-6 Time detail for range of dates September 1, 2012 to October 31, 2012
- R-7 September 17, 2012 e-mail from John Davis to K. Kuerzi re: continued behavior
- R-8 October 24, 2012 Preliminary Notice of Disciplinary Action seeking removal for neglect of duty
- R-9 September 17, 2012 e-mail from J. Davis to K. Kuerzi requesting disciplinary action and forwarding e-mail describing incident
- R-10 October 14, 2012 e-mail from J. Davis to K. Kuerzi continued behavior and forwarding e-mail re: inability to contact employee
- R-11 October 15, 2012 e-mail from J. Davis to K. Kuerzi re: October 14, 2012
- R-12 Cordell Dodge report re: Sunday October 14
- R-13 Letter of Counseling, March 16, 2010
- R-14 Letter of Counseling, June 21, 2010
- R-15 Memo to John Wiley, from Kenneth Kuerzi re: Notice of Minor Disciplinary Action, dated June 26, 2010
- R-16 Letter of Counseling, August 31, 2010
- R-17 Memo to John Wiley from Kenneth Kuerzi, re: Notice of Minor Disciplinary Action, dated September 30, 2010
- R-18 Appeal of Minor Disciplinary Action, October 7, 2010
- R-19 Settlement Agreement re: minor disciplinary action, dated November 16, 2010
- R-20 For identification only
- R-21 Letter of Counseling, dated November 11, 2010
- R-22 Letter of Counseling, dated October 6, 2011
- R-23 For identification only
- R-24 Employee Letter of Notice, January 10, 2012
- R-25 Letter of Counseling, April 19, 2012

- R-26 Memorandum to John Wiley from Kenneth Kuerzi, re: Notice of Minor Disciplinary Action, dated April 26, 2012
- R-27 Appeal of Minor Disciplinary Action, May 16, 2012
- R-28 Settlement Agreement re minor disciplinary action, dated May 22, 2014
- R-29 For identification only

