

A-2



STATE OF NEW JERSEY

In the Matter of Edmund Ansara  
City of Millville,  
Department of Public Safety

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2016-4183 & 2016-4255  
OAL DKT. NOS. CSR 08490-16 and 08783-16 (Consolidated)

ISSUED: DECEMBER 21, 2016 BW

The appeals of Edmund Ansara, Police Officer, City of Millville, Department of Public Safety, two removals effective April 26, 2016 and May 26, 2016 on charges, was heard by Administrative Law Judge John S. Kennedy, who rendered his initial decision on November 28, 2016. Exceptions were filed by Richard C. Andrien, Esq, and D. William Subin, Esq., on behalf of the appellant. A reply to exceptions was filed on behalf of the appointing authority.

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 December 21, 2016, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

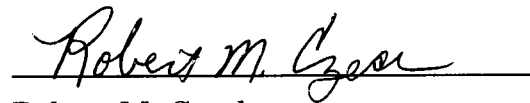
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms those actions and dismisses the appeals of Edmund Ansara.

Re: Edmund Ansara

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
DECEMBER 21, 2016

A handwritten signature in cursive script, reading "Robert M. Czech", is written over a solid horizontal line.

Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Assistant Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Unit H  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NOS. CSR 08490-16  
AND CSR 08783-16  
(CONSOLIDATED)

**IN THE MATTER OF EDMUND ANSARA,  
CITY OF MILLVILLE, POLICE DEPARTMENT.**

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**D. William Subin, Esq.**, for appellant, Edmund Ansara

**Richard C. Andrien, Esq.**, for appellant, Edmund Ansara

**Stephen D. Barse, Esq.**, for respondent, City of Millville Police Department (Gruccio,  
Pepper, DeSanto & Ruth, attorneys)

Record Closed: October 13, 2016

Decided: November 28, 2016

BEFORE **JOHN S. KENNEDY, ALJ**:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

City of Millville Police Officer, Edmund Ansara, (appellant) appeals the decision of the City of Millville Police Department (respondent, City) to remove him from employment. A Preliminary Notice of Disciplinary Action, (PNDA) dated July 31, 2015, seeks the removal of Officer Ansara based on the following charges: N.J.A.C. 4A:2-2.3(a)1—Incompetency, Inefficiency, or Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)6—

Conduct Unbecoming a Public Employee; Millville Police Department (MPD) Rules & Regulations 4.12.6 Truthfulness/Untruthfulness; 4.1.1 Professionalism; 6.1.2 Repeated Offender; MPD General Orders III A2(a) Conduct Unbecoming; and III A3(c) Officer shall be accurate, complete and truthful in all matters for an incident which occurred on October 11, 2014 (“October incident”).

After a departmental hearing, charges against Officer Ansara were sustained and incorporated into a Final Notice of Disciplinary Action (FNDA) 31-C with a proposed penalty of removal from employment. Appellant appealed his removal to the Office of Administrative Law (OAL), where it was received on June 3, 2016. The hearing in this matter was held on September 1, 2016, and September 7, 2016. The parties agreed to file their briefs with the court on October 12, 2016, and with the opposing party on October 13, 2016.

The City also issued charges seeking the removal of Officer Ansara for violations of the following provisions of the New Jersey Administrative Code: N.J.A.C. 4A:2-2.3(a)(1)—Incompetency, Inefficiency, and Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(6)—Conduct Unbecoming a Public Employee; N.J.S.A. 4A:2-2.3(a)(7)—Neglect of Duty, and N.J.A.C. 4A:2-2.3(a)(12)—Other Sufficient Cause for an incident which occurred on September 22, 2014 (“September incident”). Officer Ansara waived his right to a departmental hearing and the City issued a FNDA 31-C on May 26, 2016, sustaining the charges and imposing a penalty of removal from employment. Officer Ansara appealed his removal and the matter was transmitted to the OAL, where it was received on June 10, 2016. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing in this matter was held on September 8, 2016, and September 28, 2016. The parties agreed to file their briefs with the court on October 12, 2016, and with the opposing party on October 13, 2016. These matters were consolidated for all purposes including hearing and disposition on July 24, 2016. The record closed on October 13, 2016.

## **FACTUAL DISCUSSION**

### **October Incident**

The City alleges that on October 11, 2014, appellant permitted R.W. to break into a house owned by T.H. which R.W. claimed was his place of residence. The couple has had a history of disputes or disagreements, and it was not unusual for R.W. to leave the house for a few days at a time only to return again to resume their relationship. He had no other permanent residence and almost all of his belongings remained at their home on Oak Street, with the exception of his DJ equipment, which he routinely kept in his truck. On the morning of the incident, they had a disagreement which resulted in R.W. indicating he was going to leave again and he had called his uncle, C.W., to meet him at the residence so he could put the clothing he needed for work in his uncle's car, since he lacked the room in his own truck because of the DJ equipment.

Later on that afternoon, R.W. returned to the residence. T.H. refused to let him in. Even though he had the key to the back door lock, which the couple always used, he could not gain access to the house because she applied the deadbolt lock from inside, and neither of the two had routinely carried the key to the deadbolt, which she kept inside the house. Despite calling her and requesting her cooperation in gaining entry to the residence to retrieve his belongings, she refused. Accompanied by his uncle, R.W. requested the presence of a police officer to insure a peaceful solution so he could gather his personal clothes from his residence, which he would need for work.

According to the City, appellant made no effort to confirm whether R.W. actually resided in the house before allowing him to break into the house. Officer Ansara then followed R.W. into the house to look for what R.W. claimed were his clothes. T.H., who was home at that time with her baby, claimed that R.W. did not live there, and objected to R.W. and appellant entering her house. T.H.'s objection did not matter to appellant, who insisted that T.H. stand aside after he had permitted R.W. to break into T.H.'s house to search for clothing that R.W. claimed was his. Eventually T.W. got so upset that she raised her voice and pointed her finger at appellant, which prompted Officer

Ansara to arrest her for a disorderly persons offense in her own home. Throughout the incident appellant accepted as true everything R.W. told him without making any effort to confirm R.W.'s identity or his statement that he resided in T.H.'s house and rejected everything that T.H. claimed. Everything T.H. claimed was true, she was the owner of the house and R.W. had moved out of the house. When T.H. informed appellant that she owned the DJ equipment in R.W.'s truck, he said he could not help her and told her that she would have to pursue recovery of that equipment with the Sheriff's Department, although appellant never told R.W. to seek the assistance of the Sheriff's Department in obtaining his belongings from the home.

Appellant asserts that on October 11, 2014, he answered a dispatch call for service on Oak Street in the City of Millville at approximately 3:22 p.m., followed by his supervisor, Sergeant Harold Duffield, at approximately 3:49 p.m. The occupant of the premises, T.H., was charged later that afternoon at the police headquarters with violations of N.J.S.A. 2C:33-2A(1), and N.J.S.A. 2C:29-2A(1), approved by Sergeant Duffield. (R-6; R-11; R-7; P-1.)

On October 13, 2014, Detective Brian Starcher of the Millville Police Department Internal Affairs (IA) Unit received a message on his voicemail from T.H. and subsequently initiated IA Investigation 2014-77. (R-8.) By email dated, October 14, 2014, at 6:48 p.m., he notified appellant that he was the target of an IA investigation as a result of a verbal complaint made by T.H. involving an allegation of False Arrest and Unprofessionalism. (R-8.) There were no notes taken from talking with T.H.; no formal complaint notification was filled out by her; nor was any formal interview ever conducted of her by either Detective Starcher or Detective William A. Loteck who accompanied Detective Starcher to T.H.'s residence. T.H. entered a plea of guilty to Resisting Arrest in Millville Municipal Court on November 10, 2014. (P-2.)

Detective Starcher interviewed Sergeant Duffield, but only as a witness, not a target, on November 18, 2014, at approximately 7:33 p.m. (R-8; R-13; P-4.) Despite appellant's availability with his attorney for an IA interview on November 20, 2014, Detective Starcher cancelled appellant's administrative interview and no one from the

Millville Police Department or the Cumberland County Prosecutor's Office interviewed appellant until July 22, 2015, following the Prosecutor's declination letter, dated June 17, 2015, which was delivered to Detective Starcher on July 2, 2015. (P-8.)

On July 30, 2015, Chief Richard E. Necelis, Chief of Investigators of the Cumberland County Prosecutor's Office, then acting in the capacity of the Chief of Police of Millville, by appointment from the Cumberland County Prosecutor, approved charges in IA 2014-77 solely against appellant, although the caption of his review indicates: "*Subject members: Off. E. Ansara; Sgt. Duffield.*" (R-10.) The record indicated that Sergeant Duffield was never interviewed as a target, or ever charged internally and retired in early November 2015, before the hearings in this matter commenced. Following the July 30, 2015, recommendation by Chief Necelis, charges were signed against appellant by the City Clerk/Administrator and he was immediately suspended without pay and later ordered terminated. (R-1.) Hearings were conducted before the Departmental Hearing Officer on November 18, 2015, November 19, 2015, January 8, 2016, and January 15, 2016. The testimony is transcribed in Exhibits P-5 through P-9, and introduced as evidence in these proceedings.

*Testimony of Sergeant Starcher<sup>1</sup>*

Sergeant Starcher conducted the IA investigation. He reviewed all recordings and videos. In his opinion, the MVR from the police car did not support appellant's claim that Sergeant Duffield tried to speak with T.H. in the back of the police car. Sergeant Starcher interviewed Sergeant Duffield, who remembered the incident and said that he never spoke with T.H. while she was in the police car. Appellant advised Sergeant Starcher said that he took R.W.'s word that R.W. lived in the property but did not check to confirm this. Sergeant Starcher noted that appellant should have had his body microphone activated throughout the incident and if he had complied with this requirement it likely would have revealed some of the conversation between them.

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<sup>1</sup> References to Sergeant Starcher's testimony includes both his testimony at the OAL hearing as well as his testimony at the departmental hearing. (R-7, 8.)

Sergeant Starcher testified that there was a previous disorderly persons issue with appellant. He added that Sergeant Duffield was being investigated and charged with failure to supervise. Sergeant Starcher's understanding was that appellant arrested and charged T.H. with a disorderly person's offense before Sergeant Duffield arrived. Appellant had previously received retraining on search and seizure due to him previously being disciplined for an improper seizure and improper arrest. The charge of false report is based on appellant's statement that Sergeant Duffield tried to speak with T.H. Sergeant Starcher testified that the third paragraph on page four of appellant's report (R-8) supported the charge of untruthfulness.

In addition to appellant being untruthful, Sergeant Starcher identified the following problems with Officer Ansara's investigation:

1. Failing to confirm R.W.'s address, especially after the key did not work and T.H. said that R.W. did not live there.
2. Allowing forced entry and the breaking of the glass.
3. There was no consent to search the house.
4. Officer Ansara would not let T.H. go with him to identify which clothes belonged to R.W.

### September Incident

On or about September 22, 2014, a City of Millville Police Department dispatcher received a call for assistance involving a verbal domestic violence at a private residence. The owner of the property had placed the call due to a verbal dispute between her brother and her brother's girlfriend. The dispatcher held the call for eighteen minutes before dispatching appellant and Officer Catherine Shipley to respond. By the time the officers arrived at the residence the parties had resolved their dispute and, although it appeared that one resident of the property had been crying



prior to the officers' arrival, there was no need for services at that point. The residents of the property were upset at the extremely long delay in responding by the Millville Police Department. C.G., the male resident of the house, who was very upset by the delay was initially speaking in a loud manner, and commented that during the delay someone could have been killed. According to Officer Shipley, these comments were not threatening to either police officer. After initially objecting to Officer Ansara's request for identification (ID) on the mistaken belief that he was not obligated to provide ID, C.G., sat on the couch in the house and searched for his identification on his cell phone. His hands were always visible to the officers and, according to Officer Shipley, there were no weapons present. At one point, Officer Ansara, lunged at C.G., lifted him up and spun him around to handcuff him, and handcuffed C.G. with the assistance of Officer Shipley, as they collectively fell on the floor. Officer Ansara then lifted C.G. up from the floor by the handcuffs and took him outside where he was made to stand handcuffed on his front lawn for approximately ten minutes in full view of his neighbors and passersby.

As a call was coming in from dispatch concerning whether there were any warrants out for C.G., appellant removed the handcuffs and he and C.G. can be seen on an amateur video perusing and commenting on the handcuffs. The police officers then left the property after C.G.'s girlfriend would not sign a domestic violence form. After they left the property, Officer Shipley was so upset at the way that appellant handled the situation that she reported the incident to Sergeant Duffield, who determined that charges should have been issued against C.G. Officer Shipley refused to sign the charges so Officer Ansara charged C.G. with a disorderly person's offense in his own home. C.G. and his girlfriend were so upset by the appellant's conduct that they filed charges against Officer Ansara with the Millville Police Department. Appellant told Sergeant Starcher, during his IA interview, that he released C.G. after a warrant check was completed, however a video of the incident showed that one hand was completely free from the handcuff before the warrant check was completed.

After investigating the complaint filed by C.G. and his girlfriend, the City issued charges seeking the removal of Officer Ansara for violations of the following provisions

of the New Jersey Administrative Code: N.J.A.C. 4A:2-2.3(a)(1)—Incompetency, Inefficiency, and Failure to Perform Duties, N.J.A.C. 4A:2-2.3(a)(6)—Conduct Unbecoming a Public Employee, N.J.S.A. 4A:2-2.3(a)(7)—Neglect of Duty, and N.J.A.C. 4A:2-2.3(a)(12)—Other Sufficient Cause.

Testimony of Officer Catherine Shipley

Officer Shipley testified that she was dispatched with her Senior Officer, Officer Ansara, to C.G.'s residence on a call for an argument between C.G. and his girlfriend, M.M. Everyone at the residence was upset at how long it took the police to respond to the call. C.G. was highly upset about the delay. C.G.'s girlfriend looked like she had been crying and C.G. commented that he could have killed someone in the time it took for the police to respond (although it was clear that no one was injured and no one felt threatened by C.G. as evidenced by M.M.'s statement to Officer Shipley that the police were no longer needed). There was no risk of anyone being hurt. C.G. was on his cell phone and Shipley thought he was going to make a phone call or record them. They asked C.G. for ID and he initially refused. C.G. later said he had his ID and was getting his phone. She did not see a weapon. Officer Ansara went around the coffee table that separated him from C.G. Officer Ansara told C.G. that he was being detained but did not tell him why or explain what detained meant. Officer Ansara asked C.G. to stand up and then tried to turn C.G. around. Officer Ansara handcuffed C.G. behind his back, she helped, and they collectively fell into a laundry basket. C.G. was escorted outside by Officer Ansara and was outside in handcuffs for about five minutes. M.M. retrieved C.G.'s ID out of his truck. Officer Ansara showed "Bravado" when trying to establish who was in charge. After the incident, Shipley told Officer Ansara that what happened at the house just was not right. No one had frisked C.G. She did not know why C.G. was being handcuffed.

Testimony of C.G.

C.G. testified at the hearing and stated that he lived at his sister's house at the time of the incident with M.M. He and M.M. got into an argument and M.M. decided to

leave and he intervened to stop her but without any physical contact or threat of physical contact by C.G. He thought it took the police a long time to get there after his sister called 911. Officer Ansara asked for his ID. After he was placed in handcuffs, Officer Ansara picked him up by the handcuffs. C.G. produced pictures which showed bruises on his arms from the handcuffs along with electronic copies of his driver's license and other identifying information. (R-25.) Once he was escorted outside Officer Ansara removed his handcuffs and they looked at them together. When Officer Ansara asked him for his ID, he told him to hold on for a moment while he went on his cell phone. He was not told he was being arrested. He sat on the couch the entire time until Officer Ansara came over to handcuff him. Officer Ansara was completely unprofessional and never placed him in a police car.

C.G. testified that he received medical treatment for his wrists and that his phone got broken when he was taken to the ground by appellant. C.G. admitted that he initially told Officer Ansara that he did not have to provide ID but then said he had ID in his truck. Officer Ansara "leaped at him" and slammed handcuffs on him. C.G.'s face went into a shelf and he went into the laundry basket.

#### Testimony of Detective Loteck

Detective Loteck testified that C.G. and his girlfriend complained of excessive use of force and false arrest. He also testified that based on the information he gathered during the investigation, C.G. was sitting on his couch not in an aggressive manner and was tackled to the ground. C.G. provided proof that the charges issued by Officer Ansara were mailed to him even though Officer Ansara falsely stated that he hand delivered the summons and left it in C.G.'s mailbox. Officer Ansara removed the handcuffs before the dispatcher completed a warrant check and confirmed that there were no warrants, which means that Officer Ansara was untruthful when he said that he did not remove the handcuffs until the warrant check was completed. Detective Loteck then explained that C.G. should have been secured in a patrol car but he was left to stand in his front yard handcuffed in public view. Officer Ansara stated in his report that

he arrested C.G. but in reality he did not do so until he was directed to do so by Sergeant Duffield.

Officer Ansara IA Interview

During appellant's IA interview, Officer Ansara claimed that he handcuffed C.G. for the safety of C.G. and the officers because of C.G.'s comment that in the time it took for the Millville Police to respond to the 911 call someone could have been killed. Officer Ansara did not know if C.G. struck Officer Shipley before he attempted to handcuff him. (R-15.) He admitted that he took C.G. to the ground although his report says something different, that he took him to his knees. He could not remember what happened to C.G.'s cell phone. He never identified any specific threat made by C.G. or any aggressive action by C.G. that caused Officer Ansara to be in fear for his safety or Officer Shipley's safety.

Additional Testimony

Chief Jody Farabella testified that he reviewed all of the evidence in the case and that Officer Shipley was very upset at how the situation was handled. The defense also played a portion of the recording of Detective Loteck's IA interview of Sergeant Duffield. Duffield confirmed that Officer Shipley would not sign charges against C.G. and that he thought Officer Ansara should issue the charges because he was the one who used physical force against C.G.

**FINDINGS OF FACT**

I found the testimony of all of the witnesses to be credible. It does not appear to be in dispute that both the October incident and the September incident occurred. What does appear to be in dispute is whether appellant's conduct in each incident merits discipline commensurate to the charges filed against him. Accordingly, based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACT** the following:

October Incident

On October 11, 2014, appellant R.W. broke into a house owned by T.H. that R.W. claimed was his place of residence. The couple has had a history of disputes or disagreements, and it was not unusual for R.W. to leave the house for a few days at a time only to return again to resume their relationship. T.H. refused to let R.W. in even though he had the key to the back door lock, which the couple always used. R.W. could not gain access to the house. R.W. requested the presence of a police officer to insure a peaceful solution so he could gather his personal clothes from his residence, which he would need for work. Appellant made no effort to confirm whether R.W. actually resided in the house before allowing him to break into the house. Officer Ansara then followed R.W. into the house to look for what R.W. claimed were his clothes. T.H., who was home at that time with her baby, claimed that R.W. did not live there, and objected to R.W. and appellant entering her house. Eventually T.W. got so upset that she raised her voice and pointed her finger at appellant, which prompted Officer Ansara to arrest her for a disorderly person's offense in her own home. When T.H. informed appellant that she owned the DJ equipment in R.W.'s truck, he said he could not help her and told her that she would have to pursue recovery of that equipment with the Sheriff's Department, although appellant never told R.W. to seek the assistance of the Sheriff's Department in obtaining his belongings from the home.

September Incident

On or about September 22, 2014, a City of Millville Police Department dispatcher received a call for assistance involving a verbal domestic violence at a private residence. The owner of the property had placed the call due to a verbal dispute between her brother and her brother's girlfriend. The dispatcher held the call for eighteen minutes before dispatching Officer Ansara and Officer Shipley to respond. By the time the officers arrived at the residence the parties had resolved their dispute and, although it appeared that one resident of the property had been crying prior to the officers arrival, there was no need for services at that point. The residents of the property were upset at the extremely long delay in responding by the Millville Police

Department. C.G., the male resident of the house, who was very upset by the delay and was initially speaking in a loud manner, commented that during the delay someone could have been killed. After initially objecting to Officer Ansara's request for identification on the mistaken belief that he was not obligated to provide ID, C.G. sat on the couch in the house and searched for his identification on his cell phone. His hands were always visible to the officers and there were no weapons visible. At one point Officer Ansara lunged at C.G., lifted him up and spun him around to handcuff him, and handcuffed C.G. with the assistance of Officer Shipley, as they collectively fell on the floor. Officer Ansara then lifted C.G. up from the floor and took him outside where he was made to stand handcuffed on his front lawn for approximately five to ten minutes in full view of his neighbors and passersby. As a call was coming in from dispatch concerning whether there were any warrants out for C.G., Officer Ansara removed the handcuffs. The police officers then left the property after C.G.'s girlfriend would not sign a domestic violence form. Officer Ansara charged C.G. with a disorderly persons offense in his own home after discussing the incident with his sergeant, Sergeant Duffield.

### **LEGAL ANALYSIS AND CONCLUSION**

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:-2.21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

Respondent has sustained charges of violations of N.J.A.C. 4A:2-2.3(a)1— Incompetency, Inefficiency, or Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)6—

Conduct Unbecoming a Public Employee; MPD Rules and Regulations 4.12.6 Truthfulness/Untruthfulness; 4.1.1 Professionalism; 6.1.2 Repeated Offender; MPD General Orders III A2(a) Conduct Unbecoming; and III A3(c) Officer shall be accurate, complete and truthful in all matters for the October incident. The City also issued charges seeking the removal of appellant for violations of the following provisions of the New Jersey Administrative Code: N.J.A.C. 4A:2-2.3(a)(1)—Incompetency, Inefficiency, and Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(6)—Conduct Unbecoming a Public Employee; N.J.S.A. 4A:2-2.3(a)(7)—Neglect of Duty, and N.J.A.C. 4A:2-2.3(a)(12)—Other Sufficient Cause for the September incident.

Appellant argues that the charges against him relating to the October incident were: (1) arbitrary and capricious and were brought about in an unclear and unreasonable manner; (2) brought against him with a lack of proof of violation of specific articulable Rules of Conduct which were known in advance by the officer, rather than the vague accusations of generic misconduct alleged herein; and (3) that there is a failure of credible proof to meet the preponderance standard to establish the factual elements specified in the charges against appellant.

With regard to the September incident, appellant argues that (1) the City failed to prove the specific factual allegations set forth in the PNDA 31-A and FNDN 31-C notices of discipline (PA-1) by a preponderance of credible evidence. (2) the City's Notice of Discipline also fails to put appellant on notice of specific and identifiable factual allegations.

Under N.J.A.C. 4A:2-2.3(a)(1), an employee may be subjected to major discipline for "incompetency, inefficiency, or failure to perform duties." Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See, In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline).

“There is no constitutional or statutory right to a government job.” State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). (Note: Gaines had a substantial prior disciplinary history, but the case is frequently quoted as a threshold statement of civil service law.)

“In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change.” Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a County treasurer who could not balance the books, after the auditors tried three times to show him how.)

In reversing the MSB’s insistence on progressive discipline, contrary to the wishes of the appointing authority, the Klusaritz panel stated that “[t]he [MSB’s] application of progressive discipline in this context is misplaced and contrary to the public interest.” The court determined that Klusaritz’s prior record is “of no moment” because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[In re Herrmann, 192 N.J. 19, 35-36 (2007) (citations omitted).]

There is no definition in the administrative code of the term “inefficiency,” and therefore, it has been left to interpretation.

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. New Jersey Dep’t of Agric., 1 N.J.A.R. 315 (1980).

The fundamental concept that one should be able to perform the duties of the position is stated in Briggs v. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960), which happens to be a probationary period case involving a nurse:



Manifestly, the purpose of the probationary period is to further test a probationer's qualifications. Neither the Legislature nor the Commission has given the courts any guidance in determining the extent of assistance or orientation which a probationer must receive. Undoubtedly her duties must be explained to her and she must be given reasonable opportunity to perform the duties expected of her. But this does not mean she is entitled to on-the-job training in the manner of performing her duties. This is what she must be qualified for—the proper performance of her duties as outlined by the appointing authority.

In the present matter, the record reflects that appellant failed to perform several of his duties specifically involving how to respond to calls for assistance in both the September and the October incidents. He clearly demonstrated an absence of judgment in a sensitive position requiring public trust in the agency's judgment. Accordingly, I **CONCLUDE** that the charges of a violation of N.J.A.C. 4A:2-2.3(a)(1) (incompetence, inefficiency, failure to perform duties) must be and is hereby **SUSTAINED** for both the September and the October incidents.

Respondent also sustained charges against appellant for conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6). To the extent that appellant is charged with violation of Rule of Conduct 1.2, which addresses unbecoming conduct, consideration of such violation will be addressed in concert with the current analysis.

"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 Atlantic 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.

In the present matter, the record reflects that appellant failed to perform duties required of him in his handling of the calls for assistance in both the October and September incidents. For the October incident, the record further reflects that appellant entered a private residence without any warrant or probable cause to enter. Once inside the home, the homeowner advised appellant that R.W. did not reside there and she did not want him or R.W. in the residence. Officer Ansara and R.W. remained in the home despite the homeowner's request to leave.

Furthermore appellant arrested and charged the homeowner with being disorderly in her own home without her causing a public inconvenience, annoyance, or alarm. Once the homeowner was handcuffed and secured in the rear of appellant's patrol vehicle he then proceeded back into the home to search and seize the clothing without a warrant.

Appellant indicated in his official police report that Sergeant Duffield attempted to speak with the homeowner, T.H., while she was in the rear of the patrol car but that she was not responding to him. Both the mobile video recording of the incident and Sergeant Duffield's interview do not support appellant's report, making his report false and inaccurate.

Appellant clearly ignored 4th Amendment Rights against unreasonable search and seizure. Officer Ansara was untruthful. His behavior/conduct is unacceptable for a law enforcement officer and his lack of ability to learn from prior failures, cause him to be a significant liability to the department, the City and the citizens of Millville.

Furthermore appellant's untruthfulness and false report create issues whereby he cannot testify in any criminal court without a prosecutorial disclosure of his "Brady Issue," thereby, reducing his ability to serve as a police officer. This clearly constitutes behavior which could adversely affect the morale of the facility and undermine public

respect in the services provided. Accordingly, I **CONCLUDE** that the appointing authority has proven, by a preponderance of credible evidence, that the charge of N.J.A.C. 4A:2-2.3(a)6 (conduct unbecoming a public employee), and Rule of Conduct 1.2, should be and are hereby **SUSTAINED** for the October incident.

For the September incident, the record reflects that appellant had no basis to arrest C.G., but his actions in handcuffing C.G. and reporting skewed facts to justify his actions caused Sergeant Duffield to direct appellant to charge C.G. C.G. eventually pled out the charges rather than risk greater exposure, a very common occurrence. The charges against C.G. had nothing to do with the reason the police were dispatched in the first instance to C.G.'s residence. There was no confrontation or dispute to confront when appellant arrived at C.G.'s residence. The family issues had been resolved. Appellant should have confirmed that there was no longer a dispute and then left. Instead, his bravado took over and the situation got out of control.

Respondent also sustained charges against appellant for neglect of duty, N.J.A.C. 4A:2-2.3(a)(7) for the September incident. To the extent that appellant is charged with violation of Rule of Conduct 1.3, which addresses neglect of duty, consideration of such violation will be addressed in concert with the current analysis. "Neglect of duty" has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

In the present matter, the record reflects that appellant reported skewed facts to justify his actions. I **CONCLUDE** that this action constituted omissions of required duties, and therefore, I **CONCLUDE** that the appointing authority has proven, by a preponderance of credible evidence, that the charge of N.J.A.C. 4A:2-2.3(a)7 (neglect of duty), Rule of Conduct 1.3 should be and is hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause). Specifically, appellant is charged with violations of MPD Rules and Regulations 4.12.6—Truthfulness/Untruthfulness; 4.1.1—Professionalism; 6.1.2—Repeated Offender; and MPD General Orders III A2(a). I **CONCLUDE** that the consideration of the charges constituting a violation of N.J.A.C. 4A:2-2.3(a)(11) (other sufficient cause) have been addressed and **SUSTAINED** within the discussion of violations of N.J.A.C. 4A:2-2.3(a)(1),(6) and (7).

Accordingly, I further **CONCLUDE** that the charge of a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause) must be and is hereby **SUSTAINED**.

### **PENALTY**

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, our Supreme Court first recognized the concept of progressive discipline, under which “past misconduct can be a factor in the determination of the appropriate penalty for present misconduct.” In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, supra, 38 N.J. at 522). The Court therein concluded that “consideration of past record is inherently relevant” in a disciplinary proceeding, and held that an employee’s “past record” includes “an employee’s reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee.” Bock, supra, 38 N.J. 523-24.

As the Supreme Court explained in In re Herrmann, supra, 192 N.J. at 30, “[s]ince Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct.” According to the Court:

. . . First, principles of progressive discipline can support the imposition of a more severe penalty for a public employee who engages in habitual misconduct . . .

The second use to which the principle of progressive discipline has been put is to mitigate the penalty for a current offense . . . for an employee who has a substantial record of employment that is largely or totally unblemished by significant disciplinary infractions . . .

. . . [T]hat is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when . . . the misconduct is severe, when it is unbecoming to the employee’s position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

[In re Hermann, supra, 192 N.J. at 30-33 (citations omitted).]

In the case of In re Carter, 191 N.J. 474 (2007), the Court decided that the principle of progressive discipline did not apply to the sanction of a police officer for sleeping on duty and, notwithstanding his unblemished record, it reversed the lower court and reinstated a removal imposed by the Board. The Court noted the factor of public-safety concerns in matters involving the discipline of correction officers and police officers, who must uphold the law and “present an image of personal integrity and dependability in order to have the respect of the public.” In re Carter, supra, 191 N.J. at 486 (citation omitted).

In the matter of In re Stallworth, 208 N.J. 182 (2011), a Camden County pump-station operator was charged with falsifying records and abusing work hours, and the ALJ imposed removal. The Civil Service Commission (Commission) modified the penalty to a four-month suspension and the appellate court reversed. The Court re-examined the principle of progressive discipline. Acknowledging that progressive discipline has been

bypassed where the conduct is sufficiently egregious, the Court noted that “there must be fairness and generally proportionate discipline imposed for similar offenses.” In re Stallworth, supra, 208 N.J. at 193. Finding that the totality of an employee’s work history, with emphasis on the “reasonably recent past,” should be considered to assure proper progressive discipline, the Court modified and affirmed (as modified) the lower court and remanded the matter to the Commission for reconsideration.

The appellant’s disciplinary record is in evidence as Exhibit C-1. It contains several sustained disciplinary actions going back to 2007, including prior actions for conduct unbecoming and insubordination, as well as several instances of neglect of duty, with multiple suspensions served, the longest being for forty-five days. Considering the totality of appellant’s history, I **CONCLUDE** that the behavior exhibited in the present matters is not aberrational, but rather a continuation of a pattern that seems to be increasing in seriousness and frequency rather than decreasing. Appellant does not seem to be learning from his mistakes, but rather appears to be compounding them. Incidents such as these, in the setting of a police officer, can escalate into something much larger very quickly. The public who is served, other employees, deserve to be able to expect that in such situations the officer’s response will be guided by concerns for safety and order above all else. To expect otherwise is to invite disorder and confusion in responding to such instances, possibly leading to worse, more dangerous situations, and serves to undermine the confidence the public places in the correctional system. It cannot be tolerated. Accordingly, I **CONCLUDE** that the respondent’s action in removing the appellant from his position was justified.

### **DECISION AND ORDER**

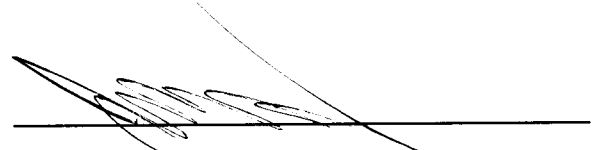
The appointing authority has proven by a preponderance of credible evidence the charges against appellant with violations of N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency; Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, and I **ORDER** that these charges be and are hereby **SUSTAINED**. Furthermore, I **ORDER** that the penalty of removal 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. 40A:14-204.

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.

11/28/16  
DATE

  
\_\_\_\_\_  
JOHN S. KENNEDY, ALJ

Date Received at Agency:

November 28, 2016

Date Mailed to Parties:

November 28, 2016.

JSK/dm

**APPENDIX**

**WITNESSES**

**For appellant:**

None

**For respondent:**

Brian Starcher  
Catherine Shipley  
C.G.  
Jody Farabella  
William Loteck

**EXHIBITS**

**For appellant:**

**October Incident**

- P-1 Use of Force Report , dated October 11, 2014
- P-2 Transcript of Municipal Court Proceeding; State v. T.H. (11/10/14)
- P-3 Internal Investigation Checklist
- P-4 Transcript of Sergeant Duffield interview (11/18/14)
- P-5 Transcript of Disciplinary Hearing (11/18/15)
- P-6 Transcript of Disciplinary Hearing (11/19/15)
- P-7 Transcript of Disciplinary Hearing; witness Brian Starcher (1/8/16)
- P-8 Transcript of Disciplinary Hearing; witness Brian Starcher (1/15/16)
- P-9 Transcript of Disciplinary Hearing; witnesses R.W. and C.W. (1/15/16)

**September Incident**

- PA-1 Preliminary Notice of Disciplinary Action 31A and Final Notice of Disciplinary Action 31C
- PA-2 Loteck IA Report
- PA-3 Shapiro Letter to Necelis, dated July 28, 2015



- PA-4 Starcher IA Report
- PA-5 Definition of Several
- PA-6 Shipley Investigative Report
- PA-7 Ansara Investigative Report
- PA-8 Shipley Arrest Report
- PA-9 Ansara Use of Force Report
- PA-10 Shipley Use of Force Report
- PA-11 Tickets Issued
- PA-12 Not Admitted
- PA-13 Prosecutor's Office IA Report
- PA-14 Not Admitted
- PA-15 Starcher transcript (11/19/15)
- PA-16 Not Admitted
- PA-17 Ansara Interview by Starcher
- PA-18 Shipley interview by Loteck
- PA-19 C.G. interview by Prosecutor's office
- PA-20 A.G. interview by Prosecutor's office
- PA-21 M.M. interview by Loteck, Part 1
- PA-22 M.M. interview by Loteck, Part 2
- PA-23 Sgt. Duffield interview by Loteck
- PA-24 Handcuff Video
- PA-25 Millville Police Department Dispatch to Officers
- PA-26 Baker letter
- PA-27 C.G. drawing

**For respondent:**

- R-1 Final Notice of Disciplinary Action 31C, dated April 26, 2016
- R-1a Internal Investigation Administrative Advisement, dated July 22, 2015
- R-2 Millville Police Department Rules and Regulations
- R-3 Millville Police Department Standard Order #2-99
- R-4 Internal Affairs Policy and Procedures

- R-5 Internal Affairs Interview of Appellant for October Incident
- R-6 Investigation Report, dated October 11, 2014
- R-7 Millville Municipal Court Summons issued upon T.H., dated October 11, 2014
- R-8 Internal Affairs Investigation Report for October Incident
- R-9 Internal Affairs Interview of T.H.
- R-10 Chief's Review and Recommendations for October Incident
- R-11 Patrol Vehicle MVR for October Incident
- R-12 Millville Police Department Search & Seizure Policy
- R-13 Internal Affairs of Sgt. Duffield for October Incident
- R-14 Final Notice of Disciplinary Action 31C, dated May 26, 2016
- R-15 Internal Affairs Interview of Appellant for September Incident
- R-16 Recording of Shipley's IA Interview (11/17/14)
- R-17 C.G.'s video recording of September incident at C.G.'s residence
- R-18 Starcher IA Report
- R-19 Loteck IA Report
- R-20 Internal Affairs Report for September Incident
- R-21 Shipley Investigative Report, dated September 22, 2016
- R-22 Ansara's Supplemental Report, dated September 22, 2016
- R-23 Use of Force Report, dated September 22, 2014
- R-24 Chief's Review and Recommendations for September Incident
- R-25 Photos taken by C.G.
- R-26 Complaint Summary and Summons
- R-27 Shipley Drawing
- R-28 Ansara Previous Discipline and Commendations