

# ***Housing Auth. v. Anonymous***

OATH Index No. 1055/10 (Mar. 24, 2010)

Proof found sufficient to establish that analyst was unfit to perform the duties of her position due to a mental disability. ALJ recommends that employee be placed on involuntary leave.

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## **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**HOUSING AUTHORITY**  
*Petitioner*  
*-against-*  
**ANONYMOUS**  
*Respondent*

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### **REPORT AND RECOMMENDATION**

**JOHN SPOONER**, *Administrative Law Judge*

This is a disability leave proceeding referred by the petitioner, the New York City Housing Authority, pursuant to section 72 of the New York State Civil Service Law. The petitioner alleges that respondent, a procurement analyst level II, is mentally unfit to perform her job duties and should be placed on an involuntary leave of absence.

At the hearing held before me on March 4, 2010, petitioner presented the testimony of respondent's supervisor and a psychiatrist who found her unfit. Respondent testified on her own behalf.

For the reasons provided below, I find respondent is unfit to perform the duties of her position as a procurement analyst II and should be placed upon disability leave pursuant to section 72 of the Civil Service Law. Due to the possible detrimental effect to respondent and her family by publication of this report, I find that withholding respondent's name is appropriate. *See Taxi & Limousine Comm'n v. Anonymous*, OATH Index No. 1053/09 (Jan. 12, 2009) (employee's name withheld where decision discusses personal issues contained in medical records).

### ANALYSIS

In this case, petitioner seeks to place respondent on involuntary leave under section 72 of the Civil Service Law, alleging that she is currently unfit to perform her job duties. In support of this application, petitioner presented psychiatric evidence that respondent exhibits aberrational thought processes and probably has a bipolar disorder with symptoms of psychosis. Petitioner also presented evidence that, at work, respondent's persistent investigation of invoices instead of simply processing them, a function not within her job duties and which she has been ordered to cease performing, interfered with the agency's processing of payments. As detailed below, I conclude that this evidence, in conjunction with respondent's own testimony, established that respondent is presently mentally unfit to carry out the functions of her job.

Respondent is 46 years old and has worked for the Housing Authority since 2000. She attended Baruch College and has some real estate training. Respondent works in the facility planning department processing invoices to pay landlords and contractors for lease of office space for Authority staff. She receives most of these invoices after the project manager has approved them and does not herself have the authority to authorize or reject a particular invoice (Tr. 90). Instead, she is to request a purchase order so that payment of the invoice can be made (Tr. 55). Where invoices come directly from vendors or landlords without having been first routed to the project manager, respondent must seek the project manager's approval before requesting a purchase order (Tr. 56). Once the purchase order is issued, respondent sends the paperwork to the accounts payable department for final payment by check, files the documents, and makes a log entry on a spreadsheet reflecting that payment for the invoice has been processed (Tr. 58, 65).

Petitioner's proof showed that until approximately a year ago, respondent's performance was deemed generally competent. Mr. Munzeles, Deputy Director of the Facility Planning Administration, has supervised respondent for about seven years. He testified that, beginning in May through July of 2009, respondent began to be repeatedly late, even after she was placed on a flex-time work schedule (Tr. 63). At the same time, respondent's work output declined and Mr. Munzeles assigned some of her invoices and filing to other employees (Tr. 64-65). Mr. Munzeles stated that around this time respondent started sending a large number of e-mails to landlords which were "not clear" and "contradictory." As a result of these e-mails, a number of the landlords complained (Tr. 92-93). Similarly, respondent posed questions to project managers

about the legitimacy of the invoices she received from them, such that “every piece of paper became suspect” (Tr. 92). The relationships between her and the project managers deteriorated and there was “an atmosphere where nobody wanted to work with her” (Tr. 95). Mr. Munzeles instructed respondent to deem the project manager’s signature approving an invoice to be sufficient for processing, without any further inquiry, but respondent disregarded this instruction. Ultimately, Mr. Munzeles’s solution to the problem was to reassign most of the invoices to another employee (Tr. 80-82).

Mr. Munzeles recalled an incident where respondent disrupted the entire office by screaming “at the top of her lungs” at another employee, and, when confronted by Mr. Munzeles, explained that her outburst was because she believed the employee had stolen her wallet six months before (Tr. 67-69). Mr. Munzeles indicated that on “many occasions” respondent complained of being underpaid and worried that others were taking her work from her (Tr. 66, 68). Respondent also told Mr. Munzeles she was concerned that unidentified people were looking at her, watching her through the computer, intercepting her e-mails, and altering her documents (Tr. 69-70). Around this same time, respondent began e-mailing the Office of the Inspector General lengthy messages describing perceived slights by co-workers and supervisors and voicing complaints that her abilities were not being properly valued (*see* ALJ’s Ex. 1).

As a result of Mr. Munzeles’s reports of respondent’s job performance problems, on September 2, 2009, Dr. Eshkenazi, a psychiatrist retained by petitioner, interviewed and evaluated respondent. Dr. Eshkenazi then wrote a report (Pet. Ex. 1) finding that respondent’s thought processes were “circumstantial with looseness of associations” and that she had “delusions” of persecution and grandiosity. He found her psychological symptoms consistent with bipolar disorder with symptoms of psychosis and concluded that her condition rendered her unfit to perform her job because it “clearly affects her ability to think rationally.”

In his testimony at the hearing, Dr. Eshkenazi elaborated upon the conclusions reached in his report. He described the symptoms of bipolar disorder with psychosis as involving “fluctuations of mood” and “disturbance in the thinking process,” where the subject cannot concentrate and indulges in “circumstantial” thought, that is, thought or speech which is circular, wandering, and never arriving at a point (Tr. 22-23). Dr. Eshkenazi noted that respondent exhibited this rapid circumstantial speech throughout his one-hour session with her, speaking in long unfocused monologues. Dr. Eshkenazi stated that respondent’s condition can be treated

with medication (Tr. 17) and testified categorically that there “is no way she could function, until she gets in treatment” (Tr. 25).

Dr. Eshkenazi described other psychological issues raised by his observations of respondent’s behavior. During the evaluation, respondent made statements as to supposed savings of \$1 million that she achieved for her agency, statements which he was certain were inaccurate and produced by grandiose delusions (Tr. 20). At the same time, respondent described irrational suspicions and fears about her coworkers (Tr. 21). During the examination, respondent admitted the outburst and behaviors described by Mr. Munzeles, although she denied that the incidents were her fault (Tr. 23).

Although respondent told Dr. Eshkenazi that she had seen a psychiatrist, who gave her a diagnosis of psychosis with depression (Tr. 18), she showed little understanding as to what such a diagnosis meant (Tr. 24). During his evaluation, Dr. Eshkenazi telephoned respondent’s psychiatrist to try to get further information about her history and treatment. The psychiatrist, after speaking with respondent on the phone as to whether she would give consent to permit him to discuss her condition, told Dr. Eshkenazi that he could not understand whether respondent had given him such consent, and said only that he had offered respondent medication which she refused to take (Tr. 19).

The primary evidence offered by respondent at the hearing was her own testimony. This testimony confirmed rather than contradicted Dr. Eshkenazi’s conclusions. Respondent vehemently and tearfully denied that she is mentally ill (Tr. 169), although she showed some awareness of decreased mental function (*see* Tr. 113) (“I know I’m smart, I know I’m not crazy but I would have a bout of being – not feeling well”). She attributed her mental problems variously to heavy metal poisoning (Tr. 110), carbon monoxide exposure that occurred in the late 80’s (Tr. 110), vitamin deficiency (Tr. 113), stress (Tr. 146), and liver problems (Tr. 137). In an effort to challenge Dr. Eshkenazi’s diagnosis, respondent brought a letter dated March 3, 2010 from a psychologist, Dr. Golomb, which stated, in a single line, that based on three visits with respondent he believed she is “capable of doing the kind of work she currently is assigned” (Rep. Ex. A).

Respondent repeatedly testified that she loved her job (Tr. 121, 137, 140, 145) but that she was frustrated because of her constricted role (Tr. 125). She stated that she cannot do a job which is menial and clerical in nature because she does not see herself “as just a data entry clerk”

(Tr. 130). She thus is obliged to second guess project managers who approve payments (Tr. 127) because inappropriate approvals by managers “could cost my boss his job if I don’t point out the things I’m questioning” (Tr. 171). Just as she had reported to Dr. Eshkenazi that she had somehow saved her employer \$1 million, she described resolving \$900,000 in unpaid rents (Tr. 123), which made her “the star in every landlord’s eye” (Tr. 124). Notably, Mr. Munzeles denied this in his testimony, calling her inquiries into managers’ approvals “needless” (Tr. 92). He also indicated that landlords and project managers alike avoided dealing with respondent due to her inappropriate and irrational questions (Tr. 61).

Attachment A commemorates over 20 e-mail and voice messages sent by respondent to the agency inspector general between April and July 2009. For the most part, the messages all seem inappropriate in that they report grievances against respondent’s coworkers as to work assignments, not illegal or unethical activities. Most of the messages detail not information but respondent’s feelings about her work. For example, on July 7, 2009, respondent sent five e-mails complaining that she was “very unhappy” because following the instructions of her supervisor would “clerkize” her, that she was “not bowing down to the Alpha female,” that a spreadsheet “smells” for unspecified reasons, and that she was made “obsolete after being put in the hole.” On July 29, respondent sent an extremely long e-mail, complaining about another worker being given better work assignments, that the office was preventing her “growth” and seeking “to sweep me under the carpet,” that no one was concerned about her “state of mind,” that “life stinks for women we cannot be all that we can be,” and that she was being pushed to “financial suicide.”

When asked to explain this unusual correspondence, respondent testified that she spoke to someone from the equal employment opportunity unit about her complaints, and was told it was “not an EEO matter.” She was directed instead to speak with the inspector general (Tr. 160). Respondent indicated that she obeyed this advice, but that, despite her frequent and lengthy communications, the inspector general’s office never responded to her messages (Tr. 173).

In a section 72 hearing, the burden is on the agency to establish that the employee is unfit. Civ. Serv. Law 72(1) (Lexis 2010) (“the burden of proving mental or physical unfitness shall be upon the person alleging it”); *Taxi & Limousine Comm’n v. Anonymous*, OATH Index No. 1053/09 (Jan. 12, 2009). Here this burden was more than met in a number of ways.

First, petitioner's evidence proved that respondent is not performing various aspects of her job, including processing of invoices and purchase orders, data entry on spreadsheets, and filing. Instead of completing the clerical tasks assigned to her, respondent challenges and confronts project managers and landlords about the propriety of expenses reflected in the invoices, a task far outside her job responsibilities. Respondent did not contradict this proof – she confirmed it, stating repeatedly that she either would not or could not perform clerical tasks because they were a waste of her talents. Instead, ignoring instructions from her supervisor, she performed audits of most of the invoices she was assigned to process, based upon uncorroborated suspicions that prior managerial approvals were somehow false or incompetent and that her own supervisor might be held accountable for these supposed flaws. On at least one occasion, she created a loud and irrational outburst based upon fears and suspicions that seemed to be delusional.

Petitioner's expert witness established that respondent's thought processes were disordered and dysfunctional and that she exhibited various signs of psychosis, including irrational fears of co-workers and equally irrational delusions as to her own skills and achievements. He offered a diagnosis of bipolar disorder with symptoms of psychosis, indicating that without medication and treatment respondent's mental functions could not be stabilized. Dr. Eshkenazi's diagnosis was consistent with that of a psychiatrist who previously treated respondent and also diagnosed her condition as depression with psychosis.

Respondent's irrationality and chaotic thinking was apparent throughout her testimony. When asked to explain the reasons for the outburst with the co-worker, respondent rambled on for several minutes, mentioning that she put herself through college, had a broker's license, was bullied by her employer, saved the City a million dollars, was raised as a Christian, noticed the high number of people on "unemployment and SSI," and had endured "20 years of chastisement." In a particularly poignant metaphor for her struggle to cope with her mental problems, she stated that her job problems were "like a ship that was going forward, like the Titanic and I couldn't stop it" (Tr. 166-70). In her description of other problems she identified in the work place, she stated repeatedly that she does not have an acceptable job title or an established role in her office, even while complaining that the job given her was too menial and dull (Tr. 121, 125, 130). She testified that co-workers "taunt" her (Tr. 126, 127) and try to discredit her (Tr. 147), "telling secrets" to Mr. Munzeles about her (Tr. 147). She has overheard

derogatory whispering about her in the office (Tr. 148-49). She believed other employees were rifling through her desk and stealing things (Tr. 165.) She stated that “[t]here was a lot of deviant behavior around [her]” (Tr. 155) and that she was in a “hostile work environment” (Tr. 160) that was making her “physically sick” (Tr. 166).

The one-sentence letter from a psychologist (Resp. Ex. A) that respondent could perform her job was deserving of very little weight. The letter was too cursory to constitute a professional evaluation of respondent’s mental state, since it did not indicate whether the psychologist was aware of critical issues such as respondent’s work history, her past history of mental health issues, the diagnosis of Dr. Eshkenazi, or her work performance problems identified by her supervisor. The psychologist did not testify so as to offer answers to these questions. Thus, the letter did little to rebut or qualify the more persuasive written and verbal conclusions offered by Dr. Eshkenazi.

Perhaps the saddest aspect of the case concerned respondent’s most recent resort to nontraditional therapies as a supposed cure for her obvious mental instability. Within the weeks preceding the hearing, respondent consulted with someone she referred to as “another doctor who connected me to the neurotransmitter testing and blood tests” (Tr. 113). Based upon this consultation, respondent came to believe that a regimen of botanical “neurotransmitter supports” will cure her psychological problems (Tr. 110-11, *see* Resp. Ex. B). When this tribunal asked respondent for documentation as to the basis for this belief, respondent’s attorney requested and was granted additional time after the hearing to produce documentation of this alternative diagnosis.

Respondent’s post-hearing submissions about her alternative treatment not only failed to contradict the more convincing proof of unfitness but also confirmed respondent’s inability to deal rationally with her mental health issues, just as she is unable to perform her job. The documents indicate that respondent consulted, not a medical doctor or a mental health professional, but a chiropractor named Dr. Lynch. In a letter dated March 10, 2010, Dr. Lynch indicates that respondent came to him complaining of “weakness and throbbing of the right arm, hand, and ankle with multiple joint pain.” The blood tests ordered by Dr. Lynch indicated that respondent has “elevated” hormonal and neurotransmitter levels and some vitamin deficiencies. Since Dr. Lynch made it clear that he is treating respondent only for “neuromuscular skeletal conditions,” he offered no opinion of her mental condition or how his recommended treatment

might impact upon that condition. Thus, the post-hearing documents, on their face, offered no support for respondent's conviction that these alternative therapies will or are intended to improve her mental function.

In sum, based on the record here, I find that the evidence establishes that respondent is mentally unfit to perform her job duties as a procurement analyst II.

**FINDINGS AND CONCLUSIONS**

The allegations in the petition should be sustained in that respondent is unfit to perform the duties of her position as a procurement analyst II and should be placed upon disability leave pursuant to Civil Service Law section 72.

I therefore recommend respondent be placed upon disability leave pursuant to Civil Service Law section 72.

John B. Spooner  
Administrative Law Judge

March 24, 2010

SUBMITTED TO:

**JOHN B. RHEA**  
*Chair*

APPEARANCES:

**TERENCE SCHWARTZ, ESQ.**  
*Attorney for Petitioner*

**ANDREW DONNER, ESQ.**  
*Attorney for Respondent*

**BY: BRUCE H. KAPLAN**