

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4909-18  
A-5705-18

D.M.,

Petitioner-Appellant,

v.

DEPARTMENT OF HUMAN  
SERVICES, OFFICE OF  
PROGRAM INTEGRITY  
AND ACCOUNTABILITY,

Respondent-Respondent.

---

IN THE MATTER OF D.M.,  
DEPARTMENT OF HEALTH,  
ANN KLEIN FORENSIC  
CENTER.

---

Argued March 17, 2021 – Decided June 2, 2022

Before Judges Accurso, Vernoia and Enright.

On appeal from the New Jersey Department of Human  
Services, and the New Jersey Civil Service  
Commission, Docket No. 2018-3796.

Christopher A. Gray argued the cause for appellant (Sciarra & Catrambone, LLC, attorneys; Christopher A. Gray, of counsel and on the briefs; Frank C. Cioffi, on the briefs).

Patrick Jhoo, Deputy Attorney General, argued the cause for respondent Department of Human Services (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Patrick Jhoo, on the brief).

Achchana C. Ranasinghe, Deputy Attorney General, argued the cause for respondent Ann Klein Forensic Center (Gurbir S. Grewal, Attorney General, attorney, joins in the brief of respondent Department of Human Services).

Eric A. Reid, Deputy Attorney General, argued the cause for respondent Civil Service Commission (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Eric A. Reid, on the brief).

The opinion of the court was delivered by

ACCURSO, J.A.D.

In these two consolidated matters, petitioner D.M., a medical security officer at Anne Klein Forensic Center, appeals from final agency decisions of the Department of Human Services, Office of Program Integrity and Accountability finding he committed an act of physical abuse against an individual with developmental disabilities and placing his name on the Central Registry of Offenders pursuant to N.J.S.A. 30:6D-77; and of the Civil Service

Commission affirming the decision by the Department of Health removing petitioner from his position.<sup>1</sup> As both decisions are amply supported by the credible evidence in the record, we affirm.

Because these matters arose out of a single incident in April 2017 between petitioner and A.C., a patient with developmental disabilities resident at Ann Klein, they were consolidated in the Office of Administrative Law for hearing and decision. The encounter took place on a narrow, raised platform running along one wall of the gym at Ann Klein and was captured on video, albeit without sound. The platform, which some witnesses referred to as a stage, was estimated variously as eighteen inches or three feet high.

Petitioner, a senior medical security officer with fifteen years' experience at Ann Klein, was sitting at one of several tables set up on the platform with two other medical security officers and three patients, playing cards. Playing cards and shooting baskets with patients is expected of medical security officers, as those activities keep patients focused and calm.

The video, which was played several times at the hearing and admitted in evidence, depicts A.C. walking along the edge of the platform past the card

---

<sup>1</sup> In order to protect the privacy of the individual with developmental disabilities, we refer to him and petitioner by their initials. See R. 1:38-3(f)(8).

players and taking a seat along a cinderblock wall behind another table very close by. A.C. sits briefly and then gets up and moves toward the cards table. As he does so, the resident sitting at the end of the cards table closest to him, gets up and moves his chair further away. Before the resident can re-take his seat, A.C. swipes at an empty card box on the cards table, knocking it to the floor and returns to his chair against the wall. Petitioner and another medical security officer, already getting to their feet as A.C. returns to his chair, converge on him.

Petitioner pulls A.C. to his feet, and bends him over the second table, which immediately begins to slide dramatically toward the edge of the platform and the other resident still standing near his chair. Just as the other resident is nearly forced off the platform, petitioner pulls A.C. off the table and takes him to the floor of the stage. Petitioner stands briefly, locks his arms under A.C.'s armpits and pulls him down the few steps to the gym floor on his back. Petitioner then rolls A.C. over onto his stomach and restrains him. The entire episode occurs within about thirty or forty seconds. Petitioner is kneeling next to A.C. as several other medical security officers arrive and eventually escort A.C. away.

Although the incident occurred in April, Human Services only launched an inquiry two months later following a complaint on A.C.'s behalf by the Protection and Advocacy for Individuals with Mental Illness coordinator for Disability Rights New Jersey. After preparing the initial "unusual incident report," Human Services referred the matter to the Department of Health, Office of Investigations to conduct the investigation.

In his first interview, memorialized in the eighty-four-page investigation report admitted in evidence at the hearing, petitioner told the investigator A.C. had come into the gym agitated and swearing and "swung at him" when A.C. swept a water bottle and empty card box from the table and then grabbed the chair he had been sitting in and gestured as if he was going to hit petitioner with it, prompting petitioner to grab the front of A.C.'s shirt to restrain him. Petitioner claimed A.C. then dropped to the ground, kicking and throwing punches. He did not recall slamming A.C. into the table. He remembered tripping and losing his balance as he tried to restrain A.C., and said he moved A.C. to the gym floor because he did not want the two of them falling off the stage.

In a follow-up interview in which petitioner was shown the video, he explained he engaged A.C. while he was sitting because A.C. had threatened to

hit him with the chair. He claimed A.C. dropped to the floor, and petitioner lifted A.C. up and "guided" him to the table and then "escorted" A.C. down to the gym floor because it had a "softer" surface than the stage. Petitioner claimed he restrained A.C. in a prone position on the floor and rested part of his body on him because A.C. was hard to control and combative. Following the investigation by the Department of Health, which substantiated the allegation that petitioner physically abused A.C., the Department of Human Services placed petitioner on the Central Registry of Offenders. Ann Klein terminated his employment. Petitioner challenged those decisions and they were referred to the OAL, which conducted a consolidated hearing on petitioner's claims the Department of Health erred by finding he physically abused A.C. and the Department of Health violated the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, by terminating his employment.

At the OAL hearing, the State presented the testimony of Edward Tobin, the Director of the Office of Investigations, who testified about how his office conducts investigations into allegations of abuse at the State's psychiatric hospitals; that Ann Klein is a much more secure environment, closer to a "correctional facility" than the State's other three psychiatric hospitals; and that the patient population there is more "unstable." He also testified to A.C.'s

history of assaultive behavior at Ann Klein documented in the investigation report, including twenty-four physical assaults on other patients, seven of which resulted in minor injury with the remainder resulting in no injury. A.C. also had six incidents of self-injurious behavior, all resulting in minor injury. A.C. had three documented incidents of assaults on staff, one with no injury, one with minor injury and one with major injury. Tobin testified A.C. only suffered an abrasion on his nose in this incident, but noted physical injury is not required for a finding of physical abuse of a patient.

The State also presented the testimony of Sandi Ferguson, who has served as director of staff development at Ann Klein since 1989. Ferguson described and demonstrated the seven permitted holds for patients, the two therapeutic option holds and the five advanced emergency holds. She explained Ann Klein employed a CALM method of de-escalation: "connect with the patient, assess them, listen and maintain your contact with them as you try to de-escalate." Ferguson testified although there could be circumstances that would permit a security medical officer to go directly to a hold, if, for example "the patient's already hitting you," Ann Klein's policy was that "[p]ersonal control techniques may be used only when other less intrusive or more therapeutic techniques, such as verbal interventions and/or other crisis

management techniques have been exhausted and cannot insure the safety of the person or others."

Ferguson was familiar with A.C., testifying she knew of the many reports of him spitting and being assaultive in the facility. She also knew petitioner, as he was one of only six officers she authorized to train the other 350 medical security officers at Ann Klein in the five advanced emergency holds. She testified she had a very good rapport with him, and he had always been well respected and competent in performing and teaching the advanced emergency holds.

Nevertheless, Ferguson testified unequivocally after reviewing the video during her testimony that petitioner did not use any of the seven approved holds in restraining A.C., his actions did not reflect his training, and none of his choices of restraint was permitted at Ann Klein. Specifically, she stated a staff member may never grab a patient from the front, shove a patient's head onto a table, or bend a patient over if there is an object, such as a table, in front of the patient. Although Ferguson testified on cross-examination she did not believe petitioner was employing a proper hold when he pulled A.C. up from his chair, judging from the position of petitioner's hands, she agreed with his



counsel's statement that she couldn't be sure from the video "whether or not" petitioner was employing the first level advanced emergency hold.

She further testified repeatedly, however, that no hold could be safely performed during the incident, given the narrow stage, the several tables and chairs and presence of other people, some of them patients, so close by. Ferguson testified petitioner and the other medical security officers should have stepped back from A.C., out of range of his spitting, and waited for a supervisor while they tried to talk him through it. While admitting to petitioner's counsel she did not see petitioner choke, kick, or punch A.C., Ferguson testified the video shows petitioner dragging A.C. down the stairs to the gym floor.

Petitioner presented the testimony of three other medical security officers who witnessed the incident, all of whom testified A.C. was loudly cursing and threatening petitioner using vulgar language. The two officers nearest the melee testified they and petitioner tried to calm A.C. but when he stood and appeared to threaten petitioner, petitioner placed A.C. in a proper hold, moving him to the gym floor until a supervisor arrived. One of the officers admitted hitting a patient's face on a table would be a violation of training, and that after petitioner put A.C. into a hold he "went down and lay

on the table," but the officer claimed A.C. "wasn't slammed on the table" by petitioner. The other officer testified in response to questions from the ALJ that A.C.'s body hit the table but not his head. As to petitioner moving A.C. to the gym floor, the officer testified A.C. "wouldn't stand up . . . so that he could walk on his own power. He dropped his weight. So, meaning so it would appear as if he's being dragged, but he wouldn't put his — he wouldn't put his feet down."

Petitioner testified on his own behalf. He explained that as A.C. approached him and the others on the stage, A.C. was cursing and making vulgar threats. Petitioner testified he asked A.C. several times to "please go back to [his] class" and only stood to restrain him after A.C. threatened to spit on him, said he would hit petitioner with a chair, "I don't know how many times," and "swiped" the card box off the table. Petitioner testified A.C. regularly spat on officers and others, and petitioner had noted A.C.'s behavior "getting more and more aggressive" in the weeks leading up to the incident. According to petitioner, A.C. had punched him in the mouth two weeks earlier when he and another officer were trying to place A.C. in a "restraint chair."

Not wanting to "take a chance" that A.C. would hit him with a chair, petitioner said he acted to restrain A.C. "to keep it safe" for himself and the

other patients on the stage. Petitioner explained he put A.C. into an "escort" hold to get him out of the chair in which he was sitting, and was moving him from a first to a second level hold when he "recognized there was a table there" and tried to pull A.C. closer to him. Petitioner claimed A.C. never hit his head against the table. Instead, the table "started to move" and petitioner "lost [his] footing a little bit" and "escorted" A.C. to the ground. After that, petitioner claimed he let go of A.C., "walked around him, . . . went down the steps . . . and . . . grabbed him from behind underneath his armpits, his head in [petitioner's] lap actually, and then . . . brought him down to the gym floor." Petitioner testified he couldn't complete the restraint of A.C. on the stage "because [t]here's too many obstacles up there."

Petitioner claimed that A.C. was still throwing punches as he "came down the steps" and once A.C. was finally on his back on the gym floor, petitioner "roll[ed] him over" face down, using a hold no longer approved for use at Ann Klein "so he wouldn't have a chance to spit on anybody." Asked why he told the investigator that A.C. grabbed the chair and threatened to hit him with it, petitioner explained he hadn't yet viewed the video and "A.C. threatened me so much to hit me with the chair, and when — the way the question was from the investigator, he kind of led me to believe that, you

know, A.C. actually did grab the chair." Petitioner claimed with the benefit of hindsight, "it was too tight in there at the time" with the table "present and all that," and he would handle it differently.

On cross-examination, petitioner, while continuing to deny A.C.'s head hit the table, admitted his body certainly hit the table. He also conceded the video did not corroborate his testimony that A.C. continued to kick and resist once on the gym floor, and he confirmed the hold he used on A.C. on the gym floor was no longer an approved hold at Ann Klein.

After hearing the testimony, the ALJ issued a written decision finding as fact that all three medical security officers attempted to redirect and de-escalate A.C.'s behavior, that petitioner and one of the other medical security officers testified credibly that when A.C. stood, it was unclear what he intended to do, and when he swept the card box onto the floor, petitioner and one of the other medical security officers "were already moving towards A.C. who continued to physically threaten [petitioner]." She also found credible the testimony of petitioner and one of the other medical security officers that petitioner executed a proper escort hold "in standing A.C. up" and thereafter transitioned into an approved level 1 hold. The ALJ found Human Services' "witnesses Ferguson and Tobin could not say for certain that [petitioner] did

not implement a [level] 1 hold, and in Tobin's case, he was unfamiliar with any of the authorized holds."

The ALJ further found that as petitioner "was transitioning into a [level] 2 hold, realizing that the table was in the way, he pulled A.C. closer to him and away from the table," which started to move. She found petitioner "lost his footing" at that point "and A.C. simultaneously dropped his weight." The ALJ found "A.C. did not slam his head on the table; however, his torso did come into contact with the table. Thereafter, [petitioner] guided A.C. to the floor of the stage." The ALJ did not find that petitioner "body-check[ed] A.C. face first onto the floor." She found petitioner's "uncontroverted testimony was credible and consistent with the surveillance film, that given the proximity of the stairs and hardness of the stage floor, he properly brought A.C. to the gym floor for his safety, protecting his head throughout the process."

The ALJ conceded petitioner "did not use a currently authorized restraint procedure" in restraining A.C. on the gym floor but instead employed "a previously approved technique," and that "A.C. continued to attempt to spit, bite, and kick the officers present." The ALJ concluded petitioner did not "kick, punch, slap, hit or push A.C.," and while petitioner "pulled A.C. down to the gym floor, he did not drag him down the steps."

Based on those facts, the ALJ concluded petitioner did not commit an act of abuse against A.C. and his actions were not reckless or done with careless disregard to A.C.'s well-being. Instead, the ALJ emphasized it was undisputed "A.C. was a patient known to be difficult, unpredictable, aggressive, and assaultive," and "[w]hen he went up onto the stage area, he was already worked up." The ALJ noted that "[f]rom the start and throughout the incident, A.C. was continuously barraging petitioner with insults and physical threats," and she found "[t]he unfolding of events happened in a matter of seconds and could not have been predicted or averted."

The ALJ concluded "[i]t was not unreasonable for petitioner to expect further aggression from A.C. based upon his prior and current behavior, threats, and body language." And "[g]iven the confined space, the patients, and obstacles that were present, petitioner's actions were not reckless or careless" but were instead "quick thinking and prudent under the circumstances and implemented to protect all that were present — including A.C."

The ALJ acknowledged that

[w]hile petitioner's restraint technique did not end in a text book fashion, . . . one cannot predict every situation that arises, nor can one train for every scenario that could conceivably happen. This is one such scenario. But for the intervening factors (i.e. losing his footing, [A.C.] dropping his weight and

tables/chairs sliding), petitioner may have been able to properly complete the restraint process which he had begun. The fact that he could not does not make his actions reckless or with careless disregard of A.C.'s well-being. Rather, it shows that in a fluid situation, petitioner adapted his actions to ensure the safety of A.C.

As for the Department of Human Services' reliance on the video, the ALJ conceded "[t]here is no question that the surveillance film of the incident, if viewed in a vacuum, is inflammatory." She found, however, that "this is not a case where a 'picture is worth a thousand words' and therefore dispositive of the charges." Instead, the ALJ stressed it was necessary to look at "the totality of the situation," including not only the video but also "the credible testimony of petitioner and the eyewitnesses to the incident," and "[i]n so doing, a different conclusion can also be reached," namely, that petitioner was not reckless or acting in careless disregard of A.C.'s well-being.<sup>2</sup>

The Department of Human Services filed exceptions, arguing the ALJ's credibility determinations were inconsistent with the video recording of the

---

<sup>2</sup> The ALJ also concluded "there is going to be physical contact" whenever a medical security officer "is required to implement one of the approved holds to restrain a patient." And as petitioner did not "kick, pinch, bite, punch, slap, hit, push, drag, and/or strike A.C. with a thrown or held object," in the course of appropriately restraining him, she concluded the Department of Health did not meet its burden on the charge of conduct unbecoming a public employee.

incident, and she failed to properly apply the controlling regulation and Department policy. Petitioner filed "exceptions" urging the initial decision be affirmed in its entirety.

In a meticulously detailed thirteen-page, single-spaced decision, Lauri Woodward, the Director of the Office of Program Integrity and Accountability, rejected the ALJ's decision, concluding the ALJ's "[f]ailure to consider and apply the appropriate statutes and regulations" constituted an error of law and her failure to take account of "all of the testimony concerning the applicability of holds is an error of fact" warranting rejection of the decision.

The Director found the ALJ appropriately identified the two-step inquiry required to determine whether a person should be placed on the Central Registry, that is, whether petitioner committed an act of abuse against A.C. and, if so, whether his actions were intentional, reckless, or done with careless disregard to A.C.'s well-being, but "never gave any attention or consideration as to whether" A.C., "had been the object of a physical act which could cause him pain, injury, anguish, or suffering." See N.J.S.A. 30:6D-74 (defining physical abuse by a caregiver against a developmentally disabled person as a physical act causing "pain, injury, anguish, or suffering," including "being



kicked, pinched, bitten, punched, slapped, hit, pushed, dragged, or struck with a thrown or held object" by a caregiver).

Instead, the Director found the ALJ repeatedly emphasized that A.C. was "not kicked, punched, slapped, or pushed," ignoring the testimony of Ann Klein's thirty-year Director of Training that none of the holds petitioner is shown using or attempting in the video was proper or warranted, and the ALJ's description of "a person being 'pulled' backwards down steps as not being 'dragged' (another of the non-exclusive examples of abuse) down the steps is so contorted of its common usage as to be incredible."

The Director was particularly critical of the ALJ's failure to account for Ferguson's extensive testimony, including that "[p]ersonal control techniques may be used only when other, less intrusive or more therapeutic techniques (such as verbal interventions and other crisis management techniques) have been exhausted and cannot ensure the safety of the person or others" and that "holds should only be attempted when it is safe to do so."<sup>3</sup> The Director noted

---

<sup>3</sup> The Director was also critical of the ALJ's failure to make any credibility finding as to Ferguson's testimony other than to note Ferguson could not say for certain that petitioner did not implement a level one hold after he grabbed A.C. out of his chair. The Director noted several instances in which various witnesses commented that minute details were hard to make out in the video, making it "reasonable to deem the rest of Ferguson's testimony as credible, given the initial decision's paucity of credibility determinations."

the ALJ's decision "ignored the non-physical intervention techniques that are to be afforded and exhausted before an individual who is assigned to a communal, therapeutic environment before any physical action is taken against the individual."

The Director found the ALJ "fixate[d] on the use of holds, restraints, and take downs," while not only "glossing over the Department's policies of verbal de-escalation" but "never contemplat[ing] that physical interaction should never have been used." Recalling the ALJ's description of the events in the video, the Director noted "petitioner's actions and the 'intervening factors (i.e., losing his footing, [A.C.] dropping his weight and tables/chairs sliding)' — all things testimony had shown to proscribe against the use of physical holds — were not seen as examples of recklessness and careless disregard for safety, but somehow exhibited a lack thereof." The Director noted that "[c]iting a list of calamities and assuming that 'but for' those events, all would have gone well does not excuse careless disregard for safety or recklessness" but instead "pretty much defines it."

The Director concluded that "[o]nly by ignoring that physical holds are potentially dangerous to both the holder and the person being held," disregarding that two medical security officers very close to A.C. were

"actively engaged in verbal redirection" of him and not feeling any danger, and "discounting the extensive training and retraining" the over 300 medical security officers at Ann Klein receive, "could this incident be considered justified or excusable."

The Director concluded petitioner physically abused A.C. by "disregard[ing] his training to use verbal de-escalation in the face of a belligerent patient" and his "actions showed not only intention, but recklessness and a careless disregard for the safety of A.C." She found by placing A.C. in a restraint hold on the narrow stage in close proximity to two tables, several chairs and other medical security officers and patients, petitioner, "cause[d] A.C.' s body to come in contact with a table, the stage floor, the steps, and the floor of the gym," physical acts causing "pain, injury, anguish or suffering."

The Director further found petitioner "made a mindful and calculated decision" to remove A.C. from his chair and place him in a restraint, "disregard[ing] the tight space," and persisted "even as the attempts failed to work correctly." The Director concluded petitioner "acted hastily and thoughtlessly in trying an improvised technique and persisted irresponsibly on, despite never having control of the situation he was escalating." She

accordingly rejected and modified the ALJ's findings and conclusions and determined the Department met its burden of proving by a preponderance of the evidence that petitioner committed an act of physical abuse against A.C. and did so intentionally, recklessly or with careless disregard to A.C.'s well-being, making his placement on the Central Registry appropriate.

The Civil Service Commission also rejected the ALJ's findings and recommendation. The Commission adopted the findings of the Director of the Office of Program Integrity and Accountability and affirmed the termination of petitioner's employment.

Petitioner appeals, arguing the decisions of the Director of the Office of Program Integrity and Accountability and the Civil Service Commission to reverse the ALJ and uphold the decisions to place him on the Central Registry and remove him from his position with Ann Klein failed to accord the proper deference to the ALJ's credibility findings and was arbitrary, capricious and not supported by the substantial credible evidence in the record as a whole. We disagree.

Our review of a final decision of an administrative agency is limited. Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009). "Without a 'clear showing' that it is arbitrary, capricious, or

unreasonable, or that it lacks fair support in the record, an administrative agency's final quasi-judicial decision should be sustained." Ibid. In particular, we "must be mindful of, and deferential to, the agency's 'expertise and superior knowledge of a particular field.'" Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 158 (2018) (quoting Circus Liquors, 199 N.J. at 10.)

An agency may reject and modify an ALJ's initial decision, as the Director did here, but its authority to do so is limited. Specifically, the Administrative Code requires that when an agency rejects an ALJ's decision, it must clearly state the basis for doing so and cite specific evidence supporting its final decision and interpretation of the law. N.J.A.C. 1:1-18.6(b). An agency may only reject or modify findings of fact as to issues of credibility of lay witness testimony if it first determines on a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence. N.J.A.C. 1:1-18.6(c).

Although it is not every day an agency head rejects the factual findings of an ALJ based on those findings being arbitrary and capricious or not supported by substantial credible evidence in the record, we are satisfied the Director did so appropriately here, carefully explaining her reasons for finding

the ALJ's decision lacked that support in the record, largely by the ALJ having failed to account for the extensive testimony of Ann Klein's long time Director of Training that petitioner's actions were not in accord with his training and that no hold could be safely attempted given the severely restricted confines of the stage. See Cavalieri v. Bd. of Trs. of Pub. Emps. Ret. Sys., 368 N.J. Super. 527, 534 (App. Div. 2004).

Although the ALJ observed "[t]here is no question that the surveillance film of the incident, if viewed in a vacuum, is inflammatory," an observation with which we readily agree, she determined an assessment of "the totality of the situation," which she defined as the video and "the credible testimony of petitioner and the eyewitnesses to the incident," allowed "a different conclusion." As the Director noted, however, the ALJ's definition of "the totality of the situation," obviously omitted entirely the very significant testimony of Training Director Ferguson. Ferguson testified unequivocally that petitioner could not safely perform a restraining hold on A.C., who was sitting in a chair with his back against a cinderblock wall, and that attempting to do so in the close, cluttered confines of the stage risked exactly what occurred — petitioner driving A.C. into the table and him falling to the floor — after which petitioner dragged him down the few steps to the gym floor.

The ALJ did not make any express finding that Ferguson was not a credible witness, indeed she did not comment on Ferguson's credibility at all. And we refuse to find the ALJ's comment that Ferguson "could not say for certain that [petitioner] did not implement a [level] 1 hold," after petitioner grabbed A.C.'s shirt and stood him up, was an aspersion on her credibility given the noted difficulty all the witnesses expressed in making out details on the video. We agree with the Director the "[f]ailure of the initial decision to address all of the testimony concerning the applicability of holds is an error of fact." Having reviewed the testimony of all of the witnesses and watched the video, we have no hesitation in agreeing with her that only by improperly disregarding Ferguson's testimony could the ALJ have found "petitioner's actions and the 'intervening factors (i.e., losing his footing, [A.C.] dropping his weight and tables/chairs sliding)' — all things testimony had shown to proscribe against the use of physical holds" — not as examples of recklessness and careless disregard for safety, but as the absence thereof.

That conclusion is reinforced when considering the testimony of the other medical security officers the ALJ specifically found was credible. One of those officers testified that after petitioner put A.C. into a hold A.C. "went down and lay on the table," and the other testified A.C.'s body hit the table but

not his head. That officer also testified A.C. did not walk down the stairs to the gym floor "on his own power. He dropped his weight," meaning "it would appear as if he's being dragged, but he wouldn't put his — he wouldn't put his feet down." As A.C. didn't walk down the steps and petitioner didn't carry him, we agree with the Director that the ALJ's description of "a person being 'pulled' backwards down steps as not being 'dragged,'" (a statutory example of abuse), "so contorted of its common usage as to be incredible."

The Legislature has declared "[t]he safety of individuals with developmental disabilities receiving care from State-operated facilities" to "be of paramount concern." N.J.S.A. 30:6D-73(b). It established the Central Registry "to prevent caregivers who become offenders against individuals with developmental disabilities" from working with such individuals in the future. N.J.S.A. 30:6D-73(d). We are satisfied the record contains substantial evidence to support the Director's decision that the Department established by a preponderance of the evidence that petitioner committed an act of physical abuse against A.C. and did so intentionally, recklessly or with careless disregard to A.C.'s well-being and thus, petitioner's placement on the Central Registry was appropriate. See In re Herrmann, 192 N.J. 19, 28 (2007).



Because no "State-operated, licensed, contracted or regulated" facility may "employ or maintain the employment of a person who is placed on the Central Registry," N.J.A.C. 10:44D-1.1(b), we are satisfied the decision of the Civil Service Commission determining petitioner's removal by Ann Klein was justified in accordance with the decision of the Director of the Office of Program Integrity and Accountability, must likewise be affirmed.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION