

Dep't of Health & Mental Hygiene v. DeGrasse

OATH Index No. 1863/19 (July 29, 2019), *adopted*, Comm'r Dec. (Nov. 12, 2019), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2019-1239 (Feb. 10, 2021), **appended**

Petitioner established that in two separate incidents, respondent, an associate laboratory microbiologist, confronted a co-worker in a threatening manner, used expletives and disparaging remarks towards the co-worker, and made an obscene display of her rear torso to the co-worker. For her misconduct, I recommend that respondent be suspended without pay for 40 days with credit for 29 days of time served, pre-trial.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF HEALTH & MENTAL HYGIENE
Petitioner
- against -
ARLENE DEGRASSE
Respondent

REPORT AND RECOMMENDATION

INGRID M. ADDISON, *Administrative Law Judge*

This disciplinary proceeding was referred by petitioner, the Department of Health and Mental Hygiene (“petitioner” or “Department”), pursuant to section 75 of the Civil Service Law. Petitioner charged that respondent, an associate laboratory microbiologist, twice accosted a fellow microbiologist and used inappropriate, aggressive and threatening language, in violation of rules 3.6, 3.8 and 3.25 of the Department’s Standards of Conduct (ALJ Ex. 1).

At a trial before me on June 26, 2019, petitioner presented documentary evidence and the testimony of four Department employees. Respondent testified on her own behalf, produced the testimony of one co-worker, and submitted documentary evidence.

For the following reasons, I find that the charges should be sustained and respondent should be suspended without pay for 40 days with credit for the 29 days that she was suspended pre-trial.

ANALYSIS

For four years, Mishkat Khanna has been an associate laboratory microbiologist in petitioner's Public Health Laboratory ("PHL"), and has worked with respondent since then (Tr. 29-30). A floor plan of the PHL shows that the following rooms listed in order, abut and have interior side entrances that open onto each other: Rooms 445 (Salmonella), 451 (Enteric), 453 (OCME) and 459 (Referral Testing) and 461 (Supervisor's office). A second separate entrance to each of those rooms lies perpendicular to the interior side entrances and open onto a common hallway. The ladies bathroom/locker room is located on the opposite side of the hallway (Pet. Ex. 1).

Petitioner charged that on two separate occasions in January 2019, during encounters with Ms. Khanna, respondent was uncivil or discourteous, exhibited threatening or intimidating behavior, and engaged in conduct prejudicial to good order and discipline, in violation of petitioner's Standards of Conduct.

January 8, 2019

On January 8, after Ms. Khanna had returned from lunch, she was entering patient information into the system when she heard respondent complaining loudly to co-worker Neena Shah about work, and speaking negatively about other individuals in the microbiology department. When shown the floor plan, she identified Room 451, as the room that she occupied, and Room 453, as that occupied by respondent (Tr. 46-47, 55-56). Ms. Khanna stated that when the interior access door to each room is closed, it is not possible to hear conversation from the adjoining room. In addition, there is "a lot of instrumentation, incubators and refrigerators in the laboratory that makes (sic) a lot of noise so you can't hear anything" (Tr. 38). Ms. Khanna closed the door connecting her room and respondent's, but respondent re-opened it, called Ms. Khanna a "psychopath, stupid idiot," and said that she did not want to see Ms. Khanna's face. Ms. Khanna testified that respondent came close to her face in a threatening manner and she was scared because she did not know if respondent was going to strike her. During cross-examination, she stated that respondent's face was so close to her that had she turned, they would have made contact. She also claimed that respondent's body was stiff and

“her fist was sort of crumpled up . . . so I felt like she was gonna hit me.” Ms. Shah was present but said nothing. However, the altercation caused their supervisor, Ludwin Chicaiza, to leave his office and come to their location to address the disturbance (Tr. 34-39, 48-50, 56).

On the same day, Ms. Khanna commemorated her encounter with respondent in an e-mail to Mr. Chicaiza and to the unit’s chief, Cherry-Ann DaCosta-Carter (“Ms. Carter”). In the e-mail, she asked to be relocated to a different department. The following day, she filed an incident report which was completed by Department Police Sergeant Brenda Williams (Tr. 32-34; Pet. Ex. 2). Sergeant Williams was not present to testify, but I found her hearsay report to be reliable,¹ as it was consistent with Ms. Khanna’s trial testimony. In relevant part, the report contained the following:

At time and place of occurrence victim stated that after she close (sic) the door between their connected offices, DOHMH employee Arlene DeGrasse opened the door, approached the victim in a threatening manner violating the victim’s personal space, and called the victim a “psychopath, stupid idiot” and that she did not want to see her face. The victim further noted that DeGrasse made her feel helpless and anxious, indicating that she was concerned about her safety.

(Pet. Ex. 2).

Mr. Chicaiza has been a supervisor of petitioner’s PHL for approximately 14 years. Respondent and Ms. Khanna are two of his subordinates (Tr. 68-70). Mr. Chicaiza testified that he was in his office one day (he could not recall the date), when he heard respondent arguing with Ms. Khanna, about two to three rooms away. The doors between the rooms were open so he proceeded to their location. Respondent claimed that Ms. Khanna had slammed the door while Ms. Khanna contended that respondent was disturbing her work. Mr. Chicaiza did not hear the door slam and doubted that it could be slammed because of the mechanism at the top, which retarded its closing. Photographs of the door between Ms. Khanna’s and respondent’s rooms showed a v-shaped mechanism at the top, which Ms. Khanna described as a stopper,

¹ Hearsay is admissible in disciplinary proceedings and may be the sole basis for a finding of fact. *Dep’t of Correction v. Connell*, OATH Index No. 1598/11 at 10 (May 24, 2011); *Human Resources Admin. v. Green*, OATH Index No. 3347/09 at 8 (Nov. 18, 2009); *see also People ex rel. Vega v. Smith*, 66 N.Y.2d 130, 139 (1985) (hearsay admissible in state administrative proceeding and if sufficiently relevant and probative may constitute substantial evidence). However, hearsay must have probative value and bear some indicia of reliability in order to be given significant weight. *Green*, OATH 3347/09 at 8; *Dep’t of Sanitation v. Jefferies*, OATH Index Nos. 2529/09 & 2530/09 at 13 (Sept. 18, 2009).

intended to prevent the door from slamming (Pet. Ex. 3). Mr. Chicaiza instructed respondent and Ms. Khanna to stop arguing and went to Human Resources. He characterized the “yelling and argument” between respondent and Ms. Khanna as “disruptive,” because it caused other workers to leave their rooms. Mr. Chicaiza noted that they have since been separated and the work environment has been “quiet” (Tr. 70-74, 76-77).

Respondent has worked at the PHL for almost 33 years (Tr. 91). She testified that around 2:00 p.m. on January 8, 2019, Ms. Khanna was in Enteric (Room 451), she was in OCME (Room 453) and Ms. Shah was in Referral Testing (Room 459). Ms. Shah brought a referral specimen to her and as they were discussing it, the door beside respondent was slammed shut, startling them both. Respondent insisted that in spite of the mechanical lever at the top of the door, the door has often been slammed loudly (Tr. 92-94, 104-05). She testified that she peered through the glass panel of the door and saw Ms. Khanna put her finger to the side of her head and make a circular motion, which respondent interpreted to mean that the person to whom the sign was directed was crazy. While Ms. Shah was still in respondent’s room, Ms. Khanna opened the door and stated that she had slammed the door because she did not want to see respondent’s face. After that, Ms. Shah left, and respondent saw Ms. Khanna, but she did not hear what Ms. Khanna muttered in her room before exiting through the door to the hallway (Tr. 95-97, 105).

Respondent did not dispute that Mr. Chicaiza came to find out what was going on. She told him that the dispute concerned the continuous slamming of the door, about which she had previously complained. Respondent denied calling Ms. Khanna a psychopath and a stupid idiot, or saying that she did not want to see Ms. Khanna’s face (Tr. 97-98).

Neena Shah, an associate microbiologist in the PHL since 2016, essentially corroborated respondent’s testimony that on January 8, 2019, at around 2:15 p.m, she went to OCME (Room 451) to give respondent a culture plate. She saw Ms. Khanna approaching from Referral (Room 459) and when she got to her room, Ms. Khanna slammed the connecting door to respondent’s room. Ms. Shah claimed that respondent asked why the door was being slammed but Ms. Shah did not have an answer (Tr. 80-83, 85, 88). Through the glass panel of the door, she saw Ms. Khanna point her finger towards her head and circle it. Then Ms. Khanna opened the door and told respondent that she had slammed the door because she did not want to see respondent’s face. Like respondent, Ms. Shah insisted that in spite of the metal device at the top, it was possible for

the door to be slammed. After returning to her work area, Ms. Shah saw Mr. Chicaiza and a Human Resources staff member speak with respondent. Ms. Shah testified that petitioner's counsel only questioned her about the incident a few days before the trial but disclosed that around April 7, 2019, she had given a written statement to the Union (Tr. 84-89).

Resolution of the charges rests on the relative credibility of the witnesses. In assessing credibility, this tribunal has considered factors such as "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." *See 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. Khanna's version of events to be more credible than respondent's.

Neither respondent nor her corroborating witness convinced me that the door between Ms. Khanna's and respondent's room could be slammed. Photographs showed that the door had a v-shaped mechanism described as a stopper, to prevent the door from slamming. Because of the nature of the work that is conducted in the PHL, it was reasonable to conclude that the door would have such a mechanism, to avoid the consequences that a door slam could cause to someone handling a sensitive specimen sample. Besides, the testimony of respondent and Ms. Shah seemed concocted and rehearsed. For example, Ms. Shah claimed that respondent asked her why the door was being slammed. Since respondent testified that the slamming of the door had been occurring regularly for several months and she had previously brought it to Mr. Chicaiza's attention, it was not new to her and there would have been no need for her to ask why the door was being slammed. In addition, even though the witnesses agreed that when the connecting doors were closed, someone in one room could not hear conversation in the adjoining room, respondent and Ms. Shah would have me believe that Ms. Khanna re-opened the door to reply to an inquiry made by respondent while the door was closed. That was not possible and therefore, not credible. Moreover, I found it unlikely that Ms. Khanna would deliberately seek to provoke respondent by closing the door and insulting her through gestures, to implicate that respondent was crazy.

Rather, it made more sense that Ms. Khanna would close the door between her room and respondent's because she wanted some quiet to concentrate on entering patient information into

the computer, as she testified. Doing so would eliminate any distraction that may have been caused by respondent's conversation with Ms. Shah. But it may likely have caused respondent to feel slighted, thus triggering her ire and making her respond in an aggressive manner by opening the door, approaching Ms. Khanna in a threatening manner, calling her a stupid idiot and a psychopath, and saying that she did not want to see Ms. Khanna's face. Notably, Ms. Khanna sent a contemporaneous e-mail to her supervisors within an hour after the incident and she filed a report with security the following day, while the incident was still fresh in her mind. *See Dep't of Health v. Talavera, d/b/a Nanetta's Hero Shop*, OATH Index No. 1767/98 at 13-14 (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).

While Ms. Khanna's contemporaneous e-mail and report to security were compelling, her testimony that respondent's fist was balled, her body taut and that their faces were almost touching, appeared to be embellishments, as those descriptions were neither contained in her e-mail nor her incident report. Nonetheless, based on the contemporaneous documents and Ms. Khanna's testimony, I find that she was genuinely distressed and concerned for her safety during the encounter.

A finding of misconduct must be based on an objective standard. *See Dep't of Citywide Admin. Services v. Phillip*, OATH Index No. 114/10 at 10 (Sep. 10, 2009) (finding that vague statements by respondent did not establish a threat as they were "not obviously intended as a threat to do physical harm"); *Admin. for Children's Services v. Hallman*, 1269/05 at 3-4 (Mar. 16, 2005) (supervisor's subjective sense of being intimidated not sufficient to show intimidation where only evidence on record was that respondent told supervisor that respondent's husband did not know why supervisor was bothering respondent, did not like it, and wanted to know what the

supervisor's "problem" was); *Human Resources Admin. v. Walker*, OATH Index No. 837/00 at 6-7 (Apr. 13, 2000) (dismissing charge that respondent threatened supervisor where absent evidence of the circumstances, the ALJ could not determine whether supervisor's fear was justified); *Dep't of Transportation v. McLean-Nur*, OATH Index No. 316/92 at 12-13 (Apr. 10, 1992), *reversed*, NYC Civ. Serv. Comm'n Item No. CD 95-36 (Apr. 10, 1995) (finding that an employee's subjective impression that the respondent's actions were threatening was insufficient to establish misconduct as "[t]he test for determining whether actions rose to a level of sanctionable misconduct must be an objective one rather than a subjective one."). The notation in the incident report that respondent had invaded Ms. Khanna's personal space and made her feel helpless was sufficient for me to find that, applying an objective standard, respondent's conduct was threatening and intimidating, in violation of Rule 3.8 of the Department's Standards of Conduct.

Even though Mr. Chicaiza could not distinguish what was being said, he credibly testified that he heard respondent arguing with Ms. Khanna from two doors down and that other workers left their room in the midst of the commotion. This made it patently clear that respondent was loud and disruptive, and that such behavior which occurred during regular office hours, was uncivil and discourteous and prejudicial to good order and discipline, in violation of Rules 3.6 and 3.25.

In sum, the charge that on January 8, 2019, respondent violated Rules 3.6, 3.8 and 3.25 of the Department's Standards of Conduct, should be sustained.

January 29, 2019

Ms. Khanna testified that she had another negative interaction with respondent on January 29, 2019. As she was cleaning up in preparation to leave that day, she walked past respondent to get rid of "petri dishes" in Room 453. Respondent accused Ms. Khanna of having her lab coat touch respondent and called Ms. Khanna "fucking nasty." Ms. Khanna testified that respondent then turned her rear to Ms. Khanna, bent over, raised her lab coat and told Ms. Khanna to "kiss [her] ass" (Tr. 41-42, 45, 50-52). Ms. Khanna went to the ladies/locker room where she saw Ms. Carter and told her what had happened. While they were there, respondent entered and banged the locker door for about four minutes before leaving, after which Ms. Carter

left. Co-worker Yelena Chekoff emerged from one of the stalls and asked Ms. Khanna about what had happened. As Ms. Khanna was telling her, respondent returned and banged the door to one of the bathroom stalls for about two minutes. Ms. Khanna and Ms. Chekoff left the bathroom and exited using the stairs instead of the elevators (Tr. 42-44, 52-54). The following day, Ms. Khanna e-mailed Ms. Carter, Mr. Chicaiza and others about the incident. She also filed an incident report from which her testimony did not depart (Khanna: Tr. 41, 44; Carter: Tr. 15, 22-23, 25-26; Pet. Ex. 4; Resp. Ex. A).

Ms. Khanna explained that the lab is structured in such a way that the microbiologists are all interconnected. Accordingly, respondent still has to come to Ms. Khanna's office to collect work if necessary. But Ms. Khanna's relationship with respondent has eroded, which has resulted in a sense of trepidation and foreboding for her as she cannot predict when respondent will erupt (Tr. 45-46).

Ms. Carter has been the Chief of Microbiology and Rabies Services at petitioner's PHL since 2016, but has worked for petitioner since 2005. She is responsible for resource allocation, staffing and scientific oversight of her unit. She supervises 27 people, 13 of whom work in the Bacteriology Unit, including respondent, with whom she has worked in different units over the years, and Ms. Khanna (Tr. 7-10). With some slight differences, Ms. Carter's testimony regarding the incident on January 29, 2019, essentially corroborated Ms. Khanna's.

Ms. Carter testified that after 5:00 p.m. on January 29, 2018, she went to the ladies room where she found Ms. Khanna. Someone else was in a stall. Ms. Khanna told Ms. Carter about her interaction with respondent which had left her very agitated. Ms. Carter instructed Ms. Khanna to put her complaint in writing. About two or three minutes later, while Ms. Carter was still in the bathroom, respondent entered, started grumbling "loudly and aggressively" and slammed the door to her locker which was close by. Ms. Carter tried to focus on what Ms. Khanna was saying to her and therefore, was unable to recount what respondent was grumbling about. She stated that Ms. Khanna looked scared. Respondent left and Ms. Carter followed after promising to speak with Ms. Khanna the next day (Tr. 13-15, 19-21, 25-26).

Yelena Chekoff, an associate microbiologist at petitioner's PHL for three years, corroborated that on January 29, 2019, she was in one of the stalls and heard when Ms. Khanna entered the room. When she came out from the stall, she and Ms. Khanna sat on a bench near

the lockers. Respondent entered and appeared to be agitated. She uttered something about “people, people, they’re driving me crazy.” She also waved her hands around before entering one of the stalls and banging the door several times. Ms. Chekoff and Ms. Khanna left the room because the situation was “scary” and “disturbing,” and they took the stairwell (Tr. 60, 63-66).

Respondent testified that after 5:00 p.m. on January 29, 2019, as she was closing her computer to head towards another assignment on the 13th Floor with the botulism team, she felt something rubbing on her leg. When she turned around, Ms. Khanna was behind respondent removing her lab coat, which she threw in the bin in respondent’s room. She waited for Ms. Khanna to apologize but when none was forthcoming, respondent remarked “your dirty lab coat rubbing me.” Ms. Khanna left silently and respondent finished logging out of her computer before going to the locker room about five minutes later to retrieve her ID for the 13th Floor (Tr. 98-100). When she got there, Ms. Khanna was speaking with Ms. Carter and Ms. Chekoff. Respondent retrieved her ID and left, taking the elevator to the 13th Floor. She maintained that Ms. Carter rode the elevator with her (Tr. 100-01). Respondent testified that after completing her work on the 13th Floor, she went back to her bench in the lab to finish her work, but she “couldn’t sustain” so she returned to the ladies room where Ms. Khanna and Ms. Chekoff were still present. Respondent claimed that she used the bathroom and then returned to her workstation (Tr. 102).

Respondent denied that she called Ms. Khanna “fucking nasty,” that she lifted her lab coat over her rear, or that she told Ms. Khanna to “kiss [her] ass” (Tr. 100). She also denied talking to herself in the locker room or banging the door to the bathroom stall. But respondent admitted that she slammed the door to her locker. She stated that she has had numerous offices and has more often been a supervisor than a technician. Each time she changed office, she stored items from her offices in her locker, which caused it to be full and required her to slam the door in order to close it (Tr. 101-02, 106-07).

Respondent’s version of events was not credible. It was apparent that she became irate because she believed that Ms. Khanna’s lab coat had touched her. The nature of their jobs meant that by the end of the day, their coats are more likely than not, contaminated, which would have given respondent reason to be concerned if Ms. Khanna’s coat had indeed touched her. However, I did not believe that her only remark was “your dirty lab coat rubbing me.” Given her

previous interaction with Ms. Khanna, their relationship was, no doubt, constrained. Ms. Khanna's refusal to engage respondent or to acknowledge that her coat may have touched respondent, must have triggered respondent's rage. Even though there were no witnesses to the interaction, Ms. Carter credibly testified as to its effect on Ms. Khanna when Ms. Carter saw her soon after in the bathroom. Moreover, Ms. Khanna's version was bolstered by her contemporaneous e-mail and incident report the following day.

I am therefore persuaded that respondent not only used expletives to Ms. Khanna, but she engaged in obscene and inappropriate behavior by raising her coat and telling Ms. Khanna to kiss her ass. Such behavior is in violation of Rules 3.6 and 3.25 of the Department's Standards of Conduct.

Respondent's behavior in the locker room was independently witnessed by Ms. Carter and Ms. Chekoff who both corroborated Ms. Khanna's testimony. However, there was nothing to establish that respondent purposely followed Ms. Khanna into the locker room since she arrived a few minutes after Ms. Khanna. Nor am I prepared to find that slamming the locker door and grumbling, as respondent did in Ms. Carter's presence, or banging the door to the stall, which she did in Ms. Chekoff's presence, was threatening or intimidating, applying an objective standard. Certainly, Ms. Carter did not assert that she felt threatened or intimidated, and Ms. Chekoff, who witnessed respondent's behavior after respondent re-entered the room, described the behavior as "scary" and "disturbing." Neither Ms. Carter nor Ms. Chekoff claimed that respondent was addressing Ms. Khanna during her grumblings.

Thus, I do not find that on January 29, 2019, respondent's behavior in the locker room violated Rule 3.8 of the Department's Standards of Conduct. However, her conduct towards Ms. Khanna on that date violated Rules 3.6 and 3.25 of the Department's Standards of Conduct.

FINDINGS AND CONCLUSIONS

1. Petitioner established that on January 8, 2019, respondent was uncivil and discourteous, threatening and/or intimidating, and demonstrated conduct prejudicial to good order and discipline, when she became aggressive towards her co-worker, used disparaging language and invaded her co-worker's personal space, in violation of Department rules.

2. Petitioner established that on January 29, 2019, respondent used expletives and engaged in obscene behavior towards a co-worker, in violation of Department rules.

RECOMMENDATION

Upon making the above findings and conclusions, I requested respondent's personnel abstract in order to make an appropriate penalty recommendation. The documents which petitioner submitted in response to my request did not list respondent's appointment date with the Department. However, respondent's trial testimony that she has been with the Department for approximately 33 years was uncontested.

Respondent is an associate microbiologist. Her three performance evaluations for 2016, 2017 and 2018, demonstrated a progressively downward slope in her performance. On her performance evaluation for the year ended December 31, 2016, respondent received an overall rating of "good." On her performance evaluation for the year ended December 31, 2017, she received an overall rating of "conditional-needs improvement." In the narrative justification for the overall rating, respondent's supervisor noted in part that during that year, respondent had had several altercations with staff members. On her performance evaluation for the year ended December 31, 2018, respondent received an overall rating of "unsatisfactory." The rating supervisor noted that respondent had had issues with co-workers and a supervisor. Respondent signed her 2018 evaluation on April 1, 2019 and commented that "[t]his evaluation reflects all lies and made-up information to discredit me"

On December 3, 2018, respondent accepted a penalty of 25 days' suspension for charges that included failing to obey her supervisor's direct order, engaging in threatening and intimidating behavior towards a supervisor which included the use of physical force, being confrontational with a supervisor, and speaking in a disparaging manner to a supervisor, which conduct occurred on five separate dates between March 16 and October 2, 2018. For the charges proven here, petitioner seeks a 60-day suspension with credit for 29 days which respondent served pre-trial for said charges. I find petitioner's request to be excessive.

This tribunal has consistently applied the principles of progressive discipline which are intended to modify employee behavior through increasing penalties for repeated or similar misconduct, and the nature of respondent's job. A fair penalty must take into account the

particular circumstances of the charges sustained and individual mitigating factors, where appropriate. *Dep't of Correction v. Phoenix*, OATH Index No. 1543/08 at 10 (Apr. 14, 2008), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-55-SA (Oct. 30, 2008) (respondent's long tenure and clean record are mitigating factors which must be taken into account in assessing penalty); *Admin. for Children's Services v. Goodman*, OATH Index Nos. 986/05 & 1082/05 at 15 (Aug. 12, 2005) (respondent's lack of a prior disciplinary record is a mitigating factor).

Penalties for threatening or intimidating behavior toward co-workers and supervisors range depending on the severity of the misconduct. *See Human Resources Admin. v. Powers*, OATH Index No. 879/12 (Mar. 5, 2012), *aff'd*, 129 A.D.3d 599 (1st Dep't 2015) (respondent terminated for intimidating and threatening behavior while using expletives, and for a near physical assault upon his supervisor); *Health & Hospitals Corp. (Kings County Hospital Center) v. Rivera*, OATH Index No. 2063/08 (Oct. 23, 2008) (45-day suspension for respondent found guilty of threatening a supervisor and being excessively late); *Health & Hospitals Corp. (Woodhull Medical & Mental Health Center) v. Alexis*, OATH Index No. 1373/03 (July 11, 2003) (25-day suspension for employee with substantial disciplinary history who intimidated her supervisor); *Dep't of Environmental Protection v. Schnell*, OATH Index No. 2262/00 (Oct. 25, 2000) (10-day suspension where respondent raised his voice in an intimidating manner and shoved a tape recorder in a supervisor's face); *Human Resources Admin. v. Olafimihan*, OATH Index No. 751/98 (Mar. 19, 1998) (45-day day suspension where respondent threatened to kill supervisor); *Human Resources Admin. v. Brown*, OATH Index No. 943/98 (Apr. 30, 1998), *modified on penalty*, Comm'r Decision (June 24, 1998), *app. disp.*, NYC Civ. Serv. Comm'n Item No. CD 99-67-D (July 9, 1999) (OATH ALJ's recommended penalty of 15 days increased to 30-day suspension where employee threatened supervisor stating "you better be careful"); *Health & Hospitals Corp. (Metropolitan Hospital Center) v. Williams*, OATH Index No. 386/98 (Dec. 8, 1997), *aff'd*, HHC Personnel Review Bd., Dec. No. 923 (Oct. 26, 1998) (40-day suspension for respondent who threatened to "get" co-worker and made a gesture with his hand and finger as if firing a gun, among other misconduct).

Respondent's tenure with the Department is significant and warrants some consideration. Her last three performance evaluations indicate that at least three years ago, she was a good worker whose performance and workplace behavior started to spiral downward. It is unclear

what is triggering this downward spiral and respondent presented no form of mitigation for it. In fact, she appeared to be in complete denial. At the same time, the Department has an obligation to provide a safe workplace, where its employees do not feel threatened or intimidated.

Taking respondent's lengthy tenure, her performance evaluations, prior discipline, and the nature of the proven misconduct here into consideration, I find that a penalty of 40 days' suspension without pay and with credit for time served, is appropriate, and I so recommend.

Ingrid M. Addison
Administrative Law Judge

July 29, 2019

SUBMITTED TO:

OXIRIS BARBOT, MD
Commissioner

APPEARANCES:

KARRIE SHERIDAN, ESQ.
Attorney for Petitioner

LEVY RATNER, P.C.
Attorneys for Respondent

BY: ALEK FELSTINER, ESQ.

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

In the Matter of the Appeal of

ARLENE DEGRASSE

Appellant

-against-

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Respondent

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

CSC Index No: 2019-1239

DECISION

ARLENE DEGRASSE (“Appellant”) appealed from a determination of the Department of Health and Mental Hygiene (“DOHMH”) finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of a 40-day suspension following disciplinary proceedings conducted pursuant to Civil Service Law (“CSL”) Section 75.

The Civil Service Commission (“Commission”) requested written arguments from the parties on November 19, 2020. Appellant’s brief was received on December 4, 2020, and DOHMH’s brief was received on December 18, 2020.¹

The Commission has reviewed the record below, which we incorporate by reference into this decision, as well as arguments submitted on appeal, and find that there is sufficient evidence to support the final determination and that the penalty imposed is appropriate.

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

SO ORDERED.

Dated: February 10, 2021

¹ The Commission notes that its case processing timeframes for 2020 and 2021 have been impacted by Covid-19 related executive orders.