

Human Resources Admin. v. Brown

OATH Index No. 161/19 (Nov. 30, 2018), *aff'd*, NYC Civ. Serv. Comm'n Index No. 2019-0055 (Apr. 10, 2019), **appended**

Petitioner established that respondent physically restrained a security officer in a stairwell and continued to do so after the officer's supervisor directed the officer to report to her post, pushed the officer's supervisor, and used profanity towards the officer and the officer's supervisor. 30-day suspension recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
HUMAN RESOURCES ADMINISTRATION
Petitioner
- against -
LATASHA BROWN
Respondent

REPORT AND RECOMMENDATION

ASTRID B. GLOADE, *Administrative Law Judge*

Petitioner, the Human Resources Administration ("HRA"), brought this disciplinary proceeding pursuant to section 75 of the Civil Service Law. The charges allege that respondent confronted a security officer at the facility where they worked, used profanity, and physically restrained the security officer. It is further alleged that when the officer's supervisor arrived on the scene and directed the officer to return to her post, respondent continued to restrain the officer, pushed the supervisor, and directed profanities towards the supervisor (ALJ Ex. 1).

During a two-day trial, petitioner presented documentary evidence and testimony from three witnesses. Respondent, who was represented by counsel, presented documentary evidence and testimony from two witnesses, and testified on her own behalf. For the reasons below, I find that the charges are sustained and recommend that respondent be suspended without pay for 30 days, with credit for time served.

ANALYSIS

Petitioner alleges that on March 6, 2018, respondent, a case worker assigned to HRA's Manhattan Office of Child Support Enforcement, initiated an altercation with two security officers at her worksite during which she used profanity, restrained one of the officers, and pushed the other officer (ALJ Ex. 1).

Petitioner bears the burden of proving the charged misconduct by a preponderance of the credible evidence. *See 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); *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). A preponderance has been defined as "the burden of persuading the triers of fact that the existence of [a] fact is more probable than its non-existence." Prince, Richardson on Evidence § 3-206 (Lexis 2008) (citations omitted); *see also Bazemore v. Friday*, 478 U.S. 385, 400-01 (1986). Petitioner has met its burden.

Ms. Acquah-Williams has been employed by an HRA contractor as a security officer at an HRA facility on Chrystie Street for four years and was assigned to the fifth floor of the facility in March 2018 (Tr. 10-11).

On March 5, 2018, as she was leaving work for the day, Ms. Acquah-Williams rode in the elevator with several people, including: respondent; Mr. Santana, a janitor at the facility; Ms. Nichols, a clerical associate; and Ms. Nicholson, a supervising security officer. According to Ms. Acquah-Williams, she briefly spoke to Mr. Santana, who asked her about the condition of the fifth floor. She described her relationship with Mr. Santana as friendly co-workers. As she exited the elevator, she said "goodnight, my love," which she directed to all the occupants of the elevator (Tr. 11-12, 35-36).

The following day, Ms. Acquah-Williams was on her lunch break between 1:30 and 2:00 p.m. on the fourth floor of the building, where an employee lunchroom and administrative offices are located. Mr. Santana was on the same floor and was heading towards the office of the facility's director. Ms. Acquah-Williams testified that she briefly spoke with Mr. Santana while they were between the director's office and the lunchroom, as she complimented him on a bracelet he was wearing and they discussed how she could obtain one. Respondent walked by as Ms. Acquah-Williams spoke with Mr. Santana (Tr. 12-13).

According to Ms. Acquah-Williams, after she spoke with Mr. Santana, she was alone in the lunchroom when respondent approached her shortly before 2:00 p.m. and asked to speak with her. Ms. Acquah-Williams, who was scheduled to return to her fifth floor post at 2:00 p.m., told respondent that her lunch break was almost over and she could not talk to her. However, after respondent insisted that they talk, Ms. Acquah-Williams agreed. Stating that she did not want people “in [her] business,” respondent asked that they go somewhere private (Tr. 14). Respondent and Ms. Acquah-Williams walked to the staircase on the fourth floor and entered the stairwell through a door that separates the stairwell from the rest of the floor. Respondent opened the door for Ms. Acquah-Williams and closed the door after they stepped into the stairwell (Tr. 14-15, 18).

Ms. Acquah-William testified that she did not feel threatened or intimidated until they were in the stairwell, which she described as a narrow space. As soon as the door closed, the situation became “nasty” and respondent asked Ms. Acquah-Williams if she had “a fucking problem” with respondent (Tr. 15, 25-27, 29-31). Ms. Acquah-Williams said she “froze up” because it happened so fast (Tr. 15-16). Respondent said that she did not like how Ms. Acquah-Williams spoke to Mr. Santana the night before and told her to stay away from him because he is her child’s father. Ms. Acquah-Williams said she was surprised by respondent’s outburst and just nodded as respondent continued to talk. She then told respondent that she had to leave, but respondent said they were not finished and held on to Ms. Acquah-Williams’ arm. At this point, respondent had backed Ms. Acquah-Williams up against a wall and was in front of her. Respondent “started yelling” as she told Ms. Acquah-Williams to stay away from Mr. Santana and to never talk to him again (Tr. 16). Ms. Acquah-Williams said she remained frozen with her back against the wall as respondent continued to hold her by her wrist and warn her to stay away from Mr. Santana. Ms. Acquah-Williams told respondent that she had to return to her post, but respondent stated that Ms. Acquah-Williams was not leaving until they were finished (Tr. 15-18).

While respondent and Ms. Acquah-Williams were in the stairwell, Ms. Nicholson, Ms. Acquah-Williams’ supervisor, entered the area (Tr. 18). Ms. Nicholson yelled for Ms. Acquah-Williams to go to her post as her lunch break was over, then exited the stairwell. Ms. Nicholson returned to the stairwell several times and told Ms. Acquah-Williams to report to her post. Respondent ignored Ms. Nicholson and continued to talk to Ms. Acquah-Williams. Finally, Ms.

Acquah-Williams told Ms. Nicholson that respondent, who was holding her wrist and standing in front of her, would not get out of her way. When Ms. Nicholson stepped into the stairwell and directed Ms. Acquah-Williams to leave the area, respondent “dragged” Ms. Acquah-Williams further into the stairwell into a corner, saying that they were not finished with their conversation (Tr. 19). As Ms. Nicholson stood behind respondent and ordered Ms. Acquah-Williams to leave, respondent turned, pushed Ms. Nicholson into a corner, told her “mind your business, you black bitch,” and said that they were not done (Tr. 18-20). Ms. Acquah-Williams was able to escape the stairwell by pushing past respondent when respondent turned towards Ms. Nicholson and cursed at her (Tr. 20, 28). Ms. Acquah-Williams went to the fifth floor, where she was joined by Ms. Nicholson. They reported the incident to their captain and wrote incident reports (Tr. 20-21).

Ms. Acquah-Williams’ written report is consistent with her testimony. She wrote that respondent held her “against [her] will” when she wanted to leave, and “pulled” her by the arm “with a tight grip on [her] hand” further into the stairwell. She described feeling scared and threatened because respondent had restricted her movement (Pet. Ex. 1).

Ms. Nicholson supervises four security officers at the Chrystie Street facility, including Ms. Acquah-Williams. As their supervisor, she is responsible for ensuring that the officers are on post, perform their duties, and comply with time and leave requirements (Tr. 33-34).

According to Ms. Nicholson, on March 5, 2018, the day before her altercation with respondent, she was in the elevator with respondent, Ms. Acquah-Williams, Ms. Nichols, and Mr. Santana at the end of the workday. She heard Ms. Acquah-Williams tell Mr. Santana “good night, my love,” or words to that effect, as they exited the elevator. Ms. Nicholson described Mr. Santana as the father of respondent’s child and maintained that she became aware of their relationship because of her interactions with respondent (Tr. 35-36).

The next day, Ms. Nicholson was on duty on the fourth floor shortly before 2:00 p.m. when she was called to the fifth floor to assist another security officer. As she waited for the elevator, she observed Ms. Acquah-Williams and Mr. Santana talking. When the elevator arrived, respondent exited the elevator (Tr. 37).

Ms. Nicholson was scheduled to start her lunch break at 2:00 p.m., after Ms. Acquah-Williams returned from break (Tr. 38). When Ms. Acquah-Williams did not report to her fifth floor post, Ms. Nicholson retrieved her lunch and went to the lunchroom on the fourth floor. The

lunchroom was empty, but Ms. Nicholson heard noise coming from the stairwell, so she went there and opened the door. In the stairwell she saw respondent standing in front of Ms. Acquah-Williams, who was against a wall. On observing respondent and Ms. Acquah-Williams in the stairwell, Ms. Nicholson told Ms. Acquah-Williams that her break was over and she had to report to the fifth floor. Ms. Nicholson then closed the door because she was going to warm up her lunch (Tr. 38-40).

When Ms. Acquah-Williams did not exit the stairwell, Ms. Nicholson returned there a second time, directed her to report to her post, and threatened to write her up. At that time, respondent, who was holding on to Ms. Acquah-Williams, stated that she was talking to her (Tr. 40-41). Ms. Nicholson entered the stairwell and told Ms. Acquah-Williams that she would be written up for her failure to return to her post, at which point Ms. Acquah-Williams said that respondent would not allow her to leave (Tr. 41, 51). When Ms. Nicholson told respondent that Ms. Acquah-Williams had to return to her post because her lunch break was over, respondent stated that she had not finished talking with Ms. Acquah-Williams. Ms. Nicholson noticed that respondent was holding Ms. Acquah-Williams' arm near her wrist and she remained in the stairwell. She told respondent that their discussion could wait until after work hours. However, respondent said that she and Ms. Acquah-Williams were going to continue their discussion and pulled Ms. Acquah-Williams further into the stairwell by her arm. Ms. Nicholson insisted that Ms. Acquah-Williams return to her post and respondent turned around, told Ms. Nicholson to mind her business, called her a "black bitch," and pushed her against a wall (Tr. 41-42, 51-52).

Ms. Nicholson testified that after respondent pushed her, she told respondent to get out of her face, at which point respondent pushed her again. Ms. Nicholson then pushed respondent and left the stairwell. No other staffer came between them and they had no additional contact (Tr. 43). Ms. Nicholson left the stairwell and went to the bathroom, where she called her supervisor, Captain Kenniff, to inform him about the incident (Tr. 44). Ms. Nicholson's incident report, written an hour or two after the altercation, is consistent with her testimony (Tr. 46; Pet. Ex. 2).

Captain Kenniff, Manhattan South Borough Commander for the HRA Police Operations, supervises security officers and HRA police at various HRA facilities, including the Chrystie Street location (Tr. 56-57). He supervises Ms. Nicholson, who in turn supervises Ms. Acquah-Williams (Tr. 57). Mr. Kenniff testified he arrived at the location at about 2:45 p.m. on the date

of the incident and interviewed Ms. Acquah-Williams and Ms. Nicholson. Ms. Acquah-Williams told him that respondent confronted her in the stairwell with allegations involving Mr. Santana. Ms. Nicholson stated that after she tried to get Ms. Acquah-Williams back on post, respondent used foul language, would not let Ms. Acquah-Williams leave, and pushed Ms. Nicholson (Tr. 59-60). He described Ms. Acquah-Williams as “shaken up” and “emotional” (Tr. 60).

Mr. Kenniff also interviewed respondent, who maintained that she was speaking with Ms. Acquah-Williams in the stairwell when Ms. Nicholson came in and used “bad language” towards her, and that they got into a shoving match (Tr. 60-61). No one involved in the incident requested medical treatment, although respondent reported that she had sustained a small scratch on her arm (Tr. 61, 64: Pet. Ex. 3).

Respondent was suspended and escorted from the premises on March 8, 2018, two days after the incident. Mr. Kenniff was present when she returned to the location with police officers, who spoke with respondent, Ms. Acquah-Williams, Ms. Nicholson, and Mr. Kenniff. He informed the officers that HRA was taking disciplinary action (Tr. 63).

Respondent’s account of her interactions with Ms. Acquah-Williams and Ms. Nicholson is starkly different from the version presented by petitioner’s evidence. In respondent’s telling, she was subject to an unprovoked attack by Ms. Nicholson and further victimized by a conspiracy concocted by Ms. Acquah-Williams and Ms. Nicholson.

Respondent has worked at HRA for 15 years. In early March 2018, she was working at the Chrystie Street facility in the Office of Child Support Services, where she interviewed public assistance clients who were seeking child support (Tr. 74-75).

Respondent described her relationship with Ms. Acquah-Williams as friendly before the March 6 incident (Tr. 77, 105-06). In contrast, respondent testified that although she and Ms. Nicholson had been friendly in the past, they were not friends at the time of the incident. According to respondent, in January or February 2017, when she was seven months pregnant, she felt that Ms. Nicholson had become aggressive towards her. She spoke to Ms. Nicholson about her dissatisfaction with their friendship and Ms. Nicholson became upset and yelled at her, causing her to feel that she might go into early labor. As a result, she ended their friendship (Tr. 77, 104, 134, 135). She did, however, invite Ms. Nicholson to her baby shower in March 2017,

and when she gave birth in March 2017, Ms. Nicholson accompanied one of their co-workers to visit her at the hospital (Tr. 104-05).

Respondent testified that between February 1, 2018, when she returned from childcare leave, and March 6, 2018, two people told her that Ms. Acquah-Williams had been spreading rumors that respondent and Mr. Santana were in a relationship and he was the father of her child. Respondent denied that Mr. Santana is her child's father or that she has an intimate relationship with him, describing him as a friend and co-worker (Tr. 77-79, 103, 105).

On March 6, 2018, one of respondent's colleagues asked her to retrieve a case folder that was located on the fourth floor. Respondent had ten minutes remaining on her lunch break, so she went to the clerical workers' office and asked a clerk to locate the folder. While on the fourth floor, she saw Ms. Acquah-Williams standing between the facility director's office and the lunchroom and asked Ms. Acquah-Williams if they could talk. She wanted to speak with Ms. Acquah-Williams to address the rumors that were circulating about respondent's relationship with Mr. Santana (Tr. 78-79).

After respondent looked in the lunchroom and saw that it was full, she asked Ms. Acquah-Williams to go with her to the stairwell for more privacy, even though the facility's director had recently told staff not to use the stairwell (Tr. 80, 113). Once in the stairwell, Ms. Acquah-Williams admitted that she had spread the rumors about respondent and Mr. Santana, which surprised respondent. Respondent asked Ms. Acquah-Williams why she had spread the rumors, and Ms. Acquah-Williams responded that she saw them together during lunch and noticed that Mr. Santana brought respondent coffee. Respondent maintained that she calmly explained to Ms. Acquah-Williams that the rumors were causing disruption in their workplace (Tr. 80-81).

According to respondent, when Ms. Nicholson came to the stairwell door and directed Ms. Acquah-Williams to leave, Ms. Acquah-Williams asked Ms. Nicholson if she could have a few more minutes. Ms. Nicholson did not respond, but remained at the door, which she kept open with her foot while she texted on her phone. Since Ms. Nicholson did not answer Ms. Acquah-Williams, respondent assumed it was okay for Ms. Acquah-Williams to remain there. However, because Ms. Nicholson continued to hold the door open, respondent asked Ms. Acquah-Williams to move further back into the stairwell. They walked to the back of the stairwell and continued to talk, as Ms. Acquah-Williams acknowledged that she understood

respondent's concerns (Tr. 82-83). Ms. Nicholson again directed Ms. Acquah-Williams to leave, and respondent asked Ms. Acquah-Williams if they could have some time to finish up their discussion, so Ms. Acquah-Williams asked Ms. Nicholson for more time (Tr. 83).

Ms. Nicholson again called for Ms. Acquah-Williams to go to her post and walked into the stairwell. She stood between Ms. Acquah-Williams, who was by the wall, and respondent, who was facing her, and motioned for Ms. Acquah-Williams to start walking. Respondent maintains that after Ms. Acquah-Williams and Ms. Nicholson started to walk, she asked Ms. Nicholson why Ms. Acquah-Williams was not being allowed to talk to her for a second and Ms. Nicholson replied: "[be]cause I fucking said so" or because she has to get back to her "fucking post" (Tr. 83). Respondent testified that she became alarmed because Ms. Nicholson was yelling and told her to "[d]o something about it." Respondent tried to leave the stairwell, but Ms. Nicholson pushed her against the wall. Ms. Acquah-Williams asked Ms. Nicholson what she was doing and placed herself between respondent and Ms. Nicholson, who had punched respondent on her right cheek with a closed fist. Two clerical associates and a clerical worker came and separated them (Tr. 83-84, 126, 132).

Respondent contends that she sustained scratches on her right wrist and neck, and a bruise on her lip during the altercation with Ms. Nicholson. She produced photographs that she testified show these scratches. Two of the photographs, taken on March 6, 2018, show a scratch to the arm and a small bruise to the lip, and the third photograph, taken on March 9, shows a scratch to the neck (Tr. 88-92; Resp. Ex. A1-A3). According to respondent, she told her supervisor that Ms. Nicholson had attacked her and showed the supervisor that her lip was bleeding (Tr. 95).

At approximately 4:50 p.m., three hours after the altercation, respondent sent an e-mail to the facility's director regarding the incident (Resp. Ex. B). In that e-mail, she wrote that Ms. Nicholson had blocked her from exiting the staircase before pushing her against a wall and hit her on the right side of her face in the cheek area (Resp. Ex. B). Respondent testified that she did not refer to the rumor that she was discussing with Ms. Acquah-Williams in her report because it concerned the physical altercation, not her discussion with Ms. Acquah-Williams (Tr. 117-18).

Respondent remained at work the rest of the day and worked a full day on March 7 (Tr. 95). However, on March 8, after respondent was notified that she had been suspended, she

lodged a complaint with the police and returned to the facility with several police officers. After speaking with Mr. Kenniff, the officers told her to leave the premises and the matter would be handled within HRA (Tr. 99-101). Respondent was suspended for 20 days and was transferred from the Chrystie Street facility (Tr. 101). She maintained that she did not contact the police on the day of the incident because Mr. Kenniff informed her that the matter would be handled internally and Ms. Nicholson would be removed from the facility (Tr. 94).

Ms. Nichols, a clerical associate III, testified that she witnessed part of the altercation. She was in her office on the fourth floor of the facility on March 6, 2018, when she heard yelling. At first, Ms. Nichols could not discern the voices. However, when she opened the door to the stairwell she saw respondent, Ms. Acquah-Williams, and Ms. Nicholson. Ms. Nichols saw respondent and Ms. Nicholson arguing and saw Ms. Nicholson push respondent backwards as respondent went towards the door to leave the area. Ms. Nichols acknowledged that she did not see the start of the incident, nor did she see Ms. Nicholson scratch, hit, or punch respondent in her face (Tr. 148-51). According to Ms. Nichols, other workers had to intervene to hold back both Ms. Nicholson and respondent (Tr. 139-40, 142, 150-51).

Mr. Santana testified that he is employed by the Department of Citywide Administrative Services (“DCAS”) as a custodian and is assigned to the Chrystie Street location (Tr. 155, 157). He testified that he saw respondent and Ms. Acquah-Williams together on the fourth floor on March 6, 2018, and that they appeared to be talking (Tr. 156). He denied having a friendly relationship with Ms. Acquah-Williams and claimed not to have spoken with her before her altercation with respondent on March 6 (Tr. 159-60).

Given the dramatically different versions of the events of March 6, 2018, resolution of the charges rests on a determination of the witnesses’ credibility. In making credibility determinations, this tribunal may consider such factors as witness demeanor; consistency of 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 (Feb. 5, 1998), *aff’d*, NYC Civ. Serv. Comm’n, Item No. CD 98-101-A (Sept. 9, 1998). I found Ms. Acquah-Williams and Ms. Nicholson to be credible witnesses, with plausible and detailed testimony that is consistent with their contemporaneous written incident reports and comports with common sense.

Respondent, on the other hand, was not believable. She maintained that Ms. Acquah-Williams voluntarily stayed in the stairwell to talk to her and even asked Ms. Nicholson for more time to complete their discussion. Respondent denied touching or threatening Ms. Acquah-Williams during their conversation, using profanity, restricting Ms. Acquah-Williams' movement in the stairwell, or pushing her into a corner. She denied having forced Ms. Acquah-Williams to go further into the stairwell and insisted that Ms. Acquah-Williams wanted to continue their conversation. Respondent maintained that she did not get the impression that Ms. Acquah-Williams felt threatened or intimidated during their conversation and that they were both calm during their encounter (Tr. 80-82, 84-85, 115-17, 121-23).

Respondent's account makes no sense. Having been subject to questioning about her role in spreading rumors about respondent's personal life, as respondent claims, it is hard to believe that Ms. Acquah-Williams would voluntarily remain in a confined area with respondent to prolong their interaction. Respondent asserted that Ms. Acquah-Williams asked Ms. Nicholson for more time to talk to respondent, but respondent testified that by the time Ms. Nicholson arrived in the stairwell, respondent had already expressed her displeasure about the rumors to Ms. Acquah-Williams. Thus, it strains credulity that Ms. Acquah-Williams would ask to prolong an encounter in which she was being chastised. It is more plausible that respondent physically restrained Ms. Acquah-Williams to prevent her from leaving the stairwell. Similarly, respondent's claim that Ms. Acquah-Williams ignored her supervisor's directives to return to her post in order to continue what was undoubtedly an unpleasant conversation is beyond belief (Tr. 123-24).

There are other aspects of respondent's testimony that render her account unbelievable. For instance, she described her interaction with Ms. Acquah-Williams as calm and denied that they were yelling in the stairwell (Tr. 116-17). Yet, they were loud enough to attract Ms. Nicholson's attention (Tr. 39-40).

As for the physical altercation with Ms. Nicholson, respondent denied cursing Ms. Nicholson or pushing her. She claims that Ms. Nicholson launched an unprovoked attack by inviting her to "do something," blocking respondent in the stairwell, pushing her against a wall, and then punching her on the cheek with her closed fist. However, respondent's testimony was incredible, particularly since she offered no motive for Ms. Acquah-Williams and Ms. Nicholson to falsely accuse her of having been the aggressor throughout the incident.

Moreover, although, respondent claimed that Ms. Nicholson punched her on the cheek with a closed fist, she failed to include this significant detail in her written statement prepared about three hours later. Instead, she merely stated that she was hit in the cheek area. Similarly, respondent claimed to have sustained a bruised lip that she brought to the attention of the facility's director immediately after the incident occurred, yet she failed to include any mention of that purported injury, or of an injury to her neck, in her written statement.

Overall, I found Ms. Nicholson's account more credible than respondent's. Ms. Nicholson had no discernible motive to fabricate or embellish. Although respondent testified that she had ended her friendship with Ms. Nicholson, she did not testify to any animus between them. Indeed, it would appear that they remained cordial towards each other as respondent invited Ms. Nicholson to her baby shower after she ended their friendship and Ms. Nicholson characterized her relationship with respondent as friendly before their encounter in the stairwell (Tr. 34).

Respondent testified that she initiated the encounter with Ms. Acquah-Williams out of concern that Ms. Acquah-Williams was spreading gossip about respondent's personal life. Given the sensitive, personal matters respondent was addressing, it is highly doubtful that she was the picture of calm that she sought to depict in her testimony. Instead, it is more plausible that respondent was upset as she spoke to Ms. Acquah-Williams, and that she became enraged when Ms. Nicholson tried to end the encounter. Nor does respondent's claim that she was the victim and Ms. Nicholson was the aggressor in their altercation comport with common sense.

As for respondent's witnesses, the testimony from Ms. Nichols, who identified herself as respondent's friend, was inconsistent in some respects and did little to corroborate respondent's version of the events. She testified that there was "a tussle to hold the parties back" and "we had to just separate them" (Tr. 151). However, when questioned about how many people were present in the stairwell, she acknowledged that she was the only one in the stairwell with Ms. Nicholson, Ms. Acquah-Williams, and respondent, and the other person was outside the stairwell door. She further testified that respondent was already exiting the stairwell door when that other person intervened (Tr. 152).

Furthermore, Ms. Nichols' testimony that she saw Ms. Nicholson push respondent is consistent with Ms. Nicholson's testimony that she pushed respondent after respondent had pushed her several times. However, Ms. Nichols was not present when the altercation started

and did not witness the interaction between respondent and Ms. Nicholson that precipitated Ms. Nicholson's push. Therefore, her testimony shed no light on whether respondent or Ms. Nicholson initiated the physical altercation.

Finally, Mr. Santana's testimony was of little probative value, but raised questions about his credibility. Specifically, he maintained that he did not talk to Ms. Acquah-Williams on March 6, shortly before the altercation in the stairwell (Tr. 160). However, Ms. Acquah-Williams testified in detail about their conversation and Ms. Nicholson testified to having seen them talking before the altercation. In addition, respondent testified that Mr. Santana was on the fourth floor when she asked to speak to Ms. Acquah-Williams (Tr. 113) and Ms. Nichols acknowledged that he was there and, although she was not certain, though it possible that he had been talking to Ms. Acquah-Williams (Tr. 146).

As for the differing accounts as to why respondent talked to Ms. Acquah-Williams in the stairwell, there is no dispute that the conversation concerned respondent's personal relationship with Mr. Santana. Although respondent claimed that she was asking Ms. Acquah-Williams to stop spreading rumors about that relationship, she failed to include any reference to this in her written summary of the incident in the stairwell. In contrast, Ms. Acquah-Williams' written report contains a detailed description of respondent having confronted her because of her interaction with Mr. Santana in the elevator the evening before. I credit Ms. Acquah-Williams' version over that of respondent, whom I found to be largely unbelievable. Although respondent denied that Mr. Santana is the father of her child or that she had a personal relationship with him, she conceded that her confrontation with Ms. Acquah-Williams stemmed from issues surrounding whether she and Mr. Santana had a personal relationship.

Petitioner established that respondent engaged in a physical altercation at the workplace. This is impermissible. Although respondent maintained that Ms. Nicholson initiated the altercation, I find that it was respondent who did so. Nonetheless, even if Ms. Nicholson had started the fight, it would not be a defense. *See Health & Hospitals Corp. (Renaissance Health Network) v. James*, OATH Index No. 2085/15 at 6 (Jan. 4, 2016) (even in the face of provocation, employee who pushed co-worker engaged in misconduct); *Dep't of Homeless Services v. Murray*, OATH Index No. 2149/11 at 6 (Sept. 15, 2011) (verbal and physical altercation in the workplace is misconduct, regardless of who starts the fight).

In addition, petitioner established that respondent used profanity during the incident. Given respondent's insistence on talking to Ms. Acquah-Williams about Mr. Santana, and her aggressive conduct towards both officers in the stairwell, it was quite credible that she cursed at them in the course of the altercation. *See Dep't of Correction v. Shark*, OATH Index Nos. 1668 & 1828/02 at 20 (July 3, 2003) (the use of profanity generally constitutes *per se* discourtesy and disrespect).

In sum, petitioner established that respondent intimidated and physically restrained Ms. Acquah-Williams in a stairwell against her will and directed profanity towards her. Furthermore, when Ms. Nicholson ordered Ms. Acquah-Williams to leave the stairwell and report to her post, respondent cursed at Ms. Nicholson and pushed her, as alleged in Specification I. Therefore, respondent's conduct violated HRA Code of Conduct §§ II-B (discourtesy), III-1 (conduct prejudicial to good order and discipline), III-24 (striking or attempting to strike and threatening or intimidating another person), III-34 (use of obscene, abusive, or inappropriate language), and III-37 (conduct detrimental to the agency).

FINDINGS AND CONCLUSIONS

1. Petitioner established that on March 6, 2018, respondent asked a security officer to go into a stairwell at the facility where they worked, held on to her arm to prevent her from leaving, directed profanity towards her, and prevented the security officer from leaving the stairwell, as alleged in Specification I.
2. Petitioner established that on March 6, 2018, respondent physically prevented the security officer from complying with direct orders from her supervisor to return to her post, pushed the supervising security officer, and directed profanities towards supervising security officer, as alleged in Specification I.

RECOMMENDATION

Upon making the above findings and conclusions, I requested and reviewed respondent's personnel record to make an appropriate penalty recommendation. Respondent was hired in February 2003 and has no prior discipline. Respondent's overall ratings on her two most recent performance evaluations were "very good" and "good." Respondent served a 20-day pre-trial

suspension without pay in connection with the charges here. Petitioner requests that respondent serve an additional 10-day suspension, for a total penalty of a 30-day suspension without pay.

Penalties for workplace altercations with co-workers range from a ten-day suspension to termination of employment, depending upon several factors, including the employee's disciplinary history, provocation, the extent of injuries, and the amount of force used. *See, e.g., Health & Hospitals Corp. (Lincoln Medical & Mental Health Ctr.) v. Lopez*, OATH Index No. 300/13 at 19-20 (Mar. 12, 2013) (termination of employment recommended where institutional aide, whose prior disciplinary record included a 60-calendar day suspension and probation, threatened and repeatedly punched a supervisor in the chest); *Health & Hospitals Corp. (Coler Goldwater Memorial Hospital) v. Cato*, OATH Index No. 643/11 at 13-14 (Jan. 19, 2011) (termination of employment recommended for long-term employee with considerable disciplinary history who assaulted co-worker and threatened hospital manager); *Health & Hospitals Corp. (Kings. Co. Hospital Ctr.) v. Edinboro*, OATH Index No. 1867/10 (Apr. 28, 2010) (10-day suspension recommended for intentionally pushing a swivel chair into a co-worker); *Health & Hospitals Corp. (Kings. Co. Hospital Ctr.) v. Meyers*, OATH Index No. 1487/09 (Jan. 26, 2009), *aff'd*, NYC Pers. Rev. Bd. Dec. No. 1349 (July 31, 2009) (10-day suspension without pay imposed where employee intentionally chest-bumped co-worker, causing her to stumble); *Dep't of Correction v. Mapp*, OATH Index No. 1305/05 (June 30, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD06-58-SA (May 2, 2006) (30-day suspension imposed where correction officer scuffled with co-worker, grabbed her hair, and refused to let go, despite a captain's order); *Admin for Children's Services v. Thomas*, OATH Index No. 1118/02 (Mar. 29, 2002), *modified*, Comm'r Dec. (May 9, 2002) (30-day suspension imposed for fighting, where employee had no prior disciplinary history and did not strike the first blow).

Here, respondent's lack of disciplinary history during her 15-year tenure is a factor in mitigation of the penalty, as is the fact that neither officer sustained physical injuries during the incident.

Nonetheless, respondent engaged in a serious form of misconduct. She not only physically restrained a security officer against her will and was verbally abusive, she initiated a physical and verbal altercation with that officer's supervisor, during which she directed profanity at the officers. It is of concern that respondent engaged in a physical altercation not only with the person she believed was interfering in her personal life, but with that person's supervisor.

Respondent's conduct in physically preventing the officer from complying with direct orders from her supervisor is especially troubling. It would appear that respondent's anger during the incident was so intense that she turned on the supervisor who came on scene simply to direct the object of respondent's ire to report to her post. Moreover, although Ms. Acquah-Williams did not sustain any physical injuries during the altercation, she credibly described being scared and feeling like a hostage when respondent restrained her in the stairwell (Tr. 18, 21).

Respondent's failure to accept responsibility for her actions is also of concern. She tried to paint herself as the victim of an unprovoked attack and a conspiracy by Ms. Acquah-Williams and Ms. Nicholson. Yet respondent acknowledged that she initiated and prolonged the encounter with both officers and that her purpose was to accuse Ms. Acquah-Williams of having spread rumors about respondent's personal life. Finally, that respondent tried to lodge a complaint against the officers with the police after she was suspended from work suggests a cynical effort to invoke the criminal justice process to exact revenge on the officers after respondent was suspended.

Accordingly, I recommend that respondent be suspended for 30 days without pay, with credit for the 20-day pre-trial suspension already served.

Astrid B. Gloade
Administrative Law Judge

November 30, 2018

SUBMITTED TO:

STEVEN BANKS
Commissioner

APPEARANCES:

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

In the Matter of the Appeal of

LATASHA BROWN

Appellant

-against-

HUMAN RESOURCES ADMINISTRATION

Respondent

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

CSC Index No: 2019-0055

DECISION

LATASHA BROWN (“Appellant”) appealed from a determination of the Human Resources Administration (“HRA”) finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of suspension following disciplinary proceedings conducted pursuant to Civil Service Law Section 75.

The Civil Service Commission (“Commission”) heard arguments from the parties on March 28, 2019.

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: April 10, 2019