



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Theresa McKinney-Wardrick, Newark School District

CSC Docket No. 2020-1914
OAL Docket Nos. CSV 02159-20

ISSUED: FEBRUARY 22, 2023

The appeal of Theresa McKinney-Wardrick, Senior Cook, Newark School District, 30 working day suspension, on charges, was heard by Administrative Law Judge Jude-Anthony Tiscornia (ALJ), who rendered his initial decision on January 18, 2023. Exceptions were filed on behalf of the appellant and appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on February 22, 2023, adopted the ALJ's Findings of Fact and conclusions and his recommendation to reverse the 30 working day suspension.

As indicated above, the Commission thoroughly reviewed the exceptions filed in this matter. Upon that review, it does not find anything persuasive to overturn the ALJ's recommendations regarding the reversal of the 30 working day suspension. The ALJ's initial decision was well-reasoned and his findings and conclusions were based mainly on his assessment of the credibility of the witnesses. In this regard, upon its de novo review of the record, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. See Matter of J.W.D., 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." See also, In re Taylor, 158 N.J. 644 (1999) (quoting State v. Locurto, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. Id. at 659 (citing Locurto, supra). The Commission appropriately gives due deference to such determinations. However, in

its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appointing authority are not persuasive in demonstrating that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations or the findings and conclusions made therefrom.

Further, the Commission rejects the argument that the appellant was guilty of the current alleged infraction by admittedly not previously reporting any unauthorized entrance into the kitchen. In this regard, the appellant was not charged with that purported infraction and thus, it cannot be imposed now. Moreover, past alleged misconduct cannot be utilized to prove current infractions. Additionally, the Commission is not persuaded by the appointing authority's argument that other staff did not have access to the kitchen. In this regard, it acknowledges that staff apparently had access, but were "prohibited" from "breaching the security of the locked kitchen." As such, the ALJ's crediting the appellant's testimony that she left the kitchen clean and that others must have created the issue was not arbitrary, capricious or unreasonable.

Since the 30 working day suspension has been reversed, the appellant is entitled to 30 working days of back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10*. She is also entitled to reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning counsel fees are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified and reverses that action. The Commission further orders that the appellant be granted 30 days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced as provided for in *N.J.A.C. 4A:2-2.10(d)3*. The Commission also orders reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12(a)*. Proof of income earned, and an affidavit in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C.* 4A:2-2.12(b), the parties shall make a good faith effort to resolve any dispute as to the amount of counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22ND DAY OF FEBRUARY, 2023



Allison Chris Myers
Acting 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

OAL DKT. NO. CSV 02159-20

AGENCY DKT. NO. 2020-1914

**IN THE MATTER OF THERESA
MCKINNEY-WARDRICK, NEWARK PUBLIC
SCHOOL DISTRICT.**

Arnold Shep Cohen, Esq., for appellant (Oxford Cohen, attorneys)

Bernard Mercado, Sr., Associate Counsel, Newark Public Schools, for respondent

Record Closed: December 7, 2022

Decided: January 18, 2023

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Appellant, Theresa McKinney-Wardrick (appellant or McKinney-Wardrick), appeals her thirty-working-day suspension by respondent, Newark Public School District (district), from her employment as a senior cook at the Camden Street School. The district alleges that appellant, who is responsible for cleaning the kitchen at the school, failed to properly clean the kitchen before leaving for summer break. Appellant disputes the allegation, asserting that the kitchen was clean and orderly when she left for summer break in June 2019, that the uncleanly condition was not discovered by the administration

until August 5, 2019, and that multiple third parties had access to the kitchen during summer break.

ISSUE

Did appellant fail to properly clean the Camden Street School kitchen prior to leaving for summer break?

PROCEDURAL HISTORY

A Preliminary Notice of Disciplinary Action (PNDA) was issued on November 1, 2019, by the district against the appellant. A Final Notice of Disciplinary Action (FNDA) was issued on December 17, 2019. The primary factual charge against the appellant is found in the specifications of the PNDA, reading as follows:

On August 5, 2019, Mr. Jason Shaw, Project Manager and Supervisor of Ms. McKinney-Wardrick, visited Camden Street School to perform an upgrade to the Point of Sale ("POS") terminal. During that visit, Mr. Shaw found the kitchen in deplorable condition. Mr. Shaw observed that the floor had not been swept or mopped; all four of the refrigerators and two freezers were filthy; there was an open food container in one refrigerator; brand new cooking and serving equipment had not been properly stored; and there were several dead and live cockroaches in the kitchen.

Based on the foregoing, the appellant was suspended for thirty days for neglect of duty, insubordination, incompetency, inefficiency, or failure to perform duties and other sufficient cause.

Appellant filed an appeal, and the matter was transmitted to the Office of Administrative Law, where it was filed on February 13, 2020. A plenary hearing was conducted on September 30, 2022. The record was kept open pending submission of

transcripts and closing arguments. Closing arguments were received on December 7, 2022, at which time the record was closed.

SUMMARY OF TESTIMONY

Theresa McKinney-Wardrick

The appellant testified that when she closed and locked the kitchen at the end of the school year (June 2019), it was in “spotless” condition. This included all four refrigerators and both freezers.

The appellant testified that security guards and custodial workers have keys to the kitchen. She further testified that her manager did not inspect the kitchen at the end of the 2018–2019 school year. She further testified that in the past, unauthorized individuals had entered the kitchen, leaving a mess, and the locks were changed as a result.

Dr. Tanya McGill

Dr. Tanya McGill serves as the executive director of Food and Nutrition Services. Dr. McGill testified that Ms. McKinney-Wardrick got training on school-closing procedures and cleaning the kitchen. McGill further testified that during July and August, the Camden Street School was closed to students, and Ms. McKinney-Wardrick was not assigned to the school during those summer months.

On cross-examination, McGill testified that certain security guards and custodial employees worked twelve months a year in the school. The security guards and custodial workers had access to the kitchen over the summer.

McGill further testified that the dietary manager is responsible for assuring that the kitchen is left in a clean and orderly manner prior to summer break. To ensure this, the dietary manager inspects the kitchen at the end of each school year. Dr. McGill testified

that in June 2019, the manager assigned to Camden Street School who would have been responsible for inspecting the school kitchen prior to summer break was out on extended sick leave. McGill testified that when a manager is absent, another manager will normally be assigned to cover. However, McGill stated that she did not know who, if anyone, inspected the Camden Street School at the end of the 2018–2019 school year, and she admitted that an inspection of the kitchen may not, in fact, have been conducted at all. McGill added that there is no protocol requiring inspection of the kitchen during the summer break, and she admitted that the guards and custodial staff had little to no supervisory oversight pertaining to their access to and use of the kitchen during the summer.

CREDIBILITY

The outcome of this case depends largely on a determination of credibility. To this point, after reviewing the substance of the testimony offered and after assessing the demeanor of the witnesses presented, I **FIND** both witnesses to be credible.

FINDINGS OF FACT

Having had an opportunity to consider all the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following **FACTS** in this case:

Appellant is currently employed by the district as a senior cook. She was employed in this capacity during the 2018–2019 school year, at which time she was assigned to the Camden Street School. On the last day of the school year, in June 2019, appellant cleaned the kitchen and left for summer break. The regularly assigned dietary manager for the Camden Street School was on sick leave, and, thus, could not perform a year-end inspection of the kitchen. Due to an apparent systemic breakdown in protocol, no one was directed to perform a year-end inspection of the kitchen in question, and no such inspection was performed.

Appellant did not return to the school kitchen during summer break. An undetermined number of district personnel had access to the kitchen during summer break. On August 5, 2019, Jason Shaw, project manager and one of appellant's supervisors, visited Camden Street School in the normal course of his job duties. During that visit, Mr. Shaw found the kitchen in an unclean and disorderly condition. It was then determined by the district administration that appellant, being the last individual charged with cleaning the kitchen back in June 2019, was ultimately responsible for the condition the kitchen was found in on August 5, 2019. Appellant was issued a PNDA and correlating FNDA, requiring a thirty-day suspension.

LEGAL ANALYSIS

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.

The appointing authority shoulders the burden of establishing the truth of the allegations by a 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 Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

In the case at bar, there is no dispute that the kitchen of the Camden Street School was found to be in an unsatisfactory condition on August 5, 2019. There is also no dispute that appellant did not re-enter the kitchen during the 2019 summer break. The sole

question is whether appellant failed to clean the kitchen prior to her departure for summer break in June 2019. If so, appellant is subject to discipline.

Respondent asserts that appellant was the last person responsible for the cleanliness of the kitchen in June 2019, thus she is the only individual who can be held responsible for the condition of the kitchen on August 5, 2019. Respondent admits through testimony, however, that: 1) protocols were not followed at the end of the 2018–2019 school year to ensure that the kitchen was properly cleaned prior to summer break, (i.e., year-end inspection); and 2) other individuals had access to the kitchen during the summer break. Based on the foregoing, I **CONCLUDE** that respondent's determination that appellant is the only individual who could be responsible for the disorderly condition of the kitchen as it was found on August 5, 2019, is unfounded, as there are a number of factors outside of appellant's control that likely contributed to the disorderly state of the kitchen. Thus, I **CONCLUDE** that the district's entire basis for disciplining appellant is pure conjecture, as it is predicated on an assumption of certain facts and ignorance of others.

ORDER

Based upon the foregoing, it is **ORDERED** that the within appeal is **GRANTED** and appellant's thirty-day suspension be **REVERSED**.

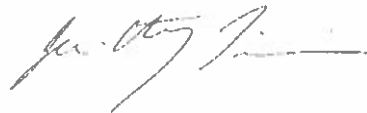
It is further **ORDERED** that appellant is entitled to back pay and any other benefits that would have otherwise accrued had she not been suspended.

It is further **ORDERED** that reasonable counsel fees should be awarded to the appellant as the prevailing party, subject to submittal of an affidavit of services and supporting documentation to the appointing agency, if settlement of fees is not successful, in accordance with N.J.A.C. 4A:2-2.12.

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, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



January 18, 2023

DATE

JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

1/18/23

Date Mailed to Parties:

1/18/23

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APPENDIX

LIST OF WITNESSES

For Appellant:

Theresa McKinney-Wardrick

For Respondent:

Dr. Tanya McGill

LIST OF EXHIBITS IN EVIDENCE

For Appellant:

None referenced in decision

For Respondent:

None referenced in decision