

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2838-20**

**IN THE MATTER OF KAREN
SALES, UNION COUNTY
DEPARTMENT OF HUMAN
SERVICES.**

Submitted April 17, 2023 – Decided July 17, 2023

Before Judges Gooden Brown and DeAlmeida.

On appeal from the New Jersey Civil Service Commission, Docket Nos. 2018-3365 and 2018-3366.

Mizrahi Partners LLC, and Dwayne D. Warren, attorneys for appellant Karen Sales (Aaron Mizrahi and Dwayne D. Warren, of counsel and on the brief).

Ruderman & Roth, LLC, attorney for respondent Union County Department of Human Services (Allan C. Roth, of counsel and on the brief; Jeffrey J. Berezny, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Civil Service Commission (Pamela N. Ullman, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Appellant Karen Sales appeals from the April 28, 2021 final agency decision of the Civil Service Commission (Commission) upholding her termination from the position of Human Services Specialist II (HSS) with respondent Union County Department of Human Services (County). We affirm.

I.

Sales began her employment with the County in 2000. In 2014, she was assigned as an HSS at the County's Division of Social Services (Division) in the child support and paternity unit. The Division assists clients applying for public assistance for children who do not reside with both parents with obtaining judicial orders establishing paternity, child support, and medical support. The Division also assists the general public by taking child support applications and locating absent parents so those who do not receive public assistance can file a complaint for paternity and child support. The Division works with all twenty-one county welfare agencies, the Family Part, probation personnel, the State's Central Office of New Jersey Child Support Services, federal agencies, and other States and territories.

In fulfilling their responsibilities, Division employees enter data into the New Jersey Kids Deserve Support (NJKIDS) database. The NJKIDS system serves as the official case record for all State programs that rely on paternity and

child support information. The database contains confidential information, including federal tax information, obtained from a variety of sources such as the Federal Parent Locator Services and the Internal Revenue Service (IRS).

The judiciary uses NJKIDS when it conducts hearings to determine whether a noncustodial parent is required to pay child support and the amount of child support to be paid. NJKIDS also keeps records of paternity tests and probation authorities use NJKIDS for enforcement purposes. Arrest warrants for failure to pay child support are issued based on the information contained in NJKIDS. The IRS uses NJKIDS to determine if income tax refunds should be applied to offset child support arrearages.

Due to State and federal agency reliance on NJKIDS, and the significant governmental actions that are taken on the basis of information entered into the system, database entry in NJKIDS is governed by strict standards ensuring accuracy. Only authorized and trained employees have data entry access to the system. The database has been engineered to be permanent without any delete function. An employee who adds information to NJKIDS has no authority or ability to delete any previously entered information. Errors in data entry are noted in subsequent entries in the system. Sales was trained annually by the

New Jersey Child Support Institute and web-based training with respect to data entry in NJKIDS.

Family A.

In 2014, Sales's immediate supervisor discovered that Sales made false and misleading data entries in NJKIDS with respect to family A.¹ A Division intake log indicates that Ms. A., the custodial great-grandmother of several children, arrived at the Division office on June 18, 2014. She was assigned to Sales for an interview.

Had Sales conducted the interview at that time, she should have completed forms in NJKIDS by entering data simultaneously with obtaining information from Ms. A. about her family's eligibility for public assistance. She also would have simultaneously verified the information she obtained from Ms. A. with various resources available to her. Sales would have been required to complete a form CSP160, the child support questionnaire, while Ms. A. was physically present. The completed form CSP160 is reviewed and signed by the client on a computer signature pad at the conclusion of the interview. It takes at least forty-five minutes to one hour to complete form CSP160. Sales did not complete a form CSP160 for family A. on June 18, 2014.

¹ We use initials to protect the privacy of the families at issue here.

Instead, on July 3, 2014, Sales generated and completed form CSP163, a notice of initial cooperation, for family A. This form should be completed only at the conclusion of an interview with the client present. Thus, Sales's completion of form CSP163 in NJKIDS falsely indicated that Ms. A. was present for an interview on July 3, 2014. It is undisputed that Ms. A. was not present at the Division on that day. In addition, Sales entered notes in NJKIDS that Ms. A. "claims to know nothing about the" putative father of her great-grandchild.

Sales also indicated "good cause" for Ms. A. in NJKIDS. This is a designation for a custodial person who cannot or believes they cannot provide sufficient information to locate the non-custodial parent. The designation may also be applied if the custodial person is the victim of domestic violence. Good cause is a significant designation that requires due diligence by the person making the designation. To make a good cause designation, Sales would be required to review NJKIDS to determine if information on the non-custodial parent already exists in the database. In addition, a good cause designation must be approved by Sales's supervisor. Good cause was never approved by Sales's supervisor for Ms. A.

Sales also completed form CSP164 in NJKIDS for Ms. A. on July 3, 2014. This is a form given to a client when the case worker requires additional

information about the non-custodial parent. Completion of this form is inconsistent with a good cause designation, which should be made only after the employee entering data in NJKIDS determines that further information about the non-custodial parent is not available. In addition, Sales entered a note on form CSP164 that Ms. A. must return to the Division to sign a good faith affidavit. It is inconsistent for Sales to have completed form CSP163 on the same day that she completed form CSP164 because form CSP163 is indicative of a completed interview process.

Had Sales interviewed Ms. A. on June 18, 2014, several additional documents would have been generated by NJKIDS, including a long-arm affidavit, a paternity affidavit, a HIPPA notification, a HIPPA acknowledgment, and a HIPPA notice for guardians of children who are not a biological parent. None of those documents were generated for Ms. A. A note entered by Sales in NJKIDS states that Ms. A. was scheduled for a formal interview on July 10, 2014, which indicates that she did not previously appear for an interview. Another note entered by Sales indicates Ms. A. reapplied for public assistance, which is not true.

The entry of inconsistent data by Sales in NJKIDS caused her supervisors to investigate the family A. file. An interview of Ms. A. by Sales's supervisors

revealed that Ms. A. knew the name, address and social security number of the putative father of her great-grandchild and had previously provided that information to the Family Part in a complaint seeking child support. Ms. A. also stated that she withdrew her complaint for child support when she became aware that the putative father had been diagnosed with cancer. Thus, the information entered by Sales regarding Ms. A.'s possession of information about the putative father was false and the good cause designation entered by Sales was unwarranted. Had Sales made a due diligence inquiry in NJKIDS for information regarding the putative father of Ms. A.'s great-grandchild before making the good cause designation, she would have seen the information Ms. A. provided to the Family Part in her complaint.

Family C.

On July 2, 2014, a supervisor directed Sales to call the Paternity Opportunity Program (POP) to determine if it had any information on the putative father for family C. The POP office logs the date, time, and agency name of all telephone calls it receives. There is no evidence at POP that Sales called the office on July 2, 2014 or July 3, 2014. However, Sales made an entry in NJKIDS on July 3, 2014 for family C. that there was "[n]o record in New Jersey POP office of father being present at birth." She made another entry on

July 8, 2014 containing the same information and signed "July 3, 2014 K.M.S." POP records indicate Sales called that office for the first time on July 9, 2014. Sales's supervisor contacted POP and obtained information on the putative father that ultimately resulted in locating him. Thus, Sales's notes regarding the information possessed by POP was inaccurate.

Family S.

On July 14, 2014, Sales made an entry in NJKIDS that after an initial interview, Ms. S. did not wish to cooperate with child support requirements because she felt they were too onerous and wanted to withdraw her application for public assistance. When this situation arises, the Division employee is required to start a case for the family in NJKIDS. This would generate a notice of non-cooperation that is forwarded to the Income Maintenance Unit so that they know not to approve public assistance for that family. Sales did not take those steps.

Instead, Sales entered the following information in NJKIDS for family S.: "Client applied for assistance. [Putative father] is the father of both children, New York birth certificates for children. Client refused to sign affidavit of cooperation. She was given a [form] 162 and told if she should change her mind[,] she knows what to submit for co-op. She was told she had 30 days to

make a decision. No co-op as long as the client applied for assistance. [Putative father] is the father of both." She also noted "[n]o cooperation as long as the refusal continues."

Sales generated a notice of non-cooperation for Ms. S. Two minutes later, she generated a notice of initial cooperation for Ms. S., five minutes after that she generated a complete questionnaire for Ms. S., and five minutes later she generated a notice of cooperation for Ms. S. These documents should not have been generated. If Ms. S. was not cooperating then only a notice of non-cooperation should have been generated. Also, a questionnaire cannot be completed in five minutes and an interview cannot be completed in twelve minutes, the total time Sales was generating documents for family S. The generated documents are also contradictory and unsigned. They cannot accurately portray Sales's interaction with Ms. S.

With respect to family A., the Division filed a Preliminary Notice of Disciplinary Action (PNDA) seeking Sales's removal from employment effective July 16, 2014 for: (1) insubordination, N.J.A.C. 4A:2-2.3(a)(2); (2) conduct unbecoming a public employee, N.J.S.A. 4A:2-2.3(a)(6); and (3) other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12), i.e., violation of county and NJKIDS policies regarding proper entry of information into NJKIDS. The Division

alleged that although a cursory meeting between Sales and Ms. A. may have taken place on June 18, 2014, Sales's entries into NJKIDS falsely indicate that she formally interviewed Ms. A. on that date. In addition, the Division alleged it is undisputed that Sales did not conduct an interview of Ms. A. on July 3, 2014 and the information entered by Sales regarding July 3, 2014 was patently false.

In addition, the Division filed an incident report with the State regarding Sales's breach and misuse of NJKIDS with respect to family A. The report stated that Sales deliberately entered false information in NJKIDS regarding Ms. A. As a result of the report, the State suspended Sales's access to NJKIDS while it conducted an investigation. The State subsequently issued a report concluding that Sales misused NJKIDS by falsifying information in the system, that this conduct constituted a breach of the system, and that the State supported a decision to permanently terminate Sales's access to NJKIDS.

The Division filed a second PNDA based on the State's termination of Sales's access to NJKIDS and her false entries with respect to family C. and family S. seeking her removal from employment effective July 16, 2014 for: (1) insubordination, N.J.A.C. 4A:2-2.3(a)(2); (2) inability to perform duties, N.J.A.C. 4A:2-2.3(a)(3); (3) conduct unbecoming a public employee, N.J.S.A. 4A:2-2.3(a)(6); and (4) other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12), i.e.,

violation of county and NJKIDS policies regarding proper entry of information into NJKIDS.

After Final Notices of Disciplinary Action (FNDA) were filed by the Division, Sales waived a departmental hearing. She appealed the FNDAs to the Commission, which transmitted the matter to the Office of Administrative Law for a hearing. An Administrative Law Judge (ALJ) conducted a plenary hearing over four days. Sales and two representatives of the County testified.

According to Sales, she was directed by a supervisor to open a case for family A. on July 3, 2014, and included a history of the case to ensure the file was accurate. She also testified that she was not directed to call the POP office with respect to family C. Instead, according to Sales, she was told by her supervisor that the supervisor had called the POP office on July 2, 2014 and was told they had no information on the putative father. Sales testified that she made a data entry in NJKIDS for family C. to reflect what she was told by her supervisor. She admitted that she called the POP office on July 9, 2014, but claimed she did so only to verify the information given to her about family C. by her supervisor seven days earlier.

With respect to Ms. S., Sales testified that the client was irate during her interview and refused to cooperate, which resulted in Sales generating a non-

cooperation notice. However, Ms. S.'s attitude improved after a discussion with Sales, which caused Sales to generate the other documents suggesting her cooperation and completion of the questionnaire.

The ALJ issued a written initial decision sustaining the charges. The ALJ found Sales's testimony to be largely self-serving and less credible than the other witnesses. The judge found Sales's explanations for the disputed data entries incomplete or lacking in credibility. For example, the judge found that Sales offered no explanation for not opening the family A. file on June 18, 2014, when Ms. A. was physically present in the office. In addition, the judge found that Sales did not explain why she would call the POP office with respect to family C. seven days after she received information from her supervisor that she had no cause to doubt. As for family S., the judge found that Sales's explanation for creating multiple conflicting notices in a short period of time was improbable and unreasonable.

The ALJ concluded that access to NJKIDS is an essential function of the position of HSS. Because Sales cannot perform the essential functions of her position, the ALJ concluded, the County had sustained the charge of inability to perform the duties and, as a result, termination of Sales from employment was warranted.

Sales appealed the initial decision to the Commission. The Commission issued a decision remanding the matter back to the ALJ for a more detailed recitation of the witnesses' testimony and more fully reasoned credibility determinations. In addition, the Commission required a more complete explanation for upholding termination as a penalty if the charges are sustained.

The ALJ subsequently issued a second initial decision more fully explaining the testimony and his legal conclusions. The ALJ again determined that Sales could not perform an essential function of her position because she is barred from accessing NJKIDS. In addition, the ALJ found that Sales was directed by her supervisor to call the POP office and failed to do so, constituting insubordination. The judge also found that Sales entered false information in NJKIDS, demonstrating a lack of care expected of employees given access to a sensitive database relied on by multiple government agencies to make significant decisions, sustaining the other disciplinary charges. The ALJ found that termination was warranted in light of Sales's inability to perform the duties of her position and because of the significance of her breaches of the NJKIDS security standards.

Sales appealed the ALJ's second initial determination to the Commission. On April 28, 2021, the Commission issued a final decision adopting the findings

of fact, legal conclusions, and recommendation of the ALJ. The Commission upheld the disciplinary charges and Sales's termination from employment.

This appeal follows. Sale argues that the Commission erred when it accepted the ALJ's findings of fact and legal conclusions and departed from the principles of progressive discipline when it terminated her.

II.

Our role in reviewing the decision of an administrative agency is limited. Circus Liquors, Inc. v. Middletown Twp., 199 N.J. 1, 9 (2009). We will not disturb the determination of the Commission absent a showing "that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence, or that it violated legislative policies expressed or implicit in the civil service act." Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963).

Decisions of administrative agencies carry with them a presumption of reasonableness. In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001). Moreover, "[a]ppellate courts must defer to an agency's expertise and superior knowledge of a particular field." Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992). However, we are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973).

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). Civil Service employees' rights and duties are governed by the Civil Service Act, which provides that a public employee may be subject to major discipline for various employment-related offenses. N.J.S.A. 11A:2-6; N.J.A.C. 4A:2-2.3. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show, by a preponderance of the evidence, that the action taken was appropriate. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); In re Polk, 90 N.J. 550, 560 (1982).

Having carefully reviewed Sales's arguments in light of the record and applicable legal principles, we conclude the Commission's final agency decision is sufficiently supported by the record and is not arbitrary, capricious, or unreasonable. We add the following comments.

There is ample support for the ALJ finding, after having the opportunity to make a credibility determination, that Sales is unable to perform an essential duty of her position: accessing NJKIDS. In addition, there is sufficient support in the record for the ALJ's conclusion that Sales committed breaches of the NJKIDS protocols by entering inaccurate information regarding families A., C., and S. Sales's explanations for the incorrect data entries are not convincing and,

even if accepted, fail to explain all of the inaccurate information she entered into NJKIDS. The Commission did not act in an arbitrary, capricious or unreasonable manner when it adopted the ALJ's second initial decision sustaining the disciplinary charges against Sales.

We also reject Sales's argument the Commission erred by not imposing progressive discipline. Generally, the severity of a public employee's discipline should increase incrementally. In re Herrmann, 192 N.J. 19, 33 (2007). However, progressive discipline can be waived if "the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when [its] application . . . would be contrary to the public interest." Ibid.; see also In re Stallworth, 208 N.J. 182, 196-197 (2011); Div. of State Police v. Jiras, 305 N.J. Super. 476, 478-82 (App. Div. 1997) (finding bypass of progressive discipline appropriate after State Trooper assaulted a prisoner, rendering the Trooper unable to function as a law enforcement officer).

Although there is no evidence in the record of prior disciplinary action against Sales, we cannot conclude the Commission's decision to terminate her was arbitrary, capricious, or unreasonable. Because of Sales's misuse of the NJKIDS system, she no longer has access to the database that is essential to the

performance of her duties as an HSS. Termination is appropriate in these circumstances, despite the absence of prior disciplinary action against Sales.

To the extent we have not addressed Sales's other arguments, we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION