

A-4



STATE OF NEW JERSEY

In the Matter of Terrance Harrison
Township of Clark, Department of
Public Safety

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2015-1175
OAL DKT. NO. CSV 14261-14

ISSUED: SEPTEMBER 16, 2015 BW

The appeal of Terrance Harrison, Police Officer, Township of Clark, Department of Public Safety, 20 working day suspension, on charges, was heard by Administrative Law Judge Kimberly A. Moss, who rendered her initial decision on August 19, 2015. No 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 September 16, 2015, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

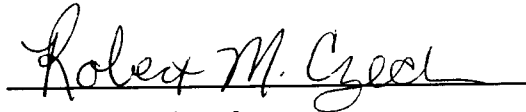
ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Terrance Harrison.

Re: Terrance Harrison

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
SEPTEMBER 16, 2015

A handwritten signature in black ink, reading "Robert M. Czech", written over a horizontal line.

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 14261-14

AGENCY DKT. NO. 2015-1175

**IN THE MATTER OF TERRANCE HARRISON,
TOWNSHIP OF CLARK DEPARTMENT OF
PUBLIC SAFETY.**

Anthony Iacullo, Esq., appearing for appellant Terrance Harrison (Iacullo Martino,
attorneys)

Joseph J. Triarsi, Esq., for respondent Township of Clark Department of Public
Safety

Record Closed: July 31, 2015

Decided: August 19, 2015

BEFORE KIMBERLY A. MOSS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Clark Police Department (CPD) suspended appellant Terrance Harrison (Harrison) for twenty days for fourteen counts of conduct unbecoming a public employee, fifteen counts of incompetency, six counts of insubordination and violations of CPD rules and regulations for inappropriately doing mobile data terminal (MDT) searches. Harrison appealed and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed on November 3, 2014, for hearing as a

contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A prehearing conference was held on February 24, 2015. The hearing was held on June 12, 2015. Closing briefs were filed on July 17, 2015, and July 31, 2015. I closed the record on July 31, 2015.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following uncontested **FACT**:

Harrison has been employed by CPD for seven years. The police car that he uses contains an MDT.

TESTIMONY

James Rapp

James Rapp (Rapp) has been employed by CPD for twenty-four years. He became a captain on June 24, 2014. He prepared the charges in the Preliminary Notice of Disciplinary Action to Harrison.

The Criminal Justice Information System (CJIS) is connected to the MDT's in police cars. The CJIS provides information to the MDT's. There is a protocol for using the MDT. A random or F-1 search can be done at any time. This search accesses vehicle information, if a vehicle is stolen, and if the owner of the vehicle has a suspended driver's license. An enhanced search, or F-5 search, is done if police action is to be taken or if the random search shows that there is a problem. It provides more information to the officer. The protocol is contained in the case of State v. Donis, 157 N.J. 44 (1998). The MDT protocol is taught at the police academy as well as being taught at police headquarters. Lieutenant Grady (Grady) and Sergeant Marman instructed Harrison in the protocol for using the MDT.

Rapp was contacted by Grady to investigate Harrison's use of the MDT. Between January 2014 and March 2014, Harrison did one hundred and fifty enhanced

searches with the MDT. During that same time Harrison did six random searches. Harrison issued two summonses for this period of time.

Harrison ran enhanced MDT searches of superior officers and the Mayor of Clark. The enhanced MDT search of the Mayor of Clark, Salvatore Bonaccorso's (Bonaccorso) license plate was done when the vehicle was at his house and Harrison was across the street. Harrison ran an enhanced MDT search of Grady's plate on January 12, 2014. This search was done in front of Grady's home. Harrison did an enhanced search of Lieutenant Concina's plate when the vehicle was parked behind police headquarters on January 19, 2014. Harrison stated that he did the search because he had seen the vehicle with its top off. Harrison ran a second enhanced search on Concina's plate on March 8, 2014, while the vehicle was behind CPD headquarters. Harrison stated that he saw the vehicle speeding a few days prior. Harrison ran an enhanced search on Patrolman DeAquino's plate on January 19, 2014. DeAquino's vehicle was parked in front of his home. Harrison stated that he wanted to make sure it was DeAquino's car and residence. On January 20, 2014, Harrison did an enhanced MDT search of Patrolman Pedro Oliveira's plate when Oliveria's vehicle was in front of Oliveira's residence. On January 26, 2014, Harrison did an enhanced MDT search on dispatcher John Deluca and Detective Walter Merfert's plates, both of which were parked in the CPD parking lot. Harrison stated that he did the searches to notify Deluca and Merfert that they needed to move their cars because the snow plows were outside. On January 26, 2014, and March 7, 2014, Harrison did enhanced MDT searches on Patrolman Keith Meehan's plate. On February 21, 2014 Harrison did an enhanced MDT search on the plate of William Shackleton. William Shackleton's vehicle is driven by his son CPD Officer Kevin Shackleton. On March 1, 2014, Harrison did an enhanced MDT search of Patrolman Ricardo Oliveira's plate, which was parked adjacent to CPD headquarters. On January 20, 2014, Harrison did an enhanced MDT search of Union County Police Lieutenant Sal Bove's plate. This was done near Bove's home. Harrison knew Bove. The only instance where the enhanced search may have been appropriate is when Harrison saw the car that he had previously seen speeding.

Harrison did an advanced search of thirteen police officers or public officials. He did not do a random search on any of the thirteen. None of the thirteen received a

ticket. CPD has community caretaking duties. Those duties do not include doing enhanced MDT searches of plates without cause. If an officer sees a vehicle that he has not seen in the neighborhood before, he can do an enhanced search.

An enhanced search can be done if a motor vehicle violation is observed. An officer does not have to call CPD to inform them that he is doing an enhanced search. An officer does not have to write a report when he does an enhanced search.

Terrance Harrison

Harrison attended the police academy for five months. He also received training once he became employed by CPD. A random MDT search can be done at any time. An enhanced search can be done when there is a motor vehicle violation; the officer has reasonable suspicion of a violation; or in a community caretaking function, such as a car alarm going off.

Harrison gave a statement to CPD in May 2014 regarding enhanced searches. He did not recall every vehicle on which he did an enhanced MDT search. He does not do a random search before he does an enhanced search. He does not usually do random searches. He normally does enhanced searches. On one occasion, Harrison did an enhanced search on his brother's car because he would be driving his brother's car and he wanted to verify that the car was registered.

Harrison testified that he does not recall why he did an enhanced search on January 14, 2014, of Bonaccorso's plate. He went to the area where he did that search, after his interview with CPD, and remembered that there was a wire down and PSE&G truck in the area. He was not sure that the parked car belonged to the mayor. The January 19, 2014, enhanced search of DeAquino's plate was done to get DeAquino's address for PBA purposes. The January 19, 2014 enhanced search of Concina's plate was done because the jeep did not have the top on. He did not know that the jeep belonged to Concina. The January 26, 2014, enhanced search of Merfert and Deluca's plates were done because there was a storm and the vehicles had to be removed; however, the search was done after the storm. He did the enhanced search on one of

the Oliveira officers because he believes that there was an alarm call but he is not sure. He did an enhanced search on the other Oliveira officer because the plate was unusual but Harrison does not know if having the license plate was a motor vehicle violation. Harrison testified that he did the March 8, 2014, search on Concina's vehicle because a few days prior to that a woman was driving the car over the speed limit. He does not recall all of the enhanced searches that he did during that period. If something is out of place he investigates.

FINDINGS OF FACT

In light of the contradictory testimony presented by respondent's witness and Harrison, the resolution of the charges against Harrison requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witness' testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses it is my view that Harrison's testimony was not credible. Harrison was interviewed by CPD on May 21, 2014, with regard to these charges. Some of the statements that he made in the interview contradict his testimony. In the interview he stated that he did not remember why he did the enhanced search on the plate of DeAquino but he testified

that he did it to get D'Aquino's address for PBA purposes. This also conflicts with his statements in the interview where he stated that he was given a rooster from CPD with the names and addresses of the entire CPD police department. In the interview he stated that he did not remember why he ran the search of Bonaccorso's plate. The officer conducting the interview mentioned that there was a downed wire. In his testimony Harrison stated that he ran an enhanced search because there was a downed wire and he saw a PSEG truck in the area. In the interview he stated that he did not remember why he did the enhanced search on Officer Pedro Oliveria but he testified that Oliveria had an unusual license plate. Harrison testified that he ran an enhanced search on Merfert and DeLuca's plates because there was a snow storm and the vehicles had to be moved, yet he did the search days after the snow storm. Conversely, Rapp's testimony was credible and he was clear in his testimony. He admitted that one of the enhanced searches may have been justified.

In view of the above testimony and the evidence, I make the following **FINDINGS of FACT**:

Harrison made 156 MDT searches of license plates from January 2014 through March 2014. Of those, six were random searches and 150 were enhanced searches. A random search of a license plate reveals vehicle information, if the vehicle is stolen, and if the owner has a suspended driver's license. An enhanced search reveals information including name and address of the owner of the vehicle as well as the social security number of the owner of the car. A random search can be done at any time. An enhanced search can be done if there is a reasonable suspicion of a crime or violation. Harrison received training on how to use an MDT and when a random and enhanced search can be used. Of the 150 enhanced searches done by Harrison, ten were of CPD officers, one was of a CPD dispatcher, one was of a Union County police officer, and one was of the Mayor of Clark. None of the searches done on the plates of CPD personnel, the Mayor of Clark, or the Union County police officer resulted in summonses being issued.

Harrison testified that the search of Bonaccorso's license plate was done because Harrison was not sure that the car parked in the driveway belonged to

Bonaccorso. The search of DeAquino's plate was to get his address. The search of Concina's plate on January 19, 2014, was because Harrison wanted to know who drove with the top off of their jeep in the winter. The search of Merfert and DeLuca's plates in the CPD parking lot was done days after a snow storm. Harrison did not remember why he did an enhanced search on Grady's license plate. He believed that he did the enhanced search on Pedro Oliveira's license plate because there was an alarm call. However, he does not know if the alarm call was on the day that he did the search. He did an enhanced search on Officer Ricardo Oliveira's plate because the license plate was unusual. Harrison did the enhanced search on Concina's plate on March 8, 2014, because he saw a woman a few days earlier speeding while she was driving that car. Harrison does not recall the reason that he did an enhanced search on the license plates of the following: Keith Meehan on March 7, 2014, and January 27, 2014; Union County Lieutenant Bove on January 20, 2014, and William Shackleton, whose son officer Kevin Shackleton operated the car on February 21, 2014.

The 150 enhanced searches done by Harrison resulted in two summonses being issued.

LEGAL ANALYSIS AND CONCLUSIONS

Based on the foregoing facts and the applicable law, I **CONCLUDE** that fourteen instances of incompetency, five instances of insubordination, thirteen instances of conduct unbecoming a public employee, thirteen instances of violation of the CPD rules and regulations for standards of conduct, ten instances of violation of the CPD rules and regulations for loyalty, ten instances of violation of the CPD rules and regulations for performance of duty, thirteen instances of violation of the CPD rules and regulations for conduct towards superior officers and associates, and thirteen instances of violation of the CPD rules and regulations for obedience to laws and regulations and one instance of neglect of duty, are **SUSTAINED**.

One instance of incompetency, insubordination, conduct unbecoming a public employee, one instance of violation of the CPD rules and regulations for standards of

conduct, loyalty, performance of duty conduct toward superior officers and associates and obedience to laws and regulations are **REVERSED**.

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

Police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980). The New Jersey Administrative Code has not defined the aforementioned terms and has left this to judicial interpretation. The administrative law judge (ALJ) in Peralta v. Division of Consumer Affairs, CSV 7147-99, Initial Decision (October 9, 2003), adopted, MSB (December 5, 2003), <<http://njlaw.rutgers.edu/collections/oal/>>, defined "incompetence" as "lack of ability, knowledge, legal qualifications or fitness to discharge the required duty or professional obligation." "Failure to perform duties" is generally interpreted to mean a failure to perform duties due to malingering, willful refusal or idleness. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564. "Inefficiency" has been defined as the "quality of being incapable or indisposed to do things required of an officer in a timely and satisfactory manner." Glenn v. Twp. of Irvington, CSV 5051-03, Initial Decision (February 25, 2005), adopted, MSB (May 23, 2005), <<http://njlaw.rutgers.edu/collections/oal/>>. The ALJ in Glenn concluded that inefficiency, incompetence or failure to perform duties exists where conduct, by its nature and frequency, demonstrates an unwillingness or inability to meet, obtain or produce the effects or results necessary for adequate performance. It is a "consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." Sotomayer v. City of Plainfield Police Dep't, CSV 9921-98, Initial Decision (December 6, 1999), adopted, MSB (January 24, 2000), <<http://njlaw.rutgers.edu/collections/oal/>>.

The standard for proving a violation of N.J.A.C. 4A:2-2.3(a)(1), incompetence, inefficiency or failure to perform duties, is that set forth in Glenn, that is, considering the nature and frequency of the conduct. Charges of incompetence, inefficiency or failure to perform duties are sustained predominantly in instances where there is either continual poor performance by an employee or the employee is responsible for an incident resulting in serious repercussions to the employer. When describing the officer's misconduct, the ALJ in Glenn noted:

[T]he persistence, pervasiveness and repetition of the misconduct of ignoring orders of his superiors, of neglecting to complete assignments, keep appointments or follow protocols and of failing to successfully perform the duties of the job . . . and the repeated disregard of training, directives, orders, admonishments, requests and warnings . . . can only draw one to a conclusion that the behavior was calculated and intentional A manifest rejection of the expectations of an appointing authority as occurred here is the epitome of a combination of . . . neglect of duty and inefficiency.

[Glenn, supra, CSV 5051-03, Initial Decision.]

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)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, supra, 63 N.J. Super. at 140.

Black’s Law Dictionary 802 (7th Ed. 1999) defines insubordination as a “willful disregard of an employer’s instructions” or an “act of disobedience to proper authority.” Webster’s II New College Dictionary (1995) defines insubordination as “not submissive to authority: disobedient.” Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

“Insubordination” is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary

definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corporate Express of the E., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. “Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department.” Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

In this case the counts of incompetency, insubordination, conduct unbecoming a public employee and violation of the CPD rules and regulations merge. This case revolves around Harrison’s use of enhanced searches. The Supreme Court in State v. Donis, 157 N.J. 44, 55–56 (1998), addressed this issue:

In enacting Sections 3.3 and 3.4, the Legislature balanced the State’s goals to maintain highway safety by ensuring that only qualified drivers operate safe motor vehicles, by protecting law enforcement officers in fulfilling their duties and by protecting motorists from unnecessary disclosure of their personal information. To best balance those concerns, the data displays of the MDTs should be reprogrammed to provide for a two-step process. In the first step, the initial random license plate look-up would display information regarding only the registration status of the vehicle, the license status of the registered owner, and whether the vehicle has been reported stolen. The registered owner’s personal information would not be displayed. If the original inquiry disclosed a basis for further police action, then the police officer would proceed to the second step, which would allow access to the “personal information” of the registered owner, including name, address, social security number, and if available, criminal record.

With the reprogrammed MDTs, police officers who were using MDTs at random and who lacked suspicion could access only nonprivate information. Nonetheless, if the

initial MDT inquiry disclosed that the car was unregistered, reported stolen or that registered owner was not properly licensed, that information would then justify the police officer accessing the "personal information" from the MDT. The ability of law enforcement officers under step-two to access full information identifying motorists will help protect those officers from danger as they stop and approach motor vehicles.

In this case Harrison was instructed in the use of the MDT system. He was informed that random searches could be done at any time and that **there had to be a reasonable suspicion of a crime or violation for doing an enhanced search.** Harrison admitted that of the 156 MDT searches he did from January 2014 to March 2014, only six were random searches. He rarely does random searches.

The reasons that he gave for the MDT enhanced searches did not show a reasonable suspicion of a violation of a law or a motor vehicle violation with the exception of the March 8, 2014, MDT enhanced searches of Concina's vehicle where Harrison saw a woman driving the car a few days earlier at a high rate of speed. The searches did not fulfill a community caretaking function. Harrison testified that the enhanced search of Bonaccorso's plate was done while his car was parked in his driveway. The search of DeAquino's plate was done in order for Harrison to get DeAquino's address. The search of Merfert and Deluca's plates was done days after a snow storm when the cars would not need to be moved. The search of Officer Ricardo Oliveria's plate was done because he had an unusual license plate. Harrison was not sure of the reason for the enhanced search of Officer Pedro Oliveria except that there may have been an alarm call, which may not have been on the day the search was done. The January 19, 2014, enhanced search of Concina's plate was done because the jeep had the hood off. No reason was given for the enhanced searches done on the plates of Meehan on two occasions, Grady, Bove, and Shackleton. None of these are in the CPD community caretaking function. There was no testimony by Harrison as to the reason for the other 137 enhanced searches that he ran from January 2014 to March 2014.

The CPD has proved by a preponderance of the evidence that Harrison's conduct constitutes incompetence, insubordination, conduct unbecoming a public employee and violation of CPD rules and regulations on all of the enhanced searches except the March 8, 2014, enhanced search of Concina's plate because on that occasion Harrison had seen a woman speeding in Concina's vehicle a few days prior.

When determining the appropriate penalty to be imposed, the appointing authority must consider an employee's past record, including reasonably recent commendations and prior disciplinary actions. Bock, supra, 38 N.J. 500. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522-24. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number, and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

In this matter there has been no testimony of Harrison having any prior discipline. Harrison, over a two-month period, conducted unwarranted enhanced license plate searches on eleven members of law enforcement, one civilian employee of CPD, the Mayor of Clark, and 137 other individuals. He was trained at the police academy and by CPD in use of the MDT as to when to perform a random search and when to perform an enhanced search. He disregarded his training to the point that he testified that he rarely does random license plate searches and almost exclusively does enhanced searches. This is evident when during the month of January 2014 to March 2014, Harrison did six random searches and 154 enhanced searches. During this time Harrison issued two summonses. The discipline of suspension for twenty days is appropriate in this matter.

ORDER

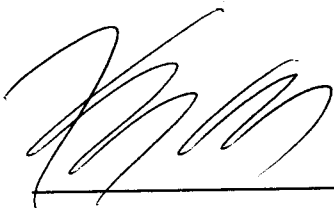
It is hereby **ORDERED** that the decision of CDP to suspend Harrison for twenty days is hereby **AFFIRMED**.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

8-19-15
DATE


KIMBERLY A. MOSS, ALJ

Date Received at Agency:


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties:

AUG 20 2015

ljb

APPENDIX

WITNESSES

For Appellant:

James Rapp

For Respondent:

None

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action dated June 24, 2014
- R-2 State v. Dondas, 157 N.J. 44 (1998)
- R-3 DVD of interview of Harrison
- R-4 Summary of Searches by James Rapp