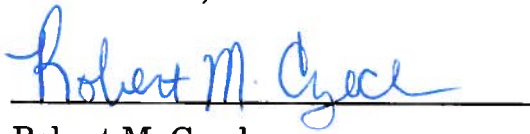


Re: Ravin Morrison

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
AUGUST 13, 2014



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 00844-14

AGENCY DKT. NO. 2014-1671

**IN THE MATTER OF RAVIN MORRISON,
CITY OF NEWARK DEPARTMENT OF
ENGINEERING.**

Joseph Greer, Esq., for appellant Ravin Morrison (Law Office of Nathaniel M. Davis, attorneys)

Kenneth G. Calhoun, Assistant Corporation Counsel, for respondent City of Newark (Karen Brown, Corporation Counsel)

Record Closed: June 2, 2014

Decided: July 17, 2014

BEFORE **MICHAEL ANTONIEWICZ, ALJ**:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter involves the removal of appellant Ravin Morrison (appellant or Morrison) from his position as a principal account clerk with the respondent City of Newark (the City or Newark), effective August 19, 2013, on charges that he resigned not in good standing, employee failed to comply with the formal conditions of previously signed Conditional Letter of Employment; employee did not call or report to work for six

(6) consecutive days without approval from August 19, 2013, to December 10, 2013; and conduct unbecoming a public employee.

On August 23, 2013, the City served appellant a Preliminary Notice of Disciplinary Action (31-A) (R-2), which proposed a determination that he was: 1) absent from duty for five days continuously without approval; and 2) employee had failed to comply with the Terms and Conditions of previously signed Conditional Letter of Employment dated June 6, 2013. Following an internal hearing held on September 13, 2013, Morrison was found guilty of being absent from duty for five days continuously, pursuant to N.J.A.C. 4A:2-6.2(b) and (c). On December 10, 2013, a Final Notice of Disciplinary Action (FNDA) was issued to Morrison. (R-1.) Appellant filed an appeal and the Civil Service Commission transmitted the matter to the Office of Administrative Law, where it was filed on January 23, 2014, as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Following the prior adjournment of the hearing date of May 6, 2014, a hearing was held on May 30, 2014, and the record closed on that date.

FACTUAL DISCUSSION

Felicia Nazon

Felicia Nazon (Nazon) was the chief deputy clerk for the City of Newark for three to four years. Attendance was tracked by an employee pay frequency status system. This system would track the days and time worked for each employee.

Morrison received a Final Notice of Disciplinary Action (31-B), dated December 10, 2013. The notice contained a charge that the employee resigned not in good standing and a failure to comply with a Conditional Letter of Employment. (R-6.) The resignation not in good standing was based on Morrison not calling the appointing authority and not showing up for work for more than five consecutive days. (R-1.)

The employee pay frequency status showed that Morrison was out of work from August 19, 2013, for a period in excess of five days. (R-5.) This absence from work without permission amounts to a violation of N.J.A.C. 4A:2-6.2.

Employees who are absent from work for five consecutive days without giving proper notice to his/her Department Director shall be considered to have resigned not in good standing. The City shall institute disciplinary procedures leading to dismissal in such instances.

Nazon determined that Morrison was required to report to work on August 19, 2013; however, Morrison did not report to work on that date. Nazon and other supervisory personnel did not hear from Morrison and thus his absence from August 19, 2013, through September 13, 2013, was recorded as an unexcused absence. (R-5.)

Nazon testified that department procedure dictated that a superior must hear from the employee within one hour of the work day that they would not be coming to work. If the employee does not call within that hour, the employee can be docked for that day. Nazon found out, after the fact, that the reason Morrison did not appear for work on that date was because he was incarcerated. She was not sure why he was incarcerated. Since August 19, 2013, Morrison had not returned to work.

Previously in Morrison's employment, he signed a Conditional Letter of Employment with the respondent. (R-6.) The letter was signed by Morrison on June 5, 2013. Some of the terms of employment included that Morrison would refrain from substance abuse, attend a program, and confirm attendance at work.

Morrison was charged with a willful violation of this letter of employment. Morrison failed to complete the drug-abuse program within the time designated in the Conditional Letter of Employment. A letter from Integrity House (J-1) states, "It is Integrity policy that no client will be admitted into the Outpatient program located at 26 Longworth Street if they are deemed under the influence of any mood or mind-altering

substance, this includes medically assisted addiction treatment drugs such as Suboxone.”

Based on this known policy, Morrison was denied entry into the Integrity House program and thus he did not complete the program. According to Nazon, she never received a letter stating that Morrison was in the program. Morrison was required to submit written proof of his enrollment in such a program to the Department within seven calendar days of the execution of the Conditional Employment Letter. (R-6.) Morrison failed to comply with same. Nazon testified that Morrison did not have a lot of work in the Department as many responsibilities were taken away due to his lack of performance.

On cross examination, Nazon stated that she did not receive a phone call from Morrison from August 19, 2013, until September 13, 2013. Nazon also stated that she had a friendship with him and she was also his supervisor; however, she did not do a work evaluation on Morrison. Nazon also remembered that Morrison did go to other drug rehabilitation programs in other locations. For example, Morrison attended the VA Lyons Domiciliary with a tentative admission date of September 23, 2013. (P-1.) Nazon was unsure if Morrison entered the Endeavor House treatment program. (J-2.) She stated that apparently, Morrison was admitted into Genesis House on November 7, 2013. (P-2.)

Nazon also became aware that Morrison was arrested during a sweep in a known drug area, and later the charges were dismissed against Morrison based on a lack of prosecution. (P-3.) After his termination, Morrison would appear in the Department’s building in Newark for no apparent reason or purpose.

Ravin Morrison

Ravin Morrison (Morrison) was employed by Newark for thirteen years. An evaluation was conducted on Morrison in 2008 or 2009 by Nazon whereby he was found to be satisfactory. Morrison recalled that on a certain day, after working for a long time in Newark, the Director became intimidating towards him. One day he went to

lunch and had two glasses of wine. According to Morrison, when he returned from lunch, the Director came at him and he pushed documents toward the Director. The Director claimed that Morrison had been drinking (which by his own admission he was) and threw contracts at him. After some time, he developed personal issues and his salary was reduced by more than one half to around \$30,000. Around this time, he began using drugs. As a result, he was suspended for ten days. A friend advised him to go to the Integrity House for drug rehabilitation. Morrison recalled that if he was on medication, he could not enroll in the rehabilitation program.

Eventually, Morrison was able to find a program through the VA and the Genesis House and he completed both. He was able to come back to work, but he was not allowed. Morrison was arrested in a drug sweep and missed his court date. Morrison was then arrested on a warrant for missing his court date. Morrison called Nazon at her home while he was in jail on August 19 or 20, 2013, at 1:00 or 2:00 a.m. Morrison testified he stated that he heard Nazon's voice but he was unsure if she heard him. This was the only time he attempted to call a superior at work to advise them of his inability to make it to work. Morrison did not call again. Morrison was released eleven days later. After his release, Morrison went to the City Hall to explain what had happened. With almost no credibility, Morrison testified that he complied with all of the terms of the Conditional Letter of Employment. When asked about going into a drug program, as required, Morrison stated that he made efforts to do so. Morrison further stated that he completed the VA program.

On cross-examination, Morrison stated that he was arrested under the charge of wandering, which was ultimately dismissed. The Conditional Letter of Employment was signed by Morrison on June 5, 2013, and Morrison testified that he understood the terms of the letter. Morrison stated that he spoke with "Maria" at EAP regarding his responsibilities pursuant to this letter. The main condition in the Conditional Letter of Employment stated:

You must participate in and successfully complete an EAP substance abuse rehabilitation program and present confirmation of same in writing to the Department and to the City Personnel Department within seven calendar days of

completion. You will comply with all conditions set forth by the EAP program for your continued rehabilitation. Further, you will describe the conditions for continued rehabilitation set forth by the EAP program. You must submit written proof of your enrollment in said EAP program to the Department within seven (7) calendar days of your execution of this document.

[R-6.]

In August, Morrison was advised that he would not be admitted into an outpatient program. In addition, Morrison admitted that he did not complete the program at Integrity House.

Morrison further admitted that he was out of work from August 19, 2013, until September 13, 2013. Morrison stated that he made one phone call to Nazon between 1:00 a.m. to 2:00 a.m. at her house. He called collect and she said hello, but he was not able to speak with her. Morrison stated that he did not make any other calls.

In an example against Morrison's credibility, Morrison testified that he had no previous disciplinary history, yet he was then presented with R-14, which confirmed a minor disciplinary action dated October 1, 2012, for conduct unbecoming a public employee and neglect of duty. Based on this disciplinary action, Morrison was suspended for three days. In addition, Morrison was also charged with a minor disciplinary action (R-12) dated November 13, 2012, with the following charges: chronic or excessive absenteeism or lateness; conduct unbecoming a public employee; and neglect of duty. For such charges, Morrison was suspended for five days. Furthermore, Morrison was served with a PNDA with charges of incompetency, inefficiency or failure to perform duties; insubordination; inability to perform duties; chronic or excessive absenteeism or lateness; conduct unbecoming a public employee; neglect of duty; and other sufficient causes. The charges were upheld and Morrison was suspended for six days. Lastly, Morrison was served with a FNDA, dated May 15, 2013, with the following charges: incompetency, inefficiency and failure to perform duties; insubordination; inability to perform duties; chronic or excessive absenteeism or lateness; neglect of duty; and other sufficient causes. Morrison received a penalty of

an eight-day suspension. It was after this last suspension that Morrison entered into a Conditional Letter of Employment. Morrison stated that substance abuse caused his problems at work. He stated that he used drugs in the years 2001 and 2013.

Morrison testified that he often confided in Nazon. He provided Nazon with information because she was his friend. Morrison admitted that he signed the Conditional Letter of Employment by his own volition. Because of pressure, Morrison stopped attending drug meetings. After being arrested and terminated, Morrison completed the program at the Endeavor House in October 2013.

Based upon the evidence presented at the hearing, including documents and testimony, and having had the opportunity to observe the witnesses and assess their credibility, I **FIND** the following pertinent **FACTS**:

1. Morrison was currently a principal account clerk for the City of Newark in the Department of Engineering.
2. A Policy and Procedure for the City of Newark (N.J.A.C. 4A:2-6.2) states that employees who are absent from work for five consecutive days without giving proper notice to his/her Department Director shall be considered to have resigned not in good standing. The City shall institute disciplinary procedures leading to dismissal in such instances. (R-1.)
3. Morrison was terminated, effective August 19, 2013, for conduct unbecoming a public employee and failure to follow the City Attendance Policies and Procedures, absence without leave, and failure to abide by the terms of a Conditional Letter of Employment.
4. Morrison was required to report to work on August 19, 2013, however, he did not report to work, nor did he contact his job until September 13, 2013.

5. Morrison was arrested on August 19, 2013, and he failed to make a call to his superiors for well past six days. His only effort to call his superior was a call to Nazon at one to two o'clock in the morning in a phone call where he was unable to speak with Nazon.
6. On June 5, 2013, Morrison signed a Conditional Letter of Employment. Some of the terms of employment included that Morrison would refrain from substance abuse, he would attend a program, and he would confirm attendance at work.
7. Morrison was charged with a willful violation of this letter of employment. He failed to complete the drug-abuse program within the time designated in the letter of employment.
8. Morrison was denied entry into the Integrity House because he was under the influence of drugs and there was a policy stating that no client will be admitted into the Integrity House outpatient program if they are deemed under the influence of any mood or mind-altering substance, which included medically assisted addiction treatment drugs.
9. Nazon never received a letter from Morrison or on his behalf stating that he had entered a drug program pursuant to the terms contained in the Conditional Letter of Employment.
10. Morrison failed to enroll in a drug program within seven days of his execution of the Conditional Employment Letter.
11. Morrison was arrested in a drug sweep in a known drug area in the City of Newark, New Jersey.
12. Although the charges were ultimately dismissed for lack of prosecution, Morrison remained in jail for missing his court date from August 19, 2013, until September 13, 2013.

13. Morrison failed to fully comply with the terms of the Conditional Letter of Employment, which he voluntarily signed.
14. Morrison fully understood the terms of the Conditional Letter of Employment.
15. Morrison previous disciplinary record includes: minor disciplinary action, dated October 1, 2012, for conduct unbecoming a public employee and neglect of duty for which he received a three-day suspension; another minor disciplinary action (R-12), dated November 13, 2012, for chronic or excessive absenteeism or lateness, conduct unbecoming a public employee, and neglect of duty for which he received a five-day suspension; Morrison was served with a PNDA with charges of incompetency, inefficiency or failure to perform duties, insubordination, inability to perform duties, chronic or excessive absenteeism or lateness, conduct unbecoming a public employee, and neglect of duty, for which the charges were upheld and Morrison was suspended for six days.
16. On May 15, 2013, Morrison was served with a FNDA with charges of incompetency, inefficiency and failure to perform duties, insubordination, inability to perform duties, chronic or excessive absenteeism or lateness, and neglect of duty for which Morrison received an eight-day suspension.
17. After the last suspension set forth in 16 above, Morrison signed the Conditional Letter of Employment.

ANALYSIS AND CONCLUSIONS OF LAW

Morrison is charged with being absent from duty, without proper notice, for five days continuously pursuant to N.J.A.C. 4A:2-6.2 and other related charges, N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3(a)(6); N.J.A.C. 4A:2-2.3(a)(7); and N.J.A.C. 4A:2-2.3(a)(11). Based upon the above findings, I **CONCLUDE** that Morrison was absent

from duty for more than five days continuously between August 19, 2013, until September 13, 2013.

Under N.J.A.C. 4A:2-6.2(b), “five or more consecutive days” absence without approval of an employee’s supervisor is regarded as abandonment of the position and deemed a resignation not in good standing. In the current instance, Morrison was to appear at work on August 19, 2013, but he did not return to duty as he was arrested and incarcerated. It was confirmed that Morrison was not on an authorized leave of absence during that period. In addition, Morrison did not contact any of his superiors regarding his date of return, nor the reason he was not returning except for a call to his supervisor’s home on August 19/20, 2013, where Morrison heard her voice but he was unable to speak with her. Even under the broadest definitions of a conversation, this attempt at notice cannot be called contact with his supervisor in order to tell his supervisor of why he did not appear at work nor when he would return as he did not convey any of that information to Nazon.

“There is no constitutional or statutory right to a government job.” State-Operated Sch. Dist. of Perth Amboy v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). 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; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at this de novo hearing are whether Morrison is guilty of the charges brought against her and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, the City bears the burden of proving the charges against Morrison by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Suero, CSV 5039-04, Final Decision (June 22, 2005), <<http://njlaw.rutgers.edu/collections/oal/>>. The appointing authority proved those charges against Morrison, many which were admitted by the petitioner.

There is no debate that Morrison failed to report to work following his arrest and incarceration on August 19, 2013, and that he failed to contact his supervisors to

determine his date of return or to explain his non-appearance well after the six days as alleged.

Morrison's attempt to cloud the issue by arguing that he was in contact with his supervisor on August 19/20, 2013, even though no tangible information was relayed to Nazon is not persuasive. Indeed, other than his testimony, Morrison offered no proof of this call and his argument supporting same is not credible. The City has demonstrated adequately that Morrison failed to return to work and failed to obtain an approved leave of absence from his supervisor as required and failed to contact any supervisor to explain his absence. Morrison failed to return to work promptly (if at all) and he failed to contact his supervisor in order to provide proper notice as to why he was absent from work for that significant period of time.

In addition, Morrison admitted that he signed the applicable Conditional Letter of Employment, signed June 5, 2013, and then failed to abide by the terms of the Letter. The Letter clearly required Morrison to submit written proof of his enrollment in a said EAP program to the Department within seven (7) calendar days of his execution of the Letter. This requirement is clear and Morrison's failure to abide by the terms of same is equally clear.

Based upon the foregoing, I **CONCLUDE** that the City of Newark has met its burden of proving by a preponderance of the credible evidence that Morrison was absent from duty for five or more consecutive business days without approval of his supervisor. In addition, the City of Newark met its burden of showing that Morrison breached the terms of the Conditional Letter of Employment. Accordingly, I **CONCLUDE** that the appellant's unapproved absence resulted in a resignation by Morrison not in good standing and supported the other charges made against him by Newark.

ORDER

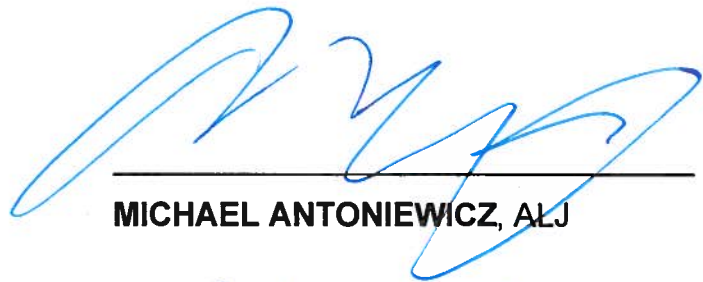
It is **ORDERED** that Morrison is hereby deemed to have **RESIGNED** from his position not in good standing, effective August 19, 2013, and his appeal be and hereby is **DISMISSED**.

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.

July 17, 2014
DATE



MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency:

July 17, 2014

Date Mailed to Parties:
jb

July 17, 2014

APPENDIX

WITNESSES

For Appellant:

Ravin Morrison

For Respondent:

Felicia Nazon

EXHIBITS

Joint

J-1 Letter from Integrity House dated October 11, 2013

J-2 Letter from Endeavor House to Morrison dated October 10, 2013

For Appellant:

P-1 Letter from Department of Veteran Affairs dated September 11, 2013

P-2 Letter from Genesis House dated December 11, 2013

P-3 Letter from City of Newark Municipal Court dated January 8, 2014

For Respondent:

R-1 Final Notice of Disciplinary Action dated December 10, 2013

R-2 Preliminary Notice of Disciplinary Action with Specifications of Charges and supporting documentation dated August 23, 2013

R-3 Relevant Provisions from New Jersey Administrative Code, specifically, N.J.A.C. 4A:2-6.2 (resignation not in good standing) and N.J.A.C. 4A:2-2.3 (general causes for employee discipline)

R-4 Memo from J. Wright, Inspector General to Director M. Mohammadish dated August 20, 2013

R-5 Timecard Printout for Ravin Morrison, date range: 08/01/2013 through 09/12/2013

- R-6 Conditional Letter of Employment signed June 5, 2013
- R-7 Final Notice of Disciplinary Action dated June 7, 2013 (w/ attached memo for Director Mohammadish)
- R-8 Stipulation and General Release signed June 5, 2013
- R-9 Preliminary Notice of Disciplinary Action with Specification of Charges and supporting documentation dated May 9, 2013
- R-10 Final Notice of Disciplinary Action dated May 15, 2013
- R-11 Preliminary Notice of Disciplinary Action with Specification of Charges and supporting documentation dated April 1, 2013
- R-12 Notice of Minor Disciplinary Action dated November 13, 2012
- R-13 Memo from Dir. Mohammadish to Morrison dated October 4, 2012
- R-14 Notice of Minor Disciplinary Action dated October 1, 2012
- R-15 Memo from Dir. Mohammadish to Morrison dated April 24, 2012
- R-16 Letter from Endeavor House to Kecia Daniels dated July 22, 2013
- R-17 Letter from Endeavor House to Kecia Daniels dated July 22, 2013
- R-18 Letter from Endeavor House to Morrison dated July 22, 2013
- R-19 Letter from Integrity House to F. Nazon, dated July 8, 2013
- R-20 Letter from Integrity House dated June 21, 2013