



STATE OF NEW JERSEY

In the Matter of Shawynae Loatman  
Woodbine Developmental Center,  
Department of Human Services

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2017-3384  
OAL DKT. NO. CSV 07313-17

ISSUED: AUGUST 3, 2018 BW

The appeal of Shawynae Loatman, Human Services Assistant, Woodbine Developmental Center, Department of Human Services, 20 working day suspension, on charges, was heard by Administrative Law Judge Tama B. Hughes, who rendered her initial decision on June 26, 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 August 1, 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 suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Shawynae Loatman.

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 1ST DAY OF AUGUST, 2018



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 07313-17

AGENCY DKT. NO. 2017-3384

**SHAWYNAE LOATMAN,  
DEPARTMENT OF HUMAN SERVICES,  
WOODBINE DEVELOPMENTAL CENTER.**

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**William A. Nash, Esq.**, for Shawynae Loatman, appellant (Nash Law Firm, LLC, attorney)

**Steven Katz**, Employee Relations Coordinator, for Department of Human Services, Woodbine Developmental Center, respondent, appearing pursuant to N.J.A.C. 1:1-5.4(a)(2)

Record Closed: June 20, 2018

Decided: June 26, 2018

**BEFORE TAMA B. HUGHES, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Shawynae Loatman ("appellant" or "Loatman") a Human Services Assistant (HSA), with the respondent, Woodbine Developmental Center ("respondent" or "Woodbine") appeals a Final Notice of Disciplinary Action and the twenty-day suspension

for Insubordination (C9.2). The basis for the suspension originate from Loatman's alleged refusal to complete Active Treatment Notes (Notes) and usage of derogatory language towards Cottage Training Supervisor (CTS), Brooke Butler (Butler).

### PROCEDURAL HISTORY

On April 29, 2015, Loatman was issued a Preliminary Notice of Disciplinary Action (PNDA) suspending her for twenty days on a date to be determined. A departmental hearing was held on March 28, 2017, the result of which was the issuance of a Final Notice of Disciplinary Action (FNDA) on April 3, 2017, suspending Loatman for twenty days.<sup>1</sup> Loatman requested a hearing and the matter was transmitted to the Office of Administrative Law where it was received on May 22, 2017, to be heard as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on May 11, 2018, and upon receipt of written summations, the record closed on June 20, 2018.

### FACTUAL DISCUSSION

**Grant Robinson (Robinson)**, a Supervisor of Professional Residential Services (SPRS) for Woodbine, testified that he has worked for Woodbine for the past twenty-five years. Woodbine is a long-term care facility for men and women with mental and physical disabilities (consumers) who cannot care for themselves. In addition to taking care of consumers' physical needs (feeding, bathing, clothing), the facility offers various services which include among other things, programs for speech and hearing.

According to Robinson, each consumer has an individualized program that staff members from all disciplines (Nursing, HSA, Psychology, etc.), follow to take care of a consumer. Documentation or Notes are placed in consumers files based upon different situations that may occur during the day. The Notes allow staff members to gauge how a consumer is progressing or digressing from their program and evaluate their needs. Notes may include among other things, a consumer's refusal to attend a program on one

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<sup>1</sup> Woodbine's representative, Steven Katz sought to amend the FNDA during the hearing conceding that Loatman completed the Notes and that the only issue that remained before the Tribunal was the derogatory language and conduct towards CTS Butler.

of the days; refusal to eat; or acting out. Such actions are documented so that a consumer's care can be adjusted accordingly. Notes are continuous and it is the responsibility of staff members who interact with a consumer to write Notes in a consumer's file with whom they have interacted with. Failure to do so by a staff member is grounds for discipline.

Woodbine has implemented a Disciplinary Action Program which outlines various offenses and levels of discipline that may be imposed based upon the incident. (R-2.) It also has a zero tolerance for a hostile work environment. When discipline is initiated, the facility has a checks and balances in place. Part of that checks and balances is a review of the file for completeness. When the instant matter arose, it was his job to ensure that all information had been gathered; determine if the charge was appropriate and review everything for accuracy and completeness and then forwarding the matter for a hearing and/or settlement. He did not witness the incident and no additional investigation was undertaken.

Robinson went on to state that as part of his responsibilities, he provides supervision to second line supervisors who oversee certain buildings where the consumers live. He has known Loatman for approximately ten years and was at one point her supervisor, but in his current position, she is not in his chain of command. He is also familiar with Butler. It was his opinion that Butler was a good supervisor who was attentive to her staff and consumers and was never known to be partial to either. She was not known to have conflicts with other staff members.

On cross-examination, Robinson was questioned about employee training – specifically whether Loatman had received training on Documentation/Notes when she transferred from food handling into direct care as a HSA. In response he stated that all staff members, including Loatman, are routinely in-serviced on documentation. In-service training covers a myriad of topics that range from consumer injuries to trips on and off the facility grounds. While he could not recall the last time Loatman received in-service

training, she was not on the "non-compliant list" which he checks periodically as part of his job responsibilities.

Robinson was also questioned whether he knew a Benita Dickerson, a CTS in Cottage 8 (C-8). In response, he stated that he knew Dickerson and that she and Butler were friends. At the time of the incident, he was not the direct supervisor of Butler as he was an Assistant SPRS. Butler's immediate supervisor was the Head Cottage Training Supervisor.

**Brooke Butler (Butler)**, testified that she has been a CTS since 2015 which was when she started working at Woodbine. Prior to Woodbine, she worked in a group home for Vineland Development Center. Her current responsibilities include direct care to consumers and administrative oversight of staff members which include HSA's. According to Butler, HSA's are responsible for consumer personal hygiene and assistance in feeding, active treatment, and are required to complete documentation.

She is familiar with Loatman, an HSA in C-8, from a shift that she (Butler) picked up on April 4, 2015, and because of an incident that occurred between the two of them on that same date. Specifically, Loatman had been charged with taking a couple of consumers to church which was located on the facility grounds. According to Butler, when a consumer goes on an outing, the event and any concerns from the outing are required to be documented in the consumer's Notes. The Notes should be completed as expeditiously as possible as things happen as the day goes on and the information may not get recorded.

Several times throughout the day she reminded Loatman to complete the required documentation. The last time she told her to complete the Notes which was at the end of Loatman's shift, Loatman told her that, "I get on her fucking nerves" and that she (Butler) should stop trying to be a "super CTS... ." Loatman additionally told her that "the management ain't doing nothing to her so call them because they know who she be and

she is Shawynae and I can tell anybody I want". The inference being that management would not do anything to her if Butler were to report the incident.

Butler testified that immediately after Loatman made the comments, she called the on-duty Assistant SPRS, Penny Maurone (Maurone), who instructed that both she and Loatman complete a written statement about the incident which she did. (R-3.) Maurone arrived at C-8 a few minutes later and spoke separately to the two of them.

Butler acknowledged that she is familiar with Dickerson through work however did not elaborate on whether they socialized outside of work.

On cross-examination, Butler stated that she had been working at Woodbine for approximately three months when the incident occurred. While she could not remember the exact number of times she asked Loatman to complete the Notes, she believes it was several times during the day - the last time ending with Loatman using derogatory language towards her.

When questioned where the incident occurred, Butler indicated that they were in the front of the cottage. In describing the location, she stated that she was in the CTS office and across the small hallway, Loatman was in the "family room." Neither room was very large and there was not much distance between the doorway of the two rooms. She could not remember what Loatman was doing in the family room; however, noted that there was a bathroom, TV and a table in that room. Butler also indicated that the binders for the Notes are kept in that room and that staff use the table to write on. It was her belief that Loatman had not yet completed the Notes at the time of the incident; however, upon arrival of Maurone, was directed to do so.

**Shawynae Loatman (Loatman)**, testified that she was hired by Woodbine in June 2005 as a part-time HSA for a year. In 2006, she transferred into Food Services where she held the title of food service worker. In 2012 she took the position of full-time HSA which title/position she currently holds today. When she was first hired, as part of her

orientation, she was trained on Documentation – specifically Notes. When she became a full-time HSA, she once again received orientation and in-service training.

On April 4, 2015, she worked her normal shift (7:00 a.m. to 3:30 p.m.) in C-8. At the time there were approximately thirty residents in C-8 with three HSA's on duty. Butler was the CTS on duty however this was the first time that she had worked on the same shift as her. Early that the morning, Butler asked Loatman to take three consumers to church, which she did as she was trying to be helpful and "give her a chance" as she (Butler) had a reputation for being harassing. Nothing eventful occurred on the way to, from, or at church with the consumers – the church located only twenty to thirty feet away from C-8.

Upon returning from church, she notified Butler of their return and went directly to the game room to start getting the consumers ready for lunch. Butler did not request or saying anything about documenting the church visit. While at lunch, Butler approached her and inquired whether Notes were required in the consumers' records after attending church. In response, she stated "not to her knowledge." An hour later Butler asked her again if Notes were required, to which she stated "no, I don't think so". An hour after that Butler again approached her, this time stating that she (Loatman) needed to document the church visit.

Around 2:30 p.m., Butler approached her and asked if she had a chance to document the church visit to which she responded that she had not; however, would get to it. At no time did she refuse to do the Notes. Given the fact that it was close to the shift change and there was consumer care required to be done prior to the end of the shift, she was not able to complete the documentation until 3:15 p.m. which was the end of her shift. It was at that time that she made her way to the family room to update the consumers' Notes.

When she was in the family room writing the Notes, Butler was in the CTS office located across the hallway and again asked her if she had done the Notes. Loatman



kiddingly responded that she would do them tomorrow - both laughing as she was already in the process of completing them and was not working the next day. At no time did Butler explain the importance of doing the Notes in a timely fashion. In fact, she requested Butler to in-service her again because she did not recall learning that documentation was required when a consumer was taken to church. Loatman went on to state that she never used the terminology that she was accused of nor did she yell, scream or be hostile towards Butler. Her only comment to Butler was that she did not recall learning that Notes were required when taking a consumer to church. It was apparent to Loatman that Butler was determined to "debate" her. While she heard Butler on the phone with Maurone, she could not hear the conversation. When Butler got off the phone with Maurone, she came into the family room and told her (Loatman) that to write a statement.

When Maurone arrived, she questioned what the issue was. In response, Loatman told her that there was no issue, but rather a training question on when Notes were required to be completed. She wrote a statement to that effect. (P-2). The first time she learned that she was accused of using vulgar language was when she received the Preliminary Notice of Disciplinary Action four or five months later.

It is Loatman's belief that Butler's actions were premeditated and retaliatory and resulted from a conflict that she had with Butler's close friend and colleague Dickerson, whom she had filed a harassment charge against. At the time she filed the harassment charges, Dickerson was her supervisor. In describing some of the harassing conduct, Loatman stated that during shift change, Dickerson and Butler would get together and if she (Loatman) asked a question they would either ignore her or say something rude. On several occasions, when she walked in the room, they would slam the door on her. The charges were ultimately deemed unfounded and since that time her relationship with Dickerson has been uncomfortable. According to Loatman, Dickerson uses her power in a harassing manner which is exactly what Butler did on the date in question. She went on to state that Butler had a reputation for harassing the workers to get things done. It is her opinion that Butler lied and fabricated the entire incident due to her close friendship with Dickerson.

## FINDINGS

Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the 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 Perrone, 5 N.J. 514, 522 (1950). A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." *Id.* at 521–22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, "[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). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Cmty. Affairs Dep't, 182 N.J. Super. 415, 421 (App. Div. 1981).

After hearing the testimony presented and review of the documentary evidence submitted, and having had an opportunity to observe the witnesses and assess their credibility, I **FIND as FACT** that the testimony presented by Butler to be credible and consistent in that she reminded Loatman several times during the shift to complete the Notes for the consumers who were taken to church earlier in the day. I further **FIND** that the last time she reminded Loatman to complete the Notes, Loatman used derogatory

language towards Butler. I **FIND** that as a result of Loatman's conduct, Butler called in the Assistant SPRS on duty, Maurone, to report the incident. I **FIND** that Maurone within minutes of being called, responded to C-8 and spoke to both Loatman and Butler regarding the incident. I **FIND** that it is important for Notes to be completed as expeditiously as possible to ensure accuracy of reporting and consumer welfare.

I further **FIND** Loatman's testimony and written statement inconsistent. Specifically, Loatman testified that after being reminded several times to write the Notes, she went to the family room at the end of her shift to write them. When Butler, who was across the hall in the CTS office asked if she had written the Notes, she kiddingly told Butler that she would write them the following day – both laughing as Loatman was off the following day and she was already in the process of writing them.

This testimony was contradictory to her statement wherein she reported that "my shift has ended and I wanted to go home. She demanded that I do it. I then wrote my active treatment notes." (P-2).

I further **FIND** that Loatman's and Butler's written statements, both of which were written almost contemporaneous with the event, were consistent in that both reflected intent and comments by Loatman that her shift was at and end; she wanted to go home; her belief that she was not in-serviced on writing Notes for church visits; and that she was not going to complete the Notes until commanded to do so.

I **FIND** that Loatman's testimony did not "hang together" as it relates to how rude and insulting Butler's and Dickerson's treatment towards her was over the preceding months had been, yet on the date of the incident, she went out of her way to assist Butler to "give her a chance."

Regarding Loatman's testimony that Butler's actions were premeditated and retaliatory on behalf of her (Butler's) friend Dickerson, I **FIND** that no credible evidence was presented in support of such an argument. The testimony that was presented

consisted of unsupported hearsay and conjecture. The same holding true for Loatman's assertion that Butler had a reputation of harassing staff members to get work done.

### **LEGAL DISCUSSION AND CONCLUSION**

A civil service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provisions of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

In an appeal concerning major disciplinary action, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). This applies to both permanent career service employees and those in their working test period relative to such issues as removal, suspension, or fine and disciplinary demotion. N.J.S.A. 11A:2-14, 2-6. The State has the burden to establish by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1982).

This matter involves a major disciplinary action brought by Woodbine against Loatman seeking a twenty-day suspension. Specifically, Loatman has been charged with insubordination - C9 (intentional disobedience or refusal to accept a reasonable order,

assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor)

The "incident" giving rise to the FNDA identifies the following basis for the sustained charges:

On April 4, 2015 at 3:15 p.m. you were directed to complete Active Treatment Notices on three gentlemen who you had taken to church that day. You began to yell and curse refusing to complete the documentation.

Loatman's argument centers on credibility or lack thereof on Butler's part and a perceived premeditated and retaliatory motive by Butler due to a complaint that she had previously lodged against Butler's friend Dickerson. For the reasons cited above - I disagree.

Insubordination is defined as intentional disobedience or refusal to accept a reasonable order, assaulting or resisting authority; disrespect or use of insulting or abusive language to supervisor. Black's Law Dictionary 870 (9th ed. 2009) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Id. at 802. Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority; disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

Similarly, case law generally interprets the term to mean the refusal to obey an order of a supervisor. See e.g. Belleville v. Coppla, 187 N.J. Super. 147 (App. Div. 1982); Millan v. Morris View, 177 N.J. Super. 620 (App. Div. 1981); Rivell v. Civil Service Comm'n, 115 N.J. Super. 64 (App. Div. 1971), certif. denied, 59 N.J. 269 (1971).

According to Webster's II New College Dictionary (1995) "insubordination" refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience.

I **CONCLUDE** that respondent has demonstrated by a preponderance of the legally competent, credible evidence that appellant committed acts of insubordination. Appellant's behavior towards her supervisor in raising her voice and use of inappropriate and derogatory language, demonstrated defiance and an utter lack of respect for authority.

### **PENALTY**

A civil service employee who commits a wrongful act related to her duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). This requires a de novo review of appellant's disciplinary action. In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). The question to be resolved is whether the discipline imposed in this case is appropriate.

Respondent seeks to suspend the appellant twenty-working-days for her actions. In her thirteen years working for Woodbine, appellant has been disciplined multiple times. (J-1.) In 2006, she was disciplined for fighting or creating a disturbance and insubordination for which she received a ten-day suspension. On at least six occasions from 2007 through 2017, she was disciplined for chronic excessive absenteeism. The penalties ranged from a written warning and official reprimand to a six-day suspension January 2009. On three occasions (July 28, 2011, February 1, 2013 and May 2, 2013), she was disciplined for violation of a rule, regulation, policy procedure or administrative

decision. The penalties ranged from a final to a six-day suspension in May 2013. She has been disciplined for being absent from work without permission and/or proper notice on two occasions (October 5, 2013 and September 12, 2017) for which she received either an official reprimand or a written warning. In March 2017, she received a written warning for a serious mistake due to carelessness.

After having considered the proofs offered in this matter and the impact of the appellant's behavior upon the institution, and after having given due deference to the principal of progressive discipline, I **CONCLUDE** that appellant's violations are significant enough to warrant a penalty, which, in part, is meant to impress upon her the seriousness of her actions and conduct towards her supervisor.

As this is a second violation for insubordination, I **CONCLUDE** that the action of the appointing authority in suspending the appellant for twenty working days is reasonable and consistent with progressive discipline, and should be affirmed.

### **ORDER**

I hereby order that the charges are sustained. Accordingly, I **ORDER** that the action of the respondent is **AFFIRMED**, and the appellant shall be suspended for twenty working days.

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.

June 26, 2018

DATE



TAMA B. HUGHES, ALJ

Date Received at Agency:

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Date Mailed to Parties:

\_\_\_\_\_

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**APPENDIX**  
**WITNESSES**

**For Appellant:**

Shawynae Loatman

**For Respondent:**

Grant Robinson

Brooke Butler

**EXHIBITS**

**For Appellant:**

P-1 Residential Services Daily Tour of Duty Report (1 page)

P-2 Confidential Incident Statement of Shawynae Loatman (1 page)

**For Respondent:**

R-1 Final Notice of Disciplinary action (1 page)

R-2 New Jersey Department to Human Services Disciplinary Action Program (6 pages – two sided)

R-3 Confidential Incident Statement of Brooke Butler (2 pages)

**Joint Exhibits:**

J-1 Shawynae Loatman's Disciplinary Record (6 pages)