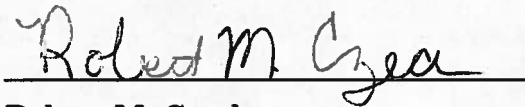


Re: Akeisha Burroughs

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
MAY 20, 2015



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 06898-14

AGENCY DKT. NO. 2014-1703

**IN THE MATTER OF AKEISHA BURROUGHS,
ESSEX COUNTY DEPARTMENT OF CITIZEN
SERVICES.**

David H. Weiner, President CWA Local 1081 for appellant, appearing pursuant to
N.J.A.C. 1:1-5.4(a)(6)

Courtney M. Gaccione, Assistant Counsel Counsel, for respondent (James R.
Paganelli, Essex County Counsel, attorney)

Record Closed: November 14, 2014

Decided: April 22, 2015

BEFORE IRENE JONES, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Akeisha Burroughs ("petitioner" or "Burroughs") was employed by the Essex County Department of Citizen Services ("Respondent" or "County"). On October 16, 2013, she was issued a Preliminary Notice of Disciplinary Action (PNDA) that charged her with inability to perform duties, chronic or excessive absenteeism or lateness, "conduct unbecoming a public employee and other cause. The PNDA set

forth the basis for the charges and also sought petitioner's removal. A departmental hearing on the charges was held on November 13, 2013, wherein all charges, were sustained. On December 2, 2013, a Final Notice of Disciplinary Action (FNDA) was issued wherein petitioner was removed from her position, effective December 7, 2013.

Petitioner filed an appeal with the Civil Service Commission and the matter was transmitted to the Office of Administrative Law for hearing as a contested case. The matter was assigned to the undersigned and a prehearing conference was held on June 26, 2014. Hearings were held on October 20, 2014. In support of its case, the County presented the testimony of Frank Palmieri petitioner's supervisor. The petitioner testified on her own behalf. The parties submitted post-hearing briefs on November 14, 2014 at which time the record closed. At the request of the undersigned the time for the issuance of this Initial Decision was extended until May 14, 2015.

FACTS

Petitioner commenced working for the County in 2009 as a Family Service Worker. Her immediate supervisor at the time of her termination was Frank Palmieri ("Palmieri") who signed and preferred the disciplinary charges against her.

Palmieri, ("Palmieri") Administrative Supervisor of Family Services, ("ASFS") at Essex County has been employed by the Department for 38 years. Prior to his current title, he held the title of Family Service Worker (FSW). As the Administrative Supervisor, he supervises the County Division of Medicaid Services, the N.J. Family Care Program and the Food Stamps Division. He supervises 102 employees including Burroughs. Palmieri noted that as a Family Service Worker, Burroughs was required to determine client eligibility for Food Stamps and Medicaid. Each worker has 800 Medicaid cases and each Food Stamp worker has 200 cases.

Initially, Burroughs worked from 8:30 to 4:00 p.m. However, she requested and was granted a different hours, 9:00 – 4:30. On February 18, 2010, Burroughs was given a Step 2 oral warning for failure to follow instructions. On June 14, 2010, she was given a 3rd step written reprimand for excessive tardiness. (R-2). Thereafter, a minor

disciplinary action was issued to Burroughs on March 26, 2012. (R-3.) She was suspended for five days on charges of chronic/excessive tardiness. She served the suspension from April 23, 2012 – April 27, 2012.

On August 31, 2012, a Preliminary Notice of Disciplinary Action, (PNDA) issued proposing to suspend Burroughs for ten days for excessive and chronic absenteeism; tardiness and conduct unbecoming a public employee. An administrative appeal hearing on the charges was scheduled for September 24, 2012 at the Office of Administrative Law, ("OAL"); however, the matter was settled. (R-5). On June 7, 2013 the County and Burroughs entered into a settlement agreement at the OAL wherein the parties agreed to a seven day suspension in lieu of a ten day suspension for excessive and chronic tardiness. Per the settlement, Burroughs agreed to "conform" her conduct. Petitioner agreed that if she failed to adhere to the time and attendance procedures, she would be immediately terminated. Further, she also agreed to a one year probation from April 24, 2013 to April 23, 2014.

R-8 is petitioner's attendance for 2011. It reflects that Burroughs was late 96 days or some 1,263 minutes. R-7 is her attendance record for 2012. (R-7, p.20). She was late 112 times or 1,481 minutes. R-9 is her attendance for 2013 and she was late 120 days or some 1,727 minutes. In 2013 her tardiness was increased. Pursuant to R-6, Burroughs was subject to immediate termination if she were to be late or absent.

Palmieri testified that Burroughs has one of the highest levels of tardiness that he has seen in his career. As a Family Service Worker, she has scheduled appointments with clients. When she is late her clients had to be seen by other Family Service Workers. (P-5). Further, Palmieri asserts that Burroughs was not a good worker per her evaluations.

Akeisha Burroughs testified on her own behalf. She was employed as Family Service Worker for four and a half years. She alleges that she was harassed by her previous supervisor, John Sciara. She filed a formal harassment complaint against him. Thereafter, Palmieri moved her to another unit. Sciara formally came to her unit and ordered her to come to a grievance meeting. She did not go because there was no

union representative present. She was given a Step reprimand. Borroughs identified R-2, a written reprimand from Jeffrey Gillman, her supervisor. When it was issued, she and her daughter were ill. She had Graves Disease and her daughter had seizures. P-6 is an evaluation prepared by Sciarra. P-7 is an annual performance evaluation where she was rated as unsatisfactory due to her being tardy. Under cross-examination, Burrough's acknowledged that her hours were 8:30 – 4:00 when she was hired. It was changed to 9:00 – 4:30 to help her get her tardiness under control. (R-7).

She further acknowledged being absent without pay. She conceded that she was docked because she had no time left, having used 26 days with no vacation or sick time remaining. She agreed that pursuant to R-8, she had 16 days without pay. R-9 shows nine and a half days without pay.

DISCUSSION, FINDINGS AND CONCLUSION

At issue herein is whether the petitioner is guilty of chronic and excessive absenteeism. And, if so, whether the penalty of removal is appropriate?

I **FIND** that in calendar year 2011, petitioner was late on 96 days for a total of 1,263 minutes. (R-8). She exhausted her sick, vacation and personal leave time. In 2012, she was late 112 times for a total of 1,481 minutes. (R-7). She exhausted all of her sick, vacation and personal days by June 2012. Thus, she was docked for sick and vacation leave time.

I **FIND** that in 2013, petitioner was late on 120 instances for a total of 1,727 minutes. Once again, she was docked for tardiness. (R-9). She exhausted all of her sick and personal leave time by June. (R-9).

Petitioner alleges that her absenteeism was due to family illness. However, she failed to present any documentation herein to support her allegations. Indeed, R-8 and R-9 reflect that she failed to present medical notes to her department head or the Department of Human Resources.

Thus, the only issue is whether the penalty of removal was appropriate. I **FIND** that petitioner signed a stipulation of settlement wherein she agreed to an immediate termination for violations of the time and attendance policies committed during her probationary period. Petitioner does not claim that she was a victim of fraud, duress or coercion when she signed the stipulation of settlement, thus its terms are binding.

In any event, I **CONCLUDE** that respondent has engaged in progressive discipline. Petitioner was issued a written warning/reprimand for excessive tardiness in 2010. (R-2). Thereafter, she was suspended for five days for chronic and excessive tardiness. (R-3). In 2012, she was suspended for ten days on chronic and excessive tardiness and absenteeism. Thereafter, she entered into settlement with the County wherein she agreed to correct her attendance related issues and serve a probationary term. Based on the aforementioned, I **CONCLUDE** that respondent has engaged in progressive discipline in accordance with the law. Town of West New York v. Bock, 38 N.J. 500, 522 (1962).

I therefore, **AFFIRM** the action of the respondent that removed petitioner from her position, effective December 7, 2013.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

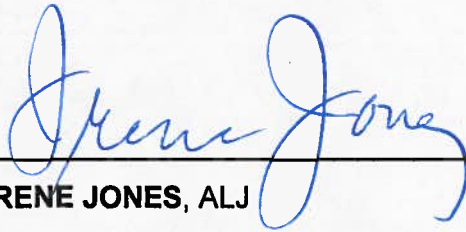
This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise 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, 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.

April 22, 2015

DATE



IRENE JONES, ALJ

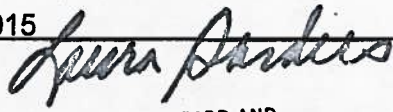
Date Received at Agency:

April 22, 2015

Date Mailed to Parties:

APR 23 2015

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DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

WITNESSES

For Petitioner

Akeisha Burroughs

For Respondent

Frank Palmieri

EXHIBITS

For Petitioner

- P-1 Letter from Communications Workers of America to Frank Palmieri, ASFS re: Step I Contractual Grievance for Akeisha Burroughs dated February 22, 2010
- P-2 Denial Letter from Frank Palmieri to David Weiner, President (CWA) re: Step 1 Contractual Grievance (Inaccurate and Improper Imposition of Discipline for Akeisha Burroughs)
- P-3 Letter from David Weiner, President (CWA) to Bruce Nigro, Director Essex County Division of Welfare, re: Step II Contractual Grievance for Akeisha Burroughs)
- P-4 Denial Letter from Bruce Nigro, Director of Essex County Division of Welfare to David Weiner, President of CWA re: Step II Grievance for Keisha Burroughs
- P-5
- P-6 Annual Performance Appraisal Form for Akeisha Burroughs for rating period January 2009 – June 30, 2009
- P-7 Annual Performance Appraisal Form for Akeisha Burroughs for rating period January 1, 2013 – June 30, 2013

For Respondent

- R-1 Essex County Department of Citizen Services Oral Warning for Akeisha Burroughs dated February 18, 2010
- R-2 Essex County Department of Citizen Services Written Warning for Akeisha Burroughs dated June 14, 2010
- R-3 Notice of Minor Disciplinary Action dated March 26, 2012
- R-4 Preliminary Notice of Disciplinary Action dated September 5, 2012
- R-5 Final Notice of Disciplinary Action dated March 11, 2013
- R-6 Stipulation of Settlement - OAL Dkt No. CSV 04681-13 dated June 17, 2013
- R-7 County of Essex Daily Attendance Record for calendar year 2012
- R-8 County of Essex Daily Attendance Record for calendar year 2011
- R-9 County of Essex Daily Attendance Record for calendar year 2013.