STATE OF NEW JERSEY

In the Matter of Martiniquan White, Trenton Psychiatric Hospital, Department of Health	DECISION OF THE CIVIL SERVICE COMMISSION
CSC Docket No. 2022-84 OAL Docket No. CSV 06218-21	

ISSUED: NOVEMBER 22, 2023

The appeal of Martiniquan White, Bus Driver, Trenton Psychiatric Hospital, Department of Health, removal, effective June 21, 2021, on charges, was heard by Administrative Law Judge Tricia M. Caliguire (ALJ), who rendered her initial decision on October 17, 2023. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

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 and reply, the Civil Service Commission (Commission), at its meeting on November 22, 2023, adopted the ALJ's Findings of Facts and Conclusions and her recommendation to modify the removal to a six-month suspension.

Upon its *de novo* review of the ALJ's thorough and well-reasoned initial decision as well as the entire record, including the exceptions filed by the appointing authority, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the testimony of the witnesses. In this regard, 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, while the exceptions filed attempt to challenge those determination, they not persuasive in demonstrating that the ALJ's determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. In this regard, upon its review, the Commission finds nothing in the record or the exceptions to question those determinations or the findings and conclusions made therefrom.

Similar to its assessment of the charges, the Commission's review of the penalty is also *de novo.* In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock,* 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center,* 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison,* 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown,* 191 *N.J.* 474 (2007).

Regarding recommending modifying the removal to a six-month suspension, the ALJ stated:

> The nature of appellant's conduct must be considered in light of the manner in which clear written policies were administered. While I am reluctant to make White pay for the shortcomings of her employer, as the Raycroft administration certainly missed opportunities to ensure the protection of its patients and staff, (footnote omitted) White did lie to her employer about her failure to follow COVID-19 policies and therefore deserves some form of discipline. Respondent did not prove all the charges against White, and while the penalty it seeks is within the range permitted for the charges it did prove, removal should be reserved for the most serious offenses, not simply for failure to follow rules that the employer failed to consistently enforce, made it difficult to follow, and which were routinely violated by other employees.

The Commission agrees with the ALJ's reasoning. In this regard, one of the charges was not sustained and, while the Commission is in no way minimizing the appellant's misconduct, removal, given the circumstances, is not warranted. Accordingly, a six-month suspension, the largest suspension available under Civil Service law and rules, should be sufficient to impress upon the appellant the inappropriateness of her

misconduct as well as serve as a warning that any future misconduct will result in more severe disciplinary action.

Since the removal has been modified, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from six months after the first date of separation until the date of actual reinstatement. However, she is not entitled to counsel fees. *N.J.A.C.* 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield,* 282 *N.J. Super.* 121,128 (App. Div. 1995): *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, the charges were sustained, and major discipline was imposed. Consequently, as appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

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 back pay are finally resolved. In the interim, as the court states in *Phillips, supra,* if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to her permanent position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modifies that action to a six-month suspension.

The Commission orders that the appellant be granted back pay, benefits, and seniority from six months after the first date of separation to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation 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:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

The parties must inform the Commission, in writing, if there is any dispute as to back pay 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 NOVEMBER, 2023

Allison Chris Myers

Allison Chris Myers
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 06218-21
AGENCY DKT. NO. 2022-84

IN THE MATTER OF
MARTINIQUAN WHITE, NEW JERSEY
DEPARTMENT OF HEALTH,
TRENTON PSYCHIATRIC HOSPITAL.

Lawrence E. Popp, Esq., for appellant (Kalavruzos, Mumola, Hartman, Lento & Duff, LLC, attorneys)

Kevin K.O. Sangster, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: October 13, 2023 Decided: October 17, 2023

BEFORE **TRICIA M. CALIGUIRE,** ALJ:

STATEMENT OF THE CASE

Appellant Martiniquan White (White) appeals the decision of respondent New Jersey Department of Health (DOH or Department) to remove White from her position as a bus driver at Trenton Psychiatric Hospital (TPH) on charges of insubordination; conduct unbecoming a public employee; and other sufficient cause, specifically, violation of a rule, regulation, policy, procedure, order, or administrative decision.

PROCEDURAL HISTORY

On March 1, 2021, DOH served White with a Preliminary Notice of Disciplinary Action (PNDA), charging her with (1) insubordination in violation of N.J.A.C. 4A:2-2-2.3(a(2)); (2) conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and (3) other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically violations of New Jersey Department of Human Services Disciplinary Action Program, Administrative Order 4:08,[1] Sections C8-2, C9-1, and E1-2. A departmental hearing was held on May 20, 2021, and, on June 17, 2021, DOH issued a Final Notice of Disciplinary Action (FNDA) to White, sustaining all charges against her, with notice that she would be removed from employment, effective June 21, 2021.

White filed an appeal on July 1, 2021, and the Civil Service Commission (CSC) transmitted this matter on July 21, 2021, to the Office of Administrative Law (OAL), which filed it for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The parties appeared for a settlement conference on November 23, 2021, before the Honorable David Fritch, ALJ. Settlement was not reached and this matter was assigned to me and scheduled for a prehearing telephone conference on December 21, 2021. During this conference, which was held immediately following a status conference in a related case involving the same parties,[2] the parties stated their intention to engage in global settlement discussions. During three subsequent status conferences, the parties reported on continuing settlement discussions but, during the status conference on May 3, 2022, they stated that settlement was not possible.[3] The hearing was scheduled for June 22, 2022.

On June 1, 2022, respondent filed a motion for summary decision in its favor claiming there are no genuine issues of material fact in dispute. Accordingly, I adjourned

[1] After reorganizations of the New Jersey Departments of Health and Human Services, the DOH uses Administrative Order 4:08, as distributed by the Department of Human Services.
[2] I/M/O Martiniquan White, NJ Dept. of Health, Trenton Psychiatric Hospital, OAL Dkt. No. CSV 03726-21.
[3] Without objection from the parties, an order of inactivity was entered in the matter docketed as CSV 03726-21.

the hearing to allow time to address the motion and following submission of responsive briefs, I issued an order denying summary decision on August 12, 2022.[4]

On January 11 and 12, 2023, the hearing was held by Zoom Audio Communications, Inc. Delivery of the hearing transcripts was delayed until June 2023. Following an extension, the parties filed simultaneous post-hearing briefs on August 15, 2023. On October 11, 2023, appellant filed a supplementary letter brief in response to my request for additional information. Respondent filed a supplementary brief on October 13, 2023, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Background

The following is undisputed and, accordingly, I **FIND** as **FACTS:**

On January 6, 2021, White was employed by DOH as a bus driver at TPH. She was scheduled to work beginning at 7:45 a.m.

On May 27, 2020, Robyn Wramage-Caporoso, Chief Executive Officer of TPH, issued a letter to all employees regarding policies and practices adopted by TPH in response to the COVID-19 emergency, which stated, in pertinent part:

> All staff are required to wear Personal Protective Equipment (PPE) which may include surgical mask, gown, gloves, protective eyewear and/or face shields.
>
> Staff who have tested positive for the COVID-19 virus are to remain home for the time-frame designated by the NJDOH and provide a medical clearance note from their physician in order to return to work.
>
> Staff coming to work have temperatures taken daily, are asked symptom questions pertaining to COVID-19 infection, are sent home if there are any positive responses, asked to contact

[4] As described in greater detail below, several key findings in the order on summary decision were invalidated by testimony at the hearing and, therefore, the order is not incorporated here.

> their primary care physician, and must be medically cleared before returning to work.
>
> [J-8.]

On July 20, 2020, DOH issued guidelines for use during the COVID-19 emergency, titled "Personal Protective Equipment (PPE) for Healthcare Providers (HCPs) and Patients Within the DBHS State Psychiatric Hospitals," which provided in pertinent part:

> Facemasks will be worn by all staff while in the facility.
>
> Employees who do not use PPE as per this guideline are subject to disciplinary action and will be put off duty without pay for creating an unsafe work environment.
>
> [J-9.]

Effective July 2020, TPH issued Policy & Procedure 7.001, titled "Facemask Requirement on TPH Property/Facial Covering/PPE," which provided in pertinent part:

> A. Each TPH Department will distribute one surgical mask and a paper bag for mask storage to all Department employees (etc.) at least once weekly.
>
> **Employee is to:**
>
> 1. Write name with ballpoint pen under the chin of the mask, on the colored (outside) surface.
>
> 2. Don (put on) new mask and discard previous week's mask and its storage bag in regular trash.
>
> 3. Mark new bag with name and date. Store safely for frequent use and ease of access when putting on and removing facemask.
>
> B. Employee is to use this mask only at work and store it in the breathable paper bag when not in use.
>
> 1. Immediately don (put on) personal surgical grade mask and wear it in all non-clinical hospital areas. This includes but is not limited to hallways, offices, elevators, stairways, cafeteria, parking lots and the general TPH grounds.
>
> 2. Remove mask when leaving TPH; store as above.

3. Don immediately upon return to grounds.

[J-10 (emphasis in original).]

Effective September 2020, TPH issued Policy & Procedure 7.002, titled, "Thermal Scanning of Employees for Infection Prevention," which provided in pertinent part that all TPH employees "will be screened for common symptoms of [COVID-19] before reporting to their work site each day and shift." (J-11.) Such screening is described as employees being monitored for temperature and "verbally surveyed for key symptoms" of COVID-19 by assigned personnel in designated spaces. The designated space in the Raycroft Building is the main lobby. Ibid.

By and before January 2021, all employees of TPH were required to submit to weekly tests for the COVID-19 virus. The testing was performed by LabCorp in the TPH gymnasium; to obtain results, each employee was directed to contact LabCorp by telephone or through the LabCorp app. On January 4, 2021, appellant took a weekly COVID-19 test; on January 6, 2021, after reporting for work, appellant learned that the test result was positive.

On January 27, 2021, appellant was served with a PNDA charging her with conduct unbecoming a public employee, discrimination, and other sufficient cause as a result of an unrelated incident.[5] Appellant did not request a hearing and an FNDA was issued on February 23, 2021, sustaining all charges and recommending the penalty of a fifteen working-day suspension. As stated in the procedural history above, White appealed the FNDA and that matter is currently inactive, pending the resolution of this matter.

On March 1, 2021, appellant was served with the PNDA regarding the incident on January 6, 2021. She requested a hearing, which was held on May 20, 2021. The FNDA sustaining all charges was issued on June 17, 2021, recommending appellant be removed from employment as of June 21, 2021. Appellant filed this appeal in a timely manner.

[5] The PNDA and FNDA for the unrelated incident were issued before the FNDA in this matter, but appellant notes that as that matter is under appeal, the allegations are "not admissible in this matter." Ltr. Br. of Appell. (August 14, 2023), at 6.

Testimony

Respondent called two witnesses; appellant testified on her own behalf and called one witness. The following is not a verbatim recitation of the testimony but a summary of the testimonial and documentary evidence I found relevant to the above-listed charges.

Yvonne Colon (Colon) is Employee Relations Coordinator at TPH. She has served in this position since January 2017. Her duties include contract interpretation; processing of employee discipline and handling grievances; and administration, review and revision of TPH policies.

Colon knows appellant and is familiar with the January 6, 2021, incident, but admitted that she has no first-hand knowledge of the incident. Colon first heard of the incident from Josephine Sesay, the Assistant Director of Nursing, who told Colon that another employee complained about White not wearing a mask. Colon spoke to appellant and asked her for a statement. Colon identified the email from appellant sent in response in which appellant stated that she was wearing a mask when she entered the building on January 6, 2021. (J-4.) As part of her investigation (which led to the PNDA), Colon watched the video of appellant entering the building on January 6, 2021. (J-5.)

Colon did not know that appellant suffered from seasonal allergies, though she also stated that any employee who suffers from a chronic condition that could result in absence from work should notify Human Resources (HR).

With respect to directions given to employees regarding allergy symptoms, Colon stated that signs were posted throughout the TPH campus notifying employees that if they suffered from any symptoms of COVID-19, including congestion, coughing, and/or headaches, they should stay home. This was the policy even if an employee was known to suffer from seasonal allergies. Colon identified the May 27, 2020, letter from the chief executive officer of TPH, which she said included this direction and which was sent to all employees by email and regular mail. (J-8.)

Colon identified the TPH policies on face masking, J-10, and thermal scanning, J-11, both of which were distributed to all employees and posted throughout the TPH campus. She stated that each employee was given two masks, one for indoors and one for outdoors (consistent with Policy 7.001). If an employee came to work without a mask, Colon stated that the policy was to call the supervisor from outside of the building and a mask would be brought to the employee. Colon did not have any knowledge of the administration of the temperature scanning policy in the Raycroft Building.

Colon identified the DOH Disciplinary Action Program, which provides that the penalty of removal from employment is appropriate for a first offense of falsification and a first offense of insubordination. (J-12.)

Josephine Sesay (Sesay) is the Assistant Director of Nursing and Director of Clinical Support Services at TPH. Her duties include training, supervising, and evaluating nurses, direct care staff, and bus drivers.

Sesay knows appellant, is familiar with the incident of January 6, 2021, and knows why appellant was removed from her position. On January 6, 2021, in the morning, appellant called Sesay to report her positive COVID-19 test result; afterward, Michelle Graham, a physical therapist at TPH, told Sesay that appellant came into the Raycroft Building without wearing a mask.

Sesay identified the email she sent to her supervisors regarding Graham's statement that appellant was not wearing a mask. (J-3.) Sesay stated that Graham "demanded" she do something[6] and, therefore, Sesay sent a text to appellant asking whether she had her mask on when entering the building. In response, appellant admitted she was not wearing a mask, but was on her way to get one. Tr. of January 11, 2023 (T-1), at 56-57.

Sesay described the TPH masking procedure as everyone entering buildings were required to wear a mask and take his or her temperature. TPH gave every employee a

[6] In her email, Graham states that when she contacted Sesay regarding appellant's positive COVID-19 test, it was to request precautionary measures, "not to file a report or complaint." (J-3.)

new mask every day and, if a mask became soiled during the day, a second mask was provided. When an employee arrived for work, he or she were required to wear a mask when entering the building, would go to the Escort Office, obtain a new mask, and sign in. At the end of the workday, an employee takes the old mask home, wears it the next workday when arriving and then gets a new mask. If an employee arrived without a mask, he or she would call a supervisor (or anyone in the Escort Office[7]) to have a new mask brought to him or her outside the building. Sesay trained all employees in this procedure.

Appellant did not report her allergy symptoms to Sesay, but the policy did not require such reporting. Instead, appellant should have called out sick when she developed allergy symptoms. Sesay was clear that the policy required an employee to stay home, and get paid, when he or she showed symptoms.

Michelle Graham (Graham)[8] testified for appellant. She has been employed by TPH as principal physical therapist since December 2009. She handles orthopedic, neurologic, muscular, and skeletal therapy for all TPH patients.

Graham knows appellant but only as a work colleague. She also knows Sesay, who supervises the clinic where Graham works. Sesay's staff, including appellant, picks up Graham's patients. Graham reports to Sesay if there is a "crisis" in her department.

Graham is familiar with the TPH COVID-19 policies and procedures; employees are updated daily by email. She recalls the policies in effect in 2020-2021 and recalls the incident of January 6, 2021.

Graham stated that upon entering the main entrance to the Raycroft Building, employees scan themselves for temperature, sign in, go to the table and obtain masks and/or PPE. She does not know why there was no table at the side door,[9] also referred to as the entrance to the "clinic services desk." Graham had asked Sesay for a table at

[7] The Escort Office was where appellant and other bus drivers reported to work, obtained their routes for the day, and where a supply of masks was kept.
[8] Graham was originally on respondent's witness list. When respondent rested without calling her, counsel for appellant asked Graham to appear without being subpoenaed, and Graham agreed.
[9] According to Graham, there is now a table with PPE at the side door.

the side door, since everyone who worked in the clinic (and bus drivers) uses that door. Sesay's response was that Graham would have to order her own PPE, but Graham stated that she was not concerned for herself but for other staff using that entrance. Prior to January 6, 2021, the Escort Office was not even open all the time.

Graham stated that it was not unusual for staff to enter through the side door without a mask; Graham admitted forgetting to wear a mask herself at times, stating "it was a common error."[10] While she speculated that an employee who arrived at work without a mask could go to another entrance (presumably, where a PPE table was set up), Graham was not familiar with the requirement, described by Sesay, of calling someone inside the building to bring a mask outside. She did recall that in early January 2021, employees who came through the side door without a mask would pass by "seven clinics" to get the Escort Office and get a mask. T-1 at 100.

On January 6, 2021, Graham recalled seeing White enter the Raycroft Building through the side entrance, headed in the direction of the Escort Office. "It didn't register with me that I saw her." Later that day, White called to tell Graham that she tested positive for COVID-19. In response, Graham said she would report this to Sesay so she, Graham, could get a rapid test. According to Graham, Sesay had to authorize the rapid test for her.

When Graham went to Sesay, Graham asked for the rapid test and Sesay's response was to ask if White was wearing a mask. Graham said she did not think so, and again asked for the rapid test. Sesay told her to draft a statement regarding her encounter with White. Graham did so, thinking that it would be required to get the rapid test.[11] (J-3.) In this statement, Graham wrote: "I think she was not wearing a mask." The next day, Sesay told her to write another statement, this time removing the words "I think." Graham did so. (J-3.)

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[10] Graham recalled hearing Sesay reminding a nurse who was not wearing a mask in the lobby to wear one. See T-1at 99.

[11] Graham never did get the rapid test at work; she took one in her garage at home before coming into contact with her family.

Graham stated that she is concerned about retaliation from Sesay because of her testimony. "I have seen it that [Sesay] retaliates to the staff that I guess she doesn't like." T-1 at 113. Graham had been treated this way by Sesay after refusing to rewrite her statement.

Appellant testified on her own behalf. She was employed by TPH since September 2009, first in food services and then, starting in 2012, as a bus driver. In that position, she drove patients to their homes, to local businesses, doctors' appointments, court, and around the grounds of TPH. At times, a patient technician accompanied appellant on her routes to assist with patients.

Appellant has suffered from allergies, including eczema, her entire life. She shows symptoms throughout the year, including migraines, congestion, skin hives and spots. Appellant typically uses over-the-counter medications (such as Sudafed) for allergy and eczema symptoms. If these medications do not provide relief, appellant calls her doctor. She identified records of medical care she has received for this condition. (J-15; J-16.)

Appellant never discussed her allergy symptoms with anyone at TPH; no one ever asked about these symptoms, and she was never asked to document them.

Appellant knows Sesay, who was her supervisor for about two years prior to January 2021. They did not interact much, as Sesay "didn't care for me." They had not had a negative encounter, but appellant was told by work colleagues to "be careful, [Sesay] is on your heels." Tr. of January 12, 2023 (T-2), at 12. Appellant stated that this began when Sesay was assigning overtime to other bus drivers, even though appellant had seniority. After complaining to Sesay, appellant went to the union and filed a grievance. "[E]ver since then she was just like after me I felt." T-2 at 13.

When asked to describe the TPH COVID-19 policies, appellant stated that she did not recall protocols, other than being required to wear a mask in the buildings. She was given papers to sign but did not receive training in COVID-19 policies.[12] As far as being

[12] Appellant agreed that TPH handed out policy documents and she was responsible to read them and adhere to the policies.

scanned upon entering the building, appellant stated that she and other members of the transportation staff used the side door or another back door, not the main entrance, because the side door was closer to the Escort Office. There was never a PPE table at the side entrance. While she agreed that it was against policy to enter buildings without a mask, appellant stated that it was normal for staff to do so.

Appellant identified the results of the COVID-19 tests she took in December 2020, all of which were negative. (J-13.) She agreed that by January 2021, all employees were tested weekly. She tried to take her tests on Mondays so that she would have results within a day or two, before the days she cared for her grandchildren.

On January 4, 2021, appellant took a COVID-19 test. She felt fine, other than being light-headed and having a headache. She assumed those symptoms were allergy-related and worked a full day. On January 5, 2021, appellant took Sudafed and her symptoms "lightened up." Again, she worked a full day. She did not see a doctor as these symptoms were consistent with her allergies. Appellant knew that employees were supposed to stay home if exhibiting any COVID-19 symptoms, but "did not understand the difference between COVID symptoms and my allergies. I was 100 percent sure of my allergies [and] I had just took a COVID test the week before that was negative." T-2 at 56.

On January 6, 2021, she arrived at work at 7:40 a.m., came in the side entrance and went to the Escort Office to sign in without stopping at the temperature station. While she conceded that she was required to have her temperature taken upon arriving at work, appellant said, "We were told not to use the temperature stations without a mask" and she did not have a mask "because if we did not have masks sometimes they would be in the [escort] office or we can just get one from someone on the grounds." T-2 at 31, 32. She passed by Graham, signed in at the Escort Office, but was not able to get a mask as there was no one in the office and no masks available. After getting her schedule, appellant went to get the vehicle she would drive, and returned to Raycroft, where she

picked up Linda Pack, the technician assigned to work with her, who went back into the building and obtained a mask for appellant.[13]

After obtaining her positive COVID-19 test results, appellant called Sesay, who told her to wait outside while she contacted HR. HR called appellant, asked about her symptoms, and told her to go home. Appellant was out of work due to COVID-19 until mid-February 2021.

Appellant recalled sending an email to Colon on January 6, 2021, in which appellant stated that she was wearing a mask. (J-4.) She admitted that statement was untrue.

DISCUSSION

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See, Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination 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). 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).

After carefully considering the testimonial and documentary evidence presented and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I make the following observations.

[13] Like Graham, appellant had no recollection of a policy requiring employees to call other staff to bring a mask outside.

Graham was particularly credible, despite respondent's attempt to disparage her interests. See Ltr. Br. of Resp't. (August 11, 2023), at 23. Her involvement in the incident of January 6, 2021, was minimal and recorded by video. Most significant is that while Graham did initially report appellant's failure to wear a mask, Graham said repeatedly that she went to Sesay due to her concern for contracting COVID-19 and to obtain a rapid test before returning to her family. Sesay – as confirmed by the emails – cared less for helping Graham than she did for documenting appellant's violation of procedure. Graham stated that she fears retaliation for her testimony, lending weight to appellant's claims that Sesay was "out to get her."

Based on the documentary evidence alone, TPH had a well-designed procedure for ensuring that all employees observed masking requirements, were scanned daily for high temperatures, were asked about other COVID-19-related symptoms, and stayed home if exhibiting symptoms.

Based on the testimony of all the witnesses, however, there is little evidence that TPH administered all COVID-19 procedures in a consistent manner, if at all. The most senior administrator who testified, Colon, readily admitted that she was unaware of the actual process followed at the Raycroft Building. The most senior official at Raycroft appears to be Sesay, and her testimony was riddled with inconsistencies.

Sesay insisted that TPH policy required all employees to wear masks when entering any building and, if they did not have a mask, to contact someone inside the building to get one. Graham, who stated that she reads policy updates more than once a day, had never heard of this policy. Neither, for her part, had appellant.

There is no dispute that while there is a main door, and main lobby, into the Raycroft Building where employees stopped to have their temperature taken and to obtain masks, not all the employees who worked in that building used the main door. Clinical staff, including appellant, used the side door. Though at least one employee – Graham – asked that a PPE station be set up at the side door, no one in the administration acted to address that obvious risk to patient health. Instead, all employees entering through the side door walked to the Escort Office to sign in and obtain masks.

It is arguable that health risks would have been reduced if employees followed the directions in Policy 7.001, and re-used their mask from the previous day when they entered the building, walked to the Escort Office, and got a new mask. As a practical matter, it is surprising that (1) a PPE station was not located at all entrances; or (2) the side door was not locked to ensure that all employees entered by the main door; or (3) if it was necessary to keep the side door open and the only PPE station accessible to employees using the side door was the Escort Office, that the Escort Office was not always staffed and a supply of masks was not always available.

In opposition to respondent's motion for summary decision, appellant signed a certification, in which she "freely and knowingly attest[ed] to the accuracy of each fact as set forth in [paragraphs one through eight]" in the brief filed by her attorney on her behalf. Certification of Martiniquan White (July 7, 2022), at ¶ 5. Further, she stated that she would reaffirm these facts if called to testify. Not only did White not reaffirm the "facts" included in paragraphs one through eight, but by her testimony, White (and other witnesses) confirmed the following inconsistencies:

1. White certified that on January 6, 2021, she suffered from typical allergy symptoms, including a runny nose and eczema. At the hearing, she stated that her allergy symptoms were congestion, headache and sinus pressure and specifically said she did not have a runny nose.

2. White certified that by January 6, 2021, TPH had established procedures for employees as they arrived at work in the Raycroft Building, which included two staff members sitting at a desk inside the side door entrance to dispense masks and take temperatures of arriving employees. If no one was at the desk, employees were directed to instead go to the Escort Office, located thirty feet away from the side door, to obtain their masks and have their temperatures taken. At the hearing, White (and other witnesses) stated that the table described above was found at the main entrance[14] which White never used. She always entered the Raycroft Building through the side door or back door,

[14] This is consistent with Policy & Procedure 7.002. (J-11.)

which are both much closer to the Escort Office. Further, as was shown on the video, a temperature station was located just inside the side door for employees to self-scan. White is shown on the video walking past this station; she stated that employees were not permitted to self-scan unless they were wearing masks.

3. White certified that on January 6, 2021, she walked into the building without a mask, walked to the Escort Office to obtain a mask and have her temperature taken, and left "the Escort Office fully masked." At the hearing, White stated that there were no masks available in the Escort Office, so she left without a mask and asked Linda Pack to get a mask for her before they picked up their first patient.

4. White certified that after learning of her positive COVID-19 result, she was told by Infection Control/HR to return home and that she remained at home, under quarantine, until January 20, 2021. At the hearing, White stated that she did not return to work until mid-February 2021.

White made numerous other statements under oath which leads me to the conclusion that she pays little attention to details, whether in the documents outlining the TPH COVID-19 policies (which she admitted to receiving but the contents of which she could not recall) or in a certification prepared for her by her attorney. She disregarded the most significant COVID-19 rule, always wear a face mask inside buildings, but followed a rule that was not included in any of the TPH policy documents (do not use the temperature screening tool without a mask).

Sesay was adamant that all procedures were posted and well-known and that pursuant to procedure, employees could not use the side doors to enter buildings. Only main doors were used. This statement is consistent with Policy 7.002, but contradicts Sesay's other statement that employees self-scanned for temperature after entering Raycroft by the side door. Sesay also stated that employees entered by the main door and would then walk downstairs to the temperature self-scanner, even though Policy 7.002 required temperature screening and a "verbal survey" for COVID-19 symptoms "by

assigned personnel." Meanwhile, appellant stated that she never used the main door and was not the only employee to walk through the side door without a mask. This self-serving testimony of appellant was confirmed, however, by Graham, who appears to have been consistently concerned about the lax enforcement by TPH of its own policies (and the risk she took by pointing this out).

Based on the above, I **FIND** the following **FACTS:**

The "policy" of employees who arrived at work without masks contacting colleagues already inside the building to bring them new masks was never formalized but was used by the employees who testified, which underscores the seriousness they took of the rule not to enter buildings a without mask.

The administrators failed to fully or adequately implement the formal COVID-19 policies and disregarded and/or failed to address how the daily habits of employees created risks to the health of patients. The most serious example was not placing a table with masks immediately adjacent to the heavily traveled side door (or locking the door to force all employees to use the main entrance).

By January 2021, almost a year into the COVID-19 emergency, the issue of distinguishing between allergy and COVID-19 symptoms was not addressed. There was no evidence presented (other than Colon's testimony) of a policy requiring employees to notify HR of chronic conditions, such as allergies, and Sesay disagreed with Colon on this point. Colon stated that the May 27, 2020, letter from the chief executive officer of TPH, included the direction that if employees suffered from any symptoms of COVID-19, including congestion, coughing, and/or headaches, they must stay home. The letter does not include that direction. It describes a daily survey given to employees regarding COVID-19 symptoms, positive responses to which would require employees to return home. (J-8.) Employees entering the Raycroft Building through the side door were not subject to the daily survey. On the morning in question, the Escort Office was not even staffed by persons who could have conducted this daily survey.

On January 6, 2021, White was exhibiting COVID-19 symptoms. If she had been surveyed by staff upon entering the Raycroft Building – consistent with Policy 7.002 – and had truthfully responded, she would have been sent home. White was not surveyed because the administration did not follow Policy 7.002. White admitted, however, that she knew to stay at home if suffering from COVID-19 symptoms. What made her statement that she believed she was suffering from allergies credible was that she also said she was concerned about possible exposure to COVID-19 because of her obligation to care for her grandchildren.

When asked by Colon to provide a statement regarding whether she was wearing a mask on January 6, 2021, upon entering the Raycroft Building, White responded untruthfully in writing.

After White obtained her COVID-19 positive test results, she acted appropriately, even going so far as to inform Graham, who then, essentially, turned White in. White remained at home while recovering from COVID-19 consistent with TPH policy.

POSITIONS OF THE PARTIES

Appellant contends that "the credible testimony clearly and convincingly establishes that [she] acted prudently, promptly and appropriately on January 6, 2021, when she learned of her positive [COVID-19] test results. Ltr. Br. of Appell. at 6. Further, her actions on January 6, 2021, were taken "in the customary accepted manner." Ibid.

Respondent contends that appellant "blatantly refused to follow the policies and guidelines that were put in place to protect patients, employees, and visitors to TPH from COVID-19." Ltr. Br. of Resp't. at 18. Further:

> The directives issued to White, and the established procedures were unambiguous. On January 6, 2021, she entered the Raycroft building without a face mask, even while she was exhibiting symptoms of COVID-19 for several days before, which was extremely dangerous and put many lives at risk.

[Ibid.]

Appellant has worked at TPH since 2009, with no prior disciplinary history. While appellant correctly notes that the charges under appeal in OAL Dkt. No. CSV 03726-21, may not be considered here, respondent argues that the recommended penalty of removal is appropriate regardless of White's disciplinary history because the underlying conduct is "sufficiently egregious." Id. at 25.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12-6 (Act), and its implementing regulations, N.J.A.C. 4A:1-1.1 to -10-3.2, are designed in part "to encourage and reward meritorious performance by employees in the public service and to retain and separate employees on the basis of the adequacy of their performance." N.J.S.A. 11A:1-2(c). The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). Such an employee may be subject to major discipline, including removal and/or resignation not in good standing. 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).

At the same time, the Act protects classified employees from partisanship, favoritism, arbitrary dismissal and other onerous sanctions. See, Investigators Ass'n v. Hudson Cty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). In attempting to determine if a penalty is reasonable, "[t]he evidence presented and the credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained, or whether there are mitigating circumstances, which . . . must be taken into consideration[.]" In re Shavers-Johnson, OAL Dkt. No. CSV 10838-13, Initial Decision (July 30, 2014), adopted, Comm'n. (September 3, 2014), https://njlaw.rutgers.edu/collections/oal/. Major

discipline may include suspension or removal. See, West New York v. Bock, 38 N.J. 500, 523-24 (1962).

The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The appointing authority must prove its case by a preponderance of credible evidence, the standard in administrative proceedings. Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such "as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958) (citations omitted). Preponderance may also be described as the greater weight of credible evidence in the case, the evidence which carries the greater convincing power. State v. Lewis, 67 N.J. 47, 49 (1975).

White is charged with (1) insubordination in violation of N.J.A.C. 4A:2-2.3(a(2); (2) conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and (3) other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically violations of New Jersey Department of Human Services Disciplinary Action Program, Administrative Order 4:08, Sections C8-2, Falsification; C9-1, Insubordination; and E1-2, Violation of a Rule, Regulation, Policy, Procedure, Order, or Administrative Decision.

Insubordination

The regulation which includes "insubordination" as an offense subject to discipline does not define the term. N.J.A.C. 4A:2-2.3(a)(2). Dictionary definitions have been used by courts to define this term where it is not specifically defined in contract or regulation:

> "Insubordination" is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

> [Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citing Deerhurst Estates v. Meadow Homes, Inc., 64 N.J. Super. 134, 150, 165 (App. Div. 1960), certif. denied, 34 N.J. 66 (1961)).]

Black's Law Dictionary 802 (11th Ed. 2019) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Similarly, the Disciplinary Action Program definition of "insubordination" includes "intentional disobedience or refusal to accept a reasonable order." (J-12 at 37.) The above definitions incorporate acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the alleged insubordinate person. Insubordination is always a serious matter. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

Appellant's actions on January 6, 2021, cannot fairly be called "intentional" disregard of reasonable policy directives. While she knew she was obligated to always wear a mask inside TPH buildings, she was heading to the Escort Office to get her mask. In January 2021, almost ten months after the COVID-19 emergency began, if Graham's testimony is to believed – and I find her credible on this point -- employees in the Raycroft Building routinely entered without a mask and there was never a supply of masks at the side door. On January 6, 2021, White also found that there were no masks in the Escort Office, so she walked back out and waited for a colleague to bring her a mask. Further, while White was not credible as to everything she said, I do believe that she suffered from allergies and in the prior ten months had not been asked about them or sent home because of them. In short, TPH designed an elaborate COVID-19 survey process, including entrance through a single door, a fully staffed station for temperature checks and verbal surveys as to symptoms, with a mask supply, but the Raycroft administration did not use it.

I **CONCLUDE** that respondent has not proved by a preponderance of the credible evidence that appellant violated N.J.A.C. 4A:2-2.3(a)(2), Insubordination, and Administrative Order 4:08, Section C9-1, Insubordination.

Conduct Unbecoming a Public Employee

There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. In re King, OAL Dkt. No. CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), http://njlaw.rutgers.edu/collections/oal/. "Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. Atl. City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 NJ. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) [quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)]. Unbecoming conduct may include behavior which is improper under the circumstances; it may be less serious than a violation of the law, but which is inappropriate on the part of a public employee because it is disruptive of governmental operations.

As discussed above, TPH had a detailed set of COVID-19 policies, intended to protect the health and safety of patients and staff. The administrators of the Raycroft Building did not strictly administer or enforce those policies, making the disregard of those policies commonplace. The only policy that appears to have been of concern to all staff was the requirement for a mask in the buildings (and on the bus used to transport patients).

Where White's conduct fell short of the "implicit standard of good behavior" was in making a false statement in writing to her superior. While this false statement is arguably not enough to "adversely affect the morale or efficiency of the governmental unit," it could have created confusion and reflected badly on her immediate supervisor, Sesay. Appellant had other means to express her frustration with Sesay's alleged mistreatment of her – if that was the basis for her false statements. Had she misunderstood the requirements of the various TPH COVID-19 policies – and their application was not consistent – she could have said so, rather than lie about following those policies. I **CONCLUDE** that respondent has met its burden of proving that appellant's actions on January 6, 2021, were conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6).

Other Sufficient Cause

There is no definition in the New Jersey Administrative Code for other sufficient cause; it is generally defined as all other offense caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when "[r]espondent has not given any substance to the allegation." Simmons v. City of Newark, OAL Dkt. No. CSV 09122-99, Initial Decision (February 22, 2006), adopted, Merit System Bd. (April 5, 2006), https://njlaw.rutgers.edu/collections/oal/.

Here, respondent alleges other sufficient cause may be found in appellant's violations of the Disciplinary Action Program, Administrative Order 4:08, Sections C8-2, Falsification; C9-1, Insubordination; and E1-2, Violation of a Rule, Regulation, Policy, Procedure, Order, or Administrative Decision. For the reasons stated above, I **CONCLUDE** that respondent has proved by a preponderance of the credible evidence that the actions of appellant on January 6, 2021, included falsification in an email communication to her superior, and a violation of the TPH COVID-19 mask policy.

Penalty

The Civil Service Commission's review of penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. Typically, the Board considers numerous factors, including the nature of the 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. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. West New York v. Bock, 38 N.J. at 523-24. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). In her post-hearing brief, appellant argues that respondent has failed to satisfy the burden of proving the charges against her, and that her conduct was not egregious or reckless, but was typical of "other co-employees regarding the masking realities at the hospital." Supplemental Ltr. Br. of Appell. (October 11, 2023), at 2. Respondent contends that removal from employment was the appropriate response to appellant's alleged violations of the statute, regulations, and Department policies, even without consideration of the prior discipline (under OAL Dkt. No. CSV 03726-21).

Here, appellant is subject to major discipline for the violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause due to violations of the Disciplinary Action Program, Section C8-2, Falsification, and Section E1-2, Violation of a Rule, Regulation, Policy, Procedure, Order, or Administrative Decision. Major discipline for such infractions may include removal, disciplinary demotion, fine or suspension for more than five working days at any one time. N.J.A.C. 4A:2-2.2(a). Further, because appellant has no prior disciplinary record, the range of penalties for the first violation of Section C8-2, are counseling to removal, and the range of penalties for the first violation of Section E1-2, are counseling to removal.

In its supplemental brief, respondent reiterates its position that appellant's behavior was an "egregious and reckless" violation of "clear" policies. Supplemental Ltr. Br. of Resp't. (October 13, 2023), at 2. As described above, I would only agree with respondent if the sole consideration is whether the policies issued by TPH were clear. The nature of appellant's conduct must be considered in light of the manner in which clear written policies were administered. While I am reluctant to make White pay for the shortcomings of her employer, as the Raycroft administration certainly missed opportunities to ensure the protection of its patients and staff,[15] White did lie to her employer about her failure to follow COVID-19 policies and therefore deserves some form of discipline. Respondent did not prove all the charges against White, and while the penalty it seeks is within the range permitted for the charges it did prove, removal should be reserved for the most serious offenses, not simply for failure to follow rules that the employer failed to consistently enforce, made it difficult to follow, and which were routinely violated by other employees.

Based upon consideration of the totality of the evidence, I **CONCLUDE** that the penalty of removal is not reasonable and recommend that appellant be suspended for six months, without pay.

ORDER

I hereby **ORDER** that the appeal of appellant **MARTINIQUAN WHITE** of charges of (1) conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); and (2) other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12), specifically violations of New Jersey Department of Human Services Disciplinary Action Program, Administrative Order 4:08, Sections C8-2, and E1-2, is **DENIED,** and the decision of respondent, the **DEPARTMENT OF HUMAN SERVICES, TRENTON PSYCHIATRIC HOSPITAL as to those charges** is **AFFIRMED.**

I further **ORDER** that the **appeal of appellant of charges of Insubordination under** N.J.A.C. 4A:2-2.3(a)(2), and Administrative Order 4:08, Section C9-1, are **GRANTED** and the decision of respondent as to those charges is **REVERSED**.

[15] Throughout the pandemic, free masks were ubiquitous, especially at the entrances to medical facilities.

Finally, I **ORDER** that the penalty of removal from employment is not appropriate and is therefore **REVERSED** and a penalty of six-month suspension without pay is appropriate.

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.

October 17, 2023
DATE

Tricia M. Caliguire
TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/kl/lam

APPENDIX

WITNESSES

For Appellant:

Martiniquan White

Michelle Graham

For Respondent:

Yvonne Colon

Josephine Sesay

EXHIBITS

Joint:

J-1 PNDA, dated March 1, 2021

J-2 FNDA, dated June 17, 2021

J-3 Employee Statements/Emails

J-4 Email from White to Soto-Colon, dated January 7, 2021

J-5 Video from Raycroft Building

J-6 Single Frame from Video showing White

J-7 Contact Tracing Intake Form, dated January 6, 2021

J-8 COVID-19 Employee Letter from Chief Executive Officer of TPH, dated May 27, 2020

J-9 PPE Guidance, dated July 20, 2020

J-10 TPH Policy No. 7.001

J-11 TPH Policy No. 7.002

J-12 Dept. of Health Disciplinary Action Program

J-13 FNDA, dated February 23, 2021

J-14 Labcorp Speciman Final Reports, dated December 3, 9, 24, and 31, 2020, and January 6, 2021

J-15 Lotus Family Medicine Clinic, Progress Notes, dated September 7, 2021

J-16 Mariam Maniya, M.D., Patient Records, dated December 1, 2022