

***Health & Hospitals Corp. (Kings County Hospital) v. Lim***

OATH Index No. 2411/18 (Dec. 28, 2018), *modified on penalty*, Hosp. Dec. (Jan. 30, 2019), *aff'd*, HHC Personnel Review Bd. Dec. 016/19 (July 31, 2019), **appended**

Service aide charged with sending threatening phone texts to a supervisor. Charges sustained and 60-day suspension recommended.

Hospital declined to adopt ALJ's recommended penalty and imposed termination of employment instead.

---

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

*In the Matter of*  
**HEALTH AND HOSPITALS CORPORATION  
(KINGS COUNTY HOSPITAL)**

*Petitioner*

*- against -*

**HAYREEN LIM**

*Respondent*

---

**REPORT AND RECOMMENDATION**

**JOHN B. SPOONER**, *Administrative Law Judge*

This disciplinary proceeding was referred to me pursuant to section 7.5 of the Personnel Rules and Regulations of the Health and Hospitals Corporation. Petitioner, the Health and Hospitals Corporation, Kings County Hospital, charged respondent Hayreen Lim, a service aide, with sending threatening phone texts to a supervisor.

A trial on the charges was conducted before me on October 2 and November 20, 2018. Petitioner called three supervisors and a security officer. Respondent testified on his own behalf, admitting sending the texts, and called a character witness.

For the reasons provided below, I recommend that the charges be sustained and that respondent be suspended for 60 days.

**ANALYSIS**

Respondent has worked as a service aide at Kings County Hospital since 2007, working part-time until 2014 and then full time afterwards (Tr. 151, 156). As a service aide, respondent

is assigned to serve food to patients, under the supervision of a manager employed by an outside consultant company named Sodexo. For the last five years, respondent has been stocking the pantries with incoming food deliveries (Tr. 151-52). Respondent works under two Sodexo supervisors, Ms. Charles and Ms. Duncan, who report to Mr. Chan, the food and nutrition director employed by Sodexo and assigned to Kings County Hospital. The charges in this case concern text messages respondent sent on March 7, 2018, to Ms. Charles and Ms. Duncan with threats about Mr. Chan.

Respondent's complaints about Mr. Chan stemmed from the desire of part-time workers to become full-time. As testified to by another service aide, Mr. Austin, many of the service aides were initially hired as part-time workers, hoping to become full-time aides when openings appear. In early March 2018, the hospital hired an outside applicant for a full-time service aide position, even though a number of current part-time aides very much wanted to become full time. To make matters worse, the part-time aides, who had often been at the hospital for 10 to 12 years, would be required to take extra time to train the new full-time aide (Tr. 130).

Respondent testified that in March 2018 he and other workers saw postings for two new full-time and two new part-time service aides. He then saw "four new faces" and realized that all of the new positions had been filled with new employees and none of the current part-time service aides had been offered full-time work (Tr. 156). On March 7, respondent's day off, he was relaxing at home drinking wine (Tr. 157). At some point, while he was "tipsy" and listening to music, he began sending texts to his supervisors on his phone (Tr. 175). At around 6:46 p.m., he sent the following text to Ms. Duncan's work cell phone:

If it's true that sedexo, you hired a full time workers from the outside, if it's true, you guys sucks, how could you all ow this to happened, it's wrong!

At 7:24 p.m., he sent Ms. Duncan another text:

Susana what he think of himself macho and handsome, if no jail time of murder I kill him myself.

At around 7:26 p.m. the same evening, he sent the following texts to Ms. Charles on her work cell phone:

I just heard what a shit Chan did to his crew!

How could you hired [sic] some one who's from the outside? Everyone is waiting for full time and benefits, Chan is going to Hell, I kill him myself if no jail

And at 7:31 p.m., he sent yet another text to Ms. Duncan:

I hope his wife fuck a non Asian man

(Pet. Ex. 4).

Around 6:30 p.m. on the day after respondent sent the texts to Ms. Duncan and Ms. Charles, respondent realized that he had “crossed the line” with his texts and sent apologies to both women (Tr. 158-59). He told Ms. Duncan, “I’m sorry I got angry about the management decision, I’m nobody to say anything, it’s just hard to understand what went down, have a good evening, Susan” (Pet. Ex. 4). To Ms. Charles he wrote, “Sorry to vent to you, I was angry [emoji] sometime the job gets in my emotions, have a good evening Fiona” (Pet. Ex. 3).

Ms. Duncan testified that, upon viewing the March 7 texts from respondent the following day, she became very upset and immediately informed Mr. Chan about them (Tr. 116-17). Mr. Chan testified that, upon seeing the texts on Ms. Duncan’s phone, he became extremely concerned and immediately called both human resources and the hospital police to report them (Tr. 17). Mr. Chan filed a workplace violence report with the hospital police (Pet. Ex. 5) and also a complaint with the local police precinct (Pet. Ex. 9).

Ms. Charles testified that she viewed the March 7 texts the following day when she was on her way to work. At a meeting the next day with Mr. Chan, Ms. Charles showed him the texts she had received (Tr. 71-73). Mr. Chan also provided these texts to the hospital and City police (Tr. 21).

When respondent next came to work two days after sending the texts, he was greeted by hospital police and told that he was suspended for 30 days (Tr. 160). He remained suspended with pay through the trial dates. Criminal charges were initiated, but ultimately dropped (Tr. 28-29, 170).

Mr. Chan testified that, after seeing the texts threatening to kill him, he became “stressed and shaky,” fearful that he or his family would be harmed. He changed the route he took to work. He discussed with his family whether he should quit his job. He avoided staying out late and as much as possible being in public. He told his wife also not to work late. He was escorted by hospital police to and from the subway station (Tr. 25-28, 31). Mr. Chan noted that respondent had had prior altercations with Mr. Chan and other co-workers when security was called (Tr. 33-37).

The following month, Ms. Duncan submitted a letter resigning from her position due to the fear instilled by respondent's threatening text messages. In her resignation letter (Pet. Ex. 7), she stated that the text messages had made her feel "very unsafe" and made it "difficult for me to complete my daily tasks." Ms. Duncan testified that respondent's threats, combined with other recent shootings, made her feel unsafe at the hospital (Tr. 119).

Ms. Charles stated that she has supervised respondent for two years and has previously known him to explode and later apologize (Tr. 81). She never before heard respondent threaten anyone, however, and did not believe that he would actually kill Mr. Chan (Tr. 82).

Respondent testified he was born in the Philippines and immigrated to the United States 26 years ago (Tr. 152-53). Respondent stated that he regretted his improper text messages and that he wished to apologize to Mr. Chan because he "truly went out of line" (Tr. 169).

After respondent's suspension, beginning on March 26, 2018, respondent started attending weekly counseling sessions with a social worker from his union (Tr. 161-63), as corroborated by attendance forms (Resp. Ex. B). He continued these sessions through August 2018. During the ten sessions, the counselor and respondent discussed emotions, empathy, and "how to suppress your anger" (Tr. 162). The social worker gave respondent a certificate confirming that he had successfully completed the treatment program (Resp. Ex. C).

In April 2018, respondent commenced anger management treatment with another program called Second Wind. Respondent found this program, which consisted of weekly group meetings, "amazing" (Tr. 165). Through this program, respondent learned meditation, which he found "very helpful" in dealing with his emotions (Tr. 165). Respondent attended nine sessions under this program through July, receiving a certificate of completion on July 12 (Resp. Ex. D).

Respondent stated that these programs gave him "the tools to properly communicate with my fellow human beings without being so emotional" (Tr. 168). He testified that he had learned to be "more empathetic" and not to use "hurtful words" (Tr. 171). Respondent stated that he wanted to return to his job at Kings County Hospital to be a "productive human being" and to support his daughter (Tr. 170).

There is no question that respondent's texts concerning the threats to kill Mr. Chan and harm his family constituted serious misconduct. They violated the fundamental rules requiring courtesy to all co-workers and the general prohibitions against workplace violence and

discrimination. *See* HHC Code of Conduct § E(1), E(4), and E(15); Kings County Hospital Center Handbook p. 41. The charges should be sustained.

### **FINDINGS AND CONCLUSIONS**

1. Charge 1 should be sustained in that, on March 7, 2018, respondent sent a text to a supervisor about another supervisor, stating that he would “kill” another supervisor “if no jail,” in violation of hospital rules.
2. Charges 2 should be sustained in that, on March 7, 2018, respondent sent a text to a supervisor about another supervisor, stating that “if no jail time of murder I kill him myself,” in violation of hospital rules.
3. Charge 2 and 3 should be sustained in that, on March 7, 2018, respondent sent a text to a supervisor about another supervisor, stating, “I hope his wife fuck a non-Asian man,” in violation of hospital rules.

### **RECOMMENDATION**

Upon making the above findings, I requested and received a personnel history on respondent’s employment with the hospital. He was appointed as a service aide in 2007 and has been disciplined once – in 2013 he accepted a penalty of 3 days’ suspension for sending improper text messages concerning a work schedule.

Respondent’s 2013 evaluation was satisfactory, with a number of categories rated as “satisfactory plus.” His supervisor noted that he is “a very good worker who can work in any area of the kitchen and is always willing to help” and “takes on any assignment without being asked.” His 2014 evaluation was also satisfactory but his supervisor wrote that respondent “needs to work on controlling his temper and conduct himself in a professional manner at work.” His 2015-2016 and 2016-2017 evaluations were also satisfactory.

Mr. Austin described respondent as a “very good worker” whom he had never known to be violent. He stated that, while respondent’s texts were wrong, respondent’s motives in standing up for the part-time aides were good (Tr. 134). Mr. Austin collected 36 signatures from staff at the hospital petitioning that respondent be returned to work (Resp. Ex. A). These generally good evaluations and favorable opinions by co-workers provide some reason for mitigation of penalty here.

Respondent's misconduct in this case was disturbing. By telling two supervisors of a desire to "kill" another supervisor, he so rattled one of the supervisors that she resigned within days of receiving the text. When told of the texts, the threatened supervisor became concerned for his safety and the safety of his family and began to take precautions to avoid isolated areas.

It is true that most City employees who have issued threats similar to those made by respondent have been terminated from City service. *Fire Dep't v. Krasner*, OATH Index No. 2967/09 at 11 (Aug. 18, 2009) (fire protection inspector's statement that "Metrotech equals Virginia Tech," along with other misconduct, results in termination); *Dep't of Environmental Protection v. Danko*, OATH Index No. 1060/08 (Apr. 11, 2008), *modified on penalty*, Comm'r Dec. (Sept. 28, 2008), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 09-20-SA (Apr. 3, 2009) (termination for machinist who threatened to "go postal" and to act like "the Virginia Tech shooter"); *Health and Hospitals Corp. (Woodhull Medical and Mental Health Center) v. Pawlowski*, OATH Index No. 1836/00 (Oct. 4, 2000), *aff'd sub nom. Pawlowski v. North Brooklyn Health Network*, 299 A.D.2d 156 (1st Dep't 2002) (employee with lengthy disciplinary history terminated for threats to supervisors and co-workers).

There are, however, other cases where employees who issued threats have not been terminated whether mitigating factors exist. *See Human Resources Admin. v. Levitant*, OATH Index No. 397/04 at 15 (Sept. 7, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD06-59 (May 2, 2006) (20-day suspension for caseworker who told supervisor "You do not know who you are messing with. I will hurt you"); *Dep't of Sanitation v. Mitchell*, OATH Index No. 1823/00 at 8 (Nov. 3, 2000), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD-01-60-SA (July 27, 2001) (30-day suspension for threatening to sic rottweiler dog on supervisor and telling him that he knew where he lived and would "get" him); *Human Resources Admin. v. Olafimihan*, OATH Index No. 751/98 (Mar. 19, 1998) (45-day suspension for employee who threatened to kill supervisor); *see also 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) (30-day suspension for short-term employee who threw flash drive at supervisor); *Dep't of Education v. Kielbasa*, OATH Index No. 658/05 (July 11, 2005) (60-day suspension for employee who swerved car toward supervisor and another co-worker).

Other factors argue for a penalty of less than termination here. Despite the ominous nature of the threatening texts, it was apparent that they were made in just a few moments of

anger while respondent was at home and slightly intoxicated. One of the supervisors who received the texts recognized it as a reflection of respondent's poor anger control and not a bona fide threat to harm anyone. Respondent apologized to both supervisors the following day. He also apologized at trial to the supervisor who he had targeted with the threats and indicated that he realized how damaging the threats were.

Respondent's testimony as to the five months' of counseling and anger management he sought out after the incident was compelling. His statements as to the insights he learned and the tools he developed to control his anger did not appear to be a calculated defense to preserve his job, but rather a genuine and entirely credible recognition of the harm his words had caused and empathy for the three supervisors affected.

In sum, due primarily to respondent's expressions of remorse and his substantial efforts to deal with his anger control issues, I recommend a penalty of a 60-day suspension, the maximum penalty short of termination. I further recommend that respondent receive this 60-day suspension without receiving credit for the 30-day pre-trial suspension he has already served.

John B. Spooner  
Administrative Law Judge

December 28, 2018

SUBMITTED TO:

**SHELDON MCLEOD**  
*Chief Executive Officer*

APPEARANCES:

**BRIAN MITCHELL, ESQ.**  
*Attorney for Petitioner*

**MICHAEL COVIELLO, ESQ.**  
*Attorney for Respondent*

**PERSONNEL REVIEW BOARD  
NEW YORK CITY HEALTH + HOSPITALS**

-----X  
: **DECISION NO.: 016/19**  
: **In the Matter of the Appeal of**  
: **DATE: July 31, 2019**  
: **Hayreen Lim**  
: **DOCKET NO.:006/19**  
: **Service Aide**  
: **NYCH+H/Kings County**  
-----X

Hayreen Lim ("Appellant") appeals from a determination by the New York City Health + Hospitals ("NYCH+H" or "System") to terminate him from his position as a Service Aide. As explained below, this Appeal is denied.

**BACKGROUND**

Appellant has been employed as a Service Aide at NYCH+H/Kings County since 2007. He was a part-time employee until 2007, and, in 2014 became a full-time employee. As a Service Aide, Appellant was assigned to serve food to patients and, for the past five years, has been stocking the pantries with food deliveries. Appellant's immediate supervisors were Ms. Susan Duncan and Ms. Fiona Charles. Their supervisor was Mr. Conrad Chan, the Director of Food and Nutrition.

While at home on the evening of March 7, 2018, Appellant, upset by what he saw as unfair staffing decisions made by Mr. Chan, and after the consumption of wine, sent texts to the work cells of Ms. Duncan and Ms. Charles expressing his anger and threatening Mr. Chan. He sent a text to Ms. Duncan stating: "If it's true that sedexo, a full time workers from the outside, if it's true, you guys sucks, how could you allow this to happened, it's wrong!" A few minutes later, he sent the following: "Susana what he think of himself macho and handsome, if no jail time



of murder, I kill him myself." He then sent a text to Ms. Charles: "I just heard what a shit Chan did to his crew. How could you hire someone who's from the outside? Everyone is waiting for full time and benefits. Chan is going to Hell. I kill him myself if no jail." A few minutes later, he sent a second text to Ms. Duncan: "I hope his wife fuck a non Asian man."

The next day, upon learning the content of the texts from Ms. Duncan, Mr. Chan filed a workplace violence report and a complaint with the local police precinct. As a result of the texts, Mr. Chan changed his route to work, discussed quitting his job with his family, avoided staying out late and being in public. The following month, Ms. Duncan resigned due to the fear the texts had caused her. In her resignation letter, she wrote that the messages had caused her to feel "very unsafe" and made it "difficult for me to complete my daily tasks". Ms. Charles remained at the hospital stating she had never heard Appellant threaten anyone and did not believe he would kill Mr. Chan.

On April 12, 2018, Appellant was the subject of a disciplinary conference by the NYCH+H/Kings County Office of Labor Relations and Conflict Resolution with respect to three charges of misconduct as delineated in the Notice and Statement of Charges dated April 9, 2018. Appellant did not deny the charges, rather, through his Union representative, requested leniency. Mr. Chan was present and provided oral statements and written documentation regarding the text messages sent by Appellant. Based on the information that was presented, the Conference Officer found that there was sufficient evidence to substantiate the charges and recommended that the Appellant's employment be terminated. Appellant then elected his option to a hearing pursuant to Section 7.5 of the Personnel Rules and Regulations of the Health and Hospitals Corporation.

Accordingly, a trial was held at the Office of Administrative Trials and Hearings ("OATH") on October 2 and continued to November 20, 2018, before

Administrative Law Judge John Spooner. After extensive testimony from NYCH+H by Appellant's three supervisors and a security officer, and for the Appellant, the Appellant and a character witness, Judge Spooner issued a Report and Recommendation dated December 28, 2018, in which he that found NYCH+H met its burden of proof to show that the Appellant committed the charged misconduct, however, he recommended that the Appellant not have his employment terminated, rather have a sixty day unpaid suspension, the maximum penalty short of termination. While he found the nature of the threats "ominous", he felt that what he saw as the Appellant's remorse for his actions and the anger management counseling the Appellant underwent argued for a penalty less than termination.

The Report and Recommendation, the entire record and a letter from Appellant's attorney in support of a penalty less than termination were filed with Sheldon McLeod, the Chief Executive Officer of NYCH+H/Kings County and reviewed by Graham Gulian, the Chief Operating Officer of NYCH+H/Kings County and Mr. McLeod's designee. By letter dated January 30, 2019, Mr. Gulian stated that after careful consideration, he did not agree with Judge Spooner and that the misconduct was so egregious that termination is the only appropriate penalty. The anger management counselling Appellant had was not enough of a mitigating factor to warrant a penalty less than termination. Appellant elected to appeal this decision to the NYCH+H Personnel Review Board ("PRB").

On May 15, 2019, a hearing was held before the PRB. Representing NYCH+H was Alexander Yellen, Esq., Associate Counsel, Labor Relations. NYCH+H had one witness: Mr. Graham Gulian. The Appellant was present, represented by Michael Coviello, Esq., Assistant General Counsel DC37. Appellant, through his counsel, did not dispute the facts, only the penalty. Counsel argued for the 60 day suspension citing similar cases in which the penalty was not termination.

Mr. Gulian testified that he had reviewed the record when he made the decision that "the only real option was termination". He further testified; "My role and my responsibility is to protect the safety of the employees who work for me. Based on the text messages, as well as Mr. Chan's trial testimony, it was a clear indication that there was a viable threat to his safety. So we made the determination that we had to first and foremost protect that."

### **DECISION AND ORDER**

After a review of the record evidence, the appeal is denied. The facts of this case are not in dispute; the issue has been the appropriate penalty. The initial action was a disciplinary conference by the NYCH+H/Kings County Office of Labor Relations and Conflict Resolution. The Conference Office found the evidence substantiated the charges and recommended that Appellant's employment be terminated. The second action, the OATH trial resulted in the recommendation by Judge Spooner that while the Appellant's conduct was disturbing and the texts were ominous in nature, the penalty should be short of termination and recommended a sixty day suspension. Judge Spooner wrote there were mitigating factors: the remorse expressed by the Appellant and the anger management counseling Appellant had received. Judge Spooner wrote that in prior similar cases when mitigating circumstances were found, the penalty was suspension. The third action was the filing of the recommendation and the record with Sheldon McLeod, the Chief Executive Officer of NYCH+H/Kings County. It was reviewed by Graham Gulian, his designee. Mr. Gulian agreed with Judge Spooner's decision to sustain the charges, but disagreed with the recommendation regarding the penalty. Mr. Gulian stated that the making of the threatening statements was so egregious that termination was the only appropriate penalty. The counseling was not found to be enough of a mitigating factor to support suspension. In his testimony at the PRB hearing, Mr. Gulian stated

it was his responsibility to protect the safety of his employees and to that end, the Appellant's employment had to be terminated.

In the two actions that were conducted under the purview of Appellant's employer, NYCH+H/Kings County: the disciplinary conference and the response to recommendation after the OATH trial, the appropriate penalty was found to be termination of the Appellant's employment. While the Board recognizes that there are cases in which suspension was found to be appropriate, the Board finds that in this case in which the facts are undisputed and under these circumstances, the Board concurs with the conclusions of NYCH+H/Kings County to terminate Appellant's employment; the appeal is denied.

  
Gale A. Gavin  
Chair

  
Jonathan L. Kimmel  
Board Member

  
Carol J. Shine  
Board Member

CJS/fh

cc: Alexander Yellen, Esq., Labor Relations, NYCHHC  
Michael Coviello, Esq., attorney for the Appellant  
District Council 37, AFSCME, AFL-CIO  
125 Barclay Street, Room 510  
New York, New York 10007