

Admin. for Children's Services v. S. B.

OATH Index No. 2425/10 (July 23, 2010)

Proof found sufficient to establish that child welfare specialist was mentally unfit to perform the duties of her position. ALJ recommends that employee be placed on involuntary leave.

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

In the Matter of
ADMINISTRATION FOR CHILDREN'S SERVICES
Petitioner
-against-
S. B.
Respondent

AMENDED REPORT AND RECOMMENDATION

INGRID ADDISON, *Administrative Law Judge*

This proceeding was referred by petitioner, the Administration for Children's Services ("ACS"), pursuant to section 72 of the Civil Service Law. Petitioner alleges that respondent, S.B., a child welfare specialist II, is mentally unfit to perform her job duties and should be placed on an involuntary leave of absence.

A hearing was conducted before me on June 11, 2010. In support of the charges petitioner presented documentary evidence and the testimony of five witnesses, including a psychiatrist who found her unfit. Respondent presented documentary evidence, testified on her own behalf, and presented her own psychiatrist who contradicted petitioner's psychiatrist's finding of unfitness.

For the reasons provided below, I find that respondent is presently unfit for work, and recommend that she be placed on involuntary leave of absence pursuant to section 72 of the Civil Service Law. Because her psychiatric examinations are discussed, I find that withholding respondent's name is appropriate. *See Housing Auth. v. Anonymous*, OATH Index No. 1055/10 at 1 (Mar. 24, 2010) (employee's name withheld where decision discusses personal issues contained in medical records).

ANALYSIS

Respondent, who is 46 years old, has worked for The City of New York since 1990 and for ACS in particular, since 1994. As a child welfare specialist II in petitioner's adoption subsidy review unit, respondent determines eligibility for Federal and State adoption assistance, for Medicaid reimbursement, and other Federal programs. She also monitors various aspects of the adoption process; prepares legal papers, testifies at formal proceedings, and demonstrates and explains procedures to others (Tr. 106-09; ALJ Ex. 1, Ex. 1). During her tenure at ACS, her roles have alternated between that of a caseworker and a paralegal. She is also required to interact with attorneys and the Family and Supreme courts (Tr. 107-8). Respondent was born with hearing loss which is now characterized as "severe" and requires hearing aids to function (Tr. 123, 125). For the last six months, only one of her hearing aids has functioned (Tr. 134).

In 2005, petitioner sought to place respondent on involuntary leave under section 72 by filing a formal petition alleging that respondent demonstrated "bizarre, inappropriate, hostile, and at times, violent" behavior in the workplace (ALJ Ex. 1, Ex. 3). Dr. Azariah Eshkenazi, a specialist retained by the City of New York to evaluate employees for mental fitness, examined respondent and found her prone to elaboration, but otherwise clear-headed, with good judgment and insight, and normal moods (Tr. 12). He opined that respondent did not "suffer from any psychiatric condition that might interfere with her ability to perform her duties" (ALJ Ex. 1, Attachment A at Ex. 3).

Petitioner alleges that since then, respondent has demonstrated disruptive behavior in the workplace on multiple occasions. This prompted petitioner to order another psychiatric examination of respondent (ALJ Ex. 1, Attachment A). On March 23, 2010, Dr. Eshkenazi examined respondent (Pet. Ex. 1; Tr. 15). Based on the results of that examination, petitioner now seeks to have respondent placed on involuntary leave of absence due to a disability. Some of the incidents described on petitioner's current Attachment A were supported by the testimony of the co-workers involved.

Shirley Sealy, Director for Administrative Case Services in the Division of Family Permanency Services, has worked at ACS for approximately six years. She has never worked with nor supervised respondent (Tr. 77). On May 16th, 2008, at around 4:30 p.m., she left her office and headed towards the "web clock" to clock out. To get to the web clock which is located near the exit to the floor, Ms. Sealy had to traverse a walkway which was wide enough

for two people to pass alongside each other without physically touching. As she approached the web clock, respondent, who was coming from the opposite direction, bumped her shoulder into Ms. Sealy's with such force, that she was knocked a little off balance. Respondent then kept on walking. Ms. Sealy reported the incident to respondent's director, who asked her to prepare a written report (Tr. 73-75). Approximately one year later, on May 19, 2009, Ms. Sealy was headed towards the bathroom as respondent approached from the opposite direction. The hallway was large enough to accommodate four persons. Ms. Sealy testified that "all of a sudden [respondent] started closing in on me." As she stood shoulder-to-shoulder with Ms. Sealy, respondent turned to her and angrily told her to have some respect (Tr. 76-77). Ms. Sealy returned to her office and contacted the Equal Employment Opportunity unit because she "felt threatened" and felt that respondent was "creating a hostile environment."

When asked about the 2008 incident with Ms. Sealy, respondent described Ms. Sealy as a "very complex person" and launched into a circuitous recount of the circumstances under which she first met Ms. Sealy, whom she mistook for the director of her department, and what transpired on that occasion. Eventually, she directed her testimony to the incident and accused Ms. Sealy of walking diagonally into her path and touching her with the elbow (Tr. 119-20). Respondent further accused Ms. Sealy of walking into her many times ". . . as though I am invisible." She suggested that Ms. Sealy's position as a director possibly led her to believe that she could walk into respondent, but that "we all have to exercise spatial awareness when we walk by each other" (Tr. 120). Regarding the May 19, 2009 incident, respondent claimed that Ms. Sealy was the one who bumped into her and not vice versa. At that time, she told Ms. Sealy that there should be mutual respect, but Ms. Sealy began "screaming and carrying on" (Tr. 121).

Jaron Ben-Shalom, Director of Adoption Services at ACS since 2007, investigated Ms. Sealy's report of the May 2008 incident, and spoke with respondent in the presence of her immediate supervisor (Tr. 80-81, 83). He asked respondent whether she needed assistance through the Employee Assistance Program but she declined (Tr. 85-86). Respondent expressed that her co-workers were unprofessional and the particular individual who had reported her did not respect diversity (Tr. 85).

Melanie Payne, a research analyst in the Systems Support Unit, has worked with ACS for just over one year. On December 15, 2009, Ms. Payne had an encounter with respondent in the fourth floor bathroom. According to her, the bathroom has a mirrored foyer area past which is

an inner area with sinks and toilet stalls. A doorway separates the foyer from the toilet area. On that day, as Ms. Payne went through to the toilet area, respondent, who was in the bathroom, accused Ms. Payne of looking at her “below the waist.” Respondent was acting “agitated and angry” and Ms. Payne felt uncomfortable at the accusation. She left the bathroom and reported the incident to her supervisor (Tr. 60-63). She testified, however, that she did not feel the need to call security (Tr. 64). Respondent’s account was largely consistent with Ms. Payne’s, but she insisted that when Ms. Payne entered the bathroom, she looked at respondent below the waist. Respondent told Ms. Payne to stop, but Ms. Payne did not respond, and respondent left the bathroom (Tr. 116-17).

Respondent was also involved in an incident in the fourth floor bathroom with Maria Sola, Deputy Director of Operations in the Systems Support Unit. Ms. Sola testified that on February 24, 2010, as she headed towards the foyer area from the inner bathroom area, respondent, who was entering, yelled and screamed at her several times to get out of the way. Ms. Sola found respondent to be “very aggressive and very intimidating” (Tr. 67). She stepped aside to permit respondent to pass, but respondent screamed that Ms. Sola did not move fast enough because she was a racist. Shocked by respondent’s outburst, Ms. Sola, who is a Latina, left the bathroom and reported the matter to her director and was instructed to e-mail the employment unit. She testified that she did not call security and conceded that she saw no need to do so. Ms. Sola added that she never worked with respondent, and was unaware of respondent’s hearing loss (Tr. 68-69). Respondent disputed Ms. Sola’s version of events. She claimed that on the day in question, she entered the bathroom foyer and was adjusting her hair in front of the mirror when Ms. Sola came towards her and asked her to move. A “blonde lady” pulled Ms. Sola away, but when respondent went to the sink, Ms. Sola looked at her hair, and said, “you have a problem.” She characterized that remark as racist and accused Ms. Sola of racism (Tr. 117-18).

In March 2010, respondent was involved in another incident, this time with her immediate supervisor. Mr. Ben-Shalom testified that the supervisor reported that she was meeting with another worker in her office when respondent interrupted the meeting to accuse the co-worker of releasing her telephone number, and began yelling at both of them (Tr. 86-87). Respondent’s area manager wanted to know what had happened but respondent became “somewhat threatening in her gestures” and leaned over her desk “accusatory, yelling at her in

the process” (Tr. 87). On March 12, Mr. Ben-Shalom was copied on a two-page long e-mail from respondent to the assistant commissioner, in which she attempted to clarify what had actually occurred in her supervisor’s office (Tr. 88). In her first two paragraphs, respondent digressed, and wrote about issues other than the subject incident. When she eventually addressed the incident, she wrote that she interrupted the meeting because she had received a telephone call for a worker who bore the same last name as another co-worker, and “this same name was speculative and therefore, I needed to verify his identity” (ALJ Ex. 1 at Ex. 2). She found it obvious that there had been “a misinterpretation of [her] behavioral demeanor” and suggested that her supervisor and co-worker whom she had interrupted had “misconstrue[d] the situation to the point of frivolity” *Id.* She also speculated that other named staff members “were expressing their vicarious anger/displacement of anger” for their failure to locate a file or acknowledge receiving it. *Id.* Respondent then discussed the gender imbalance in the department and what she perceived as sexual harassment. She claimed that she feels like “the actress in ‘North Country’ mining industry or like Jodie Foster in ‘Accused’ (sic) who is being vilified while the unjust individuals carry out their miscarriage of justice.” *Id.* Mr. Ben-Shalom found the e-mail to be “bizarre” and the circumstances described to be “unbelievable” (Tr. 89).

Soon after, Mr. Ben-Shalom had a previously-scheduled meeting with respondent on unrelated matters. During the meeting, respondent raised the issues of unequal treatment and sexual harassment by other coworkers. Mr. Ben-Shalom assured her that such behavior would not be tolerated. He testified that she began to raise personal issues, which he discouraged because that meeting was not the proper forum. He invited her to broach the subject on another occasion (Tr. 90-91).

Mr. Ben-Shalom did not dispute that respondent is a very good worker, but explained that performance evaluations might not necessarily reflect her interaction with co-workers unless the supervisor thought to include it (Tr. 94). He testified that recently, he received complaints from her direct supervisor and area manager that there have been some delays in respondent’s processing of cases. He also received a complaint from the Vice President of Mercy First, a child welfare agency, that respondent was rigid and dogmatic in her handling of cases: “When they try to point out that certain things meet particular criteria, she refuses to acknowledge that or accept it.” Mr. Ben-Shalom inquired if the problems in communication were related to

respondent's hearing loss, and Mercy First told him that they were aware of her disability, but the problem was related to respondent's mental rigidity, not her comprehension as such (Tr. 95).

Although Mr. Ben-Shalom has not personally had problems with respondent, he believes that she can be emotionally "labile"¹ in terms of how she responds to certain people and circumstances (Tr. 96). He feels that something "can happen at any given moment for no particular reason anyone's aware of" (Tr. 96). With respect to her hearing loss, he stated that staff members are conscious of it and respondent brings it to their attention when she is having problems hearing. They are understanding and repeat themselves when they are aware that she is having difficulty hearing. The office has also accommodated her by providing a specially-equipped telephone. Mr. Ben-Shalom testified that on one occasion, when telephones were being replaced, he interceded to prevent the removal of respondent's specially-equipped telephone (Tr. 101-3).

I was more convinced by the clear and consistent testimony of the complaining witnesses than I was respondent, who appeared distant and aloof, and in each instance, sought to blame the other party. Notably, none of the complaining witnesses works directly with respondent. Nor have they all worked at ACS for the same length of time. In fact, Ms. Payne was fairly new to the agency. Further, they do not all work in the same unit, and are not at the same title levels. Thus, I could see no reason why they would collude against respondent. The same holds true for Mr. Ben-Shalom, who, personally, had no problems with respondent and appeared to be very accommodating towards her.

Azariah Eshkenazi, M.D., a forensic psychiatrist in private practice and diplomate of the American Board of Psychiatry and Neurology, has been under contract with the City of New York since 1980 to conduct evaluations of city employees to determine their fitness for work (Tr. 11-12). At the hearing, the parties stipulated to Dr. Eshkenazi's qualification as an expert witness in the field of forensic psychiatry. Dr. Eshkenazi, testified that prior to his examination of respondent on March 23, 2010, he reviewed his entire file on her from the 2005 referral. He also reviewed the Attachment A to petitioner's current petition, which delineated in descending chronological order, a series of at least eight incidents involving respondent and various staff members. He forwarded his findings to petitioner in a report dated March 24, 2010 (Tr. 12-13; Pet. Ex.1). Consistent with his report, Dr. Eshkenazi testified that he found respondent to be

¹ Unsteady, easily disarranged. Taber's Cyclopedic Medical Dictionary § L (13th Ed. 1977).

“circumstantial” in her thought process, in that she “goes around in a circle until she finally comes to the point” (Tr. 16). His report noted that respondent displayed some anxiety during the visit. Dr. Eshkenazi found her to be very paranoid and suspicious of others and diagnosed her with “multiple paranoid ideation” which he found to be secondary to her hearing difficulties (Pet. Ex. 1 at 3). He testified that respondent cannot interact with others because of her suspiciousness, which causes altercations with her co-workers (Tr. 16-17). He expressed that paranoid suspicions affect “numerous” people with hearing loss, but the symptoms usually abate if the hearing loss is addressed. Thus, he expressed optimism about respondent’s future prognosis “if her hearing improves or is being treated . . .” (Tr. 23-24).

Dr. Eshkenazi conceded that respondent has received performance evaluations that reflect “very good” to “outstanding” work up until March 2009, the ending date of the last period that was reviewed (Tr. 23; Pet. Ex. 2). However, this did not impact his diagnosis because he felt that while she might be adept at the paperwork aspect of her job, it was still necessary for her to interact with others, and her performance was affected in that regard (Tr. 23). He recognized that some areas in which respondent scored highly involved tasks that required her to interact with others, such as attending fair hearings, and conducting telephone conferences (Tr. 17, 24).

Dr. Eshkenazi did not recall all the incidents commemorated in petitioner’s previous Attachment A, when it referred respondent to him for an evaluation, but he categorically denied that they reflected the same types of behavioral issues (as reflected on the current Attachment A) between respondent and co-workers (Tr. 29-33). He acknowledged reviewing respondent’s memos written at that time in response to the complaints against her, and agreed that at least one, written in November 2005, was “rambling” and “bizarre” and was “fairly circumstantial” (Tr. 28, 31). But he explained that his diagnosis was based not only on his review of the associated paperwork on respondent, but also his personal assessment of her (Tr. 40-44).

In the final analysis, Dr. Eshkenazi concluded that “respondent is not mentally fit to perform the duties of her position” (Pet. Ex. 1). He maintained that if she took steps to improve her hearing, “she would have to be re-evaluated to see if the improvement in the hearing has improved her psychiatric condition” (Tr. 17, 24, 35).

Respondent testified that she was born with congenital sensory nerve deafness as a result of her mother’s infection with rubella during her pregnancy with respondent. She has worn hearing aids since she was two and a half years old. Her deafness is now classified as severe and

she requires specialized hearing aids. She testified that sounds must be at a level of 90 decibels in order for her to hear. At the hearing, she wore only one hearing aid, in the right ear. She explained that the devices cost two thousand dollars each, and she is required to purchase new ones every five years, but because she had been suspended twice during the past five years, she could not afford them for both ears. Hence, she has been without two functioning hearing aids for approximately six months. When asked whether her hearing loss or impairment affected her job performance in any way, respondent identified only that she had to speak louder because her right-ear hearing aid was not fully functioning (Tr. 123-27, 134).

Respondent's expert witness, Alexander Bardey, M.D. is also a forensic psychiatrist in private practice and diplomate of the American Board of Psychiatry and Neurology, and has taught at New York Medical College, and New York University Medical Center. Dr. Bardey conducted his own evaluation of respondent on April 21, 2010 (Tr. 48). He examined the documents contained in Attachment A which included synopses of the complaints against respondent, and Dr. Eshkenazi's reports of his evaluations of respondent in 2005 and 2010. He also conducted an in-person interview with respondent; and administered the Milan Clinical Multiaxial Inventory 3 psycho-diagnostic test (Tr. 52-53). He prepared a detailed report of his forensic-psychiatric evaluation of respondent on May 18, 2010 (Resp. Ex. A). With respect to her mental state at the time of the examination, Dr. Bardey reported that:

There were no disturbances in her mood, affect, or thought processes. There was no evidence that she was psychotic, manic, depressed, or demented in any way. The only finding of note on her mental state was a tendency to externalize all blame for her problems and that her appreciation of her surroundings was tinged with suspiciousness. She tends to ascribe nefarious intent to negative interactions she has with others, without giving them the benefit of doubt.

(Resp. Ex. A at 6).

Based on the psycho-diagnostic test, Dr. Bardey found that respondent manifested "long-standing personality issues that included narcissistic personality disorder, an obsessive-compulsive personality disorder with histrionic personality traits and schizoid personality features." *Id.* His report further indicated that respondent's personality disorder spanned her entire life (Resp. Ex. A at 8). He testified that her personality problems color the way that she interacts with the world around her, but he did not find her to be suffering from any psychiatric

disorders (Tr. 54-55). He reported that respondent has “exaggerated fears about office-based discrimination related to issues of race, sex or disability” and that “her hearing loss and ongoing disability may be fueling her behavior and complaints” (Resp. Ex. A at 7). However, Dr. Bardey concluded that her personality problems affected her ability to interact with her coworkers, not her ability to carry out her job. He explained that she is able to compartmentalize her personality problems in a way that permits her to do her job (Tr. 56). After reviewing the background materials on respondent, Dr. Bardey did not perceive an escalation in the intensity of respondent’s behavior. Rather, he found that the more recent complaints mimicked those contained in Attachment A of the 2005 petition. He opined with a reasonable degree of medical certainty that respondent is fit to work at her job (Tr. 56), thereby challenging Dr. Eshkenazi’s opinion that respondent is not fit for work (Tr. 17, 24).

In order to place an employee on an involuntary leave pursuant to section 72 of the Civil Service Law, petitioner must prove by preponderance of the evidence (i) that respondent suffers from a disability, (ii) that she is unable to competently perform her job duties, and (iii) that her inability to perform is caused by her disability. *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 1 (Nov. 22, 1999). “The focus in a section 72 proceeding is whether the employee is *currently* able to work.” *Admin. for Children’s Services v. Cleveland*, OATH Index No. 1116/08, at 2 (Feb. 20, 2008) (emphasis in original); *see also Housing Auth. v. Anonymous*, OATH Index No. 1867/08 at 9 (June 26, 2008); *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).

Even though both experts advanced different diagnoses, I found the evidence sufficient to conclude that respondent suffers from a mental disability. As Judge Richard noted in *Administration for Children’s Services v. J.M.*, OATH Index No. 3350/09 at 5 (Apr. 5, 2010), the fact-finder is not obligated to accept the conclusions or opinions of any given medical expert. Rather, inferences may be drawn after weighing the medical evidence and other evidence in the record. *See also 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 46 (Dec. 20, 1982).

Dr. Eshkenazi diagnosed respondent with multiple paranoid ideation attributable to her hearing loss. Dr. Bardey diagnosed her with multiple long-standing personality disorders with schizoid personality features, but declined to characterize these as a psychiatric disability. Both

noted her suspiciousness of others. While Dr. Bardey perceived no change in respondent's mental state from 2005 to the present, and no escalation in her behavior, I note that he did not have the advantage of an in-person evaluation in 2005, as did Dr. Eshkenazi. Contrary to Dr. Bardey's finding, the records indicate that respondent's behavior had escalated. Petitioner's previous attempt to place respondent on disability was based on seven incidents with individual members of staff and follow-up "rambling" e-mails within a three and a half year period. This time, its petition cited eight incidents with staff within a two-year period. Notwithstanding, Dr. Bardey found it likely that respondent's behavior was fueled by "her hearing loss and ongoing disability" (Resp. Ex. A at 7). Thus, at least minimally, there was some commonality in the diagnoses of both, in that they identified respondent's hearing loss as a contributing factor to her behavior.

Besides the opinions of both experts, the witnesses' testimony provided clear and consistent descriptions of unprovoked altercations initiated by respondent. The documentary evidence suggested an increase in respondent's aggressive behavior, and respondent's demeanor and responses at trial evinced the "circumstantial" thought pattern identified by Dr. Eshkenazi. Accordingly, I find there to be competent evidence that respondent suffers from a mental disability.

Both experts recognized that respondent has problems interacting with others, particularly manifesting in fears and suspicions, but disagreed on whether she is fit to perform her job. Dr. Bardey reported that her personality disorder has been life-long. However, that does not explain how respondent worked at ACS for approximately eight years before her negative interactions with co-workers began to manifest themselves.²

We have held that an employee's fitness to perform his/her job is not limited to "how well [the] employee performs her tasks when she is present at work." *See Admin. for Children's Services v. Papa*, OATH Index No. 1392/07 at 10 (Mar. 30, 2007); *Human Resources Admin. v. Farber*, OATH Index No. 944/02 at 32 (Sept. 19, 2002). An employee might excel at the essential functions of her job, but might be otherwise be unfit if a disability "substantially interferes with [her] ability to interact appropriately with coworkers or supervisors." *Papa*, OATH 1392/07 at 11, citing *Housing Auth. v. Caballero*, OATH Index No. 699/96 at 18 (Mar.

² Respondent began working with ACS in 1994 (Tr. 107), and petitioner's Attachment A from its 2005 application indicates that the earliest complaint against respondent was dated February 8, 2002 (ALJ Ex. 1).

13, 1996). Respondent's evaluations were "very good" to "outstanding." However, their significance is diminished by her frequent, unprovoked altercations with staff. I note that no performance evaluation was submitted for the last reporting period ending March 2010, during which respondent was involved in three altercations with staff. Thus, it is unclear whether an evaluation for that period would have been as stellar. In any event, "the focus of a section 72 proceeding is on the employee's current fitness and ability to perform her job duties, not on her past condition or work performance." *Papa*, OATH 1392/07 at 10, citing *Human Resources Admin v. Bizaliele*, OATH Index No. 305/96 at 12 (Dec. 18, 1995).

Here, there are compelling reasons to find respondent unfit to perform her job duties. "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." See *Housing Auth v. Jones*, OATH Index No. 195/94 at 29 (Jan. 7, 1994), *aff'd*, NYC Civ. Serv. Comm'n Item No. C-94-72-2 (Sept. 29, 1994). Even though the witnesses involved in the incidents with respondent did not work directly with her, they credibly testified to being intimidated by her. Further, her aggression has escalated to the point where even her area manager has found her to be threatening. Her director, Mr. Ben-Shalom, whom I found to be kindly, and tolerant of respondent's shortcomings, expressed that other people in the office "are concerned for their safety at times," (Tr. 96) and that respondent has unpredictable emotions which causes her to unexpectedly erupt for no particular reason. Moreover, the frequency of the office altercations, the complaint from Mercy First, the recent complaints from supervisors about respondent's delayed case processing, and respondent's e-mail in March 2010, which I found to be rambling and indeed circumstantial, suggest that respondent is becoming unraveled.

Finally, petitioner has demonstrated a causal connection between respondent's mental disability and her unfitness. A causal connection exists where respondent's misconduct is attributable to her disability. See *Admin for Children's Services v. Papa*, OATH Index No. 1392/07 at 11; *Dep't of Finance v. Serra*, OATH Index No. 583/01 (Nov. 14, 2000). Dr. Eshkenazi's description of respondent's thought processes as "very expansive" and "circumstantial," in conjunction with his and Dr. Bardey's identification of her suspiciousness of others was supported by respondent's e-mail of March 2010, which evinced a disturbed mind. In it, respondent expressed her paranoia and suspiciousness of others by leveling against the male staff, accusations similar to those made against Ms. Sealy. She claimed that they gave her the

“elevator stare from head to the iniquinal (sic) area;” made “obscene, low down assumption about [her] personal life;” made “attempted body touch such as trying to get into my face;” “wait for [her] after work and attempted shoulder touch;” and discussed her anatomy. In the same e-mail, respondent accused a female worker of standing in front of her bathroom cubicle and staring down “at [her] iniquinal (sic) area . . . She was surprised to see that we do not have the same anatomy. It is also clear of her genetic ignorance.” She further claimed that that female worker “shared her finding with . . . other staff as evidenced by their elevator waist down stair (sic).”

Throughout her testimony and in her e-mail, respondent sought to portray herself as a victim. She accepted no responsibility for the workplace incidents. The only problem that she acknowledged as a result of her hearing loss was her elevated tone when speaking (Tr. 126).

Accordingly, I find that respondent’s suspiciousness and paranoia, along with her rigidity and emotional explosiveness, whether secondary to her hearing loss or the result of a personality disorder, render her presently unfit to perform her job. Petitioner has therefore proven by a preponderance of the evidence that respondent is mentally unfit to perform the duties of her position.

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 child welfare specialist II and should be placed upon disability leave pursuant to Civil Service Law section 72.

RECOMMENDATION

Given my findings, I recommend that respondent be placed on leave pursuant to section 72 of the Civil Service Law. Respondent has the right, pursuant to section 72(2), to apply for reinstatement, though such reinstatement is contingent upon her examination by a medical doctor selected by the Department, and that doctor's certification that she is physically and mentally fit for duty.

That being said, I recognize that respondent is a long-term employee who has produced many years of outstanding work. At the hearing, she impressively articulated her job functions and knowledge of the related laws. Thus, I urge the parties to work together to secure the

assistance that respondent needs for her to resume her duties and function as productively as she has done in the past.

Ingrid Addison
Administrative Law Judge

July 23, 2010

SUBMITTED TO:

JOHN B. MATTINGLY
Commissioner

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