



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CSV 10397-09

AGENCY DKT. NO. 2010-632

IN THE MATTER OF THE ESTATE
OF GREGORY GRAHAM, ANCORA
PSYCHIATRIC HOSPITAL.

Geoffrey B. Gompers, Esq., for appellant (Geoffrey Gompers & Associates,
attorneys)

Christopher Hamner, Deputy Attorney General, for respondent (Paula T. Dow,
Attorney General of New Jersey, attorney)

Record Closed: November 18, 2011

Decided: November 29, 2011

BEFORE DENNIS P. BLAKE, ALJ:

This matter was transmitted to the Office of Administrative Law (OAL) on October 21, 2009, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The parties have agreed to a settlement and have prepared a settlement agreement indicating the terms thereof, which is attached and fully incorporated herein.

I have reviewed the record and the settlement terms and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1, and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

11.29.11
DATE

[Signature]
DENNIS P. BLAKE, ALJ

Date Received at Agency:

12/16/11

Date Mailed to Parties:

12/16/11

/cad

RECEIVED

NOV 18 A 11:05

STATE OF NEW JERSEY
OFFICE OF ADMIN LAW

IN THE MATTER OF
THE ESTATE OF GREGORY GRAHAM
AND
ANCORA PSYCHIATRIC HOSPITAL,
DEPARTMENT OF HUMAN SERVICES

The parties in this appeal have voluntarily resolved all disputed matter and enter in the following settlement, which dully disposes of all issues in controversy between them.

BACKGROUND:

A. The Final Notices of Disciplinary Action dated July 17, 2009 contained the following charges and proposed discipline:

- | <u>Charge</u> | <u>Discipline</u> | <u>Dates Effective</u> |
|------------------------------|---|------------------------|
| 1. <u>NJAC</u> 4A:2-2.3(a)6 | Conduct unbecoming a public employee-Removal effective January 13, 2009. | |
| 2. <u>NJAC</u> 4A:2-2.3(a)11 | Other sufficient case-Removal effective January 13, 2009. | |
| 3. Admin. Order 4.08 C-3 | Physical or mental abuse of a patient-Removal effective January 13, 2009. | |
| 4. Admin. Order 4.08 E-1 | Violation of a rule, regulation, policy, procedure or administrative decision-Removal effective January 13, 2009. | |

AGREEMENT:

B. The parties have agreed to the following:

1. The total number of days of suspended pay, the Respondent has imposed on Appellant to date is as follows: None.
2. The total number of days on backpay, if any, to be paid by the appointing authority to the Appellant is as follows: 60 work days back pay from April 19, 2009 to July 12, 2009.
3. Any other days from the time of last suspension day until reinstatement shall be treated as follows: Approved leave of absence without pay from January 13, 2009 to April 18, 2009.
4. Respondent will pay Appellant sixty (60) work days of back pay representing the time period from April 19, 2009 to the date of Appellant's death on July 12, 2009 and provide Appellant with retroactive entitlement and all benefits and insurance coverage afforded active employees

during April 19, 2009 through and including July 12, 2009. The time period from January 13, 2009 to April 18, 2009 will be treated as an approved leave of absence without pay.

DISPOSITION:

C. The Estate of Gregory Graham withdraws this appeal and request for a hearing, and the Respondent Appointing Authority Department of Human Services agrees that: the following result will occur with regard to each charge:

<u>Charge</u>	<u>Disposition</u>
1. NJAC 4A:2-2.3(a)6 Conduct unbecoming a public employee	-Withdrawn
2. NJAC 4A:2-2.3(a)11 Other sufficient cause	-Withdrawn
3. Admin. Order 4.08 C-3 Physical or mental abuse of a patient	-Withdrawn
4. Admin. Order 4.08 E-1 Violation of a rule, regulation, policy, procedure or administrative decision	-Withdrawn

The parties acknowledge that under N.J.A.C. 17:2-4.5(b) and (c), no pension or seniority time may be credited for periods for which the employee is not paid by the employer.

2. Respondent acknowledges that Appellant was on active duty on July 12, 2009 and did not receive a final notice of disciplinary action as of his date of death of July 12, 2009.

The parties acknowledge that under N.J.A.C. 17:2-4.5(b) and (c), no pension or seniority time may be credited for periods for which the employee is not paid by the employer.

D. The Department of Human Services (Respondent) shall amend Gregory Graham's personnel records to conform to the terms of the settlement. All internal records of the Department of Human Services will be kept intact. Nothing herein shall preclude the Department from releasing information on this matter to anyone who has a release executed by appellant or as consistent with the law. Any information regarding the underlying charges will be provided to the Public Employees Retirement System pursuant to N.J.S.A. 43:1-3.3 as amended effective April 14, 2007.

E. The Estate of Gregory Graham waives all other claims against Respondent Appointing Authority with regard to this matter, including any award of back pay, counsel fees or other monetary relief, except as otherwise provided for in Paragraph B above.

F. Except for the assessment of Gregory Graham's disciplinary record in any subsequent personnel disciplinary hearing, nothing in this agreement shall be deemed to be an

admission of liability on behalf of either party. This agreement shall not constitute a precedent in matters involving other employees.

- G. Except as is otherwise stated herein, the Estate of Gregory Graham waives all claims, suits or actions, whether known, unknown, vested or contingent, civil, criminal or administrative, in law or equity against the State of New Jersey, the New Jersey Department of Human Services, their employees, agents, or assigns, including but not limited to those which have been or could have been made or prosecuted on account of any conduct of any party occurring at any time with respect to the events, information or disputes giving rise to this action up to the date of this agreement, including but not limited to, all claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Family Leave Act, the Family and Medical Leave Act, the New Jersey Law Against Discrimination in Employment Actm Title 11A – the Civil Service Act, the Older Workers Benefits Protections Act, the Occupational Safety and Health Act, the Public Employee Occupational Safety and Health Act, the New Jersey Smoking Act, New Jersey wages and hours law, public works statutes, unemployment compensation laws, workers compensation or common law claims and any contract express or implied. This waiver includes all claims involving any continuing effects of actions or practices which arose prior to the date of this Settlement Agreement and bars the use in any way of any past action or practice in any subsequent claims, except pending workers compensation claims. Excluded from this release are all ERISA and pension rights and all compensation and benefits owed in paragraph B.
- H. The parties agree that is any portion of this Settlement Agreement is deemed unenforceable, the remainder of this Settlement Agreement shall be fully enforceable.
- I. The parties waive the right to file exceptions and cross exceptions.
- J. This Agreement will become effective only if approved by the **CIVIL SERVICE COMMISSION**. Any disapproval by the **CIVIL SERVICE COMMISSION** shall not interfere with the rights of either party to pursue the matter further.

November 7, 2011
DATE

11/7/11
DATE

11/7/11
DATE

11/7/11
DATE

11/7/11
DATE

Viola Douglas
Viola Douglas, Co-Administrator of
The Estate of Gregory Graham,
Appellant

Emerson G. Graham
Emerson G. Graham, Co-Administrator
of the Estate of Gregory Graham,
Appellant

[Signature]
ON BEHALF of Appellant

Alfred Filippini
Alfred Filippini, Director of Human
Resources, Ancora Psychiatric Hospital

Christopher J. Hamoran
ON BEHALF OF Respondent

CERTIFICATION


Viola L. Douglas and Emerson G. Graham, being the moving parties in this matter, hereby certify that we have reviewed this Settlement Agreement and fully understand its meaning and terms. We acknowledge our understanding and verify our acceptance of the terms of this Settlement Agreement. We acknowledge that our representative questioned our understanding, verified our acceptance of the terms of this Settlement Agreement, and answered all of our questions regarding this settlement to our satisfaction. We are satisfied with our representation and we enter into this Settlement Agreement voluntarily.

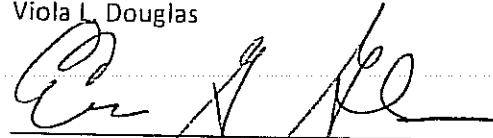
We also understand that is this Settlement Agreement is approved by the **CIVIL SERVICE COMMISSION**, our claim against the Respondent will terminate.

We certify that the foregoing statements made by us are true. We are aware that if any of the foregoing statements made by us are willfully false, We ~~am~~^{are} subject to punishment.

November 7, 2011
DATE

11/7/11
DATE


Viola L. Douglas


Emerson G. Graham