Dep't of Health & Mental Hygiene v. Brooks

OATH Index No. 3239/24 (Oct. 28, 2025)

Petitioner proved that respondent failed to meet deadlines, sent confidential information about an applicant to the wrong childcare program, provided incorrect guidance to an employee she supervised, reviewed the incorrect assignment log for an employee she supervised, and failed to timely provide written performance improvement plans to employees. Petitioner did not prove the remaining charges. 20-day suspension without pay recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Petitioner
-against-
BRENDA BROOKS
Respondent

REPORT AND RECOMMENDATION

ASTRID B. GLOADE, *Administrative Law Judge*

This is a disciplinary proceeding referred by petitioner, the Department of Health and Mental Hygiene ("Department"), pursuant to section 75 of the Civil Service Law. The charges allege that on multiple occasions between September 2022, and November 2023, respondent Brenda Brooks, an Associate Public Health Sanitarian Level III ("APHS-III"), failed to perform her duties; performed her duties inefficiently, negligently, or carelessly; failed to properly supervise and maintain discipline over employees under her supervision; and engaged in conduct prejudicial to good order and discipline (ALJ Ex. 1).[1]

At a three-day trial, held remotely via videoconference, petitioner presented five witnesses and documentary evidence. Respondent testified on her own behalf and presented documentary evidence. The record closed with the submission of written summations.

For the reasons below, I find that the charges are sustained in part and dismissed in part. For the proven misconduct, I recommend that respondent be suspended without pay for 20 days.

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[1] At the start of the trial, petitioner withdrew charge I, specification B, and charge II, specification G (Tr. 7).

ANALYSIS

Respondent has worked for the Department since December 1994 (Tr. 306). On July 18, 2022, she was promoted to APHS-III, a civil service title, when she was hired in the Central Clearance Unit ("Unit") within the Bureau of Childcare ("Bureau"). Her title within the Unit is Assistant Director and during the relevant time she reported directly to Verdinia Washington, Deputy Director of the Unit (Washington: Tr. 14, 16-17; Resp.: Tr. 306-08). Barbara Glover-Cox, Director of the Unit, also supervised respondent's work (Tr. 308).[2]

The Unit reviews comprehensive background checks ("CBCs") and clearance applications for all employees and volunteers who work in childcare programs in New York City. Washington, who has worked in the Bureau for 20 years, supervises the Unit's operations and reports on those activities to her supervisors. She also ensures that the Unit complies with federal mandates and that the databases used to perform the Unit's work are properly maintained and managed (Tr. 14-16).

Washington explained that CBCs are federally mandated for every employee and volunteer in childcare programs (Tr. 17-18). The Unit has a "state-side" and a "city-side." Employees on the city-side of the Unit process background checks for group childcare centers ("GCC") and school-based childcare ("SBCC") providers, which are commercial daycare centers. GCC applications are also referred to as "A-Series" applications and SBCC applications are also referred to as "B-Series" applications (Washington: Tr. 119-20, 122-24; Resp.: Tr. 308-09, 313). Employees on the state-side of the Unit are responsible for applications for school-age childcare centers ("SACC"), which are afterschool programs (Tr. 308-09).

Applicants for employment or volunteer positions with SBCCs must undergo a review of their criminal history and get cleared by the Bureau. Processing SBCC clearance applications entails reviewing the applicant's criminal history, an application form called the "B-Series" or "B-1 form," and a fingerprint receipt as proof the applicant was fingerprinted. Applicants who do not have a criminal history are cleared to work in SBCCs (Tr. 18, 28-29, 60). The Unit's clearance administrators process applications by reviewing information provided in the applications (Tr. 18, 120, 131). Clearance supervisors train the clearance administrators to review applications, protocols, and procedures for managing their day-to-day responsibilities, and they report statistical data for themselves and the staff they supervise (Tr. 119-20).

[2] Respondent was transferred out of the Unit in 2024 (Washington: Tr. 15-16, 137; Glover-Cox: Tr. 234).

Respondent and clearance supervisors review the applications that clearance administrators process and approve them by issuing a clearance determination (Tr. 131). Washington explained that reviewing SBCC applications is a "straightforward process" that can be completed quickly because the reviewer checks to see if the applicant has a criminal history and, if not, they "click a few buttons . . . in the different databases and issue the clearance letter" (Tr. 64).

As the Unit's Assistant Director, respondent worked on the city-side of the Unit, where she supervised clearance supervisors and principal administrative associates level 2 ("PAA-II") (Washington: Tr. 16-17; Resp.: Tr. 308-09, 320). According to Washington, respondent's responsibilities included supporting her subordinates, maintaining and reviewing statistics that she reported to Washington, and, in Washington's absence, reporting to the Unit's director and the assistant commissioner. Respondent was also responsible for ensuring that staff under her supervision followed proper procedures when processing applications, including processing them within federally mandated timeframes. She also reviewed safety assessments and maintained Department of Investigation ("DOI") secured folders (Tr. 17).

Respondent testified in detail about her responsibilities as Assistant Director. When she started her position in July 2022, her day-to-day responsibilities included: checking emails, which often numbered in the hundreds throughout the day; making sure staff submitted their timesheets; submitting her own timesheets; checking for phone calls; checking for priority requests that had to be handled immediately; monitoring DOI spreadsheets because incoming DOI reports had to be recorded and uploaded into the system; scheduling, attending, and conducting meetings; responding to requests from her supervisors; conducting interviews and tasks relating to new hires and staff whose employment ended; making sure staff had access to the necessary databases and secured folders; and making sure staff received the tasks and standards for their job titles and manuals governing their work, and were trained on processing applications (Tr. 311-16).

In addition to those day-to-day duties, respondent processed and approved GCC and SBCC applications. She testified that seven staff members submitted applications to her for review and approval (Tr. 322). Respondent, Washington, and Glover-Cox had final authority to approve city-side applications (Tr. 323).

When respondent started working in the Unit, she received on-the-job training on various aspects of the CBC and clearance processes. Between July 2022 and March 2023, and throughout her employment in the Unit, she was also trained on Unit protocols and procedures, gathering and reporting statistics, using the databases, reviewing and approving child safety assessments, and maintaining the secured DOI folders. Washington conducted the trainings in one-on-one sessions with respondent and there was no syllabus, sign-in sheet, or written training protocols (*Id.*). Washington could not specify the duration of respondent's training, but maintained it was extended when respondent "continued not understanding the proper protocols and procedures" for her position (Tr. 120-21).

Paper applications were in use when respondent started working in the Unit (Tr. 313). However, in May 2023, the Unit started using an electronic database called Salesforce for accepting, reviewing, and processing applications (Tr. 135). Washington explained that childcare programs submit applications via Salesforce and the applications are transferred to the Unit's staff, which process them electronically (Tr. 93).

Respondent supervised seven staff members, including clearance supervisors (Washington: Tr. 119-20; Resp.: Tr. 320-22). In addition, she testified, the Unit had grown to about 50 people "towards the end" of her tenure, of which 25 or 26 staff members on the city-side indirectly reported to her (Tr. 320-22). Although respondent directly supervised one PAA-II, she also reviewed the work of two PAA-IIs on SBCC applications (*Id.*).

Petitioner contends that respondent was inefficient, negligent, or careless in performing her duties and failed to promptly notify supervisors of her inability to carry out assignments. Petitioner also alleges that respondent failed to properly supervise and maintain order and discipline over subordinates, and engaged in conduct prejudicial to good order and discipline (ALJ Ex. 1).

Under Civil Service Law section 75, an employer may discipline and terminate an employee for misconduct or incompetence "after a hearing upon stated charges." Civ. Serv. Law § 75(1) (Lexis 2025). It is well established that to sanction an employee for misconduct under section 75, petitioner must make a showing of fault, such as proof that the employee acted carelessly, negligently, willfully, or intentionally. *See, e.g.*, *Office of Chief Medical Examiner v. Rheams*, OATH Index No. 262/25 at 14 (Apr. 11, 2025), *adopted in part, rejected in part*, Comm'r Dec. (June 12, 2025), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2025-0398 (Sept. 18, 2025) (quoting *Dep't of Correction v. Phillips*, OATH Index No. 1954/15 at 2 (Sept. 10, 2015))*; see also McGinigle v. Town of Greenburgh*, 48 N.Y.2d 949, 951 (1979); *Reisig v. Kirby*, 62 Misc. 2d 632, 635 (Sup. Ct. Suffolk Co. 1968), *aff'd*, 31 A.D.2d 1008 (2d Dep't 1969). A finding of misconduct cannot be predicated on mere errors in judgment that lack willful intent and are not so unreasonable as to be considered negligence. *Dep't of Environmental Protection v. Segarra*, OATH Index No. 2730/10 at 6-7 (Oct. 20, 2010), *adopted in part, modified in part*, Comm'r Dec. (Apr. 29, 2011), *rev'd*, NYC Civ. Serv. Comm'n Item No. CD-11-94-R (Dec. 20, 2011) (reversing the agency's determination, the New York City Civil Service Commission upheld the ALJ's finding that respondent was not guilty of the charges).

Petitioner bears the burden of proving the charges 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); *see also Bazemore v. Friday*, 478 U.S. 385, 400-01 (1986).

Petitioner has satisfied its burden as to some, but not most, of the charges.

Charge I: Inefficient, negligent, or careless performance of duties and failure to promptly notify supervisor of inability to carry out assignment

Petitioner alleges that respondent violated its Standards of Conduct 19 times between September 2, 2022, and November 20, 2023, by performing her duties inefficiently, negligently, or carelessly (rule 3.19), and by failing to complete work assignments and to promptly notify her supervisor that she did not complete assigned duties (rule 3.18) (ALJ Ex. 1).

Specification A: Missed deadline to complete six GCC applications

Petitioner alleges that on or about September 2, 2022, respondent failed to meet a deadline set by the Unit's director to complete six GCC applications (ALJ Ex. 1).

Barbara Glover-Cox, who has worked in the Bureau for 36 years, oversees the Unit's operations as its Director and reports to Assistant Commissioner Renee Noel (Tr. 200-02). Glover-Cox testified that as an APHS-III, respondent is responsible for training and supervising employees, reviewing and reporting on Unit operations, communicating with the Department's central administration in the absence of her immediate supervisor, and ensuring that the Unit's staff use the databases correctly (Tr. 203-04). Glover-Cox did not testify about whether she gave respondent until September 2, 2022, to complete six GCC applications or that respondent failed to complete the applications.

Respondent testified that on August 23, 2022, Glover-Cox emailed her about the first GCC application respondent processed, noting that respondent did well but needed to work on her confidence and speed (Tr. 353; Resp. Ex. B). After respondent completed her second GCC application on September 26, 2022, Washington sent her an email saying, “good job” and Glover-Cox sent one congratulating her (Resp. Ex. C). Respondent did not recall that Glover-Cox gave her a deadline to complete an application before September 2, 2022, nor did Glover-Cox contact respondent about having missed a deadline. Respondent learned that there was a deadline for the GCC applications when she received the charges (Tr. 354-55).

Petitioner failed to establish that Glover-Cox set a deadline for respondent to complete six GCC applications as alleged. Accordingly, charge I, specification A, is not sustained.

Specification C: Missed deadline to approve applications in a priority project

Petitioner alleges that on or about October 17, 2022, respondent failed to meet a deadline to approve pending applications critical to the Desert Grant Project, a high-priority project, where Washington extended the deadline by one day for respondent’s convenience. Petitioner further alleges that respondent did not approve the applications until October 20, 2022 (ALJ Ex. 1). Petitioner failed to meet its burden of proof as to this charge.

Washington testified that the Desert Grant Project is a New York State project to address limited access to licensed and registered childcare programs in some geographic areas. Washington described the project as a priority for the Unit because New York State imposed deadlines for processing childcare program applications from within the project’s area. According to Washington, respondent worked on the project but failed to meet the processing deadlines, even after they were extended (Tr. 117).

Respondent credibly testified that there was no differentiation between Desert Grant Project applications and other GCC applications so that she knew which applications were for that project. She could not recall discussing the Desert Grant Project with her supervisors in October 2022, nor could she recall being given a deadline to complete Desert Grant Project applications (Tr. 356-57).

Petitioner presented no evidence to establish that there was a deadline imposed for respondent to approve applications for the Desert Grant Project. Therefore, charge I, specification C, should be dismissed.

Specification D: Failure to provide update on subordinate's caseload as directed

Charge I, specification D, alleges that on or about October 28, 2022, respondent failed to update Washington on her subordinate's caseload as directed (ALJ Ex. 1). Petitioner failed to prove this allegation.

Respondent supervised Latisha Jones, a PAA-II who processes SBCC applications (Tr. 289-90). Respondent testified that the employees she supervised maintained logs of their assigned applications, listing each childcare program's name, identification number, applicant's name, and sometimes their fingerprint information. In October 2022, the logs were created and maintained manually (Tr. 357-59).

Respondent admitted that during a meeting on October 27, 2022, Washington directed her to provide an update on Jones's caseload (Tr. 359). During the meeting, held at about 3:00 p.m., respondent and Washington discussed Jones's workload and a meeting with clearance supervisors was scheduled for the next day. Respondent recalled that Washington issued many directives during the meeting. Respondent tried to contact Jones after the meeting, but surmised that Jones's workday had ended so she contacted her the next day to obtain the log. Jones provided the log to respondent, who gave Washington an update on Jones's caseload, and they met to discuss it (Tr. 359-61).

Petitioner offered no evidence to prove this specification and, although respondent admitted she was directed to provide an update on Jones's caseload, there is no evidence that Washington set a deadline for doing so. Moreover, respondent's detailed, credible, unrefuted testimony establishes that she provided the information to Washington. Accordingly, charge I, specification D, should be dismissed.

Specifications E, F, G, H, and I: Failure to meet December 30, 2022, deadline

Petitioner alleges that respondent failed to meet a December 30, 2022, deadline imposed by Washington to finalize A-Series applications for two applicants identified as K.R. and S.B., and failed to finalize SACC applications for three applicants identified as T.N., J.G., and Z.A. (ALJ Ex. 1).

On December 22, 2022, Washington asked respondent to ensure that seven applications were processed and approved by close of business on December 30, 2022, "if all requirements have been met" (Pet. Ex. 5). The seven applications, consisting of two A-Series, two B-Series, and three SACC applications, were ones that respondent had identified in an email dated December 20, 2022, as applications she still had to process after she reviewed her assignment log (*Id.*).

Some applications were time-sensitive, Washington testified, because federal law requires that CBC applications be processed within 45 days and petitioner could be penalized for failure to meet this deadline (Tr. 23). She imposed the December 30 deadline because some of the applications had been assigned to respondent in September and "were well over the 45-day mark" for processing, and because the end of the year was approaching (Tr. 50). However, respondent did not process the seven applications until January 2023. When Washington inquired why she had failed to process the applications, respondent said she had been working on other tasks, had questions about some of the applications, and that there was one application where the fingerprint receipt was illegible and had to be resubmitted (Tr. 50-51).

Respondent testified that between December 20 and 30, 2022, she approved the two B-Series applications that she had identified as still pending in her email. However, there were issues with the five remaining applications that prevented her from completing them. Of the two A-Series applications awaiting respondent's approval, one applicant required an out-of-state background check and the other applicant did not submit fingerprint information that respondent had requested (Tr. 363-64).

According to Washington, if an applicant lived outside of New York State within five years before submitting a CBC or clearance application, the Unit must check criminal histories and sex offender registries in each state the applicant lived to determine if there are any child abuse allegations (Tr. 52-53). The Unit's employees can conduct some checks themselves, but if the out-of-state checks require the applicant to complete additional forms or pay a fee, the staff notifies the applicant to obtain the missing information and submit it to the Unit (Tr. 53). An applicant whose out-of-state background check is pending can be conditionally approved to work with a childcare program after the Unit's staff completes its review of New York State records. When the Unit issues a conditional approval, the applicant can work under the supervision of program staff members who already have full clearance (Tr. 56, 110).

Respondent maintained that she tried to approve the three SACC applications. She explained that this was the first time she processed SACC applications, which are handled by the state-side of the Unit. Because she wanted to learn how to process them, she had asked to be trained to approve SACC applications and had requested that some of those applications be assigned to her (Tr. 308-09, 363-65). As respondent tried to approve the three SACC applications, questions arose that she needed to discuss with Washington, who was out of the office until January 2023 (Tr. 366). According to respondent, she and Washington discussed the applications that had not been approved "in the new year," when she told Washington she needed help with them (Tr. 364). Respondent processed the three SACC applications after she received guidance. Washington then had to approve the applications, which happened on January 9, 2023 (*Id.*). Respondent could not recall if she told her supervisors before the December 30 due date that she lacked the information necessary to process the applications (Tr. 426-27).

Respondent contends that petitioner failed to prove that respondent missed the December 30, 2022, deadline. Respondent asserts that the email setting the deadline by which respondent was to have completed the seven applications does not specifically identify the applications that were subject to the deadline, and there is no evidence that respondent missed the deadline for the five applicants identified by initials in the charges (Respondent's Post-Trial Brief ("Resp. Br.") at 5-6).[3] This argument is unpersuasive. The evidence establishes that Washington gave respondent until December 30, 2022, to complete two A-Series and three SACC applications, and that respondent did not meet that deadline.

However, respondent's failure to meet the deadline does not constitute misconduct.

Resolution of this charge rests on assessment of respondent's credibility. In assessing credibility, this tribunal has looked to witness demeanor, the consistency of a witness's testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness's testimony comports with common sense and human experience. *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *adopted*, Comm'r Dec. (Feb. 17, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998). Here, respondent was clear, consistent, and detailed in her testimony concerning the specifications. She candidly admitted that she did not process the applications by the deadline imposed, but provided plausible explanations for her failure to do so.

Respondent credibly testified that she could not timely approve the two A-Series applications because one required an out-of-state background check and the other applicant lacked necessary fingerprint information. As for the three SACC applications, she explained that because it was her first time processing SACC applications she had questions about the process, but

[3] Respondent's written summation is made part of the record as ALJ Exhibit 3.

Washington was on leave so the questions remained unanswered past the December 30, 2022, deadline. Respondent's testimony establishes that she was unable to timely process the applications because she needed additional information and guidance.

Petitioner disputed respondent's characterization of the circumstances, contending that she could have timely completed the applications. Washington testified that she instructed respondent to process and approve the applications "if all requirements have been met," which meant that "if all the items needed to complete the background check [have] been provided and the results received" (Tr. 154-55; Pet. Ex. 5). She acknowledged that if the applications were incomplete, respondent could not process and approve them. However, she maintained that whether respondent could have met the deadline depended on when respondent began processing the applications and sought the information necessary for their completion (Tr. 155, 157-58). Washington explained that some of the applications had been assigned to respondent in September, some in November, and a few in December 2022 (Tr. 156-57), but did not specify when the applications at issue were assigned.

Washington testified that the Unit could have issued a conditional approval to work for the applicant for whom an out-of-state background check was needed, which would have permitted the applicant to work in a childcare program under supervision while the out-of-state background check was conducted. This conditional approval would have given the applicant an additional 45 days to submit the out-of-state background check information so the Unit could make a final determination. Washington asserted that respondent had informed her that the fingerprint receipt for the other applicant was illegible so respondent requested a legible one, and the other applications were delayed because respondent was handling other tasks (Tr. 156-60).

Petitioner did not establish that respondent's failure to meet the deadline is misconduct. There is no evidence that she acted inefficiently, negligently, or carelessly, or that she failed to promptly notify her supervisor of her inability to carry out the assignment. Respondent was clear and detailed in her recollection of the circumstances surrounding the applications and offered believable explanations for not processing them by December 30. I credit respondent's testimony that she did not have necessary information to process the A-Series applications by the deadline. Consistent with Washington's direction that respondent process the applications "if all requirements have been met," I find that respondent established that the requirements had not been met for processing the two A-Series applications. With respect to the three SACC applications, I credit respondent's uncontroverted testimony that because it was the first time she processed SACC applications, she needed guidance from Washington, who was out of the office until after the deadline passed.

In sum, charge I, specifications E, F, G, H, and I, should be dismissed.

Specification J: Failure to timely complete a conditional approval letter

Petitioner did not prove that on or about January 20, 2023, respondent failed to meet a deadline set by Washington to complete a conditional approval letter for an out-of-state applicant, as charged (ALJ Ex. 1).

On December 22, 2022, Washington instructed respondent to process seven pending applications, including an out-of-state A-Series application for S.B., by December 30, 2022 (Tr. 163; Pet. Exs. 5, 6A). The deadline was based on the date the application was received and how long it remained outstanding (Tr. 163). On January 20, 2023, respondent sent S.B. an email that outlined the process for conducting S.B.'s out-of-state background check (Pet. Ex. 6B; Resp. Ex. K). Respondent did not complete the assignment until January 27, 2023, when she instructed Jones to send conditional approval letters for S.B. (Tr. 163-64; Pet. Ex. 6B).

Washington testified that processing a conditional approval letter typically takes staff "a few days or a few weeks" if "the application is good" (Tr. 56). According to Washington, the time it took for respondent to process S.B.'s out-of-state conditional approval letter was longer than is typical for such an application. When she asked respondent why the letter had not been timely processed, respondent said that she had been handling other tasks and had questions about how to process the out-of-state application (Tr. 56-57).

Respondent testified that although she had received training on processing out-of-state applications, she had not processed one before the application in issue and sought Washington's help, but Washington was unavailable (Tr. 368-69, 371).

This charge should be dismissed. S.B.'s application had been subject to the December 30, 2022, deadline that Washington previously established (Tr. 368-69; Pet. Ex. 5). As discussed above, petitioner failed to establish that respondent's failure to finalize S.B.'s application by the December 30, 2022, deadline constitutes misconduct. Petitioner appears to contend that Washington imposed a separate deadline of January 20, 2023, for respondent to complete a conditional approval letter for S.B. that is distinct from the December 30, 2022, deadline to process the application. However, petitioner offered no evidence that Washington imposed a January 20, 2023, deadline.

Moreover, Washington's testimony that "[i]f the application is good, it could take a few days or a few weeks" for staff to process a conditional approval letter (Tr. 56), undermines petitioner's contention that respondent engaged in misconduct. Respondent testified without dispute that this was the first out-of-state application that she reviewed and that she had questions about the process. Therefore, it is not unreasonable that the amount of time it took for her to do so might fall outside of what Washington testified is standard for processing such letters.

Accordingly, charge I, specification J, should be dismissed.

Specifications K, L, and N: Misfiled Reports

Petitioner alleges that on or about February 13, 2023, respondent filed DOI arrest reports for February 9 through 10, 2023, and February 10 through 13, 2023, in the 2023 criminal history reports folder. It is also alleged that on or about February 16, 2023, she filed criminal history reports for February 1 through 8, 2023, in the 2022 criminal history reports folder (ALJ Ex. 1).

DOI prepares criminal history reports for applicants who are fingerprinted. These reports contain sensitive and confidential information, including the applicants' criminal history (Tr. 21). The Unit relies on the criminal history report to determine whether a clearance applicant or CBC applicant should be cleared to work in a childcare program (Tr. 22). Arrest notification reports contain information about applicants who are arrested after they had been fingerprinted in the application process. The criminal history and arrest reports are stored in different folders within the Unit's secure database in DOI folders, organized by calendar year (Tr. 21-22).

Washington testified that she noticed that reports had been misfiled when she was saving an updated report to the criminal history report folder. In an email dated February 16, 2023, she notified respondent that there were errors in the secured folders in which the Unit stored DOI information and asked her to correct them immediately (Tr. 23-24; Pet. Ex. 1A). Washington reminded respondent that the reports are time-sensitive and must be saved as soon as possible after receipt and filed accurately for use by staff (Pet. Ex. 1A). Washington took a screenshot of the documents saved in the "2023 Criminal History Reports" folder, which shows that two arrest notification reports are saved there (Tr. 22-23, 25-26; Pet. Ex. 1B).

The information contained in the folders is time-sensitive, Washington explained, because of the potential penalties for failing to meet the 45-day federal deadline for processing certain applications (Tr. 23, 103). In addition, the criminal history reports expire seven days after the Unit receives them and the Unit's staff must retrieve reports from the database before they expire (Tr. 23). Washington testified that filing DOI reports in the wrong folder can delay application processing, which may result in penalties against the program and Unit. In addition, the Unit's staff may have to ask DOI to resend information because it cannot be located in its proper folder, which reflects negatively on the Unit (Tr. 23-24).

Respondent admitted that she misfiled the reports, but described her actions as mistakes that she corrected as soon as she was told about them. Respondent testified that she probably misfiled the documents at around 8:00 p.m., while she was working late (Tr. 372). However, it is unclear from her testimony when she misfiled the reports and if she did so on the same date or different dates, as petitioner alleges. Washington emailed respondent about the errors at 8:42 a.m. on February 16, 2023 (Pet. Ex. 1A), and respondent testified that she immediately rectified them by moving the files to the correct folders. Respondent insisted that she has never made a similar mistake and noted that shortly before the errors occurred, Washington had changed the filing system for the reports so that instead of filing arrest reports in one folder, they were separated out by year (Tr. 372-73).

It is undisputed that respondent misfiled the reports. However, this does not constitute misconduct as these errors were inadvertent and isolated, and there is no evidence that they caused a delay in processing applications. *See Admin. for Children's Services v. Sullivan*, OATH Index No. 903/20 at 14-15 (Sept. 24, 2021), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2021-0813 (May 27, 2022) ("Occasional or minor errors, with minimal impact on agency operations, do not constitute misconduct.").

Charge I, specifications K, L, and N, should be dismissed.

Specifications M and O: Clearance letters sent to the wrong programs

Petitioner alleges that on February 15, 2023, respondent sent an SBCC clearance letter for applicant A.N. to the wrong childcare program, requiring Washington to correct the error by rescinding the clearance letter and updating the Childcare Activity Tracking System ("CCATS") database.[4] It is also alleged that on February 16, 2023, respondent sent an SBCC clearance letter

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[4] CCATS is the Bureau's internal database where records of inspections, clearance activity, permit information, and staff information for all New York City childcare programs and commercial spaces are stored (Tr. 89-90). During the trial, CCATS was also referred to as the Childcare Application Tracking System (Tr. 312).

for applicant S.P. to the wrong childcare program and, as a result, Washington rescinded the approval letter and updated the CCATS database (ALJ Ex. 1).

When an applicant is cleared to work in a SBCC program, the Bureau issues a clearance letter notifying the applicant's childcare program that the applicant is permitted to work in its program. Clearance applications submitted to the Unit contain the childcare program's contact information, including its email address. Respondent was responsible for creating SBCC clearance letters and sending them to the childcare program or delegating a staff member to do so (Tr. 29-30).

On February 15, 2023, at 8:27 p.m., respondent emailed a childcare program that she was attaching an "SBCC Clearance Letter for A.N." (Pet. Ex. 2A). The childcare program responded at 9:00 p.m. that A.N. did not work for the program (*Id.*). Washington testified that respondent had sent the SBCC clearance letter to the wrong childcare program, because applicant A.N. worked at a different program and the childcare program that received the SBCC clearance letter had identified its employee as "M.K." (Tr. 30; Pet. Ex. 2A). The SBCC clearance letter contained confidential information including A.N.'s name, DOI identification number, and date of birth (Tr. 30-31).

To remedy the error, respondent was required to send a letter rescinding the SBCC clearance letter for A.N. that she had initially sent (Tr. 33). A rescission letter notifies a childcare program when a clearance letter or clearance approval was issued in error (Tr. 37). However, Washington, not respondent, issued the rescission letter (Tr. 33; Pet. Ex. 3A).

Respondent admitted that she sent an SBCC clearance letter to the wrong childcare program. She explained that she was working late and had the file open because she had a question for Jones about the application. She attached the wrong applicant's information to the application in error and sent it to the program. She immediately tried to recall the letter, but was unsuccessful. Respondent testified that she could not send the clearance letter for M.K., the childcare program's employee, because she was waiting for Jones to provide information about that application. Shortly after learning of the error, respondent apologized to the childcare program's representative in an email sent at 9:05 p.m. on February 15, and sent the clearance letter for M.K. once Jones provided the needed information (Tr. 376-77; Resp. Ex. O).

It is undisputed that respondent sent a clearance letter to the wrong childcare provider. Sending the incorrect applicant's clearance letter to the provider, as Washington testified, is a breach of confidentiality, delays the clearance process for two applicants, and reflects negatively on the Unit (Tr. 30-31, 33). Given the confidential information transmitted with the clearance letters, it was incumbent on respondent to exercise great care in performing this task. That her error occurred while she was handling other responsibilities is no excuse, as respondent should have considered the importance of the task and taken steps to check that she was forwarding the document to the correct recipient. Therefore, petitioner established that respondent was careless in transmitting the wrong applicant's clearance letter to a childcare program as alleged in charge I, specification M. *See Human Resources Admin. v. Li*, OATH Index No. 1497/14 at 8 (July 17, 2014) ("[W]here the agency has a particular interest in accuracy or there is a potential for adverse consequences a single error may constitute negligence.").

Petitioner also alleges that respondent issued an SBCC clearance letter for applicant S.P. to the "incorrect childcare program" on or about February 16, 2023 (ALJ Ex. 1). There is no evidence that respondent sent a clearance letter for S.P. to the wrong provider. Instead, the evidence shows that S.P.'s SBCC clearance approval was rescinded because the Unit had not received required documentation.

In an email dated February 17, 2023, Washington notified a childcare program that a clearance letter for S.P. issued on February 15, 2023, was issued in error and attached a letter to rescind the clearance letter (Tr. 37; Pet. Ex. 3A). Attached to Washington's February 17 email is a letter to the childcare program from then-Acting Assistant Commissioner Renee Noel, dated February 17, 2023, which states that a previous clearance determination for S.P. was being rescinded because the Bureau had "not received all of the required documentation to complete their criminal background check" (Pet. Ex. 3A). The correspondence regarding S.P.'s application was addressed to the same childcare program listed on S.P.'s SBCC application (Pet. Exs. 3A, 3B).

The clearance letter for S.P. referenced in Washington's February 17 email, was not submitted into evidence. Instead, petitioner provided an email from respondent to Washington dated February 16, in which respondent wrote that she started to work on a CBC approval rescission letter but needed a letter to rescind an SBCC clearance determination (Pet. Ex. 3B). Washington explained that because the wrong clearance letter had been issued to the program, they had to develop a rescission letter for the SBCC clearance determination. Her testimony regarding this allegation focused on respondent's failure to create an SBCC rescission letter after Washington provided her with a template (Tr. 40, 145). Washington acknowledged she would need to see the original clearance letter sent to the provider to confirm that respondent sent that letter (Tr. 145, 147-48).

Respondent maintained that because an SBCC rescission letter did not previously exist, Washington had to create the letter and get it approved by the assistant commissioner (Tr. 380-81).

Petitioner failed to prove charge I, specification O, as the evidence does not prove that respondent sent S.P.'s SBCC clearance letter to the wrong childcare provider, as charged.

In sum, charge I, specification M, is sustained, while specification O should be dismissed.

Specification P: Asked supervisor how to handle expungement

It is alleged that on or about March 30, 2023, respondent asked Washington whether an email should be sent to the Department's borough office for an applicant who had been entered into the CCATS database for expungement. Petitioner contends that the protocol for handling this issue is "presumed to be within [respondent's] supervisory proficiency" and is one that her subordinates know and follow correctly (ALJ Ex. 1). This charge should be dismissed.

Clearance Supervisor Clifford Augustin has been in the Unit for about two years and reported to respondent in March 2023 (Tr. 261-63). As a clearance supervisor, Augustin supervises four clearance administrators who process CBC applications (Tr. 262). He testified that processing CBC applications involves using applicants' fingerprints to check their criminal history; checking their names and social security numbers against a "staff exclusion list" for any allegations of abuse; checking their names, dates of birth, and address histories against the Statewide Central Registry ("SCR");[5] and checking the sex offender registry to see if the applicants are listed there (Tr. 264). If there is no need for an out-of-state background check and the other checks have been cleared, the applicants can work with children without supervision (*Id.*). When respondent was his supervisor, Augustin reviewed applications that were processed by clearance administrators and checked to see if they could be approved. If he had questions about whether an application should be approved, he asked respondent (Tr. 266).

The Bureau maintains childcare program records in its CCATS database (Tr. 89). Washington testified that if information saved in CCATS changes, such as when an employee no longer works for a childcare program, the program's records must be updated in CCATS to reflect

[5] The SCR is a database managed by the New York State Office of Children and Family Services that can be checked for allegations of child abuse or maltreatment against an applicant (Tr. 106).

the employee's last date of employment with that program, or the expungement date. Typically, a clearance administrator is notified that there has been a change in employment at a program and advises a clearance supervisor, who informs the Department's borough office, which can enter the staff member's employment end date. Washington testified that all of the Unit's staff is trained on the protocols for expunging an applicant from CCATS and that respondent was trained on October 5, 2022 (Tr. 89-91).

On March 22, 2023, Augustin copied respondent and Washington on an email in which he wrote that a teacher no longer worked for a childcare program and requested that the teacher be removed from inclusion as a program employee (Pet. Ex. 10B). On March 30, 2023, respondent forwarded Augustin's email to Washington, asking if she needed to send an email to the borough office to request that the expungement be entered into CCATS when the applicant no longer works for the childcare provider (Pet. Exs. 10A, 10B).

Washington insisted that respondent should have known how to resolve the question about the expungement process because she had been trained on the process and her staff, which had also been trained, was using the protocol that respondent asked about. Washington asserted that as the Assistant Director of the Unit, respondent should have known the answer to her own question (Tr. 151-53). Petitioner contends that despite training and being copied on Augustin's email that reflected the proper procedure, respondent sought Washington's advice on how to initiate a CCATS expungement (Petitioner's Written Summation ("Pet. Br.") at 7). [6]

Respondent argued that she merely sought clarification from her supervisor, which did not violate petitioner's rules (Resp. Br. at 11). Respondent testified that she had not previously completed an expungement for an SBCC applicant and she wanted to know if she should send the email to the borough office (Tr. 382). Respondent noted that her supervisors had encouraged her to ask questions, including in an email sent to her on March 23, and that she followed their suggestions in her March 30 email (Tr. 383; Pet. Exs. 4, 10A). However, she conceded that after a while, in response to her requests for guidance and clarification, her supervisors told her the information she requested should be within her realm of knowledge (Tr. 383).

The record supports respondent's contention that Washington encouraged her to seek guidance as she was still learning her responsibilities as Assistant Director of the Unit. On March 16 and 17, 2023, Washington met with respondent to discuss her concerns about respondent's job

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[6] Petitioner's written summation is made part of the record as ALJ Exhibit 2.

performance and areas in which she needed to improve, including outstanding assignments that respondent needed to address. Washington also provided guidance on how respondent could address the tasks and summarized their discussion in an email dated March 23 (Tr. 42-43; Pet. Ex. 4).

In that email, Washington wrote that she had asked respondent about "the continued delays in reviewing and approving A and B-Series applications" assigned to respondent for processing (Pet. Ex. 4). Washington wrote that during their meetings she advised respondent of the need for her performance to improve in her "review of pending approvals, responding to Supervisor requests, planning ahead, paying attention to detail, and managing priorities" (*Id.*). Washington further wrote that she had provided respondent with guidance on how to address these issues during her tenure in the Unit and at their meetings. While acknowledging that respondent was eight months into her tenure in the Unit and was still learning the CBC process and "fine-tuning" her leadership skills, Washington warned of the need for respondent to be able to "grasp and retain the processes and procedures" of the Unit to fulfill her duties as a supervisor. She offered respondent continued training, meeting, guidance, and advice (*Id.*). Washington testified that respondent had received "initial training in all CBC and clearance processing protocols and procedures" and refresher trainings. In addition, Washington gave suggestions on how respondent could better organize her workload, prioritize her responsibilities, and meet deadlines (Tr. 46).

At the end of her March 23 email, Washington noted that her door was always open to assist respondent with questions and that she was there to help respondent succeed as the Unit's Assistant Director (Pet. Ex. 4). According to Washington, respondent agreed during their meetings that her performance would improve, but no improvement was noticeable after the meetings and respondent continued to ask questions (Tr. 47; Pet. Ex. 4).

Petitioner failed to meet its burden as to this specification. The essence of the charge is that respondent sought guidance from Washington about a protocol that Washington believed respondent should have already known. However, the credible evidence establishes that one week before respondent asked for confirmation of her understanding of the process for CCATS expungement, Washington encouraged her to seek guidance. Respondent testified, without dispute, that she had never completed an expungement for an SBCC applicant and wanted to confirm her understanding of the process.

Accordingly, petitioner failed to establish that respondent's inquiry constitutes misconduct and charge I, specification P, should be dismissed.

Specification Q: Incorrect guidance to subordinate

Petitioner charged respondent with providing incorrect guidance to a subordinate regarding the protocol for an applicant's maiden name on DOI fingerprints on or about July 13, 2023, which caused Washington to intervene and provide correct information (ALJ Ex. 1).

Augustin testified that one of the clearance administrators he supervised sought guidance about an inconsistency in an applicant's name on the SCR and DOI fingerprint results because the applicant's maiden name was included in only one document. Recalling that Washington previously addressed an issue concerning maiden names on both documents, although in different ordering of the names, Augustin asked respondent for guidance on July 13, 2023 (Tr. 272-74; Pet. Ex. 18A). Respondent, who copied Washington on her response to Augustin's email, told him that the applicant's maiden name had to be included on both documents. However, Washington's response differed from respondent's and Augustin followed Washington's guidance (Tr. 274-75; Pet. Ex. 18A).

Washington testified that the SCR contains information provided by applicants, including the applicants' name and all maiden names and aliases. DOI does not require that applicants list all maiden names and aliases when getting fingerprinted. If an applicant's maiden name or alias appears on a DOI fingerprint result but is inconsistent with the name the applicant provided in the SCR check, the applicant is not required to submit new fingerprints to the Unit (Tr. 106-08).

Respondent testified that she had not previously directly dealt with a similar issue regarding maiden names, but admitted, without providing details, that she had received training on what is acceptable regarding names on the reports (Tr. 386-87).

Charge I, specification Q, is sustained. Petitioner established that after having been trained, respondent provided incorrect information to a subordinate who sought her guidance. Respondent contends that her mistake does not constitute misconduct because there is no evidence it had a negative effect on the Unit (Resp. Br. at 9-10). Respondent is mistaken. This was not a minor or inconsequential mistake. After respondent provided incorrect information to Augustin, Washington wrote a detailed email to correct her error, thus having to expend time to intervene and correct respondent's supervision of Augustin. Thus, respondent was inefficient in performing her duties.

Specifications R, S, and T: Failure to timely approve applications

Petitioner alleges that on or about November 14, 2023, respondent failed to approve SBCC applications on her log that were approaching or past a 45-day deadline for processing, and that Washington approved 20 applications on respondent's behalf. It is also alleged that from November 16 to 20, 2023, respondent failed to approve SBCC applications on her log that were past the 45-day deadline and her supervisor approved 44 SBCC applications on her behalf. In addition, petitioner alleges that on or about November 17, 2023, respondent failed to meet a deadline to process 50 Salesforce applications, all of which were past the 45-day deadline (ALJ Ex. 1).

On November 14, 2023, Washington informed respondent by email that one GCC and 49 SBCC applications had been pending in Salesforce for over 45 days awaiting respondent's approval, and instructed respondent to process the 50 applications by November 17 (Pet. Ex. 7A). Washington also wrote that she had already completed 20 applications pending in respondent's queue so they would not exceed 45 days (Tr. 164-67; Pet. Ex. 7A). Washington explained that she had approved the 20 SBCC applications to help lower respondent's caseload so she would have fewer pending applications (Tr. 165-66). Washington noted that she was able to approve 21 to 30 applications per day while doing other tasks, and she has more responsibilities than respondent (Tr. 171). Washington testified that while performing their other duties, employees can approve an average of seven to ten SBCC applications per day, with each application taking ten to 15 minutes to approve (Tr. 60, 169-70). Between November 14 and 17, the period respondent was given to complete the 50 applications awaiting her approval, respondent was still required to perform her other duties (Tr. 169-70).

On November 16, respondent notified Washington that she could not complete the applications because of other work. Washington found other staff to complete respondent's work and respondent did not process any of the 50 applications by the November 17 deadline (Tr. 62, 167; Pet. Ex. 7A).

On November 21, Washington sent an email to respondent, the subject of which was respondent's "Failure to Meet Supervisory and Unit Deadlines" (Pet. Ex. 7A). In that email, Washington wrote that respondent had not "approved any over 45-Day SBCC applications and failed to meet the deadline of 11/17/23 regarding the fifty (50) over 45-Day Salesforce applications" (*Id.*). Additionally, Washington wrote that there were 87 Salesforce applications awaiting respondent's review and/or approval as of November 21, and two performance improvement plan ("PIP") reviews that were over 45 days overdue (Pet. Ex. 7A).

Washington described the outstanding tasks listed in her November 21 email as items that "do not take a whole lot of time" to complete (Tr. 177). The PIP reviews, she testified, which respondent was to perform because an employee she supervised was absent, should have been done at least three weeks before the November 21 email. In addition, "[t]he outstanding applications continue to pile up daily if you do not address any of the previous applications" (Tr. 168-69, 177). Washington noted that of the 87 outstanding applications awaiting respondent's review and approval, several of them were safety assessment reviews, which she described as time-sensitive. She explained that safety assessment means that an applicant "had a criminal hit" and further investigation was necessary before a final determination of whether it was safe for that applicant to work in a childcare program (Tr. 178). Safety assessments take time because the Safety Assessment Unit interviews the applicant and requests additional documentation before making a safety determination, which has to be reviewed by the Unit's leadership for a final approval. Washington testified that she had previously conveyed the time-sensitive nature of safety assessments to respondent (Tr. 178-79). However, four GCC and three SBCC safety assessments awaited respondent's review and final approval as of November 21 (Pet. Ex. 7A; Tr. 179).

According to Washington, the backlog of respondent's workload summarized in the November 2023 emails was typical for respondent (Tr. 60; Pet. Ex. 7A). When respondent was unable to meet the deadlines, Washington reassigned the applications to other staff members to approve, including herself, Glover-Cox, other clearance supervisors, and Assistant Commissioner Renee Noel (Tr. 61-62). Because processing the applications is not part of Washington's day-to-day responsibilities, this added to Washington's workload and caused delays (Tr. 62).

Processing SBCC applications is not part of Assistant Commissioner Noel's duties (Tr. 63). However, Washington testified that Noel offered to process applications, and after being trained for about an hour, she processed 44 of the applications that had been respondent's responsibility in three days (Tr. 63-65, 102-03).

Noel, who has worked for the Department for over 28 years, including 20 years as a supervisor, oversees the Bureau's operations (Tr. 238-39). She does not directly supervise respondent. The Bureau is charged with protecting children in childcare programs and the Unit plays a critical role by processing background check applications for childcare program staff (Tr. 241-42). Noel testified that in November 2023, there was a significant backlog of applications and that childcare programs, the community, and City Hall were complaining about the delay in processing applications. To help with the backlog, Noel volunteered to process SBCC applications (Tr. 241-43, 248-49).

Because Noel had never processed SBCC applications, Washington trained her in a session that took about an hour and a half (Tr. 243). Noel was trained to review the applications that other employees had already processed, determine if they reviewed all the required elements of the application, and approve the application if it was complete (Tr. 244). Her role in approving applications, she explained, was the same as respondent's duties as a supervisor (*Id.*). This was the first time that Noel processed applications for another staff member who had a backlog (Tr. 249).

Washington transferred 44 of respondent's applications to Noel, who accessed them in the Salesforce database (Tr. 245). Noel continued to perform her duties as Assistant Commissioner while she processed the SBCC applications, so she reviewed them during breaks, at night at home, and on weekends (Tr. 247). When she was able to focus on reviewing the applications, Noel was able to process ten in an hour (Tr. 247-48). Noel testified that she processed 44 applications that had been previously assigned to respondent in seven days, which is inconsistent with Washington's testimony that Noel processed the applications in three days (Noel: Tr. 249; Washington: Tr. 64).

Respondent admitted that she failed to meet the deadline to complete 50 applications by November 17, 2023. She explained that on November 16, she told Washington that she would be unable to meet the November 17 deadline because she was working on other matters (Tr. 388-89). Respondent did not recall processing any SBCC applications between November 14 and 17, 2023. She explained that during this time, she had to complete performance evaluations for an employee who was resigning, complete PIP reviews that were already overdue, and finish safety assessments (Tr. 390). Respondent noted that in addition to receiving SBCC applications from Jones for approval, she also received applications from two other staff members and the applications already exceeded the 45-day federal deadline when she received them because of a backlog of applications in the Unit (Tr. 391). In addition, she was becoming ill and ended up being out of work for "a long duration of time" (Tr. 390).

It is notable that there was backlog of applications in the Unit, not just respondent's applications. Respondent testified that it was the norm for applications to exceed the 45-day deadline because of a backlog of applications in the Unit (Tr. 390-91). This is consistent with Washington's testimony that there was a backlog of paper applications when respondent worked in the Unit and that the entire Bureau had a backlog of applications because it was short-staffed (Tr. 86, 134-35, 138-39). Similarly, Noel testified that the entire Unit, not just respondent, was backlogged in processing applications and the Bureau had received multiple complaints due to the backlog (Tr. 240-42, 253). Respondent argued that because failure to meet the 45-day deadline was endemic throughout the Unit, respondent's failure to process applications is "*de minimus* and beyond the reach of the disciplinary process" (Resp. Br. at 12-13) (citing *Human Resources Admin. v. Green*, OATH Index No. 1794/02 at 18-20 (Dec. 6, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD06-78-SAA (Aug. 23, 2006) (failing to meet deadlines did not constitute misconduct where most of the other eligibility specialists, including respondent, missed case completion deadlines due to heavy workload and understaffing). This argument is persuasive.

Petitioner established that on November 14, 2023, respondent did not approve SBCC applications on her log that were approaching or past the 45-day deadline for processing and that she failed to approve SBCC applications on her log between November 16 and 20, 2023. However, the evidence does not establish that this constitutes misconduct, as alleged. There was a significant backlog of applications to be processed and approved in the Unit, not just respondent's applications. It would appear that respondent's failure to approve applications reflected a Unit-wide issue, not limited to respondent. Washington testified that she reassigned respondent's outstanding applications to other staff members, but petitioner offered no proof that respondent's backlog was greater than the general backlog within the Unit.

Accordingly, petitioner did not prove that respondent's failure to approve SBCC applications as alleged in charge I, specifications R and S, constitutes misconduct.

However, respondent's failure to meet a deadline to process 50 Salesforce applications by November 17, 2023, is misconduct. Respondent was given a deadline, yet seemingly made little effort to meet it. Instead, one day before the deadline, she informed Washington that she would not meet it because she was working on other matters. Respondent's supervisor imposed a deadline for completing the 50 applications, but respondent prioritized other work above the assignment her supervisor had directed her to complete. Her failure to meet the deadline reflects an intentional decision to substitute her judgment of how work should be prioritized over her supervisor's direction.

Respondent's counsel contends that it would have been impossible for respondent to approve the 50 applications between November 14 and 17, noting that Washington testified that seven to ten SBCC applications can be processed per day, while doing other work (Resp. Br. at 14). This argument is unconvincing. Respondent testified that it took her 15 to 20 minutes to review and approve an SBCC application, but took longer if she was interrupted (Tr. 328), and 20 to 30 minutes to review a GCC application using Salesforce (Tr. 334-35). This undercuts respondent's contention that it was not possible for her to process 50 applications over four days. Moreover, Washington's instructions may have required respondent to process more applications than is typical in a day, but respondent did not process any, indicating that she made no effort to meet her supervisor's deadline.

In sum, petitioner established that respondent failed to complete an assignment given to her by her supervisor. Although she notified Washington that she would be unable to do so, her failure to complete the assignment constitutes misconduct. Charge I, specification T, is sustained.

Charge II: Failure to properly supervise and maintain order and discipline over subordinates; conduct prejudicial to good order and discipline

Petitioner alleges that in 11 instances between March 16 and October 25, 2023, respondent violated its Standards of Conduct by failing to properly supervise subordinates (rule 6.1), failing to maintain order over and discipline subordinates (rule 6.7), and engaging in conduct prejudicial to good order and discipline (rule 3.24).

Specification A: Review of incorrect assignment log

Petitioner alleges that on or about March 16, 2023, respondent reviewed the incorrect assignment log for one of her subordinates, which delayed the review and approval of applications (ALJ Ex. 1).

In an email dated March 23, 2023, Washington summarized meetings she held with respondent on March 16 and 17, 2023, during which they discussed a log of Jones's assigned applications. Respondent had previously reported statistics about her subordinates' work to Washington (Pet. Ex. 4; Tr. 17, 43-45, 149). Washington testified that the log is an Excel spreadsheet in which the status of applications assigned to Jones is tracked. In her email, Washington wrote that when asked about "continued delays in reviewing and approving A and B-Series applications" respondent was responsible for processing and approving, respondent admitted that she had reviewed the incorrect assignment log for Jones's B-Series applications (Pet. Ex. 4; Tr. 43-44).

Respondent had reported the incorrect statistics for Jones to Washington (Tr. 44, 149). Washington testified that although she reports the statistics she receives from respondent to her supervisors, she corrected the error before she reported Jones's statistics. However, respondent's review of the wrong assignment log and reporting of incorrect statistics to Washington delayed Washington's ability to report accurate statistics to her supervisors (Tr. 149-50).

Respondent testified that Jones shared her B-Series application assignment log with respondent. Noting discrepancies and duplications in the applications Jones had sent her for approval and Jones's log, respondent told Jones that if she had another log, she should forward it to respondent. Respondent saw that there were additional applications in the second log Jones forwarded to her that needed to be approved. On March 16, the same day she obtained Jones's second assignment log, respondent informed Washington that Jones had a second assignment log (Tr. 392-94).

Although respondent acknowledged that Jones had shared the second log with her before March 16, she maintained that she did not remember the log because of the volume of work and number of emails she received. It was not until the discrepancies became an issue that respondent remembered that Jones kept a second log (Tr. 394).

Charge II, specification A, is sustained. It is undisputed that respondent reviewed the incorrect assignment log for Jones, which delayed approving applications and caused Washington to prepare inaccurate statistics. Respondent acknowledged that she knew that Jones kept a second assignment log, but claimed that she did not remember due to the volume of work that she had. This excuse is no defense. Instead, respondent's review of the wrong assignment log indicates a lack of care and diligence in performing her duties because she knew Jones kept a second log yet failed to consider this when she reviewed the log and prepared statistics that were forwarded to Washington. Respondent's failure to realize that Jones had given her the incorrect log and ask Jones to provide the correct log before providing statistics about Jones to Washington was significant. Washington credibly testified that it delayed her ability to report accurate statistics to her supervisors. Respondent's conduct constitutes failure to properly supervise a subordinate.[7]

Specification B: Failure to recognize protocols and address subordinate's inquiry

Petitioner alleged that on or about April 6, 2023, respondent failed to recognize the proper protocol for handling fingerprints for an applicant who had been terminated as a childcare program employee in the CCATS database for over 180 days. It is also alleged that respondent failed to properly investigate an inquiry from one of her subordinates about an application and DOI fingerprints, instead referring the subordinate to one of respondent's supervisors, who discovered that the applicant had been terminated three years earlier (ALJ Ex. 1).

On April 6, 2023, respondent sought Glover-Cox's help locating DOI fingerprint search results (Pet. Ex. 14). Glover-Cox testified that respondent asked her to contact the director of the DOI unit that handles fingerprints to find fingerprint results for an applicant because Augustin could not locate them. The protocol in such an instance was for the supervisor to double-check the employee's search and, if the fingerprints are not located, bring the issue to Washington or Glover-Cox, who initiate all inquiries with DOI (Tr. 211-12, 229). Glover-Cox informed respondent that the CCATS database indicated that the applicant's employment had been terminated three years earlier and the applicant would have to submit new fingerprints (Pet. Ex. 14). Respondent had access to the CCATS database (Tr. 213).

In a follow-up email on April 7, respondent asked Glover-Cox, on Augustin's behalf, whether the applicant's fingerprints results on file could be used since the fingerprint receipt was dated after the applicant's termination date (Pet. Ex. 14). Respondent wrote that she believed the applicant's results could be used and requested that Glover-Cox confirm her understanding so that the fingerprint results could be forwarded to DOI. Glover-Cox responded that the fingerprints could not be used because the applicant had been terminated in the CCATS database for more than 180 days (Tr. 214; Pet. Ex. 14). She testified that because the applicant's employment had been terminated over 180 days earlier, there was no need to ask DOI about existing fingerprints because the employee is required to get new ones (Tr. 214). According to Glover-Cox, all supervisors in

[7] Petitioner also charged respondent with conduct prejudicial to good order and discipline and failure to maintain order and discipline subordinates, in violation of Standards of Conduct rules 3.24 and 6.7, respectively (ALJ Ex. 1). These charges are based on the identical facts addressed above. Thus, they are duplicative and will not be considered separately for purposes of penalty. *See Savello v. Frank*, 48 A.D.2d 699 (2d Dep't 1975); *Dep't of Health & Mental Hygiene v. Yee*, OATH Index No. 520/19 at 21 (Apr. 5, 2019), *aff'd*, NYC Civ. Serv. Comm'n Index No. 2019-0436 (Sept. 5, 2019) (declining to make additional penalty finding based on duplicative charge).

the Unit, including respondent, were trained about and expected to know the 180-day fingerprint protocol. In addition, the protocol is contained in all letters that are sent to the programs and on the Bureau's website (Tr. 214-15). Glover-Cox maintained that respondent did not follow proper procedure to resolve Augustin's question before asking a supervisor for guidance (Tr. 216).

Respondent testified that after double-checking Augustin's review of the applicant's arrest notification and criminal history and not locating the applicant's fingerprint results, she asked Glover-Cox to contact the DOI representative who works with the Unit. Inquiries to the DOI representative are not unusual, respondent testified, but she could not contact the representative directly so she asked Glover-Cox for help. Respondent insisted that her supervisors never told her that she was prohibited from seeking clarification, which she did here (Tr. 395-97).

Petitioner did not establish that respondent failed to properly investigate an inquiry from one of her subordinates about an application and DOI fingerprints, instead referring the subordinate to one of respondent's supervisors, as charged. Respondent credibly testified that she double-checked Augustin's review of the applicant's records and did not locate the fingerprint results so she reached out to Glover-Cox. Respondent's email to Glover-Cox on April 6, 2023, supports her account, as she wrote that the arrest notification and criminal history reports were checked but the applicant's fingerprint results were not found (Pet. Ex. 14). This is consistent with the protocol Glover-Cox described.

However, petitioner established that respondent did not know the Unit's protocol for handling fingerprints of an applicant whose employment had been terminated for over 180 days. I credit Glover-Cox's testimony that respondent should have known that under the 180-day protocol, fingerprints for an applicant who had been terminated for nearly three years were not valid. According to Glover-Cox, this is a routine situation that arises regularly. I also credit her testimony that respondent received training on the protocol, which was generally disseminated by the Unit, and that respondent should have been able to resolve Augustin's question without guidance from her supervisors. (Tr. 214-16).

Here, in her April 7 email, respondent asked Glover-Cox to confirm respondent's understanding that the applicant's fingerprints results on file could be used since the fingerprint receipt was dated after the applicant's termination date. Respondent's inquiry shows that she did not know the protocol applicable to the situation (Pet. Ex. 14). Glover-Cox pointed out that respondent's understanding of the protocol was incorrect when she replied that the fingerprints could not be used because the CCATS database showed that the applicant's employment had been terminated for more than 180 days (Pet. Ex. 14).

In sum, the record establishes while respondent took the appropriate steps to investigate Augustin's inquiry, she did not know the protocol for generating fingerprints if an applicant had been terminated for over 180 days. Because respondent did not know this protocol, she did not resolve a subordinate's inquiry and instead referred the inquiry to her supervisor.

Accordingly, charge II, specification B, is sustained, in part.

Specification C: Failure to timely complete performance evaluations

Petitioner established that between April 7 and 11, 2023, respondent failed to meet deadlines to complete performance evaluations for six employees (ALJ Ex. 1).

Washington testified that direct supervisors must prepare performance evaluations to assess employees' work performance at intervals that are determined by the staff's civil service status, title, and whether they are probationary. Failure to timely complete performance evaluations means that employees do not receive proper feedback (Tr. 72-73). As a supervisor, respondent is required to conduct performance evaluations (Tr. 73).

Washington issued a memorandum to respondent, dated April 28, 2023, concerning respondent's "Failure to Communicate and Meet Deadlines" (Tr. 71; Pet. Ex. 12). In the memorandum, Washington wrote that on March 30, 2023, respondent had agreed to complete performance evaluations for six employees she supervised on or before April 11, 2023, but had failed to do so. Specifically, Washington wrote that respondent had agreed to submit for Washington's review: a three-month performance evaluation for one employee by April 7, 2023; 2022 performance evaluations for three employees by April 10, 2023; and three and six-month performance evaluations for two employees by April 11, 2023 (Tr. 72; Pet. Ex. 12). During a meeting on April 14, Washington noted, respondent explained that she had not been afforded enough time to complete these evaluations. Respondent had not communicated with Washington about these outstanding tasks before their meeting on April 14. Washington wrote that during the April 14 meeting, respondent acknowledged that she should have told Washington on March 30 that she needed more time to complete the tasks. Washington also wrote that during their meeting on April 14, respondent agreed to submit the outstanding performance evaluations by April 21 (Pet. Ex. 12).

Washington had previously reminded respondent of the need to complete performance evaluations in an email on March 23 (Pet. Ex. 4). In that email, Washington listed seven "outstanding issues" that respondent needed to address as soon as possible, including 2022 performance evaluations for three employees she supervised (*Id.*). Washington testified that she included the need for respondent to complete 2022 performance evaluations because the employees were on probation and needed timely feedback about their performance (Tr. 46-47).

Respondent admitted that during a meeting with Washington and Glover-Cox to discuss respondent's work performance, attendance, and outstanding work, she was instructed to complete outstanding work, including performance evaluations, by March 30 (Tr. 398-99). She contended, however, that delays in completing performance evaluations were "very common" at the time because of the volume of evaluations that had to be completed (Tr. 401-02). Respondent testified that in late March and early April 2023, the Unit was transitioning from paper performance evaluations to electronically-filed performance evaluations. The electronic performance evaluations required that the tasks and standards be entered into the system, and there were numerous steps that required approval from respondent's supervisor. In addition to annual performance evaluations, respondent had to complete quarterly evaluations of new employees and help review the clearance administrators' performance evaluations (Tr. 399-400). Completing the performance evaluations, respondent testified, involved multiple steps of gathering information about each employee and entering it into the evaluation (Tr. 401).

To further explain her failure to meet the deadline, respondent testified that during this time she was also responsible for reviewing and approving applications, which made it difficult to complete the performance evaluations. Respondent testified that she was not permitted to work overtime to complete these tasks, although she could not recall if she sought approval to work overtime before performing them, as is required (Tr. 402-03, 426). In addition, she had to participate in mediation of a conflict between two staff members and arrange for coverage for absent staff members (Tr. 403). She pointed out that Washington was on vacation from April 5 to 11, 2023, so she was not available to respondent (*Id.*).

Petitioner established that respondent failed to timely complete performance evaluations as directed by her supervisor. Respondent argued that her failure is so minor that it should not subject her to discipline (Resp. Br. at 15). This argument is unconvincing. As a supervisor, respondent must provide timely feedback for employees who can use that feedback to improve their performance (Tr. 46-47, 72-73). Her failure to do so is not *de minimis*. Respondent contended that there was a backlog in completing performance evaluations within the Unit because of the volume of work (Resp. Br. at 14-15). However, Washington alerted respondent that completing the evaluations was a priority by establishing deadlines for respondent to do so, after having reminded her to complete them evaluations. Respondent's failure to timely complete the evaluations constitutes misconduct as she did not meet a deadline for providing important performance feedback for employees she supervised, thus failing to properly supervise her subordinates.

Accordingly, charge II, specification C, is sustained.

Specifications D, E, and F: Failure to properly investigate subordinates' inquiries

Petitioner alleges that on or about May 3, 2023, respondent failed to properly investigate an inquiry from Augustin regarding an application and a potential duplicate application, which petitioner's borough office had already approved using a conditional approval letter. Petitioner further alleges that on June 13, 2023, respondent failed to properly investigate an inquiry from another subordinate regarding an application for M.H. and a duplicate application, both of which Washington reviewed. Petitioner also alleges that on or about June 30, 2023, respondent failed to properly investigate an inquiry from Augustin about an application for S.K. and the protocol for a 45-day out-of-state denial. Petitioner contends that because respondent did not properly investigate the inquiry, Glover-Cox "prompted [respondent] with the questions needed to seek the solution" (ALJ Ex. 1). These charges should be dismissed.

On April 28, 2023, Augustin emailed respondent seeking guidance on how an application should be processed where the applicant had already been conditionally approved in 2022 and entered into the CCATS database as "staff eligible" instead of "staff eligible with restrictions" (Pet. Ex. 19). On May 3, 2023, respondent forwarded Augustin's email to Washington, seeking guidance on how the application should be processed (*Id.*).

Washington testified that supervisors are trained on how clearance results should be documented and updated in the CCATS database. Respondent, as a supervisor, can make these changes in CCATS (Tr. 111). Washington provided guidance to respondent and updated the status of the clearance entry in CCATS for that applicant (Tr. 110-11; Pet. Ex. 19). According to Washington, respondent should have been able to answer Augustin's question based on her training without forwarding it to Washington (Tr. 111-12, 194-96).

Petitioner failed to establish that respondent did not properly investigate Augustin's inquiry. Respondent credibly testified that she sought advice on how to handle the inquiry because she could not recall having previously dealt with the situation (Tr. 405-06). Her request for guidance came about five weeks after Washington had informed respondent in an email on March 23, 2023 that her "door is always open to assist with any questions" (Pet. Ex. 4). Washington had also noted in that email that eight months into her tenure, respondent was learning the different aspects of the Unit's processes (*Id.*). Further, although Washington testified that respondent should have been able to answer the question independently, she acknowledged that it was appropriate for respondent to seek clarification rather than give incorrect guidance (Tr. 195-96).

Accordingly, charge II, specification D, should be dismissed.

Petitioner alleged that respondent failed to properly investigate another subordinate's inquiry on June 13, 2023. This charge is not sustained.

On June 13, 2023, Nikia Charles, a clearance supervisor respondent supervised, sought Washington's guidance on how to proceed with a duplicate application she received in Salesforce (Tr. 92; Pet. Ex. 11). Charles copied respondent on her email to Washington. Washington responded to Charles's inquiry, but did not instruct Charles to seek guidance from respondent (Tr. 94, 191; Pet. Ex. 11). Washington testified that some of respondent's staff reported that they did not have confidence in respondent's answers to their questions, but did not identify Charles as one of those staff members (Tr. 192).

According to respondent, she did not answer Charles's email because it was addressed to Washington and she was only copied on it. Respondent testified that when she started work in the Unit, she was instructed that if she could not answer a question she could ask her supervisors (Tr. 407-09). Respondent told staff she supervised that they could directly email her supervisor without her knowledge because the supervisor's open-door policy extended to all employees. Washington told respondent that she wanted respondent's subordinates to email respondent directly and respondent explained that although she had directed them to do so, they did not comply. Respondent suggested that Washington redirect the employees to respondent if they emailed Washington directly (*Id.*).

Respondent also asserted that she did not respond to Charles's email because she did not have access to the Salesforce database, which had been launched in May 2023. At that time of Charles's inquiry, questions about Salesforce were to be directed to Washington and Glover-Cox.

Respondent credibly testified, without dispute, that she did not gain access to Salesforce to approve applications until the end of July 2023 (Tr. 406-08, 410).

Accordingly, charge II, specification E, should be dismissed.

Similarly, charge II, specification F, alleging that on or about June 30, 2023, respondent failed to properly investigate an inquiry from a subordinate about an out-of-state application, should be dismissed.

On June 30, 2023, Augustin emailed respondent about a 45-day out-of-state denial letter, summarizing his understanding about how to enter information into the CCATS database reflecting that the applicant was "not eligible" (Pet. Ex. 15). As part of the out-of-state clearance process, applicants must complete and return documents to the Unit within 45 days. When applicants do not timely return the documents, the Unit sends an out-of-state denial letter, which was the case here (Tr. 205-06; Pet. Ex. 15). According to Glover-Cox, as Augustin's supervisor, respondent should have responded to his email and provided the guidance he sought (Tr. 206-07). Respondent forwarded Augustin's email to Glover-Cox, writing that a conditional approval letter had been sent and that she had reviewed Augustin's draft letter, which looked fine. Respondent explained that she "want[ed] to make sure" because the Unit had not responded to the program within the initial 45-day window (Pet. Ex. 15).

In her response to respondent, Glover-Cox expressed confusion about the emails (Pet. Ex. 15). Glover-Cox testified that the Unit has a protocol for out-of-state clearances that all staff must follow. The out-of-state clearance information is uploaded to CCATS, from which employees can determine what steps were taken by whom with regard to the application. Glover-Cox testified that she asked if respondent and Augustin had followed the protocol for this situation, which entailed determining whether the clearance administrator who initially reviewed the application had followed the correct steps for their part of the protocol. If they reviewed CCATS and concluded that the protocol had been followed, the applicant should get an out-of-state denial letter (Tr. 207-08). Respondent and Augustin had been with the Unit for almost a year, during which time the protocol for handling the out-of-state denial had been in place, and Glover-Cox wanted to make sure they knew the proper procedure (Tr. 209).

Glover-Cox testified that it was inappropriate for respondent to seek clarification because she had been trained on the protocol and had access to the documents she needed to review to resolve Augustin's inquiry (Tr. 231). In addition, respondent should have received a copy of the protocol when she started working in the Unit as part of an onboarding packet new employees receive that contains information about the Unit's functions (Tr. 231-32).

Respondent testified that after Augustin asked about the application, she emailed Glover-Cox to confirm her understanding of the protocol. She said that because she had never handled the particular situation presented by Augustin, she wanted to make sure the Unit did not have to respond to the program within the initial 45 days (Tr. 411). Before reaching out to Glover-Cox, respondent checked the CCATS system to see what clearance activity was listed for the application, including the denial letter (Tr. 412). After Glover-Cox emailed respondent and Augustin about steps that needed to be completed, respondent replied that they would "investigate further and proceed" (Pet. Ex. 15).

Petitioner did not prove that respondent failed to properly investigate Augustin's inquiry. Respondent's credible, unrefuted testimony establishes that she reviewed the CCATS database and reviewed the clearance activity for the applicant. This is consistent with the protocol Glover-Cox testified was in place. Respondent admitted that she sought her supervisor's guidance on a particular aspect of the protocol because she had not encountered the situation before, but only after undertaking her review of the application.

Accordingly, charge II, specification F, is not sustained.

Specification H: Failure to assist a subordinate

It is alleged that on or about July 10, 2023, respondent failed to assist Augustin because she did not properly investigate his inquiry about an application for L.S. regarding a protocol that was "presumed to be within [respondent's] supervisory proficiency" (ALJ Ex. 1). Petitioner contends that Washington, not respondent, instructed Augustin on the protocol.

In an email to Washington and Glover-Cox dated July 10, 2023, on which respondent was copied, Augustin sought guidance on how to process an application when the CCATS database contained two entries for the applicant in the "staff" tab for the childcare program where the applicant was employed. In that instance, the application had been rejected and a termination date entered in CCATS, but petitioner's borough office corrected the application by creating a second entry for that employee (Pet. Ex. 20; Tr. 113-14). Washington testified that respondent had previously provided incorrect information to Augustin about the application, advising him that there was no need to obtain new fingerprints, which Glover-Cox corrected in an email on April 7, 2023 (Tr. 115; Pet. Ex. 20).[8] Washington responded to Augustin's inquiry about how to process the application, confirming that he should have the clearance administrator process the application under the second entry in CCATS (Tr. 115; Pet. Ex. 20).

Augustin testified that he emailed Glover-Cox and Washington, copying respondent, to follow up on an email Glover-Cox had sent in April 2023 that corrected guidance that respondent had provided (Tr. 276; Pet. Ex. 20). He explained that he sent the email as an update about what had happened since his prior email and to confirm how to process the application. Washington and Glover-Cox helped Augustin with his inquiry and he did not approach respondent because Glover-Cox had responded "more efficiently" in the email chain (Tr. 276, 279; Pet. Ex. 20).

Respondent testified that on July 10, Augustin updated Glover-Cox and Washington about L.S.'s application, copying respondent. He informed them that the childcare program claimed that the applicant had not been terminated or had been terminated incorrectly, and the borough office had corrected their status. As a result, there were two inconsistent staff tabs for the applicant. Augustin wrote that he assumed he could have the clearance administrator process the application under the new staff tab. Respondent, who had never dealt with a similar situation, testified that there were no corrective steps that she needed to take because Washington answered Augustin's question and confirmed that his approach was correct (Tr. 412-14; Pet. Ex. 20).

Charge II, specification H, is not sustained. Augustin sent his email, addressed to Washington and Glover-Cox, at 2:48 p.m. on July 10. The next day, at 8:09 a.m., Washington responded to the email. Petitioner did not prove that respondent was required to investigate Augustin's request for clarification, which was not addressed to her, or that she was required to do so before her supervisor issued a response.

Specification I: Failure to finalize and implement plan for backlog

Petitioner alleges that on or about July 14, 2023, respondent failed to meet a deadline to finalize and implement a 75- and 90-day plan to address her work backlog. Petitioner contends that due to respondent's failure to timely provide a finalized plan, breakdown, or confirmation of implementation of the plan, Washington distributed SBCC assignments to two of respondent's subordinates on July 18, 2023 (ALJ Ex. 1).

[8] L.S.'s application had been the subject of respondent's inquiry to Glover-Cox about contacting DOI for fingerprint results as alleged in charge II, specification B (ALJ Ex. 1).

Washington testified that in May 2023, after Salesforce had been implemented, the deputy commissioner asked that a deadline be established for clearing the backlog of applications. There was a backlog, she explained, because the Unit was understaffed for the volume of applications it had received (Tr. 86). On June 2, 2023, Washington asked respondent to devise a strategy to assist with approving city-side applications. Between June 2 and August 17, 2023, they exchanged emails regarding a "City-side approval strategy," on which Glover-Cox was copied (Pet. Ex. 9; Tr. 87).

According to Washington, respondent was to submit a finalized plan for assisting with approving the city-side applications by July 14, 2023, with its implementation scheduled to begin on July 17, 2023 (Tr. 86-87). Washington explained that the July 14 deadline was set for respondent to submit her plan to address the backlog because Washington was going to meet with the deputy commissioner and Glover-Cox on July 24 to discuss the plan (Tr. 87; Pet. Ex. 9). Respondent failed to meet the July 14 deadline, explaining that she was handling other tasks (Tr. 87). Washington testified that because she was under a deadline imposed by the deputy commissioner, she assigned the outstanding applications to other staff (Tr. 88).

Respondent testified that she was asked to devise a strategic plan to equally distribute the backlogged applications among the clearance administrators and supervisors for processing, review, and approval (Tr. 414-15). Respondent explained that while they worked to clear the backlog of paper applications, they were simultaneously trying to implement the Salesforce electronic system for handling applications. They found duplicate applications because applicants had sent new applications when their old applications were not processed. The strategic plan was to clear the backlog of paper applications first (Tr. 417-18).

Because she had never created a strategic plan, respondent asked Washington for help. However, Washington just told her to devise the plan. Respondent created a strategic plan using resources she found online and presented it to Glover-Cox and Washington. After they accepted her plan, respondent had to track the number of applications that had to be distributed to staff so she contacted clearance supervisors to have them ask the clearance administrators what applications on their logs were outstanding (Tr. 415).

Respondent testified that her supervisors wanted "continuous updates," but she became ill in July and missed almost two weeks of work (Tr. 416, 419-20). When respondent returned to work on August 9, she realized that the numbers and distribution of applications "was off" and wanted to discuss the plan with Washington because it appeared that they would not process the longest pending applications within the 90-day timeframe set under the strategic plan (Tr. 416). Washington asked respondent why she had not provided information that Washington requested and noted that she sent respondent an email to which respondent did not reply. Respondent testified that she told Washington she was unable to complete the plan, and Washington "was upset" and told respondent she should have replied to Washington's email (Tr. 416-17).

The strategic plan respondent devised to clear the backlog of paper applications was never used because the Unit went paperless (Tr. 418). According to respondent, by August 21, the Unit went paperless and only the Salesforce database was used to process applications. Childcare programs were notified that if they had submitted paper applications, they had to resubmit them using Salesforce (*Id.*).

Petitioner alleges that respondent failed to meet a deadline to finalize and implement a plan to address her backlog on or about July 14, 2023. Washington testified that the deadline for respondent to submit the finalized plan was July 14 and the plan was to be implemented on July 17, 2023. Emails show that between June 13 and July 21, respondent submitted a proposed plan and amendments to that plan. On July 11, Washington sought confirmation of implementation of respondent's plan, noting that they were "now in mid-July" (Pet. Ex. 9). On July 21, Washington wrote that she had reviewed respondent's amended plan, expressed confusion about aspects of the plan, and provided analysis and feedback. Respondent thanked her for the update. The next email in the chain is on August 10, when Washington instructed respondent to "provide an update by Monday, 8/14/23 regarding the implementation progress of the city-side backlog" (*Id.*). On August 16, Washington wrote to respondent that she had not received the update on August 14, and on August 17, she wrote that respondent "failed to provide an update regarding any of the information requested in the email trail below, which is unacceptable" (*Id.*).

The emails between respondent and Washington do not establish that respondent was given a deadline of July 14 to finalize and implement her plan for addressing her backlog, as alleged. Instead, they demonstrate that respondent was told to provide an update on the implementation of her plan by August 14, which she failed to do. As this conduct was not charged, it is not a basis for liability. *See Murray v. Murphy*, 24 N.Y.2d 150, 157 (1969) ("The first fundamental of due process is notice of the charges made. This principle equally applies to an administrative proceeding for even in that forum no person may lose substantial rights because of wrongdoing shown by the evidence, but not charged."); *see also Health & Hospitals Corp. (Coney Island Hospital) v. Mauriello*, OATH Index No. 2509/24 at 8 (Nov. 14, 2024) (proven, but uncharged conduct, not a basis for liability). Furthermore, although Washington testified that a July 14, 2023, deadline had been imposed, the contemporaneous emails do not reflect that deadline.

In sum, charge II, specification I, should be dismissed.

Specification J: Failure to timely approve SBCC applications

Petitioner contends that from on or about July 24 to August 18, 2023, respondent failed to timely approve 41 SBCC applications from one of her subordinates that were pending her review (ALJ Ex. 1). This charge is not sustained.

In an email exchange with respondent on August 21, 2023, Washington sought clarification from respondent about the number of SBCC applications that Jones had approved and rejected (Pet. Ex. 8). Washington testified that she was trying to determine how long the applications Jones had submitted were awaiting respondent's approval. Respondent informed Washington that Jones sent 41 SBCC applications to her for approval between July 24 and August 18, 2023. Washington testified that a supervisor typically takes a few days to approve 41 SBCC applications, but respondent did not approve any of the applications (Tr. 77-78; Pet. Ex. 8). When Washington spoke with respondent about these applications, respondent stated that she was handling other matters and asked for guidance about prioritizing her work. However, Washington noted, respondent had attended a two-day training on managing multiple priorities in early March 2023 (Tr. 78).

Respondent insisted that her supervisors did not give her a deadline by which to approve Jones's pending applications (Tr. 420). She explained that in July 2023 she had COVID, which caused her to miss nearly two weeks of work and work from home while she recuperated. She returned to the office on August 9, 2023 (Tr. 419-21). She gained access to the Salesforce database around July 28, but did not start using the database until she returned to the office on August 9. Jones had processed paper applications, but the Unit went paperless on August 21. Respondent maintained that when she asked Washington what was to be done with the paper applications that Jones had worked on, Washington said Jones would have to tell the childcare programs to resubmit pending paper applications using the Salesforce database (Tr. 419-20).

Although it is undisputed that respondent did not approve 41 SBCC applications between July 24 and August 18, 2023, petitioner failed to prove that this constituted misconduct. There is no evidence that respondent was given a deadline by which to do so. *See Dep't of Health & Mental Hygiene v. Levia-Mena*, OATH Index No. 851/14 at 15-16 (Mar. 14, 2014), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2014-0614 (Mar. 27, 2015) (dismissing part of the specification that alleged respondent failed to make corrections to a file where there was no evidence that respondent was given a particular deadline by which to make the corrections).

Accordingly, charge II, specification J, should be dismissed.

Specification K: Failure to know protocol for program's receipt of clearance results

Petitioner contends that respondent failed to recognize the protocol that childcare programs are not permitted to receive clearance results, which is "presumed to be within [her] supervisory proficiency." Petitioner charges that on or about August 16, 2023, respondent failed to properly investigate a subordinate's question about whether she could assist a childcare program provider who requested "SCR results" and Glover-Cox notified respondent that the request must be denied because of the protocol (ALJ Ex. 1).

In an email dated August 16, 2023, a childcare program employee asked Jones to send SCR information to the program. Jones, who had been trained to deny requests for SCR information, informed the employee that this was not permitted and provided her with contact information for SCR (Tr. 299; Pet. Ex. 16). The program employee sought further guidance from Jones, claiming that the SCR helpdesk told her that the City should be able to provide a copy of the SCR result (Pet. Ex. 16). Jones asked respondent to ask Washington or Glover-Cox if the Unit could provide the program the SCR information. Respondent then forwarded Jones's inquiry to them (Tr. 302-03; Pet. Ex. 16). Jones testified that she asked for confirmation of the protocol because "things do change" (Tr. 299-300; Pet. Ex. 16).

Respondent forwarded Jones's inquiry to Washington and Glover-Cox. Glover-Cox testified that although childcare programs previously had access to information in the SCR, under a federal mandate that went into effect in 2019, the programs were no longer given that information. The prohibition on providing SCR information to programs had been in place during the entire time that respondent worked in the Unit and she had been trained about the protocol (Tr. 220-22).

Glover-Cox testified that respondent was not able to guide Jones regarding the SCR protocol (Tr. 222). In addition, she testified, respondent "second guesses herself" and is often unable to guide her staff. Employees respondent supervised, who were not identified, contacted

Glover-Cox with questions and respondent herself brought questions from her staff to Glover-Cox (*Id.*). Although Glover-Cox conceded that it is appropriate for respondent to contact her with questions when her subordinates ask her to do so, she maintained that respondent should have been able to answer the question about providing SCR information to a program with confidence (Tr. 223-24). Moreover, had respondent investigated the question herself, she would have determined that the Unit cannot give the information to the program. Instead, she sought an answer from Glover-Cox (Tr. 225).

Respondent testified that Jones expressly requested that respondent ask Washington or Glover-Cox if she could assist the program. Respondent forwarded Jones's question to her supervisor to "get clarity" because the SCR helpdesk had provided information that conflicted with the Unit's protocols and there may have been new directives issued. Respondent admitted that she took no steps to investigate Jones's inquiry before forwarding the email to her supervisor (Tr. 422-23).

This charge is not sustained. Petitioner failed to establish that respondent violated its rules when she sought confirmation of the protocol for providing SCR information. Petitioner contends that the protocol is "presumed" to be within respondent's proficiency as a supervisor and Glover-Cox's testimony that the protocol had been in place since 2019 was credible. Nevertheless, on this record, including that Jones reported to respondent that the SCR helpdesk had given a childcare program information that conflicted with the protocol, respondent's seeking clarification was not unreasonable. Therefore, charge II, specification K, should be dismissed.

Specification L: Failure to timely complete Performance Improvement Plans

Petitioner alleges that respondent agreed to complete PIPs on behalf of a colleague for two weeks, on or about October 18 and 25, 2023, but failed to timely complete them (ALJ Ex. 1). This charge is sustained.

A PIP is a plan to help employees who are performing poorly improve their performance to meet the requirements of their position. An employee's direct supervisor typically decides if an employee should be placed on a PIP and is responsible for administering the PIP. If the employee's direct supervisor is unavailable, the responsibility for implementing the PIP falls on the supervisor's supervisor (Tr. 96).

Respondent supervised Nicoya Sparks, a clearance supervisor in the Unit, and Sparks supervised "J.E.," a clearance administrator in the Unit (Tr. 97). In October 2023, J.E. was given a PIP to address concerns about his performance. On October 12, 2023, Sparks wrote to petitioner's Director of Labor Relations that she would be out of the office for two weeks starting October 17, and that respondent would be "the direct point of contact during the first two weeks of the PIP" (Tr. 97-98; Pet. Ex. 13). Sparks asked if respondent would be allowed to complete the PIPs on her behalf. Respondent and Washington were copied on the email, as was Glover-Cox (Pet. Ex. 13). In her email, Sparks included a schedule of weekly meetings she planned to hold with J.E. starting on October 18, 2023. On October 19, respondent was advised that she could complete the PIP documents in Sparks's absence (*Id.*).

Washington testified that although the PIP reviews should have been completed at the end of October, respondent did not do so until November 21, 2023. In an email dated November 21, 2023, Washington wrote that there was a three-week delay in respondent's completion and issuance of the PIP reviews, noting that "issuance of these reviews must be timely and adhere to the schedule outlined in the PIP" (Pet. Ex. 7A). Washington wrote that respondent must meet supervisory and Unit deadlines to avoid a workflow backlog and devise a plan to address the outstanding issues outlined in the email (*Id.*).

According to respondent, she agreed to complete the PIP reviews because Sparks was scheduled to be on vacation for two weeks but wanted to give the employee advice during her absence, while the PIP was in effect (Tr. 423). However, during the same period there were "many" staff members who were out on leave or were attending a conference on October 25 and 26, so respondent was covering for other employees. In addition, she was having difficulties with another employee that she had to address. Finally, the staff member who was the subject of the PIP was out of the office during the second part of the period during which she was to handle the PIP so she would not have been able to meet with him (Tr. 423-24). Respondent testified that she met with the staff member regarding the first portion of the PIP, but also had to complete a written component that detailed why the employee was being given the PIP for the employee to review. In addition, she had to review the employee's work to give him proper feedback, which she was unable to do because of her other responsibilities (Tr. 424-25). Respondent obtained guidance from Washington on how to complete the PIP reviews and ultimately completed them (Tr. 425).

Respondent informed her supervisor she was unable to timely complete the PIP reviews in a telephone call with Washington after the due date. She asserted that she did not communicate with Washington earlier because Washington and Glover-Cox were out of town on October 25, when the second PIP review was due, and respondent was in charge of the office (Tr. 429-30).

The undisputed evidence establishes that respondent undertook to perform PIP reviews for one of her subordinates for the weeks of October 18 and 25, 2023, but did not do so until November 21, 2023. Respondent offered many excuses for her failure to timely complete the PIPs during her subordinate's absence, none of which are a defense. By failing to provide timely feedback to an employee in her chain of command so that the employee was given time to improve his performance, respondent failed to properly supervise a subordinate. Accordingly, charge II, specification L, is sustained.

FINDINGS AND CONCLUSIONS

1. Petitioner did not prove that on or about September 2, 2022, respondent missed a deadline to complete six GCC applications as alleged in charge I, specification A.

2. Petitioner did not prove that or about October 17, 2022, respondent missed a deadline to approve applications critical to a priority project as alleged in charge I, specification C.

3. Petitioner did not prove that on or about October 28, 2022, respondent failed to complete her supervisor's directive to provide an update on her subordinate's caseload as alleged in charge I, specification D.

4. Petitioner did not to prove that respondent's failure to approve and process five applications by December 30, 2022, constitutes misconduct as alleged in charge I, specifications E, F, G, H, and I.

5. Petitioner did not prove that on or about January 20, 2023, respondent failed to meet a deadline to complete a conditional approval letter as alleged in charge I, specification J.

6. Petitioner did not prove that respondent's filing criminal history and arrest reports in the wrong folders on February 13 and 16, 2023, constitutes misconduct as alleged in charge I, specifications K, L, and N.

7. Petitioner proved that on February 15, 2023, respondent sent an SBCC clearance letter for applicant A.N. to the wrong childcare program as alleged in charge I, specification M.

8. Petitioner failed to prove that on or about February 16, 2023, respondent sent an SBCC clearance letter for applicant S.P. to the wrong childcare program as alleged in charge I, specification O.

9. Petitioner failed to establish that respondent's inquiry on or about March 30, 2023, about contacting the borough hall constitutes misconduct as alleged in charge I, specification P.

10. Petitioner proved that on July 13, 2023, respondent provided incorrect guidance to a subordinate about the protocol for an applicant's maiden name on DOI fingerprint results as alleged in charge I, specification Q.

11. Petitioner did not prove that respondent's failure to approve SBCC applications that were pending past 45-day deadline on November 14 and between November 16 and 20, 2023, constitutes misconduct as alleged in charge I, specifications R and S.

12. Petitioner established that on November 17, 2023, respondent failed to meet a deadline of November 17, 2023, to complete 50 applications in the Salesforce database as alleged in charge I, specification T.

13. Petitioner proved that on March 16, 2023, respondent reviewed the incorrect assignment log for one of her subordinates, which delayed the Unit's work as alleged in charge II, specification A.

14. Petitioner proved that on April 6, 2023, respondent did not know the protocol for reprinting fingerprints when an applicant had been terminated for over 180 days and instead referred the inquiry to her supervisor.

15. Petitioner did not establish that she failed to investigate a subordinate's inquiry as alleged in charge II, specification B.

16. Petitioner established that respondent failed to meet a deadline to complete performance evaluations for six employees between April 7 and 11, 2023 as alleged in charge II, specification C.

17. Petitioner did not prove that on or about May 3, 2023, respondent failed to properly investigate an inquiry from her subordinate about a potential duplicate application as alleged in charge II, specification D.

18. Petitioner did not prove that on or about June 13, 2025, respondent failed to properly investigate an inquiry from her subordinate about a duplicate application as alleged in charge II, specification E.

19. Petitioner did not prove that on or about June 30, 2023, respondent failed to properly investigate an inquiry from her subordinate about the protocol for a 45-day out-of-state denial as alleged in charge II, specification F.

20. Petitioner did not prove that on or about July 10, 2023, respondent failed to properly investigate her subordinate's inquiry about an application as alleged in charge II, specification H.

21. Petitioner did not prove that on or about July 14, respondent missed a deadline to finalize and implement a plan to address her backlog of applications as alleged in charge II, specification I.

22. Petitioner did not prove that between July 24 and August 18, 2023, respondent failed to timely approve 41 SBCC applications that were waiting her review as alleged in charge II, specification J.

23. Petitioner did not prove that on or about August 16, 2023, respondent failed to properly investigate an inquiry from her subordinate regarding the protocol for a special request to provide information to a childcare program as alleged in charge II, specification K.

24. Petitioner established that respondent failed to timely complete performance improvement plans as alleged in charge II, specification L.

RECOMMENDATION

Upon making these findings, I obtained and reviewed respondent's personnel abstract. Respondent has been employed by the Department since December 1994 and has no record of prior discipline. Her most recent performance evaluations include a three-month evaluation in October 2022, after she started working in the Unit, for which she receives an overall rating of "Good." The periods covered by performance evaluations for July 2022 to July 2023, and January 2023 to December 2023, overlap by seven months. Respondent's overall rating for July 2022 to

July 2023 is "Conditional-Needs Improvement" and for calendar year 2023, it is "Needs Improvement."

Petitioner seeks a recommendation that respondent be demoted, contending that she has persistently failed to fulfill her supervisory responsibilities, which directly affects the safety and well-being of children in facilities that are regulated by the City (Pet. Br. at 15). However, petitioner failed to prove a vast majority of the 30 charged specifications.

Demotion has been the appropriate penalty for prolonged and persistent unsatisfactory work performance, even after intensive supervision and training. *See Dep't of Housing Preservation & Development v. Hand*, OATH Index No. 2594/10 at 33-34 (Sept. 2, 2010) ("Most of the cases involving a prolonged and persistent pattern of unsatisfactory work performance have resulted in the employees being either terminated or demoted."); *Human Resources Admin. v. Greene*, OATH Index No. 390/17 at 9-11 (Nov. 7, 2016) (recommending demotion of an employee with 16 years of service and a minor disciplinary record, who clocked out five minutes early every day for more than a year, disobeyed supervisor's order to stop spraying air freshener toward surrounding cubicles, and incompetently performed her job); *Transit Auth. v. Wong*, OATH Index No. 1866/08 at 26 (Aug. 28, 2008) (recommending demotion for Computer Specialist II who was unable to perform certain aspects of his job without intensive instruction and supervision); *Human Resources Admin. v. Hampton*, OATH Index No. 517/08 at 11, 16-17 (Dec. 12, 2007) (recommending demotion for a clerical employee who consistently demonstrated an inability to properly carry out required tasks, even after receiving detailed instructions from her supervisors). Demotion is also appropriate "where an employee has proved unable to comply with the requirements of a promotional position, but is able to comply with the requirements of a lower position." *Triborough Bridge & Tunnel Auth. v. Chin*, OATH Index No. 553/97 at 14 (Feb. 21, 1997). The record here does not establish a protracted and persistent pattern of unsatisfactory work or that respondent's overall job performance fell below minimally accepted requirements for her duties such that she is unable to comply with the requirements of a promotional position.

Petitioner argued that given "[r]espondent's prevalent negligent performance of her duties . . . a penalty of suspension would not cure [her] misconduct and is therefore inadequate under the circumstances" (Pet. Br. at 15). However, this tribunal has consistently applied the doctrine of progressive discipline, which strives "to modify employee behavior through increasing penalties for the same or similar misconduct, and to give employees full notice that if they do not modify their conduct, they risk termination." *See Health & Hospitals Corp. (Woodhull Medical & Mental Health Ctr.) v. Ford*, OATH Index No. 2383/09 at 11 (July 10, 2009); *Dep't of Transportation v. Jackson*, OATH Index No. 299/90 at 12 (Feb. 6, 1990) ("It is a well-established principle in employment law that employees should have the benefit of progressive discipline wherever appropriate, to ensure that they have the opportunity to be apprised of the seriousness with which their employer views their misconduct and to give them a chance to correct it.").

In arriving at a fair penalty, consideration must be given to the particular circumstances of the charges sustained and individual mitigating factors, where appropriate. *Human Resources Admin. v. Carrington*, OATH Index No. 2307/17 at 18 (Aug. 15, 2017), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2017-1085 (Feb. 6, 2018). Cases which deal with neglect of duty generally involve egregious neglect of duty or insubordination. *See, e.g.*, *Dep't of Health & Mental Hygiene v. Dillon*, OATH Index No. 108/14 at 14-16 (Feb. 14, 2014) (recommending a 20-day suspension for a computer specialist who answered the telephone in a robotic voice, created and abandoned help desk requests, failed to provide complete ticket descriptions, and failed to assign tickets to the proper group); *Law Dep't v. Stanley*, OATH Index No. 1540/05 at 6-8 (June 15, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-08-SA (Jan. 9, 2006) (recommending a 15-day suspension for clerk who failed to perform data entry on a contract database for two months, without notifying her supervisors). Here, considering the proven charges and respondent's lengthy, unblemished tenure, demotion is excessive.

Instead, a period of suspension should put respondent on notice that she is required to perform her duties with care, including her supervisory responsibilities, and that she must modify her behavior or risk further discipline. Under all of the circumstances, I find that a 20-day suspension is appropriate. *See Dillon*, OATH 108/14 at 15-16 (declining to impose demotion in addition to imposing 20-day suspension, where computer specialist with an unblemished 38-year tenure was discourteous and inefficient in performing his duties).

In sum, I recommend that respondent be suspended without pay for 20 days.

Astrid B. Gloade
Administrative Law Judge

October 28, 2025

SUBMITTED TO:

MICHELLE MORSE, MD, MPH
Acting Commissioner/Chief Medical Officer

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