

# ***Human Resources Admin. v. Anonymous***

OATH Index No. 1613/10 (Mar. 15, 2010)

Respondent found to be suffering from paranoia rendering her unable to perform her job. ALJ recommends that she be placed on post-hearing leave of absence pursuant to section 72 of the Civil Service Law.

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

*In the Matter of*  
**HUMAN RESOURCES ADMINISTRATION**  
*Petitioner*  
*-against-*  
**ANONYMOUS**  
*Respondent*

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### **REPORT AND RECOMMENDATION**

**FAYE LEWIS**, *Administrative Law Judge*

This is a disability proceeding referred by petitioner, the Human Resources Administration (“HRA”), pursuant to section 72 of the Civil Service Law. The petition alleges that respondent, a principal administrative associate level one assigned to HRA’s Brownsville Center, is mentally unfit to perform the duties of her position and should be placed on an involuntary leave of absence.

A hearing was conducted before me on February 9, 2010. Petitioner presented Dr. Azariah Eshkenazi as an expert witness and introduced the testimony of four employees. Respondent did not present any evidence and instead asserted that petitioner failed to prove that she is unfit. For the reasons set forth below, I find that respondent is presently unfit to work and recommend that she be placed on an involuntary leave of absence.

### **ANALYSIS**

In a disability proceeding, petitioner bears the burden of proving by a preponderance of the evidence that respondent suffers from a disability, that she is unable to competently perform her job duties, and that her inability to perform those duties is caused by her disability. *Admin. for Children’s Services v. Cleveland*, OATH Index No. 116/08 (Feb. 20, 2008); *Police Dep’t v.*

*Cornick*, OATH Index No. 536/08 (Dec. 7, 2007); *Housing Auth. v. Barone*, OATH Index No. 1122/04 (May 23, 2005). The focus is on whether the employee is currently able to work. *Dep't of Probation v. Kornheiser*, OATH Index No. 361/06 at 5 (Oct. 13, 2005), *aff'd in part, rev'd in part*, Comm'r Dec. (Oct. 17, 2005).

Dr. Eshkenazi, a psychiatrist, testified that he evaluated respondent on two occasions upon petitioner's request. After the first evaluation, in August 2009, he found respondent fit to return to work (Tr. 13; Pet. Ex. 4). However, when respondent returned for the second evaluation on December 10, 2009, she was hypomanic (Tr. 15). Her speech was very fast and her thought process was circumstantial. She was unable to give a direct answer to his questions, talking in circles rather than answering (Tr. 26). She told Dr. Eshkenazi that the City of New York was against her and trying to hurt her (Tr. 15). He testified that she was "quite petrified" that people would hurt herself or her daughter, and had "multiple paranoid ideations" about that (Tr. 25). Additionally, respondent said that she had been hospitalized against her will for two weeks during which time medications had been forced upon her via injections (Tr. 15-16). She would not allow Dr. Eshkenazi to access her medical records from the hospital because she thought it would be against her interests to do so (Tr. 16). When he asked what her diagnosis was, respondent stated that she could not remember but that they had told her she needed long-term treatment (Pet. Ex. 3). As the evaluation progressed, respondent grew more paranoid, stating that the City had been able to keep her in the hospital against her will because it had connections (Pet. Ex. 3). Dr. Eshkenazi determined that respondent suffers from paranoia (Tr. 17; Pet. Ex. 3). He noted that when he first evaluated her in August, she was "much more controlled," "much more appropriate," and "much less paranoid" (Tr. 208). Based on this change in mood, he thought that she might have schizoaffective disorder, but was unable to make that diagnosis without knowing her medical history (Tr. 23).

Dr. Eshkenazi concluded that respondent is unable to perform the functions of her job (Tr. 17; Pet. Ex. 3). He explained that respondent's diagnosis is indicative of a disturbance in the thinking process; respondent, without an actual basis, is extremely fearful of the City of New York and believes that people are out to hurt or kill her. Her thought processes are unproductive and she simply can not function (Tr. 23, 25). He acknowledged, however, that if respondent were given the right medication to treat her condition, it was likely that within about three months, her mood would stabilize and she would be fit to work (Tr. 38-31).

Testimony at trial supported the doctor's conclusions. Ms. Ferrell, the site director at respondent's center, and Ms. Brown, respondent's direct supervisor, testified that respondent is a financial supervisor responsible for a financial group of four workers. Her duties include making sure that workers complete re-certifications each month, either reject or accept new applications, and pay rent arrears and issue food stamps accurately and timely (Ferrell: Tr. 48-49; Brown: Tr. 105-06). Ms. Brown explained that respondent was also required to sign off on the workers' cases. If she did not do so, the case could not be transitioned to the next status and would "purge out of the system" in a few days (Tr. 105, 106, 108). Ms. Ferrell testified that from August through November of 2009, respondent completed a minimum amount of work; she failed to review the employees' work, often causing them to have to resubmit it (Tr. 49, 66, 72-73). Ms. Brown, similarly, testified that respondent's work performance in this period was "not good" (Tr. 107). More specifically, she recalled receiving complaints from respondent's employees about having to reprocess work on which respondent had failed to sign off (Tr. 108). When she investigated, Ms. Brown found that respondent had not signed off on most of the cases. Ms. Brown ultimately made the necessary sign-offs (Tr. 108, 153). When Ms. Brown asked respondent why she had not signed off on the cases, respondent provided various excuses, including her computer was broken, images in her computer were scaring her, and there was a conspiracy (Tr. 109).

Likewise, respondent complained to Ms. Ferrell that Ms. Ferrell was involved in a conspiracy against her. Respondent said that the conspiracy threatened her own safety as well as the safety of her church friends and family (Tr. 50, 64). Respondent even noted to Ms. Ferrell that when she had gone out of town she saw people taking photos of her and noticed a Federal Express and UPS truck and did not know why the City would go "to such lengths" to follow her (Tr. 65). Respondent also complained that someone had sabotaged her computer and telephone. Ms. Ferrell explained that even a mundane conversation about the phone not working devolved into an explication of the conspiracy and that it took her a lot of time and energy to redirect respondent to the immediate issue (Tr. 49-51).

In addition to complaining that respondent did not sign off on their cases, staff also complained to Ms. Ferrell that respondent made them nervous, and that she walked around talking to herself about the unit being jealous of her status as a supervisor (Tr. 49, 50, 74-76). Ms. Brown testified that respondent would sing songs about something evil happening at the

office, claim that the office was bogus, and make slurs (Tr. 160). This erratic conduct interrupted the office workflow (Tr. 160).

At the end of August, Ms. Ferrell and Ms. Brown decided to change respondent's duties from supervising others to completing independent projects, correcting errors and reviewing cases for transfer to other sites (Ferrell: Tr. 51, 66; Brown: Tr. 110). Ms. Farrell testified that respondent failed to complete these duties as well (Tr. 51, 77). Notably, respondent refused to do the transfer cases because she felt they pertained to her situation (Tr. 66). Respondent wrote an e-mail dated October 30, 2009 saying that she found the "family composition" in the case "very interesting" and was treating the case as a "Threat" (Pet. Ex. 17). Respondent told Ms. Brown that the numbers in the address and the birth dates had significance to her and she would not process the case, and that Ms. Brown should not give her any more transfer cases (Tr. 115-116; Pet. Ex. 19). Ms. Brown wrote her a rebuttal saying the cases were given at random and not specifically assigned and that she should complete the case by Monday, November 2, 2009 (Pet. Ex. 19). Respondent, however, never finished the case. Ms. Brown assigned her another case for review on Friday, November 6; respondent did not want to do this case either and left work early for the day. She told Ms. Brown she had decided not to do the case because she knew Ms. Brown was trying to trick her (Pet. Ex. 20). She also lectured Ms. Brown about being part of the conspiracy and told her not to give her any more of the transfer cases (Tr. 139; Pet. Ex. 19). Ms. Brown wound up doing the work on these two cases (Tr. 116). I found Ms. Brown and Ms. Ferrell to be credible. Their testimony was straightforward, largely consistent, and unrebutted.

Respondent applied for and was granted leave under the Family Medical Leave Act (FMLA) from November 14, 2009, through February 26, 2009 (Tr. 39). The letter she submitted in support of her leave, dated December 7, 2009, noted that she had been hospitalized from November 14, through November 25, 2009, and needed to recuperate at home. The accompanying physician's certificate referenced "stress and tension on the job," "insomnia and anxiety," and "generalized anxiety disorder," and stated that medical leave was required because respondent was unable to work during this period and required "psychological supervision," "occasionally," as well as sedatives (Pet. Ex. 5). It was during her FMLA leave that respondent was evaluated by Dr. Eshkenazi.

The testimony of Mr. Ligresti, the associate general counsel of the Human Resources Administration ("HRA"), highlighted the extent of respondent's paranoia. Mr. Ligresti testified that respondent visited his office several times and complained that she was being harassed and

people were following her (Tr. 88). At one point she saw three attorneys walking in a hallway around lunchtime and referred to this as “another sign of three” which indicated that she was in jeopardy (Tr. 92, 93). She also called Mr. Ligresti multiple times to complain that people, at HRA’s direction, were stalking her, that the agency, or some other entity, was having her neighbors spy on her, and that she feared for her own life and that of her daughter (Tr. 88, 96). Mr. Ligresti advised respondent that if people were stalking or harassing her outside of work she should file a police complaint (Tr. 88). Respondent replied that she believed the police were involved in the conspiracy (Tr. 89). In one conversation, after respondent complained about the agency’s conspiracy, Mr. Ligresti told her that the agency only wanted her to do her job (Tr. 91; Pet. Ex. 12). In response, respondent indicated that due to the agency’s actions and the harassment she was suffering, she was not able to perform her duties (Tr. 91; Pet. Ex. 12). I credited Mr. Ligresti’s testimony, which was supported by contemporaneous e-mails he wrote to memorialize his conversations with respondent (Pet. Exs. 12, 13).

The testimony regarding respondent’s paranoia was also supported by several e-mails respondent sent. For example, in an e-mail dated September 23, she stated “I feel my life has been in danger since April, 2009. In addition, I have been shadow [sic] by many businesses and private individuals every move I made... when I finally went [sic] the precinct all kinds of tactics are being used” (Pet. Ex. 6). In an e-mail dated October 19, respondent wrote: “... everywhere I turned I am [sic] seeing signs that I had three chances and I am hung... I am concern [sic] about my safety on and off Agency Premises” (Pet. Ex. 7). Likewise in an e-mail dated November 5, respondent wrote “I have had to live with my colleagues standing in groups of twos and threes as though I am being sent subtle message. And in [sic] viewing my colleagues is not enough I am bombarded with all the messages in the street that I have had to observe for the past seven (7) months... most of my information is gather in the street and from Email under false disguises... I have had to live like a fugitive for months” (Pet. Ex. 10). These e-mails illustrate respondent’s irrational thought processes involving a conspiracy against her.

In sum, the record demonstrates that respondent suffers from paranoia which is preventing her from doing her job as a principal administrative associate level one. Respondent herself acknowledged to Mr. Ligresti that she was unable to perform her duties. Thus, under section 72 of the Civil Service Law, respondent must be placed on a mandatory leave of absence.

Although I am recommending that respondent be placed on a leave of absence pursuant to section 72(1) of the Civil Service Law, it should be understood that this is distinct from a

termination of respondent's employment. Rather, respondent will be on a leave of absence for a year. At the end of the year, she can be terminated pursuant to section 73 of the Civil Service Law. However, within that year, she can apply to be reinstated to her position at any time by requesting a medical examination pursuant to section 72(2) of the Civil Service Law. Thus, if, for example, respondent seeks psychiatric treatment and improves, she may be able to return to work within the year. In any case, while on section 72 leave, respondent may use any accrued sick leave or annual leave, and thus remain on payroll with her health insurance intact. I would encourage her, during this period, to seek appropriate medical treatment, including a follow-up psychiatric evaluation.

Faye Lewis  
Administrative Law Judge

March 15, 2010

SUBMITTED TO:

**ROBERT DOAR**  
*Commissioner*

APPEARANCES:

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