STATE OF NEW JERSEY

In the Matter of Doreen Meheski
Mercer County, Department of the Clerk

CSC DKT. NO. 2016-2936
OAL DKT. NO. CSV 4009-16

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: NOVEMBER 23, 2018 BW

The appeal of Doreen Meheski, Keyboarding Clerk 2, Mercer County, Department of the Clerk, removal effective February 2, 2016, on charges, was heard by Administrative Law Judge Jeff S. Masin, who rendered his initial decision on October 25, 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, at its meeting on November 21, 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 affirms the granting of the motion for summary decision and affirms the removal of Doreen Meheski.

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 21ST DAY OF NOVEMBER, 2018

Deirdré L. Webster Cobb

Deirdré 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
Trenton, New Jersey 08625-0312

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 4009-16
AGENCY DKT. NO. 2016 2936

IN THE MATTER OF DOREEN D. MEHESKI, COUNTY OF MERCER. DEPARTMENT OF THE CLERK.

Jeffrey J. Dunn, Esq., for appellant Doreen D. Meheski (Weir & Associates, LLC, attorneys)

Stephanie Ruggieri D'Amico, Assistant County Counsel, for respondent County of Mercer (Paul R. Adezio, County Counsel, attorney)

Record Closed: October 2, 2018 Decided: October 25, 2018

BEFORE **JEFF S. MASIN**, ALJ (Ret., on recall):

Doreen Meheski was employed with the Mercer County Clerk's Office as a senior clerk typist. On October 7, 2015, her employer served her with a Preliminary Notice of Disciplinary Action (PNDA), charging that she had been chronically or excessively absent or late, in violation of N.J.A.C. 4A:2-2.3(a)(4); had engaged in conduct that was unbecoming a public employee, N.J.A.C. 4A:2.2.3(a)(6) and "other sufficient cause", specifically, "chronic or excessive work without pay (Step 7)", N.J.A.C. 4A:2-2.3(a)(12). Following a departmental hearing, a Final Notice of Disciplinary Action was issued on February 2, 2016, removing Ms. Meheski from her position. She appealed this determination to the Civil Service Commission. On March 14, 2016, the Commission

transferred the contested case to the Office of Administrative Law. On December 16, 2016, the appointing authority filed a motion for summary decision, as authorized by N.J.A.C. 1:1-12.5. On January 9, 2017, counsel representing Ms. Meheski filed a reply to the motion. On September 4, 2018, the file was transferred to this judge, retired on recall, due to the voluminous calendar of the previously assigned judge.

In its motion seeking summary decision, the appointing authority, supporting its contentions with certifications from its Deputy Clerk, Walker Worthy, and from Maureen Sparano, employed in the Personnel Department as a clerk transcriber and, at the time of her certification, as a principal personnel technician, offers that the appellant worked in a position whose job title was included in the bargaining unit represented by AFSCME 2287. Her work schedule, governed by Articles 4.1 and 4.3 of the Agreement, consisted of a work day of seven hours per day with one-hour paid lunch, Monday through Friday. Paid time off was covered by the Agreement. Article 9.1 permitted bereavement days, with employees receiving five days for the death of specified immediate family members. Article 9.4(b) provided employees were to receive fifteen sick days per year. Article 9.4(k) provided that sick days would not accrue while an employee was on leave without pay, except for military leave,). Article 9.6 provided that full-time employees receive three personal days per year. The amount of vacation time an employee was entitled to depended upon the employee's number of years of employment, Article 22. As of the time of her termination, the appellant had been employed for twenty-four years and received twenty-five vacation days at the beginning of 2015. Under Article 22.11 vacation credits would not accrue while an employee was on leave without pay, except for military leave.

As of the beginning of calendar year 2015, Ms. Maheski was entitled to 105 hours of sick time, 210 hours of vacation time and 21 hours of personal time. According to the appointing authority, during the month of January 2015, she utilized seven hours of vacation time on January 2, 5, 6, 7, 9, 13, 14, 16, 20, 21, 29 and 30. In February, she used 7 hours of vacation time on February 10, 13 and 26. In March, she used 7 hours on March 4,1.5 hours on March 17, .50 on March 19, 7 hours on March 24 and 25, .50 on March 26 and 7 hours on March 31. In April, she used to .50 hours on

April 1 and 3.5 hours on April 9. In August, she used 3.5 hours on August 7 and 1.75 hours on August 27. Then on September 24, she used 2 hours of vacation time.

During 2015, Ms. Maheski used 7 hours of sick time on January 12, 15, 26 and 28. In February she used 7 hours on February 2, 3.5 hours on February 4, 7 hours on February 9, and 7 hours each on February 11, 12, 17, 18, 19, and 20. She also used 3.5 hours on February 25 and 7 hours on February 27. She used 7 hours of personal time on January 23 and August 25, 2015.

Ms. Maheski was docked hours on the following days in 2015: 7 hours on March 3, March 5 and March 6; 1.5 hours on March 20, 6.5 hours on March 26, 7 hours on March 2, 7 hours on April 8, and 7 hours on September 21.

In summary, the appointing authority asserts that as of April 20, 2015, the appellant had utilized 105 hours of sick time, 141.5 hours of vacation time and 7 hours of personal time. She was suspended without pay from April 20 through July 24, 2015. During that period of suspension, paid time off did not accrue.[1] She was prorated 7 hours of personal time, 61.25 hours of vacation time and 30.63 hours of sick time. Thus, when she returned to work on July 28, she had no hours of sick time remaining, 7.25 hours of vacation time remaining and 7 hours of personal time remaining.

According to Maureen Sparano's certification, Ms. Maheski called out of work on September 21, 2015. She had no time off available for her to utilize as of that date. When she returned to work the following day, she advised the deputy clerk that two family members, an aunt and cousin, had passed away the preceding Friday and that on Monday she had been tired. She also advised the deputy clerk that there was a funeral scheduled for that Wednesday and that she would be attending, utilizing, according to Mr. Worthy's certification, her remaining two hours of vacation time. The

[1] As explained at oral argument, while an employee had an allotment of fifteen days sick time for a year which could be utilized at any time during the year, sick time was actually accumulated on a monthly basis, at one and one-quarter day each month. Thus, if an employee was out of work for a period when sick leave did not accrue, the total sick time available to the employee for the calendar year would be reduced by a prorated amount.

deputy clerk discussed the absence of September 21, with the clerk and disciplinary charges were initiated. When the charges were sustained following a departmental hearing, the penalty was determined based upon reference to the Mercer County Table of Offenses and Penalties. Reference to Ms. Maheski's prior disciplinary record, combined with the findings of violations of the applicable Administrative Code provisions which formed the basis for the PNDA, resulted in a determination that she should be removed from her position, as the infractions charged constituted a Step 7 infraction, for which the penalty authorized under the Table of Offenses and Penalties was removal.

In moving for summary decision, the appointing authority asserts that none of the material facts are in genuine dispute. Therefore, under the principles laid out in Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995), the appointing authority is entitled to summary decision in its favor, in that the appellant violated the provisions of the Administrative Code by her excessive and chronic absenteeism, which constitutes conduct which is unbecoming a public employee, as it affects the morale and operations of the County Clerk's Office.

In response to the motion, the appellant initially produced only a letter reply, unsupported by any affidavits or other evidentiary materials. However, counsel for the appellant points to the documentation offered by the respondent in support of its motion, asserting that while his client does not dispute the days from work that would missed, as they are outlined in the appointing authority's brief, nevertheless, reference to the chart on pages 3 and 4 of that brief shows that she only used 14 sick days in 2015, not 15. On September 17, 2018, Ms. Meheski provided an Affidavit. In it she claims that prior to 2015, she had no disciplinary record, but in 2015 she "refused to take part in an office event, a wedding, due to sincerely-held religious beliefs." She offers that she believes that her refusal led to "the supervisors at the County Clerk's Office seeking ways to remove me from the office." She was forced to miss work due to her own personal health problems and those of her mother, for whom she "was the primary caretaker." She used leave approved by New Jersey law, as well as sick and vacation time. She claims that she was "wrongfully told that I had exhausted my sick time for 2015, and was put in docked status for missed time, and a series of disciplinary actions were taken

against me, including multiple suspensions." She did not appeal these "due to fear of furthering animosity and my belief in civil obedience." She acknowledges having called out on September 21, 2015, due to the death of two relatives. Due to her diagnosed depression, these caused "me to suffer debilitating bereavement." She offers that prior to her termination, Tammy Barringer, a timekeeper in the County Clerk's office, told her "that I had some additional form of administrative leave, such as FMLA, available to me that I could have taken during my absences." She states that Barringer told her that this had not been brought to Meheski's attention because, "they wouldn't let me tell you." Another employee, Yochin Duffell, "previously told me that "they are trying to get you fired." When she received her notice of termination, she requested that her union representative represent her, but he refused to do so.

In reply to the affidavit, counsel for the County offers documentary evidence that Ms. Meheski knew about FMLA, as in 2010, she received a notice explaining that her request for a medical leave of absence that met the requirements under the FMLA, had been approved, while in 2013 and 2014, she applied on several occasions for medical leave which was approved, although the forms presented as evidence note that while these requests for medical leave and then for an extension of previously approved medical leave were granted, these requests did "not meet the requirements under the FMLA . . . ." Counsel notes that Meheski's affidavit does not dispute that on September 21, 2015 she called out without having any time available for her to use.

As the appointing authority correctly argues, Ms. Meheski has not denied that she called out of work on September 21, 2015, because, as she offers, of the death of two relatives. She claims that these deaths caused debilitating bereavement. She also notes that she had been diagnosed with depression. She offers no evidence to support the latter contention, but even if she was so debilitated by these losses, that does not change the fact that when she called out she did not have any available sick time to utilize to cover her absence. She makes assertions that employees told her that she "had additional time available to her" of some undefined type that "they" apparently purposely, "wouldn't let [Ms. Barringer] tell" her about, and that she was told by an employee that "they" were trying to get rid of her. She also refers to some alleged

animus to her, relating to her religious beliefs, that she "believe[s]" caused "the supervisors"[2] in the office to seek ways to remove her. Yet she does not appear to deny that she was absent as frequently as the appointing authority claims, or the records offered document. And she acknowledges that she received a series of disciplinary actions that she did not appeal, offering as a reason for not challenging them her "fear of further animosity" and her "belief in civil obedience." Thus, it appears that while the appellant does not deny the essential facts upon which the appointing authority seeks summary decision, including the multiple days when she was absent due to, it must be assumed, sickness, including September 21, 2015, as well as the multiple prior steps of discipline to which she was subjected, she seems to seek to raise the possibility that her assertion of religious beliefs was the cause of what she seemingly sees as a plot to remove her. The sole cited reference to anything that she contends might have prompted this animus is her refusal in 2015 to take part in what she describes as an office event, identified as a wedding, in which she apparently "refused to take part" "due to sincerely-held religious beliefs." Her affidavit does not indicate exactly what she means by not taking part and not taking "part in the ceremony", although it may be that she means to attend the event. She does not indicate if this was a wedding involving office personnel, or a wedding that was taking place in the Clerk's office between non-office personnel. She does not explain how she manifested this refusal, whether she ever told anyone why she would not "take part." Indeed, she makes no reference to ever having revealed her "sincerely-held religious beliefs" to anyone in the office, whether to supervisors or to staff members.

The New Jersey Supreme Court defined the standard for determining motions for summary decision in Brill v. The Guardian Life Insurance Company of America, et al., 142 N.J. 520 (1995). In this case, the Court elaborated upon the standards first established in Judson v. People's Bank and Trust Co. of Westfield, 17 N.J 67, 74-75 (1954). Under the Brill standard, a motion for summary decision may only be granted

[2] It appears that Meheski's references to "they" telling Barringer not to tell her of time available to her and the "they" referred to by Duffell are references to "supervisors." Nowhere does Meheski identify which supervisor(s) were the one or ones seeking her ouster or the withholding of the information from her. Also, nowhere does she identify whether Duffell was personally told of the intent to get her fired, or whether Duffell only was reporting hearsay information.

where there are no "genuine disputes" of "material fact." The determination as to whether disputes of material fact exist is made after a "discriminating search" of the record, consisting as it may of affidavits, certifications, documentary exhibits and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of "genuine" disputes of material fact. The substantive law governing a dispute determines which facts are material. Only disputes regarding "those facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Dungee v. Northeast Foods, Inc., 940 F. Supp 682, 685 (D.N.J. 1996), quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2511, 91 L. Ed.2d 202, 211 (1986) (Anderson).

In Judson, at 75, the Supreme Court stated that the material facts allegedly in dispute upon which the party opposing the motion relies to defeat the motion must be something more than "facts which are immaterial or of an insubstantial nature, a mere scintilla, fanciful, frivolous, gauzy or merely suspicious, . . . ," (citations omitted). Brill focuses upon the analytical procedure for determining whether a purported dispute of material fact is "genuine" or is simply of an "insubstantial nature." Brill, at 530. Brill concludes that the same analytical process used to decide motions for a directed verdict is used to resolve summary decision motions. "The essence of the inquiry in each is the same: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that a party must prevail as a matter of law.'" Id. at 536, quoting Anderson, at 477 U.S. 251-52, 106 S.Ct 2505, 2512, 91 L.Ed 2d 214. In searching the proffered evidence to determine the motion, the judge must be guided by the applicable substantive evidentiary standard of proof, that is, the "burden of persuasion" which would apply at trial on the merits, whether that is the preponderance of the evidence or the clear and convincing evidence standard. If a careful review under this standard establishes that no reasonable fact finder could resolve the disputed material facts in favor of the party opposing the motion, then the uncontradicted facts thus established can be examined in the light of the applicable substantive law to determine whether or not the movant is clearly entitled to judgment as a matter of law.

However, where the proofs in the record are such that "reasonable minds could differ" as to the material facts, then the motion must be denied and a full evidentiary hearing held.

Ms. Meheski's comments concerning some alleged animus arising from a 2015 wedding and her "refusal to take part" are properly characterized, from an evidentiary standpoint, as a mere "scintilla" of "gauzy" assertions that are both "insubstantial" in character and, in the absence of any detail and supporting evidence, "immaterial." As noted, she fails to provide any details about the circumstances of the wedding and of her "refusal." She provides hearsay about "they" wanting to get her out of the office and of withholding, at the behest of "they," of some unspecified information about additional leave time. And she does not explain, with any particularity, how the alleged animus might provide any defense to the undisputed facts of her numerous absences and her use of all available sick time prior to her calling out sick on September 21, 2015. As for her comment about the debilitating impact of the two deaths, while it may well be that she was devastated by these unfortunate events, it is still the fact that she called out sick and had no sick time available to utilize. As such, I **FIND** that the material facts underlying the appointing authority's charges and supporting its motion are undisputed.

I **FIND** that on September 25, 2015, Ms. Meheski called in sick. As of that date, she did not have any available sick time to utilize. She had exhausted her allotted number of sick days for calendar year 2015. Her annual allotment of fifteen sick days was reduced due to her having been out of work on suspension without pay earlier that year, which properly resulted in the reduction of her allotted sick days as per the contract between the bargaining unit and the County. I **FIND** that her use of sick time that was unavailable constituted an abuse of sick time and continued what was a pattern of chronic and excessive absence as established by prior disciplinary actions. I **FIND** that, for the reasons explained above, Ms. Meheski's allusions to some sort of religious animus and of an attempt to terminate her employment apparently arising from such animus constitute the sort of "insubstantial" and "gauzy" assertions of fact that the Supreme Court identified as insufficient to establish the existence of relevant, material and genuine factual disputes that can defeat summary decision in the face of

undisputed facts that support the motion. In addition, to the extent these allusions may be viewed as seeking to raise legal defenses to an otherwise established factual basis for a finding of violations of the Administrative Code and for removal, the same analysis applies. As such, I **CONCLUDE** that the undisputed facts establish that Ms. Meheski was chronically or excessively absent or late, in violation of N.J.A.C. 4A:2-2.3(a)(4) and engaged in conduct that was unbecoming a public employee, N.J.A.C. 4A:2.2.3(a)(6) and constituted "other sufficient cause", specifically, "chronic or excessive work without pay(Step 7)", N.J.A.C. 4A:2-2.3(a)(12).

It is fundamental to the relationship between employer and employee that the employee will appear for work when scheduled. A contractual agreement that establishes the right of an employer to a specific number of days of sick time that may be taken during each calendar year establishes a framework for determining if the employee honors the limits or not. Here, the employee on this occasion, as before, failed to appear for work when she did not have any available sick time remaining. This establishes that the employee was guilty of excessive absenteeism.

> New Jersey courts have applied the standard of "conduct unbecoming" in numerous cases involving the discipline of police officers. For instance, in In re Emmons, 63 N.J. Super. 136 (1960), the Appellate Division confronted the issue whether an off-duty police officer's refusal to cooperate and to submit to a sobriety test following an automobile accident constituted "conduct unbecoming an officer." Id. at 140. The court observed that "[t]he phrase is an elastic one," that "has been defined as 'any conduct which adversely affects the morale or efficiency of the bureau . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.'" Ibid. (quoting In re Zeber, 156 A.2d 821, 825 (Pa. 1959)).
>
> [Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998)].

Certainly, when an employee fails to appear for work as scheduled that employee has acted in a manner that, by definition, affects the efficiency of the employing agency. And where the conduct is chronic, not only is this tendency to impair efficiency exacerbated, but the conduct can also negatively affect the public perception of the

agency. Thus, Ms. Meheski's failure to appear and her excessive absenteeism does constitute conduct unbecoming a public employee.

As noted, Ms. Meheski does not dispute her prior disciplinary record. Her unsanctioned absence on September 25, 2015, was the latest of a string of such absences. The Table of Offenses utilized by the County allowed for removal for a seventh offense. I **CONCLUDE** that removal was the appropriate penalty.

ORDER

The County's motion for summary decision is **GRANTED**. Ms. Meheski's appeal of the appointing authority to remove her from her position is **DENIED.** On this de novo consideration, **IT IS HEREBY ORDERED** that she be **REMOVED.**

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, 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.

October 25, 2018
DATE

JEFF S. MASIN, ALJ (Ret., on recall)

Date Received at Agency: 10-25-18

Date Mailed to Parties: 10-25-18

mph

LIST OF EXHIBITS:

For Appellant:

A-1 Certification of Doreen Meheski

For Movant/Respondent:

R-1 Certification of Maureen Sparano, with attachments A through F

R-2 Certification of Walker Worthy, with attachments A through D

R-3(a)(b)(c) and (d) Personal Notices sent to Doreen Meheski, dated July 7, 2010, May 6, 2013, January 8, 2014 and March 18, 2014