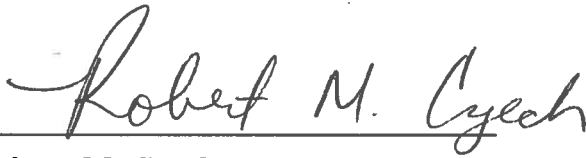


Re: Yevonne Isom

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



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 11238-11

AGENCY DKT. NO. 2012-862

**IN THE MATTER OF YEVONNE ISOM,
ANN KLEIN FORENSIC PSYCHIATRIC
HOSPITAL, DEPARTMENT OF HUMAN
SERVICES.**

Stephan Siegel, Esq., for appellant (Matlin & Siegel, attorneys)

Charles Moore, Employee Relations Coordinator, for respondent pursuant to
N.J.A.C. 1:1-5.4(a)(2)

Record Closed: January 23, 2013

Decided: June 23, 2014

BEFROE JOHN SCHUSTER III, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter Yevonne Isom (appellant), a Senior Medical Security Officer (SMSO), appeals the decision issued by her employer, the Ann Klein Forensic Psychiatric Hospital (respondent) suspending her for thirty working days on a finding that appellant violated N.J.A.C. 4A:2-2.3(a)7 "neglect of duty" and Administrative Order 4:08 Section B2 "neglect of duty, loafing, idleness, or willful failure to devote attention to

task, which could result in danger to persons or property” concerning an incident that occurred on May 24, 2011.

FINDINGS OF FACT

On May 24, 2011, appellant was assigned to work the Center Area of Unit 2 at the respondent's facility. That area is a glassed-in section of the facility located between two residential units and is approximately 16' x 10' in size. The area consists of a desk in the central portion with counters on the perimeter and the rear wall being part of a hallway in the facility. The glass enclosures have cut-outs so that items can be passed in and out and conversation can take place between individuals on either side of the glass enclosures. The event which gave rise to the charges filed occurred between 4 and 5:30 a.m., which was towards the end of appellant's 10:30 p.m. to 6:30 a.m. shift. One of the duties of an individual working the Center Area is to observe the patients' rooms in the two units through the glass enclosure and operate the door electronically to permit staff to pass through the units.

I **FIND** that Sandra Hereford was a supervisor at the Ann Klein Facility that evening and had that title since 2003. Prior to that, she served as a SMSO and her current duties involve overseeing the safety and wellbeing of both the patients and staff in the facility. Ms. Hereford testified that the officer assigned to the Center Area is charged with overseeing the two residential units to assure the safety and communication of what goes on in the unit complies with the facility requirements. Duties include observing visually and audiological what occurs in the two residential units divided by the Center Area. There are times when that individual is also required to do some paper work when that task is required. I **FIND** that on May 24, 2011, Ms. Hereford visited Unit 2 along with SMSO Salina Whitfield, at some point in the 10:30 to 6:30 a.m. shift between 4 and 5:30 a.m. When she got to Unit 2 Center Area, she observed the appellant sitting in her chair with her head slumped forward so that her chin was resting on her chest. Since she could only see appellant's profile, she could not tell if her eyes were open or closed. As she and Ms. Whitfield approached the glassed Center Area speaking normal conversational tones appellant remained motionless. Ms. Whitfield called to appellant to open a secured door and appellant did

not respond. Ms. Whitfield called a second time in a much louder voice and appellant still did not respond. When appellant did not respond, Supervisor Hereford waited a few minutes and when there was still no movement by appellant she banged on the glass enclosure. When she did, appellant became startled and aroused. Supervisor Hereford concluded that appellant was sleeping based on the aforesaid observations.

Appellant testified she was not sleeping during this period. She testified that she had the radio on and could not hear either call by Ms. Whitfield. She stated she did hear the knock on the window by Supervisor Hereford and when she did she was compliant with Ms. Hereford's orders. Appellant testified that these charges were in retaliation of charges that she had earlier filed against Ms. Hereford. Appellant denied that she was sleeping on duty and testified that she could not hear Ms. Whitfield's call to her to open the doors because she was playing a radio. She admitted; however, that as the Center Area Officer it was her responsibility to not only see what was going on in the units, but to hear any activities as well.

I **FIND** that some of the duties of the officer assigned to the Center Area is to see and hear what is going on in the two residential units. I further **FIND** that appellant was not performing that duty, as her head was slumped forward with her chin resting on her chest and was not able to hear the two call outs made by Ms. Whitfield.

LEGAL ANALYSIS

Although neglect is not defined in the administrative code, it constitutes cause for discipline. In the Matter of Christopher Burlap, Camden County Department of Corrections, CSV 10834-12, Initial Decision (March 22, 2013), adopted, Comm'r (May 1, 2013), <<http://njlaw.rutgers.edu/collections/oal/>>. Pursuant to N.J.A.C. 4A:2-2.3(a)(7), "neglect of duty" has been defined as a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). Neglect is nonperformance of a duty imposed upon a public employee and is considered more than an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). Neglect of duty can arise from an omission to perform a duty or failure to

perform or discharge a duty. Clyburn v. Twp. of Irvington, CSV 7597-97, Initial Decision (September 10, 2001), adopted, Merit Sys. Bd. (December 27, 2001), <<http://njlaw.rutgers.edu/collections/oal/>>; In the Matter of Christopher Burlap, *supra*, CSV 10834-12, Initial Decision (March 22, 2013), adopted, Comm'r (May 1, 2013), <<http://njlaw.rutgers.edu/collections/oal/>>.

In this instance, appellant's duties were to observe the two units on either side of the Center Area, call a nurse or supervisor if required, and upon request open the door with an electronic control between the units to allow staff to pass through. In essence, appellant's duties required her to be aware of what was occurring on the units and in between the units and respond to requests and concerns appropriately.

Here, the appellate testified that she did not hear Ms. Whitfield call out requests to pass through the door. The distinction between whether the appellant was sleeping or listening to the radio is not significant. Given either scenario, the appellant was not aware of what was occurring in the vicinity of the Center Area at the time in question. Although the appellate and Ms. Whitfield said that it was normal for the patients to make loud banging sounds at unexpected times, neither the appellant nor Ms. Whitfield testified that there was loud banging happening at the time of Ms. Whitfield's request. For whatever reason, appellant was admittedly not aware of her surroundings at that time.

Appellant testified that she believed that Ms. Hereford lodged this complaint against her in retaliation for a separate incident which occurred earlier in that same shift where Ms. Hereford yelled at appellant while waving her arms. In response, appellant filed a charge of workplace violence against Ms. Hereford, which was later substantiated. In order to prove a retaliatory action, an employee must demonstrate that there was no legitimate reason for the disciplinary action. Although a confrontation occurred between appellant and Ms. Hereford earlier in the shift, appellant cannot refute that there was a legitimate reason for the disciplinary action since she did not respond to at least two calls to open the door. In fact, appellant only responded when Ms. Hereford knocked on the glass window.

CONCLUSION

I **CONCLUDE** that appellant was neglectful in her duties by not observing Ms. Hereford waiting for the door to be opened and did not hear Ms. Whitfield's calls for admission. I further **CONCLUDE** that if appellant could not observe by sight or sound the two individuals within her close proximity she put herself in a position where she could not see or hear the activities in the residential units which was her responsibility.

ORDER

For the reasons set forth above, I **ORDER** appellant's appeal be **DISMISSED** and the suspension imposed upon appellant 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.

June 23, 2014
DATE


JOHN SCHUSTER III, ALJ

Date Received at Agency:

6/23/14

Date Mailed to Parties:

6/26/14

/cad

WITNESSES

For Appellant:

Yevonne Isom

For Respondent:

Sandra Hereford

Salina Whitfield

EXHIBITS

For Appellant:

None

For Respondent:

R-1 Statement of Selena Whitfield