



STATE OF NEW JERSEY

In the Matter of Eric Meikle, Linden,
Department of Public Property and
Community Services

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2020-657
OAL DKT. NO. CSV 13421-19

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ISSUED: DECEMBER 21, 2022

The appeal of Eric Meikle, Tree Maintenance Worker 1, Linden, Department of Public Property and Community Services, removal, effective August 16, 2019, on charges, was heard by Administrative Law Judge Andrew M. Baron (ALJ), who rendered his initial decision on November 21, 2022. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of December 21, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ'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 Eric Meikle.

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 DECEMBER, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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

GRANTING MOTION

FOR SUMMARY DECISION

OAL DKT. NO. CSV 13421-19

AGENCY DKT. NO. 2020-657

**IN THE MATTER OF ERIC MEIKLE,
CITY OF LINDEN, DEPARTMENT OF
PUBLIC PROPERTY AND COMMUNITY
SERVICES.**

Seth Kennedy, Esq. for Petitioner

Robert J. Merryman, Esq., for Respondent (Apruzzese, McDermott, Mastro & Murphy, PC, attorneys)

Record Closed: April 13, 2022

Decided: November 21, 2022

BEFORE **ANDREW M. BARON**, ALJ

STATEMENT OF THE CASE

Petitioner appeals from a determination that his employment as a Laborer with the City of Linden (City) should be terminated as a result of submitting a false medical note excusing an absence from work.

By Consent, the parties agreed to waive a hearing and allow the matter to go forward as a Motion for Summary Disposition with a Joint Stipulation of Facts as set forth below.

Petitioner did not invoke the 180-day rule.

Petitioner Eric Meikle was hired as a Laborer on October 26, 2006 for the position of Laborer.

Over the course of his approximate twelve years of employment with the City, petitioner incurred a history of at least seven prior disciplines, both minor and major, the most serious of which was on December 19, 2016 when he incurred a fifteen day suspension for Incompetency, Inefficiency, Insubordination and Conduct Unbecoming an Employee.

In June 2019, it was brought to the attention of Linden City officials that petitioner was one of several Sanitation employees who provided questionable medical notes to support an unexcused absence from work.

After conducting an investigation, the City was able to confirm that in fact, the note submitted by petitioner for an absence on January 18, 2018 was in fact fraudulent as he had never been treated by the physician whose signature was on the medical note. Petitioner does not deny that the note was fraudulent.

Over the course of his twelve years of employment, petitioner has a history of work attendance violations, four of which occurred over a short time span starting February 5, 2019 through May 16, 2019. The May 16, 2019 offense, which occurred one month prior to the Notice of Termination, also involved abuse of sick time and a suspension.

Through independent sources, the City learned that a year earlier, petitioner submitted a fraudulent doctor's note to support an excused absence from a physician he had never seen.

PROCEDURAL HISTORY

On June 18, 2019, the City of Linden formally notified petitioner of charges against him and its intention to terminate him. A departmental hearing was held on July 15, 2019, during which petitioner essentially admitted to providing a fraudulent doctor's note to support an absence from work, and the hearing officer sustained the charges and recommendation of termination. Thereafter, this appeal was filed, and the matter was transmitted to the Office of Administrative Law.

DISCUSSION OF UNDISPUTED FACTS

Petitioner was employed as a Laborer for the City of Linden for over twelve (12) years and was a member of the Teamsters Local 469 whose purpose among other things was to represent and look out for the interest of its members who become involved in employment disputes. As such, and with a history of several prior offenses, many of which involved attendance infractions, petitioner cannot argue that he was unfamiliar with City policies involving attendance and lateness for work.

Though he does not dispute the facts, petitioner argues that under a system of progressive discipline which has long been the norm of the Civil Service System, termination from his position in this case was an excessive and harsh penalty that was not consistent with the offense he was charged with.

Petitioner further argues that because once caught, he admitted to submitting a false medical note that he should be entitled to some consideration for his admission.

Finally, he argues that he did not have proper notice that the City was considering termination, since the PNDA he received only included reference to a potential 180-day suspension.

The City argues that there is no way petitioner did not have notice of the possible termination, as the PNDA included to potential penalties, a 180-day suspension or removal.

The City further argues that petitioner's prior history of misconduct and discipline is especially relevant here because knowing he was not sick, and with knowledge of his prior and extensive history of extensive discipline for attendance violations, he nonetheless went ahead and submitted a fraudulent note from a physician he never treated with. The City argues that it was petitioner's knowledge of his prior history of discipline that served as the primary motivating factor that led him to submit a fraudulent doctor's note.

LEGAL ANALYSIS AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-12.5 (b), summary decision may be rendered if the papers and discovery which have been filed, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party "is entitled to prevail as a matter of law." Further, when a motion for summary decision is made and supported, an adverse party in order to successfully oppose the application, must submit facts in dispute by supporting affidavit showing that there are genuine issues of material fact which can only be determined in an evidentiary proceeding.

This standard is substantially similar to the criteria governing civil motions under New Jersey Court Rule 4:46-2 when a party applies for summary judgment. See: E.S. v. Division of Medical Assistance and Health Services, 412 N.J. Super 340, (App. Div. 2001). See also Contini v. Bd. of Ed. of Newark, 286 N.J. super 106 (App. Div. 1995).

The seminal case for determining if there are any genuine issues of material fact was established in Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995), wherein the New Jersey Supreme Court ruled that a judge's function is to determine if there is a genuine issue of fact for trial, (the key word being genuine).

N.J.S.A. 11A:1-1 through 12-6 the "Civil Service Act, established the Civil Service Commission in the Department of Labor and Workforce Development in the executive branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career-service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline includes removal, disciplinary demotion and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3 (a)(2), (3), (6), (7) and (12).

In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21, See also: Atkinson v. Parkesan, 37 N.J. 143 (1962).

N.J.A.C. 4A:2-2.3 (a)(6) does not define conduct unbecoming. However, the Appellate Division has held that conduct unbecoming a public employee is "any conduct which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services. See: Karins v. Atlantic City, 152 N.J. 532, (1998).

There are a multitude of cases that discuss and uphold the right of a government entity to discharge/terminate an employee pursuant to N.J.A.C. 4A:2-2.2. In re Overton, OAL Dkt. No. 8542-07, 2008 N.J. AGEN. LEXIS 525, Final Decision (April 23, 2008) involved a building maintenance worker who was removed from his position due to being convicted of driving a township vehicle while under the influence of alcohol, and where the employee had received several accommodations for alcoholism prior to the termination. See also: In re Dakalis, OAL Dkt. No. CSV 6744-07 2008, NJ AGEN. LEXIS

717 Merit System Board Decision (June 11, 2008) and See: In re Griffin-Staples, Dept. of Children & Families, OAL Dkt. No. CSV 8810-07, 2008 N.J. AGEN. LEXIS, 1513 Initial Decision (May 27, 2008), wherein a worker at a residential treatment center was removed for being found to have engaged in inappropriate physical contact with a patient, but since there was no showing that the worker intended to harm the patient, the penalty of removal was determined to be too harsh, and a 60-day suspension imposed instead.

In each of the aforementioned cases discussed above, there was another intervening act, just as there was by petitioner Meikle, who with knowledge that he already had an excess amount of unexcused absences, went further to justify it by submitting a false doctor's note from a physician he had not seen, and then went on to incur four more unexcused absences in a short period of time after he had submitted the fraudulent note.

Both parties submitted a Joint Stipulation of Facts and Evidence and agreed to rely on an interpretation of law as to whether or not the City's decision to terminate Mr. Meikle was fair and just under a totality of the circumstances. **I CONCLUDE** that in terminating Mr. Meikle, the City did not act in an arbitrary and capricious manner, as several times before he had incurred suspensions from work, both minor and major, which as a twelve-year employee shows he was familiar with the policy of progressive discipline under the Civil Service law.

I FURTHER CONCLUDE that the submission of a fraudulent absence note from a doctor he had not seen, and by incurring four more unexcused absences thereafter, constitutes an intervening act which undermines public confidence in municipal services as well as falling into the category of destroying public respect for municipal employees.

As such, **I MUST CONCLUDE** that the City has met its burden of justifying the termination of Mr. Meikle, and that any discipline short of termination would not be appropriate.

ORDER

It is hereby **ORDERED** that Respondent's motion for summary decision is **GRANTED**.

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.

November 21, 2022
DATE
lr


ANDREW M. BARON, ALJ

Date Received at Agency:

November 21, 2022

Date E-Mailed to Parties:

November 21, 2022

lr

APPENDIX

List of Witnesses

For Petitioner

None

For Respondent:

None

Joint Stipulation of Facts of Exhibits

J-1- Stipulated Facts and Documents A-K

- A- 12/6/19 suspension
- B- 9/23/21-suspension
- C- Insubordination suspension 12/19/16
- D- 2/5/19-Attendance violations
- E- 2/19/19-Attendance violations
- F- 3/1/19-Attendnace violations
- G- 5/16/19-Abuse of sick time
- H- PNDA
- I- PNDA
- J- Final PNDA
- K- Excerpts from Employee Manual