

Dep't of Parks & Recreation v. Anonymous

OATH Index No. 858/16 (Apr. 12, 2016)

Petitioner demonstrated that respondent, a computer associate, is currently unfit for the duties of his job and should be on a leave pursuant to section 72 of the Civil Service Law.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF PARKS & RECREATION
Petitioner
- against -
ANONYMOUS
Respondent

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORNIOTTI, *Administrative Law Judge*

This disability proceeding was referred by petitioner, the Department of Parks and Recreation (“Parks”), pursuant to section 72 of the Civil Service Law (“CSL”). Petitioner alleges that respondent, a computer associate, is currently unfit for duty (ALJ Ex. 1).¹

On October 2, 2015, Parks placed respondent on a paid leave and directed him to appear for a psychiatric examination to determine whether he was fit for duty (ALJ Ex. 2). On October 7, 2015, Dr. Eshkenazi examined respondent and found him unfit (Pet. Ex. 1). By letter dated October 23, 2015, respondent notified Parks that he objected to an involuntary leave and requested a trial (ALJ Ex. 2).

At the trial held on March 25, 2016, the parties submitted documentary evidence. Petitioner also presented the testimony of Dr. Eshkenazi and four Parks employees. Respondent testified on his own behalf and claimed he was fit. For the reasons below, petitioner demonstrated that respondent suffers from an untreated delusional disorder and is currently unfit. Accordingly, he should be placed on a leave pursuant to CSL section 72.

¹ Because this report contains sensitive medical information about respondent, his name is being withheld. *See* 48 RCNY § 1-49(d) (Lexis 2015). *See also Admin. for Children’s Services v. Anonymous*, OATH Index No. 212/12 at 1 (Dec. 15, 2011) (withholding respondent’s name because the report discussed sensitive medical issues).

BACKGROUND

Respondent has been a computer associate at Parks since 1998. A computer associate is responsible for the design, implementation, enhancement, maintenance and analysis of software systems (Pet. Ex. 1). The information technology department (“IT”) has several units for computer associates including the Application Development unit where programmers work and the Geographic Information Systems unit (“GIS”) that is responsible for mapping projects (Tr. 50-51). Mr. Carlo is the supervisor in GIS, Mr. Greenan is the chief of IT, and Mr. Brenner is the deputy director of IT and Mr. Carlo’s supervisor. The entire IT department is located on the same floor in an office in Manhattan (Tr. 51).

In 2007 respondent was diagnosed with stage four cancer of the blood (lymphoma) and took an extended leave of absence. A number of respondent’s colleagues, including two of petitioner’s witnesses, donated three months of sick leave to respondent (Tr. 70, 114, 171). Respondent testified that he initially had difficulties with his cancer treatments and did not improve until his second round of treatment. Respondent stated that he was frightened about dying a painful death from cancer and thought about suicide. Respondent also had difficulty sleeping. According to respondent, when he went to the hospital to be treated for sleep deprivation, he was examined by a psychiatrist who improperly hospitalized him for five days based on a misdiagnosis that he was suicidal (Tr. 149-55). Respondent testified that nine years ago he started group therapy because of his depression and is currently attending group therapy on a weekly basis (Tr. 171-72; 186-87; Pet. Ex. 1).

This proceeding stems from workplace incidents and deficiencies in respondent’s work occurring after he returned from his leave of absence. At the time of his return, respondent was working in the Application Development unit under two supervisors, Joy and Keith.

Mr. Greenan testified that in 2009, respondent’s supervisors started having issues with respondent’s work because he was having problems keeping up with the changes in technology. The supervisors were concerned about respondent’s ability to program and gave him discrete tasks. Respondent was unable to complete these tasks, was confrontational, and believed that there was a conspiracy to ruin his career. For example, respondent was given a discrete task to write a program to temporarily store files to be transferred. When the program did not work, respondent accused his supervisors of lying and blamed the person who installed the software for

installing it incorrectly (Tr. 82-87). Mr. Greenan also testified that in addition to his supervisors, respondent had conflicts with at least five other co-workers (Tr. 106).

Mr. Brenner also testified that respondent had problems with his two supervisors, had difficulty fulfilling his job responsibilities, felt frustrated and isolated, and claimed there was a conspiracy to undermine him (Tr. 116-17). Mr. Brenner testified that he has known respondent since 2000, that respondent has always felt comfortable talking to him, and that respondent often came to him about frustrations in the workplace and issues with his supervisors (Tr. 109-11). Mr. Brenner tried to steer respondent in the right direction (Tr. 119-20) but thought that some of respondent's issues were exaggerated and unfounded (Tr. 129). Respondent agreed that Mr. Brenner always tried to help him (Tr. 183).

In 2012, as a result of the on-going workplace conflict, respondent was transferred to GIS. The Parks witnesses alleged that respondent continued to have problems with other workers, had difficulties performing his work duties, and engaged in strange and erratic behavior (Tr. 43-44, 87, 116-17).

Mr. Carlo and Mr. Brenner testified that when respondent started in GIS he worked on an existing application development project and was able to complete the work (Tr. 45-46, 117). However, when this project was completed in late 2013, respondent began having difficulty with new mapping projects because they involved newer technology that he was unfamiliar with and he was not interested in mapping. Mr. Carlo and Mr. Brenner sent respondent to training classes with other workers in GIS but respondent was unable to understand the material. Respondent wanted to take other courses, but this had to wait until the cycle of courses was completed. As a result, respondent was given easier tasks but was still unable to complete them. Respondent also failed to meet deadlines (Tr. 46-49, 52-55, 117-18, 130) and was recently allowed to set more relaxed deadlines for himself (Tr. 73-75).

Mr. Carlo testified that in addition to providing training, he allowed respondent to try different work options (Tr. 49). For example, at respondent's request, he was allowed in 2014 to switch to an Apple IOS operating system. However, respondent had difficulty signing into his computer and utilizing the program, and would yell and curse at the computer in frustration. The GIS team works in cubicles (Tr. 51) and respondent's yelling would distract and upset other people. Mr. Carlo testified that respondent would also call technical support on the phone and

yell at them (Tr. 55-56, 63, 72). Mr. Carlo testified that respondent's outbursts would occur about once a month and that it sometimes took half an hour to calm respondent down (Tr. 76).

Mr. Greenan also testified that respondent got easily frustrated and was often at his desk arguing with customer service representatives. Respondent would never simply say that he was having a problem but instead would be confrontational and use words such as, "this is broken because you are stupid." Moreover, when things went wrong with assignments, respondent refused to accept responsibility. For example, when respondent had trouble with the Apple application, Mr. Greenan discovered that respondent was not typing the password correctly even though respondent denied that this was the problem (Tr. 89-90, 104-05).

Mr. Carlo also testified about several other incidents. In late 2014, respondent was sent from his office in Manhattan to Queens to reset the tablet computers in the forestry office. When respondent did not appear in Queens, the office called Mr. Carlo who tried to locate respondent. About three hours after leaving, respondent returned to his office and told Mr. Carlo that he had been on the subway to Queens and pulled the emergency brake because he felt threatened by another passenger who was acting strangely. Other passengers got upset with respondent and he ran to look for a conductor and called 911. Respondent stated that he felt safe when he found the conductor, but that he got upset with the 911 operator who was rude and not helping him. Eventually the police arrived, spoke with him, and permitted him to return to work. When he got back to work, respondent wanted to file a complaint about the 911 operator. Mr. Carlo testified that respondent did not complete the assignment in Queens and several days later another worker completed the task (Tr. 61-63).

Mr. Carlo described another incident in early 2015 when he went to a nearby Starbucks during the work day and respondent asked to join him. Respondent immediately decided that he did not want to go to the nearby Starbucks saying that he did not like that one. Mr. Carlo said that is where he was going. When they got to the cash register, the cashier told respondent that he had previously said he would not come there anymore. Respondent started screaming that everyone should leave and that Dunkin Donuts is better than Starbucks which "stinks." When they returned to the office, respondent wanted to file a complaint. Respondent told Mr. Carlo that he had previously made a complaint about the cashier to Starbuck's regional office and

made recommendations on how Starbucks could speed up its operations. Mr. Carlo thought respondent's behavior was strange (Tr. 59-60).

Mr. Brenner testified that he received complaints from other workers that respondent's actions made them uncomfortable. One woman filed a harassment complaint against respondent. Furthermore, respondent's prior supervisor, Joy, stated that she never wanted to speak with him again and would seek a transfer if he remained in the office (Tr. 121-22, 125).

Mr. Brenner testified that in April or May of 2015, respondent stated that he no longer trusted Mr. Carlo, he saw no future in his job, and was thinking about a transfer. Two weeks later respondent said that he had changed his mind but, in June or July he again said that he wanted a transfer. Mr. Brenner made some calls for respondent and eventually spoke with Ms. Barthold who agreed to interview respondent (Tr. 113-14, 117-19). Ms. Barthold testified that she agreed to consider respondent because she needed someone with computer skills and Mr. Brenner spoke highly about him (Tr. 131-33, 136, 139).

Ms. Barthold testified that she works with another woman in a historic building that is a bit isolated. She interviewed respondent after Labor Day 2015 when it was hot and there was no air conditioning in the building. Respondent was extremely nervous, was sweating profusely, and fidgeted a lot. When she spoke to respondent about Excel, the main program that she used, respondent stated that he had no knowledge of Excel but that he was willing to learn. Ms. Barthold testified that she had reservations about respondent because: he did not seem to be a person who could work independently and would need a lot of supervision; she was unsure he would fit into the work situation and be able to perform the work that she needed; and she was concerned about being alone with respondent and leaving her assistant alone with him in an isolated work location (Tr. 133-40).

Mr. Carlo testified that respondent thought he was going to get the job with Ms. Barthold. When he was not hired, respondent was upset. Mr. Carlo said that respondent could go for the new classes that they had previously identified before the job interview. Respondent said that he was not going to take any new classes and that things had to change. Respondent claimed that his two prior supervisors had ruined his career, that he should be in the Application Development unit, and that he wanted to get them back for what they did to him. Mr. Carlo sent respondent to speak to Mr. Greenan and that this was the end of the "episode" (Tr. 57-58).

On September 30, 2015 (Tr. 173), respondent went to Mr. Greenan's office to complain that there was a conspiracy to ruin him and that his two previous supervisors were responsible. Mr. Greenan testified that respondent stated that he could not understand why Mr. Greenan supported people who were liars and wanted them reported to Mr. Greenan's supervisor, the assistant commissioner. Respondent said that Mr. Greenan was "standing in his way and that's not where [he] wanted to be" (Tr. 86-87). This statement made Mr. Greenan feel "uncomfortable" (Tr. 86). Mr. Greenan also testified that respondent stated things to the effect that he wanted to have people fired, thrown in jail, and wanted to hurt them back (Tr. 100-01).

Mr. Greenan stated that the conversation with respondent lasted about 90 minutes with respondent repeating that Joy was against him and that he was not going to take it any more (Tr. 88). About 30 minutes into the conversation, Mr. Greenan was called out of the office. Because he found the conversation so uncomfortable, he downloaded an application on his phone and recorded the remainder of the conversation with respondent (Tr. 103).

Mr. Greenan testified that two days later he had another conversation with respondent that he also recorded. Respondent told him a story about what he does when people lie to him. Specifically, respondent recounted that when he was younger he broke a man's knee because the man lied or disparaged his reputation (Tr. 88).

Mr. Greenan reported respondent to Parks' disciplinary unit because he was concerned about Joy's safety (Tr. 108). On October 2, 2015, Parks placed respondent on a paid involuntary medical leave and scheduled him for a psychiatric examination with Dr. Eshkenazi to determine whether he was fit for duty (ALJ Ex. 2).

Dr. Eshkenazi, a psychiatrist since 1971, has performed thousands of psychiatric evaluations of New York City employees over the past 42 years to determine whether they are fit for their employment (Tr. 9-10). Respondent was qualified as an expert in his field (Tr. 35).

On October 7, 2015, Dr. Eshkenazi evaluated respondent and reviewed his job description and the attachment "A" provided which gave a brief description of his erratic behavior including that his work has been unsatisfactory, that he believes there is a conspiracy against him, and that other workers feel unsafe in his presence (Tr. 12, 18-19; Pet. Ex. 1). Dr. Eshkenazi obtained a medical history from respondent that indicated, among other things: his prior suicidal thoughts for which he was hospitalized for five days, and that he is currently seeing

a psychiatrist. He is also taking various medications, including one for depression and one for sleeping (Tr. 21-23, 30; Pet. Ex. 1).

Dr. Eshkenazi testified that respondent told him that Parks staff is “colluding” against him and that people are trying to hurt him. Respondent stated that he is detached from people and likes to stay by himself. Respondent admitted that he gets very frustrated and curses at his computer which makes other people uncomfortable. Respondent admitted that he told Dr. Eshkenazi that people at work were “colluding” against him (Tr. 185).

Dr. Eshkenazi came to the conclusion that respondent has a delusional disorder and that he is not taking any anti-psychotic medication for this condition (Tr. 12-13, 31-34, 36, 39-40). Dr. Eshkenazi testified that delusions place a patient in a fixed false belief that does not respond to logic. Such a patient is unable to realize that he is delusional because the situation seems real. Without medication this condition cannot improve (Tr. 13-14).

Dr. Eshkenazi based his diagnosis of a delusional disorder on the attachment A, but also reached the same conclusion independently based on his conversation with respondent and his statements that he believed co-workers were against him (Tr. 24-27). Dr. Eshkenazi testified that during the evaluation, respondent was responsive and forthright but that he was circumstantial, talking in circles and never arriving at a point. According to Dr. Eshkenazi, this is of concern because it reflects the thinking process. Moreover, respondent’s judgment and insight into his condition was “fair, at best” because he is unable to realize that he has a delusional disorder (Tr. 12, 17-18, 34-35).

In addition to having a delusional disorder, Dr. Eshkenazi found that respondent has “generalized anxiety – severe” as evidenced by the fact that respondent was very anxious, apprehensive, and easily frustrated. Dr. Eshkenazi testified that such anxiety can be overwhelming and make a person too petrified to function. Finally, respondent has depression for which he is taking medication (Tr. 16, 27-29; Pet. Ex. 1).

Dr. Eshkenazi concluded with a reasonable degree of medical certainty that, as a result of his untreated delusional disorder, respondent is unable to continue and perform the duties of his computer associate job. Dr. Eshkenazi stated that with the proper treatment respondent could get better and return to work but that until that time, he is unfit for his job duties (Tr. 13; Pet. Ex. 1).

Respondent did not submit any medical evidence in support of his claim of fitness but instead relied solely on his own testimony. Respondent testified that he is 62 years old and implied that his problems with his work and his professional relationships are because he is older than many of the employees, who have had more recent technology training and relate better to young people (Tr. 64-65, 91-92, 141-44, 184-85). Respondent also asserted that he was not offered the right IT courses and that Mr. Carlo prevented him from taking the basic courses needed to build his skills as a programmer (Tr. 143-48). Respondent claimed that he has been “floating in the abyss” without adequate management (Tr. 162, 187-88). Moreover, there was never any indication in his prior evaluations that his work was unsatisfactory (Tr. 162-63, 189).

Respondent acknowledged that he sometimes curses at his computer, adding that he has arthritis and works in a small space. When he gets uncomfortable, he gets impatient and curses (Tr. 156-57). He testified that he has never asked for a bigger cubicle because he did not want special treatment (Tr. 172-73).

Respondent testified that Mr. Carlo’s testimony about the Starbucks incident was “not nearly as severe and he wasn’t present” (Tr. 158). According to respondent, he told Mr. Carlo about an encounter with a barista who would not bag his coffee. Respondent testified that he has carpal tunnel syndrome and that when he picks up a cup he cannot put the right pressure on it and it pops open. This is what happened at Starbucks and the coffee spilled on him and the person next to him. He was very annoyed and, without yelling, told the barista this is “your job” and “to please bag it again.” They gave him a new cup of coffee and placed it in a bag (Tr. 158).

Respondent also testified that Mr. Carlo’s testimony about the subway incident was in no “way even close to the way it happened when” he told him (Tr. 158). According to respondent, he was on the train to Queens when a young man started yelling. Respondent believed that the young man was “delusional” and felt badly for him. The young man made a move towards a person and two other men brought him down to the ground. These men understood that there was something wrong with the young man and they were gently holding him. Respondent figured that if these men could no longer hold him, there could be violence or the young man could get away at the next station and cause a car accident. Respondent therefore pulled the emergency brake. Respondent told everyone to move to the front car, and he followed. Respondent and a number of other people called 911. The police came and wanted to know who

pulled the emergency brake and respondent identified himself. The police understood that the young man was mentally ill and needed to go to Bellevue. They took no action against respondent (Tr. 159-61).

Respondent testified that he told this story to Mr. Carlo and also claimed that he had done something good because the young man could have been hurt if he had gotten away. Respondent stated he was confident that he made the right call and that if anything like this happened again he would be ready to deal with it (Tr. 161).

Respondent also testified as to the story he told Mr. Greenan regarding breaking someone's leg. Respondent stated that, when he was 14 years old, he received a birthday card from his father. Respondent did not know his father was alive but thought he had been dead for 10 years. Respondent was very confused and upset by the card. There was a "severe" bully in school and this "was not a day for a bully" to push him around. Respondent got into "a scuffle" with the bully and he threw himself onto the bully's leg in a way that broke it, which was not his intention. Respondent told Mr. Greenan this story after Mr. Greenan shared a deeply personal story about having a panic attack after he drove into a pothole. Respondent denied threatening Mr. Greenan and stated that he shared this story to reciprocate Mr. Greenan's trust (Tr. 164-67).

Respondent denied being transferred to GIS because he was having issues with his supervisors and claimed that he was just on loan to Mr. Carlo for a special project. At the same time, respondent admitted having problems with his supervisors but denied ever feeling that they were out to get him. Respondent explained that co-workers were engaged in "conflicts of interest" and that they were trying to help someone get a job that respondent should have gotten (Tr. 167-70).

Respondent admitted that during the September 30, 2015, conversation with Mr. Greenan he stated something to the effect that this "could have a negative impact on" him (Tr. 173). Respondent testified that when he did not get the job with Ms. Barthold he went to speak to Mr. Greenan because he was "very annoyed" and "could not trust managers because things just didn't make sense." Respondent testified that he spoke to Mr. Greenan about his supervisors "hiding the truth" about his competency, that there was a false and frivolous complaint made five years ago that has been following him since, that he was a good programmer, and that he wanted to tell Mr. Greenan's supervisor about what was going on (Tr. 173- 83).

ANALYSIS

In order to place an employee on an involuntary medical leave pursuant to CSL section 72, petitioner must prove by a preponderance of the evidence that: (i) respondent suffers from a disability, (ii) he is unable to competently perform his job duties, and (iii) his inability to perform is caused by a disability. *See Admin. for Children's Services v. Papa*, OATH Index No. 1392/07 at 10 (Mar. 30, 2007); *Dep't of Parks & Recreation v. Matthews*, OATH Index No. 219/00 at 2-3 (Nov. 22, 1999).

The focus of the section 72 proceeding is on the employee's current fitness and ability to perform his job duties, not on his past condition or work performance. *Admin. for Children's Services v. J.M.*, OATH Index No. 3350/09 at 4 (Apr. 5, 2010). Past performance is relevant only to the extent that it is probative of respondent's present condition and future conduct. *Housing Auth. v. Dave*, OATH Index No. 138/95 at 4 (Aug. 12, 1994), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 95-72-4 (Oct. 11, 1995).

Petitioner alleged that respondent's erratic behavior, his declining cognitive abilities, and difficulties working with other people make him unfit for duty and efforts to train him and move him to other work locations have all failed (Tr. 5-6, 192-94). Respondent acknowledged that he has conflicts with co-workers but asserted that he is trying to improve his skills, is capable of performing his job, and is going regularly to therapy (Tr. 7-8, 190-91).

Here, the un rebutted medical opinion of Dr. Eshkenazi as supported by testimony of Parks workers performance demonstrates that respondent is currently unfit for the duties of a computer associate.

In disability proceedings, the opinions of medical specialists can be profoundly informative and can materially aid the fact-finder in reaching a proper conclusion. The fact-finder is not bound to accept the conclusions or opinions of any given medical expert, but must weigh the medical evidence and draw on reasonable inferences. *Peabody Coal Co. v. Benefits Review Bd.*, 560 F.2d 797, 802 (7th Cir. 1977); *Human Resources Admin. v. Romney*, OATH Index No. 319/82 at 38 (Dec. 20, 1982) (opinion evidence offered by medical experts is to be evaluated in conjunction with other evidence in the record).

Dr. Eshkenazi gave unrebutted, credible testimony that respondent suffers from a disability. Specifically, respondent has a psychiatric condition that includes delusional disorder, severe generalized anxiety, and depression disorder.

The fact that an employee may have a psychiatric disorder does not prove that he is unable to do the job. *See, e.g., Comm'n on Human Rights v. Henderson*, OATH Index No. 704/01 (June 12, 2001). Petitioner must show that respondent is unable to perform his job duties at “a minimally acceptable level” and that the disability “presently and for the reasonably foreseeable future” prevents him from doing so. *Human Resources Admin. v. Farber*, OATH Index No. 944/02 at 24, 27 (Sept. 19, 2002) (numerous unscheduled and unpredictable absences and late arrivals caused by respondent’s migraine headaches made her unfit to perform the duties of her attorney position). Moreover, petitioner must show a causal connection between respondent’s mental illness and his unfitness. A causal connection is generally found when acts of misconduct are “attributable to” or are the “direct results of” the disability. *Dep’t of Finance v. Serra*, OATH Index No. 583/01 at 8 (Nov. 14, 2000) *citing Dep’t of Housing Preservation and Development v. Natal*, OATH Index No. 1185/90 at 11 (Mar. 22, 1991).

“An essential part of fitness to work in any job assignment is an ability to work with and be supervised by others, without being disruptive or abusive.” *Housing Auth. v. Jones*, OATH Index No. 195/94 at 28 (Jan. 7, 1994), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 94-72-2 (Sept. 29, 1994). An employee has a duty not to interfere with the ability of co-workers to perform their tasks. *Health and Hospitals Corp. (Bellevue Hospital Ctr.) v. Samuel*, OATH Index No. 243/07 at 5 (Dec. 20, 2006); *Human Resources Admin. v. Anon.*, OATH Index No. 1781/12 at 30 (Aug. 9, 2012) (employee unfit based on evidence of his ongoing disruptive and frightening behavior); *Housing Auth. v. Caballero*, OATH Index No. 699/96 at 19 (Mar. 13, 1996) (employee unfit because her disability caused her “to have frequent violent or disruptive outbursts at work, or substantially interferes with [her] ability to interact appropriately with co-workers or supervisors.”).

There was credible evidence that respondent is disruptive and belligerent. It was undisputed that when respondent has problems performing his job duties as a computer associate, he curses at his computer and yells at the technical support staff trying to help him. These outbursts occur about once a month and it can take respondent a half-hour to calm down.

Moreover, respondent got into a heated confrontation with a Starbuck's employee for no apparent reason in front of his supervisor. He also pulled the subway's emergency brake on his way to an assignment because he purportedly thought a delusional passenger would escape and cause an accident. In both instances, respondent returned to work and wanted to file a complaint with Starbucks and the police, respectively. There can be little doubt that these outbursts are disruptive to the work performed in the office and makes other employees feel uneasy in his presence.

There was also credible evidence that respondent's delusional disorder and anxiety affects his ability to function as computer associate, a job that requires logical thinking and the ability to resolve problems. The record demonstrates that after respondent had difficulties keeping up with the changes in technology, his supervisors transferred him to another unit, provided him IT training, allowed him to set his own deadlines, and gave him simple tasks. Despite these accommodations, respondent was still unable to perform his job duties and blamed his supervisors when things went wrong.

Finally, there was credible evidence that respondent's delusional disorder and anxiety make him a risk to others in his office. Dr. Eshkenazi gave unrebutted, credible testimony that respondent's psychiatric condition is manifested in his belief that co-workers are colluding and persecuting him and that his performance deficiencies are attributed to this ill will. Mr. Brenner credibly testified that Joy, the main focus of his delusional disorder, would seek a transfer if respondent were in the workplace. Mr. Greenan credibly testified that he feared for Joy's safety after respondent blamed her for not getting the job with Ms. Barthold. There is no dispute that respondent told Mr. Greenan the story about breaking someone's leg. In addition, Mr. Greenan credibly testified that respondent told him not to stand in his way and that he wants to hurt someone for spreading lies about him. Respondent's explanation that he told Mr. Greenan the broken leg story to reciprocate Mr. Greenan's story about having a panic attack made no sense and seemed consistent with the diagnosis of a delusional disorder. Certainly, respondent's statements and actions negatively impact respondent's co-workers, to the point of putting some in fear of their safety.

Thus, petitioner demonstrated a causal connection between respondent's mental illness and his unfitness.

We have also noted that a “finding of unfitness is supported where an employee denies the existence of a disability, or refuses to treat it, thereby creating a greater risk of future recurrence of the disability.” *Papa*, OATH 1392/07 at 11 (citing *Caballero*, OATH 699/96 at 23); *Admin. for Children’s Services v. E.D.*, OATH Index No. 202/03 (Oct. 18, 2002), *aff’d in part*, Comm’r Dec. (Dec. 4, 2002) (respondent’s lack of insight into her illness, refusal to acknowledge the need for treatment, refusal to take medication, and belief that she had no psychiatric problem weighed in favor of finding respondent unfit); *Admin. for Children’s Services v. M.R.*, OATH Index No. 790/00 (Feb. 25, 2000) (respondent found unfit given lack of insight into condition and refusal to take medication).

The record supports a finding that respondent is unable to realize that he suffers from a delusional disorder and it is undisputed that he is not on any medication for this disability. Dr. Eshkenazi gave credible, un rebutted testimony that without medication this condition cannot improve.

Accordingly, petitioner has proved by a preponderance of the evidence that respondent is currently unfit to perform the duties of his position due to a mental disability. Upon future proof of fitness, respondent may seek reinstatement pursuant to CSL section 72(2).

FINDING AND CONCLUSION

Petitioner demonstrated that respondent is currently unfit for the duties of his job pursuant to CSL section 72.

RECOMMENDATION

Based upon the foregoing, respondent should be placed on involuntary leave pursuant to CSL section 72.

Alessandra F. Zoragniotti
Administrative Law Judge

April 12, 2016

SUBMITTED TO:

MITCHELL J. SILVER, FAICP
Commissioner

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