A-12

STATE OF NEW JERSEY

In the Matter of B. Janet Petti
Ocean County,
Department of Health

CSC DKT. NO. 2014-812
OAL DKT. NO. CSV 13806-13

**DECISION OF THE CIVIL SERVICE COMMISSION**

**ISSUED: MAY 7, 2015 BW**

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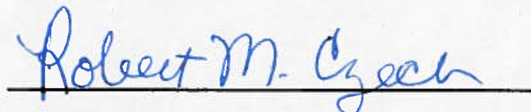
The appeal of B. Janet Petti, Senior Accountant, Ocean County, Department of Health, removal and resignation not in good standing effective May 15, 2013, on charges, was heard by Administrative Law Judge Robert Bingham III, who rendered his initial decision on April 9, 2015. Exceptions and cross exceptions 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 May 6, 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 and resigning the appellant not in good standing was not justified. The Commission therefore modified the removal to a 60 working day suspension and resignation in good standing.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
MAY 6, 2015



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***State of New Jersey***
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 13806-13

AGENCY DKT. NO. 2014-812

**IN THE MATTER OF B. JANET PETTI, OCEAN COUNTY HEALTH DEPARTMENT.**

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**Jennifer Meyer-Mahoney**, Esq., for appellant Janet Petti

**John J. Mercun**, Esq., for respondent Ocean County Health Department (Citta, Holzapfel & Zabarsky, attorneys)

Record Closed: November 24, 2014 Decided: April 9, 2015

BEFORE **ROBERT BINGHAM II**, ALJ:

## STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Janet Petti (appellant or Petti) appeals the decision of respondent, Ocean County Health Department (OCHD or the Department), to impose a removal and resignation not in good standing from her position as senior accountant on charges of insubordination, excessive absenteeism, and resignation not in good standing, all by way of Final Notice of Disciplinary Action (FNDA) dated August 18, 2013.[1] Petti appealed to the Civil Service Commission, which transmitted the matter to the Office of

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[1] Petti had received a Preliminary Notice of Disciplinary Action (PNDA), as well as an Amended PNDA dated July 3, 2013, leveling the same charges.

Administrative Law (OAL), where it was filed on September 25, 2013, 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. The hearing was held on July 1, October 14, and November 7, 2014, and the record remained open for post-hearing submissions. The record closed on November 24, 2014, upon receipt of post-hearing submissions. Extensions were granted, until April 9, 2015, for issuance of this decision.

## FACTUAL DISCUSSION

Appellant is a senior accountant who, in November 2012, was assigned to the OCHD Finance Division, located at 175 Sunset Avenue ("main office") in Toms River, New Jersey. The main office consisted of two separate buildings, with a courtyard between them. Appellant's workstation was situated in Room 38 of the older building, a vertically rectangular room with windows along the north wall. (R-52.) There, her immediate workspace was shared with three coworkers: Nancy Fede, Maria "Rosie" Nieva, and Cheryl Alonso. Alonso sat on the same side of the room as appellant (opposite the other two). Appellant reported to Mary McCarthy, head of the Finance Division, but she had regular work-related contact with Jane O'Donnell, who directed payroll. Appellant's job was stationary because she worked on her phone and computer handling grants.

In November 2012 a two-phase renovation project began at the main office's newer building (Phase 1),[2] and at some point the work involved courtyard space outside of the windows to Room 38. (R-55p, q, w.) On or about November 20, 2012, appellant inquired by email whether insulation fibers could infiltrate her workspace, and expressed concerns that dust from construction debris could aggravate her medical condition and asbestos could harm her lungs. (R-2.) On November 26, Victoria Miragliotta, the Department's director of administration, replied that the Department had taken necessary precautions and that appellant had no medical condition documented on file. (Ibid.) By memorandum dated November 29 (R-5), Miragliotta informed appellant that

[2] Renovation at the older building was Phase 2.

an asbestos sampling survey disclosed an absence of asbestos in the facility, and the project engineer had indicated that the buildings had independent ventilation systems; thus, appellant's concerns were unfounded. Miragliotta attached the licensed engineer's asbestos report (R-5) and an email from the project engineer that further indicated an absence of asbestos. (R-6.)

On December 7, 2012, the Department's chief executive, public health coordinator Daniel Regenye, transferred appellant to the OCHD's office in Lakewood, as an accommodation. (R-7.) The Department had taped the windows in Room 38 at the start of the project and again on December 27 when it cleaned the area. By email dated December 27, 2012 (R-8), McCarthy informed appellant that a loss control report generated by the Ocean County Board of Health found the building to be safe, and that appellant would be transferred back to Toms River on January 2, 2013. McCarthy attached the report, which stated, in part, "There was no evidence of dust or any construction residue on the walls or walking surfaces. . . . Overall this renovation process appears to be well organized and free of recognizable hazards. No specific suggestions for improvement were identified." (R-8.)

According to notes compiled by McCarthy (R-25), on January 2, 2013, appellant called out sick from work, and on January 4 she returned to work but left early, using three hours' sick leave, for a doctor's appointment. On January 7, appellant requested relocation from the main office in Toms River, for medical reasons, and submitted a written request for a reasonable accommodation. By letter dated that day (R-10), Miragliotta replied that the professional reports indicated that the facility was safe from construction debris residue and irritants, and the main office would continue to be her reporting site. The letter further noted that she had left work early that day and that additional absences would require use of benefit time.

On January 8 appellant reported by telephone that she was having an allergic reaction "to the building."[3] By letter dated January 9, addressed to Regenye (R-11), she

[3] According to McCarthy's notes, appellant reported that "her eyes were swollen" and her "doctor thought she was exposed to insulation fibers."

again requested reasonable accommodations "for [her] disability," citing pulmonary and back problems and concern over the air quality in her office area. Appellant presented a prescription from Stephen Ingato, M.D., dated January 8, 2013 (signed January 10), requesting that she be excused from work "for the remainder of this week due to allergy syndrome of undetermined etiology." (R-14.) She also submitted a letter from David M. Murray, M.D., dated January 14, 2013, stating that he was evaluating and treating her for a lung condition that is "aggravated by exposure to dust, molds etc.," and requesting her relocation to another building free of exposure to irritants. (R-14.)[4] She also submitted an Employee Request for Family/Medical Leave of Absence (FMLA) dated January 16, 2013. (R-16.) Appellant was given a twelve-week FMLA leave, from January 16, 2013, through April 8, 2013.

During the period of her FMLA leave, the Ocean County Health Department issued a mold-analysis report dated January 17, 2013, indicating that mold levels in the rooms examined, including Room 38, were not elevated and were within acceptable limits. (R-23.) Also, on February 13, 2013, Public Employees Occupational Safety and Health (PEOSH) investigators from the Health Department's Division of Epidemiology, Environmental and Occupational Health conducted an unannounced "complaint" inspection of the Finance Division, Rooms 38 and 40, and found no violations of PEOSH health standards. (R-35.)

Rather than return to work on April 9, 2012, the day after her FMLA leave expired, appellant requested a leave of absence. By letter dated April 12, 2013, (R-36) Miragliotta notified appellant that: (1) there was no end date noted for the requested leave; (2) the medical provider form was deficient; and (3) she was directed to return to work, as her FMLA was completed. Appellant, however, remained out of work. By letter dated May 8, 2013, (R-21) Miragliotta outlined efforts that the Department had taken and would further take to accommodate appellant, and directed her to report to duty within five days of receipt of the letter.

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[4] The letter states, in part, "Ms. Petti informed me that she is exposed to materials and dust from construction near the building in which she is currently working" and requested relocation "so that she will not be exposed to irritants that exacerbate her lung condition." (R-4.)

The parties' attorneys exchanged letters regarding appellant's request for accommodation. By letter dated May 21, 2013, the Department's attorney forwarded a copy of the mold-analysis report and requested a release to provide appellant's attorney with a workers' compensation evaluation by Dr. Tanisha Taylor dated January 7, 2013. (R-23.) Further, by letter dated June 5, 2013, he described the Department's efforts and "the reasonable accommodation" for her to return to work at the main office, and that the Department would address her absence without leave (since April 9), as she had not responded to the Department's offers to meet regarding an accommodation. (R-24.) The Department ultimately charged appellant with insubordination, excessive absenteeism, and resignation not in good standing and, on those bases, removed her from employment by FNDA dated August 18, 2013.

I **FIND as FACT** all of the above, which is not in dispute.

Testimony

The following is a summary of testimony relevant to the material issues.

I. Condition of the Work Environment

A. Respondent's Witnesses

Three coworkers shared workspace with appellant in Room 38. **Cheryl Alonso**, supervisor of billing and collections in the finance department, sat in the lower right quadrant on the same (east) side as appellant, while **Nancy Fede** (principal accounting clerk) occupied the lower left quadrant and **Maria "Rosie" Nieva** (senior accounting clerk) the upper left quadrant on the opposite (west) side. Each of those coworkers testified that during the renovation between November 2012 through May 2013, no dust, debris, or insulation from the construction penetrated into or accumulated in Room 38's work area, and no particles were observed on the windowsills; each did not experience any changes to the work environment in Room 38; and the windows in Room 38 were sealed by Gorilla tape to prevent penetration of dust and debris. Alonso testified to being allergic to dust and mold, and Fede to dust and chemicals (as well as suffering

from asthma), but neither suffered any adverse physical effects or allergic reactions from the building renovation. Fede recalled that when appellant returned for a half day in January she complained about the air quality and "stuff" coming through the vents, at which time Fede looked but did not see any such dust or debris, which would have agitated her own allergies.

**Mary McCarthy**, the Department's director of finance and appellant's supervisor, testified that she was responsible for oversight of all functions of the Finance Division, and appellant, among others, reported to her. Between November 2012 and May 2013, McCarthy's office was in an area just adjacent to the east side of Room 38 that also had two windows on the north wall. The windows of Room 38 were taped with Gorilla tape, though those of her office were not, and McCarthy does not recall whether initially duct tape was used. Her chronological notes (R-25) indicate that on December 27, 2012, the Gorilla tape was put on the Windows near appellant's and Nieva's desks. McCarthy did not experience any dust or fibers penetrating either her office or Room 38, and none of the employees who worked in Room 38 along with appellant complained of the environment relative to construction debris, dust, or insulation.

**Christine Riebe**, senior systems analyst, worked as a systems analyst in November 2012, also in the office adjacent to the east side of Room 38. She sat one and a half feet from one of the windows in that area. During the renovation, no dust or debris appeared in either her office or Room 38, which she often walked through to use the printer or copier. She would have observed and wiped it because she likes to keep things tidy. She did not experience any physical effects from the construction outside her window despite the fact that she does have seasonal allergies. She recalls that the windows were taped but does not recall when.

**Victoria Miragliotta**, the OCHD's director of administration, testified that an asbestos report had been done before renovation began and it indicated no asbestos problem. When appellant transferred on December 7, 2012, the Department arranged for a risk-control engineering survey. Miragliotta reviewed the risk-control report dated December 13, and it indicated that the two buildings were separate and there was no evidence of (interior) dust or residue. According to Miragliotta, the OCHD's finance,

purchasing and personnel divisions share the same general area, and Miragliotta received no complaints other than from appellant.

**Filepe Contreras**, a civil engineer and certified municipal engineer employed by Remington, Vernick and Vena Engineers, testified that he was the project manager for the two-phase renovation project at the main office that began in November 2012. In accordance with the demolition plan (R-52), the work for the first phase ("Phase 1") involved the newer of the two buildings ("Building 1") that was unoccupied when demolition started. Heating, ventilation and air-conditioning (HVAC) systems for the two buildings were completely separate, so there was no possibility of dust transfer from one to the other.[5] (R-6.) An asbestos survey indicated that no asbestos was present and there were no environmental issues within the facility. (R-5.) A routine loss-control report dated December 13, 2012, (R-8) indicated that the site was clean and there was no evidence of dust or residue.

Demolition for Phase 1 was 99 percent complete by December 2012 and entirely complete by mid-January 2013.[6] In Room 38, the windows were taped. Also, the Department performed a mold analysis that tested air quality, including that in Room 38, and Contreras reviewed the report and concurred with the conclusion that there was no mold hazard, as the control sample had revealed no elevated levels. Contreras also reviewed the PEOSH inspection results, the standards for which are similar to those for Occupational Safety & Health Administration (OSHA) compliance to which contractors such as Contreras adhere, as it is the duty of the construction manager to assure safety of the employees.[7] Also, during Phase 1, there was a complaint from only one employee, though Contreras was not given the name.

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[5] Contreras explained that the demolition of inside walls entailed dropping debris through a chute to the ground floor.

[6] Contreras identified photographs depicting the area within his supervision, including double windows in Room 38 as they appeared on December 12, 2012 (R-55p; R-55q), and the debris-free compacted floor of the courtyard area as it appeared on May 14, 2013 (R-55w). At the time of the hearing, Phase 2 was 65 percent complete.

[7] According to Contreras, one need not be an environmental engineer to verify tests for asbestos, mold, and PEOSHA.

On cross-examination, Contreras testified that the HVAC screens, depicted in R-55 as a grey rectangular shape on the building's exterior wall, have their own filters but were not sealed off. So, although cigarette smoke from outside might penetrate the interior, smoke particles are 1,000 times smaller than construction-site materials and, as far as he knew, there were no volatile organic compounds involved with the project. In Room 38, before the end of 2012, duct tape that had started to peel was replaced by Gorilla tape as a precautionary measure and second line of defense, as there was (already) a natural seal between the window line and frame.

On November 28, 2012, though there was interior demolition in the vicinity of Room 38, there was no breaking of concrete in the courtyard. On January 4 and 7, 2013, the work involved preparing a foundation for the left side of the courtyard. That portion of work entailed digging with a backhoe, laying forms, and pouring cement, and was completed around the end of January.

B. Appellant's Witnesses

**Sheryl Quartermas**, occupational health consultant and compliance inspector for the Department, who was assigned to the Public Employees Occupational Safety and Health Program, testified that on February 13, 2013, she performed an unannounced inspection of Room 38 and Room 40, measuring indoor air quality, due to a complaint from appellant.[8] She utilized a "Q-Track" screening tool to measure air quality in the areas cited. She also checked the room for water intrusion, and inspected the office generally, including ceiling tiles, outside walls, and the ventilator on those walls. She found nothing abnormal and thus took no air samples to test for dust particles or allergens.[9] Her test measured nothing beyond the state of the room on that date.

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[8] According to her inspection report, "the complaint stated that there was potential for poor indoor air quality that could lead to respiratory illness due to the ongoing construction/renovation project. Outside the office there is a large amount of disturbed soil due to the renovation project. The concern is that contaminated soil and dust is infiltrating into the workspace environment."

[9] She did not test for Legionnaires' disease, formaldehyde, fungus or particulates.

Concededly, her duty to investigate complaints of a building-related illness and protect employees from environmental hazards includes assuring that the subject area does not contribute to any such illness. Quartermas spoke to four or five employees in the area of Rooms 38 and 40 and they were content with the work environment and did not direct her attention to anything to cause concern or warrant further inspection.

**Jane O'Donnell**, a former accountant at the Department, testified that she was stationed in Room 35, northwest of Room 38, but she worked with appellant and often walked through Room 38 to get to her boss's office.[10] At or near the end of November 2012 she observed taping being done (in Room 38) and was informed that dust had been entering. According to O'Donnell, dust had entered upon windowsills in her area but she did not know where it came from and did not complain. It did not affect her and she personally cleaned it. And, "no," she did not deem it appropriate to report the condition to her supervisor, who was just three offices away.

Prior to appellant's return to the main office, O'Donnell saw McCarthy moving things to appellant's new station in an area without windows, adjacent to the lower east side of Room 38. O'Donnell testified that she observed McCarthy clean appellant's desks (in both Room 38 and at her new station adjacent thereto), but she cleaned neither O'Donnell's desk nor anyone else's.[11]

Appellant **Janet Petti**, a former senior account at the Department, where she worked for over eight years, testified that on November 28, 2012, she worked in the finance office, was stationed at the upper right (east) side of Room 38, and shared that area with Nieva, Fede, and Alonso. At the time, construction builders would crash debris twenty-five feet high, and dust accumulated on the window ledge. A worker named Claudia Lewandowski came and had windows taped with duct tape and the window ledges cleaned. On December 7, Petti saw that the duct tape had lost adhesion

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[10] O'Donnell testified that she would walk through a Room 38 "five, ten, fifteen times a day" and would see "what's going on in there."

[11] O'Donnell answered "yes" when asked whether McCarthy "acted like a cleaning lady."

and was "swaying" with air from the heating vent. She thus requested relocation and was transferred to Lakewood as an accommodation.

## II. Appellant's Medical Condition

### A. Respondent's Witness

**Tanisha Taylor, M.D., M.P.H.**, medical director at Barnabas Health, testified that her clinical responsibilities include evaluation of patients for work-related illnesses, including for workers' compensation, and her administrative responsibilities include supervision of hospital staff. Her educational background includes an occupational and environmental fellowship at Yale University, where she studied diseases and illnesses in the workplace and external environments, including those involving air quality, and received a master's degree in public health and environmental sciences, a field that involves analysis of how environmental exposure affects the human body. Dr. Taylor qualified as an expert in the field of occupational and environmental medicine.

On January 15, 2013, Dr. Taylor conducted an evaluation of appellant relative to a workers' compensation claim for work-related illness/injury, specifically, her alleged workplace exposure and pulmonary dysfunction and symptoms.[12] Dr. Taylor testified that she does have an independent recollection of appellant. As indicated in her evaluation report (R-18), upon examination, appellant adamantly complained of itching, rather than breathing problems, and she denied having a rash. Dr. Taylor reported her suspicion that appellant had dry skin during the winter months. Though Dr. Murphy had put appellant out of work due to "pulmonary dysfunction," appellant refused pulmonary function testing (PFTs).[13] As is further indicated in Dr. Taylor's report, appellant also refused a pulse oximetry test that is designed to measure the body's ability to oxygenate blood. Both tests are necessary to evaluate patients with pulmonary problems. Dr. Taylor was concerned about breathing issues and wanted to perform the

[12] Dr. Murphy had put her out of work due to "pulmonary dysfunction."

[13] PFTs are nationally standardized breathing tests to assess pulmonary function.

tests, but appellant declined and maintained that she had normal PFT results. She further reported that construction dust was airborne, she had begun to itch on January 4, and her last day at work was January 7.

The Department had provided Dr. Taylor with reports of environmental testing indicating no workplace asbestos, and Dr. Taylor confirmed through Department representatives the absence of any visible mold in the work environment. Also, environmental reports dated December 13, 2012, revealed no evidence of dust or construction residue, and that the work environment had appeared clean and well-maintained. It was also indicated that no other employees had complaints relative to the work environment. Dr. Taylor asked appellant for permission to obtain her test results and to speak with her treating physicians; however, as stated in Dr. Taylor's report, appellant would not sign a release for Dr. Taylor to obtain the test results or speak with her physicians.

Based on her evaluation, Dr. Taylor concluded that there was no work-related injury, and she had no concerns regarding any pulmonary issues arising out of the workplace.[14] Dr. Taylor returned appellant to work for purposes of the workers' compensation assessment, the only assessment that was requested.

<u>Appellant's witness</u>

**David Murphy, M.D.**, former chair of the Department of Pulmonology at Deborah Heart and Lung Center, was qualified as an expert in the medical field of pulmonology. Dr. Murphy testified that he treated appellant in January and April 2013. On January 10, 2013, he diagnosed her with having "small-airways disease," a condition wherein there is a narrowing of the airways. The condition may be reactive in a patient with a history of asthma, such as appellant,[15] though there admittedly can be several different

[14] Dr. Taylor's report notes that appellant denied any cough or shortness of breath, and upon physical examination Dr. Taylor found her breath/voice sounds to be normal. Notably, appellant also denied a history of asthma.

[15] Dr. Murphy testified that the condition is typically seen, for instance, in someone with asthma. As appellant had a history of asthma, it is expected that she would have that condition. Allergic-based

causes. Dr. Murphy testified that a prior pulse oximetry test had confirmed she had the condition, and the period of time that appellant had small-airways disease was for as long as she had asthma. Symptoms may include wheezing and coughing, as well as shortness of breath, which was appellant's chief complaint at that time according to his report (A-1). Dr. Murphy ordered x-rays and a bronchodilator spirometry (breathing) test. Concededly, the result was normal.

Dr. Murphy composed a letter dated January 14, 2013, indicating that he was treating appellant for a lung condition that is aggravated by "dusts, molds, etc." and, based upon her report of being exposed to construction dust, requested that she be relocated. (R-15.) On January 20, 2013, Dr. Murphy completed paperwork to excuse appellant from work due to shortness of breath, exposure to construction dust, small-airways obstruction, and some abnormal chest x-rays that showed scar tissue in an area of the lungs. (R-12.)[16] He saw her again on April 17, 2013, when her chief complaint was shortness of breath, and he again diagnosed "small airways obstruction." His medical report dated that day (A-2) indicates that appellant reported, "the air at her employment has been tested, and was satisfactory." In that report, Dr. Murphy recommended that she continue to use an inhaler, and indicated that, if no longer exposed to cement dust, "I think she can return to work." (Ibid.) On April 24, 2013, Dr. Murphy signed a medical-provider form for a medical leave of absence, recommending that appellant be away from "construction dust" and be moved to another building. Dr. Murphy did not recall where the "construction dust" came from, but believed that it was at her workplace, which appellant claimed was causing her symptoms. However, other irritants (such as mold or chemicals) could also cause the symptoms.

On May 29, 2013, Dr. Murphy forwarded another letter on appellant's behalf (A-7) in opposition to her employer's suggestion that she wear a respirator. He did not

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triggers could include grass, mold, or some other mechanism; non-allergic triggers could include fumes, dust or other agents.

[16] The latter could have no effect or it could contribute to a shrinkage of the lung and a reduction in ventilation capacity.

consider it to be a feasible solution because she had a latex allergy, as well as a prior neck injury, and it was not useful for someone working with computers and telephones.

On cross-examination, Dr. Murphy initially testified that he did not recall whether there was objective information, rather than just appellant's subjective reporting, regarding the presence of dust and debris in the workplace. Then, however, he agreed with the importance of documenting any such information, and admitted that in his report, "it's not there." Regarding potential accommodations for appellant, Dr. Murphy did not recall reviewing the Department's letter (on which he was copied) dated May 8, 2013, (R-21) outlining relevant studies, findings and reports regarding appellant's workplace environment. He may have reviewed them, but they admittedly are not referenced in his May 29 correspondence on her behalf (A-7).

Appellant **Janet Petti** testified that she suffers from chronic pulmonary issues, including asthma and "breathing problems," and that she previously had a paralyzed diaphragm. In 2011 she had been hospitalized, and she did not want to repeat that experience and affect her job. Petti testified that she was transferred to Lakewood after asking to be moved; she had feared that dust would come in and affect her lungs and she was concerned with being in the hospital (again). She did not have any breathing problems when she transferred to Lakewood, except for an initial adjustment period; it took a "few weeks to get better."

When she returned to the Toms River office on January 4, 2013, she was stationed in the "reception area," just outside Room 38, on the lower right (east) side. She left at 2:00 p.m. for a medical appointment related to a carpe-tunnel issue. On that day she felt "itchy all over [her] body" and her breathing was "stressed or harder." On January 7, her next day in the office, she arrived at 8:00 a.m. but left at 12:30 p.m., feeling "miserable." She suffered swollen eyes, itching, and a rash that developed that night. On January 8 she saw her primary care physician, Dr. Ingato, who said that she had an allergic reaction. He gave her a note (R-14) for work. On January 10, she saw Dr. Murphy, who obtained an x-ray and another pulmonary test, and wrote a letter dated January 14 (R-15), after which she requested and was granted FMLA leave.

## III. Reasonable Accommodations

### A. Respondent's Witnesses

**Victoria Miragliotta** testified that appellant was granted FMLA leave, from January 16, to April 8, 2013, based upon documentation of a serious medical condition (according to the legal department), but not because of work conditions.[17] Appellant did not return when due on April 9. Rather, she asked for medical leave, which is optional. By letter dated April 1, 2013, Miragliotta notified appellant that her leave request was deficient and therefore not processed. (R-36.) The medical-provider form did not contain an "end date," and there was actually no construction-related contamination in her work area as alleged. Miragliotta's letter further directed that she return to work because her FMLA was exhausted. According to Miragliotta, appellant never did return a corrected medical-provider form with which the Department could have processed her leave request.

By letter to appellant dated May 8, 2013, (R-21) Miragliotta set forth steps taken by the Department to ensure a safe work environment and its basis for concluding that there was no hazard in the workplace. Miragliotta described the letter as an effort to "work with her" and engage her in the interactive process despite disagreement with her claim of a contaminated workspace. A copy of the letter and relevant attachments were also sent to appellant's doctors in an effort to resolve the matter. But there was no reason for appellant not to return to duty at the main office, the central hub of the Finance Division. Also, the Department's attorney sent a letter dated June 5, 2013, to appellant's attorney (R-24) regarding the Department's prior invitation to meet and the lack of a response from appellant.[18] According to Miragliotta, despite efforts to engage

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[17] Dr. Murphy had sent a letter dated January 14, 2013, describing appellant's claim of exposure to construction dust and materials (R-15), and had signed a medical certificate dated January 20, 2013, diagnosing shortness of breath after exposure to (only) "construction dust." (R-12.)

[18] That letter describes an offer of accommodation to appellant, namely, a return to work at the main office.

and accommodate appellant,[19] she did not respond. Thus, there was no choice but to proceed with the subject charges, after two months following her return-to-duty date.

On cross-examination, Miragliotta testified that she was not aware of any corrected medical form being faxed to the Department on April 24. As for appellant's workspace, it had been cleaned and every window was locked, and there was no cross-contamination between the separate HVAC systems. Miragliotta emphasized that her personal opinion doubting any work-related injury to appellant in January 2013 did not matter; her position was not to counteract the evidence that there was no possible cross-contamination, insulation fibers, or construction debris in appellant's workspace. The Department responded to each of the appellant's concerns, which evolved from asbestos to mold to dust, and "went the extra mile" to get answers for each of her complaints. Also, after Lakewood, the Department gave her a choice of location, and positioned her station at a "center [interior] desk."

**Mary McCarthy** testified that upon appellant's return to work on January 4, 2013, she had a new location, "further back" to an area with no windows. However, she left that day and did not return. On January 7 she came to work but told McCarthy she could not return to the main office, based upon doctors' notes that she had faxed earlier, and she did not stay. She was granted FMLA leave, but when it expired in April 2013 she did not return. McCarthy further testified that, though appellant was able to function when she transferred to Lakewood, her work was hard to monitor because the finance office was in Toms River.

Appellant's witness

Appellant **Janet Petti** testified that she had requested a reasonable accommodation by letters dated January 7 (R-11) and January 9, 2013 (R-9). Daniel Regenye, public health inspector, replied that he would look into appellant's concerns. Rather than return from FMLA leave on April 9, 2013, she requested a leave extension

[19] Miragliotta testified that appellant could have brought whomever she wanted, "doctors, lawyers, etc.," whoever would have "made her comfortable."

from McCarthy and submitted the recommended forms. The forms were initially incomplete, but on April 24, 2013, she faxed the forms to Miragliotta, who confirmed receipt by letter dated May 16. After that time, the parties communicated through their respective attorneys, including letters from appellant's attorney dated May 29 (A-7), enclosing correspondence dated that day from Dr. Murphy, and May 30 (A-8), requesting documentation regarding the construction.

In May or June 2013 the Department invited appellant to a meeting at a "work area," which her lawyer told her to attend, but she did not attend because it was against her doctor's orders. On August 7, 2013, Andrew Martin, M.D., cleared appellant to return to work. (A-3.) Notably, his report indicates that she presented with a complaint of shortness of breath but had a normal exam and, regarding workplace construction, "apparently, as of April, that had resolved." (Ibid.) Appellant further testified that, "no," she did not abandon her job.

On cross-examination, appellant agreed that she was due to return to work on April 9, and had been directed to do so by letter dated April 12, 2013 (R-36). She also agreed that the Department had taken the position that it had done everything it could, and she acknowledged the letter sent to her from Miragliotta, dated May 8, outlining its "ten steps" and regarding the interactive process. (R-21.) In reviewing a photo of the courtyard (R-55w), appellant also agreed that it appeared construction was complete, though she did not know about "the pebbles" seen in the picture. Appellant testified that though she had sought work at various places, she had no job interviews and is not currently working.

Summary

The trier of fact must weigh the credibility of the witnesses in a matter such as this in order to make factual findings concerning the disputed facts. Credibility, or value accorded a witness's testimony, contemplates an overall assessment of a witness's story in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible

witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). 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).

Appellant's coworkers who share Room 38 gave substantially consistent and credible testimony as to the absence of construction dust or debris in that room. Their testimony was corroborated by that of the project manager, as well as the numerous environmental reports. Further, Dr. Taylor credibly testified as to her medical evaluation of appellant, including her review of objective environmental findings, and I afford substantial weight to her conclusion. The testimony of Miragliotta and Murphy regarding the Department's efforts, appellant's failure to return to work, and the interactive process is corroborated by a wealth of authentic documentation and was persuasive overall. Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I also **FIND** as **FACT**:

1. After December 2013, the work space inside Room 38 and the adjacent area was free from contamination related to the ongoing renovation. The windows were taped with Gorilla tape as an extra precaution; multiple environmental inspections/reports revealed no construction-related debris in the area; and no other employee complained about dust or contamination from the ongoing renovation project.

2. Further, Phase 1 renovations were completed by the end of January 2013. According to Dr. Andrew Martin, who evaluated appellant in August 2013 and found a normal exam despite appellant's complaints of shortness of breath, workplace construction "apparently, as of April had resolved." Indeed, in April appellant told Dr. Murphy that the air quality had tested normal. As shown in the photograph depicting the courtyard on May 14, 2013 (R-55w), by that time there was no construction debris in that area.

3. On January 7, 2013, appellant was thoroughly evaluated for work-related illness or injury by Dr. Taylor, who is eminently qualified to determine whether appellant suffered a medical ailment due to conditions in her work environment. Appellant denied having an asthmatic condition as well as any pulmonary symptoms, and complained of itching instead. She refused to cooperate with Dr. Taylor's efforts to obtain test results and speak with her physicians. In addition to examining appellant, Dr. Taylor reviewed reports and findings regarding the work environment and spoke with Department personnel.

4. Though appellant was diagnosed by Dr. Murphy as having had small-airways disease, a pulmonary condition, ever since she had asthma, the x-ray and pulmonary test ordered by Dr. Murphy on January 10, 2013, when appellant complained of shortness of breath, were normal, as was her examination in April 2013. Dr. Murphy's assessments, in both January and April 2013, that appellant was exposed to construction-related contaminants in her work area were based solely upon appellant's subjective complaints and were unsupported by objective evidence.

5. As was determined by Dr. Taylor, a qualified expert in the field of occupational and environmental medicine, appellant did not suffer from any illness or condition caused by her work environment, including the ongoing renovations.

6. Appellant exhausted her FMLA leave on April 8, 2013.

7. Authorization for a medical leave of absence was requested by appellant after her FMLA leave expired, with reliance upon her doctor's conclusion. The OCHD did not regard the request as valid, as it was premised upon a subjectively false conclusion that construction dust was present in appellant's work space. It is within the reasonable discretion of the Department to grant or deny the medical leave that appellant requested.

8. As of April 9, appellant never returned to work, and was absent without authorization for five or more consecutive days, through the time respondent filed the instant charges.

9. The Department made efforts to reasonably accommodate appellant, notwithstanding the safety of her work environment and absence of a work-related illness, that included: a temporary transfer, the taking of quality-assurance measures, relocation of her work station to an interior area away from windows, providing pertinent environmental information, offering use of an air scrubber and a mask or respirator, and inviting appellant and her medical/legal advocates to meet in order to resolve her issues with the workplace.

10. Appellant did not cooperate with respondent's efforts regarding the interactive process, as she failed to attend the proposed meeting to resolve the issues or propose an alternative besides relocation, which was neither necessary nor warranted under the circumstances.

## LEGAL ANALYSIS AND CONCLUSION

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses or for just cause, N.J.S.A. 11A:2-6, including insubordination and chronic or excessive absenteeism or lateness, N.J.A.C. 4A:2-2.3(a)(2), (4). An employee may also be subject to termination for resignation not in good standing, on the basis of absence from duty without approval for five or more consecutive business days. N.J.A.C. 4A:2-6.2(b), (c). On appeal from the imposition of such discipline, the appointing authority has the burden of proving justification for the action, N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a), and proving the employee's guilt by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). Preponderance may be described as the greater weight of credible evidence. State v. Lewis, 67 N.J. 47 (1975).

Appellant was charged with excessive absenteeism because she was absent without authorization for over two months, until the date of her removal. N.J.A.C. 4A:2-

2.3(a)(4). While there is no precise number that constitutes "chronic," it is generally understood that chronic conduct is conduct that continues over a long time or recurs frequently. Good v. N. State Prison, 97 N.J.A.R.2d (CSV) 529, 531. Courts have consistently held that excessive absenteeism need not be accommodated, and that attendance is an essential function of most jobs. See, e.g., Muller v. Exxon Research and Eng'g Co., 345 N.J. Super. 595, 605–06 (App. Div. 2001) (under the Law Against Discrimination, excess absenteeism need not be accommodated even if it is caused by a disability otherwise protected by the Act); Svarnas v. AT&T Commc'ns, 326 N.J. Super. 59, 79 (App. Div. 1999) ([a]n employee who does not come to work cannot perform any of her job functions, essential or otherwise); see also Dudley v. Calif. Dep't of Transp., 2000 U.S. App. LEXIS 5249 (9th Cir. Cal. March 24, 2000) (a diabetic with frequent absences who failed to provide adequate medical documentation and could not provide a definite return-to-work date was not a qualified individual).

Appellant is also charged with resignation not in good standing. Five or more consecutive days' absence without approval of the supervisor is regarded as abandonment of the position and deemed a resignation not in good standing (RNGS). N.J.A.C. 4A:2-6.2(b). However, RNGS is NOT discipline, as discipline is governed by N.J.A.C. 4A:2-2.2 and -2.3; resignation not in good standing is addressed in N.J.A.C. 4A:2-6. The RNGS rule is very old. See Carey v. Water Dep't of E. Orange, 32 N.J. Super. 131 (App. Div. 1954), holding that it did not matter if the employee told other employees he was out sick with a doctor's excuse, since he failed to seek his supervisor's approval prior to his absence.

Under N.J.A.C. 4A:2-6.2(f), the appointing authority or the Board may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing. Although the record may clearly establish that an appellant was absent without authorization in excess of five consecutive business days, if the appellant was unable to work due to medical reasons, a resignation not in good standing should be modified to a resignation in good standing. Sykes v. N.J. Judiciary, Middlesex Vicinage, CSV 4461-04, Initial Decision (July 12, 2005), adopted, Comm'r (September 23, 2005), <http://njlaw.rutgers.edu/collections/oal/>; Taylor v. New Lisbon Med. Ctr., CSV 2842-05, Initial Decision (December 9, 2005), adopted, Comm'r (January 18, 2006),

<http://njlaw.rutgers.edu/collections/oal/>; Salley v. Hudson Cnty. Dep't of Roads and Pub. Property, CSV 11813-09, Initial Decision (January 4, 2011), adopted, Comm'r (February 18, 2011), <http://njlaw.rutgers.edu/collections/oal/>.

Further, pursuant to N.J.A.C. 4A:6-1.10, the appointing authority may grant a leave of absence without pay to a permanent employee for up to one year unless otherwise provided by statute. Although the appointing authority has the discretion to deny a request for such leave, that discretion must be exercised reasonably. Cumberland Cnty. Welfare Bd. v. Jordan, 81 N.J. Super. 406 (App. Div. 1963). The standard of reasonableness takes into account a variety of factors, including the appointing authority's operational needs and its efforts to accommodate the employee, Mercado v. Dep't of Human Servs., 94 N.J.A.R.2d (CSV) 557 (1994), as well as the timing of the request for leave and the employee's diligence in communicating his or her medical needs to the employer, In re Cannuli, CSV 4533-07, Initial Decision (July 17, 2008), modified, Comm'r (September 10, 2008), <http://njlaw.rutgers.edu/collections/oal/>.

Finally, appellant is also charged with insubordination under N.J.A.C. 4A:2-2.3(a)(2). Although insubordination is not defined in the New Jersey Administrative Code, an expansive definition of the charge has been adopted to include acts of disobedience, non-compliance and non-cooperation. In re Stanziale, CSV 4113-00, Final Decision (January 29, 2001), <http://njlaw.rutgers.edu/collections/oal/>, aff'd, No. A-3492-00 (App. Div. April 11, 2002) (court affirmed Board's decision that refusal to provide complete and accurate information to a supervisor constituted insubordination); see also Ricci v. Corp. Express of the East, Inc., 344 N.J. Super. 39 (App. Div. 2001) (citations omitted); In re Klitz, CSV 10501-98, Final Decision (February 14, 2000), <http://njlaw.rutgers.edu/collections/oal/>.

Appellant contends that she did not abandon her job and was not insubordinate. Rather, she sought a reasonable accommodation, to which she was entitled based upon her pulmonary disorder or handicap, one that the Department did not extend in good faith. Respondent contends that appellant unjustifiably failed to return to work, in

excess of five days, and willfully disregarded a directive to return to work when her FMLA leave expired, notwithstanding its extension of a reasonable accommodation.

Here, Petti had exhausted her FMLA leave, had sought additional discretionary leave, and had been absent from work for over two months after being directed to return. Her premise of a contaminated workspace and medical excuses related thereto was unfounded. She failed to consent to disclosure of medical information in January 2013, received normal pulmonary test results in January, April and August 2013, and then failed to participate with the OCHD's efforts to accommodate her despite a lack of objective medical evidence of any work-related illness.

Under all the facts and circumstances, I **CONCLUDE** that respondent reasonably exercised its discretion to deny an additional medical leave to appellant. I further **CONCLUDE** that charges of excessive absenteeism and resignation not in good standing are justified, and they should be and are hereby sustained. I further **CONCLUDE**, however, that the charge of insubordination should not be sustained because appellant did obtain and rely upon the opinion of her physician, however unsupported, rather than blatantly disregard respondent's directive to return to duty.

The question thus becomes whether appellant's conduct warranted a removal from employment for excessive absenteeism and resignation not in good standing.

Penalty

With regard to penalty, consideration must generally be given to the concept of progressive discipline involving penalties of increasing severity. West New York v. Bock, 38 N.J. 500 (1962). However, progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007). It is well established that when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest, progressive discipline need not apply. In re Herrmann, 192 N.J. 19, 28 (2007); In re Stallworth, 208 N.J. 182 (2011).

For instance, termination without progressive discipline is appropriate in circumstances where an employee cannot competently perform the work required of his position. Klusaritz v. Cape May Cnty., 387 N.J. Super. 305, 317 (App. Div. 2006), certif. denied, 191 N.J. 318 (2007). Where, however, the employee's inability to perform duties is based upon a medical condition, not willful misconduct, separation from employment by resignation in good standing, rather than removal, is appropriate. In re Gore-Bell, CSV 3975-06, Final Decision (December 21, 2007), <http://njlaw.rutgers.edu/collections/oal/> (Board modified the removal of county correction officer to a resignation in good standing where inability to perform was due to glaucoma in her right eye); see also Verdell v. Dep't of Military and Veterans Affairs, CSV 6774-02, Final Decision (August 12, 2004), <http://njlaw.rutgers.edu/collections/oal/>, aff'd, No. A-0497-04T5 (App. Div. February 16, 2006), <http://njlaw.rutgers.edu/collections/courts/> (court affirmed Board's modification of the removal of appellant, an insulin-dependent diabetic who suffered unforeseen medical episodes, to a resignation in good standing).

In discussing the application of progressive discipline, the Court has stated:

> [N]o employer—whether public or private—should be compelled to retain an employee who is chronically insubordinate, disruptive, underperforming, or some combination thereof.
>
> On the other hand, there must be fairness and generally proportionate discipline imposed for similar offenses by public employers and responsibility in one agency to assure such fairness and proportionality. See N.J.S.A. 11A:2-6 (authorizing Commission to "render the final administrative decision on appeals concerning permanent career service employees . . ." where they are removed or suspended for more than five days).
>
> [In re Stallworth, supra, 208 N.J. at 192.]

The Court further stated:

> [P]rogressive discipline is a flexible concept, and its application depends on the totality and remoteness of the individual instances of misconduct that comprise the disciplinary record. The number and remoteness or timing of the offenses and their comparative seriousness, together with an analysis of the present conduct, must inform the evaluation of the appropriate penalty. Even where the present conduct alone would not warrant termination, a history of discipline in the reasonably recent past may justify a greater penalty; the number, timing, or seriousness of the previous offenses may make termination the appropriate penalty.
>
> [Id. at 199.]

Here, appellant received a written warning on March 26, 2012, for excessive absenteeism following a return from medical leave. (R-45.) She also received a written warning on June 19, 2012, for a violation of her employer's rules/procedures, specifically, taking excessive break time on three different dates. (R-46.) She thus does not have any extensive disciplinary history over the course of her eight and a half years with the Department.

In this matter, appellant, who has been diagnosed with small-airways disease, was denied discretionary medical leave, a reasonable decision by respondent. She failed to return to work, but she obtained and relied upon her doctor's recommendation, although it was based only upon her subjective complaints. She then presented her doctor's request to relocate her, in order to resume her employment at a different location. In essence, her absence was solely due to the mistaken belief that she had a work-related medical condition.

Therefore, I **CONCLUDE** that, rather than removal, a sixty-day suspension, for excessive absenteeism, and a resignation in good standing is the appropriate sanction in this matter.

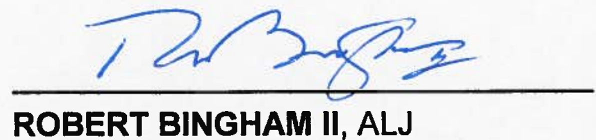
## DECISION AND ORDER

Based upon the foregoing, respondent justifiably charged appellant with excessive absenteeism and resignation not in good standing, but the facts and circumstances do not warrant a penalty of removal. Accordingly, I **ORDER** that the charges of excessive absenteeism and resignation not in good standing are **SUSTAINED**, but the penalty of removal is hereby **MODIFIED** to a sixty-day suspension, for excessive absenteeism, and a resignation in good standing I further **ORDER** that the charge of insubordination 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, 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 9, 2015
DATE

**ROBERT BINGHAM II**, ALJ

Date Received at Agency: 4/9/15

Date Mailed to Parties: 4/9/15

/lam

# APPENDIX

## WITNESSES

**For Appellant**:

Sheryl Quartermas
Jane O'Donnell
Janet Petti
David Murphy, M.D.

**For Respondent**:

Cheryl Alonso
Nancy Fede
Maria "Rosie" Nieva
Mary McCarthy
Christine Riebe
Victoria Miragliotta
Filepe Contreras
Tanisha Taylor, M.D., M.P.H.

## EXHIBITS

**Joint:**

J-1 Preliminary Notice of Disciplinary Action
J-2 Amended Preliminary Notice of Disciplinary Action
J-3 Final Notice of Disciplinary Action, dated June 19, 2013

**For Appellant:**

A-1 Medical Report from Deborah Heart and Lung Center, dated January 10, 2013

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| A-2 | Medical Report from Deborah Heart and Lung Center, dated April 17, 2013 |
| A-3 | Medical Report from Deborah Heart and Lung Center, dated August 7, 2013 |
| A-4 | Request for reasonable accommodation, dated January 7, 2013 |
| A-5 | Note to Vikki attaching revised medical provider form, dated April 24, 2013 |
| A-6 | Letter from Jessica Strugibenetti to Ms. Miragliotta re accommodations for Janet Petti, dated May 14, 2013 |
| A-7 | Letter from Jessica Strugibenetti to Mr. Mercun enclosing a note from Dr. Murphy regarding accommodations for Janet Petti, dated May 28, 2013 |
| A-8 | Letter from Jessica Strugibenetti requesting information from Mr. Mercun regarding accommodations for Janet Petti, dated May 29, 2014 |
| A-10 | Curriculum Vitae of David Murphy, M.D. |

**For Respondent:**

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| R-2 | Email exchange between Victoria Miragliotta and Janet Petti, dated November 20, 2012, to November 26, 2012 |
| R-3 | Email from Janet Petti to Dan Regenye and Victoria Miragliotta, dated November 28, 2012 |
| R-4 | Email exchange between Mary McCarthy and Janet Petti, dated November 29, 2012, to November 30, 2012 |
| R-5 | Memorandum with exhibit from Victoria Miragliotta to Janet Petti, dated November 29, 2012, with attachment |
| R-6 | Email from Remington, Vernick & Vena Engineers to Victoria Miragliotta, dated November 28, 2012 |
| R-7 | Memorandum from Daniel E. Regenye to B. Janet Petti, dated December 7, 2012 |
| R-8 | Email with attachment from Mary McCarthy to Janet Petti, dated December 27, 2012 |

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| R-9 | Letter from B. Janet Petti to Mary McCarthy, dated January 7, 2013 |
| R-10 | Letter from Victoria Miragliotta to Janet Petti, dated January 7, 2013 |
| R-11 | Letter from Janet Petti to Daniel Regenye, dated January 9, 2013 |
| R-12 | Medical Certificate for Janet Petti signed by Dr. Donald M. Murphy, dated January 20, 2013 |
| R-13 | Workers' Compensation Accident Investigation Report of Janet Petti, dated January 14, 2013 |
| R-14 | Prescription note by Dr. Steven Ingato, dated January 10, 2013 |
| R-15 | Letter from Dr. David Murphy, dated January 14, 2013 |
| R-16 | Employee Request for Family/Medical Leave of Absence made by Janet Petti, dated January 16, 2013 |
| R-18 | Medical Examination of Janet Petti report by Dr. Tanisha Taylor, dated January 15, 2013 |
| R-20 | Letter and Medical Leave of Absence form from Janet Petti to Victoria Miragliotta, dated April 24, 2013 |
| R-20a | Email from Mary McCarthy to Victoria Miragliotta, dated April 30, 2013 |
| R-21 | Letter from Victoria Miragliotta to Janet Petti, dated may 8, 2013 |
| R-23 | Letter from John Mercun, Esq., to Jessica Strugibenetti, dated May 21, 2013, with attachment |
| R-24 | Letter from John Mercun to Jessica Strugibenetti, dated June 5, 2013 |
| R-25 | Mary McCarthy report, dated January 10, 2013 |
| R-35 | Memorandum from Daniel Regenye to Victoria Miragliotta, dated February 27, 2013 |
| R-36 | Letter from Victoria Miragliotta to Janet Petti, dated April 12, 2013 |
| R-44 | Disciplinary Action Notice, five-day suspension, issued to Janet Petti on July 18, 2011 |
| R-45 | Disciplinary Action Notice, written warning, issued to Janet Petti on March 23, 2012 |
| R-46 | Disciplinary Action Notice, written warning, issued to Janet Petti on June 19, 2012 |
| R-47 | Email from Victoria Miragliotta to Janet Petti, dated June 21, 2012 |
| R-48 | Curriculum vitae of Tanisha Taylor, M.D. |
| R-52 | Diagram of 175 Sunset Ave., Toms River, NJ |

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| R-55p | Photo, dated December 12, 2012 |
| R-55q | Photo, dated December 12, 2012 |
| R-55w | Photo, dated May 14, 2013 |
| R-56 | Letter from Victoria Miragliotta to Janet Petti, dated February 7, 2013 |
| R-62 | Narrative Report OSHA |

The nonsequential numbering of exhibits reflects the fact that numerous pre-marked exhibits were neither identified nor offered into evidence.