



STATE OF NEW JERSEY

In the Matter of Jacqueline Coley,
Plainfield, Fire Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2021-535
OAL Docket No. CSV 09815-21

ISSUED: MAY 1, 2024

The appeal of Jacqueline Coley, Principal Clerk Transcriber, Plainfield, Fire Department, removal, effective November 2, 2020, on charges, was heard by Administrative Law Judge William J. Courtney (ALJ), who rendered his initial decision on February 22, 2024. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on May 1, 2024, rejected the recommendation contained in the ALJ's initial decision and acknowledged the attached settlement.

In this matter, the parties had contacted the Commission subsequent to the issuance of the ALJ's initial decision. Specifically, the parties indicated that they had settled the matter and forwarded the settlement to the Commission for review and acknowledgment. The policy of the judicial system strongly favors settlement. *See Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. The settlement provides for the appellant's reinstatement through December 31, 2024, with back pay and counsel fees. It was also agreed that the appellant would retire at that time. Upon review of the settlement, the Commission finds that it complies with Civil Service law and rules. As such, the Commission rejects the initial decision and acknowledges the settlement.

ORDER

The Civil Service Commission rejects the initial decision and acknowledges the settlement.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF MAY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Attachments



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 09815-21

AGENCY DKT. NO. N/A

2021-535

**IN THE MATTER OF JACQUELINE COLEY,
CITY OF PLAINFIELD, FIRE DEPARTMENT.**

Charlette Matts, Esq., for appellant (Weissman & Mintz, LLC, attorneys)

Denise Errico Esmerado, Esq., for respondent (Ruderman & Roth, attorneys)

Record Closed: November 18, 2022

Decided: February 22, 2024

BEFORE **WILLIAM J. COURTNEY, ALJ**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Jacqueline Coley ("Coley"), a principal clerk transcriber for respondent City of Plainfield, Fire Department ("Department"), appeals the termination of her employment resulting from a disciplinary action brought against her for several alleged incidents that occurred between October 2018 and July 2019. Coley's alleged failure to charge the appropriate fees for smoke, carbon monoxide and fire extinguisher inspections comprise the gravamen of the complaints against her. A Final Notice of Disciplinary Action ("FDNA") was issued on November 2, 2020, terminating her employment. Coley filed a timely appeal of her termination, and the matter was transferred to the Office of

Administrative Law on December 1, 2021. Hearings were conducted on June 13, 2022, June 20, 2022, July 1, 2022, and August 4, 2022. The parties submitted written summations, and the record closed on November 18, 2022.

BACKGROUND

Coley worked for the City of Plainfield for more than thirty years at the time of her removal.¹ In her first job with the City of Plainfield, she worked in the police division for approximately twelve years before being transferred to the City of Plainfield, Fire Department ("Department"). In or around 2002, Coley began her role as principal clerk transcriber, and she served in that position until her termination in November 2019. From approximately February through April 2019, Martin Mandell served as the director of the Department. In May 2019, Kenneth Childress became the director of the Department. In 2019, Deputy Chief McCue served as the head of the Fire Prevention Bureau ("Bureau") within the Department.

From 2002 through July 2019, Lieutenant Owens served as Coley's direct supervisor. In 2018 and 2019, Owens served as the fire official in the Department. Owens retired in July 2019.

In 2018 and 2019, Lieutenant Taheem Muslim served as an inspector in the Department, and Owens was also his supervisor. On August 12, 2019, after Owen's retirement, Muslim took on the role of fire official in the Department. He did not, however, take over Owen's supervisory authority over Coley. After Owen's retirement, McCue became Coley's supervisor.

As the principal clerk transcriber, Coley's primary duties included processing smoke and carbon monoxide, fire extinguisher inspection applications ("inspection applications"), violations and penalties, handling deposits, filing checks and related documents and administrative tasks. Coley did not supervise any employees. Coley was

¹ In addition to her 30 years of employment with the City of Plainfield, Coley also served as an elected member of the Plainfield Board of Education for 6 years.

the only individual working in the principal clerk transcriber role. However, Owens, McCue, and the inspectors processed inspection applications in Coley's absence.

FACTUAL DISCUSSION

Under the Uniform Fire Code ("UFC"), N.J.A.C. 5:70-2.3, before any one- and two-family or attached single-family structure is sold, leased, or otherwise made subject to a change of occupancy for residential purposes, the owner is required to obtain a certificate. The compliance fee schedule for inspections completed in New Jersey is controlled by Section 5:70-2.9 of the UFC. Pursuant to the UFC, an employee is supposed to count the number of business days between when the application fee is received and the change of occupancy to determine the fee. See N.J.A.C. 5:70-2.9(d).

At the time of her hiring, Coley was not familiar with the UFC. Owens did not provide Coley with any written policies stating that the Department adhered to the fee schedule in the UFC, nor did she receive any training concerning the UFC or any of the procedures contained therein.

In or around 2014, Coley obtained her fire official license and, as a result, became aware of the UFC. She informed her direct supervisor, Owens, that no one in the Department was adhering to the Uniform Fire Code. Her statement notwithstanding, the policy of charging a flat rate of \$45 for an inspection continued. In 2019, Coley informed then Deputy Chief McCue that the Department should be using the closing date to calculate fees. Coley also made a request to Owens and McCue that the Department institute a consistent policy related to calculating fees. However, neither Owens nor McCue responded to Coley's request.

The City of Plainfield Division of Inspections is responsible for maintaining the inspection application form. Deputy Chief McCue testified that it was the fire official, and not Coley, who was responsible for ensuring that the applications available to customers were accurate and updated. During the relevant period, customers could retrieve the inspection applications by visiting Plainfield City Hall to retrieve a packet that includes the inspection application, visiting the City of Plainfield's website, or from a basket near

Coley's desk. Most customers retrieved the packet from City Hall. The inspection application that was on the City of Plainfield's website at the time of the hearings included language that stated that the application fee for an inspection, "as required by N.J.A.C. 5:70-2.3, shall be based upon the amount of time remaining before the change of occupant is expected." This, however, was not the procedure during the timeframe relevant to this proceeding, and the Department instead designated Wednesdays as the only day that inspections would be performed. The Uniform Fire Code contains no provision designating a specific day for inspections.

When Coley first began at the Department, Owens trained Coley by reviewing an inspection application with her and instructing her on which fields she needed to complete. Owens informed her that the Department charged the lowest fee as a flat rate for an inspection. At the time of her training, the fee was \$35, and it was eventually increased to \$45. Coley was not trained concerning the significance of the closing date or told why inspections were performed on Wednesdays only. It is uncontested that Coley processed applications and charged fees in accordance with Owens' initial instructions and the practice in the department from 2002 to 2018 without any issues and without any indication from anyone that she was doing anything wrong.

In 2018, Coley was present when Captain Scalara informed Owens that the Department should try to charge citizens \$161 for inspections conducted on the same day the application was submitted or if the inspection was requested for any day besides Wednesday. Scalara further stated that the Department could try to get \$90, but the basic fee was \$45.

This statement made by Captain Scalara is important because Coley testified that Scalara's instructions became the practice within the department going forward. Coley was not provided with any written policies related to the processing of inspections before or after Captain Scalara's verbal instructions.

In practice and in accordance with Captain Scalara's instructions in 2018, the Department began charging citizens \$161 for inspections on the day that the inspection application was submitted or any day other than Wednesday; accepting the \$90 fee if the

citizen had already filled out the application and included the \$90 fee; or otherwise accepting the flat fee of \$45. Coley processed inspection applications pursuant to the Department's practice from 2018 until her termination.

I **FIND** that Owens was aware of Coley's method of processing applications and calculating fees because it was her practice to give the inspection applications she processed and the certificate of inspection to Owens for his review and signature. Coley also created a binder that contained documents that she drafted, listing the steps she took to complete her tasks. Coley's supervisors and other Department employees were aware of Coley's binder and the steps that Coley took when processing the inspection application.

Inconsistency in the processing of applications appears to have started at some point in 2018 when Lt. Muslim, an inspector at the time, began processing inspection applications in Coley's absence. Muslim learned how to process inspection applications and calculate the inspection fees while attending the Middlesex Fire Academy, where he received his fire official's license and inspector's license. Muslim was aware the UFC included a fee schedule, which provided that different fees be charged based upon the amount of time between the date of the application and the change in ownership with respect to the property at issue.

Muslim recalled that Coley, McCue and Owens also provided him with training on how to assess fees using the application, and that the training that Coley, McCue and Owens provided him did not differ. McCue and Owens both instructed Muslim to disregard the closing date when calculating fees which is the procedure set forth in the UFC. When processing applications in Coley's absence, Muslim calculated the inspection fees by counting the number of days from the date that the customer submitted the application to the date of the inspection for the change in ownership, excluding weekends and holidays.

McCue also acknowledged that the Uniform Fire Code required that an employee count the number of business days between when the application fee is received and the change of occupancy date to calculate the inspection fees. McCue sometimes used the

closing date to calculate the inspection fees. However, he and others in the Department calculated fees by counting the number of days between when the fee was received and the date of the inspection. McCue conceded that the Department's practice of completing inspections on Wednesdays only does not adhere to the UFC.

McCue also did not adhere to the Department's Wednesday-only practice and scheduled inspections on days other than Wednesday. McCue further conceded that there is no written rule regarding how the time of day impacts the fee that a customer is charged.

**FACTUAL FINDINGS RELATING TO INVESTIGATIONS INTO
COLEY'S ACTIONS**

A. February 2019 Written Warnings

1. On February 19, 2019, Coley was issued two written warnings by former Director Mandell, neither of which related directly to the allegations against Coley in this matter.
2. The first written warning related to Coley's decision to utilize a book entitled "phone message book" instead of a "phone logbook" to record telephone messages.
3. The second written warning related to her failure to properly document her lunch periods and her failure to properly request vacation or sick time prior to its use.
4. Neither Coley nor her union were able to appeal the written warnings.
5. Coley refused to sign the written warnings because she maintained that the allegations contained in the warnings were not true.

6. In response to the allegations contained in the February 2019 written warnings, Coley requested that certain restaurant owners and real estate agents write letters about her work ethic and contributions to the Department. Coley then submitted the letters she requested and an unsolicited complimentary holiday card to Mandell and the mayor's office.

B. The February 2019 Spreadsheet

1. In January or February 2019, Muslim reported to McCue and Mandell that Coley had made some unspecified errors while processing applications.
2. A few days before February 19, 2019, Mandell instructed McCue to create a spreadsheet because he believed Coley was charging her realtor friends a discounted amount for inspections, and Mandell wanted to use the spreadsheet to impose disciplinary charges against Coley.
3. The spreadsheet purportedly shows that Coley did not charge the correct fees for nineteen inspection applications that she processed from October 22, 2018, through February 19, 2019.
4. McCue submitted the spreadsheet and corresponding applications to Mandell.
5. Coley had previously submitted all the corresponding applications to Owens for review after Coley received them from the customers.
6. No one from the Department shared the spreadsheet with Coley. No one from the Department told Coley that she was not charging the correct amount of fees for inspection applications.
7. In February 2019, Coley was not issued any disciplinary notice related to how she processed inspection applications.

8. In February 2019, Coley was not provided with any written policies related to processing and scheduling inspection applications or required to undergo training related to how to process inspection applications.

C. The March 20, 2019 Incident

1. On March 20, 2019, a realtor by the name of Sandra Chambers came to the Department and submitted a completed application for an inspection.
2. Randolph, an inspector in the Department, informed Chambers that he would complete the inspection.
3. Coley then took the steps to print a certificate of inspection for the Chambers application and submitted it, along with the inspection application, to Owens for review and signature.
4. After reviewing the documents and signing the certificate of inspection, Owens gave the documents to Randolph.
5. Only Coley, Owens and Randolph were present in Owens' office when this incident occurred.
6. On March 21, McCue sent an email to Mandell² alleging that Coley misinformed Owens and that Owens did not know what he was signing.
7. Neither at the time of this incident nor shortly thereafter, did McCue or Owens say anything to Coley about the way she processed Chambers' application or scheduled the inspection.
8. Neither Coley nor Chambers were informed that an updated application needed to be completed.

² See R-10.

9. Coley was not asked to participate in any investigation or provide a written statement regarding this incident.
10. In March 2019, Coley was not issued any disciplinary action related to this incident.
11. In March 2019, Coley was not provided with any written policies related to processing and scheduling inspection applications or required to undergo training related to how to process inspection applications.
12. After March 20, 2019, Coley continued to process inspection applications pursuant to the directive of Scalara.

D. The June 2019 Incident

1. On June 26, 2019, Muslim submitted an M-13 report³ to Director Childress, alleging that Coley had misinformed an individual who had introduced himself to Muslim as an officer Brito.
2. Muslim testified that Brito was informed by Coley that he was eligible for a city discount. Muslim did not recall previously meeting Brito and did not process an inspection application for him.
3. Muslim's report further alleges that on June 24, Coley engaged in favoritism by charging relator Sam Cooper \$45 and Sylvester Anyanwa \$161 for inspections that were scheduled for June 26, 2019.
4. Muslim's report states that Coley had been previously warned about favoritism, but at the underlying hearing, he was unable to provide any specific facts or written documents related to the prior warnings.

³ An M-13 is created to document incidents that occur in the Department. See R-2.

5. Coley does not know a police officer named Brito, and she has never told anyone that they could receive an employee discount.
6. Coley testified that the inspection application and \$161 money order were prefilled by the individual who submitted the inspection application on behalf of Anyanwa.
7. Coley recalled that she informed the same individual that the inspection could be performed right away; otherwise, they could pay only \$45 for a later scheduled inspection.
8. The individual did not want to leave to retrieve a new money order and requested that Coley place them on the inspection schedule for Wednesday, June 26, and accept the \$161 money order.
9. Prior to June 26, 2019, no one in the Department informed Coley that they thought she had been showing favoritism to some customers.
10. On June 28, Coley submitted an email in response to a request that she explain why she charged Cooper \$45 for the June 26 inspection. (J-3.)
11. In her email, Coley explained that Copper had previously called to inquire about availability for a Wednesday inspection, and when she came to the office on June 26, there was still availability on the inspection schedule.
12. In her June 28 email to McCue, Coley also stated that no one in the Department was charging fees based on the closing date in accordance with the Uniform Fire Code. (J-3)
13. Coley further stated in her June 28, 2019, email that fees were not being charged in any consistent manner and attached inspection applications that supported her assertions.

14. McCue acknowledged that he became aware of inconsistencies in how the Department employees collected fees based on his review of the applications that Coley provided.
15. Coley also requested quarterly training so that fees would be charged uniformly, but she received no response.

E. The July 24, 2019 PNDA

1. The decision to issue the PNDA was made by Abby Levenson.
2. Levenson had no supervisory duties over Coley.
3. Levenson made the final decision to issue the July 24, 2019.
4. Preliminary Notice of Disciplinary Action ("July 24, 2019, PNDA") to Coley.
5. Levenson recalled that in early 2019, Mandell had spoken with her regarding concerns he had about how Coley had been charging inspection fees.
6. Levenson had no personal knowledge about the final status of his investigation into Coley or what date it ended.
7. Levenson's decision to impose the July 24, 2019, PNDA against Coley was based on her review of three incidents where Coley allegedly charged improper fees: a July 2, 2019, major discipline document drafted by Deputy Chief Blake; the City of Plainfield Code of Ethics; the Personnel Policy Manual; and Coley's personnel file, including an OAL decision from June 2002 related to Coley's employment in the police department.
8. Levenson did not personally speak with Coley about the allegations against her and has no personal knowledge about whether Coley was asked to participate in any investigation before being issued the July 24, 2019, PNDA.

9. Levenson also concluded that Coley violated the Department's policies but admitted that she has no personal knowledge about whether the Department practices or policies are memorialized in writing.
10. On July 24, 2019, Childress gave Coley the July 24, 2019, PNDA by hand delivery.

The specifications of the July 24, 2019, PNDA stated:

Employee gave preferential treatment to at least three citizens, with whom she has a personal relationship, charging a reduced rate for a fire inspection. Employee falsified a Fire Division documents [sic] so that it would appear that at least one citizen was eligible for the reduced fee for inspection. Employee deliberately misinformed an officer about the scheduling of an inspection of another property to conceal charging the citizen a reduced rate. And Employee fabricated an "employee discount" to justify a reduced rate for another. Further, Employee has refused to utilize a current fire inspection application that includes the closing date for the sale of property. Ms. Coley was previously advised by management that she must adhere to the fee schedule when scheduling fire inspections and use current forms. [P-3]

11. The July 24, 2019, PNDA was the first indication that Coley had been given that her supervisors thought she was violating the Department policies listed on the PNDA.
12. After she was issued the July 24, 2019, PNDA, Coley continued to work in her principal transcriber role.
13. After July 24, 2019, Coley was not required to undergo any training related to how she processed inspection applications or provided with any relevant written policies.

F. The August 21, 2019, Amended PNDA

1. The amendment to the July 24, 2019, PNDA included: 1) raising the number of incidents from three to "over 21" where Coley was allegedly charging reduced rates for fire inspections which constituted preferential treatment based upon Coley's personal relationship with the applicants; 2) an allegation that Coley was untruthful when asked about the reduced rate she charged for inspection(s); and 3) on at least two occasions, Coley failed to collect the inspection fee until after the inspection had been conducted.

LEGAL ANALYSIS

Pursuant to the Civil Service Act, there is a requirement that, in order for a public employee to be fined, suspended or removed, the employer must show just cause for its proposed action. In the Matter of Ruben Carrero, City of Newark Police Dept., No. 2012, 2012 WL 3647321, at *7 (N.J. Admin. July 27, 2012). The issues to be determined at this de novo hearing are whether petitioner's termination was warranted for her alleged violations of respondent's rules and policies by inappropriately charging a reduced rate for fire inspections, showing preferential treatment to citizens based on their personal relationships with Coley, not adhering to the fee schedule and not utilizing the correct forms, and if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

In an appeal of major discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of 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).

In this matter, respondent bears the burden of proving the charges against petitioner by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). 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). Preponderance may also be described as the greater

weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

For the following reasons and based upon the testimony and documentary evidence presented at the hearing, I **FIND** that the Department has not proven any of the charges against Ms. Coley by a preponderance of the credible evidence and that her termination was improper.

Charging Reduced Rates for Fire Inspections and Claims of Preferential Treatment

A crucial factor in my decision in this case is the specific wording contained in the Amended Preliminary Notice of Disciplinary Action ("Amended PNDA") which describes the incidents giving rise to the charges. The Amended PNDA states in part:

Since October 2018, employee inappropriately charged a reduced rate for fire inspections on over 20 occasions. **Many of those who received the reduced rate were provided such preferential treatment based on a personal relationship with the employee.**
[emphasis added]

There was no credible evidence presented by the Department that any of the twenty-one instances identified by the department involved anyone with a personal relationship with Coley. What the Department's evidence did reveal, however, is a series of actions taken against Coley that appear to result from her attempts to defend herself against two unrelated written warnings she received in February 2019.

Because there was no procedure for Ms. Coley to appeal the written warnings in February 2019, Coley requested that certain restaurant owners and real estate agents write letters about her work ethic and contributions to the Department. In late February 2019, four separate letters from four different realtors were submitted to the City of Plainfield Fire Department in support of Cooley. (See Exhibit J-4).

At or around the same time Ms. Coley provided the Department with the letters of support, Lt. Muslim reported to McCue and Mandell that Coley had made some unspecified errors while processing applications. There was no explanation provided as to why Lt. Muslim did not bring his concerns to his supervisor, Lt. Owens, who was also Ms. Coley's supervisor. After learning of Muslim's concerns, Mandell then instructed McCue to document the instances where Coley was charging her realtor friends a discounted price for inspections. McCue testified that Mandell wanted to use the documentation to impose disciplinary charges against Coley. While there was no direct testimony from Mandell as to why he had decided to impose disciplinary charges against Coley before McCue obtained the information he was requesting, the testimony provided indicated that, as early as February 2019, Mandell, who was the director of the department, believed Ms. Coley was charging her alleged "realtor friends" less for inspections. The facts clearly reveal that Mandell's belief arose at or around the same time two realtors authored letters of support for Coley. The Department provided no factual basis for Mandell's assumption.

Lt. McCue's sworn testimony during cross-examination concerning the spreadsheet he generated on February 19, 2019, at Director Mandell's request was as follows:

Q. Do you know what he [Mandell] was going to use it for?

A. Disciplinary charges.

Q. So, he wanted you to collect the document so he could institute . . . disciplinary charges against Ms. Coley, right?

A. Yes.

McCue went on to testify how he selected the twenty-one applications documented in the spreadsheet he created that spanned the time period between October 22, 2018, and February 19, 2019:

Q. Okay, so how did you select these twenty-one applications from that time period? What process did you use to select these specific applications?

A. Well, Director Mandell, I had—we had more than twenty-one and Director Mandell said cut it down to like fifteen or twenty because there was just too many.

Q. Okay, and again, how did you select these twenty-one though? How did you land on what is in this document.?

A. I just looked at the real estate realtors and when I found discrepancies, then I put down inspection fee (tape skipped) date—receipt date.

McCue was asked directly about the process he used in selecting the applications he included in his spreadsheet. His response was that he only looked at applications from realtors. It was clear from his testimony that he limited his review to applications from realtors because that was what he understood Director Mandell wanted him to do. There was no credible evidence presented that McCue, or anyone else for that matter, reviewed applications from those applicants who were not realtors to determine if Coley was treating realtors differently than any other applicant. The actual allegation contained in the Amended PNDA was that Coley was charging reduced rates for fire inspections based on her personal relationship with the applicant. However, the discrepancies McCue had identified in his spreadsheet were differences in the amount charged to the realtors and the amount that he believed should have been charged to those same realtors pursuant to the fee schedule contained in the UFC. The Department provided no credible evidence that Ms. Coley charged reduced rates based upon a personal relationship with any applicant. Moreover, Abby Levinson, a person who assisted in drafting the charges against Ms. Coley, testified that she found it “suspicious . . . that the letters praising Coley’s work performance were from the same people who were on the spreadsheet and in the documents as having received favorable fees. She, therefore, “assumed that there was a relationship” between Coley and the individuals who wrote letters.⁴ Levinson never spoke with Ms. Coley or any of the individuals who wrote letters on Coley’s behalf to inquire whether Coley had offered them a reduced rate or showed them favoritism. In fact, there is no evidence that anyone spoke to any of the realtors or conducted any investigation to determine if there were any personal relationships

⁴ The letters are included in Joint Exhibit 4.

between Coley and any of the realtors identified on McCue's spreadsheet or who wrote letters in Coley's support.

The only credible testimony provided at the hearing concerning Coley's relationship with any realtor was offered by Coley, not the Department. Coley offered the testimony of Sandra Chambers and Darlene McWilliams, both of whom were identified by the Department as realtors with a personal relationship with Coley who received preferential treatment. Both realtors testified that they had no personal relationship with Coley and did not believe that they received preferential treatment. They indicated that Coley charged them the same amount as everyone else in the Department.

I also find it troubling that the Department claims to have issued the Amended PNDA on August 24, 2019, after discovering "new incidents of misconduct." Based upon the testimony of the Department's own witnesses, I **FIND** that the new incidents of misconduct identified in the Amended PNDA are the same alleged discrepancies identified by Lt. McCue in his February 19, 2019, spreadsheet. I also **FIND** the testimony of Abbey Levinson, the person who assisted in drafting the Amended PNDA, to lack credibility when she testified that "the [Department] was not aware of these [new] incidents" which happened prior to July 2019. The testimony of Lt. McCue clearly demonstrates that the Department was aware of these alleged new incidents five months prior to the initial PNDA because then Director Mandel directed McCue to document them. McCue provided his February 19, 2019 spreadsheet at Director Mandell's direction, and that very same spreadsheet is the source of the claimed "new incidents" of misconduct.

Knowing that all of these new instances of misconduct were not new at all, it is important to consider that nothing was done about them for more than six months after their alleged discovery. During this time period, Ms. Coley continued to process inspection applications and charge fees in accordance with Captain Scalara's verbal instructions in 2018. There is no evidence in the record indicating that Ms. Coley was advised that she was doing anything improper while she was charging fees in accordance with Scalara's instructions. If her actions were truly a concern, I would expect that someone would have at least sent her a memo or email advising her as to what she was doing wrong or establishing a procedure as to how to process applications properly.

While there was testimony provided by McCue that both he and Lt. Owens told Ms. Coley that she should be charging fees in accordance with the UFC, he could not say when these instructions were given, and there was no writing documenting this alleged communication. There was also no direct testimony provided by Lt. Owens, who served as Ms. Coley's supervisor during the time periods in question, on the issues of the procedures in place at the department regarding how fees were to be assessed and why there were no changes in those procedures in 2014 when Ms. Coley advised him that their procedures were not in compliance with the UFC. Ultimately, Lt. Owens had the responsibility to review all of the applications and fees charged, and the record is devoid of any indication that Lt. Owens objected to the processes being utilized by Ms. Coley.

When Coley was first made aware of a concern over a single incident in June 2019 by way of a memo from Lt. McCue, she responded by agreeing that there have been inconsistencies within the bureau about how fees were being assessed, and she suggested quarterly meetings so that everyone could "touch base, plan, better organize communicate and be on one accord." She also emphasized that "no one was charging fees based on the closing date, which is the uniform state law, everybody is [calculating fees] based on the days leading to Wednesday." After her response was provided, Lt. Owens indicated to Director Childress that he too believed there should be a meeting with Ms. Coley to reiterate the process on fees and the scheduling of inspections. Not only do I **FIND** Ms. Coley's response to Lt. McCue's inquiry to be reasonable, but I also **FIND** Lt. Owens's agreement with Ms. Coley's request to meet and review the procedures to be a more reasonable and appropriate way to address the issue.

Ms. Coley's testimony concerning her processing of applications and assessing fees was consistent and credible. The Department's assertion that she was instructed prior to June 26, 2019, to charge fees in accordance with the UFC was not credible. If there had been such an instruction given to Ms. Coley, it should have been documented at or around the time the directions were given. It is not Ms. Coley's burden to prove that the direction to comply with the UCF fee schedule wasn't given. Rather, it is the Department's burden to prove that that it was.

I **CONCLUDE** that the unsupported testimony of Lt. McCue, that he and Lt. Owens had previously instructed Ms. Coley to comply with the UFC fee schedule, does not satisfy that burden. McCue does not remember when this communication was made to Coley, and Lt. Owens did not testify. Moreover, both McCue and Owens were Ms. Coley's superiors and had a clear motivation to report to Director Mandel that they had instructed Ms. Coley to comply with the UFC fee schedule. Owens was Ms. Coley's direct supervisor and had the responsibility of reviewing the applications she processed. Deputy Chief McCue was Owen's superior. The only evidence that I would consider sufficient to overcome the apparent conflict of interest would be written documentation that they had indeed advised Ms. Coley to adhere to the UFC fee schedule. I **FIND** Ms. Coley's testimony that she was never told by anyone to utilize the UFC fee schedule in processing applications to be credible and to outweigh any testimony to the contrary.

The Department argues that this tribunal should not accept Ms. Coley's testimony that her process of collecting fees was in accordance with Chief Scalara's directions in 2018 because the testimony is hearsay. I disagree. Hearsay statements are deemed admissible when the statement relates to a policy or procedure of an employer and was uttered by one authorized to make such statement. See Spencer v. Bristol Meyers Squibb Co., 156 N.J. 455 (1998). In the context of discrimination claims, hearsay statements have been deemed admissible where the statement relates to a policy or procedure of the employer and was uttered by one authorized to make such a statement. Also, when a superior's statement falls within the scope of their employment, it is deemed to have sufficient reliability to be included as a party admission under N.J.R.E. 803(b)(4).

It cannot be disputed that it was within the scope of Deputy Chief Scalara's employment to establish or modify policies within the department in 2018. At the time of Scalara's directive, he was Lt. Owens's superior, who was in turn Ms. Coley's superior. Owens, who was the only other person present when Scalara gave the directive, did not testify. Not only is the testimony concerning Scalara's directive relevant, but it is also necessary because the facts clearly reveal that the Department chose to establish

procedures for processing inspection applications verbally and to not write them down. Ms. Coley testified that Lt. Owens taught her how to process applications verbally. The only written documentation that exists in the record concerning the application process is the one drafted by Ms. Coley after she was trained on the application process by Lt. Owens. That writing (R-17) indicates that a flat fee of \$45 is inserted on the line marked "Fee Paid." When Scalera changed the process in 2018, that change was also verbal.

A. Falsification of Documents, Misinforming an Officer and Offering an Employee a Discounted Rate for an Inspection

- 1. There is no evidence that Coley falsified a Fire Department document so that it would appear that at least one citizen was eligible for the reduced fee for inspection.**

The Department failed to present any evidence that Coley intentionally made a false statement on any document. Coley testified that the allegation that she falsified a fire division document so that it would appear that a citizen was eligible for a reduced fee for inspections was not true. The Department failed to identify which document Coley allegedly falsified or the false information in the document. Accordingly, **I FIND** that the Department has failed to prove this allegation.

The Department also failed to present any credible evidence that Coley intentionally misinformed anyone of anything. It is unclear, based on respondent's case-in-chief, which underlying facts they have alleged support this allegation. The Department presented no witness with personal knowledge of any incident where Coley deliberately provided any Department employee misinformation about the scheduling of an inspection. The Department referenced McCue's March 21, 2019 email to Mandell reporting that Coley misinformed Owens and that Owens did not know what he was signing. McCue testified that he brought these issues to Mandell's attention after they were brought to his attention but could not clearly testify as to whether he had any personal knowledge about the underlying incident. Coley, on the other hand, clearly and credibly testified that only she, Owens and Randolph were present in Owens' office when this incident occurred.

McCue's email relates to a March 20, 2019, incident where Chambers, a realtor, came to the Department and submitted a completed application for an inspection. Randolph, an inspector present at the time, informed Chambers that he would complete the inspection immediately. Coley then took the steps to print a certificate of inspection and submitted it, along with the inspection application, to Owens for review and signature. It was her practice to give the inspection applications she processed and the certificate of inspection to Owens for his review and signature. After signing the certificate of inspection, Owens gave the documents to Randolph.

At the time of the incident, Coley was not given any indication that Owens believed he had been misinformed about what he was signing. Neither at the time of this incident nor thereafter did McCue or Owens say anything to Coley about the manner in which she processed Chambers' application or scheduled the inspection. Coley was not asked to participate in any investigation or provide a written statement regarding this incident, which shows the Department took no action to verify this allegation.

Coley testified that she had not deliberately misinformed any officer about scheduling an inspection to conceal what she charged a customer. The Department failed to enter into the record any evidence to rebut Coley's testimony. Accordingly, I **FIND** that this allegation against Coley has not been substantiated. There is no credible evidence that Coley told anyone that they were eligible for an employee discount.

On June 26, 2019, Muslim submitted a report to Childress alleging that Coley had informed an individual named Officer Brito that he was eligible for a city discount. Coley testified that she had never told any customer that they were eligible for an employee discount. Specifically, Coley testified that she does not know a police officer named Brito. Here, the Department attempts to rely on double-hearsay testimony from Muslim. Absent from the record is any residuum of competent evidence to corroborate the hearsay witness statements. Although N.J.A.C. 1:1-15.5(b) allows hearsay to be admitted, it also requires the ultimate findings of fact to be supported by

a residuum of competent evidence. This rule, also known as the residuum rule, is consistent with the principle that, like judicial proceedings, administrative adjudication must include procedural safeguards, including notice and an opportunity to be heard and an opportunity for cross-examination, defense, and rebuttal, essential for reliable fact finding. 2 Lars, LLC v. City of Vineland, OAL DKT.NO. ABC 8875-05, 2006 N.J. AGEN LEXIS 730, Initial Decision (September 12, 2006). The Department failed to present Brito or any other individual with personal knowledge to substantiate the allegations that Coley told Brito that he was eligible for an employee discount. Accordingly, I **FIND** that the Department has not proven by a preponderance of the credible evidence that Coley told anyone that they were eligible for an employee discount.

2. There is no evidence that Ms. Coley was untruthful when asked about a particular inspection.

The Department goes on to assert that Coley was untruthful when asked about a reduced rate for an inspection is supported by an assertion she wrote in her June 28, 2019 email correspondence. (J-3.) Coley wrote that she had a telephone conversation at work on a day that she apparently had taken as a sick day. Coley's testimony, while inconsistent with her letter, does not necessarily mean that she was untruthful. Ms. Coley credibly testified that she mixed up her days because she was out on several occasions during the relevant time period due to several deaths in her family. She testified that she simply mixed up her days. Coley credibly testified that she was not attempting to mislead her supervisors when she wrote the incorrect date. The Department failed to present any evidence that undermined Coley's explanation for the inconsistency between her testimony and the information given in her email correspondence. I **FIND** that this inconsistency does not constitute intentional untruthfulness by Ms. Coley.

3. The department failed to prove that the failure to collect inspection fees until after an inspection was performed was a prohibited practice within the department.

The Department disciplined Coley for accepting fees after inspections were completed, but the facts revealed at the hearing revealed the Department did not strictly adhere to any policy or procedure prohibiting the acceptance of fees after the inspections were completed. Both Coley and McCue testified that the fire official permitted the inspectors to collect the fee for an inspection after the inspection had been performed. Lt. Muslim also conceded that the fire official and deputy chief had the authority to permit inspectors to collect the fee for the inspection after the inspection had been performed. Ms. Coley also placed into evidence several examples where an inspection had been scheduled and the inspection application included a notation that the fee would be collected at the inspection site. (P-32; P-52; P-53; P-54.) Moreover, Ms. Coley provided un rebutted testimony that she never personally collected fees at an inspection site. To the extent that Coley accepted the fees for an inspection after the inspection was completed, it was because the inspector collected the fees at the inspection site and brought the fees back to Coley to process. Thus, I **FIND** Coley was only participating in a Department practice authorized by her supervisors and executed by other employees over whom she had no supervision.

4. There was no credible evidence that Coley refused to utilize the current forms to process inspection applications.

The Department maintains that Coley was previously advised by management that she must utilize an application that included the closing date for the property and that adhered to the UFC. The Department, however, presented no evidence substantiating the claim that Coley had been told that she was required to use current fire inspection applications. Moreover, both of the Department's witnesses as well as Ms. Coley provided testimony that the Department did not strictly adhere to the fee schedule in the UFC that was included on the form the Department claims she was instructed to use.

During the relevant time period, McCue served as the head of the Fire Prevention Bureau and the highest-ranking non-civilian officer. McCue testified that he and others failed to adhere to the UFC when assessing the inspection fees and

scheduling inspections. McCue acknowledged that the UFC required that an employee count the number of business days between when the application fee is received and the change of occupancy date to calculate the inspection fees. McCue also testified that he and other Department employees typically calculated fees by counting the number of days between when the fee was received and the date of the inspection. McCue also corroborated Coley's testimony that the Department's practice of conducting inspections only on Wednesdays does not adhere to the UFC. McCue further conceded that the Department's practice of assessing the fee the customer is charged based on the time of the day that the customer submits the application is not contained in any written rule. Also, the current fire official, Lt. Muslim, testified that he did not calculate the inspection fees pursuant to the UFC.

Based on the actual practice in the Department in processing applications and assessing fees, which did not follow the UFC, requiring Ms. Coley (and apparently only Ms. Coley) to utilize application forms setting forth the UFC fee schedule does not make sense. I **FIND** from the credible testimony presented by Ms. Coley was not instructed to utilize an application containing the UFC fee schedule or to adhere to the UFC fee schedule prior to these charges being brought against her. Prior to her termination, Coley had both verbally and in writing informed her supervisors, Owens and McCue, that the Department did not adhere to the fee schedule in the Uniform Fire Code. She also made requests to Owens and McCue that the Department institute a consistent policy. However, neither Owens nor McCue responded to Coley's request. Thus, it is highly improper for the Department to terminate Coley for not adhering to a rule that the Department, as a whole, failed to follow.

The Department failed to show that Coley neglected her duty or violated any policy by servicing a customer who presented her with an outdated inspection application form. According to the testimony of Lt. McCue, it is the fire official, not Ms. Coley, who is responsible for ensuring that the inspection applications available to customers are accurate and updated. Customers could retrieve the inspection applications by either visiting Plainfield City Hall to retrieve a packet that included the inspection application, utilizing a form contained on the City of Plainfield's website, or from a basket near Coley's desk. Lt. Muslim testified that customers most often retrieved a packet from City Hall.

The Department presented no credible evidence showing that Coley had any responsibility to ensure that customers had access to updated forms or that she intentionally provided customers with outdated or otherwise incorrect forms. Again, the Department did not sustain its burden to prove that Coley refused to utilize current forms after being instructed to do so.

For the reasons set forth above, **I CONCLUDE** that the Department has failed to prove its claims against petitioner Jacqueline Coley by a preponderance of the credible evidence, and **THEREFORE**,

IT IS on this 22th Day of February 2024, **ORDERED** that:

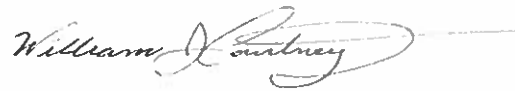
1. The Decision of the City of Plainfield Fire Department as reflected in the **November 2, 2019**, Final Notice of Disciplinary Action finding Coley in violation of N.J.A.C. 4A:2-2.3 (1), (2), (6), (7) and (12) be **REVERSED**; and
2. The Decision of the City of Plainfield Fire Department, as reflected in the **November 2, 2019**, Final Notice of Disciplinary Action, to the extent it found Coley in violation of Municipal Code Sections 11:17-1 (b); 11:17-1(c)(2) and 11:17-3, be **REVERSED**; and
3. The Decision of the City of Plainfield Fire Department as reflected in the **November 2, 2019**, Final Notice of Disciplinary Action terminating Coley's employment be **REVERSED** and that Coley be **REINSTATED** to her position of principal clerk transcriber; and
4. The City of Plainfield Fire Department shall reimburse Coley for any lost pay resulting from her termination of employment. Coley shall also be credited for any loss of pension and/or any loss of other benefits resulting from her termination of employment. Any loss of seniority resulting from her termination shall be restored to Coley.

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.

February 22, 2024



DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

February 22, 2024

Date Mailed to Parties:
am

February 22, 2024

APPENDIX

WITNESSES

For Petitioner:

Jacqueline D. Coley
Sandra Chambers
Darlene McWilliams

For Respondent:

Taheem Muslim
Micheal McCue
Abby Levenson

EXHIBITS IN EVIDENCE

For Petitioner

- P-1 Additional Customers' Letters
- P-3 July 24, 2019, Preliminary Notice of Disciplinary Action
- P-5 Uniform Fire Code
- P-7 [REDACTED] Avenue Application
- P-8 July 3, 2019, Email Correspondence from McCue to Childress
- P-9 September 17, 2013, Memo re: Smoke Inspection Applications
- P-16 November 25, 2019, Inspection List and [REDACTED] Road Application
- P-18 December 2, 2019, Inspection List and [REDACTED] Avenue Application
- P-19 December 12, 2019, Inspection List and [REDACTED] Avenue Application
- P-20 December 19, 2019, Inspection List and [REDACTED] Street Application
- P-21 [REDACTED] Street Application and Receipts
- P-22 [REDACTED] Avenue Application and Receipt
- P-24 August 1, 2019, Inspection List and [REDACTED] Lane Application
- P-25 March 21, 2018, Inspection List and [REDACTED] Street Application
- P-29 [REDACTED] Avenue Application
- P-32 [REDACTED] Road Application and Receipt
- P-38 [REDACTED] Street Application
- P-49 Packet prepared by City Clerk
- P-50 Signed Complaint from Customer, re: Packet Prepared by City Clerk
- P-52 [REDACTED] Terrace Application

- P-53 [REDACTED] Avenue Application
- P-54 [REDACTED] Street Application, Inspection List and Receipt
- P-55 Interrogatory Ten
- P-56 Second Set of Interrogatories to Respondent City of Plainfield, Interrogatory Three

For Respondent

- R-1 Final Notice of Disciplinary Action (Report omitted)
- R-2 Muslim Memo, re: June 26, 2019, Smoke Detector Inspections
- R-3 Documents Relating to June 26, 2019, Smoke Detector Inspections
- R-4 June 2019 Calendar
- R-5 Time Off for Jacqueline Coley
- R-6 Email Dated July 3, 2019, from Michael McCue to Jacqueline Coley
- R-7 Spreadsheet Regarding Fees Collected by Coley
- R-9 Letter from Owens Dated June 26, 2019
- R-10 March 21, 2019, Email from McCue to Mandell
- R-11 Documents Relating to Smoke Detector Inspection
- R-12 Smoke Detector Compliance form
- R-13 Receipt
- R-17 Smoke and Carbon Monoxide Detector Compliance Fee Entry and Printing Instructions
- R-18 June 27, 2019, Email from McCue; June 28, 2019, Email from Coley
- R-19 Municipal Code Sections 11:17-1; 11:17-3
- R-20 City of Plainfield Handbook
- R-23 OAL Initial Decision in Coley v. City of Plainfield Dated June 14, 2022
- R-24 Written Warning Dated February 12, 2019
- R-25 Written Warning Dated February 12, 2019

Joint Exhibits

- J-1 August 21, 2019, Amended Notice of Disciplinary Action
- J-2 2018 Calendar
- J-3 June 28, 2019, Email from Jacqueline Coley to Kenneth Childress
- J-4 Letters of Support for Jacqueline Coley from Four Different Realtors Drafted in Late February 2019