



STATE OF NEW JERSEY

In the Matter of Blessing Mamman,
 New Lisbon Developmental Center,
 Department of Human Services

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2022-786
 OAL DKT. NO. CSV 03846-22

ISSUED: JULY 3, 2023

The appeal of Blessing Mamman, Human Services Assistant, New Lisbon Developmental Center, Department of Human Services, removal and resignation not in good standing, effective July 13, 2021, on charges, was heard by Administrative Law Judge William T. Cooper, III (ALJ), who rendered his initial decision on May 20, 2024. Exceptions were filed on behalf of the appellant and a reply was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting of July 3, 2024, accepted and adopted the ALJ's Findings of Fact and Conclusions and his recommendation to uphold the removal and resignation not in good standing.

Upon its *de novo* review of the ALJ's initial decision as well as the entire record, including the exceptions filed by the appellant and the reply, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on his 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, there is nothing in the record or the appellant's exceptions to demonstrate that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. Accordingly, the Commission finds nothing in the record to question those determinations or the findings and conclusions made therefrom.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing and resigning the appellant not in good standing was justified. The Commission therefore affirms that action and dismisses the appeal of Blessing Mamman.

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 3RD DAY OF JULY, 2024

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 03846-22

AGENCY DKT. NO. 2022-786

**IN THE MATTER OF BLESSING MAMMAN,
DEPARTMENT OF HUMAN SERVICES,
NEW LISBON DEVELOPMENTAL CENTER.**

William A. Nash, Jr., Esq., appearing for Blessing Mamman, appellant (Nash Law Firm, L.L.C., attorneys)

Kathryn B. Moynihan, Deputy Attorney General, appearing for Department of Human Services, New Lisbon Developmental Center, respondent (Matthew J Platkin, Attorney General of New Jersey, attorneys)

BEFORE **WILLIAM T. COOPER, III**, ALJ:

Record Closed: April 5, 2024,

Decided: May 20, 2024.

STATEMENT OF THE CASE

Appellant, Blessing Mamman, appeals her termination from her position as a Human Services Assistant by the respondent, Department of Human Services ("DOHS") and New Lisbon Developmental Center (NLDC) for abandonment of her job; violation of

rule, regulation, or policy; conduct unbecoming; and other sufficient cause (improperly utilizing compensatory time and vacation leave).

PROCEDURAL HISTORY

On July 23, 2021, the respondent issued a Preliminary Notice of Disciplinary Action (PNDA) charging petitioner with a violation 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, Administrative Order 4:08 A 3-1, Abandonment of job as a result of absence from work as scheduled for five (5) consecutive days; and Administrative Order 4:08 E. 1-1, Violation of a rule, regulation, policy, procedure, order or administrative decision. On May 9, 2022, DOH issued a Final Notice of Disciplinary Action (FNDA) sustaining the following charges: A.3-1, Abandonment of job as a result of absence from work as scheduled without permission for five consecutive days; E.1-1, Violation of a rule, regulation, policy, procedure, order or administrative decision; 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.

Appellant timely appealed the FNDA. The matter was transmitted to the Office of Administrative Law where it was filed as a contested case on May 12, 2022. N.J.S.A. 52:14 B-1 to-15; N.J.S.A. 52:14 F-1 to-13.

On April 5, 2023, the respondent moved for summary decision. On April 30, 2023, the appellant cross-moved for summary decision. On May 22, 2023, the respondent filed a reply and the appellant responded on June 6, 2023. An order denying both motions was entered on July 7, 2023.

A hearing was held on January 8, 2024, and the parties were granted an opportunity to provide written summations. On April 5, 2024, summations were received, and the record closed.

FACTUAL DISCUSSION

Testimony

For Respondent:

Jessica Segal (Segal) worked in the Human Services Department at NLDC from 2018 to November 2023 when she began working for the Department of Labor (DOL). Among her responsibilities at NLDC was the processing of employee requests for leave of absence. On April 8, 2021, Segal was copied on an email that forwarded a leave of absence form to appellant. On April 9, 2021, Segal received the completed request form wherein the appellant was seeking an extended leave of absence to care for her mother from June 11, 2021, through September 18, 2021. Upon receipt of the form Segal reviewed "time keeping records" to determine if the appellant had any available Family Medical Leave Act (FMLA) time. Her review revealed that the appellant had exhausted all her available FMLA time. Segal recalled discussing this request with her supervisor Debra Bridges who concurred with Segal's assessment that all of appellant's available FMLA was exhausted and therefore the leave request would be denied. Prior to issuing the denial Segal spoke to appellant and explained to her why her request for a leave of absence was going to be denied. Segal advised the appellant that she would have to make other arrangements to care for her mother or she to "resign in good standing." Segal explained to the appellant that if she resigned in good standing, she could take care of her mother and then, when she returned to New Jersey, she could reapply to any NLDC job posting which would have an expedited hiring process based on her supervisor's recommendation.

Debra Hayes (Hayes) works in the Human Resource department as a manager II, and she has worked at NLDC for 38 years. During the summer of 2021 she was the manager of the "leave department."

The "leave department" handled FMLA requests, administration, workplace injuries and in part the American with Disabilities Act (ADA) process with employees requesting accommodations. Hayes noted that among her job responsibilities was to ensure that leave administration was handled in accordance with established policies and procedures.

Hayes recalled having a discussion with Segal concerning the appellant's request for leave in and around April 2021. Specifically, she recalled discussing that the appellant had exhausted her allotted FMLA time and thus the request had to be denied. On April 19, 2021, a denial letter was issued to appellant. (R-6)¹. According to Hayes no other type of leave was considered, indicating that this was because of staffing shortages. She explained that NLDC suffers staffing shortages on a normal basis, but that COVID compounded this problem to the point that employee attendance was "very low." Hayes stressed that NLDC's priority is to ensure the "vulnerable population" who reside there are taken care of properly. For the administration to meet its operational needs, a proper level of staffing must be maintained. Hayes noted that although administration doesn't encourage it, a "resignation in good standing" could be used in certain circumstances such as those presented with appellants situation where she had exhausted FMLA. Hayes confirmed that the appellant's request for leave was officially denied on April 19, 2021.

Hayes recalled that there came a time in June 2021, that the issue concerning appellant's leave request came up again. Apparently, on May 21, 2021, the appellant had submitted four separate requests for time off during the summer for the same period she was seeking leave of absence for. The appellant was attempting to use her personnel benefit leave time (accumulated sick and vacation time) in lieu of an approved leave of absence. Hayes recalled speaking to her supervisors who agreed that the request could not be granted due to staffing issues. Thereafter, Hayes communicated directly to the appellant that her request to take personal benefit leave time was denied.

Hayes testified that July 2021, payroll noted that the appellant had been absent from work for five or more consecutive days. Hayes reviewed the appellant's call out log and confirmed that, on July 7, 2021, the appellant called out sick for July 8, 2021, using administrative leave. On July 8, 2021, the appellant called out for July 9 through July 12, 2021, using sick leave. Hayes indicated that because of the union contract if an employee calls out sick but no longer has accrued sick time left then the employee is allowed to use

¹ Subsequent to Hayes signing the letter she was married and her last name changed to Bridges. Her maiden name is used herein for ease of reference.¹

accrued vacation time if available. Hayes confirmed that on July 20, 2021, her office sent a letter to the appellant confirming her absence and providing the appellant with a leave of absence application. Hayes advised that the payroll unit sends out a generic letter automatically when an employee calls out sick for five consecutive days. The letter does not confirm or deny an employee's eligibility for leave but is sent out to ensure compliance with FMLA.

Hayes confirmed that, on July 26, 2021, her office sent a letter to appellant confirming that NLDC had received a leave request packet from her but denying same because disciplinary charges had been filed on July 13, 2021. Hayes notes that the appellant did not submit a leave request based upon her own personal illness.

Richard Beach (Beach) is the supervisor of professional residential services at NLDC. He was responsible for overseeing six different units, managing staffing, individual employee needs and care "and everything they ask for on down as far as staffing is concerned." He estimated that he oversaw approximately 130 to 150 employees, and in 2021 this included the appellant. Beach noted that he would perform the final review of all employee leave requests after the leave department had reviewed them and made recommendations. The leave requests included vacation, administrative leave, and sick time if an employee tries to schedule them.

Beach recalled receiving "request for time off" forms for the appellant in May 2021, wherein she sought to use 80 hours or ten days of vacation time from June 10, 2021, to June 21, 2021, (R-8); sought to use 80 hours or ten days of vacation time from June 24, 2021, to July 5 2021, (R-7); sought to use 60 hours of compensation time and 30 hours or five days of vacation time from July 8, 2021, to July 19, 2021, (R-9); and sought to use 72 hours of vacation time from July 20,2021, to July 31, 2021, (R-10). Beach had reviewed appellant's request forms and on May 21, 2021, he denied them. Beach explained that COVID was rampant at the time, residents and staff were "falling to COVID" and "our staffing was very poor to maintain" and "all staffing was needed as much as possible." According to Beach he simply "could not afford" to grant the appellant so much time off.

Beach explained that Vacation leave for dates between April 15 and December 31 are required to be submitted between March 1 and March 15 of each year. A vacation request received after March 15 is granted on a "first come, first served" basis. He also noted that it is the policy at NLDC to ensure that time away from work is properly reported and to maintain adequate staffing levels. (R-11).

Beach testified that he was sympathetic to the appellant's plight, so he met with her to explain why he could not give her all that time off. Beach suggested to the appellant she consider a resignation in good standing as an option because he could not approve all the time off, she was requesting. The appellant did not want to resign and because of the circumstances Beach attempted to work with the appellant. Beach advised that during the meeting it was agreed that the appellant would modify her time off request to only two weeks off and she was allowed to select the dates. After the meeting the appellant submitted a new request form requesting the use of 80 hours of her compensation time from June 24, 2021, to June 28, 2021, and from July 1, 2021, to July 5, 2021. Beach approved this request on June 10, 2021. (R-12).

Beach anticipated that the appellant would return to work on Thursday July 8, 2021. Instead, the appellant never returned to work. The appellant began calling out sick from July 8, 2021, to July 26, 2021. Beach advised that he was disappointed in the appellant because he had worked with her so she could spend time with her mother and in turn she was supposed to return to work and help NLDC avoid additional staffing shortages.

Christina Fischer (Fischer) is employed at NLDC and works in the office of labor relations, as an employee relations coordinator (ERC). She described her job responsibilities as "process corrective and disciplinary actions, approve or disapprove those requests from the managers. I also handle grievances." The appellant became known to her when her case was referred from HR for an alleged abandonment issue. Fischer gathered the information necessary to either support or refute that allegation and then made the final decision as to whether discipline charges should be brought against the appellant. Fischer recalled that she reviewed documents pertaining to appellants case which included; an email from Karen Murphy to appellant dated April 8, 2021; Request

for Leave With or Without Pay April 2021; NLDC official timekeeping records for appellant; correspondence of Debra Bridges to appellant dated April 19, 2021; appellant's four requests for time off, each dated May 21, 2021; NLDC policy for employee time off and time keeping practices; appellants request for time off dated June 10, 2021; NLDC callout log for appellant; NLDC disciplinary action program; NLDC letter dated July 20, 2021 to appellant; and the FMLA request denial dated July 26, 2021. Based upon her review she believed the facts supported the request for administrative action. A preliminary notice alleging "abandonment of job" was prepared with a penalty of removal. Fischer advised that the NLDC "Disciplinary Action Program" notes the penalty for job abandonment is removal. (R-14).

Fischer acknowledged that the appellant had been approved for time off from June 24, 2021, through July 5, 2021. She also admitted that beginning on July 8, 2021, the appellant was calling out from work. According to Fischer, if an employee's request for time off is denied and the employee then calls out of work on the days, they requested time off for, managers will typically request documentation to prove that there was an illness or emergency. Fischer also acknowledged that she was not aware that the appellant had medical documentation that established she was hospitalized from July 28, 2021, to August 3, 2021, in Nigeria until after the PNDA was issued.

For Appellant:

Matthew Mamman (Mamman) Is the appellant's husband and they have been married for ten years. Both he and the appellant were born in Nigeria, and they have a daughter who was born on July 17, 2021. Mamman is employed by United Parcel Service (UPS). In the summer of 2021, Mamman said that the family traveled back to Nigeria. He was aware that the appellant had only been approved for time off from work from June 21, 2021, to July 5, 2021, and claimed that it was their intention to return to New Jersey on or before July 5, 2021. Unfortunately, the appellant became ill with Malaria and Typhoid. He further indicated that the airlines during COVID had a "two weeks" isolation requirement plus a negative COVID test if a traveler was ill, as was the appellant.

Mamman testified that the appellant was hospitalized at Taraba State Specialist Hospital in Jalingo, Nigeria from July 28, 2021, to August 3, 2021. (P-5). Mamman could not recall the exact date when the appellant began to feel ill but believed that her symptoms began in the middle to the end of July. He testified that her symptoms were the same as reported in the note from the hospital and included headache, fever, abdominal pain, and body weakness. Mamman could not recall specifically when the family returned from Nigeria.

Mamman indicated that the family had purchased "flex tickets" from Lufthansa, with an open return date, allowing a traveler to return on any date within a year of purchasing the ticket. When questioned as to why the flex tickets were purchased instead of tickets with a specific return flight, he responded "when you go to Africa you never know what's going to pop-up."

Blessing Mamman (appellant) testified that she learned of her mother's illness in February or March 2021. She acknowledged that she had previously used FMLA with the birth of her daughter, but claimed when she spoke to HR it was suggested that she could use her compensation time so she could attend to her mother. She began to work overtime in April to build up her bank of compensation time.

The appellant admitted to filling out the "request for leave with or without pay" on April 13, 2021, for intermittent leave from June 11, 2021, to September 9, 2021. (R-4). The appellant believes that this request was denied because she asked for too much time. The appellant obtained "request for time off" forms after having a discussion with "John" her cottage training supervisor (CTS), she then submitted four separate requests for time off from June 10, 2021, to July 31, 2021, as follows: she sought to use 80 hours or ten days of vacation time, from June 10, 2021, to June 21, 2021, (R-8); sought to use 80 hours or ten days of vacation time from June 24, 2021, to July 5 2021, (R-7); sought to use 60 hours of compensation time and 30 hours or five days of vacation time from July 8, 2021, to July 19, 2021, (R-9); and sought to use 72 hours of vacation time from July 20,2021, to July 31, 2021, (R-10). The appellant admitted that these requests were also denied, and that the administration again advised her that it was too much time.

The appellant spoke to her CTS and then had a meeting with Beach. During the meeting the appellant was advised that the administration could not afford her so much time off and if necessary, she could consider a resignation in good standing. The appellant testified that she was reluctant to accept this as an option because there was no guarantee she would be re-employed. The appellant admitted that an agreement was reached wherein she could take off two weeks. A new request for time off was submitted and approved for the appellant to use 80 hours of her compensation time from June 24, 2021, to June 28, 2021, and from July 1, 2021, to July 5, 2021. Beach approved this request on June 10, 2021. (R-12).

The appellant traveled to Nigeria with her family, and she testified that it was her intent to be back to work on July 8, 2021, but was unable to return because she became sick. She testified that she became "weak and shivering, obtained medication from a pharmacy, but the medication did not resolve her symptoms, so she eventually was hospitalized." The appellant entered the hospital on July 28, 2021, and was discharged on August 3, 2021, but then had to wait an additional two weeks before she could return to New Jersey. During cross examination the appellant indicated that she first began to feel ill in August but then corrected herself stating, "I'm missing the date. I am sick in July, not August, I'm missing the dates. It's July not August."

The appellant testified that when she could not return to work due to her illness, she personally called out of work sick. On July 8, 2021, the appellant reported she would be out sick from work for four days. On July 14, 2021, the appellant reported she would be out sick for five days. On July 21, 2021, the appellant reported she would be out sick for five days. On July 28, 2021, the appellant reported she would be out sick for five days. NLDC has no record of the appellant calling out after July 28, 2021, but appellant claims she did.

The appellant also testified that she sent medical documents to an unnamed friend and co-worker who was supposed to bring them to NLDC. The unnamed individual told appellant that she in fact turned the documents in to NLDC.

On July 21, 2021, the appellant received a letter from HR regarding her sick time and alerting her FMLA rights. The appellant advised that this letter was received while she was still in Africa through her father-in-law, who was back in New Jersey handling the family's mail. According to the appellant she was able to complete the FMLA form, seeking leave from August 4, 2021, to September 4, 2021. The application was signed on August 4, 2021, and returned to her father-in-law using the "WhatsApp." Her father-in-law then printed the documents and submitted same to NLDC. This application stated the reason for the leave was to care for appellants mother, Maryam Yaro. (P-3). No mention of the appellants own alleged medical condition was mentioned.

FINDINGS

Credibility

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. 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 witnesses' story considering its rationality or internal consistency and the way it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "the 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).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Conleton v. Pura-Tex Stone Corp., 53 N.J. Super 282, 287 (App. Div. 1958).

As to the credibility of respondent's witness, I accept the testimony of Segal, Hayes, Beach, and Fischer as credible. They each easily recounted the actions taken by themselves and staff members concerning the appellants' requests for leave and or time

off. The stated reasons for denying the requests were reasonable given the severe staffing manpower shortages NLDC faced while COVID was still active. Neither Segal, Hayes or Beach had any animosity toward the appellant, in fact it appears that the administration went out of its way to explain to the appellant why they could not afford her time off to care for her mother and offered advice on the possibility of resigning in good standing. The appellant's denial that the reasons for the rejection of her requested time off were not explained to her appears to be untrue considering the consistent testimony of these witnesses. Moreover, Beach believed he reached accommodation with the appellant resulting in her submitting a time off request for two weeks' time off. The appellant's final request for time off was approved on June 10, 2021. (R-12).

The testimony of Matthew Mamman and the appellant was less credible in comparison.

There is no doubt that the appellant's mother needed assistance after her open-heart surgery and the appellant's desire to care for her mother was a factor that weighed in her favor. Overall, however, the Mamman's testimony did not appear as credible because it did not hang well together.

Matthew Mamman could not satisfactorily explain why flex tickets, without a specific return date were purchased for a two-week trip to Nigeria. His explanation that "anything can pop up when you travel to Africa," made his testimony unconvincing. I do not accept Matthew Mamman as entirely credible.

The appellant's testimony alleging that the administration did not advise her as to why they denied her time off request was contradicted by the credible testimony from Segal, Hayes, and Beach.

The appellant acknowledged that she was only approved for two weeks of time off and that she was required to be back to work on July 8, 2021. Considering this, the purchase of flex tickets without a confirmed return date makes no sense. Rather the purchase of the flex tickets is evidence of the appellants intent to stay in Nigeria beyond July 8, 2021. The appellant understandably wanted to spend as much time as possible

with her mother and even though she agreed with Beach to limit her time off to two weeks the appellant intended to utilize all her personal benefit leave time during the visit. Appellant called out sick from work four weeks in a row testifying that she became ill shortly upon her arrival in Nigeria and therefore was unable to report to work on July 8, 2021. However, the appellant admitted receiving correspondence from HR concerning her repeated absences, and though the appellant was allegedly suffering from a serious illness she never attempted to contact her CTS to advise him of her illness. Moreover, the appellant admitted to receiving a second FMLA application on July 21, 2021, at a time when she was allegedly suffering from malaria. The form was completed indicating the need for leave from August 4, 2021, to September 4, 2021, so that the petitioner could care for appellant's mother. No mention was made as to the appellants' alleged medical condition in this request.

The appellant furnished proof that she was hospitalized from July 28, 2021, to August 3, 2021. The letter from Taraba State Specialist Hospital (Taraba) notes that the appellant had been "presented on July 28, 2021, with headache, fever, abdominal pains and body weakness of one (1) week duration." (P-5). This document undercuts appellants claim that she became ill shortly upon arrival in Nigeria. As of July 28, 2021, the date of her alleged hospitalization, the appellant had been absent from work without permission for well over five days.

Overall, the appellant's testimony was unconvincing and lacked sufficient detail that would have made her version of events persuasive. Based upon the foregoing I cannot find the appellant credible.

Findings

Specifically, as to these charges:

N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee.

I **FIND** that, on June 10, 2021, the appellant was approved for time off from June 24, 2021, to July 5, 2021, and was due to return to work on July 8, 2021. I **FIND** that the appellant improperly attempted to extend her time off by calling out sick, and or using her personal benefit time. I **FIND** that petitioner, was unhappy that she could not spend more than two weeks with her mother in Nigeria and instead of returning to work on July 8, 2021, she sought to extend same by calling out sick, and or using her accumulated compensation time. I **FIND** that while petitioner may not have intended it, her actions jeopardized the resident's as well as the efficient operations of the NLDC.

Administrative Order 4:08, 3-1, Abandonment of job as a result of absence from work as scheduled without permission for five (5) consecutive days.

I **FIND** that the appellant failed to return to work after her approved time off on July 8, 2021. I **FIND** that the appellant improperly called out of work on the following dates: July 8, 2021, reporting that she would be out of work for four days; on July 14, 2021, reporting she would be out sick for five days; on July 21, 2021, reporting she would be out sick for five days. I **FIND** that the appellant was absent from duty for five or more consecutive business days without the approval of her superior.

Administrative Order 4:08, E.1-1 Violation of a rule, regulation, policy, procedure, order, or administrative decision.

I **FIND** that the appellant had requested and was approved to use 80 hours of her compensation time from June 24, 2021, to June 28, 2021, and from July 1, 2021, to July 5, 2021. I **FIND** that the appellant violated the time off approval by failing to return to work as required on July 8, 2021.

LEGAL ANALYSIS

The issue presented here is whether appellant's failure to report back to work on July 8, 2021, constitutes an abandonment of her position and should be recorded as a resignation not in good standing.

Appellant's rights and duties are governed by the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6 through 2-20; N.J.A.C. 4A:2-2.2, through 2.6. Major discipline includes removal, fine, or suspension for more than five working days.

The appointing authority has the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v Ford Motor Co, 36 N.J. 487 (1962).

The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). 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. Delaware, Lackawanna, and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933).

The appellant herein is charged with violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(12), "other sufficient cause," violating NLDC policies A.3-1, *Abandonment of job as a result of absence from work as scheduled without permission for five (5) consecutive days* and E.1-11, Violation of a rule, regulation, policy, procedure, order, or administrative decision.

As to conduct unbecoming a public employee, this term has been described as an "elastic" phrase that includes "conduct which adversely affects the morale or efficiency" of the public entity or "which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (citation omitted); see Karins v. City of Atl. City, 152 N.J. 532 (1998).

The appellant has also been charged with "other sufficient cause," in this case violating the county sick leave call in procedure that requires an employee to alert county at least one hour prior to the start of the employee's shift if they are going to be absent or late. Violating a rule or policy means failure to adhere to the standards set forth by the institution, in this case the NLDC, by appellant failing to adhere to her approved time off request and report back to work on July 8, 2021.

N.J.A.C. 4A:2-6.2(b) provides that:

Any employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. Approval of the absence shall not be unreasonably denied.

Applying the law to the facts, I **CONCLUDE** that the respondent has sustained, by a preponderance of the credible evidence, the charge of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), specifically by failing to report back to work as required by July 8, 2021. Here, appellant admits to being approved for time off from June 24, 2021, to July 5, 2021, and was required to report back to work on July 8, 2021. Instead of reporting back to work the appellant improperly called out of work on: July 8, 2021, reporting that she would be out of work for four days; on July 14, 2021, reporting she would be out sick for five days; on July 21, 2021, reporting she would be out sick for five days.

Applying the law to the facts, I **CONCLUDE** that the respondent has sustained, by a preponderance of the credible evidence, the charge of N.J.A.C. 4A:2-2.3(a)(12) specifically failing to report to work by July 8, 2021, and being absent for five consecutive days without permission, and violating the terms of the approved request for time off by failing to report to work on July 8, 2021 in violation of NLDC Administrative Order 4:08, 3-1 and E.1-1.

PENALTY

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline requires consideration. In re Stallworth, 208 N.J. 182,195-96 (2011); Bock, 38 N.J. at 523. When deciding what disciplinary action is an appropriate penalty, the fact finder shall consider the nature of the sustained charges and the appellant's past record. Bock, 38 N.J. at 523-24. The employee's past record is said to encompass their reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Ibid. Consideration as to the timing of the most recently adjudicated disciplinary history should also be given. Id. at 524.

However, the theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Ibid. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all the circumstances, to shock one's sense of fairness. Ibid. Removal has been upheld where the acts charged, with or without a prior disciplinary history, have warranted imposition of that sanction. Ibid. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Ibid.; in re Herrmann, 192 N.J. 19, 33-34 (2007). Indeed, progressive discipline "is not a necessary consideration 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." Herrmann, 192 N.J. at 33.

Here, the appellant does not have an extensive disciplinary history, however, the appellant's actions were egregious considering she was informed both verbally and in writing that staffing shortages prevented the NLDC from granting her multiple requests for extended leave. Nevertheless, once she secured the approval for two weeks' time off, she traveled with her husband and daughter to Nigeria, with the intention of using her

personal benefit leave time to remain in Nigeria instead of reporting back to work on July 8, 2021, as required. The appellants actions needlessly jeopardized NLDC residents and caused an unnecessary burden on other NLDC employees who had to cover appellants unauthorized time off.

Based upon the severity of the sustained charges, I **CONCLUDE** that the penalty of removal is appropriate.

ORDER

For the reasons set forth above, it is **ORDERED** that the charges entered on the FNDA, dated May 9, 2022, by the respondent against the appellant, Blessing Mamman, are hereby **SUSTAINED**. The appeal is **DISMISSED**.

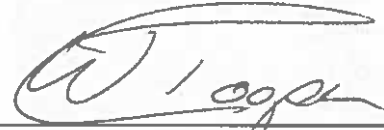
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

May 20, 2024

DATE



WILLIAM T. COOPER, III, ALJ

Date Received at Agency:

Date E-Mailed to Parties:

WTC/am

APPENDIX

Witnesses

For Appellant:

Matthew Mamman
Blessing Mamman

For Respondent:

Jessica Segal
Debra Hayes
Richard Beach
Christina Fischer

Exhibits

For Appellant:

- P-1 July 20, 2021, letter from NLDC to appellant re: Recent Absences (5 days or more)
- P-2 July 26, 2021, letter from NLDC to appellant denying FMLA request.
- P-3 NLDC Request for Leave With or Without Pay application for 8/4/21 to 9/4/21.
- P-4 August 2, 2021, letter from Biyama Hospital.
- P-5 August 4, 2021, letter from Taraba State Specialist Hospital

For Respondent:

- R-1 PNDA dated July 23, 2021.
- R-2 FNDA dated May 9, 2021.
- R-3 Email from Karen Murphy to appellant dated April 8, 2021.
- R-4 Request for leave with or Without Pay.
- R-5 NLDC timekeeping records.
- R-6 Letter from Debra Bridges to appellant dated 4/19/21.
- R-7 Request for time off, dated 5/21/24.
- R-8 Request for time off, dated 5/21/24.
- R-9 Request for time off, dated 5/21/24.

OAL DKT. NO. CSV 03846-22

R-10 Request for time off, dated 5/21/24.

R-11 NLDC Policy for Time Off and Time Keeping Practices.

R-12 Request for time off dated 6/10/24.

R-13 NNLDC Callout Log.

R-14 DHS Admin. Order 4:08 Disciplinary Action Program.