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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-3379-15T3

JESSENIA JIMENEZ,

Petitioner-Respondent,

v.

CAPE MAY COUNTY SOCIAL  
SERVICES,

Respondent-Appellant.

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Submitted April 24, 2018 – Decided May 25, 2018

Before Judges Reisner and Hoffman.

On appeal from the New Jersey Civil Service  
Commission, Docket No. 2015-1204.

James B. Arsenault, County Counsel, attorney  
for appellant (Lauren F. Fogarty, Assistant  
County Counsel, on the brief).

Respondent has not filed a brief.

PER CURIAM

Cape May County (County) appeals from a March 21, 2016 final  
decision of the Civil Service Commission (Commission) reversing  
the action terminating the employment of respondent Jessenia

Jimenez as Keyboarding Clerk 1 at the end of her working test period (WTP). The Commission's final decision was based upon the evidence presented to an Administrative Law Judge (ALJ) whose Initial Decision reversing the County's actions was deemed adopted by the Commission, pursuant to N.J.S.A. 52:14B-10(c). On appeal, the County argues the ALJ's initial decision was arbitrary and capricious. We affirm.

We summarize the facts found by the ALJ. In May 2014, Jimenez applied for a job with Cape May County Board of Social Services (Board).<sup>1</sup> On her employment application, respondent listed a bank as her employer, and wrote she began working there in June 2011. She signed the last page of the application, which included a certification that applicant provided "true and complete" answers and understands that "false or misleading information . . . may result in discharge."

In late June 2014, the Board hired respondent as a Keyboarding Clerk 1; at this point, her WTP began. The Board – apparently unaware it had hired respondent within the previous week – filed a Special Civil Part complaint against her on July 1, 2014. The complaint sought a monetary judgment and alleged, in pertinent part:

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<sup>1</sup> On June 28, 2015, the County abolished the Board and replaced it with a department within the County.

[Respondent] was a participant in the Work First New Jersey General Assistance program and Supplemental Nutrition Assistance program (SNAP), formerly known as food stamp program during the months of August 2011 through December 2011. During this period [respondent] failed to report her employment with [a bank] creating a WFNJ/GA overpayment in the amount of \$700 and a SNAP program overpayment in the amount of \$1,000.

. . . .

[Respondent] was a participant in the Work First New Jersey General Assistance program and . . . SNAP . . . during the months of January 2012 through June 2012. During this period [respondent] failed to report her continued employment with [the bank] and a receipt of unemployment insurance benefits creating a WFNJ/GA overpayment in the amount of \$731.46 and WFNJ/GA related Medicaid overpayment in the amount of \$410.11 and a SNAP program . . . overpayment in the amount of \$1,030.

Jeffrey Lindsay, the Director of Human Resources for the Board, met with respondent to discuss her sixty-day evaluation in mid-September 2014. Before the meeting, Lindsay learned that respondent "potentially had an intentional program violation or lied to [the] Board . . . ." According to Lindsay, he marked "unsatisfactory" on the evaluation and informed respondent she "shouldn't offer any statements at that time" because they would "hold a fact finding[,] at which time she'd be able to explain." Lindsay told respondent that if the hearing shows he received incorrect information, he would change the "unsatisfactory"

evaluation to a "satisfactory" one, at the ninety-day evaluation, and it would not affect her employment. Eventually, Lindsay terminated respondent due to the allegations she "potentially committed fraud against or intentionally provided inaccurate information to the [Board] in connection with [her] application for benefits."

Respondent appealed to the Commission, which referred the matter to the Office of Administrative Law for a hearing before the ALJ. At the hearing, the ALJ heard testimony from six witnesses, including Lindsay and respondent. In a December 22, 2015 opinion, the ALJ reversed the decision terminating respondent's employment, finding that nothing in the record demonstrated that respondent received notice of any deficiencies in her work and that, based on the evidence adduced at the hearing, if she lied, it was on her application for welfare benefits, not on her employment application. According to the ALJ, the trial testimony and evidence demonstrated that "the only reason [respondent] was terminated was because Lindsay was concerned that in some way liability for some future action by [respondent] could be imputed to the County . . . ."

The Civil Service Commission did not have a quorum at the time that it was supposed to make its final decision. After one extension, respondent declined to consent to an additional

extension, resulting in the adoption of the ALJ's recommended decision as the Commission's final agency decision, pursuant to N.J.S.A. 52:14B-10(c). The Commission's final decision clarified the limited scope of the ALJ's Initial Decision:

Since the [respondent's] release at the end of the WTP has been reversed, she is entitled to reinstatement to the position of Keyboarding Clerk 1. However, as the Commission does not generally grant permanent status in such matters, and the ALJ did not do so in his initial decision, the [respondent] is not entitled to permanent status in that position. Nor is she entitled to back pay, benefits or seniority for the period from the onset of her release at the end of the WTP until she is actually reinstated. Rather, she is only entitled to reinstatement with the opportunity to complete a new WTP.

This appeal followed, with the County arguing the Initial Decision of the ALJ was arbitrary and capricious because he concluded the termination decision must relate to the employee's job performance deficiencies. The County argues that it had the authority to terminate respondent's employment on the basis of her "conduct and fitness" because she "gave false or misleading information during an interview," which she agreed could result in her termination.

Typically, where an agency issues a final decision, our review is limited. Lavezzi v. State, 219 N.J. 163, 172 (2014). We will not disturb the final determination of an agency unless shown that

it was "arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Id. at 171 (citing Prado v. State, 186 N.J. 413, 427 (2006)). That deference extends to decisions relating to employee discipline and punishment, including termination. In re Herrmann, 192 N.J. 19, 28 (2007).

However, "when the lack of a quorum attributable to vacancies cause[s] the agency inaction [in response to an ALJ's recommendation], the current version of the deemed-adopted statute does not require traditional deferential appellate review of the ALJ's decision." In re Hendrickson, 451 N.J. Super. 262, 266 (App. Div.), certif. granted, 231 N.J. 143 (2017). Instead, we apply "the standard of review for bench trials," where we will affirm an ALJ's factual findings "to the extent they are supported by substantial credible evidence in the record." Id. at 273 (citing Zaman v. Felton, 219 N.J. 199, 215 (2014)). "No deference will be accorded to . . . legal conclusions; they will be reviewed de novo." Ibid. (citing Zaman, 219 N.J. at 216).

Applying this standard of review, we turn first to the ALJ's determination that the "the only reason [respondent] was terminated was because Lindsey was concerned that in some way liability for some future action by [respondent] could be imputed

to the County, an issue which he stated he dealt [with] in private practice before becoming the Director of Human Resources."

The County terminated respondent after her WTP. N.J.A.C. 4A:1-1.3 defines a WTP as "a part of the examination process after regular appointment, during which time the work performance and conduct of the employee is evaluated to determine if permanent status is merited." "An employee may be separated for unsatisfactory performance at the end of the [WTP]." N.J.A.C. 4A:4-5.4. The WTP permits "an appointing authority to determine whether an employee satisfactorily performs the duties of a title." N.J.S.A. 11A:4-15. "The whole purpose of a . . . [WTP] . . . is to supplement the examining process by providing a means for testing an employee's fitness through observed job performance under actual working conditions." Dodd v. Van Riper, 135 N.J.L. 167, 171 (1947).

In its brief, the County does not contend it terminated respondent because she lied to the Board before her employment with the Board began; instead, the County asserts it fired respondent for lying during her fact finding interview. On this point, the ALJ found that, if respondent lied, she lied on her application for welfare benefits, years before her employment with the Board. The record supports this finding. Lindsay testified that, at the fact finding hearing, he asked respondent whether she

was employed with the bank listed on her application from June 2011 up to a short time before she started with the Board, and respondent stated that she was not sure.

The definition of WTP found in N.J.A.C. 4A:1-1.3 includes a review of the employee's "conduct"; however, the plain language of the statute makes clear that the "conduct" examined is the conduct that takes place during the WTP. See DiProspero v. Penn, 183 N.J. 477, 492 (2005) ("The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language."). Therefore, respondent's conduct prior to her employment should not have been a factor in the decision to terminate her employment, following her WTP.

We conclude the evidence supported the ALJ's determination to reject the County's claim that it terminated respondent's employment because she lied during an interview. The record also supports the ALJ's finding that respondent did not lie on her job application or during her interview. Additionally, the evidence supported the ALJ's determination that Lindsay recommended terminating respondent's employment because he believed an employee who had lied to the Board prior to her employment was a "liability."



Since the County eliminated the Board in favor of a department within the County, the ALJ noted that respondent "is a Keyboarding Clerk 1 employed by the County of Cape May. As such, she may be placed anywhere in the County where a Keyboarding Clerk 1 is utilized."

Because the Board failed to follow proper procedures in the way it completed its evaluation of respondent (e.g., providing no reasons for giving her an unsatisfactory sixty-day evaluation), and relied upon conduct that long preceded her employment by the Board, we do not find arbitrary or unreasonable the order reinstating respondent to her position as Keyboarding Clerk 1, with a new WTP, but with no back pay, benefits or seniority.

Any arguments not addressed lack 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