



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>RD</sup> DAY OF JULY, 2024

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 05680-23

AGENCY DKT. NO. 2023-2697

**MAXINE PETROSKY,**

Appellant,

v.

**UNION COUNTY, DEPARTMENT**

**OF HUMAN SERVICES,**

Respondent.

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**Maxine Petrosky**, appellant, appearing pro se

**Kathryn V. Hatfield**, Esq., and **Catherine Wachtell**, Esq., For respondent (Hatfield,  
Schwartz, Law Group, LLC, attorneys)

Record Closed: April 15, 2024

Decided: May 21, 2024

BEFORE: **JULIO C. MOREJON**, ALJ:

**STATEMENT OF THE CASE**

Appellant, Maxine Petrosky (Petrosky), appeals the decision by respondent, Union County, Department of Human Services, (Union County) dismissing her from her position of

HSS1 resulting from her inability in obtaining the minimum test results during her working test period. Petrosky appeals under the provisions of N.J.A.C. 4A:2-4.3.

### **PROCEDURAL HISTORY**

On May 8, 2023, Union County notified Petrosky that she had not satisfied the minimum test results for the position of HSS1, during her working test period and she was to return to her previous permanent position of Keyboarding Clerk 1. On May 25, 2023, Petrosky filed her appeal of Union County's decision.

On June 27, 2023, the Civil Service Commission, Division of Appeals and Regulatory Affairs (Civil Service), transferred this matter to the Office of Administrative Law (OAL), as a contested hearing, for a hearing therein.

An initial telephone status conference was held on July 19, 2023, and a Prehearing Order was issued therein. Subsequent status conferences were held thereafter, as the parties exchanged discovery and attempted to resolve this matter.

On February 13, 2024, a zoom remote hearing was held. Respondent, with appellant's consent, requested time to obtain the hearing transcript and file post hearing summations.

Post hearing summations were then filed on March 27, 2023, by Petrosky and on April 8, 2024, by Union County. I closed the record on April 15, 2024.

### **ISSUE:**

Was Union County's decision to return Petrosky to her permanent title at the end of her ninety-day (90) working test period made in bad faith?

## FINDINGS

The following facts are not in dispute as they are derived from the documents admitted in evidence, and I **FIND** the same as **FACT** herein.

Petrosky has been employed with Union County for approximately ten (10) years and has been employed with the Social Services section for eight (8) of those ten years. Petrosky's permanent position within Union County is Keyboarding Clerk-1. On February 6, 2023, she began a 90-day training period for the Human Services Specialist 1 (HSS-1) position. Petrosky received performance evaluations at 30, 60, and 90 days. (R-2, R-3, R-4). The baseline to pass the training period and be retained as an HSS-1 was an average of 85. (R-1). Michele Adams sent Petrosky an e-mail on March 13, 2023 reminding her that she needed an 85 to pass the class. (R-7). Jocelyn Casey, likewise, sent an e-mail to Petrosky on March 30, 2023, informing her that her current average was below the 85 minimum requirement. (R-8).

At the conclusion of the 90-day period, Petrosky's average was below 85, and she was not retained in the HSS-1 position for failure to meet the minimum requirements. (Id.). Union County then had Petrosky returned to her permanent position as Keyboarding Clerk 1.

Petrosky filed the within appeal because she believes she did not receive a fair test period. Petrosky said at the hearing, "[t]he reason for my appeal I'm stating because I feel I didn't get a fair test period. I did do live work that was not returned and looking through the progress reports that was presented at the end it says my average was an 88.71, so which technically is a passing grade." (Hearing Transcript,<sup>1</sup> 29:18-23). The class, which Petrosky participated in had an average test score of 88.71 (R-1), and Petrosky's average was an 80 (Id.).

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<sup>1</sup> Hearing Transcript will be referred to as "T".

### Testimony

Petrosky testified at the hearing . Michele Adams and Jocelyn Casey testified on behalf of Union County. Below is a summary of their respective testimony, my credibility determination, and findings:

#### Maxine Petrosky:

Petrosky testified that during her entire training period, she asked for help and did not receive it. Specifically, Petrosky testified that she asked for extra practice, specifically in the form of five or six e-mails asking for help on certain material, which were not opened and not answered. (A-1 to A-6; T:30:6-10). Petrosky also testified that she did not follow up on these e-mails. (T:42:1- 3).

Petrosky further testified that "we were never, ever told that there was a specific grade or, you know, amount of points we had to get to be a passing grade." (T:50:5-7). Petrosky testified "they never said what is pass or fail" (T51:19-20). Petrosky stated, "it was never said, 'You have to get an 85 or better on every test that you take in order to pass the class,' nothing in writing, nothing was signed, nothing was said about any test score" (T:64:1-3).

Regarding the scores she received during the course, Petrosky was presented with the baseline score that were contained in an excel spreadsheet (A-2, "baseline score"). The baseline score document also contained the requirements and class score average (Id.) The final page of the baseline score document revealed that Petrosky needed a "baseline score of 85" to pass her classes; the class average score was an 88.71, and Petrosky earned an 80. (Id.) Petrosky did not disagree with the scores that appeared on the baseline document, but she objected that those were in fact her scores, as she stated, "because that's not even the score they told me I got." (T63:1-9).

When asked to explain how Union County's failure to indicate what score was passing demonstrates bad faith, Petrosky answered by stating "I never saw those tests" (T54:11-18).

When asked what motive someone may have to fabricate scores, Petrosky responded by saying, "some people get special treatment, if they liked you they gave you more time for tests, they helped you more. I asked five or six times, and I didn't receive any help." (T:65:2-6).

Petrosky' stated she is "not a great written test taker." (T31:11-14.), and that she has a learning disability, and stated she never spoke to anyone about test taking accommodations until after the testing period, because she did not know she had to. (T:67:1-5; T68:11-12).

Michael Adams

Michele Adams (Adams) is the Training Supervisor for Union County. Adams provided testimony regarding the basic requirements for the HSS-1 training. She provided testimony concerning the courses provided to Petrosky, which consisted of course orientation, policy discussions, and case scenario processing. Adams testified that trainees must achieve a baseline score of 85 to pass the policy and case scenario tests. Adams testified she oversees training logistics, scores, and evaluations, and Jocelyn Casey trains policy and case work, and a "Ms. McCoy" handles orientation and basic math. Ms. Adams testified that Petrosky struggled with math early in the training, resulting in an unsatisfactory 30-day evaluation. (T:86-87:13-18).

Adams also testified that generally when trainees reach out and need extra help, the trainers give the whole class extra help, especially if they have more than one request for a certain topic, so that everybody can practice the same things at the same time. (T:92:18-22). Adams explained that when the trainers administer practice in response to requests from class members, including Petrosky, they set aside time in the class to give them the practice that they need. (T:100:6-10).

Adams further explained that the reason Union County implemented the testing and case scenarios was to bring some objectivity to the process and eliminate subjectivity.

(T104:21). Adams testified that Petrosky was not the only person who did not satisfactorily complete the working test period. Generally, about 20% of the class does not pass, as was the case with Petrosky's training class. (T90:17-20).

Adams testified that she was not aware of Petrosky's alleged learning disability prior to today, but that trainers make accommodations following disclosure by the trainee. (T106:16-19). Adams testified that she did not hold any personal animus or any negative thoughts or feelings towards Petrosky prior to or during the whole process of training. (T108:19-20).

### Joselyn Casey

Jocelyn Casey (Casey), a Human Services Specialist-4 and Supervisor in Training, testified regarding her role as the supervisor and trainer during Petrosky's training period. Casey stated that she primarily focused on teaching policy and regulations related to SNAP benefits, General Assistance, and TANF eligibility determination. (T114:14-18). Casey testified that Petrosky participated in class but did lack some understanding in reference to the policy and the interpretation of the material that was being taught. (T115:6-10). Casey testified that Petrosky's test scores, and class performance led her to conclude that Petrosky did not fully understand the coursed material. (T116:16-20). Casey further testified that in response to Petrosky's request for practice material from the trainers, the same was provided to all of the class members. (T119:22-25).

Casey testified that the training department met with the trainees at the 30-, 60-, and 90-day evaluations. 1(T26:4-8). Additionally, they communicate with them through e-mail, and they send out progress reports in between the intervals letting them know what they need to improve upon. (T121:14-15). Casey testified that following Petrosky's 60-day evaluation, Petrosky and the trainers discussed additional work, which the training department did send out to the class. (T126:15-17). Casey testified that "[w]e also informed her that if she had any work that she wanted us to review, to submit it to us and we'll look at it individually. But she didn't submit anything right away. (T126:17-24). Casey testified that



the training department sent a reminder e-mail shortly thereafter and Petrosky then submitted the work five (5) or six (6) days before the 90th day. (T127:2-5).

Casey testified that she held no personal animus towards Petrosky either before or during the working test period. Specifically, Ms. Casey stated, "there was no ill will or intent from my part on her as we have had a cordial relationship prior to her being in training and also a cordial relationship after she left the training because she was part of a pilot program that we were doing, and I ran that and there were no issues after that." (T128:18-24).

Casey further testified that "we need everybody in that agency when there's new hire, we want them to be successful, we want them to pass the course" (T129:8-11). Casey acknowledges that this is especially true in light of the fact that following the pandemic, there was a significant drop in personnel, and the department needed new hires and was desperately trying to fill these holes. (T130:5-20).

### **Credibility determinations**

When the testimony of a witnesses is in disagreement, the trier of fact must weigh the witnesses' credibility in order to make factual findings. Credibility is the value that the fact finder gives to testimony of a witness and contemplates an overall assessment of the witness's story in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Credible testimony must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955); Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E. & A. 1934). A fact finder is expected to base credibility decisions on his or her common sense and life experiences. State v. Daniels, 182 N.J. 80, 99 (2004). Credibility is not dependent on the number of witnesses who appeared, State v. Thompson, 59 N.J. 396, 411 (1971) and the finder of fact is not bound to believe the testimony of any witness. In re Perrone, 5 N.J. 514, 521-22 (1950).

In the present case I **FIND** the testimony of Adams and Casey credible, as to the testing material and procedures, as they provided sound and consistent testimony that was corroborated by the documents in evidence. I **FIND** the testimony of Adams and Casey credible that they did not have the motivation or intent to not assist Petrosky or see her fail her testing period I **FIND** Adams and Casey's testimony credible as demonstrated by their statements and corroborated by the exhibits in evidence, that any additional materials to assist the participants was provided to all who needed the same. Overall, I **FIND** the testimony of Adams and Casey as **FACT** herein.

I **FIND** Petrosky's testimony not credible that she was not aware that she needed a baseline score of 85 to successfully complete her testing period, as this testimony was directly contradicted by the testimony of Adams and Casey. Specifically, Adams's e-mail to Petrosky of March 13, 2023, reminding her that she needed an 85 to pass the class. (R-7). Casey likewise sent an e-mail to Petrosky on March 30, 2023 informing her that her current average was below the 85 minimum requirement. (R-8).

Although she did not provide any information to corroborate that she had a learning disability, I **FIND** Petrosky's testimony credible and believable that she does have a learning disability that by her own admission she did not inform the trainers of the same during her testing period.

I **FIND** Petrosky's testimony not credible that the other trainees received preference and that she was not treated the same as the other participants, as she has failed to provide any specific example or evidence of the same, but merely makes allegations.

### **LEGAL ANALYSIS AND CONCLUSION**

One of the objectives of the civil service laws and regulations is to ensure the merit and fitness of public service employees. N.J.S.A. 11A:1-2; State-Operated Sch. Dist. of City of Newark v. Gaines, 309 N.J. Super. 327, 332 (App. Div. 1998), certif. denied, 156 N.J. 381 (1998). Toward this end, a candidate for permanent employee status must successfully

complete a probationary or working test period. N.J.S.A. 11A:4-15. The working test period is considered part of the examination process and designed to enable an appointing authority to evaluate whether an employee can satisfactorily perform the duties of the title meriting permanent status. N.J.S.A. 11A:4 15; N.J.A.C. 4A:4-5.1(a). It is intended "to supplement the examining process by providing a means for testing an employee's fitness through observed job performance under actual working conditions." Dodd v. Van Riper, 135 N.J.L. 167, 171 (E. & A. 1947).

It is well settled that "a basic condition of permanent or absolute appointment for any civil service employee is the favorable opinion of the employee's fitness as formed by the appointing authority during the probationary period." Dodd, 135 N.J.L. at 171. "[T]he sole test is an opinion formed by observation of the employee's work," which opinion [\*22] must be "formed in good faith ...." Lingrell v. New Jersey Civil Serv. Comm'n., 131 N.J.L. 461, 462 (Sup. Ct. 1944). The function of the working test period is not for the purpose of providing the employee further training to qualify him for the position. Briggs v. Dep't of Civil Serv., 64 N.J. Super. 351, 355 (App. Div. 1960).

In an appeal from an employee's termination at the conclusion of a working test period, the employee shoulders the burden of proving that the appointing authority's "action was in bad faith." N.J.A.C. 4A:2-4.3(b). If bad faith is found, the employee is entitled to a new full or shortened working test period and, if appropriate, other remedies. N.J.A.C. 4A:2-4.3(c). The basic test is whether the appointing authority exercised good faith in determining that the employee was not competent to perform satisfactorily the duties of the position. See Briggs, 64 N.J. Super. at 356; Devine v. Plainfield, 31 N.J. Super. 300, 303-04 (App. Div. 1954); Lingrell, 131 N.J.L. at 462.

In general, good faith has been defined as meaning "honesty of purpose and integrity of conduct with respect to a given subject." Smith v. Whitman, 39 N.J. 397, 405 (1963). As stated in Schopf v. New Jersey Department of Labor, 96 N.J.A.R.2d (CSV) 853, 857:

No set rule may be formulated when attempting to determine whether an employee's termination at the end of the working test period was based on opinions of the appointing authority formed in good or bad faith . . . It is only required that the opinion be based on actual observations and that those observations form a rational basis for the opinion.

Good faith in this context means "the appointing authority has actually observed the probationer's performance and found it to be unsatisfactory." Sokolowsky v. Twp. of Freehold Dep't of Code Enforcement, 92 N.J.A.R.2d (CSV) 1 55, 1 57; Davis v. Newark Pub. Library, 9 N.J.A.R. 84, 87. In addition, "[a] fair evaluation period is further evidenced by the giving of guidance and advice due to a probationer, as well as a notification of any deficiencies in performance." Sokolowsky, 92 N.J.A.R.2d (CSV) at 57; Davis, 9 N.J.A.R. at 87-88.

The progress reports required by 4A:45.3, N.J.A.C. 4A:4-5.3 are a means of notice to an employee in the working test period if their performance is satisfactory, or if unsatisfactory, the employee has an opportunity to improve specified performance deficiencies toward completing a successful working test period and attaining permanent appointment. The termination of an employee in situations in which the appointing authority has failed to provide that mandated notice has been found to be demonstrative of a lack of good faith and a denial of a fair evaluation of the employee's work performance. Sokolowsky, at 157.

The record herein reveals that Petrosky acknowledged that she was having a difficult time in learning the material and in her classroom experience. Petrosky's main arguments were: 1) The trainers (Adams and Casey) treated differently from the other trainees in that they did not provide her with additional learning material when requested, and they did not respond to her requests for extra help; 2) she was not made aware by Union County that she had to obtain a baseline score of 85 in all of material to pass satisfactorily pass the class.

Petrosky's arguments are not supported by the documents admitted in evidence and the testimony provided herein. Petrosky through her own admission recognizes that she was having difficulty in understanding the material and also struggling in completing her

classroom work. Moreover, Petrosky's testimony that she did not receive additional assistance and was not aware of the baseline score required is rebutted by the testimony of both Adams and Casey.

For these reasons, I **CONCLUDE** from the record herein that Petrosky has failed to prove by a preponderance of the credible evidence that Union County's decision that she did not satisfactorily complete the working test period was made in bad faith as required by law. N.J.A.C. 4A:2-4.3(b).

I **CONCLUDE** that the decision by Union County that Petrosky did not satisfy the 90-day test period is **AFFIRMED**.

### **ORDER**

Based on the foregoing findings of fact and applicable law, it is **ORDERED** that the determination of Union County that Petrosky did not successfully complete the working test period is hereby **AFFIRMED**.

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 21, 2024  
DATE

*Julio Morejon*  
**JULIO C. MOREJON, ALJ**

Date Received at Agency:

May 21, 2024

Date E-Mailed to Parties:  
lr

May 21, 2024

**APPENDIX**

Witnesses

For Appellant:

Carolyn Petrosky

For Respondent:

Michael Adams

Joselyn Casey

Exhibits

Appellant:

- A-1 Interrogatories and Responses
- A-2 Progress Reports
- A-3 Case Review Request
- A-4 30 Day Evaluation-2/6/23 to 3/6/23
- A-5 60 Day Evaluation-3/7/23 to 4/6/23
- A-6 Grievance and Information Request
- A-7 Petrosky E-mail to Count on SNAP-17

Respondent:

- R-1 thru R-6 Not Identified But in Evidence
- R-7 Adams to Petrosky E-mail/Class Average - 3/13/23

- R-8 Casey to Petrosky E-mail/Progress
- R-9 Casey to Petrosky E-mail/Practice Work Not Sent Back - 4/10/23
- R-10 Casey to Petrosky E-mail with Practice work Attached - 3/7/23
- R-11 Casey to Petrosky E-mail with Extra Practice Work - 3/8/23
- R-12 Casey to Petrosky E-mail With Extra Practice Work - 4/18/23
- R-13 Successful Completion of Working Test Period Form Signed by Ms.Petrosky