Dep't of Education v. Bermel

OATH Index No. 1332/11 (May 23, 2011), *adopted*, Chancellor's Dec. (June 14, 2011), **appended**

School custodian charged with forging principal's signature on annual maintenance plan. Administrative law judge found proof sufficient to prove that employee forged signature. Termination recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF EDUCATION
Petitioner
- against -
FREDERICK BERMEL
Respondent

REPORT AND RECOMMENDATION

JOHN B. SPOONER, *Administrative Law Judge*

This employee disciplinary proceeding was referred by petitioner, the Department of Education, pursuant to section 75 of the Civil Service Law. The petition alleges that respondent Frederick Bermel, a custodian engineer, failed to obtain the approval of a principal on an annual school plan and forged her signature on the plan.

The hearing was held on April 12 and 13, 2011. Petitioner presented the testimony of the principal, a deputy director of facilities, and an investigator, who indicated that respondent submitted a school plan with a signature which was not that of the principal. Respondent did not testify, but presented the testimony of a union officer to raise a number of mitigating factors.

I find the proof sufficient to sustain both of the charges and recommend that respondent be terminated.

ANALYSIS

Respondent has been a custodian with the Department since 1990. It was undisputed that he, like all custodians, is obliged to participate in preparing an annual operation plan, which is a written summary of the maintenance and cleaning of the school facilities during a given school

year. The operation plan is agreed upon and signed by the principal and custodian and filed with the school administration. The charges here allege that respondent submitted an annual operations plan to his supervisor without reviewing the plan's contents with the principal and forged the principal's signature on the plan.

In June 2010 respondent was assigned as the custodian for Public School 86 in Jamaica, Queens, for the 2010-2011 school year. Deputy Director of Facilities Pasquale testified that, on September 16, 2010, he sent out an e-mail (Pet. Ex. 10) to the 30 custodians under his supervision, including respondent, to submit their annual operating plans by September 30. On October 18, after respondent failed to submit a plan by the deadline, he sent respondent a second e-mail (Pet. Ex. 10) reminding him about the plan and asking him to submit it "on next pay day," which would have been October 28. Some time after this second e-mail was sent, respondent told Mr. Pasquale that he was working on the plan (Tr. 78-80).

Karen Zuvic, principal of Public School 86, testified that, at the beginning of October 2010, respondent spoke with her about the need to complete an annual operation plan for the coming year. Respondent told Ms. Zuvic that he needed to create the annual plan and asked if she had a "template" to use. Ms. Zuvic gave respondent a copy of the annual plan from the previous school year (Pet. Ex. 7), signed by Ms. Zuvic and the former custodian. Ms. Zuvic told respondent that once he produced the plan they could go over it together, sign it, and submit it to the school administrators (Tr. 30-31). Ms. Zuvic recalled having a brief conversation with respondent later in October during which respondent said that he had obtained a plan template from one of his friends. Respondent also returned the copy of the previous plan which Ms. Zuvic had given him earlier, saying he did not need it (Tr. 33).

Mr. Pasquale recalled that, on the evening of October 27, he visited Public School 86 in a routine visit to confirm the custodial employees who were present. He entered respondent's office to find some records. There, on respondent's desk, he saw a copy of an annual operation plan for the school. The plan had not been signed by either respondent or by Ms. Zuvic (Tr. 83-84).

The next day, October 28, respondent handed to Mr. Pasquale an envelope containing a copy of the annual plan (Pet. Ex. 8), with signatures of both respondent and Ms. Zuvic (Tr. 79). Mr. Pasquale was certain this was the same document that he had seen the night before on

respondent's desk (Tr. 85), albeit with signatures now added. Upon reading the plan, Mr. Pasquale found it to be unusually "vague, very generic," and "without a lot of substance" (Tr. 93). He called Ms. Zuvic to discuss the plan with her and to express his surprise that she would have approved such a plan. Ms. Zuvic told Mr. Pasquale that she had never seen or signed, any plan (Tr. 96).

The next day Mr. Pasquale brought Ms. Zuvic a copy of the plan he had been given by respondent. Ms. Zuvic told Mr. Pasquale and testified at the hearing that she had never seen this plan before. In addition, while she recognized respondent's signature, she insisted that the other signature was not hers (Tr. 36-37, 42). As to the substance of the plan, Ms. Zuvic indicated that many of the specific cleaning responsibilities for the custodian were described only "as required." Ms. Zuvic indicated that she would not have agreed to this language and, instead, would have insisted that the cleaning be "daily," as reflected in the plan for the previous school year (Tr. 43-44).

Ms. Zuvic testified that the forging of her signature made her feel "totally violated" and unable to trust respondent with the cleaning and maintenance of her school (Tr. 47). A few days after the plan was submitted to Mr. Pasquale, respondent was removed from his school assignment.

Principal James Ambrose, who testified by telephone, stated that he had worked with respondent at Public School 115 from 2004 to 2010. During that time he and respondent worked together to develop several annual operation plans, starting with templates obtained by Mr. Ambrose. In creating the plans Mr. Ambrose and respondent inspected the school building to determine the level of cleaning needed. Mr. Ambrose never authorized respondent to submit a plan without first consulting him (Tr. 153-55).

Investigator Matthew Martucci interviewed respondent on November 2. During this interview respondent initially recalled signing the annual plan "prior to" October 28 (Tr. 133-34). When he was shown the plan, however, he said that the signature on the document was not his and also that the other signature was not that of Ms. Zuvic. Respondent said he could not recall submitting the plan to Ms. Zuvic. Respondent gave Mr. Martucci a copy of the same plan without any signatures (Tr. 134-36). Because the investigation involved an alleged forgery, the

case was referred to the Queens District Attorney's office for possible criminal prosecution (Tr. 140).

Respondent's attorney indicated that, due to the mention of a referral to the District Attorney and "after consultation with my client," respondent would not testify about the charges (Tr. 198). Instead, respondent called Matthew Wile, the vice-president of the custodian engineers' union. Mr. Wile testified that under the collective bargaining agreement the principal, not the custodian, is responsible for formulating an initial operations plan, although both the principal and custodian must agree upon the plan before it is finalized and submitted to the administration (Tr. 172). According to Mr. Wile, the collective bargaining agreement imparts a principal with the authority to modify the terms of an operation plan at any time (Tr. 169).

Mr. Wile indicated that respondent was 59 years old and expected to retire at 62. He had a heart and pulmonary condition which made it difficult for him to do some physical activity (Tr. 175-76). Mr. Wile described respondent as a "pen and pencil kind of guy" who was not comfortable with computers (Tr. 175), although respondent uses a computer supplied by the Department which provides access to e-mail and certain purchase orders. Mr. Wile did not believe respondent's computer supported word processing (Tr. 174).

In Mr. Wile's view, there would have been no financial advantage for respondent to have forged Ms. Zuvic's signature and submitted the plan without her approval (Tr. 181).

The petition alleges that respondent's actions with regard to the operations plan violated the Department bylaws and the non-pedagogical rules. Both provisions state that a Department employee may be disciplined for "conduct unbecoming" his position and for "conduct prejudicial to the good order efficiency or discipline" of the Department. During the hearing, respondent's attorney challenged the applicability of the 2004 non-pedagogical rules (Pet. Ex. 3) to custodians. According to respondent's attorney, as well as Mr. Wile, custodians are governed by a separate set of rules (Resp. Ex. D) promulgated in 1977 for custodians only. The parties filed post-hearing memos on this issue.

The post-hearing memos suggest that there is some legal basis for concluding that the Department's non-pedagogical rules do not generally apply to custodians, even though the rules would appear on their face to apply to all non-pedagogical staff, including custodians. The most recent collective bargaining agreement with the custodians' union (Resp. Ex. E) provides that

any "complaint" against a custodian is limited to violations of the custodian rules. The most recent version of the non-pedagogical rules states that where a collective bargaining agreement is inconsistent with the non-pedagogical rules, the union agreement must take precedence. *See* Bd of Education, Rules and Regulations for Administrative Employees (Non-Pedagogical) at 3 (Jan. 30, 2004). Since the non-pedagogical rules provide that they may be superseded by the collective bargaining agreement, and since the collective bargaining agreement states that custodians may only be charged with violations under the custodian rules, it seems incongruous to charge a custodian with violations of the non-pedagogical rules.

In this case, however, there is no need to reach a final resolution of this issue for several reasons. First, both parties agree that the issue concerns a collective bargaining matter more properly the subject of a grievance proceeding than a disciplinary proceeding. More importantly, the choice of rules is moot here because the custodian rules, the non-pedagogical rules, and the Department bylaws (which respondent conceded apply to custodians) have similar provisions prohibiting the misconduct charged in this case. All three sets of rules prohibit "conduct unbecoming" by a Department employee and, no matter which set of rules is applied, the legal analysis would be identical as to whether misconduct occurred. I thus see no necessity to reach a final conclusion on such a controversial legal issue in this case.

The facts here were uncontested. The credible and unrebutted testimony of Ms. Zuvic and Mr. Pasquale established that on October 28, 2010, respondent submitted to Mr. Pasquale an annual maintenance plan with a forged signature for Ms. Zuvic. Their testimony further established that respondent did not review this plan with Ms. Zuvic prior to its submission, as he is obliged to due under the Department rules. Based upon this evidence, specification 1 (c), alleging that respondent failed to review the contents of the plan with Ms. Zuvic, must be sustained as a violation of the general obligation of an employee to abide by his employer's rules and avoid "conduct unbecoming."

There was a narrow dispute as to whether respondent had a motive to circumvent Ms. Zuvic's participation in the creation and approval of the annual plan. Ms. Zuvic indicated that the version of the plan submitted to Mr. Pasquale called for less frequent cleaning than the plan for the prior year, suggesting that there might have been some reduced expense in the custodian's operating budget. Mr. Wile insisted that there would have been no financial benefit to

respondent in submitting the plan since Ms. Zuvic had the authority to demand additional cleaning at any time. Whatever the financial repercussions of a decreased cleaning schedule, it was undisputed that Mr. Pasquale had given respondent a deadline of October 28 to submit the plan. Respondent would therefore have had a motive to comply with this order and avoid any adverse consequences for not doing so.

Although no direct proof was submitted as to who forged Ms. Zuvic's signature, there was convincing circumstantial evidence to support a finding that respondent did so. Respondent was the only school employee with any motive to finalize the operations plan, having been directed to do so a few days before by Mr. Pasquale. When confronted with the plan by an investigator, respondent offered no explanation as to how Ms. Zuvic's signature was obtained. Instead, he acknowledged that the signature for Ms. Zuvic did not resemble her regular signature and gave contradictory statements as to whether his own signature was genuine. At the hearing, respondent did not testify, with his attorney offering the explanation that he feared criminal prosecution based upon a passing reference by the Department investigator to communication with the District Attorney. Respondent's failure to offer information on the forgery, either during his interview or during the hearing, offers further support for the conclusion that it was respondent who forged Ms. Zuvic's signature. *See Police Dep't v. Green*, OATH Index No. 1326/11, mem. dec. at 5 (Jan. 4, 2011) (party's silence permitted fact-finder to adopt adverse inference and construe evidence in light most favorable to opposite side, even though criminal prosecution pending); *Dep't of Finance v. Smyth*, OATH Index No. 1285/11 at 4 (Mar. 9, 2011) (party's failure to testify entitles opposing party to "the strongest inference against him that the opposing evidence in the record permits," *citing Comm'r of Social Services v. Philip De G.*, 59 N.Y.2d 137, 141 (1983)). Such an inference is appropriate even though it was possible that respondent's actions might result in criminal prosecution. *See Marine Midland Bank v. Russo*, 50 N.Y.2d 31, 42 (1980) (in civil trial, negative inference taken where defendants, on advice of counsel, invoked privilege against incrimination in light of ongoing FBI investigation).

One final matter demands mention. After the hearing, respondent's attorney filed two memos on the issue of whether the non-pedagogical rules should apply, one memo three days before petitioner's memo was filed and another reply memo later the same day petitioner's memo was filed. Petitioner's counsel promptly filed a motion to strike the second reply memo as

prohibited by OATH rules. I informed the parties I would defer ruling upon the motion to strike until I submitted my report.

I find that the motion to strike should be denied. It is true that reply memos are generally not favored and that advance permission is generally required to file such memos. Here neither party made any request to file such a reply at the time the briefing schedule was agreed to. However, such a reply closing memo is not expressly forbidden by OATH rules, which prohibit such memos only with regard to pre-trial or post-trial motions. *See* OATH rules 1-34 and 1-52. Nor is there any prejudice to petitioner due to the submission of the memo, since the memo largely repeats arguments made in the original closing memo and, as outlined above, I ultimately declined to reach the merits of the legal issue being addressed. Petitioner's motion to strike is therefore denied.

In sum, respondent's failure to obtain Ms. Zuvic's approval of the operations plan and his forging of her signature on the plan were "conduct unbecoming" within the meaning of the Department bylaws and rules. Specifications 1(a) and 1(b) must be sustained.

FINDINGS AND CONCLUSIONS

> The charges should be sustained in that, on or about October 28, 2010, respondent submitted an annual operations plan which he had not reviewed with principal Karen Zuvic and on which he had forged Ms. Zuvic's signature, in violation of Department Bylaws article 5 and the Rules and Regulations for the Custodial Force section 2.1.6.

RECOMMENDATION

After making the above findings, I requested and received a summary of respondent's personnel history in order to make an appropriate penalty recommendation. He has worked for the Department since 1990 and has no prior disciplinary history.

Respondent's past evaluations from principals at his assigned schools have been mixed. In 2005 to 2006 Mr. Ambrose rated respondent as "excellent" in nearly every category. In 2007, however, Mr. Ambrose rated respondent as generally "satisfactory," noting that his cleaning of stairways and bathrooms, as well as his "communication skills," "needs improvement." In November 2007 Mr. Ambrose wrote a letter to respondent stating that the gymnasium and the

back office had not been cleaned, that the building was generally "dirty," and that this condition was "not acceptable."

Respondent's file has a number of commendations which should mitigate any penalty. In 1992 respondent and his staff were commended by a principal for helping arrange a ribbon cutting ceremony. In 1997 a principal thanked respondent for his "excellent work" in maintaining her school. In 1998 respondent was commended for volunteering to install computer cable. In 2000 respondent was commended for working on a visit by President Clinton. In 2004 respondent received a certificate for "dedication and outstanding service."

Respondent's forging of Ms. Zuvic's name on the school operations plan, as well as his failure to obtain her approval to the plan before submitting it, demonstrates a distressing level of dishonesty. In past disciplinary cases, this tribunal as well as the Civil Service Commission and the state courts have terminated employees for forging timesheets or medical documentation. *See, e.g., Human Resources Admin. v. Johnson*, OATH Index No. 1080/10 (Apr. 6, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 11-09-SA (Mar. 4, 2011) (employee with no prior disciplinary history terminated for forging four medical notes); *Rodriguez v. City of New York*, 71 A.D.3d 512 (1st Dep't 2010) (notwithstanding unblemished 26-year record and outstanding evaluations, termination upheld based on employee's pattern of falsifying medical notes and other serious misconduct); *Dep't of Correction v. Hall*, OATH Index No. 400/08 (Oct. 18, 2007), *aff'd*, Comm'r Dec. (Nov. 2, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-33-SA (May 30, 2008). The few cases where a lesser penalty of suspension was given involved instances of extraordinary mitigation. *See, e.g., Transit Auth. v. Paniagua-Castillo*, OATH Index No. 700/02 at 5-6 (Mar. 8, 2002) (employee's simultaneous divorce, bankruptcy, and dealing with severe illness of her child found to mitigate penalty of altering medical notes); *Transit Auth. v. Patel*, OATH Index No. 1946/01 at 9-10 (Jan. 10, 2002) (employee's false statement of seeing a doctor mitigated by undisputed fact that he was ill and under stress). In the instant case, the primary reason for mitigation provided was respondent's length of service, a factor which has repeatedly been found insufficient to justify a penalty of less than termination for forgery. *See Rodriguez; Bd. of Education v. Cori*, OATH Index No. 489/93 (Feb. 26, 1993).

As observed in a past case, a "custodian's integrity is of equal importance" to his managerial skills. *Dep't of Education v. Cherry***,** OATH Index No. 1236/09 at 15 (May 29, 2009), *adopted*, Chancellor's Dec. (July 6, 2009), *aff'd sub nom. Cherry v. Klein*, 2010 NY Slip Op 31659U (Sup. Ct. N.Y. Co. 2010). In *Cherry*, a custodian was found to have mismanaged his school accounts by commingling funds, failing to document expenditures, and paying himself an excessive salary, among other things. Noting the "elevated degree of managerial and fiscal independence" demanded of custodians, Judge Richard concluded that Mr. Cherry's proven lack of integrity compelled his termination. As this case shows, there is merit to petitioner's contentions that a deceitful custodian, charged with maintaining the school building and managing a significant portion of the school budget, could have calamitous consequences. Being unable to rely upon a custodian's truthfulness, the other managers, such as the principal, would be forced to assume extra management burdens in order to ensure that work was completed or supplies received.

It is true, as suggested by respondent's attorney, that the forgeries found in past OATH cases resulted in more significant benefits to the employees, in the form of leave or pay, than did respondent's forgery in this case. However, respondent's forging of Ms. Zuvic's signature provided him with at least two advantages. First, submitting the signed agreement fulfilled respondent's obligation to file the plan in accordance with the e-mail received from Mr. Pasquale. Second, creating an operations plan with relatively few daily cleaning responsibilities could have lightened the custodial staff's workload.

The forging of Ms. Zuvic's name by respondent was probably as foolhardy as it was deceitful, since it should have been apparent that his deception would be discovered by Mr. Pasquale, Ms. Zuvic, or both. The fact that respondent's actions appear inexplicably irrational is hardly mitigatory, however, and provides further reason to question his fitness to continue to function as a custodian.

Accordingly, I find that the appropriate penalty here for respondent's proven misconduct is termination and I so recommend.

John B. Spooner
Administrative Law Judge

May 23, 2011

SUBMITTED TO:

DENNIS M. WALCOTT
Chancellor

APPEARANCES:

ANDREA N. CHILAKA, ESQ.
Attorney for Petitioner

SPIVAK, LIPTON, LLP
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Chancellor's Decision (June 14, 2011)

I have received and reviewed the Report and Recommendation dated May 23, 2011, issued by John B. Spooner, Administrative Law Judge ("ALJ") of the City of New York, Office of Administrative Trials and Hearings ("OATH"), the transcripts, and the exhibits introduced at the hearing. I have also reviewed the comments on the report submitted by Respondent's counsel.

In the Report and Recommendation, the ALJ recommends that the employment of Frederick Bermel ("Respondent") be terminated. As the ALJ noted, the Respondent was obligated to participate in preparing an annual operation plan that outlined the maintenance and cleaning duties of his custodial staff at P.S. Q086 for the school year.[1] The annual operation plan was to be submitted for review and pre-approval to Principal Karen Zuvic, of P.S. Q086, prior to its submission to the Respondent's supervisor at the Division of School Facilities. I concur with the ALJ that the Respondent bypassed this directive and instead submitted an annual operation plan to his supervisor which had not been reviewed or approved by Principal Zuvic[2], and on which he had forged Principal Zuvic's signature. The ALJ concluded that the Respondent's actions violated the Department's By-Laws and the Rules and Regulations of the Custodial Force.

As the Chancellor of the New York City Department of Education ("Department"), I have the authority, pursuant to Section 75 of the New York State Civil Service Law, to accept or reject the recommendation. I have decided to accept the ALJ's recommendation that the Respondent be terminated from his employment with the Department.

A hearing before OATH on the charges against the Respondent was held on April 12 and 13, 2011. I agree with the ALJ that the evidence, including the credible unrebutted testimony of the Department's witnesses, amply proved the charges against the Respondent. I also concur with the ALJ that there was convincing circumstantial evidence to support that the Respondent forged Principal Zuvic's signature on the annual operation plan. The evidence showed that the

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[1] Respondent, as Custodian Engineer, would have received a significant budget in order to hire staff and carry out the plan.

[2] The evidence showed that the duties of the custodial staff listed in the forged plan were significantly less than what Principal Zuvic would have approved of.

Respondent was the only individual with any motive to finalize the plan and to forge the principal's signature. The Respondent had acknowledged that the forged signature was not authentic, and offered no explanation as to how Principal Zuvic' s signature was obtained. Furthermore, the Respondent gave contradictory statements as to whether his own signature on the forged plan was genuine.

I also agree with the ALJ that the appropriate penalty is termination. As noted by the ALJ, Custodian Engineers have an "elevated degree of managerial and fiscal independence," *Dep't of Education v. Cherry*, OATH Index No. 1236/09 (May 29, 2009), *adopted*, Chancellor's Dec. (1uly 6, 2009), *aff'd sub nom. Cherry v. Klein*, 2010 NY Slip Op 316559U (Sup. Ct. N.Y. Co. 2010), and the lack of integrity compels termination. I concur with the ALJ that the Respondent's proven misconduct "demonstrates a distressing level of dishonesty," and I concur with the ALJ's reasoning regarding the appropriate penalty here.

I have reviewed the written submission by Respondent's counsel, dated May 25, 2011. Respondent's counsel argues that the benefits Respondent received as a result of his misconduct were not significant enough to justify termination of Respondent's employment. I find this argument to be without merit. I concur with the ALJ that regardless of the financial repercussions, there were at least two advantages the Respondent received as a result of his fraudulent actions. First, it was undisputed that the Respondent was given a deadline to submit the plan, and thus the Respondent had a motive to submit the forged document to avoid adverse consequences for not timely complying with his supervisor's directive. Second, submission of a plan without the input or approval of the school principal, that contained relatively few daily cleaning responsibilities, could have lightened the custodial staff's workload. By circumventing the procedure and forging the principal's signature, Respondent improperly sought approval of a plan with a lightened custodial workload with respect to school maintenance and cleaning. At a minimum, this wrongful act could have impacted the safety of the school, increased the risk of injury to staff and students, and jeopardized the health of those who would have been subject to a compromised school environment.

Respondent's counsel[3] also asserts that it was not the Respondent's job to submit the annual operation plan in the first place; that the deadline was artificial; and that had the Respondent's supervisor "not pressured [the Respondent] ... this ... would never have happened." Respondent's counsel further asserts that regardless of what was submitted by the Respondent, the principal could have changed the plan at any time. I am not persuaded by these arguments because these excuses seek to pass the blame for Respondent's misconduct onto others. Moreover, none of these assertions mitigates or justifies Respondent's forgery of the principal's signature.

Respondent's counsel also requests that I reject the ALJ's recommendation of the penalty of termination because Respondent has been an employee for twenty years. I disagree, and I concur with the ALJ that the Respondent's length of service is insufficient to justify a penalty of less than termination for the proven misconduct in this case. *See, e.g., Human Resources Admin. v. Johnson*, OATH Index No. 1080/10 (Apr. 6, 2010), *aff'd*, NYC Civ. Servo Comm'n Item No. CD 11-09-SA (Mar. 4, 2011); *Rodriguez v. City of New York*, 71 A.D. 3d 512 (lst Dep't 2010); *Dep't of Correction v. Hall*, OATH Index No. 400/08 (Oct. 18, 2007), *aff'd*, Comm'r Dec. (Nov. 2, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-33-SA (May 30, 2008); *Bd. of Ed. v. Cori*, OATH Index No. 489/93 (Feb. 26, 1993) (holding that Respondent's thirty five year tenure, of which twelve were as a custodian, does not mean he cannot be dismissed for serious misconduct; and the relatively small benefit received by the Respondent did not change the fact that the Respondent was still capable of falsifying records). "Acts of moral turpitude committed in the course of public employment are an appropriate ground for termination of even long standing employees with good work histories." *Sang v. NYC Dep't of Ed*, 111353/09, 2010 NY Slip Op 523244 (N.Y Co. Sup. Ct. 2010) (immediate termination appropriate for Respondent who forged Assistant Principal's signature on timesheets, and acquired unearned per session monies, as Respondent had "broken the basic level of trust necessary in the employment

[3] Respondent's counsel also raised a number of settlement negotiation issues that are without merit. Contrary to Respondent counsel's claims, the OATH pre-conference settlement judge (who was not the same judge who presided over the trial) indicated that the forgery charge was worthy of termination if the Department was able to prove the charge at trial Additionally, contrary to Respondent counsel's claims, the Department was not prevented from making settlement offers. Instead, after careful consideration and multiple pre-trial telephone conferences with the settlement judge, the Department declined to make any settlement offers to the Respondent, in light of the serious misconduct involved.

relationship."). As the ALJ pointed out, the few cases involving forgery by an employee where a lesser penalty of suspension was recommended contained evidence of extraordinary mitigation that is not present here. *See, e.g., Transit Auth. v. Paniagua-Castillo,* OATH Index No. 700/02 (Mar. 8, 2002) *Transit Auth v. Patel*, OATH Index No. 1946/01 (Jan. 10, 2002).

Based on all of the above, including my review of the hearing transcript, the Report and Recommendation and the evidentiary exhibits in this case, I find that there is ample evidence for me to accept the recommendation of the OATH ALJ to terminate the Respondent's employment. The fully litigated record in this case supports this determination. The Respondent's actions involved deception and moral turpitude. The lack of remorse in the evidentiary record, and the failure of the Respondent to take responsibility for his misconduct, is very troubling. It is my determination that there is substantial evidence to support a finding that the Respondent is guilty of serious misconduct. Upon this record, I find that the penalty of termination is appropriate and not shocking to one's sense of fairness.

Respondent's employment shall be terminated effective immediately.

Dennis M. Walcott
Chancellor
Dated: June 14, 2011