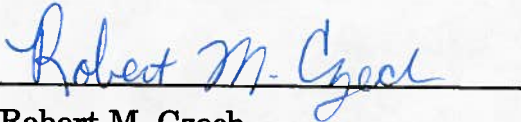




Re: Maxine Reid

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  
MARCH 4, 2015

A handwritten signature in blue ink that reads "Robert M. Czech". The signature is written in a cursive style and is positioned above a solid horizontal line.

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 7553-14

AGENCY DKT. NO. 2014-638

**IN THE MATTER OF MAXINE  
REID, MIDDLESEX COUNTY  
BOARD OF SOCIAL SERVICES.**

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**Alan Kaufman**, CWA Representative, for appellant, appearing pursuant to  
N.J.A.C. 1:1-5.4(a)6

**Robin McMahon, Esq.**, for respondent (Cleary, Gicobbe, Alfieri, Jacobs, LLC,  
attorneys)

Record Closed: December 16, 2014

Decided: January 29, 2015

**BEFORE JOHN S. KENNEDY, ALJ:**

**STATEMENT OF THE CASE**

Respondent, Middlesex County Board of Social Services (hereinafter Appointing Authority), suspended appellant Maxine Reid for ten days. The Appointing Authority alleges that appellant, a Social Work Specialist 2, provided false information to a supervisor with intent to deceive and altered a public document with intent to deceive and that suspension for a period of ten days was the appropriate penalty.

Appellant was charged for this offense with violations of N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(11), Other sufficient cause (R-4).

### **PROCEDURAL HISTORY**

On August 30, 2013, the Appointing Authority issued a Preliminary Notice of Disciplinary Action (R-2) setting forth the charges and specifications made against appellant. After a departmental hearing on September 5, 2013, the Appointing Authority issued a Final Notice of Disciplinary Action (R-4) on September 6, 2013, sustaining the charges in the Preliminary Notice and suspending appellant from employment for ten days. Appellant appealed, and the matter was filed at the Office of Administrative Law on June 17, 2014, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on December 16, 2014, and at the conclusion of the hearing, the record closed.

### **FACTUAL DISCUSSION**

**Linda Jay** has been employed by the Appointing Authority for approximately ten years. She is currently an Administrative Supervisor assigned to the Services Department and is the appellant's immediate supervisor. Appellant, a social work specialist, was hired in September 2004. Her hours of work were 8:30 a.m. to 4:15 p.m. The Appointing Authority has a swipe card system to account for all employees' time. Employees use a card to gain access to the building and then swipe in at a swipe station in order to have their arrival time recorded. The card records the time that employees enter the building and also records the time they swipe in at the swipe station. If an employee forgets their card they are required to sign in with security on the first floor. Appellant's swipe station is outside of the services department on the second floor of the building. The Appointing Authority allows for flex time so appellant would not be considered late unless she arrives at the swipe station on the second floor after 9:00 a.m.

On August 9, 2013, Jay noticed the appellant arrive with all of her belongings at 9:10 a.m. Appellant explained that she was in the bathroom and denied coming in late. On August 12, 2013, Jay was advised by Rachel Arroyo that there was an issue with appellant's time card for August 9, 2013. Ms. Arroyo is a secretarial assistant for the services department and reports to Ms. Jay. She presented appellant's time sheet from August 9, 2013 to Jay which indicated that appellant signed in at the security guard station and entered the time 8:55 a.m. but the entry appeared to be altered (R-5). There was no verifying signature of the guard for this entry (R-3D). Employees are required to sign out vehicles when they go into the field. Appellant signed out a car at 9:10 a.m. Appellant informed Ms. Arroyo that she had forgotten her swipe card and asked that she make a note of when she was going into the field. Arroyo noted that appellant field start time was 9:39 a.m. Jay questioned appellant about this on August 12, 2013 and she denied altering the sign in sheet. Appellant forgot her time card and did not know why the guard did not sign her entry. The guard, Mike Curry, was sitting in the security office when she signed in.

Later in the day, appellant changed her story and informed Jay that she had originally written the time as 9:00 a.m. on the sign in sheet but changed it when she checked the time on the clock in the security office. Appellant then advised Jay that she had forgotten her card, signed in at security and went back out to her car to look for the card. Jay showed appellant the door entry that recorded her entering the building at 9:05 a.m. Appellant responded that it must have recorded her the second time she entered the building after finding her card in her car (R-5). This incident would have placed appellant on step one of the Appointing Authority's excessive absence policy due to her lateness (R-9). Based on that policy, appellant would have lost a half hour of time and been verbally warned that any further incidents would lead to further discipline.

**Joseph Jennings** next testified on behalf of the Appointing Authority. He is an employee relations officer assigned to the personnel department. Mr. Jennings signed and served the Preliminary and Final Notices of Disciplinary Action upon the appellant. He also reviewed the video system to determine when appellant entered the building and when she reached the swipe station on the second floor. He made several screen shot photos of appellant at different areas in the building. Each of the photos is

stamped with the date and time. Mr. Jennings prepared a timeline of the snapshot photos (R-12). According to his review of the video system, appellant first enters the building at 9:06:33 a.m. on August 9, 2013 (R-3C). She enters the security office at 9:07 a.m. and exits the security office at 9:07:44 a.m. (R-3C). She exits the 2nd floor elevator and walks towards the ladies room at 9:08:40 a.m. (R-3C). Appellant walks from the ladies room and disappears from view of the video cameras heading toward her department at 9:12:45 a.m. (R-12). Mr. Jennings noted that appellant did not swipe in at the second floor swipe in station on August 9, 2013. Based on the swipe card system, appellant entered the building at 9:05 a.m. (R-3E). The time on the video system and the computer swipe card system is not synchronized.

**Maxine Reid**, appellant, next testified on her own behalf. She drove into the parking lot on August 9, 2013 at 8:50 a.m. and parked in the back of the lot. It takes her four to five minutes to walk to the building from where she parks. When she approached the building, she thought she had her card but could not find it. The doors opened so she thought the security guard opened it for her. She stopped at the elevators to look for her card but could not find it. She then went to sign in at the security office and started to enter the time as 9:00 a.m. but changed it when she looked at her watch and noticed it was 8:55 a.m. Security Officer Mike Curry was sitting in the office and she said hello to him. She went to the ladies room on the second floor but did not swipe in because she did not think she had her card. She said good morning to Ms. Arroyo and advised her that she had forgotten her card. She has a good relationship with Ms. Arroyo. Appellant next went to her desk and called a client. She then went back downstairs to sign out a state vehicle so that she could go to a field appointment. She recorded the time to be 9:10 a.m. according to her watch (R-3F).

Appellant asserts that she did not have a conversation with Ms. Jay on August 9, 2013. She did not speak to Ms. Jay until August 12, 2013. At that time she did not tell Ms. Jay she went back out to her car to look for her swipe card. She did not go back out to her car until she was going into the field and that was to get a special seat that she uses for driving. She never told Ms. Jay that she went to the ladies room and did not think she was late or in danger of being placed on a step of the excessive absence policy. When asked by Ms. Jay about the issue with the sign in sheet, appellant

acknowledged changing the time from 9:00 a.m. to 8:55 a.m. She never changed her story as Jay suggests. Appellant did not lie to Ms. Jay. She told her what happened and did not change her story.

Appellant feels Ms. Jay lied about speaking with her on August 9, 2013, because they had an altercation in May of 2013 which resulted in appellant reporting Jay to her union representative and the personnel department. The two met with a representative of the personnel department and Ms. Jay apologized. As a result, no charges were filed against Ms. Jay. Appellant feels Jay fabricated the story in retaliation.

**Mike Curry** next testified as a rebuttal witness for the Appointing Authority. Officer Curry is a security supervisor employed by the Appointing Authority for the past nine years. He is a retired police officer having spent twenty-six years with the City of New Brunswick Police Department. Officer Curry explained that the only way to gain access into the building is with the swipe card or to be buzzed in by a security officer. If an employee does not have their card, they can press a button near the door and the officer on duty will buzz them in. A record is made of the employees that were buzzed into the building and signed in with the officer at the security office. On August 9, 2013, three employees signed in at the security office (R-3D). He acknowledged the first two by initialing the employee sign in sheet. He did not initial the entry for appellant (R-3D). Mr. Curry does not recall seeing her or speaking to her on August 9, 2013. If he did see appellant, he would have initialed the sign in sheet. Officer Curry drew a diagram of the security office and indicated that it was a very small room (R-16). It would be highly unlikely that an employee could enter the room without his knowledge even if his back was turned.

**Rachel Arroyo** next testified and confirmed that she is a secretarial assistant for the services department and reports to Ms. Jay. She observed the conversation between Jay and appellant on August 9, 2013. Appellant told Jay that she was not late and was in the bathroom. Arroyo alerted Ms. Jay of the issue with the time sheet on August 12, 2013. This was part of her job. Ms. Jay did not direct her to look into appellant's time. She noted the time that appellant went into the field as 9:39 a.m. at

appellant's request. She used the clock on her desk to record this time. Appellant told Arroyo that she was late on August 9, 2013.

The Appointing Authority recalled **Linda Jay**. Appellant filed a complaint against her in May 2013 for grabbing a phone message from her in an aggressive manner. She did not apologize to her when they met with personnel. She did tell her that it was not her intention to aggressively grab the phone message. Their relationship was tense after the incident and they kept their distance. No charges were filed against Jay as a result. Ms. Jay asserts that she absolutely did not fabricate these charges as a result of the May 2013 incident.

### **FINDINGS OF FACT**

The record in this matter includes documentary evidence and the testimony of the individuals who prepared the documents or had knowledge of the incidents they described. There are factual disputes and allegations that either appellant or Ms. Jay is lying.

In order to resolve the inconsistencies in testimony, the credibility of the witnesses must be determined. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

I **FIND** Ms. Jay to be a credible witness and her testimony believable. She testified that she spoke to appellant when she noticed that she was late on August 9, 2013. Appellant told her she was not late and that she was in the bathroom. She also testified that she did not speak to appellant on August 12, 2013 until after Ms. Arroyo



showed her appellant's time/leave report for August 9, 2013. Ms. Arroyo testified that she witnessed the conversation between appellant and Ms. Jay on August 9, 2013, and that Ms. Jay did not direct her to look into appellant's time. As a result, I **FIND** as **FACT** that appellant did have a conversation with Ms. Jay on August 9, 2013 and told her she was not late.

I **FIND** appellant not to be credible. Her testimony is contradicted by the other credible witnesses and documentary evidence. She denies speaking to Ms. Jay on August 9, 2013, but both Jay and Arroyo recall the conversation and recall appellant telling Jay that she was not late. Officer Curry does not recall speaking to appellant on August 9, 2013 and did not initial her sign in sheet. The photographs taken from the security video reveal that appellant entered the building at 9:06:33 a.m., eleven minutes and thirty-three seconds after the time she entered on the employee sign in sheet. Ms. Arroyo and Officer Curry would have no reason to lie. Additionally, appellant admits that she had a good relationship with Ms. Arroyo.

After carefully reviewing the videotape snap shot photographs, exhibits and documentary evidence presented numerous times during the hearing, and after having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the additional relevant and credible **FACTS** in this matter: On August 9, 2013, Jay noticed the appellant arrive at 9:10 a.m. and asked appellant if she was late. Appellant explained that she was in the bathroom and denied coming in late. On August 12, 2013, Jay was advised by Rachel Arroyo that there was an issue with appellant's time card for August 9, 2013. Ms Arroyo presented appellant's time sheet from August 9, 2013 to Jay which indicated that appellant signed in at the security guard station and entered the time 8:55 a.m. but the entry appeared to be altered (R-5). There was no verifying signature of the guard for this entry (R-3D). Appellant signed out a car at 9:10 a.m. Appellant informed Ms. Arroyo that she had forgotten her swipe card and asked that she make a note of when she was going into the field. Arroyo noted that appellant's field start time was 9:39 a.m. Jay questioned appellant about this on August 12, 2013 and she denied altering the sign in sheet. Appellant later changed her story and informed Jay that she had originally written the time as 9:00 a.m. on the sign in sheet but changed it when she checked the time on the clock in the security office.

Appellant then advised Jay that she had forgotten her card, signed in at security and went back out to her car to look for the card. Appellant first enters the building at 9:06:33 a.m. on August 9, 2013 (R-3C). She entered the security office at 9:07 a.m. and exited the security office at 9:07:44 a.m. (R-3C). She exited the 2nd floor elevator and walked towards the ladies room at 9:08:40 a.m. (R-3C). Appellant walked from the ladies room and disappeared from view of the video cameras heading toward her department at 9:12:45 a.m. (R-12). Appellant did not swipe in at the second floor swipe in station on August 9, 2013.

I further **FIND** as **FACT** that appellant filed a complaint against Ms. Jay in May 2013 for grabbing a phone message from her in an aggressive manner. Their relationship was tense after the incident and they kept their distance. No charges were filed against Jay as a result.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority shoulders the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant was charged with "Conduct unbecoming a public employee." N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase that

encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

I **CONCLUDE** that appellant's behavior did rise to a level of conduct unbecoming a public employee. The basis for the charge of conduct unbecoming was appellant's providing false information to her supervisor regarding her lateness on August 9, 2013. She took steps to hide the fact that she was late for work which included altering the employee sign in sheet and advising her supervisor that she was not late. Appellant's conduct was such that it could adversely affect the morale or efficiency of a governmental unit or destroy public respect in the delivery of governmental services.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(11), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Appellant's conduct was such that she violated this standard of good behavior. As such, I **CONCLUDE** that the Appointing Authority has met its burden of proof on this issue.

### **PENALTY**

In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr.,

96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523–24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for removal. See Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978); In re Herrmann, 192 N.J. 19 (2007). The question to be resolved is whether the discipline imposed in this case is appropriate.

For her actions arising out of this incident, appellant has been found to have violated N.J.A.C. 4A:2-2.3(a)(6), "Conduct unbecoming a public employee" and N.J.A.C. 4A:2-2.3(a)(11), "Other sufficient cause." Appellant received a ten-day suspension for her actions relating to these charges. The Appointing Authority did not provide appellant's disciplinary record and no evidence has been set forth to indicate she has any prior disciplinary record. After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the behavior by appellant herein, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that appellant's violations are significant enough to warrant a penalty, which, in part, is meant to impress upon her, as well as others, the seriousness of any further infractions by her in that regard. Therefore, I **CONCLUDE** that the imposition of the ten-day suspension was an appropriate penalty.

#### **DISPOSITION**

I **CONCLUDE** that the Appointing Authority has sustained its burden of proof as to the charge of violation of N.J.A.C. 4A:2-2.3(a)(6), "Conduct unbecoming a public employee" and N.J.A.C. 4A:2-2.3(a)(11), "Other sufficient cause."

Accordingly, I **ORDER** that the action of the Appointing Authority is **AFFIRMED**. Appellant will receive a ten-day suspension.

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.

January 29, 2015  
DATE

  
\_\_\_\_\_  
JOHN S. KENNEDY, ALJ

Date Received at Agency:

January 29, 2015

Date Mailed to Parties:

January 29, 2015

cmo

**APPENDIX**  
**LIST OF WITNESSES**

**For Appellant:**

Maxine Reid  
Rachel Arroyo

**For Respondent:**

Linda Jay  
Joseph Jennings  
Mike Curry

**LIST OF EXHIBITS**

**For Appellant:**

None

**For Respondent:**

- R-1 CAMPS Disciplinary Action Form and Employee Card
- R-2 August 30, 2013 Preliminary Notice of Disciplinary Action
- R-3A Summary Report for Disciplinary Action Decision by Linda Jay, 8/30/2013
- R-3B Summary Report for Disciplinary Action, employee signature 8/22/2013,  
with attached narrative by Linda Jay, 8/22/2013
- R-3C Security Video Screen Shots
- R-3D Security Office Employee Sign In Sheet, 8/9/2013
- R-3E Employee Entrance Swipe-In Record, 8/9/2013
- R-3F Vehicle Sign Out Sheet, 8/9/2013
- R-4 Final Notice of Disciplinary Action served 9/6/2013
- R-5 Linda Jay Notes regarding 8/9/2013, 8/12/2013 and 8/13/2013

- R-6 Emails between Linda Jay and Maxine Reid, 1/31/2013, 2/15/2013 and 7/29/2013
- R-7 Collective Negotiations Agreement Article III – Hours of Work
- R-8 Building Security Swipe Card Use Memorandum
- R-9 Personnel Policies and Procedure Manual – Excessive Absenteeism
- R-10 Additional Security Screenshots, 8/9/2013
- R-11 Copy of Security Video, morning of 8/9/2013
- R-12 Timeline 8/9/2013
- R-13 Time Card Report
- R-14 Email from Pat Byrd to Linda Jay, 8/14/2013, with attached Excessive Absence/Lateness Report for 8/8/2013
- R-15 Directions for video playback
- R-16 Diagram of Guard Office