Human Resources Admin. v. Hines

OATH Index No. 0073/17 (Mar. 17, 2017)

Petitioner established that respondent violated multiple rules of its Code of Conduct when she: was loud and verbally abusive to a security guard at her workplace; failed to efficiently perform her duties; failed to timely process a client's application; was insolent to the deputy director; denied homebound services to a client; was loud and discourteous to a client in the presence of other clients; failed to follow a supervisor's instructions; and, refused to attend a meeting with the deputy director. Petitioner did not establish that respondent failed to comply with her supervisor's instructions to complete face-to-face re-certifications for two specific clients, and to prepare a homebound package for a client. Nor did petitioner establish that respondent became verbally confrontational with the deputy director. For the proven charges, ALJ recommends that respondent be suspended from her employment without pay for 30 days.

NEW YORK CITY OFFICE OF
ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
HUMAN RESOURCES ADMINISTRATION
Petitioner
-against-
BELINDA HINES
Respondent

REPORT AND RECOMMENDATION

INGRID M. ADDISON, *Administrative Law Judge*

The Human Resources Administration ("HRA" or "petitioner") brought this disciplinary proceeding under section 75 of the Civil Service Law, charging respondent, Belinda Hines, a level III eligibility specialist ("ES"), with: failing to follow security procedures for entering her work location; failing to comply with her supervisor's instruction to complete recertification of two HRA clients by a date certain, and having other clients' cases suspended in her queue for 22 days without action; refusing to explain to the deputy director her determination that a particular client was ineligible for public assistance and having an outburst and walking out of a meeting with the deputy director; being rude to and refusing to recommend homebound services for a prospective client, and ignoring her supervisor's directive to prepare a homebound package; and,

being rude and disrespectful to another client in the presence of other HRA clients, in violation of Executive Order No. 726, section I, section II, paragraph B, and section III, paragraphs 1, 11, 21, 22, 24, 34 and 37 (ALJ Ex. 1).

At a hearing on December 15, 2016, January 17 and February 28, 2017, petitioner relied on the testimony of Blanca Matos, supervisor of the security guards at respondent's work location, Timothy Gould, assistant to the director of respondent's center, Madonna Williams, deputy director of the center, Nadupeedikayil Mani, respondent's former supervisor, and a complaining HRA client. Petitioner also presented documentary evidence. Respondent testified on her own behalf and presented some documentary evidence.

For the following reasons, I find that respondent violated multiple rules of its Code of Conduct when she: was loud and verbally abusive to a security guard at her workplace; failed to efficiently perform her duties when she held seven cases in her queue for 22 or more days; failed to timely process a client's application or give the client reasons why her application had not been approved; denied homebound services to a client; was loud and discourteous to another client and failed to follow a supervisor's instructions to service said client; and, refused to attend a meeting with the deputy director which was rescheduled to accommodate respondent's request to have her union representative ("union rep.") present. Petitioner did not establish that respondent failed to comply with her supervisor's instructions to complete face-to-face re-certifications for two specific clients, and to prepare a homebound package for a client. Nor did petitioner establish that respondent became verbally confrontational with the deputy director.

Accordingly, I recommend that respondent be suspended from her employment without pay for 30 days.

ANALYSIS

Petitioner charged respondent with violating section I, section II, paragraph B, and section III, paragraphs 1, 11, 21, 22, 24, 34 and 37 of petitioner's Code of Conduct.

Section I prohibits action, conduct or activity that would undermine or compromise the effectiveness of an employee in the performance of his/her duties or undermine the Agency-participant relationship. Section II, paragraph B requires workers to be courteous and considerate in their contact with fellow employees at all times.

Section III, paragraph 1, requires workers to be courteous and considerate in their contact with the public and with other employees, and forbids employees from conducting themselves in a manner prejudicial to good order and discipline. Paragraph 11 prohibits employees from committing acts which constitute an unauthorized and abusive exercise of the employee's official functions. Paragraph 21 requires employees to immediately obey all regulations and orders of their supervisors, whether oral or written. Paragraph 22 requires employees to perform all duties and responsibilities imposed by their tasks and standards, and to carry out work assignments from their supervisor as accurately and efficiently as possible. If unable to do so, employees shall promptly notify the supervisor, giving specific reasons for the inability to do so. Paragraph 24 forbids employees from threatening or intimidating a participant, supervisor, fellow employee or private citizen. Paragraph 34 proscribes the use of obscene, abusive or inappropriate language with a participant, supervisor, fellow employee, or private citizen. Paragraph 37 prohibits employees from engaging in conduct detrimental to the Agency or which would undermine the effectiveness of the employee in the performance of his/her duties.

Madonna Williams, deputy director of HRA's Senior Work Center ("Center") on East 16th Street in Manhattan, has been employed by HRA for approximately 21 years. She worked at the Center from 2002 to 2009, and from 2013 to the present (Tr. 10-12). The Center provides care for seniors whose cases are transferred from HRA's borough offices, which initially receive the applications. Upon receipt by the Center, ES workers check that the applicant is still eligible and determines whether or not additional services are required. If eligible, the applicants receive public assistance in the form of cash, contributions towards rent, health care benefits in the form of Medicaid, and food stamps. Ms. Williams is involved in all aspects of ensuring the timely delivery of services to clients (Tr. 12-14).

Ms. Williams testified that respondent's responsibilities include face-to-face recertification of clients on an annual or biannual basis. Recertification involves interviewing clients to assess whether there is a continuing need for benefits, and reviewing documentation to see whether rents have increased, the client is still paying rent, and the client's address needs to be updated. Respondent's job also entails closing cases where necessary, investigating why a client may not have received a benefit, and handling requests for home visits. Following the ES worker's interview of a client, the client's computer records are updated, documents are scanned

into the system and the recertification application is remitted to a supervisor for review and approval. This should be done within 48 hours if the client has all the necessary information (Tr. 14-18). Ms. Williams stated that generally, recertification takes about 45 minutes. She noted that she holds several floor meetings during which she instructs the ES workers against leaving cases in their computer queue, which is the paperless office system, because it prevents the client from receiving or delays the client's receipt of benefits. ES workers should refer problems to their supervisors, or, if Ms. Williams notices a problem, she would ask a supervisor to sit with the specialist to try and resolve the problem (Williams: Tr. 19-20; Jones: Tr. 151).

Ms. Williams maintained that over a protracted period, from around February 2014 to April 2015, respondent took more than the normal time to process a recertification. Sometimes she took one and a half to two hours. Her supervisor was asked to sit with respondent and find out what was causing the delay. To compound her sluggishness in processing, clients began to complain that respondent was less than professional with them. Initially, the complaints could not be verified because it appeared to be the complaining client's word against respondent's. However, because of the number of complaints being filed against respondent, her supervisors decided to observe her more closely (Tr. 20-21).

Specification I - Refusal to Show Employee ID and Loud and Disrespectful Behavior.

Petitioner charged respondent with failing to follow security procedures for gaining entry to her office, by failing to produce her ID when asked to do so, and becoming loud and disrespectful, in violation of Executive Order No. 726, section I, section II, paragraph B, and section III, paragraphs 1, 11, 21, 22, 24, 34 and 37 (ALJ Ex. 1).

Blanca Matos works for FJC Security Services, and supervises its security guards. In February 2014, she was assigned to work at the Center. Her job entailed making sure that there were security guards to secure the Center, and to ensure that the guards were doing their jobs properly. Ms. Matos testified that all HRA workers are issued identification cards ("IDs"). When entering the building, a worker may swipe his/her card to gain entry. If the swiping process does not work, a worker must present ID to the security guard on duty who would then permit the worker to enter the employee entrance. Ms. Matos stated that each time an employee

exits, he/she must present ID upon reentry. This requirement is posted throughout the area (Tr. 82-84, 98).

On February 6, 2014, while Ms. Matos was making rounds, she stood next to the security officer at the employee entranceway because the officer had reported having problems with workers. That day, respondent had an issue with swiping her card. When asked to produce ID, she got angry and expressed that they saw her too many times and she was "tired of the shit of always having to show the ID" (Tr. 84, 94-95). Ms. Matos informed HRA Police Officer Smith of the incident, and together they went to Ms. Williams and reported it. Ms. Matos also wrote a contemporaneous report which Security Officer Smith signed (Tr. 85-90; Pet. Ex. 7).

Ms. Williams corroborated Ms. Matos's testimony. She stated that when she walked into the Center on the morning of February 6, 2014, one of the security guards complained that an employee had cursed at her, the security guard. Ms. Williams expressed disbelief and asked the guard to point out the worker. When the guard identified her, respondent was still agitated and was loudly expressing that she works at the Center and the security guard was supposed to know the Center's workers. Respondent expressed displeasure at being asked for identification. Ms. Williams instructed respondent to cease her behavior, and told the security guard that she would address the situation. She immediately called a meeting of all workers and informed them that they are to present ID when asked to do so by security. Respondent kept interrupting her during the meeting, so she wrote respondent a memo about her behavior, which she copied to the director (Tr. 22-27; Pet. Ex. 1). In her contemporaneous memo, Ms. Williams noted that when she approached respondent's cubicle that morning, respondent was still very loud and was making disparaging remarks about the security guard whom, Ms. Williams explained, was new to the Center.

Respondent testified that she has worked at HRA since 1971, and at the Center since 2010. While she normally uses the palm scanner, she did not explain what happened on the day in question as regards the palm scanner. She conceded that she did not have ID on her and therefore could not gain access to the Center. She claimed that she was one of many workers who had to wait until another employee came along and swiped her in. Further, she stated that it was when that employee showed up that Ms. Matos appeared. Respondent did not recall what interaction she had with the security guard but she denied being loud and belligerent and using

profanity. She asserted that Ms. Williams' meeting of workers on that day was the first time that workers were informed that they needed ID cards for access to the building. Respondent further denied being disruptive during Ms. Williams' meeting (Tr. 179-84).

In a disciplinary proceeding, petitioner must prove its case by a preponderance of the credible evidence. *Antinore v. State*, 79 Misc. 2d 8, 12 (Sup. Ct. Monroe Co. 1974), *rev'd on other grounds*, 49 A.D.2d 6 (4th Dep't 1975), *aff'd*, 40 N.Y.2d 921 (1976); *Foran v. Murphy*, 73 Misc. 2d 486, 489 (Sup. Ct. N.Y. Co. 1973); *Osoba v. Bd. of Education*, NYC. Civ. Serv. Comm'n Item No. CD 92-127 at 3 (Nov. 19, 1992), *aff'g,* OATH Index No. 237/92 (Feb. 28, 1992). To do so, petitioner must persuade the "trier of fact to believe that the existence of a fact is more probable than its non-existence." *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602, 622 (1993); *see also Dep't of Correction v. Tavarez*, OATH Index No. 1273/02 at 5 (Nov. 21, 2002). Thus, an assessment of the credibility of the witnesses must be undertaken. In determining credibility, this tribunal has considered "witness demeanor, 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." *Dep't of Sanitation v. Menzies,* OATH Index No. 678/98 at 2-3 (Feb. 4, 1998), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998).

I found Ms. Matos to be a credible witness who had no apparent motive to fabricate her testimony against respondent. Her recollection was clear and her testimony was convincing. Ms. Matos' testimony was corroborated by Ms. Williams. While there was obvious tension between her and respondent, Ms. Williams' testimony that respondent was still simmering over the incident when identified by the security guard was credible. Her testimony about respondent's behavior during the meeting of all workers was supported by her contemporaneous memo. *See Dep't of Health v. Talavera, d/b/a Nanetta's Hero Shop,* OATH Index No. 1767/98 (Sept. 11, 1998) (Department inspector's detailed testimony which was consistent with her contemporaneous reports lent credence to her claims of verbal and physical abuse by respondent); *Dep't of Correction v. Boyce*, OATH Index No. 789/97 at 14 (July 9, 1997), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 99-75-SA (July 19, 1999) ("Contemporaneousness usually evinces reliability."); *see also People v. Brown*, 80 N.Y.2d 729, 733 (1993) (noting that

"a statement describing an event when or immediately after it occurs is reliable because the contemporaneity of the event observed and the hearsay statement describing it leaves no time for reflection. Thus, the likelihood of deliberate misrepresentation or faulty recollection is eliminated.") (citations omitted).

Respondent was less than forthcoming. She offered only general denials of the behavior complained of, and often did not answer questions directly, but diverged to what she determined to be compelling. She also plowed into providing answers while questions were still being asked, making Ms. Williams' testimony about her behavior at the meeting very plausible. While respondent's singular use of a profanity may not be sanctionable, that, plus her conduct after being let into the Center and during Ms. Williams' meeting, makes her behavior unprofessional and violative of petitioner's Code of Conduct. *See Dep't of Housing Preservation & Development v. Tulloch,* OATH Index No. 512/03 at 5 (May 13, 2003), *aff'd,* NYC Civ. Serv. Comm'n No. CD 05-45-SA (Aug. 11, 2005) (respondent's pronouncement that she was "sick of this shit" followed by her running up and down the hallway into the offices of two supervisors found to be disruptive and disrespectful behavior). Further, I did not believe that this was the first time that staff members were told that they had to produce ID to gain access, given Ms. Matos' credible testimony that there were signs posted to that effect.

In sum, the charge that respondent refused to produce her ID for the security guard and became loudly abusive and disrespectful, is sustained.

Specification II - Failure to Complete Clients' Face-to-Face Recertification.

Petitioner charged that respondent failed to comply with her supervisor's directive to complete face-to-face recertification for two named clients[1] by February 15, 2015, and that respondent had seven other cases suspended in her queue for over 22 days, in violation of sections I and III-21, 22, and 37 of petitioner's Code of Conduct.

Valerie Jones has been a level I principal administrative associate at the Center for approximately seven years. She supervises ES workers and approves actions on cases. Ms.

[1] At petitioner's request and pursuant to OATH Rule of Practice 1-49(d), the clients' full names throughout this report have not been disclosed. *See* 48 RCNY § 1-49 (d) (Lexis 2017) ("On the motion of a party, or *sua sponte*, the administrative law judge may determine that publication of certain information will violate privacy rights set forth in applicable law or rules and may take appropriate steps to ensure that such information is not published.")

Jones testified that she supervised respondent, whose responsibilities included interviewing clients and handling walk-in, face-to-face certification, from 2015 to mid-2015. Respondent had been transferred to her from another supervisor and Ms. Williams had asked Ms. Jones to work with respondent to clear a backlog of cases that respondent had. Ms. Jones accomplished that by farming out some of respondent's work to other ES workers. She appeared to have an amiable relationship with respondent, who would ask Ms. Jones questions when she needed to. Also, whenever Ms. Jones noticed that respondent's work was lagging, she would e-mail respondent a reminder that there were cases in the queue which needed attention, to avoid the cases becoming overdue. Ms. Jones explained that there are two controlling dates. One is established manually, giving the ES worker a specific time to complete a case. The other is triggered by the computer, which signals a warning to the worker that if action is not taken, the client's benefits may be interrupted (Tr. 168-69).

According to Ms. Jones, the eligibility specialists are supposed to be assigned a maximum of 35 re-certifications per month. However, the Center workers sometimes handle well in excess of that number. In fact, most workers schedule about five clients per day and in addition, handle about seven walk-in emergencies. Because they are short-staffed, the workers are overwhelmed by clients (Tr. 157-58).

On March 4, 2015, Ms. Jones e-mailed respondent, identifying seven cases which had been in respondent's queue for well over 22 days. She reminded respondent that the client only had 10 days to return documents, and directed respondent to complete the cases and remit them to her the same day. Ms. Jones stated that a case gets to the ES worker's queue when it is first assigned. The worker schedules an appointment with the client about ten days thence and sends a notice to the client. Thus, according to her, the cases were in respondent's queue well in advance of the dates identified in her e-mail. By accessing respondent's queue, Ms. Jones can see the dates on which respondent interviewed clients for each of her cases, the documents that respondent obtained from the clients and the date that respondent suspended the cases in her queue. For the seven cases that she listed in her e-mail, the system indicated that respondent had gathered and scanned the necessary paperwork on each case, and then suspended them instead of entering comments on the cases and clicking "complete" for them to exit her queue (Tr. 139-46,

149-57; Pet. Ex. 10). Ms. Jones noted that her e-mail was intended to prevent the seven cases in respondent's queue from reaching the overdue list (Tr. 157).

Ms. Jones offered no testimony to support petitioner's charge that respondent failed to follow her supervisor's directive to complete face-to-face recertification for two specific cases by February 15, 2015.

Respondent acknowledged that the seven cases identified in Ms. Jones' e-mail had been in her queue up until the date of the e-mail, but insists that she had completed the work on them. She conceded that they should have been moved out of her queue by February 22, 2015, but testified that she was "fairly slow" in getting cases out of her queue, and at that time, there were about 60 cases in her queue (Tr. 197-200). In an unrelated memo to respondent on April 24, 2015, Ms. Williams pinpointed that respondent had problems with managing her time, which affected the processing of her cases in a timely manner (Pet. Ex. 4).

To establish misconduct, an employer must prove that either the employee acted willfully or intentionally, *Reisig v. Kirby*, 62 Misc.2d 632, 635 (Sup. Ct. Suffolk Co. 1968), *aff'd*, 31 A.D.2d 1008 (2d Dep't 1969) ("Misconduct and insubordination on the part of a civil service employee implies intentional and willful disobedience"), or carelessly or negligently, *McGinigle v. Town of Greenburgh*, 48 N.Y.2d 949, 951 (1979). *See also Ryan v. NYS Liquor Auth.*, 273 A.D. 576, 581 (3d Dep't 1948) ("A mere technical breach of the rules without wrongful intent" was not sufficient to warrant the discharge of an officer who had a good record of service) (citation omitted); *Taxi & Limousine Comm'n v. Kowal*, OATH Index No. 1614/10 at 7 (Mar. 16, 2010), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD-11-26-A (May 4, 2011); *Dep't of Sanitation v. Banton*, OATH Index No. 336/07 at 3 (Dec. 1, 2006); *Dep't of Correction v. Messina*, OATH Index No. 738/92 at 10 (July 9, 1992). Here, there was no assertion by respondent's supervisor that respondent's conduct was intentional and willful. Ms. Jones made it clear that because of their caseload plus emergency walk-ins, the workers were overwhelmed. Thus, petitioner must show that respondent was careless or negligent in her duties. *Dep't of Environmental Protection v. Majors*, OATH Index No. 1024/10 at 4 (Mar. 10, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 11-35-A (May 11, 2011).

To find that respondent was careless, her "degree of carelessness must be more than *de minimis*, since minor and inconsequential errors do not rise to the level of misconduct." *Dep't of*

Sanitation v. Nieves, OATH Index No. 1683/07 at 2 (Sept. 19, 2007); *see also Dep't of Sanitation v. Richards*, OATH Index No. 529/06 at 3 (Feb. 3, 2006); *Dep't of Sanitation v. Frank*, OATH Index No. 465/03 at 8 (Feb. 28, 2003). However, repetitive, fundamental errors by an employee may indicate that the employee is not being careful with his or her work and may constitute negligence. *Law Dep't v. Lawrence*, OATH Index No. 1312/10 at 13-14 (Mar. 30, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 11-36-A (May 11, 2011) (fundamental errors in processing eight payments constituted carelessness or negligence); *Dep't of Consumer Affairs v. Laguda*, OATH Index No. 658/10 at 9-10 (Feb. 10, 2010) (neglect of duty found where respondent failed to make required entries on three occasions, despite reminders, and refused assistance and counseling); *Transit Auth. v. Smallwood*, OATH Index No. 442/96 (Aug. 8, 1997) (repetition of timekeeping errors, though relatively minor, established that employee was not exercising appropriate care before submitting work to supervisor). Here, given the likely adverse consequences of an applicant losing benefits if his/her case case is not closed within a certain period of time, respondent's acknowledgement that she was slow is insufficient for me to dismiss her inattentiveness to the cases in her queue. She had an obligation to have the cases moved out of her queue upon completion, or alert her supervisor if there was a problem. She neglected to do so.

Accordingly, the portion of the charge that alleges that respondent violated agency rules by having seven cases in her queue for 22 or more days is sustained. The portion of the charge that alleges that respondent failed to comply with her supervisor's directive to complete face-to-face recertification for two named clients by February 15, 2015, is not sustained because petitioner offered no testimony or documentary evidence in support.

Specification III – Failure to Timely Process a Client's Application for Public Assistance. Verbal Confrontation with Deputy Director and Walking out of Meeting.

Petitioner charged respondent with: failing to timely process a client's paperwork, which caused the client to file a complaint against respondent, walking out of a meeting called by the Deputy Director to address the client's case, and becoming verbally confrontational with the Deputy Director, in violation of sections I, II-B, and III-1, 21, 22 and 37 of petitioner's Code of Conduct.

Ms. Williams testified that on March 27, 2015, she was walking through the Center's reception area when someone alerted her that a client, Marva M., wished to speak with a manager because Ms. M. had been calling and visiting the Center and her concerns were not being addressed (Tr. 28). Ms. Williams took Ms. M. to her office and Ms. M. explained that she had been going to and from the Center for about six weeks, and had spoken with respondent, but to no avail. Ms. M. became emotional, relating that each time she came to the Center, she had to pay car fare so she wanted to file a complaint. Ms. Williams extracted a complaint form and attempted to give it to Ms. M., who stated that she was no good at writing, and asked Ms. Williams to write it for her. Ms. Williams agreed to do so, on condition that she would read it back to Ms. M. and if it accurately represented Ms. M.'s version of events, Ms. M. would sign the complaint (Tr. 30-31). Petitioner introduced a complaint form which Ms. Williams identified as the one that she wrote at Ms. M.'s request. The document was dated March 27, 2015, but it was not signed by Ms. M. (Tr. 32-35; Pet. Ex. 2).

After Ms. M. left, Ms. Williams called respondent into her office and asked about Ms. M.'s case. Respondent replied that "it's going to be done." When Ms. Williams told respondent that it will have to be done right away, respondent replied that if so, Ms. Williams will have to handle it. Ms. Williams told respondent's supervisor that she wanted the case to be addressed even if it meant reassigning it to another worker, because she did not want Ms. M. to have to return to the Center. She also called for a meeting with respondent and her supervisor, but respondent requested to have her union rep. present. When the union rep. appeared, respondent announced that she was not staying and walked out (Tr. 20-21, 35-36). Ms. Williams maintained that she had no idea what delayed the processing of Ms. M.'s case (Tr. 65).

Ms. Williams memorialized multiple incidents in a memo to respondent dated April 24, 2015 (Pet. Ex. 4). In one paragraph, she addressed Ms. M.'s complaint, and noted that respondent walked out of her office after stating that she, Ms. Williams, should complete Ms. M.'s case. In another paragraph, she noted that respondent walked out of meetings on April 3 and 8, 2015, and refused to attend one on April 9, 2015, which was scheduled to accommodate respondent's union rep's presence.

Respondent implied that someone else had worked on the subject client's case before her, testifying that it had been opened in advance of being assigned to her. She stated that the client's

moving expenses had previously been denied. Respondent also conceded that the client's paperwork went back and forth between respondent and her supervisor, resulting in the protracted disapproval of Ms. M.'s moving expenses. According to respondent, neither she nor her supervisors knew how to get Ms. M.'s case to the Rental Assistance Unit for that unit's approval. Nor did she know to whom she should forward the client's information. Thus, even though respondent received the case in December 2014, it still had not been approved by March 2015. Respondent also blamed the delay on the bill that Ms. M. presented, claiming that "it was the way the company presented the bill that confused the order - - or confused the moving expense. And we had to unscramble that." She further stated that it took her supervisors time to understand what they needed to do (Tr. 203-06). Respondent denied not wanting to meet with Ms. Williams, but concurred that she wanted her union rep. present (Tr. 207-08). Notably, she did not challenge that when Ms. Williams directed her to attend to Ms. M.'s case immediately, she retorted that Ms. Williams will have to do it.

By her own admission, respondent was tardy in processing Ms. M.'s application, resulting in much grief to Ms. M. Moreover, her only explanation for the delay was that she and others did not know how to get the case transferred to the Rental Assistance Unit. I am not persuaded that others were involved in the delay in the processing of Ms. M's case. Rather, the only person who appeared accountable for the delay was respondent, who maintained the day to day control over the case and should never have had Ms. M. trapesing back and forth to check on the approval of her application. This particularly violated petitioner's Code of Conduct regarding agency-participant relationship, and the efficient performance of work assignments.

The allegation that respondent became verbally confrontational with Ms. Williams in the presence of the union rep. was not supported by the testimony or the memo that Ms. Williams wrote on April 24, 2015, discussing multiple complaints against respondent. While petitioner alleged that on the same day of Ms. M.'s visit, respondent went to Ms. Williams' office with her union rep. and immediately became confrontational, Ms. Williams' memo contained no notation that respondent came to her office the same day. Rather, the only reference to the union rep. indicates that a meeting was scheduled for April 9, 2015, some two weeks after Ms. M.'s incident to permit respondent to have her union rep. present, and that respondent refused to attend. What is supported in Ms. Williams' contemporaneous memo, however, is that

respondent suggested that Ms. Williams should work on Ms. M.'s case, as asserted in the allegation.

In determining whether certain behavior is proscribed and constitutes misconduct, this tribunal has considered whether, among other things, the behavior demonstrated insolence, discourtesy and disrespect. *See Health & Hospitals Corp. (North Bronx Healthcare Network) v. Wolfe,* OATH Index No. 2844/08 at 6 (Sep. 8, 2008) (citing *Dep't of Correction v. Bond,* OATH Index No. 1589/97 at 4 (Oct. 16, 1997), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 99-59-SA (June 3, 1999)); *Human Resources Admin. v. Bichai,* OATH Index No. 211/90 at 12-14 (Nov. 21, 1989), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 90-54 (June 15, 1990). Whether a particular remark or manner amounts to sanctionable insubordination or disrespect in any given case is a factual question to be decided in the totality of the circumstances. *Tulloch*, OATH 512/03 at 6 (insolent behavior is sanctionable if it entails disobedience, insubordination, or disrespect directed towards another employee or supervisor). Here, respondent's retort to Ms. Williams, the deputy director, who is senior to respondent's immediate supervisor, demonstrated a distinct lack of respect for a senior worker, and was extremely insolent.

Therefore, excluding the allegation that respondent was verbally confrontational with Ms. Williams in the presence of the union rep., I find that the specification is sustained.

Specification IV – Refusal of Home Bound Services to Applicant; Failure to Follow Supervisor's Instructions; Walking out of Meeting with Deputy Director; Refusing to attend Re-scheduled Meeting.

Petitioner charged that on or around April 6, 2015, respondent was discourteous to an elderly client's son who was advocating for his mother, Hassina B., and refused to recommend home bound services for the client. Petitioner also charged that respondent failed to follow her supervisor's instructions to prepare a home bound package for the client, in violation of sections I, II-B, and III-1, 21, 22 and 37 of petitioner's Code of Conduct.

A homebound client is someone who is unable to navigate the subway or who suffers some kind of illness that prevents travel to the Center, and therefore calls to request a home visit. The call may also be made by a client's relative (Williams: Tr. 41-42; Gould: Tr. 107-12). Timothy Gould, assistant to the Center's director, testified that in April 2015, he received a call from a client's son who reported that he had notified his mother's caseworker at the Center of a

medical condition that would have prevented his mother from traveling to the Center for a meeting on April 16, 2015. He requested a home visit, but the caseworker, whom he identified as respondent, insisted that his mother should come in. Mr. Gould completed the top half of a complaint form on April 6, 2015, documenting that the client's son characterized respondent as rude. He also e-mailed respondent's supervisor and the Center's manager on April 8, 2015, about the call (Tr. 101-06, 113; Pet. Exs. 5, 8). Petitioner produced a certified e-mail from Ms. Jones to respondent on April 8, 2015, which was copied to Mr. Gould and one other person. It notified respondent of the complaint against her by the client's son, and instructed her to prepare a homebound packet for said client (Pet. Ex. 11). Ms. Jones did not testify as to whether or not respondent complied with her e-mail.

Ms. Williams did not recall the incident with specificity but stated that a memo which she wrote respondent on April 24, 2015, documenting multiple incidents, accurately represented the incident (Tr. 43-46; Pet. Ex. 4). Her memo indicated that respondent had walked out of a meeting with her on April 8, 2015, and an attempt was made to have another meeting the following day, for respondent's union rep. to be present. Ms. Williams acknowledged that she had written the section that addressed "Action taken" on the complaint form which Mr. Gould had written (Tr. 48-49; Pet. Ex. 5).

Respondent did not recall having a conversation with either the homebound client or the client's son, who had filed the complaint. In fact, she denied that she was the one who had refused the client's son's request for homebound services for his mother, or that she was ever assigned to provide services to the client. Respondent produced a report from the Center's computer system which showed, among other things, the subject client's case number, workers' names, activity description, case comments and activity dates ranging from January 12, 2012 to December 7, 2016 (Resp. Ex. B). The report did not reflect any activity for April 2015. Nor did it show respondent's name as one of the client's workers (Tr. 209-13, 221). When shown Ms. Jones' e-mail directing her to prepare a homebound package for Hassina B., respondent claimed that she rarely read her e-mails at that time because she was so bombarded with cases (Tr. 221-24).

The report which respondent produced was insufficient to support her claim that she did not initially deny homebound services to Hassina B. The activity description and case comments

fields suggest that the report only reflected actions taken on in-person visits to the Center. In any event, Ms. Jones' and Mr. Gould's e-mails left no doubt in my mind that respondent was the worker who denied homebound services to the complainant for his mother. Moreover, Mr. Gould's handwritten portion of the complaint form that respondent was rude to Hassina B's son went unchallenged. But there was no testimony that respondent failed to follow Ms. Jones' e-mail instructions to prepare the homebound package for the client. In addition, petitioner's only proof of its allegation that respondent walked out of a meeting with Ms. Williams on April 8, 2015, was Ms. Williams' notation in her April 24, 2015 memo that this indeed occurred. But the memo contained no details as to respondent's behavior leading to the alleged walk-out, except to suggest that it was prompted by a need for respondent's union rep. to be present.

Under section 75(2) of the Civil Service Law ("CSL"), employees are entitled to have their union rep. present if disciplinary action is the likely consequence of a supervisor's questioning of the employee. *See Dep't of Correction v. Wright,* OATH Index No. 1984/11 at 7 (Aug. 10, 2011), *modified on penalty,* Comm'r Dec. (Nov. 28, 2011) ("An employee has the right to refuse to submit to an employer's interview without the presence of a union representative if the employee reasonably believes that the interview could result in disciplinary measures, and the employee requests such representation."). Thus, if without more, respondent walked out on Ms. Williams on April 8, 2015, for purposes of having her union rep. present, this action cannot be deemed to be misconduct. On the other hand, I find that Ms. Williams' contemporaneous memo supports that respondent refused to attend a meeting on April 9, 2015, which was scheduled to accommodate her having her union rep. present. Respondent did not rebut this portion of the charge. Such refusal was disrespectful, discourteous and insubordinate.

Accordingly, the specification is sustained only with respect to the allegations that respondent denied a client homebound services and refused to attend a meeting with the Deputy Director and others, which was scheduled to accommodate respondent's needs.

Specification V – Disrespectful Behavior to Client; Failure to Follow Supervisor's Instructions.

Petitioner charged respondent with loudly arguing with and walking away from a client, in the presence of other seated clients, in violation of multiple agency rules.

Mr. R. is currently a Center client. He did not know respondent by name but identified her as the person with whom he interacted at the Center on April 28, 2015. On that date, he had met with his caseworker, and as he was leaving, realized that there was something else that he needed to discuss with the caseworker. He was in the waiting area when respondent, whom he had not met previously, would not permit him to go back to his caseworker. Without mentioning exactly what respondent said to him, Mr. R., who appeared to become highly incensed as he recalled the incident, testified that respondent raised her voice and screamed at him. He characterized her treatment of him as "rude," "indignant," "arrogant," "condescending" and "horrendous" (Tr. 68-71, 73, 78). Mr. R. stated that a female supervisor witnessed respondent's behavior and encouraged him to file a complaint, which he did. Mr. R.'s complaint elaborated that he was in the process of returning a check for which he wanted a receipt, but respondent did not want him to return and speak with his caseworker (Tr. 72-75; Pet. Ex. 6).

Ms. Williams testified that she actually witnessed the incident between respondent and Mr. R. She could not recall respondent's words to Mr. R., but maintained that they were inappropriate, so she instructed respondent to "stop," and then asked Mr. Mani, one of the supervisors who was in the waiting area, to handle the situation. Ms. Williams also could not recall if she had spoken to Mr. R. on the day of the incident (Tr. 50-52). But she acknowledged that she had written the first page of the complaint form which was attached to Mr. R.'s complaint. On it, she indicated that respondent was given a memo. Under the "Resolution" section of the form, Ms. Williams wrote "Disciplinary Action" (Tr. 52-54).

Nadupeedikayil Mani, a 27-year employee of HRA, has worked at the Center for more than 15 years. As a level I principal administrative assistant for over 10 years, he supervises ES workers, and was respondent's direct supervisor for a couple years (Tr. 115-18). Mr. Mani testified that on April 28, 2015, he was at the front desk, where clients come to request assistance, when he observed respondent's interaction with Mr. R. He maintained that respondent was being discourteous to Mr. R., in that she was not giving him an opportunity to speak, and was, instead, continuously talking. So Mr. Mani intervened and directed respondent to answer Mr. R.'s questions. Respondent replied that she was not going to answer Mr. R.'s questions and that Mr. Mani could answer them. Mr. Mani documented the incident in a memo to respondent on the same day. In it, he described respondent's interaction with Mr. R. as loud

and argumentative, that other clients were present, and noted that Ms. Williams had witnessed the behavior. Mr. Mani's memo also informed respondent that he would forward his memo to management for appropriate steps to be taken (Tr. 118-24; Pet. Ex. 9).

Respondent testified that on April 28, 2015, she was assigned a client and when she went to the waiting area for that client, Mr. R. approached her and requested assistance. She claimed that she informed him that he should sit and wait for his worker. She denied that there was any incident between her and Mr. R. She acknowledged that a supervisor approached her and ordered her to service Mr. R., but she already had a customer, and in any event, it would not have been proper to take documents from Mr. R. in the waiting area because the workers were instructed by management not to service customers in the waiting area. Respondent testified that taking documents from Mr. R. in the waiting area would not have been proper, and that Mr. R. should have gone to the reception area to let the receptionist know that he wished to see his worker again. During cross-examination, respondent initially denied that a supervisor directed her to service Mr. R. But when pressed, she admitted that Mr. Mani instructed her to do so (Tr. 215-20).

While I concur with respondent that the testimony of Mr. R., Ms. Williams and Mr. Mani did not identify the specific words that she used, but were conclusory in nature, there can be no doubt that respondent spoke inappropriately to Mr. R. There was no testimony that Mr. R. had had any previous interaction with respondent, so there was nothing for me to conclude that he was biased against her. However, from his testimony, he appeared to recall a very humiliating experience with respondent which affected him deeply, and continues to affect him. In addition, Mr. R.'s contemporaneous complaint communicated the anger he felt at how he was treated by respondent. I also found Mr. Mani to be a credible witness who demonstrated no bias against respondent, and whose observation of her on the day in question occurred by chance. From both Mr. R.'s and Mr. Mani's testimony, it was clear that respondent was discourteous and unprofessional towards Mr. R.

As a general rule, civil service employees are obligated to comply with a supervisor's order when it is given, and address objections to the appropriateness of the order through the grievance process at a later time. *Dep't of Transportation v. Hines,* OATH Index No. 790/07 at 3 (Feb. 9, 2007); *Dep't of Environmental Protection v. Salinas,* OATH Index No. 1020/04 at 5

(Nov. 15, 2004), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 06-16-SA (Jan. 9, 2006). Respondent did not deny that she was instructed by Mr. Mani to service Mr. R., and her attempt to explain why she failed to follow Mr. Mani's instructions did not make sense. Moreover, I found it to be a deliberate attempt to obfuscate the real issue, that is, that she did not wish to assist Mr. R.

In sum, I find that respondent displayed unprofessional behavior towards Mr. R. in the presence of other agency clients, and she failed to follow the directive of a supervisor, Mr. Mani, to service Mr. R., in violation of agency rules. The specification is therefore sustained in its entirety.

FINDINGS AND CONCLUSIONS

1. Petitioner established that on February 6, 2014, respondent violated multiple sections of petitioner's Code of Conduct when she became loud and disrespectful to the security guard at her workplace upon being asked to present ID.

2. Petitioner did not establish that respondent failed to comply with her supervisor's directive to complete face-to-face re-certifications for two cases by February 15, 2015, but it established that during the same month, respondent neglected her duties by holding seven cases in her queue for 22 or more days, in violation of petitioner's Code of Conduct which requires efficient performance of duties.

3. Petitioner established that over a period from December 2014 through March 27, 2015, respondent was tardy in the processing of a client's application, which caused significant grief to the client, in violation of petitioner's Code of Conduct.

4. Petitioner failed to establish that respondent became verbally confrontational with the deputy director on March 27, 2015, but it did establish that respondent was disrespectful and insolent towards the deputy director on that date, in violation of petitioner's Code of Conduct, when she stated that the deputy director should handle the case that respondent was being instructed to handle.

5. Petitioner established that on April 6, 2015, respondent was discourteous to a client's son and denied homebound services to his mother, in violation of petitioner's Code of Conduct.

Petitioner did not establish that respondent failed to follow her supervisor's later e-mail instructions to prepare a homebound package for said client.

6. Petitioner established that respondent refused to attend a meeting with the deputy director on April 9, 2015, which had been rescheduled for her to have her union representative present. Respondent's behavior was disrespectful and insubordinate, in violation of petitioner's Code of Conduct.

7. Petitioner established that on April 28, 2015, respondent was loud and discourteous to an agency client within the earshot of other clients, and failed to follow a supervisor's instructions to service said client, in violation of petitioner's Code of Conduct.

RECOMMENDATION

Upon making the above findings, I obtained and reviewed an abstract of respondent's personnel record in order to make an appropriate penalty recommendation. Petitioner's records indicate that respondent has worked for the agency since January 1973. She has been disciplined on three occasions in the past, mainly for time and leave infractions. Her last instance of misconduct occurred in 2010. In 2012, respondent settled those charges, which involved the use of inappropriate language with a co-worker, and leaving a meeting with a supervisor, as well as time and leave infractions, for a 25-day pay fine. Her last performance evaluation for the period January 1 through December 31, 2014, was issued on January 28, 2015, but was unsigned by respondent. In it, respondent received three "unsatisfactory" ratings and one "good" rating.

Respondent has been found guilty of: being loud and disrespectful to a security guard; failing to efficiently perform her duties by holding seven cases in her queue for 22 or more days, and delaying the processing of a client's application for months; displaying disrespect and insolence towards the deputy director on multiple occasions; being discourteous to a client's son and denying homebound services to his mother; being loud and discourteous to an agency client within the earshot of other clients, and failing to follow a supervisor's instructions to service said client, all in violation of multiple rules of petitioner's Code of Conduct.

For the proven misconduct, petitioner seeks to suspend respondent for 30 days without pay. Even though petitioner did not prove the five charges in their entirety, I find petitioner's request to be appropriate.

When assessing the penalty for unprofessional and disrespectful language in the workplace, this tribunal has considered such factors as context, substance, tone, and duration of the remarks. *Human Resources Admin. v. Smart*, OATH Index No. 1325/16 (May 6, 2016). Penalties for such behavior have ranged from a formal reprimand to a ten-day suspension without pay. *See Dep't of Citywide Admin. Services v. Amar*, OATH Index No. 2227/16 (Oct. 6, 2016) (formal reprimand for staff member who said, "this is bullshit," in the presence of a supervisor and other employees upon being told of his supervisor's decision on a schedule issue); *Dep't of Transportation v. Dhar*, OATH Index No. 2024/14 (July 3, 2014), *aff'd*, NYC Civ. Serv. Comm'n Item No. 2014-0757 (Nov. 25, 2014) (three-day suspension without pay for respondent who used discourteous and unprofessional language during an argument with a co-worker); *Admin. for Children's Services v. Goldman*, OATH Index No. 985/12 at 8 (July 3, 2012), *adopted*, Comm'r Dec. (July 13, 2012) (ten-day suspension imposed on case worker, with serious disciplinary record, for asking a supervisor, "what the fuck is your problem?"); *Human Resources Admin. v. Germaine*, OATH Index No. 758/01 (Jan. 31, 2001) (four-day penalty for respondent who used inappropriate language and engaged in a loud, disruptive argument with a coworker). Here, respondent's use of profanity was relatively mild, but followed by her behavior during Ms. Williams' meeting, I find that a three-day suspension without pay to be appropriate for the behavior she displayed with Ms. Matos and at the meeting that followed.

For misconduct which included neglect of work duties, this tribunal has recommended penalties ranging from 12 days suspension without pay to termination. *See Dep't of Health & Mental Hygiene v. Dillon*, OATH Index No. 2231/15 (Sept. 15, 2015), *aff'd*, NYC Civ. Serv. Comm'n Index No. 2015-1389 (Mar. 24, 2016) (30-day suspension for computer specialist who answered the telephone in a robotic voice, created and abandoned help desk requests, failed to provide complete ticket descriptions, and failed to assign tickets to the proper group); *Dep't of Health & Mental Hygiene v. Levia-Mena*, OATH Index No. 851/14 (Mar. 14, 2014), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2014-0614 (Mar. 27, 2015) (12-day penalty recommended for worker who was inefficient in performing duties relating to a home day care provider, was discourteous to a colleague on one occasion, and failed to perform work as assigned on two occasions); *Law Dep't v. Stanley*, OATH Index No. 1540/05 (June 15, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-08-SA (Jan. 9, 2006) (15-day suspension for clerk who failed to

perform data entry on a contract database for two months, without notifying her supervisors); *Human Resources Admin. v. Bellamy*, OATH Index No. 1665/03 (Jan. 9, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 07-14-SA (Feb. 9, 2007) (60-day penalty for worker who negligently followed procedures and refused immediate needs benefits to homeless client who had no food nor money to buy food, on incorrect ground that his children had no identification); *Human Resources Admin. v. Gibson*, OATH Index No. 1293/01 (November 26, 2001), *modified on penalty*, Comm'r Dec. (Jan. 4, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 02-80-SA (Oct. 10, 2002) (60-day penalty for worker who failed to timely complete various case assignments which adversely impacted on benefits available to needy clients, compounded with multiple time and leave violations); *Human Resources Admin. v. Barton*, OATH Index No. 2203/00 (Mar. 15, 2001) (termination recommended for worker who had a significant disciplinary history and failed to do any work at all on at least 12 cases over a two-month period, sought no help from his supervisor, nor provided any explanation or notice to his supervisor that he was having problems completing his assignments). Here, respondent's neglect of seven cases in her queue had the potential for a negative impact on clients' benefits but did not. However, her failure to persist with Ms. M.'s case, which caused significant delay in its processing and grief to the client, while unacceptable, does not warrant as harsh a penalty as those in the cited cases. I find that a penalty of seven days' suspension without pay to be appropriate.

In cases where employees were found to have been disrespectful and insubordinate to their supervisors, this tribunal has imposed penalties ranging from three to twenty days' suspension without pay. *See Transit Auth. v. Felix*, OATH Index No. 1206/09 (June 16, 2009) (eight-day suspension for multiple instances of rude and discourteous behavior and insubordination); *Human Resources Admin. v. St. Louis*, OATH Index No. 895/05 (May 26, 2005), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 07-03-SA (Feb. 9, 2007) (10-day suspension for insubordination); *Human Resources Admin. v. Royal*, OATH Index No. 1087/04, *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 05-59-SA (Aug. 26, 2005) (20-day suspension for insubordination); *Bichai*, OATH 211/90 (three-day suspension for worker who disobeyed several orders and called supervisor a profane name). Here, respondent was disrespectful and insolent to the deputy director on two occasions (on March 27 and April 9, 2015), and she failed to acknowledge or accept responsibility for either. She was also disrespectful and insubordinate

when she refused to attend a meeting with the deputy director, which was scheduled to accommodate respondent. I therefore find a ten-day suspension without pay for those two instances to be appropriate.

Civil servants are obligated to be courteous and professional in their interaction with the public. *See Human Resources Admin. v. Lovell,* OATH Index No. 2477/14 at 15 (Feb. 13, 2015), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2015-1442 (Apr. 12, 2016); *Dep't of Finance v. Zindel,* OATH Index No. 168/06 & 223/06 at 20 (Oct. 3, 2006), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 07-63-SA (June 12, 2007). This tribunal has generally assessed penalties in the range of four to twenty days for rude and discourteous conduct directed at members of the public. *Dep't of Environmental Protection v. Onibokun*, OATH Index No. 871/07 (Apr. 4, 2007), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 07-108-SA (Dec. 7, 2007) (four-day suspension for research assistant who yelled at a customer and was insubordinate); *Human Resources Admin. v. Rosier*, OATH Index No. 1951/04 (Mar. 31, 2005) (20-day suspension for an eligibility specialist who replied that he name was "shit" when asked by a client to identify herself, and hung up the phone, and who also made an unsolicited, taunting phone call to a former supervisor); *Dep't of Sanitation v. Bower*, OATH Index No. 2284/04 (May 20, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-03-SA (Jan. 9, 2006) (five-day suspension for calling civilian a "fucking bitch" after civilian threatened to report respondent for illegally parking his truck); *Police Dep't v. Beirne*, OATH Index No. 506/03 (Jan. 14, 2003) (five-day suspension for officer who directed obscene gesture at member of the public and then refused to identify himself when asked). Here, respondent's behavior towards Hassina B.'s son was discourteous and inappropriate. For that, I find that a suspension without pay for two days to be appropriate. Respondent's treatment of Mr. R. was troublesome because it was done in the presence of other clients. Even so, I find that it was not so egregious as to warrant a penalty recommendation at the higher end of the spectrum. I therefore recommend that respondent be suspended from her employment without pay for three days for treating Mr. R. in an inappropriate manner.

This tribunal has generally recommended penalties of five or more days for failing to comply with a supervisor's directives. *See Human Resources Admin. v. Traylor,* OATH Index No. 2162/11 (July 1, 2011) (10-day suspension for failing to comply with supervisory directives); *Human Resources Admin. v. Traylor,* OATH Index No. 168/07 (Jan. 31, 2007) (five-

day suspension recommended where respondent's failure to comply with her supervisor's order appeared to be fleeting); *Health and Hospitals Corp. (Coney Island Hospital) v. Reid*, OATH Index No. 681/00 (Apr. 14, 2000) (10-day suspension for failure to promptly obey supervisor's order and hanging up the phone on supervisor). For respondent's failure to comply with Mr. Mani's instructions to service a client, I find a five-day suspension without pay to be appropriate.

In sum, I find that a 30-day suspension without pay to be appropriate for the proven charges, and I so recommend.

Ingrid M. Addison
Administrative Law Judge

March 17, 2017

SUBMITTED TO:

STEVEN BANKS
Commissioner

APPEARANCES:

DANIEL KORENSTEIN, ESQ.
Attorney for Petitioner

THOMAS COOKE, ESQ.
Attorney for Respondent