



STATE OF NEW JERSEY

In the Matter of Desiree Jones, Union
County, Department of Human
Services

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-94
OAL Docket No. CSV 05951-22

ISSUED: SEPTEMBER 25, 2024

The appeal of Desiree Jones, Keyboarding Clerk 1, Union County, Department of Human Services, 20 working day suspension, on charges, was heard by Administrative Law Judge William Courtney (ALJ), who rendered his initial decision on August 14, 2024. Exceptions were filed on behalf of the appointing authority and a reply was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent, *de novo* evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on September 25, 2024, adopted the Findings of Fact and Conclusion of Law as found in the initial decision. However, it did not adopt the ALJ's recommendation to modify the 20 working day suspension to a five working day suspension. Rather, the Commission upheld the 20 working day suspension.

In its exceptions, the appointing authority argues that the ALJ, despite upholding all of the charges, erred in reducing the suspension, especially given the appellant's prior disciplinary history. The Commission agrees.

In his initial decision, in recommending reducing the 20 working day suspension to a five working day suspension, the ALJ stated:

Because I have concluded that the charges the County brought against Jones were appropriate, and because Ms. Jones's exaggerated narrative of the incident resulted in an investigation that diverted time and resources away from the County, it is reasonable for Ms. Jones to be suspended for five working days. Her conduct, while serious, did not

present a risk of harm to anyone. For these reasons, I **FIND** that at 20-working days suspension is excessive.

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

In this matter, the Commission does not agree with the ALJ's recommendation to modify the penalty to a lesser suspension. The ALJ's minimization of the incident in question is concerning. While there was no actual "harm," the appellant made a false accusation of workplace violence against a co-worker. Such misconduct is worthy of a stern sanction. While perhaps, the ALJ's recommended reduction would be warranted for an employee with a clean disciplinary history, such is not the case here. Rather, the record indicates that the appellant has several prior disciplines, including two major disciplines. As such, a progressive penalty is warranted in this matter. Therefore, the originally imposed 20 working day suspension is appropriate and should serve to sufficiently warn the appellant that any future misconduct will lead to progressively higher disciplinary penalties.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore upholds the 20 working day suspension.

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 25TH DAY OF SEPTEMBER, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 05951-22

AGENCY CASE NO.: 2023-94

DESIREE JONES,

Petitioner,

v.

UNION COUNTY DEPARTMENT

OF HUMAN SERVICES,

Respondent.

Fred Shahrooz-Scampato, Esq., for petitioner

Brian M. Hak, Esq., for respondent (Eric M. Bernstein & Associates, attorneys)

Record Closed: February 10, 2023

Decided: August 14, 2024

BEFORE **WILLIAM COURTNEY, ALJ:**

STATEMENT OF THE CASE

Petitioner, Desiree Jones, appeals the penalty of 20-working day suspension without pay on charges of conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12), that Respondent Union County Department of Human Services ("the County") brought against her following an incident that occurred on August 5, 2021.

PROCEDURAL HISTORY

On or around November 9, 2021, the County served Jones with a Preliminary Notice of Disciplinary Action ("PNDA"), charging her with violations of various Civil Service regulations, as well as violations of the Union County Employee Handbook and/or Personnel Policies.

On April 13, 2022, the County conducted a disciplinary hearing where it was determined that the County had met its burden of proving all charges against Jones as set forth in the PNDA: an ongoing feud with a coworker and the violations of the regulations and policies constituted conduct unbecoming a public employee and other sufficient cause for discipline. The hearing officer recommended a 20-working day suspension without pay.

On June 7, 2022, the Union County Manager concurred with the recommendation, and on June 16, 2022, the County served Jones with a Final Notice of Disciplinary Action ("FNDA") with the same charges. The suspension would be effective from June 20, 2022 until July 18, 2022 included.

Jones appealed the FNDA on July 5, 2022, and the matter was transmitted to the Office of Administrative Law ("OAL"), where it was filed on July 18, 2022, for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On January 5, 2023, a hearing took place, where Respondent produced two witnesses: Beth Maldonado, Petitioner's direct supervisor, and Kamili Williams, Director of the Division of Social Services.

On February 10, 2023, both parties provided their summations, and the record was closed.

FACTUAL BACKGROUND

Ms. Jones is a Keyboarding Clerk I for the Union County Department of Human Services.

On or around August 5, 2021, Jones was standing by the desk of and conversing with a coworker in a hallway when another employee, Lakita Boston, was heading to the time clock system to reportedly punch in for her afternoon shift. The hallway was so narrow that when Boston passed by Jones, she touched Jones and her belongings.

Later in the day, Jones complained to her Supervisor, Beth Maldonado, that Boston "intentionally pushed [Jones] and [her] belongings", so that Jones felt "physically violated." (Respondent's exhibit R-2) Boston hurriedly found Maldonado to contradict Jones's statements. Maldonado eventually instructed them to send her something in writing if they wanted to pursue this matter further. (Respondent's exhibit R-2; Maldonado's testimony dated January 5, 2023)

Within 24 hours, both Jones and Boston emailed back their version of the incident. (Respondent's exhibits R-2 and R-3) Maldonado forwarded the emails to her Supervisor, Todd Smith, who forwarded them to the Director, Kamili Williams, and the Deputy Director, Tina Lopez. In his forwarding email, Smith indicated to Williams and Tina Lopez that "Lakira Boston and Desiree Jones are accusing each other of assault. Desiree is accusing Lakira of violating county computer security policy as well. Lakira has accused Desiree of creating a hostile work environment." (Respondent's exhibit R-2)

Consequently, during the following weeks, the County police investigated the incident. They concluded that nothing supported Jones' claim of assault. Notably, after reviewing surveillance video footage, it appeared the bump was incidental and not intentional or aggressive, as Jones alleged during the investigation. (Respondent's exhibit R-6)

The initial incident report from Officer Michael Probus indicated that Jones had reported that Ms. Boston "was walking very aggressively and very fast towards her

direction", "bumped her aggressively with her shoulder and knocked her lunch box and purse off her shoulder", and "aggressively bumped her again when she passed by." The witness, Ms. Diane Williams, "stated that she did not see Mrs. Boston bump Ms. Jones and stated that she feels that if she did and need more room to pass Mrs. Boston could have said excuse me." Further, "Ms. Jones did not mention wanting to file charges on Mrs. Boston but wanted something to be done about harassment in the workplace between females." Ms. Boston was not present to be questioned. The preliminary report concludes "due to neither individual actively pursuing to file chargers [sic], this report is for informational purposes and the immediate resolve of workplace behavior resides with their respective supervisors." (Petitioner's exhibit P-1)

The supplementary incident report from Officer Bernard Waddell indicates that "the complaint identified as Desiree Jones (County Employee) reported an assault." Ms. Diane Williams was present during the incident but stated "she did not witness the assault." Ms. Jones reportedly mentioned "there were cameras in the area, which could have captured the incident." Officer Waddell observed that "[i]t appears Ms. Jones purposely adjusted and protruded her body in the walkway and waited until Ms. Boston approached. . . [i]t appeared Ms. Jones made an effort to block Ms. Boston passage. . . The footage did not capture Ms. Boston bumping Ms. Jones in the hallway." (Respondent's exhibit R-6)

The supplementary report also indicates Ms. Jones's suspicions regarding Ms. Boston accessing her [Ms. Jones's] personal email. The current supervisor (Ms. Aida Colon-Liptak) recorded a statement in this regard. She states that while the office contains files and documentation for daily operations for use by the clerical staff – that includes Ms. Boston and Ms. Jones – through the day, she has not witnessed Ms. Boston using the previous supervisor's computer or credentials. Ms. Colon-Liptak reported the apparent conflict between Ms. Boston and Ms. Jones to her supervisors. (Ibid.)

Boston also recorded a statement, conceding that she and Ms. Jones were "acting childish", and that it started when "Ms. Boston was [allegedly] given permission from her supervisors to turn work over to Ms. Jones. . . The incident caused problems with both parties at work." (Ibid.) On the day of the alleged assault, Boston claimed she

was walking towards the time clock and said "Excuse me" approximately three times before she squeezed behind Ms. Jones to get to the time clock. She conceded she made contact with the tote bag but denied any contact with Jones's body. (Respondent's exhibit R-3)

Regarding Jones's suspicions of accessing Ms. Jones's emails, Ms. Boston clarified that Diane Williams was the person to advise her of a special schedule due to a childcare conflict. Ms. Boston admits she questioned Ms. Jones about "receiving special privileges", although it was not her business. (Respondent's exhibit R-6) Boston later approached Jones to try to reconcile. While talking with each other, Jones and Ms. Boston reportedly realized that coworkers were adding fuel to the fire between them. Upon that realization, "Ms. Jones stated that the current state of affairs at the time of the incident gave her the pretense that Ms. Boston provoked an *assault*." (*Ibid.*)

The supplementary report also indicates that Mr. Otera, Director of Data Processing, was contacted regarding unauthorized access to the previous supervisor's server. He stated that the previous supervisor's credentials were deactivated upon her retirement. There was no access to the server. (*Ibid.*)

In conclusion, Officer Waddell noted that Ms. Jones was advised of complaint procedures (i.e. notify Affirmative Action to report any matters pertaining to hostile environment), and that the breach of security claims were unfounded. (*Ibid.*)

The County then proceeded with disciplinary action.

Based on the results of the investigation, Ms. Jones was charged with conduct unbecoming a public employee due to the ongoing feud.

Ms. Jones already has a history of disciplinary violations, including:

- A written reprimand for not taking a mandatory Employee Workplace Discrimination virtual seminar;

- 10 working day suspension for failing to complete daily assignments and falsifying County records;
- A written reprimand for failing to complete work assignments;
- 4 working day suspension for chronic lateness;
- A written warning for cell phone usage at her desk;
- 8 working day suspension for failing to review a document that had been submitted for recording;
- 3 working day suspension for chronic lateness.

On or around November 9, 2021, the County served Jones with a PNDA, charging her with displaying conduct unbecoming a public employee, violations of various Civil Service regulations, as well as violations of the Union County Employee Handbook and/or Personnel Policies.

On April 13, 2022, the County conducted a disciplinary hearing where it was determined that the County had met its burden of proving all charges against Ms. Jones as set forth in the PNDA. The hearing officer recommended a 20-working day suspension without pay.

On June 7, 2022, the Union County Manager concurred with the recommendation, and on June 16, 2022, the County served Ms. Jones with a FNDA indicating that the suspension would be effective from June 20, 2022 through July 18, 2022.

Jones appealed the FNDA on July 5, 2022, and the matter was transmitted to the OAL, where it was filed on July 18, 2022.

On January 5, 2023, a hearing was held where the County produced two witnesses.

The Parties' Positions

Petitioner

Jones contends that Boston constantly provokes her and creates a hostile work environment for her. She believes that Ms. Boston intentionally pushed her in retaliation for reporting to their supervisor that she [Boston] improperly delegated work to her [Jones] a few months prior to this incident. Regardless, Jones asserts she did not claim she was assaulted, and did not request an investigation into the matter. The time and resources that were invested in the investigation should not be her responsibility. Therefore, Petitioner argues she should not be penalized and should not have received a 20-working day suspension. The penalty is unfair and too excessive.

Respondent

Jones verbally reported to her supervisor that she felt like she was assaulted. In the narrative of the incident that she emailed Maldonado, Jones used words to the effect of "Ms. Boston intentionally pushed me", "knocking my belongings off my shoulder", "shifting my body from the stand I was standing in." Jones also mentioned that, during the incident, she was "bum-rushed both times" by Boston. The language used orally and in writing was sufficient to support a claim of assault. The County has a duty to investigate any incident where an employee complains about unwanted offensive physical contact. The investigation was assigned to the Union County police, that concluded that there was nothing supporting any claims of assault. At most, it was an incidental bump, not an intentional push.

The County determined that Ms. Jones fabricated a claim of assault. The time and resources invested in the investigation were time and resources taken away from the community. This conduct is deemed unbecoming a public employee.

Due to Ms. Jones' extensive discipline history, a suspension of 20 working days is appropriate. Thus, the County is requesting for the 20-working day suspension to be affirmed.

Testimony offered at the January 5, 2023 hearing

Ms. Beth Maldonado

Maldonado is the supervisor of the Fraud Department of Union County. Her actual title is Human Services Specialist IV. She has held her job since 2008. She is familiar with the incident that led to the charges against Jones.

In June 2021, she was overseeing the Clerk Department for a few months, due to the retirement of Ms. Torres, the then-supervisor. Jones and Boston therefore worked under Maldonado's authority. On or around August 5, 2021, Jones reported that "she was assaulted in the main corridor of the building. Boston bumped her on purpose. She [Jones] felt that it was an assault."

Boston informed Maldonado that none of what Ms. Jones said happened. She explained that she had just come in to punch in for the afternoon shift and did her best to avoid Ms. Jones who was standing in the way. Maldonado eventually emailed both Jones and Boston and instructed them to put something in writing if they wanted to pursue the matter further. Both emailed back their version of the incident.

In Ms. Boston's email (Respondent's exhibit R-3), she expressly stated "I Lakira Boston would like to further this matter. I'm being harassed by Desiree Jones which is making it a hostile work environment for me." She complained about a previous incident where Ms. Jones "jumped in front of her while standing to clock out." Boston then continued "[t]oday I Lakira came in office to try and punch in at the time clock and I said excuse me 3 times and Desiree did not move, she had a lunch bag on her shoulder that I tapped trying to get by because she would not move." She also mentions a later encounter where Ms. Jones "was asked to leave"¹ and "made a comment as if she supposed to be scared." She ends her email with the following comments: "I Lakira have

¹ It appears that Ms. Boston asked Ms. Jones to leave. Ms. Jones left after getting the file from a supervisor.

no time for any of that ignorance at a work place. Coworkers should conduct themselves in a matter of representing the county in which Desiree is not following."

On the other hand, Ms. Jones's email (Respondent exhibit R-2) is lengthier and describes an ongoing situation of harassment that she made Management and her union representative aware of on many occasions. It all started when Ms. Boston attempted to assign work to delegate work to her. It continues with accusations of Ms. Boston "maliciously accessing Ms. Torres' private email correspondences. . . and program portal", as well as threats of "going to get [Jones]." According to Jones, Boston has spread misinformation "deliberately altering the report between coworkers in the office" and "creating a very uncomfortable tension." Ms. Jones also accuses Ms. Jones of provoking her and lying to her.

Jones describes the alleged assault as another issue created by Boston. She states that

Ms. Boston intentionally pushed [her] and [her] belongings in passing today, in front of Diane Williams in the hallway. [Ms. Boston] was NOT rushing to the time clock, she was walking the halls to look for a coworker. . . [Ms. Boston] about face and brushed/pushed past [her] a second time knocking my belongings off of my shoulder and shifting my body from the stance [she] was standing in. . . . [Ms. Jones] was bum rushed both times.

Maldonado also testified that Jones had verbally reported that she was assaulted. As soon as she heard the word "assaulted", she knew that it was out of her hand, that it had to go up to her boss, Mr. Todd Smith, and that it would be escalated to the Director (Ms. Kamili Williams) and the Deputy Director, Ms. Tina Lopez.

Although she was no longer involved in the incident investigation, Ms. Maldonado clarified that she was still involved with Boston and Jones. According to Ms. Maldonado, Boston and Jones could not get along at all. She therefore asked them to avoid each other, especially since their jobs were completely separate and they did not have to speak to each other.

Ms. Maldonado recalls that Jones complained about Boston improperly delegating work to her sometime in June 2021. She does not remember that Jones indicated that she felt the bumping was retaliation for complaining. "But it could have happened."

Ms. Maldonado repeated that there was a lot [of tension] between Jones and Boston. In a memo, Jones was specifically instructed to come to Maldonado's office if Boston was coming at her. Further, Jones was to receive her assignments from Maldonado or her assistant, not from Boston.

Regarding the incident, Maldonado expressly requested Jones and Boston to put it in writing if they wanted to pursue the issue further.² The language that Ms. Jones used to the effect of "Ms. Boston intentionally pushed me" was considered an "assault" by Ms. Maldonado. Also, Ms. Maldonado reported that Jones directly informed her that Boston had assaulted her.

Ms. Maldonado clarified that, if an employee accuses another of intentionally pushing them or bum-rushing them, it is management's duty to act. As a supervisor, she had a duty to report the incident for investigation. Ms. Maldonado added that she was not the one to ask for law enforcement's intervention. She followed instructions from upper management.

Ms. Maldonado concedes that, based on the email she received on the day of the incident, Ms. Boston wanted to pursue the matter further and claimed that Ms. Jones created a hostile work environment. Neither Ms. Jones nor Ms. Boston used the word "assault" in their narratives. From the same email, Ms. Maldonado understands that Ms. Boston acknowledged that she tapped Ms. Jones and she made incidental physical contact.

² Ms. Jones reported the incident. Ms. Boston actually wrote "I Lakira Boston would like to further this matter."

Ms. Kamili Williams

Ms. Williams is the Director of the Division of Social Services. She is familiar with the charges and specifications supporting them.

Ms. Williams received an email from the Administrator who oversees Ms. Jones. In the email, she learned that Boston and Jones are accusing each other of assault. Ms. Williams was definitely concerned because an employee stated that another worker made bodily contact with her, causing her bag to be knocked off and her body to be moved. Ms. Williams forwarded the email to her supervisor (Debbie-Ann Anderson – Director of Health Human Services) to request some guidance. Ms. Anderson instructed her to contact the detective designated for the division to handle any personnel investigation. Detective Tate assigned one of his officers to follow through the investigation. Once the investigation was completed, Ms. Williams received a supplementary incident report from the Union County police.

She noted from the supplementary report that Diane Williams was present at the time of the alleged assault. When Williams asked Ms. Jones if Ms. Boston hit her, Jones answered “yes.” She also noted that the complaint identified Jones as the one reported the assault. Consequently, Williams understood that Jones reported that she was assaulted when she used language to the effect of “Lakita Boston aggressively bumped her” and “bumped her again on her way back”. For Ms. Williams, that language was consistent with the narrative. It described something intentional and forceful.

Williams also concluded the surveillance video contradicted Jones’s statements: she could not see any intentional push, bum-rush, or any contact resulting in a change of body position. The contact did not appear intentional. However, Ms. Williams observed an intentional squeeze from Ms. Boston to avoid contact.

Ms. Williams was made aware there was tension between the two employees, so the administration tried to separate them. This incident involved physical contact that was described as aggressive by the detective. This was therefore escalated.

The video clip of the incident (Respondent's exhibit R-9)

The video clip dated August 5, 2021 shows Jones standing in a narrow corridor³ between a gate and what appears to be a desk at approximately 1:30 pm. Jones is carrying what appears to be a lunch bag. At about 44 seconds, Boston appears in the middle of the corridor. She is seen walking towards the time clock system, passing by the spot where Jones is standing. The video clip does not show that Boston paused to allow Jones to move out of the way. However, it shows that Boston squeezed to pass by and that Jones slightly moves her body to give Boston more space to go through. Incidental contact occurred. Boston continued her walk towards the time clock. The clip does not show Boston actually punching in. She is only seen removing her mask and looking at the time clock. On her way back, it does not appear that Boston paused to allow Jones to move out of the way. Incidental contact occurred again. While Jones did not react on the first time there was contact, the second time, Jones turned to look at Ms. Boston.

Inconsistencies of the evidence

The fact that Diane Williams, the only witness of the incident, indicates in the preliminary incident report that Boston could have said "Excuse me" to request that Jones makes way for her to pass by is inconsistent with Boston stating she said "Excuse me" three times. The video clip does not support the fact that Ms. Jones was aggressively bumped by Boston, as she allegedly reported to the officer in the preliminary incident report. The video clip does not support that Jones's body was moved when contact occurred, as Jones stated in her email to Maldonado regarding the incident. The video clip does not support the fact that Boston was clocking in for her shift, Ms. Boston stated in her email to Maldonado regarding the incident. The video clip does not support that "Ms. Jones purposely adjusted and protruded her body in the walkway and waited until Ms. Boston approached", as concluded by the detective in the supplementary incident report. The video clip does not support the fact that Boston paused to allow Jones to move, after allegedly saying "Excuse me" three times, as Boston stated in her email to

³ The width of the corridor where Ms. Jones is standing is so narrow that it seems that only one person could fit in at a time. If two persons were walking in opposite directions, they would likely brush against each other.

Maldonado regarding the incident. It is not conclusive that "Ms. Jones made an effort to block Ms. Boston passage", as reported in the supplementary incident report.

In the determination of the charges against Jones, the County heavily relied on the police incident reports as well as the video clip. It thus charged Jones with displaying conduct unbecoming a public employee due to an ongoing unresolved feud with a coworker. It also charged her with violating Civil Services regulations and the Union County employee handbook policy due to the video clip not supporting her narrative. Consequently, the County recommended that Ms. Jones be suspended for 20 working days without pay. Ms. Jones finds the penalty unfair and excessive.

LEGAL DISCUSSION

The first issue is whether the respondent has proven the charges by a preponderance of the credible evidence. After reviewing all of the evidence submitted and considering all of the testimony presented, I **CONCLUDE** that respondent has met its burden. The second issue is whether the penalty of a 20-working-day suspension was justified and reasonable. Given the evidence presented, I **CONCLUDE** that a 20-working-day suspension is not reasonable.

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period of permanent career service employees.

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. See N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. See also In re Attorney Gen.

Law Enft Directive Nos. 2020-5 & 2020-6, 465 N.J. Super. 111, 124, 240 A.3d 419, 427 (Super. Ct. App. Div. 2020) (“Under the Administrative Code, major discipline. . . is defined as including removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. N.J.S.A. § 34:13A-5.3; N.J.A.C. 4A:2-2.2(a).”) An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including “conduct unbecoming a public employee,” and “other sufficient cause.” N.J.A.C. 4A:2-2.3(a) (6) and (12).

Violation of N.J.A.C. 4A:2-2.3(a)(6).

N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming. However, courts have held that conduct unbecoming a public employee is “any conduct which adversely affects . . . morale or efficiency . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (quoting In re Zeber, 156 A.2d 821, 825 (1959)); Karins v. Atl. City, 152 N.J. 532, 554 (1998). A finding of conduct unbecoming need not be predicated upon violation of any rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re Emmons, 63 N.J. Super. at 140. What constitutes conduct unbecoming a public employee is primarily a question of law. Karins v. Atl. City, 152 N.J. at 553.

Here, the County asserts that Jones “engaged in an ongoing feud with a fellow co-worker”, displaying conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6). In addition, the County charged Jones with violating various Civil Service regulations and Union County Employee Handbook and/or Personnel Policies, which would constitute other sufficient cause for discipline, N.J.A.C. 4A:2-2.3(a)(12). In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The emails from Jones and Boston, the testimonies from Ms. Maldonado and Ms. Williams, the supplemental incident report of the police all allude to tension between Ms. Jones and Ms. Boston. The evidence supports the existence of an ongoing feud between Ms. Jones and Ms. Boston. Since both accuses the other of creating a toxic work environment, the ongoing feud does not appear to be one-sided.

It also appears that Ms. Jones notified management and the union about the harassment she has been victim of, and that other coworkers have witnessed the tension, sometimes adding fuel to the fire. It is not clear if the tension has also been visible to the public, and if such conduct destroyed public respect for county employees and confidence in the operation of county services. However, a feud is likely to adversely affect the morale and efficiency of the office operations, as employees will likely take sides. After consideration of all of the evidence, I **CONCLUDE** that respondent has sustained its burden of proof that Jones' actions were in violation of N.J.A.C. 4A:2-2.3(a)(6).

Violation of N.J.A.C. 4A:2-2.3(a)(12).

Regarding the violations of the various Civil Service regulations and Union County Employee Handbook and/or Personnel Policies, which would constitute other sufficient cause for discipline, the County indicates that the evidence does not support the narrative of Ms. Jones. It therefore charges her with falsification of facts and violation of the law, and determined that her actions towards Ms. Boston were "clearly violative of law, facts and common workplace behavior."

The FNDA states that "[o]n August 5, 2021, you accused Ms. Boston of aggressively bumping you when she was walking past you to punch in at the time of the clock." In her email describing the incident to her supervisor, Ms. Jones indeed used language to the effect of "Ms. Boston intentionally pushed me and my belongings in passing today", "[Ms. Boston] about face and brushed/pushed past me a second time knocking my belongings off of my shoulder and shifting my body from the stance I was standing in", "I was bum rushed both time" and "I felt violated." In the preliminary incident report from the police, she allegedly used language to the effect of "[Ms. Boston] was walking very aggressively and very fast towards her direction", "bumped her aggressively

with her shoulder and knocked her lunch box and purse off her shoulder”, and “aggressively bumped her again when she passed by.” While reviewing the video clip from the surveillance camera, though, Boston is seen walking in a narrow corridor towards the time clock system. Jones is standing by the desk of Diane Williams in the same corridor. When Boston arrives at Jones’s level, it appears she tries to squeeze behind to pass. Incidental contact occurs and their belongings touch. When Boston returns through the same corridor, she does not squeeze her body as much, and incidental contact occurs again. Their belongings touch again.

Upon review, the video clip shows that incidental contact occurred, and does not support a claim of intentional or aggressive bumping, as stated in the incident report. Although Jones argues that she never claimed in her email that she was assaulted, the language she used, and her description of the action imply she was victim of an offensive physical attack. I **FIND** that Management had a duty to investigate such claim. Further, Ms. Maldonado testified that, although Jones might not have used the word “assaulted” in that specific email describing the incident, she actually used the word when she verbally reported the incident. The investigation establishes that the claim of assault was unfounded. The County therefore determined that Jones fabricated facts, a conclusion which I **FIND** is supported by the evidence presented at the hearing. Jones’s narrative was reasonably interpreted as an incident of violence that occurred in the workplace, which is a violation of the Union County Employee Handbook and/or Regulations. The evidence supports that Ms. Boston did not commit said violence during the incident.

The rest of the charges are not fully supported by the evidence. The video clip shows Ms. Boston looking at the time clock, but she is not seen punching in. Ms. Jones is seen standing by the desk of Diane Williams, in a very narrow hallway. She is not seen as “purposely [adjusting] herself and [protruding] her body into the walkway and [waiting] until Boston approached so as to force contact with her,” nor was Ms. Jones “making an effort to block Ms. Boston’s passage.” The County has not met its burden of proof regarding the rest of the charges.

Thus, I **CONCLUDE** a violation of N.J.A.C. 4A:2-2.3(a)(12) did occur based on Ms. Jones' false reporting of the nature of the contact between she and Ms. Boston on August 5, 2001.

A penalty of 20-working day suspension without pay is excessive.

In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. The concept of progressive disciplinary action is described in West New York v. Bock, 38 N.J. 500, 519 (1962). In Bock, the officer had received a thirty-day suspension and seventeen minor-disciplinary actions during eight years of service. The prior disciplinary actions and the suspension of thirty days were strongly considered in determining if the thirty-day suspension was warranted. A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522-24.

In disciplinary cases the appointing authority has both the burden of persuasion and production and must demonstrate by a preponderance of the competent, relevant and credible evidence that it had just cause to discipline the officer and lodge the charges. See Coleman v E. Jersey State Prison, OAL Dkt. No. CSV 1571-03, Initial Decision (February 25, 2004), <http://njlaw.rutgers.edu/collections/oal/> (citations omitted); see also 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, 560 (1982); In re Darcy, 114 N.J. Super. 454, 458 (App. Div. 1971); N.J.S.A. 11A:2-6(a)(2), -21; N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. A preponderance of evidence has been defined as that which "generates belief that the tendered hypothesis is in all human likelihood the fact." Martinez v. Jersey City Police Dep't, OAL Dkt. No. CSV 7553-02, Initial Decision (October 27, 2003), <http://njlaw.rutgers.edu/collections/oal/> (quoting Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959)).

Jones's discipline history includes several minor penalties for chronic lateness, cell phone usage at her desk and failure to complete work assignments. It also includes two instances of major discipline for failing to complete work assignments and falsification of County records, as well as failure to review a document submitted for recording, which are clearly related to the performance of her duties.

Jones also states that she communicated with her supervisor on many occasions regarding being the victim of harassment from Ms. Boston. According to Ms. Maldonado, the two employees have been separated. Yet, their paths have crossed, creating incidents such as the incident of August 5, 2021. Jones was reportedly conversing with Diane Williams when Boston walked towards the time clock. Boston reportedly went to punch in when she met Jones in the hallway. Since Boston is not seen pausing or slowing down when she arrives at the level of Jones, and since the two of them are supposed to avoid each other, Jones may have felt that Boston invaded her private space. Likewise, Jones knows this hallway is narrow and seems to be the only way to the time clock. She should have anticipated that, if she did not give way, incidental contact would occur. Both employees seem to be equally responsible for the encounter. Because I have concluded that the charges the County brought against Jones were appropriate, and because Ms. Jones's exaggerated narrative of the incident resulted in an investigation that diverted time and resources away from the County, it is reasonable for Ms. Jones to be suspended for five working days. Her conduct, while serious, did not present a risk of harm to anyone. For these reasons, I **FIND** that at 20-working days suspension is excessive .

CONCLUSION

The preponderance of the credible evidence supports an ongoing feud between Ms. Jones and Ms. Boston, resulting in a display of conduct unbecoming a public employee. While Ms. Jones should be penalized for exaggerating her narrative of the incident of August 5, 2021, causing time and resources to be diverted from the County operations, given her discipline history and the fact that the charges were based on questionable evidence, a suspension of 20-working days is excessive.

ORDER

For the reasons set forth above,

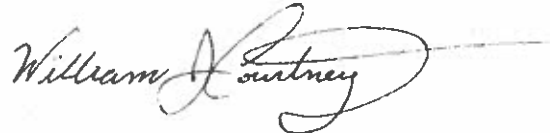
IT IS on this 13th day of August, 2024 **ORDERED** that:

1. The June 16, 2022 FNDA is **RECIENDED**.
2. Petitioner be disciplined for engaging in conduct unbecoming a public employee and for other sufficient cause, as described above, in violation of N.J.A.C. 4A:2-2.3(a) (6) and (12).
3. Petitioner's discipline shall consist of a suspension for 5 working days.
4. Any suspension already served by petitioner pursuant to the June 16, 2022 FNDA shall be credited against the 5-day suspension herein imposed.
5. In the event petitioner has served in excess of 5 days suspension pursuant to the June 16, 2022 FNDA, respondent shall reimburse petitioner for any lost wages and benefits resulting from said suspension and also reinstate any lost seniority rights.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



August 14, 2024
DATE

WILLIAM COURTNEY, ALJ

Date Received at Agency:

August 14, 2024

Date Mailed to Parties:

August 14, 2024

db

APPENDIX

Petitioner's witnesses:

1. Desiree Jones

Respondent's witnesses:

1. Beth Maldonato
2. Kamili Williams

Petitioner's Exhibits :

- P-1 Incident report
- P-2 August 5/6, 2021 email chain

Respondent's Exhibits:

- R-1 FNDA dated June 16, 2022
- R-2 Initial Report, August 5, 2021
- R-3 initial Incident Report, August 5, 2021
- R-4 September 28, 2021 email – Desiree Jones
- R-5 September 28, 2021 email – Likira Boston
- R-6 Union County police supplemental report dated August 6, 2021
- R-7 Workplace Violence Policy
- R-8 December 3, 2022 Policy against Workplace Discrimination
- R-9 Video Clip August 8, 2021