A-26

STATE OF NEW JERSEY

In the Matter of Jose Segarra
Central Office Police
Department of Human Services

CSC DKT. NO. 2015-584
OAL DKT. NO. CSR 11375-14

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: February 5, 2015 PM

The appeal of Jose Segarra, a Senior Police Officer with the Central Office Police, Department of Human Services, removal effective July 9, 2014, on charges, was heard by Administrative Law Judge Sarah G. Crowley, who rendered her initial decision on January 16, 2015. 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 February 4, 2015, 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 removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Jose Segarra.

Re: Jose Segarra

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
FEBRUARY 4, 2015

Robert M. Czech

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
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attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSR 11375-14
AGENCY DKT. NO. ~~N/A~~ 2015-584

IN THE MATTER OF JOSE SEGARRA, NEW JERSEY DEPARTMENT OF HUMAN SERVICES, CENTRAL OFFICE POLICE.

Christopher Gray, Esq., for appellant Jose Segarra (Sciarra & Catrambone, LLC, attorneys)

Robert Strang, Deputy Attorney General, for respondent Department of Human Services (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Record Closed: December 23, 2014 Decided: January 16, 2015

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Jose Segarra, a senior police officer for respondent Department of Human Services (DHS), appeals disciplinary action seeking his removal for a violation of a last-chance agreement. Appellant argues that there was substantial compliance with the agreement, or, in the alternative, that the agreement is null and void.

On June 30, 2014, respondent issued a Preliminary Notice of Disciplinary Action seeking appellant's removal for violation of a last-chance agreement. On July 8, 2014, an Amended Preliminary Notice of Disciplinary Action was issued. A Final Notice of Disciplinary Action removing the appellant from his position was issued on August 29, 2014. Appellant filed a timely notice of appeal with the Office of Administrative Law (OAL), pursuant to N.J.S.A. 40A:14-202(d), on September 9, 2014. The matter was heard on December 12, 2014. The parties' post-hearing submissions were received on December 23, 2014, and the record closed on that date.

SUMMARY

Appellant was hired as a senior police officer for the Department of Human Services on December 25, 2004. In resolution of a prior disciplinary action seeking his removal in March 2013, the appellant entered into a settlement agreement, which was approved by Chief Administrative Law Judge Laura Sanders on September 6, 2013, and by the Civil Service Commission on October 16, 2013. The agreement is identified as a "last-chance agreement." The agreement required the appellant to undergo psychological treatment for six consecutive months, with no less than three sessions per month. Appellant commenced treatment in November 2013, and as of June 30, 2014, had completed only ten of the required eighteen sessions. The appellant argues that this was substantial compliance with the agreement. Appellant also argues that since this non-compliance was not a "violation of the rules and regulations of the department," the penalty should not be termination. Appellant's final argument is that the last-chance agreement is null and void due to his execution of a subsequent authorization form from Personnel. Respondent seeks appellant's removal for a violation of the last-chance agreement.

TESTIMONY

For respondent:

Iris Mungin Bey, independent medical examination (IME) coordinator for the Department of Human Services, testified that she is familiar with the Jose Segarra case. She was involved in the 2013 case that resulted in the settlement agreement, the violation of which is at issue in this matter. She testified that Mr. Segarra was facing removal when he signed the last-chance agreement, which provided that he was to complete no less than three psychological treatments per month for six consecutive months upon reinstatement of his health benefits. The agreement was signed by both parties and their counsel, and then approved by the administrative law judge and the Civil Service Commission.

Approximately one week after the execution of the last-chance agreement, Ms. Mungin Bey asked Mr. Segarra to sign an "Acknowledgement of Receipt of the Agreed-Upon Post-IME Appointment Accountability and Verification Form." (P-1.) Ms. Mungin Bey testified that the purpose of this acknowledgement form was to require Mr. Segarra to complete the necessary paperwork for benefits to be reinstated and to provide verification of the required appointments. The form was not part of the settlement agreement, nor was it reviewed by counsel, or approved by the Civil Service Commission. The acknowledgment form, signed by appellant, stated:

> my failure to comply with either my appointments requirement or verification requirements or properly and timely completing the forms required for the reinstatement of my health benefits will be construed as indicative of my failure to comply with the Settlement Agreement of September 6, 2013 and will render such Settlement null and void even during the pendency of the review and approval of this Settlement by the Civil Service Commission. I understand that such failure on my part will be forwarded to the Civil Service Commission.
>
> [P-1.]

Ms. Mungin Bey testified that this acknowledgement form did not modify or alter the terms of the agreement in any way. Ms. Mungin Bey had no authority to modify the terms of a settlement agreement approved by counsel for both parties, the administrative law judge and the Civil Service Commission. She testified that this form was for her records only, and was never sent to counsel or to the Civil Service Commission.

Ms. Mungin Bey testified that Mr. Segarra commenced treatment with Mike Abrams, M.D., in November 2013. He saw Dr. Abrams on ten occasions: November 6, 14, and 27, 2013; December 6, and 20, 2013; January 22, 2014; February 12, 26, and 28, 2014; and March 5, 2014. These appointments were confirmed in a letter dated June 17, 2014, from Dr. Abrams's office. (P-2.) Mr. Segarra attended no sessions with Dr. Abrams after the March 5, 2014, session. Ms. Mungin Bey received no calls or communications from Mr. Segarra after this date about any problems with the doctor or with completing his required treatment. Subsequent to service of the initial notice of discipline on Mr. Segarra on June 30, 2014, Ms. Mungin Bey received verification documents from psychologist Barbara Velazquez, M.D. Mr. Segarra apparently started treatment with her in July 2014, after the Preliminary Notice of Disciplinary Action was served. Ms. Mungin Bey acknowledged that Mr. Segarra had a work-related injury in January 2014 that kept him out of work for a week to ten days.

For appellant:

Sheri Eure-Washington testified that she has been an employee relations coordinator for the DHS since December 2013, and is responsible for handling disciplinary matters. She testified that the Preliminary Notice of Disciplinary Action was issued in this matter on June 30, 2014. The discipline for which the notice was issued related to Mr. Segarra failing to comply with the terms of the September 6, 2013, settlement agreement. There were no allegations of a violation of any department rules and regulations. Ms. Washington did not have any specific information about billing issues with Dr. Abrams. She was aware that Mr. Segarra had started receiving treatment from Dr. Velazquez after the Preliminary Notice of Disciplinary Action was issued.

Jose Segarra testified that he started working for the DHS in December 2004. Prior to joining the DHS, he worked for a local police department, and he has a total of eighteen years in the system. He testified that he entered into a settlement agreement with the DHS in September 2013, which was the result of discipline related to a domestic-violence matter. He was facing termination when he negotiated and signed the 2013 last-chance agreement. He said that he understood that the agreement required him to attend three therapy sessions per month for six months after his insurance benefits were reinstated. He went back to work upon execution of the settlement agreement in September 2013. He testified that he attended a total of ten treatments with Dr. Abrams in November and December 2013, and January, February and March 2014.

Mr. Segarra testified that Dr. Abrams inquired about payment of his outstanding bills sometime in December 2013. Mr. Segarra acknowledged that he received a check from his insurance company that was to be turned over to Dr. Abrams, but he deposited the money in his bank account and never paid Dr. Abrams. He testified that when he told Dr. Abrams he had received a check from the insurance company, Dr. Abrams said something like, "get it to me, as soon as you can." Mr. Segarra testified that he was struggling financially due to having been out of work for a significant period of time, and he never paid Dr. Abrams. Dr. Abrams was "out of network," which is why the payments came directly to appellant. He stated that he never received a bill or had any further discussions with Dr. Abrams or anyone from his office. He testified that he received a text message from Dr. Abrams in March 2014 stating that he could not treat him anymore due to non-payment of bills. Mr. Segarra said that he did not save the text message, and he had no documentation that Dr. Abrams refused to continue treatment.

Mr. Segarra testified that he never called Dr. Abrams's office, or made any effort to pay him or negotiate some payment schedule, after the March 2014 text message. He never called Ms. Mungin Bey or anyone else at work to advise them of the problem with his continued treatment. To date, Mr. Segarra has not paid Dr. Abrams for any of his treatments with him. He testified that he was aware of the terms of the agreement, which required three visits a month for six consecutive months. Mr. Segarra did not

dispute that he had only attended ten sessions in the six-month period in question. He testified that he started treating with Dr. Velazquez in July 2014, after the Preliminary Notice of Disciplinary Action for non-compliance with the settlement agreement was issued in June 2014. He was aware that the treatments were to have been completed by April or May 2014.

Mr. Segarra was asked what he thought the "last-chance" agreement meant, and he testified that he believed it meant that if he did not comply he would be terminated. With respect to the Verification Form that Ms. Mungin Bey asked him to sign a week after the settlement, he confirmed that he did not discuss it with his attorney, and that it just required him to verify the appointment that he went to with Dr. Abrams. He had no additional understanding of what the form meant or its implications.

FINDINGS OF FACT

The resolution of the charges against Jose Segarra requires that I make a credibility determination regarding some of the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth. In re Perrone, 5 N.J. 514, 521–22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, I **FIND** as follows:

1. Mr. Segarra entered into a last-chance agreement with the DHS on September 6, 2013. The agreement was approved by the Civil Service Commission on October 16, 2013.

2. The agreement required Mr. Segarra to undergo six months of psychological treatments, at a rate of not less than three sessions per month.

3. A week after this agreement was signed, Mr. Segarra signed a Verification Form provided by the IME coordinator, which required verification and documentation of appointments, in addition to filling out all necessary documents for reinstatement of health benefits.

4. This Verification Form was not approved by counsel, the OAL or the Civil Service Commission. The form did not alter the terms of the settlement agreement.

5. Consistent with the September 6, 2013, settlement agreement, Mr. Segarra returned to work and commenced treatment with Dr. Mike Abrams, a psychologist.

6. Mr. Segarra attended a total of ten sessions with Dr. Abrams on the following dates: November 6, 14, and 27, 2013; December 6, and 20, 2013; January 22, 2014; February 12, 26, and 28, 2014; and March 5, 2014.

7. Dr. Abrams was "out of network," so insurance payments were made to Mr. Segarra, who, in turn, was to pay Dr. Abrams.

8. Mr. Segarra received at least three insurance payments, and rather than pay Dr. Abrams, he deposited the funds in his own account. No payments were made to Dr. Abrams.

9. Sometime in March 2014, Dr. Abrams declined continued treatment of Mr. Segarra as a result of Mr. Segarra's non-payment of bills.

10. Mr. Segarra never notified his employer that he had stopped treating with Dr. Abrams, or requested assistance in the matter.

11. Mr. Segarra never attempted to work out a payment arrangement with Dr. Abrams or turn over the insurance payments to him.

12. Mr. Segarra was served with a Preliminary Notice of Disciplinary Action on June 30, 2014, seeking his removal from his position with the DHS for non-compliance with the agreement.

13. Sometime in July 2014, Mr. Segarra commenced treatment with Dr. Barbara Velazquez.

LEGAL DISCUSSION AND CONCLUSIONS

A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provisions of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

In an appeal concerning major disciplinary action, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). This applies to both permanent career-service employees or those in their working test periods relative to such issues as removal, suspension or fine, and disciplinary demotion. N.J.S.A. 11A:2-14; N.J.S.A. 11A:2-6. The State has the burden to establish by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1980).

This matter involves a major disciplinary action brought by the respondent appointing authority against appellant, Jose Segarra, seeking his removal. The appellant is charged with failing to comply with the terms of a "last-change agreement" executed in September 2013. Mr. Segarra acknowledged that it was his understanding that a violation of the terms of the agreement would warrant termination, and he was facing termination when it was executed. Mr. Segarra was represented by counsel when the agreement was negotiated in September 2013. Mr. Segarra completed only ten of the eighteen required psychological treatment sessions within the specified six-month period. The fact that Mr. Segarra stopped treating with Dr. Abrams because he kept the payments from the insurance company rather than turn them over to Dr. Abrams is an aggravating factor rather than some form of mitigation. Mr. Segarra's treatment from another doctor nine months after treatment commenced, and after the Preliminary Notice of Disciplinary Action was issued, does not constitute substantial compliance.

The appellant has urged several interpretations of the last-chance agreement. Initially, he argues that the agreement required a violation of department "rules and regulations that carry a penalty of removal," and since he only violated the terms of the last-chance agreement itself, the penalty should not be removal. Appellant also argues that due to the Verification Form, he should now have an opportunity to re-litigate the 2013 disciplinary action that resulted in the last-chance agreement.

The foregoing interpretations of the last-chance agreement are illogical and contrary to the spirit of the agreement. It is well settled that "last-chance agreements"

are interpreted as just that—a last chance. In this case, the appellant was expected to complete a treatment program within a specific time period. Even if the terms and the time period were unreasonable, which I find they were not, this was an agreement negotiated by the appellant's attorney to give him "one last chance." Appellant simply did not perform as contemplated by the parties, warranting his removal. As stated by the New Jersey Supreme Court in Watson v. City of East Orange, 175 N.J. 442, 445–46 (2003), "[a] contrary conclusion likely would chill employers from entering into last chance agreements to the detriment of future employees. See Golson-El v. Runyon, 812 F. Supp. 558, 561 (E.D. Pa.) (construing last chance agreements in favor of employers, because to do otherwise would 'discourage their use by making their terms meaningless'), aff'd, 8 F.3d 811 (3d Cir. 1993)."

Based upon the above findings and legal discussion, I **CONCLUDE** that the respondent has satisfied its burden of proving that appellant violated the terms of the last-chance settlement agreement. I further **CONCLUDE** that the respondent has satisfied its burden of proving that the appropriate penalty for violation of this last-chance agreement is termination. I further **CONCLUDE** that Mr. Segarra's treatment with a different doctor after the issuance of the Preliminary Notice of Disciplinary Action does not constitute substantial compliance and is not a mitigating factor.

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. 40A:14-204.

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.

January 16, 2015
DATE

Sarah G. Crowley
SARAH G. CROWLEY, ALJ

Date Received at Agency: January 16, 2015

Date Mailed to Parties: January 16, 2015

SGC/cb

APPENDIX

WITNESSES

For appellant:

Jose Segarra

For respondent:

Iris Mungin Bey

Sheri Euri-Washington

EXHIBITS

Joint Exhibits:

J-1 Department of Personnel Employee Master Inquiry

J-2 Preliminary Notice of Disciplinary Action, dated June 30, 2014

J-3 Amended Preliminary Notice of Disciplinary Action, dated July 8, 2014

J-4 Final Notice of Disciplinary Action, dated August 27, 2014

J-5 Department of Human Services Disciplinary Action Program

J-6 Civil Service Commission Final Administrative Action (including OAL Settlement Agreement), dated October 16, 2013

J-7 Disciplinary Record

J-8 Psychological Evaluation report of Dr. Mike Abrams, Ph.D., MBA, ABPP

J-9 CFG Health Systems, LLC, Fitness for Duty Evaluation, dated July 23, 2013

J-10 Letter from Dr. Barbara Velazquez, Ph.D., dated December 9, 2014

For appellant:

P-1 Acknowledgement of Receipt of the Agreed-Upon Post-IME Appointment Accountability and Verification Form, dated September 13, 2013

P-2 Letter from Dr. Mike Abrams, dated June 17, 2014

For respondent:

R-1 Department of Human Services letter to appellant, dated October 23, 2013

R-2 Letter from Dr. Mike Abrams, dated December 6, 2013

R-3 Post-Independent Medical/Psychiatric Evaluation (IME) Appointment Accountability and Verification Form, dated November 6, 2013

R-4 Post-Independent Medical/Psychiatric Evaluation (IME) Appointment Accountability and Verification Form, dated November 13, 2013

R-5 Post-Independent Medical/Psychiatric Evaluation (IME) Appointment Accountability and Verification Form, dated November 28, 2013

R-6 Department of Human Services letter to appellant, dated November 29, 2013

R-7 Letter from Dr. Mike Abrams, dated January 22, 2014

R-8 Letter from Dr. Mike Abrams, dated February 12, 2014

R-9 E-mail from Dr. Mike Abrams, dated December 10, 2014