



STATE OF NEW JERSEY

In the Matter of Marilyn Camp
Atlantic County, Department of the
Administrator

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-435
OAL DKT. NO. CSV 11981-17

ISSUED: OCTOBER 19, 2018 BW

The appeal of Marilyn Camp, Employment Specialist, Atlantic County, Department of the Administrator, removal effective August 2, 2017, on charges, was heard by Administrative Law Judge Kathleen M. Calememo, who rendered her initial decision on September 21, 2018. No exceptions were filed.

Having considered the record and the Administrative Law Judge’s initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of October 17, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge’s initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Marilyn Camp.

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
THE 17th DAY OF OCTOBER, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 11981-17

AGENCY DKT. NO. 2018-435

**IN THE MATTER OF MARILYN CAMP,
ATLANTIC COUNTY, DEPARTMENT OF
PERSONNEL.**

Yolanda Lawson, Staff Representative, AFSCME NJ, for appellant pursuant to
N.J.A.C. 1:1-5.4(a)(6)

Jennifer P. Starr, Assistant County Counsel, for respondent (James F. Ferguson,
County Counsel)

Record Closed: August 7, 2018

Decided: September 21, 2018

BEFORE KATHLEEN M. CALEMMO, ALJ:

STATEMENT OF THE CASE

Respondent Atlantic County (County) removed appellant Marilyn Camp (Camp) from her position as an Employment Specialist, effective August 2, 2017. The County alleged there was just cause for the disciplinary action under N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, because on June 14, 2017, Camp did not contact her supervisor before taking two hours and fifty-five minutes of administrative leave time in violation of Atlantic County Policies and Procedures and her Last Chance Agreement. Camp contests her removal claiming that she had administrative leave time and she notified the designated supervisor in charge that she would be late.

PROCEDURAL HISTORY

On June 21, 2017, the County issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth charges against Camp and suspending her and recommending removal for a date to be determined. (R-1.)

A departmental hearing was conducted on July 12, 2017. The County issued a Final Notice of Disciplinary Action (FNDA) on August 1, 2017, removing Camp from her position, effective August 2, 2017. (R-1.) Appellant requested an appeal, and the matter was filed with the Office of Administrative Law (OAL) on August 18, 2017, to be scheduled for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The hearing was scheduled for December 12, 2017 but was adjourned at the County's request with Camp's consent. It was rescheduled for March 7, 2018 but adjourned due to a scheduling conflict with my calendar. I heard the case on August 7, 2018 and closed the record.

FACTUAL DISCUSSION

The parties stipulated to the following facts and I therefore **FIND** them as **FACTS**:

1. On Monday, June 12, 2017, Camp worked a full day.
2. On Tuesday, June 13, 2017, Camp was out of the office serving a suspension.
3. On Wednesday, June 14, 2017, Camp clocked in for work at 11:25 a.m., two hours and fifty-five minutes after her scheduled start time of 8:30 a.m.
4. Camp did not submit her request for administrative leave time for Wednesday, June 14, 2017 on the County's electronic system which is an email system for submitting requests and receiving responses.

5. Camp executed a Settlement and Last Chance Agreement with the County on October 6, 2015.

TESTIMONY

Shirley Smith (Smith) was Camp's supervisor during the incident and testified for the County. On November 1, 2017, Smith retired from the County. Prior to her retirement, Smith was an employment specialist supervisor for five years.

Smith testified that the County used an electronic system for the employees to input requests for leave. When a leave request was submitted, Smith would review it and approve it, if appropriate. In emergency situations, an employee could submit a verbal request by leaving Smith a voice message on her office telephone. Smith testified that Camp was familiar with the procedure and she used it for leave requests in the past. According to Smith, it was her responsibility as the employment specialist supervisor to approve requests for time off from work. This was not a task that she delegated to others in her office. Smith testified that when she was out of the office, she delegated certain responsibilities to Regina Ludmer, but she never delegated the responsibility to approve leave requests because that was a supervisor's job.

When Smith arrived at work on June 14, 2017, there were three members of her department missing from work, including Camp. Smith had received a voice mail message from one staff member advising her that the employee would not be at work due to sickness. The other employee had requested leave in advance. Only Camp had provided no prior notice of her absence. Smith stated that she asked other staff members if they had heard from Camp. Later that day, Smith testified that she saw Camp and asked her if she had requested time off from work for that morning. Camp's only response was that she used her administrative time. According to Smith, it was not normal practice for any employee to take time off without prior notice to their supervisor. Smith explained that her employees service the public, therefore, she needs to know in advance how many employees will be available each day.

Smith stated that Camp put in her administrative leave request after the fact, but she denied it as against policy for not requesting the leave time before the event. Smith understood that Camp had sufficient notice of the event that required leave time to make her request in proper order.

On cross-examination, Smith stated that she has discretion whether to deny or grant a request for leave. Smith believed that she had a fairly good working relationship with Camp. Smith responded that she keeps a calendar on her desk and her staff are welcome to write reminders or notes for her on it. However, a leave request could not be written on her calendar without it being approved first. Smith also stated that a staff member could not submit a leave request on behalf of someone else. According to Smith, the process was not burdensome because an employee always had the option of leaving a verbal voice message on Smith's telephone if there was no opportunity for advance notification through the electronic email system.

Regina Ludmer (Ludmer) works as an employment specialist and testified on behalf of the County. Ludmer testified that she is not a supervisor, so she cannot approve or deny leave requests. Over the course of her employment with the County, she recalled having requests for leave denied.

On June 12, 2017, Ludmer recalled having a conversation with Camp at the end of their work day about attending graduation activities involving their children. Ludmer was taking Friday off to attend a graduation. She recalled telling Camp that she would mark Camp's time on Smith's calendar when she wrote her own time. Ludmer wrote on Smith's calendar that both she and Camp would be off on Friday, June 16, 2017. She assumed from their conversation that Camp had also taken Friday off from work because the only day they discussed was Friday. Friday had been the day that the office was going to celebrate birthdays but it had to be changed due to the amount of employees taking Friday off from work.

Ludmer testified that all employee requests for leave must be entered in the computer system. Each employee has an individualized log in and password. No one can enter a request on behalf of a co-worker. Ludmer also stated that she made notations

on the calendar as a reference or reminder.

On cross-examination, Ludmer stated that she received training on the computer system in January 2017. She could not recall if there were complaints or problems with the system. Ludmer stated that when Smith was not available, Ludmer would be designated as the acting supervisor to deal with any day to day problems. She could not recall if she was ever approached about becoming a union shop steward. Ludmer stated that she wrote on Smith's calendar as a courtesy. Her recollection was that she had been speaking to Camp about graduation ceremonies and the only day discussed was Friday, so she assumed Camp's event was on Friday. Ludmer stated that all employees have access to Smith's desk calendar and anyone can write reminders on the calendar.

Rhonda Lowery (Lowery) is the Executive Director and the Director for Workforce Development. She has been employed by the County for thirty-four years and has been the Director for over ten years.

Employees are required to use the time clock to verify their time spent at work, break, and lunch. Lowery stated that the worker is required to use the computer system for leave requests. The computer generates an email and notifies the employee when the supervisor approves a leave request. She understood that the system is not liked by the employees. She stated that all employees received training but there are glitches in the system.

Lowery stated that she was familiar with Ludmer. Ludmer is an employment specialist, which is not a supervisory position. Lowery is also familiar with Camp, who is also an employment specialist.

Lowery was the director who signed Camp's Settlement and Last Chance Agreement on October 6, 2015. (R-2.) Lowery recalled that Camp's time and attendance were the concern prior to the agreement. She described it as "no call, no show."

After the June 14, 2017 incident, Lowery signed the PNDA. (R-1.) According to Lowery, because the employees deal with the public, it is important for the supervisors to

know who is available on any given day. She stated that it is not efficient for the department if employees do not show up for work on time without notice.

On cross-examination, Lowry stated that she was told about the event before she signed the PNDA. She did not remember being told about the notation on Smith's calendar. Lowry focused on the fact that Camp did not request leave before she failed to show up for work. She further stated that if she had known about the calendar notation, her decision would not have changed because the employees know they must call for emergencies or input their request into the computer system. She stated that there are always exceptions but those would involve life-threatening events.

Lowry testified that under the Atlantic County Policies and Procedures P.S. 5.11, any absence from work which is not approved by the supervisor is considered an unauthorized absence, known as "W-time."

Daphne Brown (Brown) testified on behalf of Camp. Brown is a shop steward for the AFSCME NJ, the union for the County employees. As the shop steward, Brown recalled that Camp had filed a complaint against Smith alleging disparate treatment and there had been telephone calls and complaints by Camp about her treatment.

Brown testified that she is familiar with the computer system, but she does not use it for administrative leave requests. As described by Brown, every employee gets three personal days each year to be used as needed by the employee. The time can be taken in any increments of one hour. Brown stated that she just tells her supervisor when she is taking her administrative time.

On cross-examination, Brown stated that she does not have the same supervisor as Camp because they work in different departments. Brown stated that she always calls first if she is going to be late. The computer system is new for the workers. Although Brown does not always use the computer system, she stated that she always lets her supervisor know if she is going to be late. She never just tells a co-worker.

On redirect, Brown stated that she understood that Ludmer was the acting supervisor when Smith was not available.

Melanie Griffin (Griffin) is a clerk who has been employed by the County for fourteen years. Griffin testified on behalf of Camp. Griffin knows Camp from the time they both worked in the Pleasantville office. Griffin stated that it is common to input administrative time after the fact. The main thing is to input your time prior to payroll so that you are paid correctly. Griffin was aware that there were personal confrontations between Smith and Camp. She also knew that Camp had trouble getting her vacation time approved, but after Camp filed a complaint alleging a hostile work environment, her vacation was approved.

On cross-examination, Griffin testified that many employees notify their supervisors, instead of using the computer for leave requests. Griffin stated that employees either tell their supervisor or they tell the person in charge. Smith was not Griffin's supervisor, but she also understood that Smith made Ludmer the acting supervisor when Smith was not available.

Marilyn Camp (Camp) testified on her own behalf. She stated that on June 12, 2017, Smith was not in the building. Her past practice was to talk to Ludmer when Smith was not available.

Camp described problems with using the computer system for leave requests. By way of example, Camp used her administrative leave request entered into the computer for April 17, 2017 to show that Smith never issued a response, even though Camp used the time with no ramifications. (P-1.)

On June 12, 2017, Smith was out of the building and Camp recalled being very busy with clients. Camp stated that at approximately 3:30 p.m., she learned that there would be no family representative at a school function for one of her children. As a single parent and because she had available administrative time, she decided to go. At the end of the work day, while conversing with Ludmer, Camp asked Ludmer to let Smith know. Camp also stated that Ludmer told her she would mark it on Smith's calendar. Because

she was requesting administrative leave, Camp was not concerned because there was never a problem with getting administrative time approved. It was not until she questioned Ludmer on June 21, 2017 that she realized Ludmer put the wrong date on the calendar. Camp stated that she never thought Smith would not approve her administrative time because the practice has always been that administrative time had to be entered into the computer before the next payroll cycle.

Camp testified that she was aware that there were only two months remaining on her last chance agreement. If she did not think that telling Ludmer was sufficient, she would have made the request on the computer or left a voice message for Smith. Camp acknowledged that she knew about the event in enough time for her to either enter it into the computer or leave a voice mail for Smith. She reiterated that she worked for the County for many years and there was never a problem with taking administrative time.

On cross-examination, Camp acknowledged that before taking time off from work she needed to tell her supervisor, but she believed that telling Ludmer, the acting supervisor, was good enough.

I asked Camp to describe her conversation with Ludmer on June 12, 2017. Camp responded that she told Ludmer that her daughter was getting an award during a school program and she would be attending. There was also a discussion about moving the birthday celebration from Friday, June 16, 2017 because so many people were going to be out of the office. Ludmer is the birthday coordinator for the office and according to Camp, after their conversation, Ludmer stated that she would take care of it and put it on Smith's calendar.

ANALYSIS AND ADDITIONAL FINDINGS OF FACT

To resolve the inconsistencies in the witness testimony, the credibility of the witnesses must be determined. Credibility contemplates an overall assessment of the story of a witness considering its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because

it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

I deem the testimony of Smith to be credible. She testified in a very business-like manner, with a flat affect. She did not fidget and maintained her composure during questioning. Her responses were thoughtful but not coached. Her factual assertions that supervisors must be notified before an employee takes time off from work was not disputed. Her responses were delivered in a no-nonsense matter of fact manner. There was no bias against Camp noticed by me during her testimony. There is nothing in the record to dispute Smith's assertion that she was unaware that Camp intended to be out of the office on June 14, 2017. Smith had prior knowledge that she would be missing two employees on Wednesday, June 14, 2017, so it is reasonable that missing a third employee from her department could prove problematic, especially when there was no notice. Smith testified that she designated Ludmer as the supervisor in charge when she was not available to handle daily operations. However, Smith stated that she did not delegate the authority to approve leave time requests to a non-supervisor. There is nothing inherently incredible in that statement. Smith's testimony about delegation of tasks was also supported by Ludmer's understanding of her limitations when she was acting supervisor in Smith's absence. Camp also testified that she did not request Ludmer to approve her leave time but simply to tell Smith that she would not be in the office.

Ludmer and Camp both recalled having a conversation at the end of the work day on June 12, 2017. There were similarities in their testimony about the time of the conversation, the discussion of graduation activities, and the need to change the birthday celebration from Friday, June 16, 2017. Ludmer acknowledged telling Camp that she was going to mark the event on Smith's calendar, but the date marked on the calendar was Friday, June 16, 2017 not Wednesday, June 14, 2017. There was nothing from Ludmer's testimony to suggest that she understood Camp was asking her to approve an administrative leave request for Camp. Surprisingly, Camp's testimony did not provide

details of exactly how she informed Ludmer of her need to use a certain amount of administrative leave on June 14, 2017. The testimony about the conversation was vague. I gave Camp the opportunity to provide more details about the nature of her conversation with Ludmer, but in her response she never mentioned the words administrative time, never provided details about how many hours she was taking, or even if she was planning to come back to work after the event. Camp has a substantial stake in the outcome, yet she responded to questions by using a flippant tone of voice. Her argument that she thought it was good enough to tell Ludmer was not persuasive, especially because she was not able to articulate exactly what she told Ludmer regarding the specific leave request. I **FIND** that Ludmer's testimony about the nature of the conversation had a greater ring of credibility and Ludmer's actions in writing on Smith's calendar that Camp would be out of the office on Friday, June 16, 2017 demonstrated that Ludmer did not know that Camp was taking administrative time on Wednesday, June 14, 2017.

While I found the testimony of Brown and Griffin to be credible, they were not present for the conversation between Ludmer and Camp and they both agreed that advance notice to a supervisor is required, even for administrative leave.

Lowry testified that she based her decision on her conversation with Smith who informed her that Camp took leave time without notice or approval. I deemed Lowry's testimony to be credible and consistent with the rules and regulations governing requests for administrative leave time. As set forth in the Agreement between the County of Atlantic and AFSCME Local #2302, "[r]equests for administrative leave of absence must be approved in advance by the employee's supervisor." (R-4.)

The testimony from Brown, Griffin, and Camp was that administrative leave time was flexible and it could be entered in the computer at any time prior to the next billing period for payroll purposes. While I do not deny that this may have been common practice among certain employees for computing time, it does not strike at the crux of the matter regarding whether leave can be taken without notice to a supervisor.

Based upon a review of the documentary evidence and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following as **FACTS** in this matter:

1. Before the end of the work day on June 12, 2017, Camp decided to use administrative leave time on Wednesday, June 14, 2017.

2. At the end of the work day on June 12, 2017, Camp and Ludmer had a conversation about attending graduation events and moving the office birthday celebration from Friday, June 16, 2017.

3. On June 12, 2017, Smith was out of the office so Ludmer was designated to handle routine office matters on her behalf.

4. Ludmer was not a supervisor and requests for leave of absence may only be approved by an employee's supervisor.

5. Camp did not enter her request for administrative leave on the computer system prior to taking three hours of administrative leave on June 14, 2017.

6. Camp did not leave a voice message for her supervisor, Smith, about taking administrative leave time on June 14, 2017.

7. Smith, as Camp's supervisor, did not approve Camp's administrative leave time entered after the fact in the computer system.

8. Under Camp's Last Chance Agreement, Camp acknowledged that there would be a zero tolerance by the County of "any future conduct resulting in a no-call, no-show, or any other unauthorized absences from work." (R-2.)

9. The Last Chance Agreement stated that any "future infraction implicating time and attendance issues resulting in 'W' time during the next 24 months shall be cause for and result in employee's removal (termination) from employment with Atlantic County."

LEGAL ANALYSIS AND CONCLUSIONS

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified people to public service. Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 147 (1965). A civil service employee who commits a wrongful act related to his or her employment, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

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

Here, the County has the burden to demonstrate by a preponderance of the evidence that the appellant violated the County's policies and procedures and the last chance agreement to justify the disciplinary action of removal. N.J.A.C. 4A:2-2.3(a)(12). This is a fact-sensitive determination as to whether Camp's claim of mentioning that she would be out of the office for her child's school event to the supervisor in charge satisfied the requirement in her collective bargaining agreement that requests for administrative leave must be approved in advance. (R-4.)

I **CONCLUDE** that the County has established by a preponderance of the evidence that all employees are required to notify their supervisors in advance before taking administrative leave time. This procedure is stated in the Collective Bargaining Agreement. (R-4.) The testimony from the supervisor, Smith, the Executive Director, Lowry, and all the County employees, including Camp, established that an employee cannot miss work without notifying her supervisor in advance. While I acknowledge that

the procedure for administrative time requests may be less formal than other types of leave requests, there is nothing in the record to support an employee taking administrative time and notifying her supervisor after the fact.

I further **CONCLUDE** that the testimony about Camp's conversation with Ludmer, regardless of whether Ludmer was designated as acting supervisor, does not support Camp's position that she gave Ludmer advanced notice of her request for administrative leave for June 14, 2017. There were no facts from the testimony to corroborate Camp's assertion that she notified Ludmer that she needed to take administrative leave time on June 14, 2017, or that notifying Ludmer was sufficient.

Finally, I **CONCLUDE** that Camp violated her last chance agreement by engaging in conduct that resulted in a no-call, no-show, or an unauthorized absence from work. Camp testified that she was aware there were two months remaining on her agreement. Camp also testified that she had the ability to enter her leave request on the computer or leave Smith a voice message regarding her absence. Camp did neither.

DECISION AND ORDER

I **ORDER** that the County's decision to remove Camp is **AFFIRMED**.

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.

September 21, 2018
DATE

Kathleen M. Calemmod
KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

September 21, 2018

Date Mailed to Parties:

September 21, 2018

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APPENDIX
LIST OF WITNESSES

For Appellant:

Daphne Brown
Melanie Griffin
Marilyn Camp

For Respondent:

Shirley Smith
Regina Ludmer
Rhonda Lowery

LIST OF EXHIBITS

For Appellant:

P-1 Computer Print-Out of Leave Requests

For Respondent:

R-1 PNDA and FNDA
R-2 Second Chance Agreement October 6, 2015
R-3 Policies and Procedures
R-4 Collective Bargaining Agreement
R-5 Chronology of past discipline