STATE OF NEW JERSEY

In the Matter of Karen McDougald, Passaic County, Board of Social Services CSC DKT. NO. 2022-2995 OAL DKT. NO. CSV 05111-22	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

ISSUED: SEPTEMBER 20, 2023

The appeal of Karen McDougald, Human Services Specialist 2, Passaic County, Board of Social Services, 20 working day suspension, on charges, was heard by Administrative Law Judge Thomas R. Betancourt (ALJ), who rendered his initial decision on August 1, 2023. 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 September 20, 2023, accepted the recommendation as contained in the attached ALJ's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Karen McDougald.

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 20TH DAY OF SEPTEMBER, 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

d

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. 05111-22

AGENCY REF. NO. 2022-2995

KAREN McDOUGALD,
PASSAIC COUNTY BOARD OF
SOCIAL SERVICES.

David H. Weiner, Union Representative, for appellant Karen McDougald pursuant to N.J.A.C. 1:1-5.4(a)(6)

David J. Kass, Esq., for respondent Passaic County Board of Social Services (Steinhardt, Cappelli, Tipton & Taylor, attorneys)

Record Close Date: July 17, 2023 Decided: August 1, 2023

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Karen McDougald, appeals a Final Notice of Disciplinary Action (FNDA), dated May 6, 2022, imposing a penalty of a twenty day suspension.

The Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where it was filed on June 22, 2022.

A prehearing conference was conducted on July 8, 2022, and a prehearing order entered on the same date by the undersigned.

A Substitution of Attorney was filed on November 11, 2022, wherein David J. Kass, Esq., replaced Albert C. Buglione, Esq., as counsel for Respondent.

A hearing was held on May 8, 2023. The undersigned requested a transcript of the proceeding, which was received on July 17, 2023, whereupon the record closed.

ISSUES

Whether there is sufficient credible evidence to sustain the charges set forth in the Final Notice of Disciplinary Action; and, if sustained, whether a penalty of a twenty day suspension is warranted.

SUMMARY OF RELEVANT TESTIMONY

Respondent's Case

Respondent called no witnesses.

Appellant's Case

Karen McDougald, Appellant, testified as follows:

She is employed by the Passaic County Board of Social Services, and has been for thirty-three years. Presently she is a Human Services Specialist II.

Sher received a Preliminary Notice of Disciplinary Action (PNDA), which called for a thirty day suspension with pay pending a hearing. She had a hearing upon her return. She then received a twenty day suspension. She was then docked twenty days' pay.

She denied ever having submitted information on behalf of her family, as stated in the PNDA. She has a brother who is homeless. She used her personal phone to help him apply for benefits. This was not done through the agency's computer. She cannot access the agency's computer via her phone or personal computer.

Ms. McDougald admitted to looking at her brother's case. The other three individuals (referring to in the investigation report, R-7) whose cases she reviewed were work related.

She works in the DCU (Data Control Unit). Their job is to process all 105s. A 105 is an internal form sent to DCU either granting, denying or changing benefits. The DCU then inputs them into the system so it gets to the State. The 105 is on GUMP, the computer system used by Passaic County. It is not the State system. It is sent to the State system via Phoenix.

She admitted to accessing the cases of the other three individuals mentioned in the PNDA, other than her brother, using GUMP. These cases came across her desk as either a 105 or other DCU work related activity. She did not do any actions on these three cases.

Her homeless brother, Anthony McDougald, called her and requested her help to apply online for food stamps. She agreed and helped him using njhelp.org, where you can apply online. It is not part of GUMP.

Her batch number appears on her other brother's case because it was on a list of cases given by her supervisor. Her other brother is Gerald McDougald. All she did was change the worker's code for the following month. She did not increase or decrease the food stamps. She did nothing to make him eligible for something he was not eligible for. She did what she was told do as his name was on a list given to her. Her supervisor is Jani Munjol.[1]

[1] Mr. Munjol was not a witness in this matter.

She was also accused of accessing the cases of Gregory Spruill and Joseph Schollers. She received a 105 and processed the case. She admitted she knows both men. She puts through the 105 with whatever the supervisor puts on it.

She denied ever receiving the employee code of conduct, R-9.

She denied receiving the memorandum dated February 5, 2015 regarding the Local Conflict of Interest Law, R-10.

She denied receiving the memorandum dated August 23, 1991 regarding the Local Government Ethics Law- Conflict of Interest, R-11.

Her employer did not produce a document showing her signature as having received any of the above documents.

She admitted, as found by the hearing officer, that she accessed her brother's case file, Gerald McDougald, to enter data. She stated she believed it was only one time. It was to change the worker code.

She has never before received discipline. She has never before been in trouble in her then thirty-two years of work. She admitted she should have been disciplined, but thinks the twenty-day suspension was excessive. She believed a written reprimand was sufficient.

Cross Examination

To her knowledge she did not receive R-9, R-10 or R-11.

She admitted that it would be wrong had she changed her brother's food stamp allotment.

She admitted it would be a conflict of interest to work on one of her brother's cases if she actually was doing the work on the case. She would not be impartial.

She does not dispute that she accessed Gerald McDougald's case 16 times in GUMP from April 13, 2020 through May 28, 2021. She never advised her supervisor this file was assigned to her.

She also did not dispute that she accessed Anthony McDougald's case 38 times in GUMP from April 15, 2020 through June, 2021.

She admitted she told the investigator, Ms. Littlejohn, that she needed to access Mr. McDougald's case to get information such as his Social Security number. She stated her brother lost his card and needed it to apply for Section 8 housing.

She never advised her supervisor that she accessed Anthony McDougald's file 38 times on GUMP. She did not think she needed to.

She reiterated that she believes she should be punished. She does not believe what she did was unethical. She believes what she did was to help her brothers.

She first accessed her brother Gerald's case when it came across her system from DCU for processing. She changed the worker code. She did not know why she had accessed his case another 15 times in GUMP.

By the AJL

She knows both Mr. Schollers and Mr. Spruill from work as clients. She also knows Mr. Spruill outside of the job.

She accessed GUMP 15 times for Mr. Schollers and 10 times for Mr. Spruill. She did not know why. It could be if she got a 105.

She could not explain why she accessed her brother Anthony's case 38 times. She stated she did not work on Anthony's case.

Re-direct Examination

She stated it would be unethical if she had taken the application, granted the application, without running it past a supervisor.

Re-Cross Examination

She reaffirmed she had not received R-9, R-10 and R-11. She stated it was common sense that tells her why it would be unethical to have granted increases in food stamps.

Her testimony today does not differ from her testimony at the departmental hearing.

Wanda Sawyer, testified as follows:

She is employed by the Passaic County Board of Social Services and has been for 38 years. She is also the vice president of the union.

She and Ms. McDougald were called to the personnel director's office, Ms. Melo. At the meeting Ms. McDougald was served with the PNDA. She was to be sent home for 30 days. Ms. Sawyer argued against this.

Ms. Sawyer thought Ms. McDougald was entitled to a hearing first pursuant to the contract.

Initially they wanted to send Ms. McDougald home without pay. She told Ms. McDougald to return to her desk. The next day Ms. Sawyer received a call from a shop steward that Ms. McDougald was being sent home. Ms. Sawyer went and found the police were there. She met with Ms. Melo and a Mr. Castillo, a management specialist. Ms. McDougald was escorted out by the police.

Ms. Sawyer was contacted thereafter by Talisha Coleman, the Director, to speak and try and resolve Ms. McDougald's matter.

She believes the 20 day suspension given Ms. McDougald is not warranted. She thinks a written reprimand is warranted.

Cross Examination

Ms. Sawyer did not believe any punishment was warranted. She thought just speaking with Ms. McDougald was all that was needed. She thought the most that should happen in terms of discipline was a written reprimand.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see Polk, supra, 90 N.J. 550. Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

When facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings. Credibility is the value that a finder of fact gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, its internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (8th Cir. 1963).

I had some difficulty with Ms. McDougald's testimony. While she mostly seemed to testify in a straightforward and direct manner, she stated she did not know why she accessed one brother's case 38 times. This is simply not believable to me. She knew why she accessed the other brother's case. It was to gather information for his Section 8 housing application. She seemed entirely too fuzzy on her brothers' files. She also had no knowledge of why she accessed Mr. Spruill's or Mr. Schollers' files.

She told the investigator, Ms. Littlejohn, she accessed her brother Anthony's case file 38 times to get information such as a social security number. When the undersigned asked this question she could not explain why.

I will note that there is no allegation, or evidence, that Ms. McDougald did anything illegal such as granting unwarranted benefits to any of the four individuals noted herein. However, her job does not entail her accessing case files for these individuals so many times. She offered little in way of explanation for her actions.

Her inability to explain why she accessed the files leads me to think she was conveniently unaware of R-9, R-10 and R-11. However, not remembering receiving notices as a defense to discipline for violating said notices is no defense at all.

RESIDUUM

Judicial rules of evidence do not apply to administrative agency proceedings, except for rules of privileges or where required by law. N.J.R.E.101(a)(3).

DeBartolomeis v. Board of Review, 341 N.J. Super. 80, 82 (App. Div. 2001). N.J.S.A. 52:14B-10(a) and N.J.A.C. 1:1-15.1(c).

Hearsay are statements other than ones made by the declarant while testifying at a hearing, offered into evidence to prove the truth of the matter asserted. N.J.R.E. 801(c). Hearsay is usually not admissible because it is deemed untrustworthy and unreliable (N.J.R.E. 802) unless it falls within an exception enumerated in N.J.R.E. 803 or 804. However, hearsay is admissible in an administrative proceeding such as this one subject to the "residuum rule," which mandates that the administrative decision cannot be predicated on hearsay alone. Weston v. State, 60 N.J. 36 (1972).

[A] fact-finding or legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal competent evidence in the record to support it. [Id. at 51]

The Uniform Administrative Procedure Rules governing administrative agency proceedings codify this doctrine by requiring that "some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." N.J.A.C. 1:1-15.5(c). In assessing hearsay evidence, it should be accorded "whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a).

While Respondent offered no testimony, it relies to some extent on R-7, the Confidential Memorandum prepared by Yvonne Littlejohn. This memorandum is supported by the testimony of Ms. McDougald.

I also note that the hearing officer's decision is in evidence as R-13. I afford this no weight. It is the duty of the undersigned to conduct a de novo hearing. It is not the

duty of the undersigned to ascertain whether the hearing officer made the correct decision.

FINDINGS OF FACT

I **FIND** the following **FACTS**:

Karen McDougald, Appellant, is employed by the Passaic County Board of Social Services (PCBSS) and has been for 32 years as of the date of the PNDA. Her present job is in the Data Control Unit. She inputs information found on 105 forms. She does so by accessing the GUMP system utilized by her employer.

Ms. McDougald has two brother's: Anthony and Gerald. Anthony is homeless. Ms. McDougald assisted Anthony with his food stamp application using njhelp.org.

Ms. McDougald accessed her brother Gerald's case file in GUMP 16 times between April 13, 2020 to May 28, 2021. She offered no explanation as to why.

Ms. McDougald accessed her brother Anthony's case file 38 times in GUMP from April 15, 2020 through June 7, 2021. She told the investigator, Ms. Littlejohn, she did so to get information such as her brother's social security number.

Ms. McDougald accessed Joseph Schollers' case file 15 times in GUMP. She does not know why.

Ms. McDougald accessed Gregory Spruill's case file in GUMP 10 times. She does not know why.

Ms. McDougald knows both men. It is unclear if they are friends or merely clients of Respondent.

The Respondent issued an Employee Code of Conduct, R-9, which provides that an employee must notify immediately the office of the Director if a member of her family

has applied for financial assistance or services. I specifically **FIND** that Ms. McDougald knew or should have known of this Employee Code of Conduct, and that she violated the same by failing to advise the office of the Director regarding her two brothers' applications for benefits.

The Respondent issued a Memorandum, R-10, dated February 5, 2015, which stated that no government official shall act in her official capacity where an immediate family member has an interest that might reasonably impair her objectivity. I **FIND** that McDougald knew or should have known of this Memorandum, and that she violated the same by acting in her official capacity regarding her two brothers' applications for benefits.

The Respondent issued a Memorandum, R-11, dated August 23, 1991, which stated that an employee who has knowledge that a member of the immediate household has applied for benefits must report that information to the Personnel Department immediately. I **FIND** that McDougald knew or should have known of this Memorandum, and that she violated the same by acting not notifying the Personnel Department of her two brothers' applications for benefits.

The finding that Ms. McDougald knew or should have known of R-9, R-10 and R-11 is based upon my credibility determination above.

Ms. McDougald was served with a PNDA, dated April 19, 2022 alleging she breached the Memorandum dated August 23, 1991 and the Local Government Ethics Law. She was suspended for thirty days with pay pending a hearing. (R-6)

Ms. McDougald was served with a FNDA, dated May 16, 2022, which provided for a suspension of 20 working days. Ms. McDougald has served that suspension.

I make no finding as to Ms. McDougald's actions in accessing the case files of Mr. Schollers or Mr. Spruill. There is insufficient evidence as to her relationship with either man, which in turn makes it difficult to ascertain whether her actions were violative of any ethical constraints.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a civil service employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). In order to carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). This burden of proof falls on the agency in enforcement proceedings to prove violations of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

In the instant matter, after a departmental hearing, The FNDA had sustained charges that Ms. McDougald breached PCBSS Memorandum File #91-34, dated

August 8, 1991, and Local Government Ethics Law – Conflict of Interest. The PNDA provided a penalty of suspension for twenty days.

Here it is clear that the evidence preponderates in favor of Respondent that Appellant is guilty of the sustained charges in the FNDA, as set forth above.

The PCBSS Employee Code of Conduct states in relevant part: "... any employee who knows that a member of his or her immediate household has applied for financial assistance or services from this PCBSS must immediately report that information to the Office of the Director." Ms. McDougald knew both her brothers had applied for benefits. Indeed, she had accessed one brother's case file 38 times and the other brother's case file 16 times. It is not disputed that she never notified the Office of the Director.

The PCBSS issued two Memoranda, dated February 5, 2015 and August 23, 1991, respectively, regarding the Local Government Ethics Law about conflicts of interest. (P10 and P-11)

The February 5, 2015, memorandum states "The perception of unethical conduct can seriously damage that public trust and confidence even though unethical conduct may not have occurred." It further states: "no local government official or employee shall act in his or her official capacity in any matter where he, a member of his immediate family ... has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity or dependence on government."

While there is no allegation that Ms. McDougald conferred unwarranted benefits to either of her brothers, the mere fact that she accessed their respective case files creates the perception of unethical conduct.

The August 23, 1991 memorandum states: "An employee who has knowledge that a member of the immediate household has applied for financial assistance or services from this agency must report that information to the Personnel Department immediately." It is not disputed that Ms. McDougald knew both her brothers had applied

benefits. It is also not disputed that Ms. McDougald did not report the same to the Personnel Department.

What now must be determined is whether a 20 days suspension is the appropriate penalty.

An appeal to the Merit System Board[2] requires the Office of Administrative Law to conduct a de novo hearing and to determine appellant's guilt or innocence as well as the appropriate penalty. In the Matter of Morrison, 216 N.J. Super. 143 (App. Div. 1987). In determining the reasonableness of a sanction, the employee's past record and any mitigating circumstances should be reviewed for guidance. West New York v. Bock, 38 N.J. 500 (1962). Although the concept of progressive discipline is often cited by appellants as a mandate for lesser penalties for first time offences,

> that is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.
>
> [In re Hermann, 192 N.J. 19, 33-4 (2007) (citing Henry, supra, 81 N.J. 571).]

Although the focus is generally on the seriousness of the current charge as well as the prior disciplinary history of the appellant, consideration must also be given to the purpose of the civil service laws. Civil service laws "are designed to promote efficient public service, not to benefit errant employees . . . The welfare of the people as a whole, and not exclusively the welfare of the civil servant, is the basic policy underlining the statutory scheme." State Operated School District v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). "The overriding concern in assessing the propriety of the penalty is the public good. Of the various considerations which bear upon that issue, several factors may be considered, including the nature of the offense, the concept of

[2] Now the Civil Service Commission, N.J.S.A. 11A:11-1

progressive discipline, and the employee's prior record." George v. North Princeton Developmental Center, 96 N.J.A.R. 2d. (CSV) 463, 465.

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, our Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, supra, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, supra, 38 N.J. 523–24.

The concept of progressive discipline has been used to reduce the penalty of removal in other cases involving a law-enforcement officer who used racist language in public but who otherwise had a largely unblemished employment record. In In re Roberts, CSR 4388-13, Initial Decision (December 10, 2013) adopted, Comm'n (February 12, 2014), <http://njlaw.rutgers.edu/collections/oal/>, for example, an on-duty police officer who, while arresting an uncooperative black suspect, shouted to his K-9 police dog, "Zero, bite that nigger," had his penalty modified from removal to a six-month suspension. The ALJ had found that his misconduct was "plainly aberrational," as his past record only included an oral reprimand for a motor-vehicle accident over the course of seven years of service and several of his minority co-workers credibly testified that he had otherwise treated citizens in an impartial and respectful manner. While the ALJ found that, due to mitigating circumstances, "termination is too severe a penalty," he nonetheless concluded that, despite a past record that included only an oral reprimand, the "fitting" penalty "is the longest suspension which the law allows: six months."

While concept of progressive discipline in determining the level and propriety of penalties imposed requires a review of an individuals prior disciplinary history a "clean" record may be out-weighed if the infraction had issued a serious in nature. Henry v. Rahway State Prison, 81 N.J. 571 (1980); Carter v. Bordentown, 191 N.J. 474 (2007). Further some disciplinary infractions are so serious that removal is appropriate. Destruction of public property is such an infraction. Kindervatter v. Dep't of Envt'l Protection, CSV 3380-98, Initial Decision (June 7, 1999), http://lawlibrary.rutgers.edu/collections/oal/search.html.

In determining the penalty to be imposed, the court noted that none of the factors justifying mitigation of removal were present. Namely mistake, negligence, or remorse. The Court was compelled to hold that whatever the employee's motive, and regardless of the worth of the computer, she had to be subject to major discipline. While the goal of discipline is to either remove an employee unsuitable for public service or to impose some lesser sanction when the employee may be rehabilitated, the Court held that the extraordinary serious offense in this case could not be mitigated by a prior good-service record as that mitigation is reserved only for lesser offenses.

In the instant matter a suspension for twenty days is the appropriate penalty without any prior disciplinary action having been taken against Appellant. The act of accessing one's brothers case files excessively, without adequate explanation as to why is an egregious violation of both the PCBSS Memorandum and the Local Government Ethics Law. It creates the perception of unethical conduct, even where none exists.

In In Re Borough of Englewood Cliffs, 473 N.J. Super. 189, 205-206 (App. Div. 2022) the Court states:

> "The Local Government Ethics Law(the Ethics Law), N.J.S.A. 40A:9-22.1 to -22.25, creates a statutory code of ethics that governs when a disqualifying conflict of interest arises for a local government official. The Ethics Law and the common law guide courts in evaluating when conflicts arise. See Piscitelli v. City of Garfield Zoning Bd. of Adjustment, 237 N.J. 333, 349-50, 205 A.3d 183 (2019); Grabowsky v. Twp. of Montclair, 221 N.J. 536, 552, 115 A.3d 815 (2015). "The overall objective 'of conflict of

> interest laws is to ensure that public officials provide disinterested service to their communities' and to 'promote confidence in the integrity of governmental operations.' " Piscitelli, 237 N.J. at 349, 205 A.3d 183 (quoting Thompson v. City of Atlantic City, 190 N.J. 359, 364, 921 A.2d 427 (2007))."

Ms. McDougald's actions certainly detract from promoting confidence in the integrity of governmental operations.

Based upon the above, I **CONCLUDE** that Respondent has demonstrated by a preponderance of the credible evidence that Appellant is guilty of the sustained charges in the FNDA, and that a suspension of 20 days is the appropriate penalty.

ORDER

It is hereby **ORDERED** that Appellant's appeal is **DENIED**; and,

It is further **ORDERED** that the Final Notice of Disciplinary Action, dated May 16, 2022, providing for a penalty of 20 day suspension, is **SUSTAINED**.

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.

August 1, 2023
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:
db

APPENDIX

List of Witnesses

For Appellant:

Karen McDougald, Appellant

Wanda Sawyer

For Respondent:

None

List of Exhibits

For Appellant:

None

For Respondent:

R-6 PNDA
R-7 Confidential Memo by Yvonne Littlejohn, Confidential Investigator
R-8 Appellant Paystub
R-9 Employee Code of Conduct
R-10 Memorandum, 2/5/15, re: Local Conflict of Interest Law
R-11 Memorandum, 8/23/91, re: Local Government Ethics Law – Conflict of Interest
R-12 Code of Ethics for employees
R-13 Disciplinary hearing decision, 5/16/22

By the AJL:

J-1 FNDA