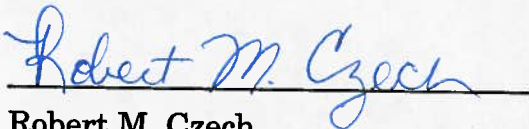


Re: Ronald Carrasquillo

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
JUNE 3, 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. CSR 10535-14

**IN THE MATTER OF RONALD
CARRASQUILLO, CITY OF
PATERSON FIRE DEPARTMENT.**

Nestor F. Guzman, Jr., Esq., for appellant Ronald Carrasquillo

Steven S. Glickman, Esq., for respondent City of Paterson (Ruderman &
Glickman, attorneys)

Record Closed: March 13, 2015

Decided: April 27, 2015

BEFORE **MICHAEL ANTONIEWICZ, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Ronald Carrasquillo (Carrasquillo), appeals from disciplinary charges causing his removal as a City of Paterson firefighter effective May 15, 2014. Respondent City of Paterson (the City) charged appellant with N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

Appellant appealed his removal to the Civil Service Commission and the Office of Administrative Law (OAL) pursuant to N.J.S.A. 40A:14-202(c). The appeal was filed with the Office of Administrative Law on August 12, 2014. A prehearing conference was held on September 9, 2014, and a hearing was scheduled for October 17, 2014. On October 16, 2014, appellant's counsel requested an adjournment with a waiver of back pay and the hearing was rescheduled for December 19, 2014. On December 17, 2014, appellant's counsel once again requested an adjournment of that hearing date with a waiver of back pay. The hearing was then rescheduled and held on February 27, 2015. The parties requested until March 13, 2015, to file post-submission briefs, and then the record was closed.

TESTIMONY

Lieutenant Chief Brian McDermott

Lieutenant Chief Brian McDermott (McDermott) has been employed with the Fire Department for the City of Paterson for twenty years. McDermott was aware that the appellant had an addiction problem. McDermott testified that the appellant checked out of an addiction rehabilitation program without completing the program. In addition, the appellant violated the Department's sick leave policy by taking sick leave and leaving his house without advising the Department.

McDermott stated that appellant was not sent for a fitness for duty exam because he did not complete his program. McDermott explained that when an employee calls out sick, the employee must remain at home unless he advises the Department as to where he is headed and then call again when he returns back home. This is contained in the sick leave policy. (R-4.) On February 11, 2014, Captain Tovar conducted a welfare check on the appellant. Captain Tovar proceeded to the appellant's house and rang the doorbell several times with no response. (R-9.) It was clear that appellant was not at his home.

On January 3, 2014, Chief Michael Postorino received a letter from the Case Manager of Behavioral Health of Palm Beaches (BHPB) stating that the appellant was admitted to an in-patient program for the treatment of a medical condition on December 31, 2013. The estimated length of stay is forty-five days. (R-5.) McDermott stated that appellant failed to stay the required forty-five day period.

The Department received a Discharge Summary (R-6), which stated that appellant left the program on January 20, 2014, well short of the forty-five day period. Appellant was admitted for his dependence to alcohol, hallucinogens, cannabis, and opiates, as well as his addiction to gambling.

After leaving BHPB, appellant entered Montville Counseling Center (MCC) for personal counseling with Dr. MacGregor. At MCC, appellant also failed to complete the course of treatment. On March 7, 2014, Chief Postorino received an e-mail from Dr. MacGregor stating that as of that date, she cannot consider the appellant fit for duty. Respondent received no other information regarding the appellant's fitness for duty. Dr. MacGregor was seeing the appellant twice a week since January 28, 2014, with three missed visits between that date and March 6, 2014. Dr. MacGregor conveyed that she had

experienced several occasions regarding [appellant's] belligerence and lack of cooperation, of which examples are his refusal to turn off his cell phone in session, his not coming to session on time and his lack of seriousness towards his counseling. In addition, he has shown this therapist that he resents being required to come to any kind of counseling or therapy.

[R-8.]

After receipt of the above-referenced e-mail, appellant was brought up on charges. The problem with his gambling addiction is that it raises concern as firefighters enter homes where there is cash, jewelry, and other valuables. The general public must have a sense of trust that the firefighters will act properly. In addition, the appellant was dependent on alcohol and opiates. This raises another public safety

issue because a firefighter needs to be fit and focused. A firefighter is a danger to himself, his co-workers, and the public if he is on drugs or alcohol while working.

Appellant had prior discipline and was served with the Preliminary Notice of Disciplinary Action (PNDA) on January 25, 2013. (R-10.) The specification stated that "on or about January 6, 2013, Ronald Carrasquillo was arrested and charged with aggravated assault." In addition, on or about January 6, 2013, appellant informed his Captain that he had to leave the firehouse for a family emergency and after leaving appellant confronted a male visiting his girlfriend. Thereafter, Carrasquillo assaulted that male. The third specification was for lying to his Captain, stating that he had to leave for a family emergency when, in fact, he left to confront a male visiting his girlfriend and then assaulted that person. Appellant was then served with a Final Notice of Disciplinary Action (FNDA) dated July 12, 2013, which recommended a suspension for forty-five days. (R-11.) This matter was resolved via an agreement (R-11) wherein the appellant pled guilty to the charges contained in the PNDA, dated January 17, 2013, and that he will receive a suspension without pay. Appellant further agreed that if another allegation of misconduct is made for any of the same reasons as expressed in the PNDA or any other reason warranting major discipline, he shall be entitled to administrative disciplinary hearing regarding same. The sole issue at the administrative hearing shall be whether the alleged misconduct occurred. If the misconduct is substantiated, Carrasquillo consents to more severe discipline, up to and including termination of his employment with the City of Paterson.

On cross-examination McDermott admitted that the letter, dated January 3, 2014, from BHPB was the first notice received regarding appellant's in-patient program. McDermott also admitted that no behavior at employment led to appellant going to the treatment facility. After receiving such treatment, the appellant would need to have a fitness for duty exam; however, this was not done because the appellant failed to successfully complete the program at BHPB. Carrasquillo's admission to that facility was voluntary. When the Department received the letter from BHPB (R-5), then the appellant goes on the sick leave roster by Human Resources. The Department has an unlimited sick leave policy for a period of one year.

Although not sent for a fitness for duty exam, Dr. MacGregor stated in her e-mail dated March 7, 2014, that she found Carrasquillo to be unfit for duty. However, McDermott was unaware if the appellant was sent for a formal fitness for duty evaluation and at no time did he receive any documentation stating that the appellant was found to be fit for duty.

Ronald J. Carrasquillo

Carrasquillo became a member of the Paterson Fire Department on March 3, 2009. In November/December 2013, appellant suffered an ankle sprain. He missed work until he completed rehabilitation. The Department did not require him to attend substance abuse rehabilitation. Carrasquillo attended the BHPB for twenty-one days and then left prior to the forty-five day program was to end.

Carrasquillo then came back to New Jersey and reported back to the Paterson Fire Department. Thereafter, toward the end of January 2014, appellant attended Montville Counseling Center (MCC) and left there prior to successfully completing the course because he was not satisfied with the program. Carrasquillo then entered New Pathway Counseling for its "early intervention" program on April 28, 2014, and completed the program on July 29, 2014. (P-2.) Carrasquillo attended ten sessions and was screened for all mood-altering substances, including alcohol. All screening came back negative; however, a few screenings were positive for "ethyl glucoranide," which could indicate alcohol consumption, even though alcohol itself was not present. Carrasquillo denied any alcohol consumption. (P-2.)

On February 11, 2014, Carrasquillo was at his residence and called out sick. On that date, he attended therapy at MCC. (P-1.) After leaving the MCC early, he attended New Pathways counseling. Appellant admitted that there was no fitness for duty evaluation done.

Carrasquillo remembered a meeting with Director Glen Brown, the Chief of the Department, and a union representative. The topic of the meeting was his relationship with a woman who was seeing a friend of the Director. Carrasquillo was told by Director Brown to stay away from this woman because appellant's job was not full proof.

Carrasquillo admitted on cross-examination that there occurred a departmental hearing on April 21, 2014, and a decision was rendered on May 15, 2014. Carrasquillo testified that on February 11, 2014, he called in sick and attempted to call the Department's Tour Commander's Office in order to notify them that he was leaving his house, but no one answered the phone. Carrasquillo did admit that upon his return home on February 11, 2014, he did not call the Department. Carrasquillo further admitted that he entered New Pathways on April 28, 2014, one week after the departmental hearing. In addition, at no time did Carrasquillo send a copy of a letter from New Pathways to the Department.

Carlos Pagan

Carlos Pagan (Pagan) is the President of the Firefighters Union. Pagan attended the meeting between Carrasquillo, Director Glen Brown, and the Chief of the Department. Pagan recalls the meeting being very heated. There was a discussion at the meeting regarding a female or incident. Pagan recalled that there was a relationship between Carrasquillo and the female. Pagan stated that Director Brown expressed his displeasure. Pagan did not recall that Carrasquillo's job was actually threatened, but he did recall that there was a lot of yelling.

On cross-examination Pagan testified that he was a firefighter for twenty-two years. He was the president of the union since 2009. Pagan admitted that a firefighter addicted to gambling, alcohol, and/or opiates was not good for the Department and those working with that firefighter.

FINDINGS OF FACT

1. Ronald Carrasquillo is a firefighter with the Fire Department in the City of Paterson.
2. On or about December 31, 2013, Carrasquillo voluntarily entered a substance abuse program at Behavioral Health of the Palm Beaches, Inc., for treatment for his dependence on alcohol, hallucinogens, cannabis, and opiates, as well as an addiction for gambling.
3. The program at Behavioral Health was forty-five days in length and Carrasquillo left early after only twenty-one days and thus did not successfully complete same.
4. After leaving the above program early, Carrasquillo entered a personal counseling program at Montville Counseling Center.
5. Carrasquillo was also unsuccessful in the Montville program. Dr. MacGregor at the Montville program determined that he was unsuccessful in the program and recommended that he attend a new counseling program.
6. Dr. MacGregor also determined that Carrasquillo was not fit for duty.
7. On February 11, 2014, Carrasquillo had called out sick from the Department. Captain Tovar went to Carrasquillo's house in order to determine if he was at home on a sick day taken by Carrasquillo.
8. Captain Tovar determined that Carrasquillo was not home and had failed to contact the Department in order to advise that he was leaving home.
9. Carrasquillo had left home in order to attend a counseling session, but failed to notify the Department when he returned home.

10. Carrasquillo was served with a Preliminary Notice of Disciplinary Action (31-A) on March 7 2014, charging him with:
 - a. Inability to perform duties;
 - b. Conduct unbecoming a public employee;
 - c. Incompetency, inefficiency or failure to perform duties;
 - d. Neglect of duty; and
 - e. Other sufficient cause.
11. A departmental hearing was held on April 21, 2014, wherein the charges against Carrasquillo were sustained.
12. The City issued a Final Notice of Disciplinary Action removing Carrasquillo, effective May 15, 2014.
13. Carrasquillo attended an early intervention program on April 28, 2014.
14. Carrasquillo successfully completed the New Pathway Counseling program on July 29, 2014.

CONCLUSIONS OF LAW

The burden of proof falls on the agency in enforcement proceedings to prove violation of administrative regulations, Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The agency must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings, Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to a given conclusion, Bornstein v. Metropolitan Bottling Company, 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power, State v. Lewis, 67 N.J. 47 (1975). Credibility, or more specifically, credible testimony, in turn, must not only proceed from

the mouth of a credible witness, but it must be credible in itself, as well, Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

The first charge against Carrasquillo is conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(6). "Conduct unbecoming a public employee" is an elastic phrase, which 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)).

In the first specification, it is without dispute that appellant entered a rehabilitation program at BHPB. Carrasquillo entered this program voluntarily, however, failed to successfully complete the program. Appellant left this program against medical advice. At the time Carrasquillo left the program, he was having unresolved addiction and dependency issues.

After leaving the BHPB program, Carrasquillo entered a counseling program at Montville Counseling Center on January 28, 2014. Once again, Carrasquillo failed to successfully complete the program at MCC and he left on March 6, 2014. On March 7, 2014, the treatment counselor, Dr. Elizabeth MacGregor, forwarded an e-mail to the respondent expressing her opinion that Carrasquillo was not fit for duty. It was Dr. MacGregor's opinion that Carrasquillo should continue counseling. Just after failing treatment for the second time, the Department served the appellant with disciplinary charges.

I agree with the respondent in this case, that once the Department was informed of Carrasquillo's addictions and dependencies, it was the appellant's responsibility to provide the Department proof that he successfully completed a program treating those conditions. Respondent had to ensure that Carrasquillo was fit for duty. This was

especially true after being informed by a treating doctor that Carrasquillo was "unfit for duty." McDermott clearly spelled out in his testimony the risks associated to the public, the firefighter and his co-workers in the event that the Department reactivated a firefighter with such conditions as held by appellant.

Appellant's last attempt to complete a rehabilitation program began nearly seven weeks after failing to complete the MCC program. It can logically be seen that after two failed attempts to complete such a treatment program, the ultimate motivating factor in having Carrasquillo complete a treatment program was the receipt of the FNDA and his termination from the Department. In fact, Carrasquillo admitted in his testimony that at no time did he notify the Department that he entered and/or completed the program at Pathways.

I **FIND** no relevance with regard to Carrasquillo's testimony regarding the "threat" by Director Brown at their meeting with the union representative, Pagan, attending. The threat was not confirmed in Pagan's testimony. Where Carrasquillo remembers a threat, Pagan simply recalls a loud disagreement between the parties. In addition, this has no basis for the ultimate decision as to whether appellant was fit for duty. Based on the other facts shown through the course of the hearing, I cannot **FIND** that Carrasquillo's termination was based on some sort of personal disagreement with Director Brown over a female.

Based on the foregoing, I **FIND** that Carrasquillo failed to properly treat his substance abuse issues prior to the action taken by the Department. In addition, I **FIND** that Carrasquillo failed to abide by General Order 2004-13 (Injury/Sick Leave Policy), which states that all personnel reporting off-duty as sick/injured shall immediately notify the on-duty Tour Commander/Division Commander. In addition, it states that all sick/injured members who must leave their place of confinement shall telephone the Tour Commander and report their reasons for leaving and their destination. Upon their return, they shall again telephone the Tour Commander/Division Commander. I **FIND** that Carrasquillo failed to do both. Although he attempted to report that he was leaving his home, he failed to report the fact that he was leaving to the Tour

Commander/Division Commander. Also, there is no dispute that Carrasquillo failed to contact the Tour Commander/Division Commander as required.

Therefore, I **CONCLUDE** that the City proved by a preponderance of the credible evidence that Carrasquillo's conduct was unbecoming a public employee and demonstrated an inability to perform duties. I further **CONCLUDE** that the City proved by a preponderance of the credible evidence that Carrasquillo neglected his duty as a firefighter since there was no way that he could have performed his duties safely and not endanger the public he has a duty to protect due to his addiction to alcohol, hallucinogens, cannabis, and opiates, as well as gambling. Lastly, I **CONCLUDE** that Carrasquillo violated the City's Injury/Sick Leave Policy by failing to notify the Tour Commander that he would not be at home while on a sick day and failed to so notify the Tour Commander when he returned home. Based upon these violations, I **CONCLUDE** that appellant must be removed from employment as a firefighter.

ORDER

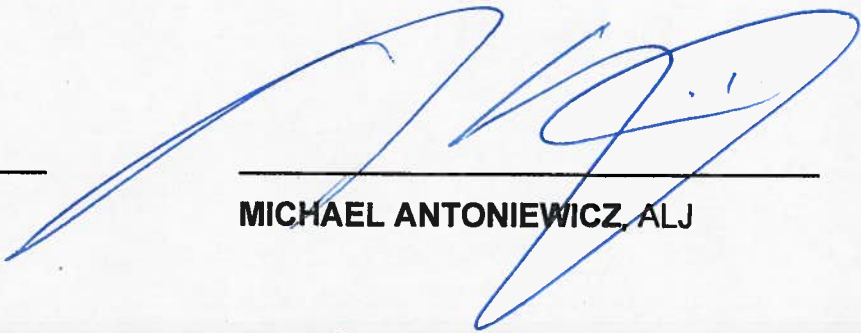
Accordingly, I **ORDER** that the action of respondent appointing authority, City of Paterson, in removing Ronald Carrasquillo be **AFFIRMED** and that appellant's appeal be **DISMISSED**.

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. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 27, 2015
DATE



MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency:

April 27, 2015

Date Mailed to Parties:

April 27, 2015

jb

APPENDIX

List of Witnesses

For Appellant:

Ronald Carrasquillo
Carlos Pagan

For Respondent:

Lieutenant Chief Brian McDermott

List of Exhibits

For Appellant:

- P-1 Explanation of Benefits – Horizon Blue Cross Blue Shield for Ronald Carrasquillo
- P-2 Letter from New Pathway Counseling to Whom It May Concern dated August 27, 2014

For Respondent:

- R-1 Final Notice of Disciplinary Action dated May 20, 2014
- R-2 Preliminary Notice of Disciplinary Action dated March 6, 2014
- R-3 Excerpts from the Paterson Fire Department Rules and Regulations
- R-4 General Order 2004-13 (Injury/Sick Leave Policy)
- R-5 Correspondence from Behavioral Health of the Palm Beaches, Inc., dated January 3, 2014
- R-6 Discharge Summary from Behavioral Health of the Palm Beaches, Inc., dated January 20, 2014
- R-7 Correspondence from Montville Counseling Center dated January 28, 2014
- R-8 E-mail from Dr. Elizabeth MacGregor dated March 7, 2014
- R-9 Memorandum from Captain Javier Tovar to Chief Michael Postorino dated February 11, 2014
- R-10 Preliminary Notice of Disciplinary Action dated January 25, 2013
- R-11 Final Notice of Disciplinary Action, dated July 12, 2013