

Admin. for Children's Services v. Yu

OATH Index No. 1924/16 (Sept. 1, 2016), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2016-0818.
(Feb. 24, 2017), **appended**

Petitioner demonstrated that respondent engaged in disrespectful conduct, made threats thereby causing other employees to feel unsafe, and failed to obey orders. Termination from employment is recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
ADMINISTRATION FOR CHILDREN'S SERVICES
Petitioner
-against-
LAURENE YU
Respondent

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORNIOTTI, *Administrative Law Judge*

This employee disciplinary proceeding was referred by the Administration for Children's Services ("ACS") pursuant to section 75 of the Civil Service Law. Respondent, Laurene Yu, a graphic artist, is charged with using disrespectful language towards her supervisors; failing to be courteous and considerate of fellow employees; sending discourteous e-mails; failing to obey orders; engaging in threatening behavior; and conducting herself in a manner prejudicial to good order and discipline of the agency (ALJ Ex. 1).

At the hearing held on August 9, 2016, petitioner presented the testimony of five ACS employees and documentary evidence. Respondent testified on her own behalf and presented documentary evidence. For the reasons below, the charges should be sustained. Due to similar previous incidents of misconduct, termination from employment is recommended.

ANALYSIS

Respondent has worked as a graphic artist for ACS since April 2008. Her tasks include working on ACS's website, brochures, and other graphical publications (Tr. 85). Respondent's

regular work hours are from 8:30 a.m. to 4:30 p.m. (Tr. 10, 112).

The charges relate to respondent's conduct on March 10 and 11, 2016, and the approval of a timesheet by her then-supervisor, Ms. Simmons. Respondent and Ms. Simmons work on opposite sides of the 14th floor of 150 Williams Street.

In addition to being respondent's supervisor between January and March 2016, Ms. Simmons was and is currently the Chief of Staff for the Division of Administration. In that role she is the secretary of the Agency Staffing Actions Committee, the agency representative of the New York Advisory Council, the agency representative for Local Law 29 and Mayoral Directive One Compliance, a member of the Reasonable Accommodations Board, and the main point of contact for internal and external entities that interact with the Division of Administration (Tr. 9-10). She also approves timesheets, leave requests, and overtime requests for other staff.

Ms. Simmons testified that paychecks are issued bi-weekly on Fridays for the two-week pay period occurring two weeks before the pay calendar week. The weekly timesheet is submitted by each employee in City Time by the following Tuesday so that it can be approved by a supervisor on Friday. A timesheet approved in a pay calendar week is not for the upcoming paycheck but is for the following one. For example, a timesheet submitted on Tuesday March 8, 2016, is not for the paycheck issued on Friday March 11, 2016, but rather for Friday March 25, 2016 (Tr. 12-13, 34-35, 38-39).

Ms. Simmons explained that she usually logs into City Time to approve timesheets in her queue when she arrives each morning around 8:00 a.m. and that if something is submitted later in the day she will not look at it until the next morning (Tr. 30). Respondent testified that it was her "routine" to send an automatic alert to Ms. Simmons in Outlook every Monday to approve her timesheet (Tr. 92). In addition, respondent routinely sent Ms. Simmons electronic workflow requests and e-mails and made in-person statements that Ms. Simmons needed to approve her timesheets after they were submitted (Tr. 26, 30, 33-35, 88, 92-95, 114; Pet. Exs. 1-3; Resp. Ex. B). Ms. Simmons testified that it was not normal practice for an employee to engage in such communications with a supervisor (Tr. 13, 37).

Ms. Simmons testified that prior to the dates charged, she spoke to respondent several times about the need to get preapproval for overtime, taking lunch at the end of the day rather than between the hours of 12:00 and 2:00 p.m., and other leave requests because respondent had not always adhered to ACS policy (Tr. 14, 29-30, 36).

On Monday March 7, 2016, respondent sent Ms. Simmons an alert to approve her timesheet (Pet. Ex. 1). According to Ms. Simmons' testimony and her written statement prepared on March 11, 2016 (Pet. Ex. 7), the timesheet was for the prior week and that respondent had worked through lunch and left an hour early on three occasions without approval. On Tuesday or Wednesday, Ms. Simmons verbally told respondent that the timesheet could not be approved because she had taken lunch at the end of the day without authorization and that she was awaiting guidance from someone in the timekeeping unit, who was currently out of the office (Pet. Ex. 7; Tr. 13-15, 30-31, 39).

While this timesheet issue was pending, respondent was also e-mailing Ms. Simmons about an overtime request. Ms. Simmons provided respondent again with the ACS policy and also reminded her in writing about what needed to be done to get approval. Respondent e-mailed several times, including at 2:16 and 3:00 a.m. from her home, with various questions, complaints that Ms. Simmons was not responsive, and statements that she did not understand the problem with getting her overtime approved (Tr. 31-33; Pet. Ex. 3).

On Thursday, March 10, 2016, at approximately 4:45 p.m., respondent appeared in Ms. Simmons' office after her work hours. According to Ms. Simmons, respondent was visibly agitated and demanded that she approve her timesheet. Ms. Simmons reminded respondent that she was waiting to hear from timekeeping regarding the lunch issue. According to Ms. Simmons, respondent became extremely irate and started yelling things to the effect that, "I submit my timesheet every Monday, just approve what I send you." Ms. Simmons reminded respondent that the timesheet was not for Friday's paycheck and that there was time to resolve the matter before the following pay cycle. Respondent continued to yell that Ms. Simmons needed to approve her timesheet and also asked, "Do you even know how?" (Tr. 15). Respondent also made statements to the effect that Ms. Simmons works for her and that Ms. Simmons' only job is to approve her timesheets. Ms. Simmons responded that she was respondent's supervisor and that timesheets are approved only after all discrepancies are resolved. Ms. Simmons asked respondent to leave her office but respondent remained and continued to yell at Ms. Simmons about her timesheet and told her that she needed management training (Tr. 15-16; Pet. Ex. 7).

Ms. Simmons testified that she asked respondent three or four times to leave her office and that when respondent finally stepped outside she continued to yell in front of her door about

the timesheet and that Ms. Simmons needed management training. When Ms. Simmons again asked respondent to leave, she replied that she was not in her office. Ms. Simmons told respondent that she would call security to have her removed from the area. At that point respondent started waving her arms and pointing at Ms. Simmons in an aggressive manner while yelling something to the effect that, "I'm going to take you down. I am going to take everyone here down" (Tr. 16-17; Pet. Ex. 7).

According to her testimony and written statement prepared on March 11, 2016 (Pet. Ex. 9), Ms. Edmund stated that she works a few feet from Ms. Simmons' office and heard Ms. Simmons calmly ask respondent to leave her office. Ms. Edmund stated that respondent stood outside Ms. Simmons' office and loudly stated that she was going to "take down" Ms. Simmons and everyone at ACS. Ms. Edmund, who is friendly with respondent, took this to be a threat. According to Ms. Edmund, respondent said that Ms. Simmons was a poor manager who needed training and that all she did was sign timesheets. Ms. Edmund told respondent that she cannot speak to a supervisor in that manner and that she should return to her office (Simmons: Tr. 17-18; Edmund: Tr. 43-45; Pet. Ex. 9).

According to her testimony and written statement prepared on March 11, 2016 (Pet. Ex. 12), Ms. Mathis, who also works near Ms. Simmons' office, stated that she heard respondent speaking to Ms. Simmons from outside her office in an agitated manner about approving her timesheet. Ms. Mathis testified that respondent was yelling at Ms. Simmons that she did not know what she was doing and needed to take a management course. Initially, Ms. Mathis was unable to hear Ms. Simmons who was speaking in a low tone but as the confrontation continued, her voice escalated. Ms. Mathis observed that respondent was pacing back and forth, was making gestures with her arms, and was visibly upset. Other people came out of their work cubicles to see what was going on. Ms. Mathis testified she told respondent that she understood her frustration but that she was handling the situation wrong, that her face was extremely red, and that she needed to calm herself. Respondent told Ms. Mathis that she was really upset about her timesheet and that she did not "care" (Tr. 63-65, 68-69; Pet. Ex. 12). Ms. Mathis testified that she found the situation "uncomfortable" and did not want respondent to do anything to hurt herself or others (Tr. 66).

While respondent was yelling outside Ms. Simmons' office, Ms. Simmons called Ms. Starker in the Employment Law Unit and ACS police to report the incident (Tr. 18). Respondent eventually left the area.

According to an ACS police report prepared by Sergeant Evans, respondent went to the police command at 5:08 p.m. and was yelling, "I'm sick of people threatening to call security on me." Respondent told Sergeant Evans she was upset that Ms. Simmons had not approved her timesheet. Respondent left the command saying she was going to talk to an assistant commissioner. Sergeant Evans spoke with Ms. Simmons about the situation (Pet. Ex. 14).

According to various hearsay documents and testimony, respondent went to see an assistant commissioner and the executive director of program services about her timesheet. Apparently, to avoid respondent who was yelling about her timesheet, they locked themselves in the assistant commissioner's office. The commissioner also felt compelled to accompany the director to the elevator because they were concerned about respondent (Tr. 27-28, 74; Pet. Ex. 7).

At 5:52 p.m. respondent sent Ms. Simmons and the executive director a workflow request that her timesheet was awaiting approval (Pet. Ex. 2).

According to Ms. Simmons after respondent went to ACS police, Ms. Edmund, Ms. Mathis, and other people came into her office to inquire if she was okay. While they were speaking, respondent returned to the area. According to all of the witnesses called by petitioner, respondent paced back and forth outside Ms. Simmons' office and glared at them in an intimidating manner. Moreover, respondent was yelling obscenities and saying things to the effect that, "This is bullshit" and "You guys need to grow up." These witnesses also testified that they, as well as other employees, felt unsafe around respondent (Tr. 18-19, 21, 23-24, 26; 46-48, 65-66, 75-78, 81; Pet. Exs. 7, 9, 13).

While this second encounter was going on, Ms. Simmons notified various ACS managers and ACS police by telephone and e-mail that respondent was continuing to engage in harassing behavior (Tr. 19-20; Pet. Exs. 7, 8). At approximately 6:20 p.m. Sergeant Evans responded to the scene. Sergeant Evans advised respondent that she was not authorized to be on the premises past her work hours and escorted her out of the building (Pet. Ex. 15).

Between 8:54 and 10:19 p.m., respondent sent Ms. Edmund on her personal phone four text messages saying, "Maybe get rid of the real culprits," "Just sign the damn timesheet and move on," and "It's never about me. But about hurting management" (Pet. Ex. 10; Tr. 49-51).

On March 11, 2016, after an all-day training off-site, respondent was given a letter written by Ms. Starker that she was immediately suspended (ALJ Ex. 1; Pet. Exs. 4, 7, 8).

At 5:10 p.m., either before or after being given the suspension letter, respondent sent Ms. Simmons an e-mail stating, "You need to sign my timesheet for this week." At 5:36 p.m., presumably after she received the suspension letter, respondent sent another e-mail to Ms. Simmons stating, "You are too disgusting to even write the memo yourself" (Pet. Ex. 3).

Ms. Edmund testified that as she was leaving on March 11, 2016, she saw respondent being escorted out of the building by ACS police. Respondent was joking and laughing. Respondent asked if she could join Ms. Edmund on the walk to the train station. While they were walking respondent expressed disdain about what had happened and stated that she was being treated unfairly (Tr. 52-53, 58).

At 6:04 p.m. respondent sent an e-mail to Ms. Starker from her mobile phone saying, "There is no memo attached [sic] on what the charges are. You and ACS are full of fraud." This was followed by an e-mail at 6:22 p.m. saying, "Sending it out to 20 people. You are disgusting." At 7:06 p.m. respondent sent an e-mail to Ms. Simmons and another assistant commissioner stating, "You disgusting people did this so I can't find another job and get a better job" (Pet. Ex. 4). Respondent also sent Ms. Edmund two text messages at 5:37 and 7:16 p.m. stating, "Disgusting pieces of shit" and "I told . . . [Ms. Simmons] they are disgusting" (Pet. Ex. 11).

On Saturday, March 12, 2016, respondent sent Ms. Starker another e-mail stating, "Youve [sic] done this before. You suspend me and made up charges later. Fraud and Cheaters i [sic] know who you are" (Pet. Ex. 6).

Respondent was served with charges on March 14, 2016 (ALJ Ex. 1). In response respondent sent e-mails to the Employment Law Unit on March 14 and 25, 2016, with various statements including, "This is Bullshit and You should grow up," "My opinion, is THEY are disgusting," "In, my opinion, YOU are disgusting," "Im [sic] entitled to my opinion," and "Yes, they should sign the timesheet" (Pet. Exs. 16, 17).

Respondent testified that on March 10, 2016, she went to Ms. Simmons' office after her work hours "as an employee to her supervisor" to check about her timesheet because she saw that it had not yet been approved. She was "upset" because she had sent Ms. Simmons follow-up e-mails and reminders. According to respondent, Ms. Simmons just "snapped" and told her to

get out, that she did not report to respondent, and that she did not work on respondent's schedule. Respondent was "shocked" and claimed that Ms. Simmons never explained why she had not approved her timesheet. However, respondent admitted that she "probably did use the wrong choice of words" when she made statements about taking Ms. Simmons and other people down at ACS. Respondent explained that she was "really frustrated" and was "venting." Respondent stated that "everybody should be responsible for their actions" and that "I would report them to management as I've done so in e-mails" (Tr. 96-98, 113-14).

Respondent claimed that she went to ACS police because Ms. Simmons had been disrespectful and she was scared of her. Respondent stated that when she "didn't get anywhere" with Sergeant Evans she went to the assistant commissioner who was very dismissive of her (Tr. 102-03, 106-07). Respondent also denied pacing back and forth outside Ms. Simmons office and claimed that "perhaps" she walked back to the area because she was looking for a piece of paper that she had dropped on the ground (Tr. 98-99).

Respondent testified that she was "venting" in her texts to Ms. Edmund (Tr. 99). With regard to the e-mails she sent on March 11, 12, 14, and 25, respondent explained that she was "venting" and "reacting to the suspension" and was "very agitated" and "very appalled" that they would suspend her "without any investigation" (Tr. 101-02, 106-11).

Petitioner alleges that respondent's conduct on March 10 and 11, 2016 violated a number of ACS rules prohibiting rude, threatening, insubordinate, and disruptive conduct. In a disciplinary proceeding, petitioner has the burden of proving its case by a preponderance of the credible evidence. *Dep't of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-33-SA (May 30, 2008). Preponderance has been defined as "the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence." *Richardson on Evidence*, § 3-206 (Lexis 2008) (citation omitted); *see also Dep't of Sanitation v. Figueroa*, OATH Index No. 940/10 at 11 (Apr. 26, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 11-47-A (July 12, 2011). Petitioner sustained its burden on all of the charges.

The facts are mostly undisputed. However, to the extent there were discrepancies between the petitioner's witnesses and respondent, resolution of these differences relied on a determination of witness credibility. In order to determine credibility, this tribunal has looked to witness demeanor, the consistency of a witness' testimony, supporting or corroborating evidence,

witness motivation, bias or prejudice, and the degree to which a witness' testimony comports with common sense and human experience in determining credibility. *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998).

Ms. Simmons, petitioner's primary witnesses, was credible. Ms. Simmons, who is no longer supervising respondent, had no apparent motive to lie. Moreover, her testimony was corroborated by four witnesses and documentary evidence including documents created by respondent. Petitioner's other witnesses had no apparent motive to lie, including Ms. Edmund, who respondent acknowledged was a friend and confidant (Tr. 99). While there were some minor discrepancies between the witnesses' testimony, they were not on any substantive issues and were of the type to be expected in a trial. Respondent, on the other hand, had a motive to lie to minimize her actions, to avoid a finding of misconduct, and to shift the blame to Ms. Simmons. Thus, to the extent respondent's testimony differed from petitioner's proof and did not comport with common sense, it was not credible.

Turning to the primary charges involving rude and threatening behavior, this tribunal has noted that while it is permissible to disagree with a supervisor or a co-worker, the disagreement must remain within the bounds of decorum and discretion. *Health & Hospitals Corp. (Lincoln Medical & Mental Health Ctr.) v. Thomas*, OATH Index No. 531/04 at 6 (May 4, 2004); *Human Resources Admin. v. Bichai*, OATH Index No. 211/90 at 13 (Nov. 21, 1989), *aff'd*, N.Y. Civ. Serv. Comm'n Item No. CD 90-54 (June 15, 1990). The substance of the disagreement, the tone of voice, and the words used to express an opinion must all be evaluated to determine whether or not the disagreement amounts to misconduct.

Moreover, to prevail on a charge of insubordination, petitioner must show that: (1) an order was communicated to the employee and the employee heard and understood the order; (2) the contents of the order were clear and unambiguous; and (3) the employee willfully refused to obey the order. *Dep't of Sanitation v. Smyth*, OATH Index No. 2178/05 at 7 (Feb. 14, 2006), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-122-SA (Nov. 14, 2006).

Petitioner alleged that on March 10, 2016, respondent engaged in disrespectful and intimidating conduct when she demanded that Ms. Simmons approve her timesheet. It was undisputed that respondent went to Ms. Simmons' office after her work hours because she was upset that her timesheet had not yet been approved despite her various communications directing

Ms. Simmons to do so. Ms. Simmons' testimony that respondent was visibly agitated and insisted that Ms. Simmons approve her timesheet was credible. Respondent's assertion that Ms. Simmons never said that she was waiting for guidance from timekeeping regarding the lunch issue was not credible. Respondent did not dispute Ms. Simmons' claim that she had to routinely remind respondent about ACS's time and leave policies and that for the timesheet in question respondent had taken lunch on three occasions at the end of the day without approval.

It also seems likely that upon hearing that Ms. Simmons was waiting to hear from timekeeping, respondent became more irate and started yelling things to the effect that, "I submit my timesheet every Monday," "Do you know how" to approve a timesheet, "Just approve what I send you," "You work for me," and approving my timesheets is "your only job." A number of these comments were heard by Ms. Mathis and Ms. Edmund and were consistent with statements respondent made in various texts and e-mails.

While it is likely that Ms. Simmons was frustrated, respondent's assertion that she was rude was not supported by any credible evidence. This claim was also inconsistent with the testimony of Ms. Mathis and Ms. Edmund who credibly testified that Ms. Simmons' voice remained low and calm while respondent was in her office and that it was respondent who was speaking in a loud and agitated manner. There is no doubt that respondent's conduct was rude, disrespectful, intimidating, insolent, unbecoming, and disruptive to the work environment. Charge 1, specification 1(a) should be sustained.

Petitioner alleged that respondent refused Ms. Simmons' orders to leave her office. Respondent acknowledged that Ms. Simmons gave her a clear and unambiguous order to leave. Ms. Simmons' testimony that she had to tell respondent several times to leave was credible and not disputed by respondent. Indeed, respondent testified that she was shocked when Ms. Simmons told her to leave. Thus, charge 1, specification (1)(b) should be sustained.

Petitioner alleged that respondent continued to engage in disrespectful and threatening conduct outside Ms. Simmons' office which was observed by others. Ms. Simmons' testimony, as corroborated by Ms. Mathis and Ms. Edmund, that when respondent eventually left the office, she remained outside, paced around, and waved her arms and pointed in a threatening manner, was credible. Moreover, respondent did not dispute petitioner's proof that she yelled things to the effect that "I am not in your office," "Just approve my timesheet," "You need management training," and "I'm going to take you down. I am going to take everyone here down."

Respondent acknowledged that her choice of words was “poor.” Ms. Simmons, Ms. Mathis, and Ms. Edmund also credibly testified that they found respondent’s actions to be threatening and disruptive. Thus, charge 1, specifications 1(c), (d), and (e) should be sustained.

Petitioner alleged that on March 10, 2016, respondent engaged in disrespectful and disruptive conduct at the ACS police command. It was undisputed that after respondent left the 14th floor she went to the ACS police. Sergeant Evans’ report that respondent was yelling, “I’m sick of people threatening to call security on me” and that she was upset that Ms. Simmons had not approved her timesheet was credible. Respondent’s claim she went to report that Ms. Simmons had been rude and that she was afraid of her supervisor was not credible. Respondent admitted that when she did not get anywhere with Sergeant Evans she went to an assistant commissioner to further complain about Ms. Simmons not approving her timesheet. Thus, charge 1, specification 2 should be sustained.

Petitioner alleged that on March 10, 2016, respondent engaged in misconduct by sending a disrespectful e-mail to her supervisor. It was undisputed that at 5:10 p.m. respondent sent an e-mail to Ms. Simmons stating, “You need to sign my timesheet for this week.” As Ms. Simmons’ subordinate, respondent had no authority to make such a demand on her supervisor. This e-mail was rude and disrespectful. Thus, charge 1, specification 3 should be sustained.

Petitioner alleged that on March 10, 2016, respondent returned to Ms. Simmons’ work area and engaged in disrespectful and threatening conduct. It was undisputed that respondent returned to the area outside Ms. Simmons’ office. All of petitioner’s witnesses credibly testified that respondent was pacing in a threatening manner, glaring, and yelling things to the effect that, “This is bullshit” and “You people need to grow up” thereby causing them to feel unsafe. Respondent’s testimony that she was walking around the area for a piece of paper that she had dropped on the floor was not credible. Thus, charge 1, specification 4 should be sustained.

Petitioner alleged that on March 10, 2016, respondent continued to engage in misconduct and had to be escorted out of the building. Respondent did not dispute petitioner’s credible proof that she continued to rant and rave in a threatening manner until she was escorted out of the building by ACS police. Respondent admitted that she was “venting” and in fact continued to do so later that evening in four texts sent to her friend, Ms. Edmund. Thus, charge 1, specification 5 should be sustained.

Petitioner alleged that on March 11, 2016, respondent engaged in misconduct by sending five disrespectful e-mails to various supervisors. It was undisputed that on March 11, 2016, respondent sent five e-mails to various supervisors calling them “disgusting,” “cheaters” and “frauds.” All of these e-mails were disrespectful. Thus, charge 1, specifications 6(a), (b), (c), (d), and (e) should be sustained.

FINDINGS AND CONCLUSIONS

1. On March 10, 2016, respondent yelled at her supervisor about approving her timesheet as charged.
2. On March 10, 2016, respondent failed to leave her supervisor’s office as directed as charged.
3. On March 10, 2016, respondent remained outside of her supervisor’s office and behaved in a rude and threatening manner as charged.
4. On March 10, 2016, respondent yelled at ACS police that her supervisor had failed to approve her timesheet as charged.
5. On March 10, 2016, respondent sent an inappropriate e-mail to her supervisors as charged.
6. On March 10, 2016, respondent continued to yell at her supervisor and engage in threatening behavior until she was escorted out of the building as charged.
7. On March 11, 2016, respondent sent five inappropriate e-mails as charged.

RECOMMENDATION

Upon making the above findings and conclusions, I obtained and reviewed an abstract of respondent’s personnel record provided by petitioner. Respondent was appointed to her position as a graphic artist on April 28, 2008. During her eight-year tenure with petitioner, respondent has demonstrated a pattern of disrespectful and threatening behavior and has been formally disciplined on five prior occasions. In 2010, respondent was issued a written reprimand for using profanity and throwing a ream of paper at a co-worker. Also in 2010, respondent served a

five-day suspension without pay for using rude and disrespectful language towards a supervisor. In 2011, respondent served a 20-day suspension without pay for insubordination, failing to perform her duties, and using rude and disrespectful language towards her supervisor. In 2012, respondent entered into a global settlement with respect to a pending arbitration and two additional sets of charges consolidated before this tribunal. The charges included an EEO violation towards a fellow employee, using disrespectful and inappropriate language directed towards a fellow employee, and failing to perform her duties. Respondent agreed to a 20-day suspension without pay, which was previously served in 2011, and to withdraw the pending arbitration appealing the imposition of the 20-day penalty from 2011. Following a hearing in 2013, respondent received a 30-day suspension for being disrespectful when her supervisor requested that she download a file from her computer to a flash drive and then threw the flash drive at her supervisor. *Admin. for Children's Services v. Yu*, OATH Index No. 269/13 (Apr. 4, 2013), *aff'd*, NYC Civ. Serv. Comm'n Item No. 35136 (Dec. 9, 2013).

Petitioner has requested that respondent be terminated from her employment. This request is appropriate under the circumstances presented here.

Penalties for threatening or intimidating behavior toward co-workers and supervisors have generally ranged between 10 days and termination depending on the severity of the misconduct and respondent's prior disciplinary record. *See Law Dep't v. Lawrence*, OATH Index No. 1312/10 at 17-18 (Mar. 30, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 11-36-A (May 11, 2011) (termination where employee refused to follow supervisor's orders on multiple occasions, engaged in intimidating behavior, was negligent in performance of his duties, and made "abundantly clear" that he will not hesitate to engage in passive and aggressive confrontation); *Human Resources Admin. v. Uddin*, OATH Index No. 1286/07 at 15, 21 (Oct. 3, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-24-SA (May 7, 2008) (30-day suspension for a 20-year employee who approached a co-worker in a loud and aggressive manner, waving his finger, causing fear, and resulting in another employee intervening to prevent respondent from lunging at the co-worker); *Health and Hospitals Corp. (Coler-Goldwater Specialty Hospital and Nursing Facility) v. Ramsey*, OATH Index No. 1248/05 (Nov. 9, 2005) (termination from employment for respondent who engaged in numerous acts of insubordination and discourtesy, including repeated refusal to respond to or acknowledge supervisors); *Dep't of Environmental Protection v. Schnell*, OATH Index No. 2262/00 at 9-11

(Oct. 25, 2000) (ten-day suspension for respondent who raised his voice in an intimidating manner and shoved a tape recorder in supervisor's face).

Respondent has been warned on more than one occasion that her misconduct towards co-workers and supervisors is unacceptable. In *Admin. for Children's Services v. Yu*, Arbitration Dec., A-13806-11 at 12 (Feb. 22, 2012), the arbitrator wrote:

Her job requires professionalism and responsive communication with clients and supervisors. Her testimony and written submission at the close of the hearing demonstrate that she has not been chastened by this experience at all. She wrote that she considers the allegations petty and testified that she does not understand the charges. The one-week suspension should be sufficient to place the Grievant on notice that her failure to change her conduct will soon place her job in jeopardy.

In respondent's most recent disciplinary case, Administrative Law Judge Kara J. Miller, noted: "Despite being apprised of the seriousness in which her employer views her misconduct, she continues to conduct herself in the same manner rather than correct it. She continues to demonstrate a profound disdain for her supervisor and feels entitled." *Yu*, OATH 269/13 at 10.

There comes a point when a public employer is entitled to end the employment relationship. *Dep't of Correction v. Belgrave*, OATH Index No. 1662/05 at 14 (Jan. 18, 2006), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-115-SA (Nov. 8, 2006). Respondent has placed herself at that point and should be separated from City service. It is apparent that respondent does not believe that the agency rules apply to her. Despite previous discipline and warnings that her rude, disruptive, and intimidating behavior will not be tolerated, respondent has continued to engage in similar misconduct. Notably, after respondent was served with the most recent set of charges, she continued to send disrespectful e-mails to ACS personnel. Given respondent's poor attitude, her lack of remorse, and her adamant, mistaken belief that the problems lie with her supervisors and that they are there to serve her only, there is no evidence that a lesser penalty would discourage respondent from continuing this misconduct in the future.

Since respondent was on clear notice that her conduct was unacceptable and was given ample opportunity to correct it, termination does not violate the principle of progressive discipline. See *Taxi & Limousine Comm'n v. Neubauer*, OATH Index No. 1618/13 at 5 (July 8, 2013) (termination appropriate where, despite prior warnings and discipline, respondent shows no signs of changing his behavior); *Health and Hospitals Corp. (Cumberland Diagnostic and*

Treatment Ctr.) v. Lowe, OATH Index No. 1808/06 (Nov. 2, 2006) (termination appropriate where, despite prior discipline, respondent refused to correct his attitude and conduct); *Health and Hospitals Corp. (Metropolitan Hospital Ctr.) v. Ahmed*, OATH Index No. 567/05 at 6 (Jan. 7, 2005) (“Despite ample warnings . . . Respondent’s refusal to change behavior and unwillingness to follow supervision are grounds for termination”); *Office of Management and Budget v. Perdum*, OATH Index No. 998/91 at 29-30 (June 17, 1991) (termination appropriate where employee was “on clear notice that his conduct was unacceptable and was given ample opportunity to correct it”).

In consideration of respondent’s proven misconduct, her prior disciplinary record, as well as the absence of any compelling mitigation evidence, termination of respondent’s employment is recommended. Such a penalty is not disproportionate to the sustained misconduct as to be shocking to one’s sense of fairness. *See Pell v. Bd. of Education*, 34 N.Y.2d 222 (1974).

Accordingly, pursuant to the principle of progressive discipline, respondent should be terminated from her employment.

Alessandra F. Zorghiotti
Administrative Law Judge

September 1, 2016

SUBMITTED TO:

GLADYS CARRIÓN
Commissioner

APPEARANCES:

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**THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION**

In the Matter of the Appeal of

LAURENE YU

Appellant

-against-

ADMINISTRATION FOR CHILDREN'S SERVICES

Respondent

*Pursuant to Section 76 of the New York
State Civil Service Law*

CSC Index No: 201 6-0818

DECISION

LAURENE YU (“Appellant”) appealed from a determination of the Administration for Children’s Services (“ACS”) finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of termination following disciplinary proceedings conducted pursuant to Civil Service Law Section 75.

The Civil Service Commission (“Commission”) heard arguments from the parties on February 2, 2017.

The Commission has considered the arguments presented on this appeal, and reviewed the record of the disciplinary proceeding. Based on this review, the Commission concludes that there is sufficient evidence in the record to support the findings of fact and the conclusions of law, and that the penalty is appropriate.

Therefore, the final decision and penalty imposed are hereby affirmed.

SO ORDERED

Dated: February 24, 2017