STATE OF NEW JERSEY

In the Matter of Raymond Powell
Jackson Township

CSC DKT. NO. 2014-509
OAL DKT. NO. CSV 14466-14
(ON REMAND CSV 1211-13)

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: APRIL 1, 2015 BW

The appeal of Raymond Powell, Code Enforcement Officer, Jackson Township, removal effective July 22, 2013, on charges, was heard by Acting Director and Chief Administrative Law Judge Laura Sanders, who rendered her initial decision on March 9, 2015. Exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on April 1, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Raymond Powell.

Re: Raymond Powell

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
APRIL 1, 2015

Robert M. Czech

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 14466-14
AGENCY DKT. NO. 2014-509
(ON REMAND CSV 12711-13)

IN THE MATTER OF RAYMOND C. POWELL,
JACKSON TOWNSHIP.

Raymond C. Powell, appellant, pro se

Robert A. Greitz, Esq., for respondent, Jackson Township (Citta, Holzapfel & Zebarsky, attorneys)

Record Closed: February 4, 2015 Decided: March 9, 2015

BEFORE **LAURA SANDERS**, Acting Director & Chief ALJ:

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Appellant Raymond C. Powell appeals the action by Jackson Township terminating him from his position as code enforcement officer effective July 22, 2013. He contends he is innocent of the charges brought against him.

Originally filed as OAL Docket No. CSV 12711-13, the matter was heard by Administrative Law Judge Linda Kassekert, who rendered an Initial Decision on September 17, 2014. ALJ Kassekert determined that a thirty-day suspension was

warranted in relation to sexual-harassment charges involving a realtor, having earlier determined by summary decision that charges related to a coworker, Debra Borbotko, already had been addressed by a five-day suspension. In a decision issued November 6, 2014, the Civil Service Commission remanded the matter to the Office of Administrative Law (OAL) "so that testimony and/or documentation" regarding sexual-harassment claims predating May 12, 2012, "but which do not include the incident for which the appellant received a five-day suspension, can be presented." It was filed on November 7, 2014, and heard on February 4, 2015. The record then closed.

FACTUAL DISCUSSION

The entire factual record from OAL Docket No. CSV 12711-13 is incorporated in this decision, although not repeated here. The parties agreed that the incidents for which Powell received the five-day suspension occurred in July 2006. Therefore, the allegations in this remand concern the period after July 2006 and September 2011, when Borbotko, who also worked as a Township housing inspector, filed a tort claim notice that alleged various acts of sexual harassment by Powell. Since 2011, Borbotko has divorced and remarried, and is now known as Debra Lilley.

Lilley testified that she fought long and hard to get the promotion from clerk to housing inspector in 2005. She felt she deserved the position in 2001 but had been unfairly deprived. On receiving the promotion, she was trained by Powell for about four days, the training having been cut short by the untimely death of her stepson. She said that until the promotion, she and Powell had a normal, friendly working relationship, but after the promotion, he took the attitude that he was her boss and became bullying. She said that with the death of her stepson, her ex-husband became too depressed to work, and she alleged that Powell's overall bullying attitude toward her was an attempt to take "the only little bit of happiness in my life" and turn it into misery. She testified that any time something positive happened to her on the job, Powell's behavior toward her would become difficult.

Her account of the incident that led to the five-day suspension differs from Powell's. She said that Powell first leaned over her computer as if he was trying to see

something, then demanded that she give him a kiss. As she stood up to move away from him, he grabbed her rear. She said she told him no, then escaped to the bathroom to recover her composure, as he had never done anything like that and she was in shock. She said she thought something similar happened in 2006 but could not remember because she has tried to put all this behind her. All told, she guessed that he tried to get her to kiss him three or four times between 2005 and 2009. The last incident occurred sometime in 2009–2010, when she went to get supplies from the closet first thing in the morning. Powell entered behind her and closed the door. As soon as she saw that, she turned, put a fist in his face and told him if he did it again, she would knock him out. As soon as she left the closet she saw a coworker, Dennis O'Brien, standing three to four feet away with papers in his hand. He engaged her in a conversation about Township business, which Powell shortly joined, then they all went their separate ways. However, Powell made another attempt, and she yelled at him, which O'Brien overheard. When he asked what happened, she told him, and he reported it to John Grillo, her supervisor. After that time, the attempts at touching stopped. On that particular day, she did not recall Powell demanding a kiss. Rather, she said, she just knew what was coming and therefore acted rapidly to escape the situation. She said she could tell by the look on his face, and his "bug eyes." (The latter apparently was a reference to the fact that Powell wears very thick lenses, which make his eyes look enlarged.) She stated that the day before she had gotten a big pat on the back from her boss for something she had done, and attributed Powell's following her to an attempt to put her in her place professionally.

Lilley also testified to an earlier incident in which Powell called her to a new house to show her some code-change issues. As there were cars parked in the drive, she expected other people to be there, but he was alone in the house. He motioned to her to go over by the sink area and to look down into the hole where the sink would be placed. As she did so, he grabbed her, turning her toward him, demanding that she give him a kiss. She had to fight to get free of him. On another occasion sometime in 2008–2009, they were both at a Wawa store purchasing coffee, and as she got into her car he leaned in, grabbed her shoulder, and tried to pull her toward him for a kiss. A similar incident occurred at a different Wawa on another date. In both instances, she rolled up the window to put a stop to it.

Lilley said she did complain to Grillo, as well as to Dennis O'Brien and to a third, more senior inspector who has since passed away. She maintained that Grillo told Township administrators about the situation, but they did nothing. (Grillo retired at the end of 2011.) (R-2.) Others in the code enforcement bureau in general, however, would try to avoid sending her alone on assignments with Powell. Later, asked if she originally contemplated a sexual discrimination suit, she said that when her lawyer began to ask her questions, she broke down, adding that this was the first time she told anyone all of what was going on.

On cross-examination, Lilley acknowledged that she never did receive more than four days of training in her position, and that her former stepdaughter, who now lives in Florida, called the Township, very drunk, on two occasions, with the allegation that the harassment story was a scam, created for the purpose of getting money. Lilley explained that because of the lawsuit, her marriage was dissolving, so her stepdaughter went on her father's side, and called up drunk, attacking her. The step-daughter did not identify herself to the police, but when Lilley listened to the tape, she recognized who it was, and the Jackson Township police made arrangements for the police in Florida to visit the stepdaughter and ask her to cease calling.

She and Powell gave differing accounts of a number of events. He said he brought in a leather motorcycle jacket, which she asked to take. She said he was asking everyone if they wanted it, and after it hung at the office for several months, another employee said it had to go, and she finally took it. He said he came to the office, announced that his wife had decided they should get healthy, and asked if anyone had bicycles they would like to sell. She said she had two he could have, and she let him have them for free. She testified that Powell came to a yard sale at her house, during which her ex-husband agreed to give the bicycles to him. Powell wanted to know why she called him to bring her gasoline when her motorcycle ran out of it on the way to work; she said a coworker called him while she called John (Grillo). They did agree that it was Powell who showed up with the gasoline. Powell inquired why she visited him at home during his knee surgery; she denied doing so, then, faced with a written statement from a coworker saying the two had gone to his home together but the

coworker could not remember why or when, she said she may have visited his home if she knew his wife would be there, then finally said she did not remember. He asked her if she remembered the thirty or forty times that they met for coffee at Wawa; she said that various department personnel gathered there to consult before going on the road, and that she only met him if other people were present. He recalled warning her in 2010 that her long lunch hours with her car parked very visibly at home were not discreet, because she lived on a main road that not only he, but the mayor, used often. She said she did not remember that being a friendly warning; she maintained that the statement was made in a degrading way, and that it was not part of his job, nor did he have any right, to tell her when to take lunch. Both said they went to their immediate boss to complain about the other on that occasion. He asked her about accepting a free mobile home from a mobile home park she inspected; she said it was essentially uninhabitable, and she paid $500 for it. He asked her about accepting kitchen cabinets from an apartment complex she inspected; she said they were taken from the garbage. The parties stipulated that Lilley sent a lot of jokes on the office computer, and that Powell was one of many recipients on the email joke chain. She maintained that she stopped sending them later. She acknowledged sending him Christmas cards, but said she sent them to everyone. She also acknowledged giving her male colleagues a Christmas peck on the cheek, but denied voluntarily kissing Powell. She denied sitting next to him at a sexual-harassment seminar or joking with him about it; however, she said she did remember sitting with him and other members of the department at some kind of seminar. She remembered a sexual-harassment class, but said that occurred after her suit was filed.

They also had different recollections concerning the "alone in the house" inspection. The inspection report (A-2) shows one inspection by Powell on April 16, 2008, followed by five by Lilley between June 5, 2008, and June 24, 2008. Besides denying that the kissing incident occurred, Powell said he was called to the house on June 5, 2008, because their superior was unhappy with his prior inspection. He testified that when he showed Dennis O'Brien that he had written the many problems on the back of the application, which was typical, O'Brien demanded to know from Lilley why she had not pointed that out to him. Shown the inspection report, Lilley stated, "I don't remember it being this long; I had the actual paper when I went to court . . . I don't see

anywhere saying a realtor complained . . . a realtor complained about your inspection and complained about you. And that's when John called you out there" to go over things. She agreed with him that some of what was on the report was not something she normally would have put there, but rejected any notion that someone else, such as a plumbing inspector, had been at the home. She went on to say the report had been changed without her knowledge.

Denise Fluck, personnel manager, testified that the Township had an anti-sexual-harassment component of its Employee Handbook, which was disseminated in 2009, prior to the time she started in November. In April 2010 she was responsible for compiling and disseminating the addendum, which expands on the anti-harassment language of the earlier handbook. (R-1.) Fluck said she did witness the original round of Township employee interviews conducted by outside counsel, and said that at the time she believed Powell. The report of July 2013, which referred to Lilley's deposition, was the first time Fluck saw the specifics of Lilley's allegations.

Raymond Powell testified on his own behalf. He noted that he was never deposed, and that this was the only occasion on which he had ever been offered an opportunity to speak about what occurred, as the Township's departmental hearing was minimal. He said he has never sexually harassed anyone, and that he long believed that he and Lilley had a good relationship. He also asked why, if as alleged, realtors had complained and she had complained, his personnel file contained no evidence of such complaints. He also wondered why Lilley and another Township employee, Robin Staley, visited him at his home during his knee surgery if he was someone victimizing women.[1] He also offered an email from a female employee in the department complaining about Lilley's work ethic and generally supporting Powell. (A-6.) Powell categorically denied the existence of the alone-in-the-house kissing attempt, but said he admitted to the mutual tapping on the rear in 2005 because he realized he had done something wrong, and believes that he should take responsibility when he errs. He alleged that Lilley's daughter was employed by one of the realtors who complained. He

[1] Powell subpoenaed Staley, who sent a letter explaining why she would not be available, and provided a notarized statement saying that she "went with Debbie to Ray's house because of [another employee]. I don't remember why and when it was." (A-5.)

poignantly expressed his sadness about the effect of the accusations on his wife and about a situation in which a person's career can be ruined because someone else is in need of funds to start over after a divorce.

Neither Lilley nor Powell were particularly good witnesses. Lilley was wrong about the timing of the Township's sexual harassment policy; both the 2009 and the 2010 versions predated her complaint, as did the seminar (see Township closing arguments). She did not deny Powell's allegation that she was taking over-long lunches on Township time; rather, she challenged his right to raise the issue. She also made clear that she was still angry over her failure to get a promotion before 2005, and came across as defensive about her professional skills, possibly due to the admitted lack of on-the-job training when she started, and the fact that her deposition states that as of May 14, 2013, she did not have an inspector license from the State of New Jersey. (See Exhibit H, deposition, page 25, line 25, and page 26, lines 1–8; see also The Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-3(k), defining "multiple dwelling" units as including those with three or more units of dwelling space; N.J.A.C. 5:10-1B.2(a) et seq., requiring staffing of inspection agencies by individuals who possess the appropriate licenses.) There was also some back-and-forth sniping on money, which raised the inference that she was not entirely happy with her pay. Her own statements about telling people are inconsistent internally—on one hand, she testified that she told her superiors about the harassment, but the Township administration did nothing. On the other, she testified that she never told anyone about all of what was happening until she met with her lawyer. The "bug-eye" crack underlined the fact that she does not like Powell, but its smallness and the fact that her stepdaughter was calling the Township with ugly allegations are of concern. Additionally, even assuming the truth of her statements—that the apartment complex planned to throw out the kitchen cabinets, and that she paid $500 to the mobile home park, meaning the cost of the transaction was the same as for the public at large—the fact that she was the inspector creates a troubling inference.

Powell does have an overbearing side that was occasionally on view. He admitted behaving inappropriately at work in 2005, and ALJ Kassekert's Initial Decision specifically noted that she found his comment that the realtor was "not his type" was

cavalier and suggested that if she had been, flirtatious behavior would have been appropriate. In this hearing, Powell said that Lilley was not that attractive, and if he wanted to kiss someone, he could kiss his wife, who is much prettier. He also described joking around about the sexual-harassment seminar. Both of these remarks can be taken as indicators that even now, he fails to appreciate the seriousness of the subject. On the other hand, the leather jacket, the gasoline, the office email, the Christmas cards, the coffee, and the home-visit descriptions were credible, and raise the question of why someone being seriously harassed would do those things.

Because neither testimony was strongly persuasive, the documentary evidence also was examined. The June 4, 2012, report by the Township's independent counsel, Kevin Starkey, reviewed three complaints. (R-2.) On one, his supervisor had determined no action was warranted. On a second, the supervisor decided that Powell had exercised poor judgment in showing up very early to investigate a complaint and not properly announcing himself to a tenant, but that it did not merit action. The third complaint, made by a real-estate agent was evaluated more carefully. She alleged that he had intentionally brushed against her breast, but the attorney felt that her lack of specifics, and some inconsistent statements on what she could remember, caused the complaint to lack enough specifics to make it actionable. (Ibid.) The same report did note that in 2011, Grillo recalled Lilley complaining that Powell had "pinned her in a truck" and was following her around. (Ibid.) At that time, Grillo separated the work spaces of Powell and Lilley. O'Brien also told the attorney that in 2011, Lilley had complained about Powell driving past her residence. (Ibid.)

Aside from the testimony of Powell, Lilley, and Fluck, virtually all of the evidence is hearsay. The fact that all of the incidents occurred while they were alone works both ways—neither has a witness for backup. However, looking at all of the evidence together, I am persuaded that a preponderance of the evidence demonstrates that Powell had a pattern of unwise behavior around women, which more likely than not included touching Lilley inappropriately on three occasions after 2005.

LEGAL ANALYSIS AND CONCLUSION

As ALJ Kassekert pointed out, sexual harassment falls within the kinds of behavior encompassed in the elastic definition of conduct unbecoming. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). Therefore, I **CONCLUDE** that the Township has met its burden of proving that Powell's conduct toward Lilley on at least three occasions constituted conduct unbecoming. It also falls within the definition of other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12), because it violated the Township's policies against sexual harassment, as laid out in the Employee Handbook distributed in 2009, and the addendum issued in 2010.

Progressive discipline is the general rule for civil service cases. W. New York v. Bock, 38 N.J. 500 (1962). Nonetheless, it is not a fixed and immutable rule to be followed without question. Carter v. Bordentown, 191 N.J. 474, 484 (2007). Some infractions are serious enough on their own to warrant termination. In re Herrmann, 192 N.J. 19, 33 (2007).

Here, ALJ Kassekert had recommended imposing a thirty-day penalty in relation to the Trembow harassment incident, which was a significant leap from the five-day suspension for the 2005 incident, but apparently took into account the fact that Powell is sixty-three years old, has a fairly lengthy work history with the Township, and prior to all this had no disciplinary history at all. Here, the implication is that Powell not only touched Lilley inappropriately, he had a habit of exercising poor judgment in situations involving women. A feature of the housing inspector's position is that he or she has the authority to pass or fail a house, which can cause the owner and potential buyers considerable financial difficulty. It is thus a position involving the exercise of the Township's authority. Additionally, it is a position that takes the public official into private homes, frequently with just the inspector and one other person present. The lonely nature of such inspections renders it even more important that the inspector conduct himself or herself cautiously and circumspectly. Therefore, given the important public trust involved, the nature of the position, and the preponderance of evidence

demonstrating inappropriate conduct with more than one woman, and on more than one occasion, I **CONCLUDE** that termination is appropriate.

ORDER

The Township's action terminating appellant is hereby **AFFIRMED** and his appeal **DISMISSED** with **PREJUDICE**.

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.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 9, 2015
DATE

Laura Sanders
LAURA SANDERS
Acting Director and Chief
Administrative Law Judge

Date Received at Agency: March 9, 2015

Date Mailed to Parties: 3-10-15

/caa

WITNESSES

For Appellant:

Raymond Powell

For Respondent:

Debra Lilley
Denise Fluck

EXHIBITS

For Appellant, Raymond Powell:

A-1 Negotiated Settlement Agreement and General Release signed January 28, 2014
A-2 Property Maintenance Manage Inspection for 25 Laurel Avenue, Jackson, printed September 26, 2011
A-3 Letter from Frank S. Gaudio, Esq., to Kevin Starkey, Esq., dated May 29, 2012
A-4 Affidavit of Denise Fluck
A-5 Letter from Robin Staley, dated January 29, 2015
A-6 Email from Christie McDonald to Denise Fluck dated June 7, 2012

For Respondent, Jackson Township:

R-1 Jackson Township Employee Handbook and Addendum
R-2 Report to Mayor Michael Reina from Kevin Starkey, Esq., dated June 4, 2012
R-3 Report to Joe Torres, municipal administrator, from Kevin Starkey, Esq., dated July 19, 2013
R-4 Memorandum to Raymond Powell from Jose "Joey" Torres, dated July 9, 2012, regarding departmental hearing decision on disciplinary action

A-3

STATE OF NEW JERSEY

In the Matter of Raymond Powell

DECISION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-509
OAL Docket No. CSV 12711-13

ISSUED: NOV 06 2014 (SLK)

The appeal of Raymond Powell, a Code Enforcement Officer with Jackson Township (Township), of his removal, effective July 22, 2013, on charges, was heard by Administrative Law Judge Linda M. Kassekert (ALJ), who rendered her initial decision on September 17, 2014. Exceptions were filed on behalf of the appointing authority and cross exceptions were filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on October 22, 2014, ordered that the matter be remanded to the Office of Administrative Law (OAL).

DISCUSSION

The appellant was removed on charges of conduct unbecoming a public employee and other sufficient cause. Specifically, it was asserted that the appellant had multiple incidents of alleged sexual harassment from 2005 through 2012. Upon the appellant's appeal to the Commission, the matter was transmitted to the OAL for a hearing as a contested case.

At the OAL, the appellant filed a Motion for Summary Decision requesting dismissal of the charges, based, in pertinent part, on the doctrine of *res judicata*. Specifically, the appellant indicated that he served a five-day suspension without pay from July 18-24, 2012, on sustained charges of "[m]ultiple incidents of alleged sexual harassment as set forth in the complaint dated October 2011, and additional

alleged incidents up to May 16, 2012." These allegations involved sexual harassment of a co-worker, Debbie Borbotko, a Code Enforcement Officer.[1] Thereafter, the appointing authority received additional allegations of sexual harassment made by Pamela Trembow, a realtor, against the appellant in an email dated August 8, 2012. Following the receipt of Trembow's complaint, the appointing authority had the opportunity to depose Borbotko. As a result of this deposition and Trembow's complaint, the appointing authority issued the Preliminary Notice of Disciplinary Action (PNDA) that is the subject of this appeal on July 22, 2013 charging the appellant with "incidents of alleged sexual harassment beginning in 2005 and incidents up through 2012." On May 6, 2014, the ALJ granted in part the appellant's motion for summary decision based on the fact that the appellant was previously charged with multiple incidents of sexual harassment up to May 16, 2012 and had received a five-day suspension. Specifically, the ALJ held that the doctrine of *res judicata* applied to claims against the appellant which predated May 16, 2012, essentially prohibiting the appointing authority from proceeding based upon information obtained from Borbotko during her deposition. As a result, the ALJ determined that "only incidents that occurred after May 16, 2012" were at issue in the instant matter, specifically, the allegations of sexual harassment made by Trembow.

Trembow testified that she first interacted with the appellant in 2005 or 2006 and thought that appellant was nice, talkative, and social, but as time went on, his questions became more personal and started to make her uncomfortable. Specifically, in 2008 after going through a divorce, she stated that the appellant would ask her if she was "dating" and compliment her on what she was wearing. In 2009, Trembow recalled an incident where appellant hugged her and asked if she was "getting her needs satisfied" or "satisfying herself." Thereafter, Trembow maintained that she started to bring her father to the inspections because she did not want another uncomfortable interaction to happen again and she was also concerned because the appellant could fail her house inspections. Trembow claimed that at one point appellant said, "Let's see what we can find wrong." Trembow believed that the appellant started to look harder to fail her houses and she stated that she would have "knots" in her stomach waiting to see which inspector would pull up at her house inspections. Trembow indicated that there were no other incidents involving the appellant since 2009.

The appellant testified that his relationship with Trembow was professional, that she mentioned her divorce during conversations and stated that she was "looking for a boyfriend." The appellant did not recall speaking with Trembow about her looking for a boyfriend and testified that she was "not his type." The

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[1] The Commission notes that Ms. Borbotko, who had filed a civil complaint against the Township for sexual harassment and discrimination in April 2012, did not provide the appointing authority with a statement prior to the June 15, 2012 hearing where it issued the five day suspension to the appellant, on the advice of counsel.

appellant stated that he believed Trembow wanted Borbotko to perform her inspections because he was a more thorough inspector who had a higher failure rate. The appellant claimed that he never made comments about her appearance and that he never asked her about dating or had any sexual conversation. Appellant represented that he did not think that he made her uncomfortable and that the first time he learned that she had a problem with him was at his dismissal hearing.

The ALJ determined that Trembow's testimony was credible and that the appellant's statement that Trembow was "not his type" was cavalier, and suggested that if she were his type such behavior would have been appropriate. As a result, the ALJ found the appellant's credibility in this matter to be lacking. Based on the foregoing, the ALJ sustained the charge of conduct unbecoming of a public employee. However, the ALJ determined that the appointing authority did not sustain the charge of other sufficient cause as there were no specifications in support of that charge. Since the appellant's prior disciplinary record only consisted of a five-day suspension in July 2012, the ALJ recommended modifying the removal to a 30 working day suspension.

In its exceptions, the appointing authority states that a single incident of sexual harassment is sufficient to warrant removal. In *In Matter of Brian Brown*, (MSB decided July 12, 1999), the former Merit Systems Board upheld the termination of an employee who had inappropriately touched an outside vendor on a single occasion. It asserts that, like *Brown*, the appellant's conduct is so severe and outrageous that the only appropriate result is termination. The appointing authority presents that the appellant had previously been disciplined for sexual harassment and maintains that his conduct towards Trembrow was even more egregious as this situation involved a member of the public seeking to do business with the Township. It argues that the respect of the public is paramount to the operation of government and that respect is destroyed when one of its employees sexually harasses a member of the public. In *In the Matter of Kennth J. Czarnecki, Middlesex County Board of Social Services* (CSC, decided May 21, 2014), an employee was removed for making racial and ethnic based comments toward clients and acting unprofessionally toward clients. The appointing authority asserts that the current situation is similar to *Czarnecki* as the appellant's conduct was extreme and involved a member of the public. As such, the appointing authority argues that the fact that appellant only had one prior discipline for sexual harassment should not have prevented his termination.

The appointing authority also argues that the ALJ erred when she granted partial summary decision to the appellant on the grounds of *res judicata* and that the appointing authority should be allowed to present information in Borbotko's deposition relating to incidents that predate May 12, 2012. The appointing authority maintains that the doctrine of *res judicata* is inapplicable as the acts complained of are not the same, the witnesses are different, and the material facts

alleged are not the same. It states that the first disciplinary hearing that was held on June 15, 2012 that led to the appellant's five-day suspension was based solely on the appellant's admission, who was the only witness, to mutual flirtation and touching Borbotko's "rear." The appointing authority provides that the evidence obtained from Borbotko's May 14, 2013 deposition and the August 2012 complaint by Trembow did not exist at the time of the appellant's June 15, 2012 hearing. Further, it represents that the subject matter of the August 14, 2013 hearing which led to the appellant's removal dealt specifically with Borbotko's sworn testimony regarding the appellant's sexual harassment of Borbotko as well as the information provided by Trembow. The appointing authority asserts that while the charges for the two PNDAs were the same, the evidence presented in support of each disciplinary action and the incidents forming the basis for the charges were completely different. Therefore, the doctrine of *res judicata* was inapplicable and appellant's application for summary decision should have been denied.

In his cross exceptions, the appellant argues that the ALJ erred in her failure to award attorney fees to the appellant as he was the prevailing party.[2] The appellant presents that *N.J.A.C.* 4A:2-2.12(a) provides for the award of partial or full counsel fees when an employee "has prevailed on all or substantially all of the primary issues." Appellant notes that the ALJ dismissed the charge of other sufficient cause and also significantly reduced the penalty for conduct unbecoming of a public employee from termination to a 30 day suspension.

Upon its *de novo* review, the Commission finds that the initial decision is unclear and contains insufficient information for it to make a reasoned and informed decision. In the summary judgement decision, the ALJ determined that since the appellant had already received a five-day suspension based on allegations of sexual harassment by Borbotko, "only incidents that occurred after May 16, 2012" were to be addressed in the instant appeal. However, the initial decision addressed and the ALJ sustained the charges of conduct unbecoming a public employee based on the allegations made by Trembow in her August 8, 2012 e-mail regarding incidents involving her that ended in 2009. Therefore, it is unclear why the ALJ granted partial summary decision that excluded "incidents" prior to May 16, 2012 but sustained the charge of conduct unbecoming a public employee based on incidents involving Trembow that clearly occurred prior to May 16, 2012. Further, the first departmental hearing held on June 15, 2012, leading to the appellant's

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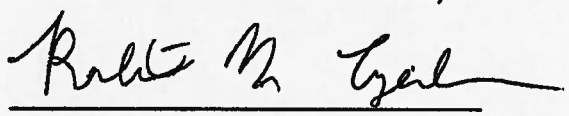
[2] As the ALJ sustained the charge against the appellant of conduct unbecoming a public employee, he was not a prevailing party on substantially all of the primary issues in his appeal. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. *See Johnny Walcott v. City of Plainfield,* 282 *N.J. Super.* 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel,* Docket No. A-1489-02T2 (App. Div., March 18, 2004). However, since this matter is being remanded for further proceedings, the matter of counsel fees is premature.

five-day suspension, was based solely on the appellant's testimony. However, the second departmental hearing on August 14, 2013 which led to the appointing authority's decision to remove the appellant was based on both Borbotko's deposition that she was sexually harassed as well as the information provided by Trembow. As such, the evidence presented in support of each disciplinary action and the incidents forming the basis for the charges were completely different. In this regard, the appellant's first disciplinary matter could not have considered any evidence provided by Borbotko as it was not available at that time. Therefore, the Commission orders that this matter be remanded to the OAL in order to clarify these matters and to allow for further proceedings so that testimony and/or documentation regarding Borbotko's claims that predate May 12, 2012, but which do not include the incident for which the appellant received a five-day suspension, can be presented.

ORDER

The Commission orders that this matter be remanded to the OAL for clarification and further proceedings as set forth above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22nd DAY OF OCTOBER, 2014



Robert M. Czech
Chairperson
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Henry Maurer
Director
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Written Record Appeals Unit
P.O. Box 312
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 12711-13
AGENCY DKT. NO. 201-509

IN THE MATTER OF RAYMOND POWELL, JACKSON TOWNSHIP.

William Martin, Esq., for appellant Raymond Powell (Martin, Gunn & Martin, attorneys)

Robert A. Greitz, Esq., for respondent Jackson Township (Citta, Holzapfel & Zabarsky, attorneys)

Record Closed: August 4, 2014 Decided: September 17, 2014

BEFORE **LINDA M. KASSEKERT**, ALJ:

STATEMENT OF THE CASE

Appellant, Raymond Powell, appeals his removal from employment effective July 22, 2013, by respondent, Jackson Township Department of Community Development, Code Enforcement (Jackson Township). The respondent contends that the appellant was removed for conduct unbecoming a public employee and other sufficient cause.

PROCEDURAL HISTORY

Appellant served as a code enforcement officer for Jackson Township. On July 22, 2013, respondent filed a Preliminary Notice of Disciplinary Action (PNDA) charging appellant with violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, alleging that there were incidents of alleged sexual harassment from 2005 through 2012, and seeking the appellant's removal, effective July 22, 2013. A departmental hearing was held on August 14, 2013, where the charges were sustained. A Final Notice of Disciplinary Action (FNDA) was issued on August 15, 2013, removing the appellant from his position. Appellant filed a timely appeal of this action, which was transmitted to the Office of Administrative Law for determination as a contested case on September 5, 2013. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The appellant filed a motion for summary decision and for dismissal of the charges on January 6, 2014. On May 6, 2014, the undersigned granted this motion in part and denied it in part, based on the fact that appellant previously served a five-day suspension without pay from July 18–24, 2012, on sustained charges of "[m]ultiple incidents of alleged sexual harassment as set forth in the complaint dated October 2011, and additional alleged incidents up to May 16, 2012." As a result, only incidents that occurred after May 16, 2012, are at issue in this decision, specifically, the allegations made by Pamela Trembow in an email to the Township dated August 8, 2012.

On July 7, 2014, the appellant filed a Motion in Limine to Bar Testimony of Pamela Trembow. This motion was denied orally at the hearing, which was held on July 11, 2014. Following the hearing, the parties were granted time to file posthearing submissions. Upon receipt of the parties' submissions and review of same, the record closed on August 4, 2014.

TESTIMONY

For Respondent

Pamela Trembow

Ms. Trembow has worked for RE/MAX realty in Howell for the last two years. Prior to that she worked for Century 21 for four years. She is a licensed realtor and handles listings, working with buyers, inspections and certificates of occupancy. She worked with the two inspectors in Jackson, the appellant and Debbie Borbotko. Her first interaction with the appellant was in 2005 or 2006. The appellant would inspect houses that she was selling. Approximately 80 percent of the time it was just the appellant and her at the inspection. When she first met him she thought he was very nice. He was talkative and social. However, as time went on, his questions became more personal and he started to make her feel uncomfortable. In 2008 she was going through a divorce, and this often came up in their conversation. He would ask her if she were "dating" and would compliment her on what she was wearing. She recalled an inspection in the beginning of 2009, around the time her divorce became final. At this time he hugged her and asked her if she were "getting her needs satisfied" or if she were "satisfying herself." After this occurred, she started bringing her father, a former marine, with her to the inspections. She did not want to cause a scene, but did not want an uncomfortable interaction to happen again. She was concerned because he could fail the house inspection. At one point he told her, "Let's see what we can find wrong." She began to think he was looking harder to fail her houses. She stated that after the incident, she would have "knots in her stomach" while she waited to see which inspector would pull up at her house inspections. Since 2009 there have been no other incidents involving the appellant.

Ms. Trembow learned that there had been other complaints about the appellant by another real estate agent. On August 8, 2012, she wrote an email to Jackson

Township officials, including Denise Fluck, Jackson Township's personnel director. The email stated[1]:

> Dear Denise, Dennis, and anyone else whom it may concern:
>
> I am writing this email to serve as an official complaint against Jackson Township housing inspector Ray Powell.
>
> I have been a licensed Realtor in Monmouth and Ocean County for the past 8 years. During the course of that time I have had the privilege of selling many homes in Jackson as it is the primary market of my business. I have also had the responsibility of obtaining dozens CCO's for my clients as I specialize in adult community homes and the majority of my sellers have either moved to assisted living or have passed away.
>
> While obtaining many CCO's I have had the unpleasant experience of having Ray Powell as my inspector. Going back at least 5 years, on many occasions when Ray would be the inspector on one of my vacant listings his behavior was not only crude and inappropriate, but intimidating as well. Ray would typically ask personal questions that would increase in an intimate nature as the inspection would go on. He has on several occasions, which increased after he found out I had gotten divorced, has asked me "if I were dating," "if I was lonely," "if I was getting my physical needs met," "if I was taking care of my own physical needs" or "if I was able to find someone to satisfy me" . . . he has also hugged me without asking and completely against my will more than once and he would rub his hand on my back and my butt.
>
> Whenever I would tell him his questions were none of his business or protest in any way then all of a sudden he would find some obscure item to fail me or threaten to fail me on. But on the contrary, if I didn't complain he would pass me, and has passed me even when items did not meet code more than once.
>
> It got to the point where I was so stressed about him doing my inspections that about 3 years ago I started having my father, who is a retired marine and Jackson resident,

[1]All excerpts of memos, letters and other documents have been typed verbatim into this decision. It should be assumed that any typographical, grammatical and spelling errors are the products of the respective authors of these materials. Therefore, terms such as sic have not been utilized.

> accompany me on all my inspections where the house was vacant just in case Ray was the inspector.
>
> I thought many times over the years of filing a complaint. But I am ashamed to admit my fear of retribution has always prevented me. Now, given that others were more brave than I and documented complaints, I realize I must come forward so you understand that this is a widespread problem. Ray Powell is a predator, and the worst kind because he is using the power given to him by the taxpayers of Jackson Township to gain access to and intimidate his victims.
>
> It would be in the best interest of Jackson Township for Ray Powell to be removed from his position permanently. He is a legal and moral liability that Jackson Township cannot afford.
>
> Until Ray is permanently removed from employment, I am requesting that Debbie be assigned to all my inspections moving forward.
>
> Please confirm receipt of this email and that Debbie will be assigned to all my inspections moving forward.
>
> Also, if you need me to come in and give a formal statement, I will be able to do that.
>
> [R-2.]

Ms. Trembow was asked why she waited until 2012 to tell the Township of her concerns, and she stated that she had been afraid of retribution.

On cross-examination, Ms. Trembow was asked if the appellant had passed her on the inspection the day he stated to her, "Let's see what we can find," and she said that he had. She was asked if she recalled being deposed in this matter on February 27, 2013, (A-3) and stating that she had not had inappropriate contact with appellant since 2007. She stated that she did not recall. She stated that there were no inappropriate comments to her by the appellant when the homeowners were present or when her father was there, only when she was alone with him. She told her father that she felt "uncomfortable," but did not provide details. She did not say anything to the appellant. She was asked if she recalled an interview with a Mr. Starkey where Ms.

Fluck was present, and she stated that she did not recall his name. She could not recall the appellant failing her on an inspection. She also stated that it was helpful when her father accompanied her on inspections because he was "handy" and could fix problems so that the house would pass inspection.

Ms. Trembow's testimony was credible and I **FIND** as **FACT** that the appellant made these statements to her.

For Appellant

William Powell

The appellant is sixty-three years old. He was employed by Jackson Township as a housing inspector. Later he was promoted to building inspector and held both titles. Because of a downturn in the economy, he was not laid off, but returned to the title of housing inspector, losing approximately $10,000 a year in salary. At the time of his termination, he was in the title of code enforcement officer, earning approximately $45,000 per year.

The appellant first met Ms. Trembow during a house inspection. She was a realtor, and he was assigned to inspect the house. The assignments were made by the clerk and occurred randomly. Sometimes the homeowners were there, sometimes just the realtor, and sometimes both. He had a checklist of requirements for the inspection; he normally started in the kitchen, and then checked the bathrooms. He would look for leaks and check the outside, including the gutters and siding and the garage door opener, and check for broken glass.

The appellant stated that his relationship with Ms. Trembow was professional; she was the real estate agent, and he was the inspector. He did not think that he made her uncomfortable. He would have conversations with her. She mentioned her divorce. He stated that he never made comments about her physical appearance. She told him she was "looking for a boyfriend." He never asked her about dating or had any sexual

conversations. The first he learned that she had a problem with him was at his dismissal hearing. He stated that he thought Ms. Trembow's father was accompanying her to the inspections to do repairs at the houses.

The appellant stated that he had one prior disciplinary action. He served a five-day suspension without pay in July 2012. After the suspension he was on sick leave for knee surgery starting on May 13, 2013; when he returned to work on July 22, 2013, he was terminated. He had no disciplinary actions from July 2012 until his termination.

On cross-examination, he stated that the July 2012 suspension was because of an allegation of sexual harassment by a coworker. He admitted at that time that he and Ms. Borbotko had joked around and that he patted her once on the butt.

The appellant stated that he had done ten to fifteen inspections with Ms. Trembow. When he failed one of her houses it was because something needed to be fixed, and her father often did the necessary repair right away. He said he never commented on what Ms. Trembow was wearing, and never hugged her. He never asked about satisfying her needs, and he has no idea why she would say this. He said that he could not recall talking to her about looking for a boyfriend, and he commented that she was "not his type." He believes that he was a more thorough inspector than Ms. Borbotko, and that is why Ms. Trembow did not like him and wanted Ms. Borbotko to do her inspections. Ms. Borbotko had a failure rate of 40 to 50 percent; his failure rate was 75 to 90 percent.

FINDINGS OF FACT

Based on the exhibits and testimony presented in this matter, the following is found as **FACT**:

1. On August 8, 2012, real estate agent Pamela Trembow sent respondent an email in which she made allegations about the appellant making inappropriate comments to her and hugging her when they were working together.

2. On July 22, 2013, respondent served petitioner with a PNDA. The PNDA charged the appellant with violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. The specification of charges states that the incidents giving rise to the charges and the dates on which they occurred were as follows:

> Incidents of alleged sexual harassment beginning in 2005 and incidents up through 2012.

The appellant was suspended immediately; was notified that if he so requested, a hearing would be held on the matter on July 31, 2013; and was notified that it was the respondent's intent to remove appellant from his position as a code enforcement officer, effective July 22, 2013.

3. On August 15, 2013, an FNDA was issued to the appellant sustaining the charges and removing him from his employment effective July 22, 2013.

LEGAL DISCUSSION

The Civil Service Act, N.J.S.A. 11A:1-1 et seq., governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Service Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act sets forth that State policy is to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). To carry out this policy, the Act authorizes the discipline (and termination) of public employees. N.J.S.A. 11A:2-6.

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 561 (1982).

The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro Bottling Co., 26 N.J. 263, 275 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Delaware, Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933).

The Township of Jackson charged the appellant with violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

Unbecoming Conduct

"Conduct unbecoming a public employee" is an elastic phrase which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police

Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

In this matter, appellant was charged with conduct unbecoming a public employee for "incidents of alleged sexual harassment beginning in 2005 and alleged incidents up through 2012." As a result of appellant's motion for summary decision and this tribunal's partial granting of the same, because the appellant had already been disciplined and suspended without pay for five working days in July 2012 for incidents up to May 16, 2012, only incidents that occurred after that date were considered as part of the matter at hand. Specifically, only the misconduct alleged by Ms. Trembow in her email to the Township of August 8, 2012, is at issue.

Appellant argues that the conduct alleged by Ms. Trembow never occurred, and that Ms. Trembow wrote the email alleging that the appellant sexually harassed her in order to have Ms. Borbotko assigned to be the inspector on her real-estate matters, because Ms. Borbotko was not as "thorough" as the appellant. He asserts that her motive was to give her the "opportunity to get her housing inspector of choice."

Appellant also argues that there were inconsistencies in Ms. Trembow's testimony. Having heard Ms. Trembow's testimony and had the opportunity to review the email in which she initially made the allegations against appellant, I reject this argument. Any inconsistencies noted by appellant are understandable given the length of time between the period during which the alleged conduct occurred, the date Ms. Trembow wrote the email, and the date of the hearing. The core of her allegations never changed. Appellant's categorical denial of the alleged misconduct involving Ms. Trembow is to be expected. However, his comment that Ms. Trembow was "not his type" was cavalier, and suggests that if she were his type such behavior would have been appropriate. As a result, I found his credibility in this matter to be lacking.

Accordingly, I **CONCLUDE** that respondent has proven by a preponderance of the credible evidence that the appellant's conduct in this instance constituted a violation of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee.

Since the appellant has not prevailed in this matter, I **CONCLUDE** that his petition for attorney's fees is not appropriate.

Other Sufficient Cause

In addition to the charges previously discussed, appellant was also charged with a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. There were no specifications as to how appellant violated this provision. No departmental policies or procedures were cited. Therefore, I **CONCLUDE** that respondent has failed to prove by a preponderance of the credible evidence that appellant's conduct in this instance constituted a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

PENALTY

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate regardless of the individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007). Rather it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished record. Ibid.

Appellant's prior discipline record consists of a a five-day suspension in July 2012 for the same offense. Although I have concluded that appellant's behavior constituted conduct unbecoming a public employee, I do not find that this conduct warrants dismissal. I do take into consideration the discipline appellant received in 2012 and the fact that it involved a similar offense. I **CONCLUDE** that major discipline

of a thirty-working-day suspension is appropriate under these circumstances, following the principles of progressive discipline under Bock.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the charge of conduct unbecoming a public employee is **SUSTAINED**. It is also hereby **ORDERED** that the charge of other sufficient cause is **DISMISSED**.

I hereby **MODIFY** the decision of the appointing authority and **ORDER** that the appellant be suspended for a period of thirty working days.

It is further **ORDERED** that thereafter appellant shall be reinstated to his position as a code enforcement officer with back pay, pension credit, service credit and all other emoluments, subject to appellant's fitness to perform the job duties. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned or that could have been earned by appellant during this period. Proof of income shall be submitted by or on behalf of the appellant to the appointing authority within thirty days of the issuance of this decision. Pursuant to N.J.A.C. 4A:2-2.10, the parties shall make a good-faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay.

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.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 17, 2014 Linda M Kassekert

DATE **LINDA M. KASSEKERT**, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/lam

WITNESSES

For Appellant:

Raymond Powell

For Respondent:

Pamela Trembow

EXHIBITS

For Appellant:

A-1 Email of Pamela Trembow

A-2 Handwritten notes of Denise Fluck re: Trembow interview

A-3 Deposition of Pamela Trembow, dated February 27, 2013

A-4 July 9, 2012, departmental hearing decision

A-5 Letter report of Investigator Starkey, dated July 19, 2013

A-6 July 22, 2013, Preliminary Notice of Disciplinary Action

A-7 August 15, 2013, Final Notice of Disciplinary Action

A-8 Pages 1, 61–63 of deposition of Kevin N. Starkey, dated April 29, 2013

For Respondent:

R-1 Preliminary Notice of Disciplinary Action, dated July 22, 2013

R-2 August 8, 2012, email from Pamela Trembow