

Health & Hospitals/Coler v. Tindal

OATH Index No. 367/25 (Mar. 5, 2026)

Housekeeping aide disobeyed orders to take off plastic gloves on two occasions and failed to wear a uniform shirt on four occasions. Penalty of 24 days' suspension without pay recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
HEALTH AND HOSPITALS/COLER
Petitioner
- against -
RUDOLPH TINDAL
Respondent

REPORT AND RECOMMENDATION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, NYC Health and Hospitals/Coler (“Coler”), brought this disciplinary proceeding under section 7.5 of its Personnel Rules and Regulations, charging respondent, housekeeping aide Rudolph Tindal, with nine specifications of misconduct that allegedly occurred in July and August 2023 (Pet. Ex. 2). The charges include refusal or failure to remove plastic gloves, failure to remove or change soiled gloves, and failure to wear a uniform shirt as directed (*Id.*).

At a two-day trial, held via videoconference, petitioner relied on testimony from three witnesses, photographs, and other documents. Respondent testified and denied any wrongdoing.

For the reasons stated below, petitioner proved that respondent refused to remove his gloves on two occasions and failed to wear his uniform shirt on four occasions. I recommend a penalty of 24 days' suspension without pay, with credit for the suspension days already served.

ANALYSIS

Introduction

Respondent works at Coler, a large post-acute care facility, where his duties include trash removal (Tr. 66, 114, 146, 162). Infectious disease control policies require proper glove use within

the facility (Tr. 66-67, 110-11; Pet. Ex. 4). Petitioner provides respondent and others with uniforms that enable residents to identify employees and the departments where they work (Tr. 137-38). The petition alleges that respondent repeatedly refused to remove or change his gloves as directed and failed to wear his uniform shirt (Pet. Ex. 2).

At trial, respondent testified that he disposed of his gloves after putting trash in a wheeled bin and he put on clean gloves to protect himself before pushing the trash-filled bin in hallways (Tr. 166, 193-94). Respondent did not dispute that he failed to wear a uniform shirt as alleged (Tr. 164-65, 193). He said that he did not have uniform shirts on the dates at issue because he had returned uniform shirts that did not fit and petitioner did not give him new shirts (Tr. 164-65).

The charges should be sustained in part. Petitioner proved that respondent disobeyed orders to remove his gloves on two of the five dates alleged and that he failed to wear a uniform shirt on four occasions after petitioner had provided him with new shirts.

Petitioner's evidence

Director of labor relations, David Richardson; former assistant director of environmental services, Francisco Berrios; and director of environmental services, Ronald Russo; testified about respondent's alleged failure to obey Coler's uniform and infectious disease control policies in July and August 2023 (Richardson: Tr. 15; Berrios: Tr. 89; Russo: Tr. 133-34).

Coler provides every employee with five sets of uniform shirts and pants (Richardson: Tr. 70-71; Berrios: Tr. 99-100; Russo: Tr. 138). Respondent had complained about not receiving a uniform shirt, but that issue had been resolved and he received new uniforms in June 2023 (Richardson: Tr. 78). The new uniform shirt is collared, black, and it has petitioner's logo and the words "Environmental Services" printed on it (Berrios: Tr. 116-17).

Respondent removes trash from Coler's four-story C-building (Russo: Tr. 146). He enters a room between units where trash is gathered; picks up bags of "soiled trash;" puts the bags in a wheeled bin, which the parties call a "gondola;" covers the bin; pushes the bin to the elevator; and brings the trash to a first-floor compactor for removal from the building (Tr. 146-47).

Respondent received personal and online training regarding petitioner's infectious disease control policies and the use of personal protective equipment ("PPE") (Richardson: Tr. 33-35, 39-40, 43-44; Russo: Tr. 138-39, 148-49; Pet. Exs. 7, 8, 9, 10). Procedures for prevention of transmission of infectious agents require employees to "[r]emove gloves after contact with a

resident and/or the surrounding environment,” “[r]emove and discard” PPE, and “perform hand hygiene before leaving” a resident’s room (Pet. Ex. 4 at § B(3), (5)).

Coler’s written policies and training materials do not explicitly prohibit housekeeping staff from donning new gloves before moving trash in hallways. The procedures require employees to “[w]ear gloves for anticipated contact with blood, [and] body fluids . . .” (Pet. Ex. 4 at § B (5)). Although the training materials direct employees to remove gloves and perform hand hygiene “after use,” they also state, “[g]loves must be worn if there is a possibility of contact with blood or body fluids” (Pet. Ex. 8 at 3).

Petitioner’s three witnesses offered three different interpretations of the rules. Richardson said that, to prevent cross-contamination, employees were “supposed to wear gloves at all times” (Tr. 20). Berrios insisted that employees were required to take their gloves off between environments, clean their hands between every use, not wear gloves in the hallways, and push the trash bins with their bare hands (Berrios: Tr. 94-95, 104, 113-14, 118-21). Russo also opined that respondent was supposed to take off his gloves after covering the bin, wash his hands, and push the bin in hallways to the first-floor compactor room (Tr. 140, 146-47). But Russo initially complained to Richardson that respondent was not “changing his plastic gloves when leaving certain rooms” and he testified that respondent was not supposed to wear “soiled” gloves when walking through the building (Richardson: Tr. 18; Russo: Tr. 146-47).

In the summer of 2023, Berrios and Russo reported to Richardson that respondent had refused to wear his uniform and change his gloves when they had directed him to do so (Richardson: Tr. 19). Russo told Richardson that respondent was not listening or cooperating when told “to wear his proper uniform and gloves” (Richardson: Tr. 18). After Richardson asked for specific dates and times, Berrios and Russo reported their observations via emails (Richardson: Tr. 17-18; Pet. Exs. 11, 12, 13, 14).

One of those emails was sent on August 15, 2023, by Berrios, who was then assistant director of environmental services and respondent’s supervisor (Tr. 89, 91; Pet. Ex. 13). In that email, Berrios wrote that, on July 19, 2023, respondent “was asked to take off his gloves when walking in the halls pushing trash” (Pet. Ex. 13). Petitioner did not allege that respondent committed any misconduct on July 19.

On July 20, 2023, Berrios noticed respondent wearing a t-shirt and gloves while pushing a trash bin in the hallway of the “first floor” or “lobby basement” (Tr. 94, 116). Berrios told respondent to take off his gloves and respondent did not comply (Tr. 93-95). In the August 15,

2023 email about this incident, Berrios wrote that respondent was first asked to remove his gloves on the morning of July 20 and twice that afternoon he was asked to remove his gloves and put on his uniform (Pet. Ex. 13).

Russo offered sparse testimony about incidents that occurred on July 27, August 3, and August 4, 2023 (Tr. 150-51). After petitioner's counsel read Russo's August 15, 2023 email and related specifications in the petition, Russo simply confirmed that the email and specifications were based on his personal observations (Tr. 150-53; Pet. Ex. 14). In the email, Russo stated that respondent was "not wearing his proper uniform and wearing his soiled gloves at Coler" during the preceding two weeks (Pet. Ex. 14). The email states that respondent did not wear his uniform shirt by the resident's canteen on the morning of July 27 and later that day he did not wear his uniform shirt by the resident's "River Club" on the first-floor corridor (*Id.*). Although the email does not mention whether respondent wore gloves on July 27, it states that he wore "soiled gloves" and did not wear his uniform on the first-floor corridor on August 3 and 4, 2023 (Tr. 150-51; Pet. Ex. 14).

On August 10, 2023, Berrios and Russo saw respondent in the corridor outside the environmental services office (Berrios: Tr. 95-96, 104-05; Russo: Tr. 151). Respondent wore soiled gloves and was not wearing his uniform (Berrios: Tr. 95). Berrios told him to take the gloves off and to put on his uniform, but respondent did not comply (Berrios: Tr. 95-96, 104-05). In an email sent less than 15 minutes later, Berrios reported that respondent was seen outside the housekeeping office and "asked to take off his gloves and put on his uniform" (Pet. Ex. 12). The email includes a photo of respondent wearing a non-uniform t-shirt and light blue plastic gloves as he pushes a trash bin (*Id.*). Berrios and Russo also referred to this incident in their August 15 emails, and Berrios noted that respondent continued to disregard multiple directives regarding his uniform and gloves (Pet. Exs. 13, 14).

After receiving the complaints, Richardson reviewed respondent's training records, spoke with Russo and Berrios, watched surveillance video, and checked with infection control personnel (Tr. 18-21, 30-32, 82). Richardson summarized the video on a chart (Tr. 31-32, 74, 82; Pet. Ex. 6). According to the chart, the video showed that respondent wore "[g]loves" on July 20, "no uniform" and "soiled gloves" on July 27, and "no uniform" and "gloves" on August 3, 4, and 10 (Pet. Ex. 6).

While preparing for trial, Richardson discovered that the video file was corrupted and no longer available (Tr. 73, 75, 84). Richardson testified that respondent and his union representatives

were provided with a computer monitor and had an opportunity to view the video, privately, at the September 2023 informal conference (Tr. 73-74, 84-85; Pet. Ex. 16 at 1). Respondent's counsel protested that she had never been provided with the video and that testimony regarding its contents had "little to no value" (Tr. 75-76, 194).

Respondent's testimony

Respondent has worked for petitioner for 26 years and at Coler for the last 15 years (Tr. 161-62). For the past seven years, respondent reported to senior supervisor Steven Erzah, but in the summer of 2023, respondent reported to Berrios and Russo (Tr. 163). Respondent has a "pretty good" relationship with Erzah but did not have a good relationship with Berrios and Russo (Tr. 163-64). In 2017, respondent filed a human rights complaint against Russo (Tr. 164). After the incidents in 2023 that led to the pending charges, respondent filed a complaint against Berrios for "harassment" regarding glove-wearing and uniform compliance (Tr. 164). Respondent provided no other details about those complaints.

Although respondent conceded that he did not wear a uniform shirt on the dates at issue, he claimed that he was unable to do so because he "just came back" from workers compensation leave in February (Tr. 165, 177). Before that leave began, respondent returned his old striped-uniform shirts to assistant director David Roberto because they were too big and he had not received new shirts (Tr. 165-66, 177, 182-83, 187, 189). Respondent recalled telling Erzah and Berrios that he had not received a new uniform and being told in reply that "they are waiting for the company to deliver new shirts" (Tr. 166-68). According to respondent, he did not receive a properly fitting new shirt until he returned from a 30-day pre-hearing suspension that he served for the present charges (Tr. 167, 177-78, 187).

In the Step 1(a) recommendation, Richardson noted that respondent and two representatives from his union attended an informal conference on September 6, 2023 (Pet. Ex. 16 at 1). According to Richardson, one of respondent's union representatives stated that respondent "indicated" that he did not wear the uniform shirt because he was very hot, he did not want to overheat, and he felt cooler working without the shirt (*Id.* at 3). At trial, respondent denied that he or his union representatives had ever raised such a defense; instead, respondent recalled discussing his need to receive a new shirt before he could return to work after his pre-hearing suspension (Tr. 187-89). Respondent said that comments about "overheating" may have been based on statements made outside of his presence by a union representative (Tr. 189-90).

As for the gloves, respondent explained that each unit has a housekeeper who collects trash from residents' rooms and moves the trash to another room (Tr. 178). Respondent enters that room and puts on gloves before putting the trash in a bin (Tr. 180). After removing trash from a unit, respondent discards his gloves, sanitizes his hands, and puts on a fresh pair of gloves because the trash bin is "infected" and lacks a "proper cover" (Tr. 165). Respondent noted that the bin originally had a rubber cover that went over the trash and did not touch the handles (Tr. 165-66). In 2023, the bin no longer had the original cover; instead, it had a tarp that touched the trash and the bin's handles (Tr. 165).

When asked about the specific dates at issue, respondent's testimony was unclear. He initially said that he "did not refuse" to remove his gloves on July 20, 2023 (Tr. 166). But then he explained that he was pushing the bin to discard trash when he was told to remove the gloves (Tr. 166). Respondent testified that he would be in "harm's way" if he removed his gloves because the trash bin was "still infected" (Tr. 166). For the remaining specifications, where petitioner accused respondent of wearing soiled gloves, respondent testified that, even though it may have seemed to others that he was wearing the same gloves, he had changed his gloves before pushing the bin (Tr. 167-68).

As a result of being charged with misconduct, respondent now removes his gloves after putting trash in the bin, pushes the bin without gloves, and takes the elevator to the first-floor compactor room, where he puts on a fresh pair of gloves before emptying the bin (Tr. 180-82).

The charges

Petitioner charged respondent with nine specifications of misconduct: refusal or failure to remove gloves on one date; wearing soiled gloves and failing to change or remove soiled gloves, on four dates; and not wearing a uniform shirt on four dates (Pet. Ex. 2). To prevail, petitioner "has the burden of proving its case by a fair preponderance of credible evidence." *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). In assessing credibility, relevant considerations include demeanor, consistency of testimony, supporting evidence, witness motivation, bias or prejudice, and whether the testimony comports with common sense and human experience. *See Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998).

All the witnesses attempted to recount events from 2023 as they perceived and remembered them, but there were gaps in testimony that may have been due to the passage of time. In general, I found petitioner's witnesses more credible because they corroborated each other and supported their testimony with documents, including emails and, to a limited extent, photos. Respondent offered no documents or witnesses to support his version of events.

For example, respondent claimed that the charges were in retaliation for a human rights complaint he made against Russo in 2017 and a later harassment complaint against Berrios. Respondent provided no details about the 2017 complaint, no evidence that Russo or any of petitioner's witnesses knew about the complaint, and no witnesses or documents to show that the complaint influenced the pending charges, which involved events that occurred six years later. Respondent also provided no details of a harassment complaint that he filed after the events that led to the present charges. *See Lugo v. NYC Dep't of Investigation*, 30 Misc. 3d 1226(A) (Sup. Ct. N.Y. Co. 2011) (rejecting retaliation claim where employee was transferred after an angry outburst and did not accuse supervisors of misconduct until later).

Respondent also argued that no weight should be given to testimony regarding the surveillance video that no longer exists (Tr. 194). *See Voom HD Holdings LLC v. EchoStar Satellite L.L.C.*, 93 A.D.3d 33, 41 (1st Dep't 2012) (requiring a party that anticipates litigation to prevent routine destruction of electronic data). Petitioner had a duty to preserve the surveillance video and it failed to do so. But Richardson credibly testified that respondent and his union representatives received an opportunity to view the video before it was inadvertently destroyed. Under these circumstances, a severe sanction, such as dismissal or preclusion of evidence, is inappropriate; however, the testimony regarding the unavailable video's contents may be entitled to less weight. *See General Security Insurance Co. v. Nir*, 50 A.D.3d 489, 490 (1st Dep't 2008) (affirming denial of cross-motion to dismiss a complaint due to spoliation of evidence, where defendants received an opportunity to inspect the evidence before its premature disposal; reviewing court noted that, if appropriate, trial court could instruct the jury about adverse inferences and the need to weigh plaintiff's explanation for unavailability of evidence).

The specific charges are discussed as follows.

Disobeying directives regarding gloves

Petitioner alleges that "[r]espondent refused and/or failed to remove" his gloves on at least two occasions on July 20, 2023, as directed by his supervisor (Pet. Ex. 2, Specification 1). Four

other specifications allege that on July 27, August 3, August 4, and August 10, 2023, respondent “was observed wearing soiled gloves and failing to remove and/or change said soiled gloves as previously directed” by his superiors (Pet. Ex. 2, Specifications 3, 4, 6, 8).

To prove these specifications, petitioner needed to show that a supervisor gave respondent a clear and unambiguous order that he heard, understood, and willfully refused to obey. *See Health & Hospitals Corp. (Jacobi Hospital Ctr.) v. Cooper*, OATH Index No. 1748/12 at 3 (Sept. 17, 2012); *see also McGinagle v. Town of Greenburgh*, 48 N.Y.2d 949, 951 (1979). An order need not be followed if it poses an immediate threat to health and safety, but that is an affirmative defense that respondent needed to prove. *See Health & Hospitals Corp. (Kings County Hospital Ctr.) v. Gordon*, OATH Index No. 483/05 at 5 (June 24, 2005), *modified*, Exec. Dir. Dec. (July 22, 2005).

Petitioner proved that respondent disobeyed orders to remove his gloves on July 20 and August 10, 2023 (specifications 1 and 8)

The evidence established that respondent failed to obey direct orders to remove his gloves on July 20 and August 10, 2023. Berrios credibly testified that on both dates, he told respondent to take off his gloves and respondent did not comply. Russo was present for the August 10 incident, emails corroborate both of these claims, and a photo from August 10 shows respondent wearing plastic gloves.

As noted, it was unclear whether petitioner’s rules prohibited respondent from wearing gloves in the hallway. But even if respondent wore clean gloves or Berrios mistakenly believed that the rules prohibited respondent from wearing any gloves in the hallway, respondent had a duty to obey a direct order to remove his gloves. *See Fire Dep’t v. McAllan*, OATH Index No. 120/04 at 8 (Mar. 4, 2004) (finding that, despite sincere belief that an order to submit to full-duty medical examination was incorrect, employee had to obey order when given and could later challenge it through proper channels); *see also Human Resources Admin. v. Diggs-Rodriguez*, OATH Index No. 1733/00 at 5-6 (June 8, 2000), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 01-66-SA (July 30, 2001) (employee must comply with supervisor’s directions, even if those directions are incorrect or contrary to established procedures).

Respondent may have believed that wearing gloves afforded greater protection, but he failed to prove the affirmative defense that obeying Berrios’s order posed an immediate risk to health or safety. There was no evidence to show that, after respondent loaded the bin, discarded his gloves, and washed his hands, pushing a covered bin containing trash bags would have exposed

him to infectious materials. Nor did respondent offer any evidence to support his belief that the tarp, covering the bin and handle, was less safe than the original cover, which went over the trash and did not touch the handle. *See Health & Hospitals Corp. (Bellevue Hospital Ctr.) v. Tanvir*, OATH Index No. 797/10 at 7 (Dec. 17, 2009), *aff'd* 112 A.D.3d 436 (1st Dep't 2013) (rejecting technician's unsupported claim that reassignment to a different laboratory would endanger patients); *Health and Hospitals Corp. (Coler-Goldwater Hospital) v. Hinkson*, OATH Index No. 163/04 at 4-5 (Nov. 21, 2003) (finding that employee failed to show that working mandatory overtime posed an immediate risk to health or safety).

Petitioner did not prove that respondent failed to remove or change “soiled gloves” on July 27, August 3, and August 4, 2023 “as previously directed” (specifications 3, 4, and 6)

The evidence did not prove that respondent disobeyed an unambiguous order to remove or change soiled gloves on July 27, August 3, and August 4. Unlike the failure to obey direct orders on July 20 and August 10, there were no allegations or proof that respondent received or disobeyed direct orders on July 27, August 3, or August 4. Instead, petitioner alleges that respondent wore “soiled gloves” on those dates and failed “to remove and/or change said soiled gloves as previously directed” (Pet. Ex. 2).

Petitioner failed to show that respondent disobeyed a clear, prior directive. The policies and training materials do not explicitly prohibit employees from wearing plastic gloves in hallways. One of petitioner's witnesses, Richardson, said that employees were required to wear gloves all the time. The specifications for July 27, August 3, and August 4 allege that respondent failed to “remove and/or change” soiled gloves, which suggests that it would have been permissible for respondent to wear clean gloves. But Berrios testified that employees were prohibited from wearing gloves in hallways and Russo offered similar claims. There was, however, no evidence that anyone issued such a clear directive to respondent.

The petition does not specify the previous directive that respondent allegedly violated on July 27, August 3, and August 4, 2023 (Pet. Ex. 2). There was evidence that on July 19, 2023, respondent “was asked to take off his gloves when walking in the halls pushing trash” (Pet. Ex. 13). But that order is ambiguous. A supervisor told respondent to take off his gloves as he pushed trash in the hallway on that date. Even if the July 19 request could be construed as a ban on future glove use, the directive was limited to wearing of gloves “when walking in the halls pushing trash.”

The evidence failed to prove that respondent violated that directive, because none of petitioner's witnesses testified that respondent was pushing trash when he was seen wearing gloves on July 27, August 3, or August 4.

The evidence also failed to establish that respondent wore "soiled gloves" on July 27, August 3, or August 4, as alleged in the petition. Petitioner's witnesses never explained how respondent's gloves were "soiled" on those dates. The witnesses never said that the gloves were visibly dirty. And in the only photo of respondent wearing gloves, which petitioner introduced, the gloves look clean (Pet. Ex. 12 at 1).

Petitioner's witnesses evidently use the term "soiled" gloves to refer to gloves that are contaminated because they were used to pick up "soiled" trash or worn in more than one area of the facility (Russo: Tr. 146). According to Richardson, he asked for specifics after Berrios and Russo said that respondent "wasn't changing his plastic gloves when leaving certain rooms" (Tr. 18). Yet petitioner offered no evidence to show that, on the dates alleged, respondent wore the same gloves in more than one area of the facility. *Cf. RSRNC, LLC v. McDonald*, 243 A.D.3d 27, 32 (3rd Dep't 2025) (finding that nursing home violated Department of Health regulation where eyewitness testified that housekeeping aide walked out of facility's COVID-19 positive unit wearing gown and gloves; walked into a common area, kitchen, and utility room to retrieve toilet paper; and returned to COVID-19 positive unit, without removing gown or gloves or washing hands as required by infection control policy). Instead, on each specified date, petitioner's witnesses saw respondent wearing gloves in a hallway and assumed they were the same gloves that respondent used to pick up trash or wore elsewhere in the facility.

Assumptions are not proof and insubordination cannot be based on an ambiguous order. The evidence did not show that respondent received a clear prior directive regarding glove use or that he violated such a directive by failing to remove or change soiled gloves on July 27, August 3, and August 4, 2023. Thus, the specifications for those days should be dismissed. *See Human Resources Admin. v. Williams*, OATH Index No. 3072/09 at 17-18 (Jan. 15, 2010) (dismissing insubordination charge, which turned "on the precise wording of what was said and how it was said," where it was unclear what directive or order was given to employee).

Failure to wear uniform shirt

Petitioner alleges that respondent failed to wear his hospital-issued uniform shirt on four occasions from July 27 to August 10, 2023 (Pet. Ex. 2; Tr. 9-10). The evidence showed that petitioner had provided respondent with uniform shirts and respondent failed to wear his shirt on the dates alleged. Respondent claimed that he did not have uniform shirts on the dates alleged because he had previously returned them and petitioner did not provide him with new shirts.

These specifications should be sustained because petitioner rebutted respondent's vague and unsupported claims. At trial, Richardson credibly maintained that a prior issue regarding shirts had been resolved, and respondent received new shirts in June 2023. Respondent's testimony to the contrary was unclear. Other than stating that he had returned his uniform before he went on workers compensation leave, respondent did not say what month or year he returned his uniform. He also said that the leave ended in February. Because petitioner issued new uniforms in June 2023, respondent was claiming that his old uniforms did not fit and he never received new uniforms.

Unlike petitioner's witnesses, who consistently maintained that respondent had received his uniform shirts, respondent presented no witnesses or documents to support his claim that he had not received new shirts. Petitioner also presented credible evidence that, during the Step 1(a) conference in September 2023, respondent never said that he lacked a uniform shirt. Instead, the representatives claimed that respondent did not wear his uniform shirt because it was too hot. Though respondent denied that he or his union representatives ever made those comments, he did not offer testimony or written statements from either representative. Because petitioner supported its claim with a contemporaneous memorandum, which Richardson wrote the day after the conference, I gave it more weight than respondent's unsupported denial. *See Dep't of Social Services (Human Resources Admin.) v. DeFrance*, OATH Index No. 1593/20 at 18 (Sept. 28, 2020), *adopted*, Comm'r Dec. (Dec. 16, 2020), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2020-0810 (Feb. 19, 2021) (recognizing that contemporaneous reports may evince reliability because of the proximity to occurrence of events).

The evidence proved that respondent had received new uniform shirts prior to July 2023 and respondent failed to wear them as required on the dates at issue. No credible evidence supported respondent's claims that he did not have uniform shirts on those dates.

FINDINGS AND CONCLUSIONS

1. Petitioner proved the respondent committed misconduct by disobeying orders to remove his gloves on July 20 and August 10, 2023, as alleged in specifications 1 and 8.
2. Petitioner failed to prove that respondent committed misconduct by disobeying “previously given orders” to remove or change “soiled” gloves on July 27, August 3, or August 4, 2023, as alleged in specifications 3, 4, and 6.
3. Petitioner proved that respondent committed misconduct by failing to wear his uniform shirt as previously directed on July 27, August 3, August 4, and August 10, 2023, as alleged in specifications 2, 5, 7, and 9.

RECOMMENDATION

After finding that respondent committed misconduct, I requested and received his disciplinary history and recent performance evaluations. His disciplinary record is imperfect. In 2017, he surrendered five days of annual leave and accepted a ten-day penalty for the record to settle charges of excessive lateness and absenteeism. In 2021, he received counseling for not wearing his assigned uniform or wearing an unbuttoned uniform and in 2022, he was counseled for excessive absenteeism. Respondent’s 2024 annual evaluation gave him satisfactory ratings for work performance, including adherence to uniform and safety procedures, but he received an overall rating of “needs improvement” due to poor attendance. In a three-month follow-up evaluation in 2025, his supervisor noted that, despite an issue with “excessive call outs,” respondent was a “good employee.” In respondent’s 2025 annual evaluation, he received satisfactory ratings in all categories.

Petitioner now seeks a 30-day suspension (Tr. 201). Respondent contends that such a penalty is excessive (Tr. 11-12, 194-95). Petitioner’s penalty request was based on the premise that it had proved all the charges. Because petitioner failed to prove all the charges, a lesser penalty is appropriate.

A fair penalty should reflect the nature of the misconduct and mitigating factors. *See Health & Hospitals Corp. (Kings County Hospital Ctr.) v. Gathers*, OATH Index No. 236/08 at 8 (Oct. 22, 2007). Consideration should also be given to progressive discipline, which aims to modify employee behavior through increasing penalties for repeated or similar misconduct. *See Health & Hospitals Corp. (Woodhull Medical & Mental Health Ctr.) v. Ford*, OATH Index

No. 2383/09 at 11 (July 10, 2009) (“The theory of progressive discipline is 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”).

Penalties for insubordination by hospital workers range from a five-day suspension to termination, depending upon the employee's disciplinary history and the nature of the insubordination. *See, e.g., Tanvir*, OATH 797/10 at 9 (recommending termination of employment where employee disobeyed directive to attend training after reassignment and failed to report to work for 11 months); *Health & Hospitals Corp. (Woodhull Medical & Mental Health Ctr.) v. McMillian*, OATH Index No. 1402/06 at 6, 9 (July 24, 2006) (recommending a five-day suspension for long-term employee with no prior misconduct who had a loud, disrespectful, and disruptive confrontation with her supervisor during which she pointed her finger close to the supervisor's face); *Health & Hospitals Corp. (Coler-Goldwater Specialty Hospital & Nursing Facility) v. Ramsey*, OATH Index No. 724/04 at 7-9 (Apr. 16, 2004) (recommending a 21-day suspension for employee, with a disciplinary history and a relatively short tenure, who initially refused to perform an assignment, walked out on supervisor while instructions were being given, and refused to answer pages).

The penalty for being out of uniform ranges from a reprimand to a five-day suspension. *See Dep't of Sanitation v. Speroni*, OATH Index No. 1613/12 at 15 (July 19, 2012), *adopted*, Comm'r Dec. (Aug. 23, 2012); *see also Dep't of Correction v. Jones*, OATH Index No. 1142/01 at 14-15 (May 17, 2001) (recommending a three-day suspension for appearing at EEO interview in civilian clothing instead of required uniform); *Police Dep't v. Halsey*, OATH Index No. 1084/90 at 2 (June 4, 1990) (recommending a reprimand for police officer who had his undershirt visible at roll call).

Respondent's repeated refusal to remove or change his gloves is a serious matter because he failed to follow policies that protect patients, staff, and visitors. Though the failure to wear the proper uniform shirt does not raise the same safety concerns, it involved repeated misconduct. In mitigation, respondent is a long-term employee with a minor disciplinary record, and he maintained that he wore clean gloves, which he believed were necessary for his safety. As a result of the charges and pre-hearing suspension, respondent modified his behavior. For more than two years he has complied with his directives regarding uniforms and safety procedures.

Accordingly, I recommend a three-day suspension for each of the four days that respondent failed to wear his uniform shirt, and a six-day suspension for each of the two proven charges of

disobeying the orders to take off his gloves, for a total suspension of 24 calendar days, with credit for the suspension that he has already served.

Kevin F. Casey
Administrative Law Judge

March 5, 2026

SUBMITTED TO:

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