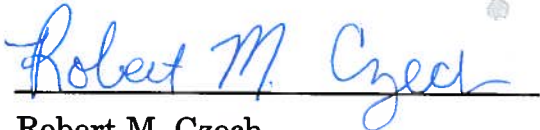


Re: Elmore Gaines

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
JULY 30, 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 horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 14166-13

AGENCY DKT. NO. 2014-844

**IN THE MATTER OF ELMORE GAINES,
CITY OF NEWARK, NEIGHBORHOOD &
RECREATIONAL DEPARTMENT**

Elmore Gaines, pro se

Allison Brown-Jones, Assistant Corporation Counsel, for respondent City of Newark, Neighborhood & Recreational Department (Michael Oppici, Corporation Counsel, attorney)

Record Closed: February 4, 2014

Decided: May 12, 2014

BEFORE JEFFREY A. GERSON, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On or about July 9, 2013 a Preliminary Notice of Disciplinary Action was filed against Elmore Gaines, a Code Enforcement Officer of the City of Newark, Neighborhood Services.

There were three charges filed against Gaines, the first being conduct unbecoming a public employee.

The basis of the complaint stems from an E-mail authored by Gaines and transmitted using the City of Newark electronic system directed to a Municipal attorney who, at the time, was conducting a hearing with Gaines at the Office of Administrative Law. This transmission was directed toward the Municipal attorney, but copied to in excess of forty other Municipal officials including the Mayor, the entire Municipal counsel and several other agency heads.

A Final Notice of Disciplinary Action dated August 29, 2013, sustained all three charges against Gaines and removed him from his position effective September 3, 2013. On or about September 19, 2013, Gaines appealed his termination and the matter was forwarded to the Office of Administrative Law on or about October 1, 2013. A hearing was conducted on February 4, 2014 and concluded on that day.

TESTIMONY

No witnesses testified on behalf of the City because their factual circumstances were stipulated to by Gaines.

Marked in evidence as J-1 was the E-mail authored by Gaines and circulated to the named recipients. Gaines admitted authorship of the E-mail and that he had transmitted it using the City of Newark Electronic System.

After the City rested its case, Gaines called Wanda Stevenson, a union representative to testify on his behalf. Stevenson confirmed receiving the E-mail in question and indicated that she was aware of the policy precluding employees from using City of Newark computers for personal use and/or for the purpose of intimidating or harassing others.

Gaines testified on his own behalf and reaffirmed the fact that he had authored the E-mail in evidence and had used a City of Newark computer to originate and circulate it.

Gaines indicated that he was frustrated by the Municipal attorney's conduct at his prior hearing indicating that he thought that she was "using her body to influence the judge".

DISCUSSION

Gaines transmitted the E-mail using the City of Newark Electronic E-mail System and personally attacked the City of Newark's Assistant Corporation Counsel. The E-mail read in relevant part:

"I take exception that you sent my witnesses away without asking me or telling me or the judge, I wonder whose idea this was. I take exception to you dress code, a five month pregnant woman in a tight short mini skirt was this a misguided attempt to pervade the judge because of your weak case".

Gaines, by accusing the Newark Assistant Corporation Counsel of trying to influence the judge with both her dress and her body undoubtedly crossed the line of what could be acceptable standards of decency and engaged in conduct that was unbecoming a public employee.

Offensive E-mails, in violation of an internal E-mail policy, have been found to constitute conduct unbecoming. See In Re Shauyn Copeland, OAL DKT. NO. CSV 05036-04 Initial Decision (Aug. 4, 2005). Although Gaines' E-mail does not rise to the offense of distribution of pornographic imagery as found in Copeland, its depiction of the municipal attorney and the clear inference that the attorney was attempting to inappropriately influence the judge is quite simply conduct unbecoming. If Gaines had sent his E-mail only to the Corporation Counsel handling his case at the time, it might well have been argued that out of his frustration he did something quite offensive and rude. But, the fact that Gaines forwarded the E-mail to so many City officials, no other conclusion can be reached other than the fact that he intended to either harass, intimidate, or at the very least embarrass Corporation Counsel. Unnecessarily besmirching Corporation Counsel and circulating it to between forty and fifty officials of the City is both a violation of policy and clearly conduct unbecoming.

SANCTION

A review of J-3 in evidence, Gaines' disciplinary history, reveals a rather deplorable record. It reflects numerable warnings and several suspensions, the last three of which appeared to be sixty, ninety, and one hundred twenty day suspensions. Standing alone, the charges in this disciplinary action would probably not warrant a termination, but, the progressive nature of Gaines disciplinary record and his prior entry into many settlement agreements should have put him on notice that any further disciplinary infractions could very well result in his termination. He had been disciplined in the past for conduct unbecoming, including an act that discredited another officer in the Department, in that case although not using E-mails, but offensive brochures. Thus, not only is Gaines' record rather extensive, his offense in this case is not dissimilar to offenses to which he was suspended in previous cases. In fact, a review of Gaines' record indicates that the City of Newark had been quite patient with him over a course of many years and their patience was repaid by a venomous attack against a Corporation Counsel. This conduct warrants termination.

ORDER

It is **ORDERED** that Elmore Gaines is terminated from his position of Code Enforcement Officer for the City of Newark, Neighborhood Recreational Services as of September 3, 2013.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

May 12, 2014



DATE

JEFFREY A. GERSON, ALJ

Date Received at Agency:

5/12/14

Date Mailed to Parties:

sej



5/13/14

**DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE**

APPENDIX

WITNESSES

For Petitioner

Wanda Stevensen

Elmore Gaines

For Respondent

None

EXHIBITS

For Petitioner

None

For Respondent

None

Joint:

- J-1 Printout of Email from Elmore Gaines dated 4/1/13
- J-2 City of Newark E-Mail Policy dated 6/27/00 (6 pgs.)
- J-3 Employment History printout for Elmore Gaines (2 pgs)
- J-4 Certification of Elvin Padilla Re: Elmore Gaines Employment History Printout
- J-5 Printout of Disciplinary Action
- J-6 Initial Decision dated May 6, 2011