



STATE OF NEW JERSEY

In the Matter of Tahron Miles
 City of Newark, Police Department

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NOs. 2015-244 & 2015-816
 OAL DKT. NO. CSV 09487-14 &
 OAL DKT. NO. CSR 13040-14
 (CONSOLIDATED)

ISSUED: APRIL 20, 2018 BW

The appeals of Tahron Miles, Police Officer, City of Newark, Police Department, indefinite suspension effective June 6, 2014 and removal effective September 15, 2014, on charges, were heard by Administrative Law Judge Evelyn J. Morose, who rendered her initial decision on February 28, 2018. Exceptions were filed on behalf of the appellant and 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 (Commission), at its meeting of April 18, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision. Additionally, the Commission notes that the Administrative Law Judge did not rendered a determination regarding the indefinite suspension. However, since the record reflects that the standard to impose such a suspension under *N.J.A.C. 4:2-2.7* were met, the Commission also upholds that action.

ORDER

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

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
THE 18TH DAY OF APRIL, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

(CONSOLIDATED)

TAHRON MILES,

Petitioner,

v.

CITY OF NEWARK POLICE DEPARTMENT,

Respondent.

OAL DKT. NO. CSV 09487-14

AGENCY DKT. NO. 2015-244

IN THE MATTER OF TAHRON MILES,

CITY OF NEWARK POLICE DEPARTMENT.

OAL DKT. NO. CSR 13040-14

AGENCY DKT. NO. N/A

2015-814

Anthony Fusco, Jr., Esq., for appellant, Tahron Miles (Fusco & Macaluso, attorneys)

Kimberly Holmes, Esq., for respondent, The City of Newark (Kenyatta Stewart, Acting Corporate Counsel)

Record Closed: February 16, 2018

Decided: February 28, 2018

BEFORE EVELYN J. MAROSE, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On June 5, 2014, the City of Newark, Police Department (Newark Police) served Tahron Miles (Miles) with a Preliminary Notice of Disciplinary Action (PNDA) indefinitely

suspending Miles effective June 6, 2014. (R-3.) Miles requested a Departmental Hearing, which was held on July 2, 2014, and resulted in a Final Notice of Disciplinary Action (FNDA), wherein Miles was disciplined by means of a suspension from June 6, 2014, to July 8, 2014. The following charges were sustained:

OAL Docket No. CSV 09487-14

Charge 1: Violation of Newark Police Department Rules and Regulations Chapter 6:29.1, OFFICIAL INEFFICIENCY OR INCOMPETENCY. Department members whose performance is demonstrably inadequate or fails to meet, obtain or produce the effects or results mandated by the Department orders and procedures, shall be deemed in violation of Department Rules and Regulations and shall be charged accordingly.

Charge IB: Violation of Civil Service Rule 4A:2-2.3(a)(1). INCOMPETENCY, INEFFICIENCY, FAILURE TO PERFORM DUTIES.

Charge IC: Violation of Civil Service Rules 4A:2-2.3(a)(3). INABILITY TO PERFORM DUTIES.

Specification: On April 30, 2014, Miles did violate the above Rules when information was received from Camden County Superior Court-Domestic Violence Unit that he was the subject of provisions from possessing any and all firearms. Miles was the subject of provisions of the Domestic Violence Order stemming from an incident which occurred on June 3, 2012. Since June 3, 2012, Miles has been prohibited from possessing any firearms. In fact, his personal firearms were also seized by the Camden County Superior Court. Miles also failed to disclose his inability to possess a firearm and/or the fact that the Camden County Superior Court seized his personal weapons as a result of Domestic Violence.

Charge II: Violation of Newark Police Department Rules and Regulations Chapter 18:22-1. FALSE STATEMENTS. Police Officers who deliberately depart from

the truth by omitting, misrepresenting, or distorting any fact on any form, questionnaire, or report shall be charged with having made a false statement. (2 Counts.)

Charge III: Violation of Newark Police Department Rules and Regulations Chapter 18:22-2. PRE-EMPLOYMENT STATEMENTS. Police officers shall be held to have violated this Rule, retroactively, who had false statements during their investigation from candidacy to the Police Department. (2 Counts.)

Specification I: On October 28, 2013, Miles did submit a Pre-Employment Background Investigation Questionnaire to the Newark Police with intent to deceive, in that he deliberately omitted pertinent information relative to Camden County Prosecutor's Office-Domestic Violence Unit prohibiting him from possessing any firearms.

Specification II: On October 28, 2013, Miles did submit a Pre-Employment Background Investigation Questionnaire to the Newark Police with intent to deceive, in that he deliberately omitted pertinent information relative to the Camden County Prosecutor's Office-Domestic Violence Unit seizing his personal firearms and his Camden Police issued firearms, as a result of a Domestic Violence where he was the subject. The action of prohibiting Miles from possessing or carrying any firearms would have disqualified him from employment as a Newark Police Officer.

Charge IV: Violation of Newark Police Department Rules and Regulations Chapter 4:4.6. SUBPOENAING OR SUMMONING. Whenever Department members are summoned or subpoenaed to appear before:

- (a) A legally constituted investigative body with subpoena power,
- (b) A judicial tribunal with subpoena powers, or comparable agencies,
- (c) A legally constituted hearing board for the purpose of inquiring into the activities or operations of Individual Department police officers or of the Department itself.

They shall appear before, cooperate with and render every aid and assistance to such body, tribunal or agency and prior to such appearance notify their commanding officer by submitting a duplicate report, the original of which shall be forwarded through channels to the Office of the Police Director. (3 Counts.)

Charge V: Violation of Newark Police Department Rules and Regulations Chapter 3:2.3. RESPONSIBILITY FOR OWN ACTIONS. A police officer is responsible for his own actions or omissions. He may not submit as an excuse or justification for an action or for an omission to a Rule and Regulation, to an Order, or to a Directive, that his action or inaction resulted from the advice or suggestion of another person. This Rule hold whether this person is connected with the Department or not. On the other hand, this Rule does not apply when he acts to carry out the Order of an Officer of higher rank in which case the responsibility for issuing Orders or Directives shall be assessed against the officer of higher rank. (3 Counts.)

Specification I: On January 28, 2014, Miles did violate the above rule when he responded to Camden County Superior Court-Family Part relative to Case No. FO 04 000134 13 C and failed to notify his commanding officer and the Police Director in writing prior to appearance.

Specification II: On February 20, 2014, Miles did violate the above rule when he responded to Camden County Superior Court-Family Part relative to Case FO 04 000134 13 C and failed to notify his commanding officer and the Police Director in writing prior to appearance.

Specification III: On June 3, 2014, Miles did violate the above rule when he responded to Camden County Superior Court-Family relative to Case FO 04 000134 13 C and failed to notify his commanding officer and the Police Director prior to appearance.

Charge VI: Violation of Newark Police Department Rules and Regulations, Chapter 3:2.7. KNOWLEDGE OF LAWS AND REGULATIONS. Police Officers shall equip themselves with knowledge found in the (2 Counts):

- (a) New Jersey Laws,
- (b) Newark City Ordinances,
- (c) New Jersey Court Rules, and
- (d) The Newark Police Department Manual of Rules and Regulations.

Specification I: Prior to April 30, 2014, Miles did violate the above rule when he accepted and possess a Newark Police Department issued firearm, knowing he was prohibited from possessing any firearm by the Camden County Prosecutor's Office-Domestic Violence Unit.

Specification II: On June 3, 2014, Police Officer Miles did violate the above rules when booked off sick with a cold and failed to notify his command that he was no longer at his place of confinement.

Charge VII: Violation of Newark Police Department Rules and Regulations Chapter 18:6. NEGLECT OF DUTY. Department members shall not commit any act nor shall they be guilty of any omission that constitutes neglect of duty. (3 Counts.)

Charges VIIB: Violation of Civil Service Rule: 4A2:2-3(a)(7). An employee may be subject to discipline for NEGLECT OF DUTY.

Specification I: Miles, assigned to Fifth District-Patrol, did neglect his duty when he failed to inform the Newark Police Department that he was prohibited from possessing any firearm by the Camden County Prosecutor's Office-Domestic Violence Unit.

Specification II: On June 3, 2014, Police Officer Miles did violate the above rules when he booked off sick with a cold and failed to notify his command that he was no longer at his place of confinement.

Specification III: On June 3, 2014, Police Officer Miles did violate the above rule when he responded to Camden County Superior Court-Family Part relative to Case

FO 04 000134 13 C and failed to notify his commanding officer and the Police Director in writing prior to appearance. (R-4.)

On July 14, 2014, Miles appealed the sustained charges. Tahron Miles v. City of Newark, Police Department, Docket No. CSV 09487-14 was transmitted, 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) on July 25, 2014, where it was filed.

On July 3, 2014, Newark served Miles with a PNDA seeking termination. (R-2.) Miles requested a Departmental Hearing, which was held on September 2, 2014. At the hearing, Miles entered a non-guilty plea. However, a finding of guilt was entered by the Board and in accordance with a FNDA, Miles was terminated from his position, effective September 15, 2014. The following charges were sustained:

OAL Docket No. CSR 13040-14

Charge I: Violation of Newark Police Department Rules and Regulations Chapter 6:29.1, OFFICIAL INEFFICIENCY OR INCOMPETENCY. Department members whose performance is demonstrably inadequate or fails to meet, obtain or produce the effects or results mandated by the Department orders and procedures, shall be deemed in violation of Department Rules and Regulations and shall be charged accordingly.

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which occurred on June 3, 2012. Since June 3, 2012, Miles has been prohibited from possessing any firearms. In fact, his personal firearms were also seized by the Camden County Superior Court. Miles also failed to disclose his inability to possess a firearm and/or the fact that the Camden County Superior Court seized his personal weapons as a result of Domestic Violence.

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They shall appear before, cooperate with and render every aid and assistance to such body, tribunal or agency and prior to such appearance, notify their commanding officer by submitting a duplicate report, the original of which shall be forwarded through channels to the Office of the Police Director. (3 Counts.)

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- (f) Newark City Ordinances,
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Specification III: On June 3, 2014, Miles did violate the above rule when he responded to Camden County Superior Court-Family Part relative to Case FO 04 000134 13 C and failed to notify his commanding officer and the Police Director in writing prior to appearance. (R-1.)

Miles appealed the charges. In the Matter of Tahron Miles, City of Newark (Police Department), Docket No. CSR 13040-14 was transmitted, 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), on September 22, 2014, where it was filed.

On November 14, 2014, a Consent Order Consolidating the two Cases was entered by the Honorable James A. Geraghty, Jr., ALJ. Orders of Inactivity were entered, at the request of the parties, on November 19, 2014, May 20, 2015, September 23, 2015, March 8, 2016, June 17, 2016, September 12, 2016, and March 28, 2017, pending a decision in a related New Jersey Appellate Division case, which the parties advised might resolve the two matters. Several documents were executed related to Miles's waiver of back pay.

At the conclusion of the Appellate case, hearings were held on October 16, 2017, and January 12, 2018. The record closed on February 16, 2018, upon the submission of post hearing briefs.

FACTUAL DISCUSSION AND FINDINGS

Six witnesses testified in this matter. Miles testified on his own behalf and called as a witness Sergeant Andy Rivera of the Newark Police. Director Sheilah A. Coley,

Lieutenant Christine Locke, Sergeant Eric Wren, and Assistant Prosecutor Matthew Spence testified on behalf of the Newark Police. Based upon a review of the totality of the pertinent evidence, and having had the opportunity to assess the demeanor and credibility of the witnesses and review the documents admitted into evidence, I **FIND** the following pertinent facts:

- 1.) Miles was employed as a police officer for the Camden City Police Department (Camden Police) from January 2010 to April 2013.
- 2.) Miles was involved in a domestic incident on June 3, 2012. A Temporary Restraining Order (TRO) was entered on June 4, 2012. The TRO was dismissed on June 14, 2012. (R-8.)
- 3.) Pursuant to the Office of the Attorney General Guidelines, the Camden County Prosecutor's Office (Camden Prosecutor's) seized the weapons (personal and duty weapons) and Fire Arms Purchaser Identification Card (FPIC) of Miles, on June 4, 2012.
- 4.) Miles was set to be re-armed by the Camden Prosecutor's once he completed counseling and was re-evaluated by a Department physician. Miles completed those terms and a decision was made by the Camden Prosecutor's on November 9, 2012, to re-arm Miles.
- 5.) Before Miles was re-armed and returned his FPIC, he was involved in an incident at a "local club" on November 11, 2012, where the Cherry Hill Police Department was summoned. (R-9.)
- 6.) Based upon the second incident, the Camden Prosecutor's reversed its Initial Decision to re-arm Miles. Miles was prohibited from carrying any weapon based on the domestic violence of June 3, 2012, and the "local club" incident on November 11, 2012. (R-19 to R-21.)
- 7.) Miles received a ninety-day suspension from the Camden Police for failing to inform his superior officers of the November 11, 2012, incident. Miles only served thirteen days of his ninety-day suspension because the Camden Police ceased to exist on March 31, 2013.

- 8.) On October 16, 2017, when Miles applied to be a police officer in Newark, he did not inform the Newark Police that his weapons and FPIC were seized as of June 4, 2012. (R-17.)
- 9.) Miles completed a background investigation for his Newark Police job application. The first page of the applicant's questionnaire contained a warning provision that "any misstatement of fact, omission or attempt to mislead this agency, its investigators or the appointing authority, deliberate or in error, may lead to your disqualification." Applicants were instructed to initial the bottom of every page as they completed each page, a direction with which Miles complied. (R-6, R-22.)
- 10.) On October 24, 2013, Miles acknowledged on the questionnaire, that a TRO was issued against him in Camden County and later dismissed. (R-22.)
- 11.) Miles testified that, at the time that he applied for employment as a Newark Police Officer, he did not advise Newark that his weapons were seized by the Camden Prosecutor's, as was his FPIC.
- 12.) Sergeant Rivera of the Newark Police Department had difficulty obtaining information regarding Miles's employment as a police officer in Camden. In recommending that Newark continue the hiring process for Miles, he relied upon the truthfulness of the information provided by Miles in his pre-employment interview and questionnaire.
- 13.) On November 25, 2013, Miles was employed as police officer in the City of Newark.
- 14.) Lieutenant Locke testified that Miles failed to disclose on his Newark questionnaire that he was prohibited from carrying a weapon. She testified that Miles would not have been accepted had he revealed on his questionnaire that he was prohibited from carrying a weapon.
- 15.) Miles testified that he did not advise the Newark Police, either before his employment or while he working as a Newark Police Officer and carrying a weapon in Newark, that his weapons were seized by the Camden Prosecutor's, as was his FPIC.

- 16.) Miles appeared in Camden County Superior Court on January 28, 2014, February 20, 2014, and June 3, 2014. Miles testified that he did not notify his supervisor in the Newark Police Department that he was summoned and did appear in Court in Camden County Superior Court, Family Part on those three days. He acknowledged that he told his supervisor that he was sick on at least one of the days that he was in Court. (R-12, R-15.)
- 17.) On April 30, 2014, Sergeant Wren was directed by Assistant Prosecutor Spence of the Camden County Prosecutor's Office to contact the Newark Police Department since Miles had stated in Court that he was a police officer for Newark even though he did not have a legal right to possess a weapon nor FPIC since 2012. Sergeant Wren advised staff of the Newark Police Department that the department weapon issued by the Camden Police Department, the personal weapons of Miles, and Miles's FPIC were all seized on June 4, 2012. (R-5.)
- 18.) Miles did not receive the return of his personal weapons and his FPIC until an Order was entered by the Honorable Richard F. Wells, J.S.C. of the Superior Court, Camden County, Chancery Division-Family Part, on June 7, 2017.

I **FIND** no merit in Miles's argument that he did nothing that should be found to rise to the level of intentional dishonesty or untruthfulness, sufficient to support removal, since the TRO and charges related to the "local club" incident concluded in dismissal, and his personal firearms and FPIC were eventually returned. The sustained charges at issue relate not to the eventual dismissal of the entered TRO and "local club" charges nor to the eventual return of his weapons and FPIC, but rather to Miles's failure to truthfully and completely inform Newark of the "local club" incident and that he did not have a legal right to possess and carry a weapon.

A careful analysis of credibility is necessary in order to make critical findings of fact. 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, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's 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). Also, "[t]he interests, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). A fact finder "is free to weigh the evidence and to reject the testimony of a witness 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. 522, 521-22 (1950). The choice of rejecting the testimony of a witness, in whole or in part, rests with trier of and finder of fact and must simply be a reasonable one. Renan Realty Corp. v. Community Affairs Dep't, 182 N.J. Super. 415, 41 (App Div. 1981). A fact finder "is free to weigh the evidence and to reject the testimony of a witness 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. Perrone, 5 N.J. at 521-22 (1950). The choice of rejecting the testimony of a witness, in whole or in part, rests with trier of and finder of fact and must simply be a reasonable one. Renan Realty, 182 N.J. Super. at 41.

I **FIND** Miles's argument that he was reasonably confused about the status of his right to carry a firearm to be incredible. In testimony, Miles acknowledged his obligation as a police officer (as detailed in the sustained charges) to know New Jersey Laws, Newark City Ordinances, New Jersey Court Rules, and The Newark Police Department Manual of Rules and Regulations, which include laws relating to seizure of weapons after a domestic violence incident. Further, he was fully aware that his personal firearms and FPIC, seized in June 2012, were not returned to him after the TRO and "local club" incident charges were dismissed, nor by the time he applied to the Newark Police Department, nor during the time he was working as a Police Officer in Newark

and carrying a firearm issued by Newark. Since Miles never informed Newark that the weapon issued to him by the Camden Police Department, his personal firearms and FPIC were seized and returned, he certainly cannot reasonably argue Newark's hiring him without this knowledge supports his argument that he was confused about his "right to carry a weapon."

I **FIND** Miles's argument that the City of Newark "closed its eyes" to details of Miles' application to have no merit. If anything, Newark did not "close its eyes," rather Miles "held his hands over Newark's eyes" when, during his interview and on his employment questionnaire, he failed to reveal the seizure of his weapons and FPIC card.

I **FIND** Miles is not justified to claim he is being unjustly disciplined by termination when he was advised on the pre-employment questionnaire that he failed to accurately fill out that "any misstatement of fact, omission or attempt to mislead this agency, its investigators or the appointing authority, deliberate or in error, may lead to your disqualification." (Emphasis added.)

I **FIND** Miles's argument that he might have been hired by Newark on an interim basis until the return of his weapons and FPIC to be inappropriate speculation since Miles admitted in his testimony that he never informed Newark of the seizure prior to his employment nor was there any testimony that interim positions for police officers "unable to carry" exist.

Based upon the foregoing facts, I **FIND** that the Newark Police Department has proven by a preponderance of the competent, relevant, and credible evidence that Miles is guilty of the sustained charges detailed above and in the FNDAs at issue in Docket No. CSV 09487-14 and Docket No. CSR 13040-14.

LEGAL ANALYSIS, CONCLUSIONS AND PENALTY

"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). A

civil service employee who commits a wrongful act related to his duties, or gives other just cause, may be subject to major discipline. N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The burden of persuasion is on the agency in enforcement proceedings to prove violation(s) of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The appointing agency must prove its case by the preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Preponderance may be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses. State v. Lewis, 67 N.J. 47 (1975). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958).

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. W. New York v. Bock, 38 N.J. 500, 523 (1962). However, the principle of incremental, or progressive, discipline does not need to be applied in every disciplinary setting, particularly when the misconduct "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 Herrmann, 192 N.J. 19, 33 (2007). New Jersey courts have repeatedly concluded that, even in the absence of a prior disciplinary record, removal may be imposed if the charges are serious enough in nature. Ibid.; Henry v. Rahway State Prison, 81 N.J. 571 (1980).

Moreover, the test for reviewing an administrative sanction is "whether such punishment is so disproportionate to the offense, in the light of all the circumstances, so as to be shocking to one's sense of fairness. In re Polk, 90 N.J. 550, 578 (1982). Further, courts should take care not to substitute their own views of whether a particular penalty is correct for those of the body charged with making that decision. In re Carter, 191 N.J. 474,486 (2007).

Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4. A law enforcement officer is held to a higher standard of conduct than other employees and, more than other employees, is expected to act in a responsible manner, honestly, with integrity, fidelity and good faith. In re Phillips, 117 N.J. 567, 576 (1990); Reinhardt v. E. Jersey State Prison, 97 N.J.A.R.2d (CSV) 166. Where the "desired goal of upholding the morale and discipline of the force, as well as maintaining public respect for its officers would be undermined, removal is justified" as it is when there is a "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." Asbury Park v. Dep't of Civil Serv., 17 N.J. 419 (1955).

As detailed more above, Miles's weapons and FPIC were seized as a result of two separate incidents—a domestic violence incident and a "local club" incident. Miles failed to inform his then employer, the Camden County Police Department, of the "local club incident." As a result, he was suspended for ninety days.¹ Since the Camden County Police dissolved, Miles sought employment from the City of Newark. During his pre-employment interview and in his pre-employment questionnaire, Miles failed to inform Newark of the seizure of his service weapon, his personal weapons and his FPIC. During his employment, he failed to inform his supervisor, as required, when he was summoned and did appear in the Superior Court, Camden County Chancery Division-Family Part on three separate occasions. In fact, on at least one occasion, he expressly lied to his supervisor by advising him that he was home sick rather than in Court on a domestic matter. During his employment he accepted and carried a weapon issued to him by Newark with knowledge that his seized personal weapons and FPIC were never returned to him. Miles could not have reasonably been confused as of "right to carry." With consideration of the factual basis for the charges at issue and the standard to which a police officer is held, I **CONCLUDE** that the sustained charges should be affirmed and that removal is merited.

¹ Miles did not actually serve all the days of his suspension from the Camden County Police Department solely because this police force dissolved. However, the discipline remains on his record.

ORDER

It is **ORDERED** that the charges of Official Inefficiency or in Incompetency, Failure to Perform Duties, pursuant to Chapter 6:29.1 and 4A:2.2.3(a)(1), are **AFFIRMED**.

It is **ORDERED** that the Charge of Inability to Perform Duties, pursuant to 4A:2-2.3(a)(3) is **AFFIRMED**.

It is **ORDERED** that the Charge of False Statements, pursuant to Chapter 18:22.1 is **AFFIRMED**.

It is **ORDERED** that the Charge of Pre-Employment Statements, Chapter 18:22.2 is **AFFIRMED**.

It is **ORDERED** that the Charge of Subpoenaing or Summoning, pursuant to Chapter 4:4.6 is **AFFIRMED**.

It is **ORDERED** that the Charge of Responsibility for Own Actions, pursuant to Chapter 3:2.3 is **AFFIRMED**.

It is **ORDERED** that the Charge of Knowledge of Laws and Regulations, pursuant to Chapter 3:2.7 is **AFFIRMED**.

It is **ORDERED** that the Charges of Neglect of Duty, pursuant to Chapter 18:6 and 4A:2-2.3(a)(7), are **AFFIRMED**.

It is further **ORDERED** that the penalty of removal imposed by the appointing authority 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 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, 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.

February 28, 2018

DATE



EVELYN J. MAROSE, ALJ

Date Received at Agency:

2/28/18

Date Mailed to Parties:

MAR 2 2018



Laura Sanders
CHIEF ADMINISTRATIVE LAW JUDGE

sej

APPENDIX

WITNESSES

For Appellant:

Andy Rivera, Sergeant
Tahron Miles

For Respondent:

Sheilah A. Coley, Director
Eric Wren, Sergeant
Christine Locke, Lieutenant
Matthew Spence, Assistant Prosecutor

EXHIBITS

For Appellant:

- P-1 Order of the Superior Court, Chancery Division-Family Part, Camden County, Criminal Action, the Honorable Richard F. Wells, J.S.C., dated June 7, 2017
- P-2 Police Department, Administrative Submission, Background Investigation, dated November 15, 2013
- P-3 Identical to P-1

For Respondent:

- R-1 Binder Tab A, Final Notice of Disciplinary Action, dated September 2, 2014
- R-2 Binder Tab B, Preliminary Notice of Disciplinary Action of Removal, dated July 3, 2014
- R-3 Binder Tab C, Preliminary Notice of Disciplinary Action of Indefinite Suspension, dated June 5, 2014
- R-4 Binder Tab D, Final Notice of Disciplinary Action of Suspension, dated June 6, 2014
- R-5 Binder Tab E, Police Department, Administrative Submission, dated June 5, 2014, Investigation of Personnel, Allegation: Neglect of Duty, redacted

- R-6 Binder Tab F, Police Department, Administrative Submission, dated June 5, 2014, Investigation of Personnel, Allegation: Neglect of Duty, redacted
- R-7 Binder Tab G, Police Department, Administrative Submission, dated June 5, 2014, Investigation of Personnel, Allegation: Neglect of Duty, redacted
- R-8 Binder Tab H, Temporary Restraining Order, Superior Court, Chancery Division-Family Part, Camden County, the Honorable Edward J. McBride, J.S.C., dated June 14, 2012
- R-9 Binder Tab I, Cherry Hill Police Department, Officer Report for Incident at Taylor's Grill and Bar Restaurant, dated November 11, 2012
- R-10 Binder Tab J, Withdrawn
- R-11 Binder Tab K, Withdrawn
- R-12 Binder Tab L, Newark Police Department Complaint Against Personnel, date of incident—April 30, 2014
- R-13 Binder Tab M, Affidavit of Miles, In Support of Order to Show Cause, dated October 4, 2013
- R-14 Binder Tab N, Police Department, Administrative Submission, dated April 30, 2014, Statement as to Possession and Registration of Firearms
- R-15 Binder Tab O, Police Department, Administrative Submission, dated June 4, 2014, by Captain Eugene Venable, as to Miles responding to Superior Court for a personal matter without notifying the Newark Police Department
- R-16 Binder Tab P, Letter from Sergeant Locke to Laurie A. Corson, Assistant Prosecutor and Eric Wren, Sergeant, dated May 5, 2014
- R-17 Binder Tab Q, Letter from Laurie A. Corson, Assistant Prosecutor, to Detective Julio Rios, Camden, dated June 4, 2012
- R-18 Binder Tab R, Letter from Laurie A. Corson, Assistant Prosecutor, to Howard L. Goldberg, Esq., First Assistant County Counsel, Camden County, dated June 20, 2013
- R-19 Binder Tab S, Letter from Gail R. Gallagher, DAG to Eugene Venable, Newark Police Director, dated July 7, 2014
- R-20 Binder Tab T, Amended Order of the Superior Court, Chancery Division-Family Part, Camden County, Honorable Richard F. Wells, J.S.C., regarding seizure and forfeiture of Miles's weapons, dated June 30, 2014

- R-21 Binder Tab U, Decision of the Superior Court, Chancery Division-Family Part, Camden County, by the Honorable Richard F. Wells, J.S.C., dated June 26, 2014, affirming the retention of Miles' weapons
- R-22 Binder Tab V, Police Department, Background Investigation Questionnaire, dated October 24, 2013
- R-23 CD of October 16, 2017, Hearing
- R-24 CD of January 12, 2018, Hearing