

appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007).

In the instant matter, the record reveals that the appellant has no major discipline. Her conduct, while very serious in nature, does not overcome progressive discipline principles. The Commission emphasizes that it does not condone the appellant's misconduct. However, given the totality of the circumstances, the Commission finds that removal is disproportionate to the offense. The Commission is satisfied that a major discipline of a five-month suspension will impress upon the appellant that her conduct was improper and serve as a warning that future offenses may result in a higher penalty, up to and including removal. Accordingly, the foregoing circumstances provide a sufficient basis to modify the removal imposed by the appointing authority to a five-month suspension. *See N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d)*.

Since the removal has been modified, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10* from five months after the first date of separation without pay until the date of actual reinstatement.¹

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing Sheri Janoski was not justified. The Commission therefore modifies that action to a five-month suspension.

The Commission orders that the appellant be granted back pay, benefits, and seniority from five months after the first date of separation without pay to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

¹ The appellant filed her appeal *pro se*, and thus, there is no consideration for an award of counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF MARCH, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 06970-23

AGENCY REF. NO. 2024-170

**IN THE MATTER OF SHERI JANOSKI,
GREEN TOWNSHIP ADMINISTRATIVE
DEPARTMENT.**

Sheri Janoski, pro se, appellant

Ursula H. Leo, Esq., for respondent Green Township (Laddey, Clark & Ryan, LLP,
attorneys)

Record Closed: December 22, 2023

Decided: February 22, 2024

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

The Green Township Administrative Department terminated clerk Sheri Janoski for insubordination, chronic or excessive absenteeism and lateness, conduct unbecoming a public employee, and other sufficient cause.

PROCEDURAL HISTORY

Sheri Janoski was served with a Preliminary Notice of Disciplinary Action (PNDA) dated June 15, 2023, for insubordination, chronic or excessive absenteeism and lateness, conduct unbecoming a public employee, and other sufficient cause.¹ (R-E.) She did not request a hearing, and Green Township issued a Final Notice of Disciplinary Action (FNDA), dated June 26, 2023, sustaining the charges and terminating Janoski's employment. (R-F.)

Janoski appealed, and the Civil Service Commission transmitted the contested case to the Office of Administrative Law (OAL), pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on August 2, 2023. The hearing was scheduled for October 24, 2023, but was adjourned at appellant's request due to a medical issue. The hearing was held on November 17, 2023. The record closed on December 22, 2023, after receipt of respondent's post-hearing brief.

EVIDENCE AND FINDINGS OF FACT

Background

Sheri Janoski testified on behalf of appellant. Mark Zschack and Linda DiLorenzo testified on behalf of respondent. Based upon a review of the evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Sheri Janoski has been employed by Green Township as a clerk since 2016. Mark Zschack has been employed by Green Township as Township clerk since 2016 and was involved in hiring Janoski. Linda DiLorenzo has been employed by Green Township as chief financial officer for twenty-two years. Jason Miller is employed by Green Township as the superintendent of Public Works.

¹ Although the regulation for other sufficient cause is not enumerated in the PNDA, it states "Janoski is also subject to discipline for other sufficient cause because she violated Township policies."

Janoski was supervised by Zschack and DiLorenzo. Janoski's general job duties were answering phone calls, greeting clients at the walk-ins' window, animal control/dog licensing, reception/secretarial/clerical duties, attendance, regularly driving to the bank and the post office, and being an assistant to the CFO, including helping with finance purchase orders (POs) and bank reconciliations.

On March 29, 2023, Janoski sent Township Clerk/Administrator Zschack fourteen text messages. (R-D.) A written reprimand letter dated March 30, 2021, from Township Clerk/Administrator Zschack to Janoski reflects that her text messages to him on March 29, 2021, regarding her absence from work and obtaining a doctor's note to return to work were "unacceptable" and her "conduct in sending repeated inappropriate text messages was insubordinate and unprofessional." (R-B.) Zschack's handwritten note dated April 5, 2021, reflects that he was under quarantine until April 5, 2021, and had a meeting with Sheri that "Patty" witnessed, and he verbally described the contents of the letter. (R-B.)

By letter dated May 12, 2021, Zschack advised Janoski of the availability of Family and Medical Leave Act (FMLA) leave, New Jersey Family Leave Act (NJFLA) leave, and Family Temporary Disability (FTD) for her own serious health condition, and that to determine if her absence qualifies she had to return the required certification. (R-G.)

A resident email to Zschack, dated July 29, 2021, stated, in pertinent part, as follows:

When I called this morning, the person who answered the phone was quite rude when I explained the situation. She said, "What do you want us to do, cut down the corn?" When I replied, "Yes," She then replied, "We don't control this." I then told her that it was a dangerous situation and if there was an accident, I would testify that the town was not interested in hearing about this. I hope the town will take this seriously before there is an accident and someone is seriously hurt or killed.

[R-B.]

A resident letter to Zschack, dated August 5, 2021, stated, in pertinent part, as follows:

I first became aware of the construction two weeks ago when the first electronic road sign was parked at the end corner of Whitehall Road and Airport Road. I immediately called the receptionist at the municipal building for more details. She merely stated the road was going to be closed for construction and I should be grateful the work was being performed. I asked for more details such as will some of the road remain accessible, how long will the construction continue, etc. I also asked why the businesses were not notified. She informed me due to state law the town does not have to send letters to property owners on a street when road construction will occur. I asked if there was such a letter and she said yes. I asked her to fax it over and she said she would. I never received it.

On Tuesday August 3rd I called the town again after I watched the Green Twp Road Dept put another electronic sign at the other end of Whitehall Road. I asked the receptionist about changing the sign to state "intermittent road closures, businesses will be open for business." I was instructed to call the police. I informed the receptionist that Green Twp does not have a police dept. She told me I needed to contact the state police since the sign was on a county road. I informed her in a professional manner that White Hall Road is a town road and I watched the Green Twp Road Dept put up the sign, and it had nothing to do with the state police.

I expressed to the receptionist my concerns that the electronic signs were misleading to our customers, and customers may believe our business . . . would be closed and inaccessible for an indefinite amount of time. She then asked me why wasn't I happy that the road was being repaired. I professionally told her that yes, while I was pleased for the road work to be performed, I still needed to run a business. She became hostile and said "I will contact them." I asked her who "they" were, and I was told she was contacting the Green Twp road department.

Within 30 minutes of the phone call, Jason Miller was in my office explaining the scope of the project, the anticipated length, and the steps the town was taking to ensure that "open for business" signs and detour routes were being planned and posted. Jason was informational, courteous, professional, and had full knowledge of the project.

I highly commend how Jason Miller handled my concerns. However, I feel that the town's receptionist (Sheri?) should be more willing to understand and address concerns of the citizens and businesses of Green Twp.

[R-B.]

On August 12, 2021, Zschack and the Township mayor met with Janoski regarding the July 29, 2021, and August 9, 2021, complaints and followed up with a letter, dated August 21, 2020,² stating that her conduct was unprofessional and unbecoming conduct for a public employee and neglect of duty, and that further such instances would result in discipline up to and including termination. (R-B.) Zschack's notes from the meeting reflect that Janoski denied making the comments referenced by both residents. (R-B.)

On October 18, 2021, Zschack and DiLorenzo met with Janoski regarding the following: folders to be kept in Janoski's office; POs must have an invoice; red folders to be reviewed by Janoski before going to Zschack; nothing should be processed without an account number from DPW; be careful entering line-item numbers; and Janoski to handle non-vendor in-house vouchers by attaching documentation and obtaining signatures. (R-B.)

An October 4, 2021, Supervisor Review Evaluation, signed by Janoski and Zschack, for the period January 2020 through September 2021, noted "Needs Improvement" and "Sometimes fails to meet objectives" for all categories. (R-A.) The general comments were, "Overall job performance has deteriorated over the past 18 months but you are still very dedicated to your job," and "You go to great lengths to help all residents in person or via phone." Comments specific to the five categories were: (Focus on residents: . . . "You always try to help the resident when dealing with an issue but occasionally are argumentative and abrupt. Listen and direct the resident to the proper authority."); (Job knowledge: . . . "Repetitive Job functions consistently have the same errors. No attention to detail and a lack of focus while performing general duties."); (Contribute to a positive work environment: . . . "Personal issues should not be excessively discuss [sic] with other employees during the work day. This takes up not only your time but time of other

² 2020 was a typographical error.

employees.”); (Strategic thinking: . . . “You need to understand all aspects of the job function to be able to evaluate and find a more efficient method.”); and (Continuous improvement: “You need to fully understand the job function in order to become better prepared. You need to truly listen and understand when receiving direction.”). (R-A.)

A written warning letter dated July 14, 2022, from Zschack to Janoski, signed by both, reflects, in pertinent part, the following:

This written warning follows prior oral warnings I have given to you regarding providing advice to citizens concerning matters that are for other Township departments. On July 12, 2022, I observed you speaking to a resident regarding their tax assessment and asking them about improvements and construction permits for the property. As we have previously discussed, you are not to discuss tax and construction department issues with citizens. We have employees who are specially trained in tax and construction, and we want to provide consistency by having all such questions answered by the relevant department. In the future when you speak to residents, you should inform them that you cannot discuss the issue. I expect you to be polite and direct them to the proper department.

This written warning will be placed in your file. Should your conduct be repeated, additional disciplinary action may be taken.

[R-B.]

A note dated March 17, 2023, states as follows: “As per Linda Sheri for the past 2 weeks or so has been making many mistakes it looks like invoices are misplaced for no apparent reason.” (R-B.)

By letter dated March 17, 2023, Zschack advised Janoski of the availability of FMLA leave, NJFLA leave, and FTD to care for a parent due to a serious health condition, and that to determine if her absence qualifies, she had to return the required certification. (R-G.) On April 5, 2023, Janoski notified Zschack that she needed to take leave under the FMLA to care for a parent due to a serious health condition. (R-G.) By letter dated April 5, 2023, Zschack again advised Janoski of the availability of FMLA leave, NJFLA leave, and FTD

and requested that Janoski return the required certification to support her leave request. (R-G.)

An undated resident note to Zschack stated, in pertinent part, as follows:

I have served on the Zoning/Land Use Board for 20 + years. Everyone at Town Hall has always treated me kindly and with respect. I was a bit taken aback on Monday am when I returned the key from a meeting I had on Saturday. No one was at the window so I approached a lady who was behind the glass in an office to the right. I did not want to go through the partition even though as a member of the land use board, I probably could have entered. I asked the woman if Kim was available. Here it is—she rudely said, “Ring the bell,” which I then did. I went back to her and asked again because I heard voices down the hall. She gave me a rude look. I waited until she got up and went down the hall to get Kim. Kim came immediately and helped me to schedule another meeting. I am not a complainer normally but how the public is treated says something very important about our town. I would respectfully ask that you speak to Sheri about her attitude because first impressions are important

[R-B.]

A written warning letter dated May 1, 2023, from Zschack to Janoski, reflects, in pertinent part, the following:

This written warning follows prior oral warnings and a written reprimand on July 14, 2022, regarding communication with citizens. On April 24, 2023, you treated a resident and Township volunteer rudely and had a poor attitude when assistance was requested. As we have previously discussed, you are to treat all visitors to the Township with courtesy and respect. Please be polite and if you cannot assist someone directly, please direct individuals to the proper department.

This written warning will be placed in your file. Should your conduct be repeated, additional disciplinary action may be taken.

[R-B.]

On June 14, 2023, at 7:57 a.m., Janoski texted Zschack, "I got up early with my mom will be in late sorry." At 8:10 a.m., Janoski texted Zschack, "I'm not gonna lie to you. I woke up at 4:30 in the morning and took care of mom and I laid down for just a second and I totally fell asleep so I am going to be late I'm so sorry." (R-D.) Janoski arrived at work 1.5 hours late, and other Township employees observed physical signs or symptoms and behavioral indicators of impairment.

A Reasonable Suspicion Observed Behavior Report, dated June 14, 2023, was completed by Zschack (Zschack RS Report). The Zschack RS Report reflects that from 9:30 a.m. until 10:30 a.m., while Janoski was on duty at the Green Township Municipal Building, Zschack observed "flush/pale/sweaty face," "droopy eyelids," "disheveled appearance," "combative/threatening speech," "incoherent/slurred/slowed speech," and "swaying/stumbling/staggering," and that he noted the following:

Sheri arrived at work 1.5 hours late and I immediately observed slurred speech. After a few minutes three employees also told me they thought Sheri was having an "issue." I observed further behaviors that indicated a reasonable suspicion of impairment.

[R-C.]

The Zschack RS Report also reflects that Zschack checked "yes" to the following questions: (1) Has impairment been displayed by the employee in their workplace appearance, actions and/or performance?; (2) Could the impairment result from the possible use of drugs and/or alcohol?; (3) Is the impairment current?; (4) Did you personally witness the situation and/or the concerning appearance, action, behavior or performance?; and (5) Are observers able to (and/or have they) document(ed) facts about the situation? (R-C.)

A Reasonable Suspicion Observed Behavior Report, dated June 14, 2023, was completed by DiLorenzo (DiLorenzo RS Report). The DiLorenzo RS Report reflects that from 9:30 a.m. until 10:30 a.m., DiLorenzo observed "droopy eyelids," "delayed" speech, and "swaying," and DiLorenzo checked "yes" to the following questions: (1) Has impairment been displayed by the employee in their workplace appearance, actions and/or performance?; (2) Could the impairment result from the possible use of drugs and/or

alcohol?; (3) Is the impairment current?; and (4) Did you personally witness the situation and/or the concerning appearance, action, behavior or performance? (R-C.)

A Reasonable Suspicion Observed Behavior Report, dated June 14, 2023, was ostensibly completed by Jack Miller (Miller RS Report). The Miller RS Report reflects that at 10:00 a.m., DiLorenzo observed “shaking hands/body tremors/twitching,” “disheveled appearance,” “rapid/rambling/repetitive speech,” “delayed/mumbling speech,” “shouting/whispering/silent,” “swaying/stumbling/staggering,” and that he noted the following:

Behavior was out of the norm for daily interactions. Swaying and disheveled manner. Speech was rambling and off topic, also repetitive speech.

[R-C.]

The Miller RS Report also reflects that Miller checked “yes” to the following questions: (1) Has impairment been displayed by the employee in their workplace appearance, actions and/or performance?; (2) Could the impairment result from the possible use of drugs and/or alcohol?; (4) Did you personally witness the situation and/or the concerning appearance, action, behavior or performance?; and (5) Are observers able to (and/or have they) document(ed) facts about the situation? (R-C.)

On June 14, 2023, at approximately 12:30 p.m., Janoski was transported by Zschack and DiLorenzo to Valley Medical Group (VMG) in Riverdale, New Jersey, for a reasonable-suspicion urine drug screen (UDS) and breath alcohol technician (BAT) test. (R-C.) Her blood-alcohol split urine test results were .157 (screening) and .177 (confirmation).

Text messages between Zschack and Janoski from November 1, 2018, through August 24, 2023, reflect that Janoski frequently texted Zschack that she would be late to work or would not be in for various reasons. (R-D.) Some of Janoski’s handwritten time sheets were not consistent with the data entered into Prime Point. (R-I; R-J.)

Testimony

Sheri Janoski

She was a single mom of two and kept to herself and did her job. Nobody told her she was doing a bad job. She was never drunk at work. She has foot problems and she had foot surgery that did not go well. Both her feet are numb, and that is why she staggers. She was hungover on June 14, 2023. During the week of June 5, 2023, Zschack and DiLorenzo met with her in the back room, and Zschack said she was rude, but he would not elaborate further when asked to do so. She was not rude. She and Zschack had a problem, so she was well behaved and stayed in her office and ate lunch in her office. Zschack berated her in front of coworkers. She did all the compliance in Green Township and only had three complaints in eight years. Zschack, DiLorenzo, and Miller never told her she was doing a bad job, and if she was doing a bad job, someone would have said something. She had only one evaluation in eight years, and anything that was wrong she straightened out and buttoned it right up. If an invoice was missing or a PO was missing, it would fall on her, so she did not want other people ordering, but she did not have the proper paperwork because other people were ordering.

The only reason she was missing work was that her mother was very sick and almost died, and Zschack always told her that family comes first. She used her vacation and sick leave. Sometimes she was caring for her mother. Sometimes there were accidents and traffic. She sent photos of traffic to Zschack. She used leave time for her foot surgery, for her thyroid removal, and for her mother. She had eight days of vacation and one personal day left. Zschack signed off on every timecard. If there was a problem with her time, Zschack never told her. Someone else wrote up one of her timecards; it is not in her handwriting. Once she hired a person to stay with her mother, she was right back at work. She did not want to put her mother in a nursing home. It took a toll on her. The work environment got so hostile, and she could not go to HR. She never missed a day of work when COVID was going on. Her brother-in-law died, and she only took one bereavement day because she had missed a lot of work. Nobody told her she was doing anything wrong. When she got insubordinate, it was after her surgery, and she felt terrible, and she

apologized to Zschack over and over. Zschack should have told her if he had a problem with her, but he never did.

Mark Zschack

Janoski's performance was sporadic and irregular. She was occasionally argumentative, abrupt with residents, directed residents to the wrong departments, and answered questions for other departments that she should not have answered. There were a lot of problems with drama and personal issues with other employees. He reviewed Janoski's poor performance with her, and she was aware of the deficiencies. Her attendance was sporadic. The Township maintains time sheets. It was Janoski's duty to match the physical handwritten timesheet with the computer time entries. Her handwritten time sheets did not match the computer-program time entries. There were requests for days off on the handwritten time sheet that were not entered into the computer. She went 1.31 days over in her leave time as a result. He spoke to her about leave and he offered her FMLA three times.

On June 14, 2023, Janoski arrived shortly after 9:30 a.m. and came to Zschack's doorway to apologize for being late. The minute she turned around and walked away, he and Miller both thought that something was wrong and that she was possibly drunk. Within a few minutes, three other employees came to his office with concerns about Janoski and that she was scheduled to drive to the post office shortly. He had Janoski come out of her office and go into another room due to concerns about her driving, and an appointment was scheduled for Janoski to be tested. At VMG, he was given an envelope with the test results and was told by a nurse that Janoski should not drive. He drove Janoski home after the testing. She did not admit to being under the influence of alcohol.

Janoski was terminated based on Township policies. The mayor made the decision to terminate her employment. The PNDA outlined reasons for termination. Her sick-leave attendance in 2023 was summarized and confirms a negative balance. The PNDA accurately reflects the Green Township attendance policy and drug and alcohol policy.

Linda DiLorenzo

There were a lot of errors in Janoski's work. It got to a certain point where it was at a standstill and stayed that way. She needed improvement, and they repeatedly went over the same things, like account numbers, and proper documentation not being attached to POs. Janoski was cut off from changing vendors because of concerns that a vendor name would be accidentally changed on a PO. She spoke with Janoski several times and pointed out errors and sent work back to Janoski to be corrected. She also spoke with Zschack about all the errors and about having to review very carefully all of Janoski's work. She did not see improvement.

On June 14, 2023, she was in her office speaking with the superintendent when Janoski arrived and was going on and on about why she was late. Janoski then went around to each employee with her spiel about being late. Janoski was scheduled to go to the post office at 10:00 a.m. When she walked out of her office after speaking with the superintendent, several employees approached her concerned about Janoski and the 10:00 a.m. post-office run because Janoski appeared intoxicated. She did not think Janoski should drive and spoke to Zschack about it. She saw Janoski in July, and Janoski insisted she was not drunk and was only hungover.

LEGAL ANALYSIS AND CONCLUSIONS

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.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including “insubordination,” “chronic or excessive absenteeism or lateness,” “conduct unbecoming a public employee,” and “other sufficient cause.” N.J.A.C. 4A:2-2.3(a) (2), (4), (6) and (12).

N.J.A.C. 4A:2-2.3(a)(2) does not define insubordination. Black’s Law Dictionary 953 (11th ed. 2019) defines insubordination as a “willful disregard of an employer’s instructions” or an “act of disobedience to proper authority.” Merriam-Webster defines insubordination as “disobedient to authority,” <https://www.merriam-webster.com/dictionary/insubordination>. Likewise, 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.

The Final Notice of Disciplinary Action reflects that Janoski was charged with insubordination, chronic or excessive absenteeism and lateness, conduct unbecoming a public employee, and other sufficient cause. 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).

Although Janoski noted that she had foot and thyroid surgery herself and was caring for her ill mother, she did not avail herself of FMLA, NJFLA or FTD despite having been sent

the paperwork for the same, and text messages reflect that Janoski regularly last-minute texted Zschack that she would be late or would not be in for any number of reasons. Accordingly, I **CONCLUDE** that Janoski was chronically and excessively late. I further **CONCLUDE** that her chronic and excessive lateness and unreliability were a violation of Green Township's attendance policy, excerpted in the PNDA and FDNA as follows:

Regular and reliable attendance is of primary importance to the operation of Green Township. Excessive absenteeism or tardiness places an unfair burden on other employees and the Township. All employees are required to maintain good attendance and punctuality. This means reporting to work on each scheduled workday unless illness or other unavoidable circumstances make it impossible to do so, or unless prior permission to be absent has been given by the Administrator or Supervisor...

[R-E; R-F.]

Additionally, although Janoski denied being intoxicated, both the testimony and laboratory documents confirm that Janoski was intoxicated at work on June 14, 2023. I **CONCLUDE** that intoxication at work is conduct unbecoming a public employee and was a significant safety hazard given that Janoski's job duties required driving. I further **CONCLUDE** that her intoxication was a violation of Green Township's drug and alcohol policy, excerpted in the PNDA and FNDA as follows:

Green Township is committed to making efforts to provide a safe, secure and productive workplace. Because an employee's use of or impairment by drugs or alcohol poses a serious threat to the workplace, employees are required to report to work in an appropriate mental and physical condition. Green Township strictly prohibits all employees from being under the influence of alcohol, illegal drugs—including any use of marijuana, or other controlled substances or engaging in alcohol or drug-related activities while on Township:

1. Premises and work sites (including municipal and private vehicles parked or operated on Township-owned or leased premises/work sites).
2. Business (including Township events, client's or vendor's premises, or while driving on Township business).

[R-E; R-F.]

Additionally, even though she had been warned not to do so, as credibly testified to by Zschack and confirmed by the warning letter, Janoski continued to advise clients on matters outside the scope of her job. I **CONCLUDE** that such conduct was insubordinate.

With respect to the penalty, the Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must utilize the evaluation process set forth in West New York v. Bock, 38 N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations, and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated. Since West New York v. Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct: to support the imposition of a more severe penalty for a public employee who engages in habitual misconduct, and to mitigate the penalty for a current offense. In re Herrmann, 192 N.J. 19, 30–33 (2007). However, in an instance where an employee commits an act sufficiently egregious, removal may be appropriate notwithstanding the lack of a prior history of infractions. See, e.g., In re Herrmann, 192 N.J. 19. According to the Supreme Court, progressive discipline is a worthy principle, but it is not subject to universal application when determining a disciplined employee's quantum of discipline. Id. at 36.

Although progressive discipline is a recognized and accepted principle that has currency in the [Civil Service Commission's] sensitive task of meting out an appropriate penalty to classified employees in the public sector, that is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty 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.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306, 633 A.2d 577 (App.Div. 1993), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

[Id. at 33–34.]

The theory of progressive discipline is not a fixed and immutable rule to be followed without question, as some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007). The Supreme Court has noted that “the question for the courts is ‘whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one’s sense of fairness.’” Ibid. (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)). The Supreme Court also noted that the Appellate Division has likewise acknowledged and adhered to this principle, upholding dismissal where the acts charged, regardless of prior discipline, warranted the imposition of the sanction. Id. at 485.

Janoski has been employed by Green Township since 2016, and although she had no prior major disciplinary history, I **CONCLUDE** that Janoski’s conduct as detailed above warranted termination—most significantly her intoxication at work when scheduled to drive, which was sufficiently egregious to warrant termination on its own.

ORDER

I hereby **ORDER** that the charges of insubordination, chronic and excessive absenteeism or lateness, conduct unbecoming a public employee, and other sufficient cause are **SUSTAINED**, and that the penalty of termination is **AFFIRMED**.

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

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

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

February 22, 2024



DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Appellant:

Sheri Janoski

For Respondent:

Mark Zschack

Linda DiLorenzo

Exhibits In Evidence

For Appellant:

None

For Respondent:

R-A Performance Review Form

R-B Performance documents (complaints/letters)

R-C Reasonable Suspicion Observed Behavior Report & Alcohol Testing Documents

R-D Text messages

R-E PNDA

R-F FNDA

R-G FMLA letters

R-H (Not in Evidence)

R-I Time Sheets

R-J Time History

R-K Employee Information

R-L (Not in Evidence)

R-M (Not in Evidence)

R-N (Not in Evidence)