

Dep't of Sanitation v. Lumas

OATH Index No. 896/26 (May 28, 2026)

Petitioner's undisputed evidence established that respondent was absent without leave from February 5, 2025, to November 13, 2025. Termination of employment recommended.

**New York City Office of
Administrative Trials and Hearings**

In the Matter of
Department of Sanitation

Petitioner

-against-

Christopher Lumas

Respondent

Report and Recommendation

Jonathan Fogel, *Administrative Law Judge*

Petitioner, the Department of Sanitation (“DSNY”), brought this disciplinary proceeding under section 75 of the Civil Service Law against respondent Christopher Lumas, a sanitation worker. Petitioner alleged that respondent was absent without leave (“AWOL”) from February 5, 2025, to November 13, 2025 (Pet. Ex. 9). Respondent denied committing misconduct.

At a two-day trial, held remotely via videoconference on March 19 and April 6, 2026, petitioner relied on documentary evidence and the testimony of three witnesses. Respondent testified on his own behalf. The record was closed on April 21, 2026, following respondent’s submission of a post-trial memorandum of law. Petitioner declined to submit a post-trial memorandum.

For the reasons below, I find that petitioner proved the AWOL charge and recommend that respondent be terminated from his employment.

Motion to Dismiss

In his post-trial memorandum, respondent moved to dismiss the charge, alleging that service of the petition was improper because respondent, who is currently incarcerated at Cape Vincent Correction Facility, was not personally served (Resp. Br. at 3-4; Pet. Ex. 11; Tr. 119, 124-27). That claim is mistaken.

Section 1-23 of OATH’s Rules of Practice require that the petition be served “pursuant to statute, rule, contract, or other provision of law applicable to the type of proceeding being initiated.” 48 RCNY § 1-23(b) (Lexis 2026). “Absent any such applicable law, service of the petition must be made in a manner reasonably calculated to achieve actual notice to the respondent.” *Id.*

Petitioner served respondent with the petition by certified mail at the prison where he is incarcerated (Tr. 76-79; Pet. Exs. 10, 12). Such service was “reasonably calculated” to apprise respondent of the nature and pendency of the proceeding and satisfies due process. *See Health & Hospitals Corp. (Elmhurst Hospital Center) v. Wallen*, OATH Index No. 658/09 at 1-2 (Oct. 3, 2008) (petitioner’s service of the charges by certified mail at the prison was “reasonably calculated” to apprise respondent of the nature and pendency of the proceeding and satisfies due process); *Dep’t of Environmental Protection v. Licari*, OATH Index No. 1685/07 at 2 (June 5, 2007) (service of notice of hearing and statement of charges, which included respondent’s inmate number, by registered mail addressed to respondent at the correctional facility); *Admin.*

for Children's Services v. Pelaez a/k/a Palaez, OATH Index No. 876/04 at 2 (May 19, 2004) (service of the charges and notice of hearing, which included his prisoner identification number, by certified mail correctly addressed to respondent at the correctional facility satisfied due process).

Respondent argued that petitioner's service of the petition failed to comply with Correction Law section 620, which authorizes an "alternative method of service on an incarcerated person by delivery to an officer at the prison, who is henceforth required to deliver the papers and record the date and time of receipt" (Resp. Br. at 3). Corr. Law § 620 (Lexis 2026). However, section 620 does not require an incarcerated person to be served in that manner and "merely authorizes an alternative method of service on a prisoner" who is otherwise properly served. *See Montes v. Seda*, 208 A.D.2d 388, 388 (1st Dep't 1994) (finding service proper under the CPLR where a copy of the summons and complaint was delivered to an incarcerated defendant's daughter at defendant's "usual place of abode"). As described above, petitioner's service by certified mail satisfied due process.

Accordingly, respondent's motion to dismiss the petition is denied.

Analysis

Petitioner has designated respondent AWOL since February 5, 2025 (Pet. Exs. 4, 5, 7, 8; Tr. 22, 34-37, 54-56). Respondent has been incarcerated since February 3, 2025, after he was convicted of assault in the second degree, a class D felony, and sentenced to a term of imprisonment of two years (Pet. Ex. 6; Tr. 111). According to respondent, he has a conditional release date of October 17, 2026 (Tr. 118).

Deputy Chief Sean Neal, who oversees the Bronx district where respondent works, testified that when a sanitation worker is AWOL, their job duties must be completed by another employee (Tr. 12-13, 27-29). This diverts manpower and may require paying that employee overtime (Tr. 27-29). When an AWOL employee's duties cannot be reassigned, it causes missed services to city residents (Tr. 30). Deputy Chief Neal noted that employees being AWOL also impacts the morale of other employees because they can see who is not working (Tr. 27-28, 30). No evidence was presented that any employees were being paid overtime to cover respondent's job duties while he has not been at work.

Respondent testified that he has been employed with petitioner as a sanitation worker since 2017 (Tr. 110). He timely informed the Department of his court proceedings and subsequent incarceration (Tr. 112, 114-16). He expects to be released from custody in October 2026 (Tr. 118). He has applied for a “work release,” which would allow him to be released from incarceration during weekdays, and for an early release under a state program, which could allow him to be released in June 2026 (Tr. 116-18). He attempted to apply for a leave of absence with petitioner to “keep [his] job” but testified that his attempts were unsuccessful (Tr. 114-15, 118-19).

Petitioner’s Code of Conduct provides that “[e]mployees may not be absent without authorization” (Pet. Ex. 1 at 5). Additionally, petitioner’s General Order 2012-17 provides that “[e]mployees are considered AWOL if, on the day the employee is scheduled to work, they are not present for roll call and have not contacted their respective work location prior to the start of their work shift” (Pet. Ex. 2 at 1). The General Order further states that “[a]ny employee who is placed under arrest or incarcerated for any reason . . . and is unable to report to work must be recorded as AWOL, regardless if they have contacted their respective work location” (*Id.* at 2). Unauthorized absences may constitute a basis for discipline under section 75 of the Civil Service Law. *See Dep’t of Social Services (Human Resources Admin.) v. Gamonedá*, OATH Index No. 2029/21 at 6-7 (Oct. 25, 2021), *aff’d*, NYC Civ. Serv. Comm’n Case No. 2021-0883 (Mar. 18, 2022).

It is undisputed that respondent has not reported to work since February 3, 2025, and has been incarcerated since that date. “It is well established that an employee’s incarceration is actionable as an absence without leave.” *Dep’t of Sanitation v. Watson*, OATH Index No. 656/96 at 2 (Oct. 23, 1995), *adopted*, Comm’r Dec. (Oct. 23, 1995); *see also Human Resources Admin. v. Cornelius*, OATH Index No. 2041/13 at 3-6 (July 10, 2013) (respondent who was continuously absent for more than a year due to incarceration was AWOL); *Dep’t of Transportation v. Pierre*, OATH Index No. 2112/11 at 7 (Oct. 3, 2011), *adopted*, Comm’r Dec. (Oct. 21, 2011) (respondent who had been absent from his employment for nearly a year due to pretrial incarceration terminated where there was no evidence that he would be released in the foreseeable future). AWOL for incarceration for a period as little as four months supports termination. *See Health & Hospitals Corp. (Elmhurst Hospital Ctr.) v. Wallen*, OATH Index No.

658/09 at 5 (Oct. 3, 2008) (termination recommended for respondent who was continuously absent for four months due to incarceration); *Dep't of Sanitation v. Mejia*, OATH Index No. 317/03 at 5 (Oct. 4, 2002), *appeal dismissed as moot*, NYC Civ. Serv. Comm'n Item No. CD04-63-D (Nov. 17, 2004) (termination recommended for respondent who had been absent for six months due to incarceration).

Accordingly, petitioner established that respondent has been AWOL from February 5, 2025, through November 13, 2025.

Findings and Conclusions

Petitioner established that respondent has been AWOL from February 5, 2025, to November 13, 2025.

Recommendation

Upon making these findings, I obtained and reviewed respondent's personnel abstract. Respondent has been employed by petitioner since 2017. His evaluations from 2020 to 2025 rate his overall performance as "unsatisfactory." Respondent has no prior disciplinary history.

Petitioner seeks termination of respondent's employment. That is appropriate. Respondent's extended AWOL represents a fundamental form of misconduct that substantially impedes the Department's ability to fulfill its mission. *See Dep't of Social Services (Human Resources Admin.) v. Cato Woolery*, OATH Index No. 2249/23 at 3 (June 2, 2023), *adopted*, Comm'r Dec. (June 26, 2023) (respondent who was continuously absent for more than a year due to incarceration terminated); *Dep't of Sanitation v. Bryant*, OATH Index No. 2010/06 at 6-7 (Dec. 5, 2006) (termination of employee for continuous long-term AWOL). Respondent's efforts to not abandon his job and return to it do not mitigate his absence from work without authorization (Resp. Br. at 5-6). Under these circumstances, termination of his employment is appropriate.

Jonathan Fogel
Administrative Law Judge

May 28, 2026

Submitted To:

Gregory Anderson

Commissioner

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