



STATE OF NEW JERSEY

In the Matter of Denise DeLeon,
Middlesex County, Board of Social
Services

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2021-1509
OAL Docket No. CSV 04720-21

ISSUED: JULY 23, 2025

The appeal of Denise DeLeon, Human Services Specialist 2, Bilingual in Spanish/English, Middlesex County, Board of Social Services, demotion to Human Services Aide, Bilingual in Spanish/English, effective April 12, 2021, on charges, was heard by Administrative Law Judge Sarah H. Surgent (ALJ), who rendered her initial decision on June 23, 2025. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on July 23, 2025, adopted the ALJ's Findings of Facts and Conclusions of Law and his recommendation to uphold the demotion.

The Commission makes the following comments. In her thorough initial decision, the ALJ outlines the voluminous evidence of the appellant's deficient work performance. Upon its *de novo* review, the Commission agrees with the ALJ's determination that the appointing authority has sustained its burden of proof regarding all of the proffered charges.

Regarding the penalty, similar to its assessment of the 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).

The Commission agrees with the ALJ that the two-level demotion was wholly appropriate in this matter. In that regard, the ALJ stated:

In this case, without even needing to consider principles of progressive discipline, DeLeon’s two-level demotion from HSS2 to HSA is more than justified. DeLeon demonstrated that she was unsuitable for continuation in the position of HSS2 or HSS1 due to her prolonged and repeated failure to perform her duties as expected and required. Further, given the substantial impact of her errors on the Board’s vulnerable clients, her colleagues, and the Board as a whole, her continuation in such role would be contrary to the public interest.

Despite repeated opportunities and training to fulfill the function of an HSS2, DeLeon has demonstrated that she is unsuitable for continuation in that position or any other position which requires exercise of judgment and discretion. A single level demotion to HSS1 would be inappropriate because DeLeon is incapable of doing the work of an HSS2 or an HSS1, which is the functional equivalent . . .

* * *

Although the Board imposed a two-level demotion in this case, it would have been more than justified to seek removal in this matter but instead took a more measured approach in imposing the two-level demotion. Principles of progressive discipline only lend further support to the appropriateness of the discipline imposed. DeLeon is an employee who has already been subject to significant major discipline including the three-month suspension and the imposition of a six-month leave of absence without pay for incompetency, inefficiency, or failure to perform duties related to “a persistent, pervasive, and deceptive pattern of abuse and theft of time and failure to provide essential services to the Agency’s clients” imposed against her in 2016. (R-22). Even after facing such significant discipline only a few years ago, DeLeon has not demonstrated an adequate performance of her duties.

Clearly, even without regard to progressive discipline, the appellant’s abject inability to properly perform the duties of her position over a prolonged period of time supports the demotion imposed. When factoring in that the appellant had previous major discipline, the Commission agrees with the ALJ that, indeed, she is fortunate that the appointing authority did not seek the ultimate penalty of removal from employment.

ORDER

The Civil Service Commission finds that the action of the appointing authority in demoting the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Denise DeLeon.

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 23RD DAY OF JULY, 2025



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 04720-21

AGENCY DKT. NO. 2021-1509

DENISE DELEON,

Petitioner,

v.

MIDDLESEX COUNTY BOARD OF

SOCIAL SERVICES,

Respondent.

Patricia A. Villanueva, Esq., for petitioner (Weissman & Mintz, attorneys)

Kyle J. Trent, Esq., for respondent (Apruzzese, McDermott, Mastro & Murphy,
PC, attorneys)

BEFORE **SARAH H. SURGENT, ALJ:**

Record Closed: January 16, 2025

Decided: June 23, 2025

STATEMENT OF THE CASE

Petitioner Denise DeLeon (DeLeon) appeals from respondent Middlesex County Board of Social Services' (Board) disciplinary action demoting her from a Human Services Specialist2 (HSS2) position to a Human Services Aide (HSA) position for alleged

incompetency, inefficiency, or failure to perform duties, N.J.A.C. 4A:2-2.3(a)1, and an alleged inability to perform duties, N.J.A.C. 4A:2-2.3(a)3, (R-2), which DeLeon disputes. DeLeon maintains that her disciplinary charges and demotion were arbitrary, based upon a lack of standardized and realistic work production goals, her former supervisor's alleged unfriendliness and overly demanding attitude about DeLeon's work quality, and a lack of training.

PROCEDURAL HISTORY

On January 21, 2021, the Board served DeLeon with a preliminary notice of disciplinary action (PNDA), notifying DeLeon of the above charges against her with a proposed disciplinary action of removal, effective February 4, 2021. (R-1). After a departmental hearing on April 7, 2021, the Board sustained the charges and demoted DeLeon from an HSS2 to an HSA, effective April 12, 2021. (R-2).

On April 15, 2021, DeLeon timely requested a hearing, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on May 25, 2021, to be heard as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The hearing was conducted remotely via Zoom on November 3 and 4, 2022, August 17 and 18, 2023, September 5, 2023, and June 7, 2024. The parties ordered the transcripts,¹ and submitted post-hearing briefs and reply briefs. The record closed on January 16, 2025 when hard copies of those submissions were received by the OAL. Several decision deadlines were extended due my voluminous caseload.

SUMMARY OF RELEVANT TESTIMONY, **FACTUAL DISCUSSION AND FINDINGS OF FACT**

The following witnesses testified for the Board. Laura Veron (Veron), an administrative supervisor of income maintenance. (1T-2T). Her testimony and demeanor

¹ 1T denotes the November 3, 2022 hearing transcript. 2T denotes the November 4, 2022 hearing transcript. 3T denotes the August 17, 2023 hearing transcript. 4T denotes the August 18, 2023 hearing transcript. 5T denotes the September 5, 2023 hearing transcript. 6T denotes the June 7, 2024 hearing transcript.

were candid, straightforward, in keeping with the documentary evidence, and highly credible. Tami Byrd (Byrd), an HSS4 supervisor in the Supplemental Nutrition Assistance Program (SNAP) change, recertification, and internal reporting form (IRF) unit. (1T-4T). Byrd's testimony and demeanor were credible and consistent with the documentary evidence and Veron's prior testimony. Patricia Byrd (P. Byrd), a retired personnel officer and deputy director. (5T). Her testimony was clear, straightforward, and in keeping with the prior testimony and evidence. Lydia Pacheco (Pacheco), Veron's assistant administrator who was present as a witness for some of DeLeon's weekly corrective action plan (CAP) meetings. (6T). Her testimony was also candid, credible, and straightforward.

DeLeon testified on her own behalf. (5T-6T). I find that her testimony was evasive and self-serving and not in keeping with the evidence. Luciano Franco (Franco), a retired HSS2 testified on DeLeon's behalf. (6T). His testimony was vague and inconsistent with the evidence and DeLeon's testimony, except to bolster DeLeon's theory that Byrd was a mean and demanding boss.

Having reviewed the evidence and observed the witnesses' demeanors and credibility, I **FIND** the following **FACTS** and incorporate the above statement of the case and procedural history herein.

Between October 2019 and December 2020, DeLeon worked as an HSS2 for the Board. She performed office work collecting, recording, analyzing, and evaluating data of social service applicants to determine applicants' eligibility for welfare program services and she processed changes to cases. (1T29; R-3). She was previously subject to major disciplinary action by the Board in 2016, which resulted in a three-month disciplinary suspension plus a loss of pay for an additional six-month period through an unpaid leave of absence for incompetency, inefficiency, or failure to perform duties related to "a persistent, pervasive, and deceptive pattern of abuse and theft of time and failure to provide essential services to the Agency's clients." (5T14-5T25; R-2; R-22).

The Board uses the HSS1 title in a limited fashion because pursuant to the applicable labor contract governing its HSS1 and HSS2 bargaining unit, the

Communications Workers of America (CWA), HSS1s must be promoted to HSS2s after one year in that role pursuant to the contract. (1T35-1T36; 5T13-5T14; 5T70; 6T12-6T14). The Board uses the HSA title for simpler work than the HSS1 or HSS2 titles, and an HSA interviews clients, takes applications, and determines proper verifications, but does not actually determine eligibility or process the client's case to calculate the client's benefit allotment. (1T37).

At times relevant to this matter, DeLeon worked in the Board's case processing unit for its SNAP under the supervision of Byrd (DeLeon's direct supervisor), Pacheco (Veron's assistant administrator), and Veron (the department head). (1T29-1T34; 3T19). SNAP is considered the least complex of the programs the Board administers. (5T51-5T53).

Case processing involves examining existing clients' current case status or new applications for people who are applying for assistance and determining eligibility for those programs and the level of benefits, if eligible. (1T28; 3T19-3T20). HSS employees, including DeLeon, received training from the Board and are also provided with resources such as a program reference guide, (R-23), and Division of Family Development Instructions (DFDI) to assist in fulfilling their duties. (1T44-1T47; 2T18-2T19; 2T119-2T127; 3T21-3T25; 3T69-3T71; 5T82-5T90; 5T181-5T183; 6T97-6T99; 6T156-6T158).

DeLeon received a full month of training before joining the SNAP Unit and she believed that training prepared her for the work. (5T89-5T90). In her role as an HSS2, DeLeon was required to exercise judgment and discretion in determining eligibility and related issues. (1T47; R-3). Due to enduring deficiencies in her performance, DeLeon's responsibilities were limited to processing SNAP changes before the period relevant to the disciplinary charges at issue in this matter because those responsibilities were viewed as simpler and took a shorter amount of time than the work other HSS employees in her unit were performing. (1T47-1T48; 1T165; 2T103; 3T19-3T21; 5T95).

DeLeon's responsibilities had been limited to processing SNAP changes for multiple years because she failed to demonstrate the requisite knowledge for more complicated tasks typically completed by people working in HSS1 or HSS2 titles,

including processing new/reopened applications, recertifications, and interim reporting. (1T47-1T48; 1T165; 2T103; 3T19-3T21; 5T95). DeLeon was the only HSS employee limited in that way due to her performance issues, although there were approximately eight employees in her unit at all relevant times. (1T48-1T50; 1T155; R-20).

The production expectation for HSS2s is fourteen cases per day, and although DeLeon was limited to processing changes, which are simpler and quicker than the work being done by the other HSS2s in her unit, DeLeon had the same production goal of processing fourteen cases per day at all times relevant to this matter. (4T49-4T50; 6T7-6T12; 6T130-6T131; R-5). DeLeon's demonstrated performance issues included not meeting deadlines and cutoffs which could create an overpayment or underpayment to welfare beneficiaries, which could have affected their benefits in the future. (1T49-1T52; 2T108-2T110).

Errors by workers such as DeLeon that were not caught by a supervisor not only had a potential impact on clients' benefits but also could impact other Board workers who relied on DeLeon's work and would need to correct it in the future when the error was discovered. (6T140-6T142; 6T161-6T162; 6T169-6T170). In addition to the impact on clients, if DeLeon's errors were not caught by a supervisor, the Board also may have been financially sanctioned by the State for such errors. (1T127-1T129; 2T157-2T158; 3T39-3T40).

Notwithstanding the already reduced scope of her work, DeLeon's June 2019 evaluation identified ongoing concerns regarding her quality of work and knowledge of her job, including a 14.92% error rate, which exceeded department standards. (1T54-1T64; R-4). Errors in cases by a worker such as DeLeon would be recorded on a case review document (CRD) to identify the issues flagged by the supervisor with instructions from the supervisor to the worker regarding the need to correct the issue along with the returned case file. (1T57-1T59; R-A). The CRDs would be reviewed by multiple supervisors, particularly if an employee was placed on corrective action to address a worker's performance issues. (1T59). In addition to DeLeon's direct supervisor, Byrd, the department head, Veron, and assistant administrator, Pacheco, both also reviewed

DeLeon's CRDs and confirmed DeLeon's errors, which were often repeats of issues that had already been addressed with her earlier. (2T79; 6T177-6T178).

DeLeon had continuing performance issues after her June 2019 evaluation and between June and September 2019, including in the areas of production, error rate (which increased to an average of 21.90%), knowledge of job, judgment, and organization, as addressed with her by her supervisor during a worker conference on September 6, 2019. (1T64-1T79; R-5). As department head, Veron had particular concern about DeLeon's performance due to the number of deficient areas and the fact that her error rate had increased after her evaluation emphasized that issue. (1T79-1T81).

As a result of her performance deficiencies, on October 3, 2019, DeLeon was placed on a one-month corrective interview (CI) identifying deficiencies in her performance and the needed improvement. That action was taken due to ongoing concerns about the quality of her work, knowledge of her job, judgment, organization, and production. (1T81-1T87; R-6). DeLeon was not the only individual in the unit under corrective action between June 2019 and December 2020. (4T96).

The Board did not typically extend CIs when an employee failed to correct their deficiencies during the specified period and would instead normally move to a more significant CAP following an unsuccessful CI. (5T26-5T27). DeLeon failed to adequately address the deficiencies in her performance between October and November 2019, but rather than take more significant action of implementing a CAP at that time, the CI was extended until December 6, 2019. (1T87-1T89; R-7).

DeLeon failed to adequately address the deficiencies in her performance between November and December 2019 and was still making the same types of errors and presenting the same issues. As a result, the Board implemented a CAP for the period of January and February 2020 in an effort to resolve her continuing performance issues. (1T91-1T96; R-8; R-9). DeLeon did not meet the terms of her first CAP, resulting in its extension through March 31, 2020. (1T97-1T100; R-10). Prior to the completion of her CAP extension period, however, DeLeon took a leave of absence from March 16, 2020, to June 1, 2020. (1T101-1T103; R-12).

DeLeon's June 2020 performance evaluation continued to identify her quality of work and knowledge of job as unsatisfactory, and her quantity of work (productivity), organization, and judgment as marginal, and it was recommended that she not receive a step increase in salary based on her ongoing performance issues. (1T103-1T106; R-11). After a brief return from leave, DeLeon took another leave from June 10, 2020, through August 31, 2020. (1T101-1T103; R-12).

Upon DeLeon's return to work from her leave of absence on September 1, 2020, the Board again assigned DeLeon to solely process SNAP changes for several weeks and evaluated her performance before determining to re-implement a CAP. (1T106-1T108; R-12). Although the Board did not immediately re-implement the CAP following her return from leave, DeLeon's September 2020 performance evaluation identified DeLeon's quality of work, knowledge of job, response to supervision, initiative and creativity, organization, and judgment to be unsatisfactory and her quantity of work (productivity) to be marginal. Among other concerns, she had a 44% error rate during the evaluation period which resulted in the withholding of her merit increase in a further effort to address her prolonged deficiencies. (1T108-1T111; R-13).

After the implementation of her second CAP, DeLeon still did not meet the Board's expectations during the period of September 30 to October 30, 2020. (1T111-1T113; 3T35). DeLeon processed only 172 cases, or an average of 8.6 cases per day, and her error rate in completing those cases was 31%. (1T111-1T113; 3T35; 3T107-3T109; R-15). DeLeon's supervisors had to return files she worked on to her due to significant errors on dozens of occasions during that period. Many of DeLeon's errors would have resulted in incorrect eligibility or benefits determinations related to the Board's clients and would have had a direct and dire impact on the Board's clients. (1T113-1T119; 3T36-3T40; 3T107-3T109; R-14; R-A through R-I).

A few examples of DeLeon's many errors in failing to successfully process cases during that period included:

- a. Case S553242, (R-14 at 654; R-A), was an earned income change case which DeLeon initially submitted for supervisor review without necessary paperwork for the reviewer to determine the status of the case. After the supervisor returned it to DeLeon for submission with the appropriate paperwork, DeLeon was still missing pages, failed to run a check to see if the client was receiving child support, which needed to be included in the income calculation, and failed to prorate certain income and expenses. As a result, DeLeon was using an incorrect benefits allotment for August. Due to the number of times the case was returned to DeLeon, the supervisor eventually just fixed the errors herself so that the case could be processed. If the supervisor had not caught those errors, the client would have received an incorrect issuance of benefits. (3T40-3T53).
- b. Case C058632, (R-14 at 657; R-B), was a sanction rescission case to remove a sanction from a SNAP recipient to make them eligible for food stamps. DeLeon failed to process the case successfully because she was issuing additional "Z" disaster supplement benefits to the client for that month, before the State had issued the supplement. If the supervisor did not catch that error, the client would have received an over-issuance of benefits. Additionally, DeLeon was counting one of the client's incomes twice, which would have resulted in a separate under-issuance of benefits. The supervisor returned the case to DeLeon to correct those errors, but DeLeon failed to successfully do so. DeLeon erroneously added a new adult client to the case but failed to include a route slip to send the case to the Board's claims unit to make sure that person did not have some type of disqualification for SNAP benefits. Due to the time it took to process the case, the supervisor referred it to the claims unit herself rather than returning it to DeLeon again. (3T53-3T61).
- c. Case S622671, (R-14 at 660; R-C), was a household size change case which DeLeon failed to successfully process because: (1) she again tried to issue the Z disaster supplement in a month before the State issued that supplement; (2) she was again missing pages needed for supervisor review;

and (3) she was missing steps needed to add a person to the household by using a "dummy" social security number, which could have resulted in a duplication of benefits because the person could already have been on a separate case. DeLeon also incorrectly marked the case as if she were in possession of a birth certification verification when she did not have a birth certificate for the person. (3T63-3T69).

- d. Case S576591, (R-14 at 661; R-D), was an earned income change case which DeLeon failed to successfully process because although she highlighted that the client was receiving unemployment benefits, she failed to count the unemployment benefits as income. That error could have resulted in an over-issuance of SNAP benefits if not caught by the supervisor. The supervisor returned the case to DeLeon for correction, but DeLeon again failed to successfully process the case because she used an incorrect work registration code when the client had a child under six years of age. That fact impacted whether the client had mandatory employment training obligations to receive benefits. Further, although the unemployment benefits were then included as part of the calculation, DeLeon failed to properly include the client's rent amount when communicating the client's change in SNAP benefits. (3T69-3T79).
- e. Case S583913, (R-14 at 661; R-E), was a shelter cost change case in which DeLeon was required to process a client's change in rent or mortgage. She failed to successfully do so because she added an adult to the SNAP case but did not take the appropriate action outlined in the processor guide to run a find for the person and do the claims unit route slip to ensure there was no disqualification for that individual. She also failed to do a required college verification for the individual to determine if they met the college student requirements for receipt of SNAP benefits. After the initial CRD was returned, the supervisor had to return the case to DeLeon a second time because there was still no claims unit route slip and the adverse action letter DeLeon prepared was incorrect by failing to identify the income being counted and by indicating the wrong household size. The supervisor had

to process the adverse action letter herself due to DeLeon's errors and the need for the case to be processed. (3T79-3T85).

- f. Case S593716, (R-14 at 662; R-F), was a medical cost change case where someone who was aged or disabled had an out-of-pocket medical cost for which they may have received a deduction. DeLeon did not successfully process the case because she again failed to print paperwork needed for the supervisor's review as had been addressed with her by her supervisor previously, she failed to confirm whether the client was receiving unemployment benefits, and she failed to follow the procedure for the client's fair hearing request. DeLeon was required to act upon the client's fair hearing request immediately when she received it via email. Acting on fair hearing requests immediately is required because clients continue to receive benefits pending such an appeal. DeLeon should have contacted the Board's fair hearing worker immediately to notify them of the request when she received it, but she failed to do so. (3T85-3T93).
- g. Case S613989, (R-14 at 663; R-G), was another shelter cost change case that DeLeon initially failed to successfully process because she used an incorrect utility allowance indicator which would impact the utility allowance received by the client. After the case was returned to DeLeon, there was another error because she was again issuing the Z supplemental benefit when the State had not yet issued that benefit for the month, resulting in potential overpayment. (3T93-3T100).
- h. Case S617064, (R-14 at 663; R-H), was a case where DeLeon made a payment error by failing to update the client's Social Security benefit amount. If the supervisor had not caught that error the client would have received more SNAP benefits than they should have, resulting in present and future benefit issues for the client once the overpayment had to be recouped. (1T118-1T127).

- i. Case S617064, (R-14 at 663; R-1), was an “other change” case which typically meant it involved multiple changes. In that case, the client submitted a PSE&G bill and a phone bill which required processing. DeLeon did not successfully process the case because she removed the client’s unemployment income, although the client was still receiving unemployment benefits. That could have resulted in a benefit overpayment if not caught by the supervisor. The handwritten notes from DeLeon indicated that she had removed the unemployment income without inquiring about the client’s student status as required. (3T101-3T107).

During that period, DeLeon was still making the same types of errors from months earlier that had been addressed via CRDs and otherwise. (1T127-1T129; 2T157-2T158; 3T39-3T40).

In October 2020, DeLeon’s supervisor also learned that DeLeon was working beyond her scheduled work hours and informed her that was not permitted. (4T156-4T159; P-21; 5T158-5T161; 5T171; 6T27-6T30; 6T112). The labor contract and Board policy required overtime pay at time-and-a-half for any workers working more than thirty-five hours per week, or double time on holidays, and employees were not permitted to exceed those work hours without permission. (1T39; 4T156-4T159; R-24). Despite the contract and policy overtime requirements, DeLeon testified that she would regularly work beyond her scheduled work time and during breaks without the approval of her supervisor until she was told that was not permitted. (5T158-5T161; 5T171).

DeLeon again failed to meet the requirements of her second CAP, but the Board gave her an additional opportunity to correct her deficiencies by extending the CAP through December 15, 2020. (1T111-1T113; 1T130-1T132; 3T35; 3T107-3T109; R-15). DeLeon again failed to successfully complete her second CAP during the extended period of November 16 to December 15, 2020. She processed only ninety-one cases, or an average of 6.5 cases per day, between November 16 and December 15, 2020, a decrease in her already insufficient productivity. Despite the further decrease in her productivity, her error rate in completing those cases increased to 36.46%. Additionally,

cases were returned to her a second time due to continuing errors at a rate of 9.39%. (1T132-1T134; 3T107-3T113; R-17).

DeLeon's supervisors again had to return files she worked on to her due to significant errors of a similar nature to her earlier errors on dozens of occasions during that period. And again, many of DeLeon's errors would have resulted in incorrect eligibility or benefits determinations related to Board clients and a direct and dire impact on those clients. (1T134-1T138; R-16; R-J to R-M).

Some examples of DeLeon's errors in failing to successfully process cases during that period included:

- j. Case C061726, (R-16 at 669; R-J), was another shelter cost change case which DeLeon failed to successfully process because she changed the utility allowance indicator without indicating why that change was being made and using proper coding. (3T115-3T119).
- k. Case S626645, (R-16 at 670; R-K), was a case where the client requested closing. DeLeon failed to process the case because she waited until the next month to close it out. That delay meant that the client received a month of benefits from the Board which she did not want. If the client was applying for benefits in a new state, she would have had her application denied because an individual cannot collect SNAP benefits in more than one state at the same time, causing additional issues for the client. (3T119-3T123).
- l. Case S570814, (R-16 at 672; R-L), was another medical cost change assigned to DeLeon on November 9, 2020. She took an inappropriate amount of time, more than one month, to initially process the case, and then she did not successfully do so. First, the calculation she did was for December, when the change was received in November. She used the wrong allotments for the wrong month at issue. Additionally, she again failed to print the paperwork necessary for supervisor review. At that point, her supervisor had spoken with her several times about the need to print

the paperwork for review and that was documented in cases from months earlier. (R-A). After the supervisor returned the case to DeLeon, she still failed to successfully process the case so her supervisor corrected it herself so the issue could be resolved for the client after the long delay. (3T123-3T132).

- m. Case S568959, (R-16 at 672; R-M), was a multiple changes case where the Board's Medicaid Unit referred the matter for a SNAP change because the clients had married and were living together and therefore needed to be treated as a collective case rather than each having their own case. DeLeon failed to change the client's address as required and the supervisor returned the case to DeLeon for correction. After it was returned, DeLeon still failed to properly process the case because DeLeon used an incorrect reason code, indicating that the client had asked that the case be closed, which was not true, and the case needed to be coded as a marriage with their marital status updated to married, which DeLeon did not do. (3T132-3T139).

As reflected in her reevaluation for the period of October 1 through December 31, 2020, DeLeon's quantity of work (productivity), quality of work, knowledge of job, initiative and creativity (adaptability), organization, and judgment were still all unsatisfactory. (1T138-1T139; R-18). Between June 2019 and December 2020, DeLeon demonstrated an excessive error rate, and her productivity fell below Department standards. (1T143-1T145; R-19; R-20).

The Board provided DeLeon with repeated opportunities to correct her deficient performance with numerous monthly conferences, CIs, and CAPs, with weekly meetings during the CAPs between September 2019 and December 2020 and a month of training before she started processing SNAP changes. (1T146-1T147; 1T200-1T207; 3T26-3T34; R-21; R-22; 6T17-6T24). In addition, DeLeon's supervisor spoke with her about particular cases for DeLeon's edification, which occurred approximately several times each week, and the supervisors continued to see the same errors in DeLeon's cases. (3T128).

Veron attended multiple CAP meetings with Byrd, DeLeon, DeLeon's union representative, and a representative from the Board's personnel department to address DeLeon's deficiencies. (2T133-2T136; R-21). Pacheco also attended at least half dozen of the weekly CAP meetings with Byrd and DeLeon beginning after September 2020, during which DeLeon was given an opportunity to ask questions about the errors reflected in the CRDs that had previously been returned to her. (6T176-6T178; 6T192; R-21). Despite those meetings and opportunities, DeLeon continued to make the same types of errors even after those issues had been addressed. (6T177-6T178).

At times, Pacheco would speak to DeLeon about a particular error and DeLeon would claim that she understood, but she would still make the same error again, sometimes resulting in DeLeon's supervisor correcting the error due to the time it took DeLeon to process the case. (6T182-6T185). DeLeon had the opportunity to go over specific errors on her CRDs when she met with Byrd and other supervisors during the CAPs meetings, which could be considered additional training she received. (6T46-6T48; R-21). At one point, DeLeon was specifically instructed to email Byrd with any questions she had about changes in SNAP regulations if she was confused, but DeLeon never did. (6T102-6T106; R-25). When DeLeon was struggling during March 2020, she was also provided with another copy of the program reference guide, (R-23), which included checklists of tasks that needed to be completed on particular types of cases, which DeLeon printed and kept on her desk. (1T147-1T150; 2T140-2T148).

Because DeLeon failed to meet the requirements of multiple CIs and multiple CAPs after protracted repeated opportunities to demonstrate competency in her role between October 2019 and December 2020, the Board finally concluded that DeLeon was unable or unwilling to perform the minimal duties of her title and position. (1T133; 1T148-1T149; 3T139-3T140; R-17). For the same reasons DeLeon could not perform the duties of an HSS2, the Board also concluded that she could not perform the duties of an HSS1, given the way the Board uses those titles for the same job function. (1T149). Accordingly, the Board decided to demote DeLeon to the position of HSA, where she would no longer be responsible for determining client eligibility or calculating benefits. (1T37; 5T31; R-2).

LEGAL ANALYSIS AND CONCLUSIONS

The Board has the burden of proof in this matter. N.J.A.C. 4A:2-1.4(a). Disciplinary charges against career Civil Service employees must be proved by the employer by a preponderance of credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Phillips, 117 N.J. 567, 575 (1990). A preponderance has been described as “the greater weight of credible evidence in the case [and] does not necessarily mean the evidence of the greater number of witnesses but means that evidence which carries the greater convincing power to our minds.” State v. Lewis, 67 N.J. 47, 49 (1975).

I.

DeLeon is charged with incompetency, inefficiency, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1), and with an inability to perform duties in violation of subsection (a)(3) of that rule.

The Civil Service rules do not specifically define incompetency, inefficiency, or failure to perform duties. However, collectively, that provision has been “generally interpreted to mean a failure to perform duties due to malingering, willful refusal, or idleness.” In re Richardson, CSV 7573-17, Initial Decision, (November 6, 2017), adopted, Civil Serv. Comm’n, (March 29, 2018), <https://www.nj.gov/csc/about/meetings/decisions/pdf/2018/3-27-18/A-011%203-27-18.pdf>.

Incompetency has been recognized as a “lack of the ability or qualifications necessary to perform the duties required of an individual,” and “[a] consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position.” In re Muse, CSR 14350-19, Initial Decision at 8, (March 17, 2020), adopted, Civil Serv. Comm’n, (May 1, 2020), <https://www.nj.gov/csc/about/meetings/decisions/pdf/2020/4-29-20/A-007%204-29-20.pdf>; Sotomayer v. Plainfield Police Dep’t, CSV 9921-98, Initial Decision, (December 6, 1999), https://njlaw.rutgers.edu/collections/oal/html/initial/csv9921-98_1.html, adopted,

Merit Sys. Bd., (January 4, 2000), <https://njlaw.rutgers.edu/collections/oal/final/csv09921-98.pdf>). Inefficiency has been recognized as the “quality of being incapable or indisposed to do the things required of an [employee] in a timely and satisfactory manner.” Muse, CSR 14350-19, Initial Decision at 8 (quoting Glenn v. Twp. of Irvington, CSV 5051-03, Initial Decision, (February 25, 2005), https://njlaw.rutgers.edu/collections/oal/html/initial/csv05051-03_1.html, modified in part, Merit Sys. Bd. (May 23, 2005), <https://njlaw.rutgers.edu/collections/oal/final/csv5051-03.pdf>). Inability to perform duties has been defined as being unable to perform one’s duties due to some physical or psychological limitation. In re Downwar, CSR 00421-19, Initial Decision, February 28, 2020, adopted, Civil Serv. Comm’n, (April 17, 2020), <https://www.nj.gov/csc/about/meetings/decisions/pdf/2020/4-15-20/A-004%204-15-20.pdf>.

In this case, I **CONCLUDE** that the Board has proved by more than a preponderance of the evidence that DeLeon was incompetent, inefficient, and failed to and was unable to perform her duties. The record overwhelmingly establishes that DeLeon demonstrated a prolonged and consistent inability to perform the duties minimally required of her position. She was afforded numerous opportunities to correct her deficiencies from October 2019 through December 2020. This included not only an initial CI, but also a CI extension, followed by multiple consecutive CAPS spanning months. DeLeon’s supervisors met with her repeatedly to help her correct her deficiencies. (R-21).

Whether unwilling or incapable of doing so, she failed in all respects. Despite the repeated notices and opportunity for correction, she demonstrated that she is incapable of performing the duties of an HSS2 through her prolonged, repeated performance issues from October 2019 through December 2020, as reflected in her high error rates even after files were returned to her previously with errors, which demonstrated her lack of program knowledge, incorrect judgments when processing cases, lack of productivity, failure to prioritize work, and lack of timeliness in completing work or even returning case corrections to reviewers.

The documentation supporting her errors was overwhelming. The record included detailed testimony and supporting documentation about nine case examples of Ms.

DeLeon's errors during the period of September 30 to October 30, 2020. (R-A to R-I). Those were but a few of the many examples of errors resulting in cases being returned to DeLeon on one or more occasions many dozens of times during that period. (R-14). Those examples also occurred after multiple months of Ms. DeLeon being on a CI and numerous efforts being taken to correct her deficient job performance.

The record also includes additional detailed testimony and supporting documentation about examples of DeLeon's errors during the period of November 16 and December 15, 2020. (R-J to R-M). Those were also only a few of the many examples of errors resulting in cases being returned to DeLeon on one or more occasions dozens of times during that period. (R-16). DeLeon presented no evidence to dispute the evidence of her overwhelming and repeated errors and related performance deficiencies.

The record is clear that Ms. DeLeon was unwilling or unable to perform the duties expected of an HSS1 or HSS2. She demonstrated a consistent failure to perform her prescribed duties in a manner that is minimally acceptable for her position from at least October 2019 through December 2020 despite being afforded numerous corrective opportunities and notice of the deficiencies. As a result, more than a preponderance of the evidence establishes that DeLeon is guilty of incompetency, inefficiency, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1) and an inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(3).

II.

Due to the nature of her demonstrated, protracted, repeated performance shortcomings, I further **CONCLUDE** that the two-level demotion imposed from HSS2 to HSA is not only appropriate, but a necessary penalty to ensure the orderly operation of the Board and to protect its vulnerable clients' interests.

The New Jersey Supreme Court has directed that when assessing an employee's conduct for purposes of determining the appropriate penalty, an employee's past record and principles of progressive discipline may be considered in certain circumstances. West New York v. Bock, 38 N.J. 500, 523-24 (1962). But it is well-settled that progressive

discipline is not a necessary consideration “when the misconduct is severe, when it is unbecoming to the employee’s position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.” In re Herrmann, 192 N.J. 19, 33 (2007).

The Civil Service Commission and courts have accepted two-level demotions as appropriate where the employee has demonstrated an inability or unwillingness to perform the functions required in the higher roles. See, e.g., In re Connors, CSV 19494-15, Initial Decision, (March 3, 2020), adopted, Civil Serv. Comm’n, (May 1, 2020), aff’d, No. A-3790-19, 2022 WL 2517202, (N.J. Super. Ct. App. Div. July 7, 2022) (slip op.) (determining that two-level demotion from lieutenant to non-supervisory corrections officer position was appropriate due to individual’s failure to act like a leader). In this case, without even needing to consider principles of progressive discipline, DeLeon’s two-level demotion from HSS2 to HSA is more than justified. DeLeon demonstrated that she was unsuitable for continuation in the position of HSS2 or HSS1 due to her prolonged and repeated failure to perform her duties as expected and required. Further, given the substantial impact of her errors on the Board’s vulnerable clients, her colleagues, and the Board as a whole, her continuation in such role would be contrary to the public interest.

Despite repeated opportunities and training to fulfill the function of an HSS2, DeLeon has demonstrated that she is unsuitable for continuation in that position or any other position which requires exercise of judgment and discretion. A single level demotion to HSS1 would be inappropriate because DeLeon is incapable of doing the work of an HSS2 or an HSS1, which is the functional equivalent. She has demonstrated that she cannot exercise the appropriate judgment to determine program eligibility or benefit allotments, as is required for those roles, to the detriment of the Board’s clients, her colleagues, and the Board.

The appropriateness of the two-level demotion is particularly apt as the Board must use the HSS1 and HSS2 title interchangeably and in limited fashion because HSS1s are entitled to be promoted to HSS2s after one year in that role, pursuant to the collective bargaining contract governing those positions. (1T35-1T36; 5T13-5T14; 5T70; 6T12-6T14). The Board uses the HSA title for significantly simpler work than the HSS1 and

HSS2 titles because HSAs merely interview clients, take applications, and determine the proper verifications, but they do not actually determine eligibility and process the clients' cases to determine their benefit allotments. (1T37). As DeLeon clearly and repeatedly demonstrated that she could not perform the duties of an HSS1 or HSS2, demotion to perform the simpler tasks of an HSA was appropriate.

Although the Board imposed a two-level demotion in this case, it would have been more than justified to seek removal in this matter but instead took a more measured approach in imposing the two-level demotion. Principles of progressive discipline only lend further support to the appropriateness of the discipline imposed. DeLeon is an employee who has already been subject to significant major discipline including the three-month suspension and the imposition of a six-month leave of absence without pay for incompetency, inefficiency, or failure to perform duties related to "a persistent, pervasive, and deceptive pattern of abuse and theft of time and failure to provide essential services to the Agency's clients" imposed against her in 2016. (R-22). Even after facing such significant discipline only a few years ago, DeLeon has not demonstrated an adequate performance of her duties.

ORDER

It is therefore **ORDERED** that the charges against DeLeon and her two-level demotion to HSA are hereby **SUSTAINED**; and it is further

ORDERED that DeLeon's petition of appeal is hereby **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.

June 23, 2025

DATE


SARAH H. SURGENT, ALJ

Date Received at Agency:

June 23, 2025

Date Mailed to Parties:

June 23, 2025

SHS/nn

APPENDIX

Witnesses

For petitioner:

Denise DeLeon
Luciano Franco

For respondent:

Laura Veron
Tami Byrd
Patricia Byrd
Lydia Pacheco

Exhibits

For petitioner:

- P-1 Board Personnel Department Announcement, dated September 16, 2011
- P-2 HSA Job Description, dated September 30, 2019
- P-3 Board Working Test Period Report, dated January 13, 2012
- P-4 Board Employee Performance Evaluation, dated March 9, 2012
- P-5 HSS1 Job Description, dated June 23, 2017
- P-6 Board Employee Performance Evaluation, dated December 19, 2012
- P-7 HSS2 Job Description, dated June 23, 2017
- P-8 Board Letter of Promotion to HSS2, dated January 14, 2013
- P-9 Board Personnel Change Memo, dated October 21, 2013
- P-10 Board Employee Performance Evaluation, dated March 7, 2014
- P-11 Board Employee Performance Evaluation, dated March 30, 2016
- P-12 Board Employee Performance Evaluation, dated June 11, 2018
- P-13 SNAP Reviewer-Processor Return Rate Documents, various dates

- P-14 DeLeon's FMLA leave form, dated June 9, 2020
- P-15 Email from DeLeon to Pacheco and Veron, dated September 21, 2020
- P-16 Email from DeLeon to Pacheco and Veron, dated October 5, 2020
- P-17 SNAP CSU Reviewer Return Rates, dated June 2019 through December 2020
- P-18 Email from DeLeon to Byrd, dated October 7, 2020
- P-19 Email from DeLeon to Pacheco, dated October 22, 2020
- P-20 Email from Byrd to DeLeon, Pacheco and Veron, dated October 9, 2020
- P-21 Email from Byrd to DeLeon, Pacheco and Veron, dated October 13, 2020
- P-22 Email from P. Byrd to DeLeon, dated November 15, 2019
- P-23 Petition to Request Unit meeting, dated November 24, 2020

For respondent:

- R-1 PNDA, dated January 21, 2021
- R-2 FNDA, dated April 8, 2021
- R-3 HSS2 Job Description, dated June 23, 2017
- R-4 Board Employee Performance Evaluation, dated June 24, 2019
- R-5 Worker Conference Memo, dated September 6, 2019
- R-6 Worker Conference Memo, dated October 3, 2019
- R-7 CI Memo of Extension, dated November 8, 2019
- R-8 Corrective Interview Conclusion Memo and Imposition of CAP, dated December 9, 2019
- R-9 CAP Summary Report, dated January 8, 2020
- R-10 CAP Decision with Extension, dated February 26, 2020
- R-11 Board Employee Performance Evaluation, dated June 10, 2020
- R-12 CAP Memo, dated September 30, 2020
- R-13 Board Employee Performance Evaluation, dated September 30, 2020
- R-14 SNAP Processor Return Detail, dated September 30, 2020 through October 30, 2020
- R-15 CAP Extension Outcome Memo, dated November 16, 2020
- R-16 SNAP Processor Return Detail, dated November 16, 2020 through December 15, 2020

- R-17 CAP Extension Outcome Memo, dated December 22, 2020
 - R-18 Board Employee Performance Evaluation, dated December 22, 2020
 - R-19 SNAP Processor Return Details, various dates
 - R-20 Processor Error Rates and Reviewer Return Rate Reports, dated February 17, 2021
 - R-21 DeLeon's CI/CAP History Timeline, dated April 12, 2021
 - R-22 Settlement Agreement with Final Decision, dated July 13, 2017
 - R-23 Program Reference Desk Guides for SNAP Program, undated
 - R-24 Personnel Manual Overtime Excerpt, undated
 - R-25 Email from Byrd to SNAP Unit, dated November 24, 2020
 - R-26 Email from Pacheco to DeLeon, dated October 23, 2020
 - R-27 DeLeon's Detailed Hours – Monthly Union Time Paid Report, from June 23, 2023 through August 18, 2023
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- R-A CRD S553242 Case File Excerpt, dated October 3, 2020 (R-14 at 2)
 - R-B CRD C058632 Case File Excerpt, dated October 29, 2020 (R-14 at 5)
 - R-C CRD S622671 Case File Excerpt, dated October 27, 2020 (R-14 at 8)
 - R-D CRD S576591 Case File Excerpt, dated October 6, 2020 (R-14 at 9)
 - R-E CRD S583913 Case File Excerpt, dated October 20, 2020 (R-14 at 9)
 - R-F CRD S593716 Case File Excerpt, dated October 7, 2020 (R-14 at 10)
 - R-G CRD S613989 Case File Excerpt, dated October 22, 2020 (R-14 at 11)
 - R-H CRD S617064 Case File Excerpt, dated October 22, 2020 (R-14 at 11)
 - R-I CRD S619784 Case File Excerpt, dated October 26, 2020 (R-14 at 11)
 - R-J CRD C061726 Case File Excerpt, dated December 1, 2020 (R-16 at 5)
 - R-K CRD S626645 Case File Excerpt, dated November 27, 2020 (R-16 at 6)
 - R-L CRD S570814 Case File Excerpt, dated December 12, 2020 (R-16 at 8)
 - R-M CRD S568959 Case File Excerpt, dated November 28, 2020 (R-16 at 8)