

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33087
C/kmb

_____AD3d_____

Argued - November 10, 2011

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2011-03371

DECISION & JUDGMENT

In the Matter of Josephine Paul, petitioner,
v Michael D. Israel, etc., et al., respondents.

(Index No. 19115/10)

James M. Rose, White Plains, N.Y., for petitioner.

Julie Switzer, Valhalla, N.Y. (Barbara F. Kukowski of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent Westchester Medical Center, dated July 12, 2010, which adopted so much of a decision of a hearing officer, made after a hearing pursuant to Civil Service Law § 75, as found the petitioner guilty of misconduct, and terminated her employment as a Senior Admitting Clerk.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The review of administrative determinations in employee disciplinary cases made after a hearing under Civil Service Law § 75 is limited to a consideration of whether the determination was supported by substantial evidence (*see* CPLR 7803[4]; *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176; *Matter of Smith v Carter*, 61 AD3d 982). Here, there is substantial evidence in the record to support the determination of the respondent Westchester Medical Center that the petitioner was guilty of misconduct (*see Matter of Jenkins v Israel*, 83 AD3d 1068). The petitioner's argument to the effect that the administrative determination is not supported by substantial evidence because the evidence presented was hearsay is without merit (*see* Civil Service Law § 75[2]; *Matter of Lumsden v New York City Fire Dept.*, 134 AD2d 595).

December 6, 2011

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Under the circumstances presented, the penalty of termination of the petitioner's employment was not so disproportionate to the offense committed as to be shocking to one's sense of fairness, thus constituting an abuse of discretion as a matter of law (*see Matter of Kreisler v New York City Tr. Auth.*, 2 NY3d 775; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222; *Matter of Furtado v Israel*, 49 AD3d 644).

DILLON, J.P., ANGIOLILLO, FLORIO and DICKERSON, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court