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STATE OF NEW JERSEY

In the Matter of Dean Edwards City of Passaic, Department of Public Works

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2016-4248 OAL DKT. NO. CSV 09824-16

ISSUED:



BW

The appeal of Dean Edwards, Tree Maintenance Supervisor, City of Passaic, Department of Public Works, removal effective March 29, 2016, on charges, was heard by Administrative Law Judge Leland S. McGee, who rendered his initial decision on July 24, 2017. 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 (Commission), at its meeting of September 6, 2017, 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 Dean Edwards.

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 6, 2017

> Robert M. Czech Chairperson Civil Service Commission

Inquiries and Correspondence Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



INITIAL DECISION

OAL DKT. NO. CSV 09824-16 AGENCY DKT. NO. 2016-4248

DEAN EDWARDS.

Petitioner,

٧.

CITY OF PASSAIC DEPARTMENT OF PUBLIC WORKS,

Respondent.

Kendal Coleman, Esq., for petitioner (Kendal Coleman, attorneys)

Steven Siegler, Esq., for respondent (Eric M. Bernstein & Associates, attorneys)

Record Closed: April 27, 2017

Decided: July 24, 2017

BEFORE **LELAND S. MCGEE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This case arises out of an employment termination proceeding against Dean Edwards (Petitioner or Edwards) by the City of Passaic (Respondent). Edwards worked for the Passaic Department of Public Works (DPW) for over twenty-five years. He worked as a recycling driver for approximately ten years before becoming a tree cutter. He held that position until he was promoted to the position of Supervisor of Trees in 2008.

On October 14, 2015, the City of Passaic issued a Preliminary Notice Disciplinary Action (PNDA) against Petitioner alleging twenty (20) charges. Petitioner requested a hearing, which the City conducted over four (4) dates:

- November 30, 2015,
- December 21, 2015,
- January 25, 2016, and
- February 25, 2016.

On March 31, 2016, the City issued a Final Notice of Disciplinary Action (FNDA) removing Edwards from public employment. The following charges were sustained: N.J.A.C. 4A:2-2.3(a):

- (1) (Incompetency, inefficiency, or failure to perform duties);
- (2) (Insubordination);
- (6) (Conduct unbecoming of a public employee);
- (7) (Neglect of duty);
- (8) (Misuse of public property, including motor vehicles); and
- (12) (Other sufficient cause).

Petitioner then appealed to the OAL.

The allegations outlined in the FNDA relate to several incidents and altercations involving a number or Edwards's coworkers. The facts surrounding these incidents, litigants' arguments, and credibility determinations are outlined chronologically below.

There was a delay in serving the FNDA upon Petitioner, and thereafter, he requested a hearing before the Civil Service Commission, which transmitted this matter 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, to the Office of Administrative Law (OAL), where it was filed on July 1, 2016.

DISCUSSION OF THE FACTS

Summary of Testimony

May 15, 2015, Incident

At the time of the incidents, Anthony Gagliano (Gagliano) was the Assistant Superintendent. On May 15, 2015, Edwards requested Gagliano's approval to take a personal day on May 18, 2015. (R-9). Edwards did not inform Gagliano that he was scheduled for a mandatory defensive driving class on that day. The schedules were posted in the DPW office and employees are responsible for checking the schedule regularly. Gagliano approved the request because he did not know Edwards was scheduled for a class. (R-9.) Typically, this requires the approval of the director.

September 18, 2015, Incident

On September 18, 2015, at approximately 7:36 a.m., Miriam Perez (Perez), Administrative Assistant, parked her vehicle in the DPW parking lot. As she exited the vehicle and prepared to walk across the DPW driveway, Edwards drove past her in a large bucket loader. (P-1.) Perez was alarmed by the fact that Edwards's vehicle was passing so close to her at a high rate of speed. She felt he was traveling too fast and that she was in danger.

The video files of the incident show a first DPW vehicle (pickup/utility truck) exiting the garage and reaching the end of the driveway in approximately ten seconds. (P-1.) The video shows the second vehicle, a much larger piece of equipment, being driven by Edwards, exiting the garage and reaching the end of the driveway in approximately seven seconds. The videos also show multiple DPW employees crossing the busy driveway at that time of day.

October 1, 2015, Incident

On October 1, 2015, Kasim Washington (Washington) was working near 14 Alfred Street, a private residence belonging to a relative. He called Anthony Gagliano, Assistant DPW Superintendent at 10:04 a.m. to ask permission to use a restroom. Gagliano granted him permission to use the bathroom at 14 Alfred Street, the home of the mother of Washington's son. Edwards called Gagliano on his cell phone at 10:28 a.m. and again at 10:37 a.m. to advise him that Washington was in a private residence. Gagliano advised Edwards during the first telephone call that he had granted Washington permission to be there and that he would check into the matter himself. When Washington exited the residence, he saw DPW vehicle #107 parked head-on to his vehicle on the wrong side of the street.

Washington called Gagliano and asked whether Edwards and the Shade Tree crew were supposed to be working in that area because a similar situation occurred in May of that year when Washington was working with a crew nearby. In that instance, Washington received permission from his supervisor to use the restroom at his girlfriend's home at XX Wilcot Street but when he returned to the crew, he noticed Edwards watching him from a DPW vehicle parked up the street, with a cell phone pointed in his direction. Edwards ducked down when he recognized that Washington noticed him. In the October instance, Gagliano said they were working nearby (one block away). When Washington exited the house Edwards addressed him stating "I got you now" and instructed Washington to go to the DPW office. Washington then called his Shop Steward, Frank Gonzalez (Gonzalez), and asked him to meet him at the DPW office.

Gonzalez met Washington at the DPW office where Washington explained what happened at 14 Alfred Street. Gonzalez saw Edwards and asked to speak with him in private. They went into the "clock" room. Gonzalez tried to talk to Edwards about his concern about other employees' whereabouts. (R-5.) Edwards spoke over him and used insulting language. Edwards and Gonzalez then left the building together, walked towards the garage, and continued to address one another. In the garage, Edwards began threatening Gonzalez. (R-5.) Edwards then approached Gonzalez, put his finger

in his face, and threatened him. (R-5.) Coworkers restrained Gonzalez and urged him to back away before the incident escalated.

Washington and Gonzalez submitted reports regarding the DPW garage incident, and went to the City's Personnel Department to discuss it with Viviana Lamm (Lamm), Director of Personnel. (R-2; R-5.) Lamm advised them to return to the garage and to stay away from Edwards. She then spoke with Gagliano to advise him that Edwards was to stay away from Washington and Gonzalez for the rest of the day. Gagliano met with Edwards and gave him this directive. Lamm did not speak directly with Edwards.

Despite Gagliano's warning, Edwards approached Washington and Gonzalez while they were in the break room at the end of their shift. He entered the break room and demanded that both employees give him their daily work reports "or else [he was] going to write [them] up." (R-3; R-6.)

Both Washington and Edwards reported the day's incidents to the Passaic Police Department on the following day. (R-4; R-7.) The officer found probable cause to issue a complaint against Edwards, who was later found "not guilty" in Municipal Court.

October 6, 2015, Incident

On October 6, 2015, John Sarno, Esq. (Sarno) of the New Jersey Employers' Association led a seminar for DPW employees, on workplace harassment and discrimination. Edwards and Gregory Lawson (Lawson), a DPW employee, were in attendance. At one point during the seminar, Edwards began a lengthy admonishment about what he perceived to be a general lack of work ethic among unidentified DPW workers. Lawson took offense and responded to Edwards's statements. Edwards then engaged in a verbal confrontation with Lawson. Both employees ignored Sarno's repeated requests to stop. The argument became personal and heated. Both men rose from their seats, continued arguing, and made inflammatory statements. They were approximately eight feet apart, shouting and gesturing at each other. They closed the gap to approximately four feet. They continued to argue for short while before eventually returning to their seats.

<u>Perez</u>

In May 2015, Theodore Evans (Evans), Director of the DPW, asked Perez to monitor the time that Edwards spent in the office instead of out in the field supervising his crew. (R-1.) Perez recorded that on at least six occasions between May 6, 2015, and August 11, 2015, Edwards had spent over five hours in the office when he should have been in the field supervising his staff.

Edwards' Disciplinary Record

Edwards was disciplined on four prior occasions. These include:

- One-day suspension in 2002 (<u>see</u> Exhibit R-15, Notice of Minor Disciplinary Action, dated May 10, 2002);
- Two-day suspension in 2009 (<u>see</u> Exhibit R-16, Notice of Minor Disciplinary Action, October 14, 2009);
- Twenty-four-day suspension in 2014 (<u>see</u> Exhibit R-17, Final Notice of Disciplinary Action, dated February 13, 2014); and,
- Forty-five-day suspension in 2016 (<u>see</u> Exhibit R-18, Final Notice of Disciplinary Action, dated January 13, 2016).

Arguments

May 15, 2015

Petitioner argues that all employees, including supervisors, were aware of the training and had notice that it was scheduled for May 18, 2015. He argues that since Gagliano had notice of the training, he could not have been misled into granting a Personal Day.

Respondent argues that Edwards deliberately failed to mention the training to Gagliano because otherwise, he would have denied the request for a Personal Day.

September 18, 2015

Petitioner argues that the allegation that he drove recklessly through the DPW parking lot is "absurd" and that it is "obvious" from the video.

Respondent argues that Edwards drove through the parking lot too fast given the time of day and that he almost "ran over" Perez. Respondent points out that Edwards's vehicle crosses the lot in seven seconds just after another DPW vehicle crosses in ten seconds.

October 1, 2015

Petitioner argues that he followed the proper chain of command when he observed Washington's vehicle parked at a private residence and that he was never instructed "not to confront Washington." He also argues that Frank Gonzalez instigated and escalated the confrontation that occurred in the garage. Petitioner argues that at no point after the incident did anyone order him to stay away from Gonzalez and Washington.

Respondent argues that Edwards was insubordinate when he chose to confront Washington outside of 14 Alfred Street as Gagliano said he would look into the matter himself. Respondent also argues that Edwards's conduct with Frank Gonzalez was unbecoming of a public employee and violated DPW employee policies. Respondent provides testimony of Gagliano to suggest that Edwards was in fact ordered to stay away from Gonzalez and Washington.

October 6, 2015

Petitioner argues that he did not instigate a confrontation with Lawson during the training and did not engage him physically at any point.

Respondent argues that neither man listened to Sarno's request to stop and both used inflammatory statements during the confrontation.

Perez's Notes

Petitioner argues that Ms. Perez was never asked to keep track of any other employee and this action was done to single out Edwards so that he could be terminated. He also argues that he was using his time in the office to make work-related phone calls.

Respondent provides testimony that Ms. Perez has kept track of other employees in the past. Perez testified that Edwards was in the office when he should have been supervising his crew and that at one point he was observed watching a movie.

CREDIBILITY

When the testimony of witnesses is in disagreement, the trier of fact must weigh the witnesses' credibility in order to make factual findings. Credibility is the value that the fact finder gives to testimony of a witness and contemplates an overall assessment of the witness's story in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Credible testimony must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955); Gilson v. Gilson, 116 N.J. Eq. 556, 560 (E. & A. 1934). A fact finder is expected to base credibility decisions on his or her common sense and life experiences. State v. Daniels, 182 N.J. 80, 99 (2004). Credibility is not dependent on the number of witnesses who appeared, State v. Thompson, 59 N.J. 396, 411 (1971) and the finder of fact is not bound to believe the testimony of any witness. In re Perrone, supra, 5 N.J. at 521-22.

Regarding the incident on May 15, 2015, I **FIND** Respondent's testimony to be more credible. Therefore, I **FIND** that Edwards should have, but failed to mention the training to Gagliano when he requested a Personal Day. Edwards intentionally misled Gagliano.

Regarding the incident in the DPW parking lot on September 18, 2015, I find Petitioner's argument to be more convincing. Therefore, I **FIND** that at no point in the video did the loader appear to be moving at an excessive rate of speed, nor did it come close to "running over" Perez.

Regarding the incident involving Kasim Washington and Frank Gonzalez on October 1, 2015, I **FIND** Respondent's testimony to be more credible. Therefore, I **FIND** that Edwards did not follow orders and acted inappropriately when confronted by other DPW employees.

Regarding the incident that occurred during the workplace harassment seminar on October 6, 2015, I **FIND** Respondent's testimony to be more credible. Lawson may have instigated the confrontation; however, I **FIND** that Edwards acted inappropriately and served to escalate the conflict.

Regarding Perez's keeping track of Edwards, I **FIND** Respondent's testimony to be more credible. Therefore, I **FIND** that Edwards spent an excessive amount of time in the office, neglected work duties, and was not singled out for purposes of terminating his employment.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 580-81 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act states 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.A.C. 4A:2-2.3(a) provides that a public employee may be subject to major discipline for various offenses. The New Jersey Department of Human Services has a Disciplinary Action Program that sets forth the standards that all employees must meet. (R-12.) "Unbecoming conduct" is broadly defined as conduct that adversely affects the morale or efficiency of the government unit or has the tendency to destroy public respect and confidence in the delivery of government services. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). The physical abuse of a resident of NJDC by a staff member who was entrusted with the resident's care would be conduct unbecoming the staff member.

The Disciplinary Action Program also sets forth the penalty or range of progressive penalties for each offense of violating the Department's standards. With respect to the physical abuse of a client, the first and only disciplinary action is removal of the employee. (R-12 at C.3.) Consistent therewith, NJDC's Policy # CEO-005 regarding Suspected/Alleged Abuse or Neglect of Clients defines "abuse" as, among other things, "striking with a closed or open hand." (R-11 at 1.) NJDC has an Incident Response Unit with established protocols under Policy # CEO-005 for conducting investigations of suspected abuse or neglect. (R-11 at 4.)

On March 31, 2016, the city of Passaic issued a Final Notice of Disciplinary Action to Edwards, terminating him from employment. The following charges will be discussed.

N.J.A.C. 4A:2-2.3(a)(1) (Incompetency, inefficiency or failure to perform duties)

Regarding Civil Service Rule N.J.A.C. 4A:2-2.3(a)(1) petitioner did exhibit incompetency, inefficiency or failure to perform his duties. There is no definition in the New Jersey Administrative Code for incompetency, inefficiency or failure to perform duties. However, case law has determined incompetence is a "lack of the ability or qualifications necessary to perform the duties required of an individual [and] 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. Plainfield Police Dep't, CSV 9921-98, Initial Decision (December 6, 1999), adopted, Merit Sys. Bd. (January 24, 2000),

http://njlaw.rutgers.edu/collections/oal/final/ (citing <u>Steinel v. City of Jersey City</u>, 7 N.J.A.R. 91 (1983); <u>Clark v. New Jersey Dep't of Agric.</u>, 1 N.J.A.R. 315 (1980).)

I CONCLUDE that Edwards ignored his duties as a Supervisor when he chose to follow Washington and threatened him with disciplinary action. Washington was not a member of Edwards's crew. Edwards ignored his job duties when he spent a total of over five hours in the DPW office instead of supervising his men out on the road. Edwards failed to perform his duties in a manner that is minimally acceptable for his position. Therefore, I CONCLUDE that this charge should be upheld.

N.J.A.C. 4A:2-2.3(a)(2) (Insubordination)

Regarding Civil Service Rule N.J.A.C. 4A:2-2.3(a)(2), petitioner did engage in insubordination. The New Jersey Administrative Code definitions, N.J.A.C. 4A:1-1.3, does not provide a definition for insubordination; however, case law generally interprets the term to mean the refusal to obey an order of a supervisor. See e.g. Belleville v. Coppla, 187 N.J. Super. 147 (App. Div. 1982); Millan v. Morris View, 177 N.J. Super. 620 (App. Div. 1981); Rivell v. Civil Service Comm'n, 115 N.J. Super. 64 (App. Div. 1971), certif. denied, 59 N.J. 269 (1971). According to Webster's II New College Dictionary (1995) "insubordination" refers to acts of non-compliance and noncooperation, as well as affirmative acts of disobedience. Stanziale v. County of Monmouth Bd. of Health and Merit Sys. Bd., 350 N.J. Super. 414 (App. Div. 2002), certif. denied, 174 N.J. 361 (2002). In In re Rudolph, CSV 5083-99 (consolidated), Initial Decision (October 23, 2000), adopted, Merit System Board (December 18, 2000), http://njlaw.rutgers.edu/collections/oal/, the Merit System Board upheld the removal of a public works repairer for refusing to respond to the reasonable orders of his supervisor to The Administrative Law Judge found that appellant's complete an assignment. employment history evidenced a pattern of refusal to accept supervision and disrespect for those who attempted to supervise him and upheld appellant's removal.

I **CONCLUDE** that Edwards disobeyed Gagliano regarding the matter of Washington's use of a private bathroom on October 1, 2015. Gagliano told Edwards he would handle the matter himself. Edwards remained on the scene, continued to monitor

Washington and confronted Washington outside the home, stating "I got you now." He should have left the scene after speaking with Gagliano.

I further **CONCLUDE** that Edwards was insubordinate when he disobeyed and disregarded the directive of Gagliano, through Lamm, to stay away from Gonzalez and Washington for the rest of the day on October 1, 2015. Edwards defied this order when he chose to confront the employees and demand to see their daily work logs even though he was not their direct supervisor. Therefore, I **CONCLUDE** that this charge should be upheld.

N.J.A.C. 4A:2-2.3(a)(6) (Conduct unbecoming a public employee)

Regarding Civil Service Rule N.J.A.C. 4A:2-2.3(a)(6), petitioner did engage in conduct unbecoming a public employee. There is no precise definition for conduct unbecoming a public employee, and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), http://njlaw.rutgers.edu/collections/oal/.

In <u>Jones v. Essex County</u>, CSV 3552-98, Initial Decision (May 16, 2001), <u>adopted</u>, Merit Sys. Bd. (June 26, 2001), http://njlaw.rutgers.edu/collections/oal/, it was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. Unbecoming conduct is not precisely defined in <u>N.J.S.A.</u> 11A or <u>N.J.A.C.</u> 4A; <u>see</u>, <u>e.g.</u>, <u>In re Emmons</u>, 63 <u>N.J. Super.</u> 136, 140 (App. Div. 1960). In <u>Karins v. City of Atlantic City</u>, 152 <u>N.J.</u> 532 (1998), an off-duty firefighter directed a racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase "unbecoming conduct" is an "elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for municipal employees and confidence in the operation of municipal services." <u>Id.</u> at 554.

In <u>Hartmann v. Police Department of Ridgewood</u>, 258 <u>N.J. Super.</u> 32, 40 (App. Div. 1992), that court stated that a finding of misconduct need not "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."

In the present case, I **CONCLUDE** that Edwards engaged in a loud verbal confrontation with the Shop Steward, Frank Gonzalez, on October 1, 2015. Edwards threatened, taunted, and bullied Gonzalez using profane and insulting language. Five days later, he engaged in a verbal confrontation with a different DPW employee during a seminar addressing the topic of workplace violence. Again, Edwards used threatening and insulting language. Therefore, I **CONCLUDE** that this charge should be upheld.

N.J.A.C. 4A:2-2.3(a)(7) (Neglect of duty)

Regarding Civil Service Rule N.J.A.C. 4A:2-2.3(a)(7) and the charge of negligence, petitioner did neglect his duties. There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of their job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977), neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961).

I **CONCLUDE** that Edwards failed to perform his job duties when he chose to unreasonably follow and question Washington on two occasions, engaged in two verbal altercations with two different employees, skipped a mandatory training class, and sat in the office watching movies instead of working. Therefore, I **CONCLUDE** that this charge should be upheld.

N.J.A.C. 4A:2-2.3(a)(8) (Misuse of public property, including motor vehicles)

Regarding Civil Service Rule N.J.A.C. 4A:2-2.3(a)(8) and the charge of misuse of public property, petitioner did not neglect his duties. There is no definition in the New Jersey Administrative Code for misuse of public property, including motor vehicles, but the charge is understood to mean that an employee has used public property, in this case a vehicle, in a manner that is inconsistent with agency policy or reasonable safety standards. In In re Pressley, A-0699-13T4, A-0700-13T4 (consolidated) (App. Div. June 21, 2016), http://njlaw.rutgers.edu/collections/courts/, recurring incidents of unpermitted and erratic driving were sufficient to sustain a charge under N.J.A.C. 4A:2-2.3(a)(8).

I **CONCLUDE** that Edwards did not misuse public property as suggested by Respondent. The video evidence does not support Perez's testimony that she was almost "run over" by the loader. The loader does not appear to be moving at an excessive speed and there is a sufficiently large distance between the vehicle and where Perez was standing at the time it passed. Therefore, I **CONCLUDE** that this charge should be dismissed.

N.J.A.C. 4A:2-2.3(a)(12) (Other sufficient cause)

Regarding Civil Service Rule N.J.A.C. 4A:2-2.3(a)(12), respondent did not provide a basis for the other sufficient cause listed on the FNDA. There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against petitioner. The charge of other sufficient cause has been dismissed when "respondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm'r (April 26, 2006), http://njlaw.rutgers.edu/collections/oal/final/.

The FNDA does not specify which incidents should be considered sufficient cause. Respondent argues that cumulatively, all of Edwards' actions, as detailed above, constitutes "other sufficient cause" in violation of N.J.A.C. 4A:2-2.3(a)(12). I CONCLUDE that this charge should not be upheld.

CONCLUSIONS

Edwards has a history of disciplinary action with the City of Passaic DPW. While it is not necessary to show progressive discipline in this case it is worth noting that the city comported with this policy. Edwards's actions, as outlined in the FNDA, are sufficiently egregious to warrant his termination from employment.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that the determination to terminate Petitioner in this matter be and hereby is **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 <u>N.J.S.A.</u> 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.

July 24, 2017

DATE

LELAND S. MCGEE, ALJ

July 24, 2017

Date Received at Agency:

Date Mailed to Parties:

JUL 25 2017

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APPENDIX

LIST OF WITNESSES

For Petitioner:

Dean Edwards, petitioner

Tim White

Arthur Smith

Jose Tapia

For Respondent:

Miriam Perez

Robert Urena

Kasim Washington

Frank Gonzalez

Anthony Gagliano

Viviana Lamm

John Sarno, Esq.

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

- P-1 CD-ROM containing four videos
- P-2 Diagram of Training Room

For Respondent:

- R-1 Cumulative Report, Miriam Perez, various dates (1 p.)
- R-2 Handwritten Report, Kasim Washington, dated October 1, 2015 (3 pp.)
- R-3 Dep't of Public Works Incident Report Form, Kasim Washington, dated October 2, 2015 (1 p.)
- R-4 Passaic Police Dep't Police Report, dated October 2, 2015 (1 p.)
- R-5 Handwritten Letter, Frank Gonzalez, dated October 1, 2015 (3 pp.)

- R-6 Dep't of Public Works Incident Report Form, Frank Gonzalez, dated October 1, 2015 (2 pp.)
- R-7 Passaic Police Dep't Police Report, dated October 2, 2015 (1 p.)
- R-8 Incident Report, Anthony Gagliano re: Dean Edwards, dated October 1, 2015 (2 pp.)
- R-9 Memo, Anthony Gagliano re: Dean Edwards, dated May 15, 2015 (1 p.)
- R-10 Memo, Anthony Gagliano re: Dean Edwards, dated May 15, 2015 (1 p.)
- R-11 Email from John Sarno, Esq. to Viviana Lamm, dated October 14, 2015 (1 p.)
- R-12 Excerpts from City of Passaic Employee Handbook (5 pp.)
- R-13 Job Specification, Supervisor of Trees, NJ Dep't of Personnel (2 pp.)
- R-14 Harassment and Ethics Training attendance certification, Dean Edwards, dated January 10, 2014
- R-15 Notice of Minor Disciplinary Action, dated May 10, 2002 (1 p.)
- R-16 Notice of Minor Disciplinary Action, October 14, 2009 (1 p.)
- R-17 Final Notice of Disciplinary Action, dated February 13, 2014 (1 p.)
- R-18 Final Notice of Disciplinary Action, dated January 13, 2016 (2 pp.)