



**STATE OF NEW JERSEY**

In the Matter of Amy J. Robitaille  
Gloucester County, Department of  
Emergency Response

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2016-3057  
OAL DKT. NO. CSV 4056-16

**ISSUED: APRIL 20, 2018      BW**

The appeal of Amy J. Robitaille, Emergency Medical Technician, Gloucester County, Department of Emergency Response, removal effective February 22, 2016, on charges, was heard by Acting Director and Chief Administrative Law Judge Lisa James-Beavers, who rendered her initial decision on March 19, 2018. 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 April 18, 2018, 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 Amy J. Robitaille.

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 18<sup>TH</sup> DAY OF APRIL, 2018



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 4056-16

AGENCY DKT. NO. 2016-3057

**IN THE MATTER OF  
AMY J. ROBITAILLE,  
GLOUCESTER COUNTY, DEPARTMENT  
OF EMERGENCY RESPONSE**

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**Jason L. Jones, Esq., and Charlette Matts-Brown, Esq., for appellant  
(Weissman and Mintz, LLC, attorneys)**

**Eric D. Milavsky, Esq., for respondent (Brown and Connery, LLP, attorneys)**

Record Closed: March 21, 2017

Decided: March 19, 2018

**BEFORE LISA JAMES-BEAVERS, Acting Director and Chief ALJ:**

**STATEMENT OF THE CASE**

Appellant Amy Robitaille (Ms. Robitaille), an Emergency Medical Technician, appeals her removal on charges 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; and N.J.A.C. 4A:2-2.3(a)(7), neglect of duty. Appellant denies that she violated any of the provisions of the administrative code when she, along with her partner, failed to respond to a call.

**PROCEDURAL HISTORY**

On January 25, 2016, the respondent Gloucester County Department of Emergency Response (Department) issued a Preliminary Notice of Disciplinary Action to appellant for the above charges and suspended her without pay pending a disciplinary hearing. (A-1.) After the hearing on February 8, 2016, the Department served appellant with a Final Notice of Disciplinary Action (FNDA) sustaining the charges and removing her effective February 22, 2016. (R-1.) Appellant appealed the FNDA to the Civil Service Commission (CSC). The CSC transmitted the case to the Office of Administrative Law (OAL) where it was filed on March 15, 2016. I scheduled the hearing for August 16 and 17, 2016. Appellant requested an adjournment due to her retaining counsel. Since the case was a removal, respondent would not consent unless appellant waived back pay until the next hearing date. Appellant waived back pay until the next scheduled hearing date, October 19 and 20, 2016. Those dates were adjourned and the hearing was rescheduled for October 31, and November 17, 2016. The parties adjourned those dates due to the unavailability of witnesses on those scheduled dates. The hearing was then rescheduled for January 23 and 25, 2017. On those dates, I heard the case and kept the record open for written submissions. The record closed upon receipt of those submissions on March 21, 2017.

**FACTUAL DISCUSSION**

The following facts are not in dispute and therefore I **FIND** them as **FACT**.

Amy Robitaille was an Emergency Medical Technician (EMT) with the Department. She began as a part-time EMT in October 2007 and then became a full-time EMT in November 2007. She has certification with the State of New Jersey as an EMT and a firefighter. Her job is to answer 9-1-1 calls, provide basic treatment and intervention services for medical trauma and transport patients to the hospital and other appropriate facilities.

Ms. Robitaille was working the 6:00 p.m. to 6:00 a.m. shift that went from December 30, 2016 to December 31, 2016. EMTs work in teams as required by the State of New Jersey. The Department is a twenty-four hour per day operation. EMTs work twelve-hour shifts and must be ready to respond. At the time of the incident in question, Ms. Robitaille was working with her partner, Dan Hauss, who was a part-time or per diem employee. They were assigned to Gloucester County Emergency Medical Services (GCEMS) crew 82-75. At about 1:36 a.m., their unit was dispatched for a cardiac arrest in Glassboro, New Jersey. The dispatch was later updated to a gunshot wound. Due to the severity of the call, another crew BLS 82-85 was also dispatched and responded to assist. Ms. Robitaille's unit never responded nor arrived at the location. Ms. Robitaille's partner, Mr. Hauss, received a written warning for missing the call. Ms. Robitaille was suspended without pay, and then removed after her hearing.

The parties stipulated that there is a pager charger and radio charger that are secured in place in the computer room. The telephone charger was not secured in the computer room.

### TESTIMONY

#### Andrew Lovell

Andrew Lovell testified that he is Chief of Emergency Medical Services (EMS) for GCDER. He previously served as Chief for the Township of Logan. When Gloucester County established its first county life support system in 2007, he was chosen to lead it. The function of the GCDER is to respond rapidly to all 9-1-1 calls from the public for traumatic or medical emergencies.

Chief Lovell explained that, during a typical night shift, a team may receive between three to seven calls. A member of the public dials 9-1-1 and the public safety telecommunicator determines the nature of the emergency and dispatches an EMS crew. Typically crews of two are in stations awaiting the calls. Policy 2012-26 sets forth that the GCEMS expects that "all emergency staff will arrive at work with sufficient rest

to be able to remain awake and perform all functions fully alert and safely.” (R-1.) The policy also sets forth that the on-duty crew must be available for immediate response to any emergency dispatch. It prohibits sleeping while on duty and sets forth that “Failure to be ready to respond to an emergency dispatch or call will result in disciplinary action up to and including termination.” (R-1.)

Chief Lovell testified to the six methods of dispatch. There are three voice or audible and three digital methods that are used concurrently. They are: 1) audio message over VHF paging system; 2) audio message over UHF paging system; 3) two-way radio system; 4) digital text message to crew cell phone; 5) digital email message to computer; and 6) Active 9-1-1 Phone App. The redundancy is used so that the crews cannot miss a call. Sometimes one method may fail, although that is very infrequently, but all six will not fail at the same time. The failure of all has never happened because each method is independent of the other. Chief Lovell explained a video of the station showing the crew area, the kitchen area and the small computer room, all of which are in close proximity.

On December 31, 2015, a call went out at 1:36 a.m. that a person was lying in the driveway in front of a residence. Another crew arrived on the scene, treated and transported the patient to the hospital where the patient was pronounced dead in the Emergency Room. Chief Lovell testified that he knows that the call went out over all six methods because he heard the audio notice. The County keeps recorded messages as they are subject to Open Public Records Act (OPRA) requests. He played the recording of the dispatch, which lasted approximately three minutes and forty-one seconds. (R-5.) He noted that the synthesized voice saying what time it is while the recording plays is only on the recording and not heard in real time. The paramedics and the fire department were concurrently dispatched. Two minutes after the call, Ms. Robitaille's crew still had not responded.

Chief Lovell testified that the call went to the radio, the crew's digital phone by text and by pager. An audit of the Roam Alert Secure Network (RSAN) indicated that the text page was sent electronically. The cell phone carrier confirms that it transmitted

the page. (R-6.) He also retrieved the confirmation of the email that was sent. (R-7.) When he interviewed Ms. Robitaille, she said that she had the 9-1-1 Phone App and the call was transmitted. Chief Lovell also showed that the crew responded to three calls before the 1:36 a.m. call and responded to one call after that call. (R-8.) The last call they responded to before the 1:36 call was at 9:59 p.m. Ms. Robitaille's crew reported no issue with the pagers or radio prior to the 1:36 a.m. call. He testified to Police Policy 2012-13 that requires crews to respond and be in route to a call within two minutes of the initial dispatch. (R-9.) He noted that Ms. Robitaille did not fill out a special report, which can be used if something goes wrong, for example, if a pager does not trip. (R-11.) Ms. Robitaille received the Uniform and Appearance policy (R-17) and the Rested and Fit for Duty Policy (R-1.)

Chief Lovell requested that Human Resources discipline Ms. Robitaille for the failure to respond to the call. He recommended termination because she had a pattern of failure to carry out the duties of an EMT and that failure put the public at risk. (R-10.) No other employees missed the call in question. It is the crew's responsibility to make sure that all methods of communication are on and working. The GCEMS will have answered 200,000 calls this year.

On cross-examination, Chief Lovell noted that electronic devices can fail; however, there has been no reported failure of the radio system, Active 9-1-1, text pages or email that is used by all agencies. He has no knowledge of whether Ms. Robitaille had the email open on the computer. The alert tones are only sent once, so if they are sent more than once, it means that the crew did not respond to the call. He agreed that employees have to pay for the Active 9-1-1 App themselves, so the GCEMS does not require it. The County issued new pagers, but it was due to the new radio system and had nothing to do with this incident. The time between the dispatch and the time the paramedic unit responded was three minutes and thirty-four seconds. Ms. Robitaille reported that her pager did not trip.

**Christopher Mellish**

Christopher Mellish testified that he is the supervising EMT who works from 7:00 p.m. to 7:00 a.m. Part of his job is to make sure that crews respond to calls. He found out about Ms. Robitaille's missed call because another unit went to the call, loaded the patient into the ambulance and went to the hospital. On the way to the hospital, the crew called him and asked the status of the other ambulance because that crew, 82-75, never arrived on the scene. After he learned 82-75 did not respond to the call, he called the alarm room supervisor in charge of dispatching, William Ross, and confirmed that Ms. Robitaille's crew, 82-75 did not respond to the call. He then dialed Ms. Robitaille's cell phone. When she answered, she sounded groggy. He asked her if she knew that she had missed an assignment and she said she did not. He asked if it had come up on her Active 911 phone app and she said that it was there. She then called her partner's name three times in an escalating voice, "Dan, Dan, Dan," as if trying to wake him. He did not call Mr. Hauss directly because he generally communicates with the full-time employees and Mr. Hauss is a part-time employee who works twelve to twenty-four hours per week.

Later, at approximately 3:20 a.m., Ms. Robitaille's unit was dispatched to the same address to console the family members who were distraught about what had happened. Mr. Mellish asked her later if the pagers had gone off that time. She said that they had. He filed a report to Chief Lovell and sent it to him by email later that morning.

The call in question was dispatched as a cardiac arrest, which is an involved call that requires multiple people so the second ambulance is sent to assist knowing that Ms. Robitaille and Mr. Hauss would probably need a hand. Mr. Mellish heard the second ambulance sign on to the radio approximately two minutes after the dispatch. When he was first advised of the incident, he was at the Mullica Hill station. Ms. Robitaille said that the pagers did not trip for that 1:36 a.m. call. There were no other EMTs to ask about the status of the pagers. The other unit, 82-85, received the dispatch because they answered the call, if not by pager, by cell phones, if not by cell



phones, then the radio, if not the radio, the Active 911 app., if not the app, the dinging of the emails on their computer. There was no previously reported problem with pagers that night. When he asked why she did not answer the cell phone call, Ms. Robitaille said that her cell phone was on silent.

Mr. Mellish denied ever giving EMTs under his supervision a directive that they are not permitted to take duty cell phone chargers in to the crew room. If he issues a verbal directive, he follows it up with a department-wide email. If he issued any directive about chargers, it was not to charge your personal cell phones using department chargers.

### **Christopher Rosser**

Christopher Rosser testified that he is a lieutenant with the Gloucester County EMS. He was on vacation when the incident occurred but was advised of it when he returned, approximately January 4, 2016, according to the documentation. Chief Lovell asked him to investigate the incident. To do so, he spoke with the crew, checked the notification equipment and spoke with the crews in the area to see if they had an issue with any of the equipment.

When Lt. Rosser interviewed Dan Hauss, he was very apologetic and contrite about missing the call. He said, "he may or may not have been sleeping." He described Ms. Robitaille as the opposite in her interview. She answered almost every question with one word and she was not apologetic. She said that the notification equipment was not working. Ms. Robitaille said the radio was in the computer room, but it should have been on her person as it is supposed to be all the time. The duty phone should also be on an EMTs person at all times. He looked specifically at the pagers that were in use at Ms. Robitaille's station. There are three pagers at the Station 82-7. Each pager has a repeat function so he was able to go back many calls to prove that the pager was not having any issues receiving any messages. He was not able to go all the way back to the night in question, but he was able to confirm that the pager was in good working order. Last, he interviewed some other crews and they did

not report any issues with any of the notification equipment. He summarized his investigation and gave it to Chief Lovell. Lt. Rosser received one report that one of the three pagers did not activate on January 10, 2016. He does not recall the EMT who made that report.

Although discipline was one of his responsibilities, he was not responsible for recommending any discipline for Ms. Robitaille. He does not know who made that recommendation. He did not recall issuing a memorandum to Mr. Hauss about the incident, but after being shown it, he identified it as the disciplinary memorandum he wrote. (A-1.) Mr. Hauss received a written warning.

### **Caroline Pope**

Caroline Pope testified that she is an EMT with Gloucester County EMS. She will be beginning her third year in March 2017 she worked the hours of 6:00 a.m. to 6:00 p.m. on December 31, 2015 at station 82-7 in Pitman. Ms. Robitaille and Mr. Hauss preceded her shift. She had worked at station 82-7 approximately eight times before December 31, 2015. She never had any problems with any of the dispatch notification equipment prior to that date. She keeps all the notification equipment in the room where she is located either on her person, sitting next to her or on the coffee table in front of her. It is her responsibility to see that the equipment is charged and the volume is turned up.

Ms. Pope typically has an exchange with the outgoing shift that tells whether there are any problems with the ambulance or the paging system or if hospitals were on divert. The outgoing crew did not mention any problems with any of the notification equipment that she recalls. She recalls a conversation of a shooting that had taken place and that another crew had taken the call.

She identified a pager, and EMS radio, and the duty cell phone as being the type of those items that were present in the station on December 31, 2015, but not necessarily the actual ones that were there that night. During her shift on December

31, 2015, she received approximately three dispatches and did not have any problems with the notification equipment at the station. To this day, she has not had any problems with any of the notification equipment at station 82-7 and the testimony was taken January 25, 2017. Compared to the other places that she has worked as an EMT, the other organizations do not have as many alerting devices as Gloucester County has.

On December 31, 2015, Ms. Pope was a per diem EMT for the county permitted to work up to twenty-four hours per week. She recalled the conversation about the shooting because it is not something that happens every day so it sticks out in her mind. She agrees that she does not have personal knowledge of any problems that Ms. Robitaille could have encountered with equipment prior to her shift. When she demonstrated how the reset button works on the pager, the reset button did not work on the device that had been brought to court. She uses the reset button to make sure that the volume is high enough for her to hear the dispatch.

### **Amy Robitaille**

Amy Robitaille testified that she started working for the Department in October 2007 as a part time EMT. She is certified professionally as an emergency medical technician and a firefighter for the state of New Jersey. She currently works full-time at Lourdes EMS and Gloucester Township EMS part-time or per diem. She began working for Lourdes part-time or per diem in 2014.

Ms. Robitaille's main responsibility for the Department was to answer 9-1-1 trauma calls and then transport patients to the hospital. On occasion, she would answer public assist type calls. She was hired by the Department initially as a part-time EMT, but shortly after being hired she applied for full-time position and was made full time before the end of 2007.

On December 30, 2015, she was assigned to Pitman 82-7 working the 6:00 p.m. to 6:00 a.m. shift. She was assigned with Danny Hauss. Upon arriving for work, she

and Mr. Hauss did the rig check to make sure all the equipment was on the ambulance and that they were adequately stocked for the night. The rig check also entails checking for oxygen, oxygen equipment, gas, fuel, radios, lights and everything to ensure they are in working order. They then proceeded to do the station chores.

At some point she received a call from Mr. Mellish. When she received the call from Mr. Mellish, she was watching television sitting on the couch in the crew room. She received a call on her personal cell phone that was set on vibrate at the time. He asked her if she realized that they had missed a call. She responded that of course she did not. He asked if her pager went off and she told him that neither her pager nor Mr. Hauss's had gone off. Ms. Robitaille testified that her voice probably did sound groggy as he said because she hadn't talked for almost 3 hours by the time she had that conversation with him on the telephone. The nature of the call that she had missed was a gunshot. Her pager had not tripped for the call. She recalled that at the Pitman station there were two pagers at the Station. It was not the first time that her pager did not trip or activate. It happens on a regular basis approximately once every couple of months. She reported that to her direct supervisor Mr. Mellish verbally. Mr. Mellish called her on the phone to say the county was getting ready to re-tone them.

Ms. Robitaille testified that her duty phone was in the office charging where the power strips are. She wanted to make sure it was charged to go on a call. There are no chargers for the duty phone in the crew room. There was only one duty phone present in that station during her shift. She was never advised that she was prohibited from charging the duty phone during her shift. She did not see an email prompt because the computer was in the office, not the crew room. Generally, the email does not even stay open. She does not recall hearing a ding from the email. She was never advised that email had to be kept open during the shift. She denied falling asleep at any point during her shift. When Mr. Mellish called again, he told her to be ready to be dispatched to the location of the gun shot. When she and Mr. Hauss went to the location, they were then told that the patient had already been transported by personal vehicle to the hospital so their services were not needed. There was a radio present at the station during the shift, but Mr. Hauss had it. She recalled the conversation

between her and Mr. Hauss and the incoming team. She told them about the shooting and the fact that the pagers had not tripped for that call. She is absolutely certain she told Ms. Pope that the pagers did not trip. She had the active 9-1-1 app on her phone at the time of the call at issue. Her phone was set on vibrate at the time. It would have made one short buzzing sound, which she does not recall hearing during her shift.

Two weeks prior to testifying, she had just bought a new iPhone 7 to replace her iPhone 6. The active 9-1-1 app did not change though. She received notification through the app anytime from two to seven times per shift. The vibration did not change from one phone to another.

Ms. Robitaille found out she was being removed from her position by a letter that said she was being suspended pending a hearing. After her departmental hearing she received a notice indicating she's been removed from her position. She has nine and a half years in her pension, most of which was in Gloucester County. She needs ten years to vest. In addition, she wants to return to her job because she loves the familiarity and the job.

Ms. Robitaille and Mr. Hauss had responded to three calls prior to the call at issue. She did not report any problems regarding the notification systems to her supervisors about the notification systems after the gunshot. She received no notice through any means of the call at 1:36 a.m. on December 31, 2015. She heard the audio recording of the call and understands that the other ambulance crew heard the call as did another local fire department. She did not know about the call because the pagers did not trip, the phone was in her front pocket of her sweatshirt on vibrate for her active 9-1-1 so she did not feel it, the duty cell phone was charging in the office and her email was not opened. The computer was in the office and not in the crew room in any event. Mr. Mellish told her not to move the chargers for the duty cell phones. There was an electrical outlet in the crew room where the duty phone could have been charged. Also, if it were charging in the other room, the volume could have been turned up loud enough and the volume low enough for her to hear it. He was on another couch approximately four feet from her. She testified that there is nothing saying that

the radios have to be turned on. She thinks the radio was in Mr. Hauss's radio strap. She checks the pagers at the beginning of her shift by pushing the reset button to make sure that it is operating. According to her, email was not to be used as a notification system. She did not put in an incident report the fact that the pagers did not function. She had no recollection of having reviewed policy R-17.

### **FINDINGS OF FACT**

In order to make findings of fact in the present case where the evidence is disputed, the court must make credibility determinations. Testimony, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954). Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following:

Robitaille's testimony is essentially that she did not answer the 9-1-1 call because, although there were two pagers, neither pager was working; the duty cell phone was in the computer room charging; the email application on the computer was not left open and it was also in the computer room in any event; there was only one radio and it was with Mr. Hauss; and she had the Active 9-1-1 application on her personal cell phone, but it was set to vibrate. Thus, according to her testimony, only the pagers not working were out of her control. All of the other notification systems worked fine, but she did not follow procedures designed to ensure that she would not miss a call.

Regarding the pager, Ms. Robitaille is correct that no one who testified for the Department was present with her at the time at issue to say for sure that the pager was working. There is only the circumstantial evidence that Ms. Pope, who was very credible, does not recall Ms. Robitaille telling her the pager not working at the start of Ms. Pope's shift. The pager information is not as significant as the fact that there was a shooting during the shift before, but it is significant enough that she probably would have remembered. The other evidence the Department presented is that Ms. Robitaille

received three pages without incident before the 1:36 a.m. call and another page after the 1:36 a.m. call. Ms. Robitaille asks that the court draw an adverse inference from the fact that the Department did not call Mr. Hauss who was the only person with Ms. Robitaille at the time at issue. I decline to do so. If Mr. Hauss could support Ms. Robitaille's testimony that neither of their pagers were working, she also could have called him as a witness. As it stands, her testimony that Mr. Hauss said his pager was not working is only hearsay and is rebutted by his apology to Mr. Mellish. The mutual failure of both parties to call him as a witness cancel each other out. Apparently neither party felt that they needed Mr. Hauss in order to support their case. Because her testimony that her pager failed was undisputed, I **FIND** that her pager failed. I **DO NOT FIND** that Mr. Hauss's pager also failed, however.

I **FIND** that the redundancy of the notification system should have ensured that Ms. Robitaille did not miss the call. I **FIND** that it was Ms. Robitaille's responsibility to ensure that the duty cell phone was in a place where she could hear it. If it was in the computer room charging then she could have been in the computer room for the length of time it would have taken to charge it. Similarly, although no policy says the email application on the computer has to be left open and the email was in the computer room, she could have been in the computer room to ensure that she did not miss a call or an email. I **FIND** also that if there was only one radio and it was with Mr. Hauss, she had the responsibility to make sure that his radio was loud enough for her to hear it. The testimony of Ms. Pope that there were two radios is more believable than that of Ms. Robitaille in any event. Ms. Robitaille's testimony that she was under no obligation to have the radio turned on was reprehensible in light of it being one of the many notification systems to keep her from missing a call. Last, although Ms. Robitaille was not mandated to have the active 9-1-1 application on her personal cell phone, she did have it. Therefore, I **FIND** it was her responsibility to ensure that she could feel or hear it. Apparently she could not do that with the phone set on vibrate. She cannot blame anyone else for her failure to feel the vibration of her phone.

## CONCLUSIONS OF LAW

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. In an appeal from such discipline, the appointing authority bears the burden of proving the charges by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). In re Polk License Revocation, 90 N.J. 550, 560 (1982); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). The Department has charged Ms. Robitaille with 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; and N.J.A.C. 4A:2-2.3(a)(7), neglect of duty in connection with missing the call in question.

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). 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 Department produced policies showing that Ms. Robitaille was required to be fully alert and call-ready. Although the Department could not prove that she was asleep, it certainly proved that she failed to perform the most essential duty of her job, which is to answer emergency calls from dispatch. The Department also produced evidence that it is essential to the EMT position that they not miss a call. Ms. Robitaille put herself in a position that allowed her to miss a call by not having the duty cell phone on or near her as required by the policy R-17. I therefore **CONCLUDE** that the Department met its burden to prove by a preponderance of the credible evidence that Ms. Robitaille exhibited inefficiency and failure to perform her duties in violation of N.J.A.C. 4A:2-2.3(a)(1).

The next charge, "Conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(6) 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)). Ms. Robitaille argues that the Department failed to prove that its notification devices sufficiently notified her team of the call at issue and therefore, the Department failed to establish conduct unbecoming a public employee. The Department proved by a preponderance of the evidence that Ms. Robitaille's team had a radio that she did not bother to see if it was set loud enough to hear a call because nothing said that she was required to have it on. The Department proved that, even though it did not provide Ms. Robitaille with the Active 9-1-1 application on her cell phone, she had it and the call went through to it and she did not respond to it. The Department also proved that Ms. Robitaille had a functioning duty cell phone in addition to her personal cell phone, but instead of the phone being on her or Mr. Hauss's person as required by number ten of the Uniforms and Appearance policy, she had it charging in the computer room. Taken in its totality, the Department proved its devices were sufficient to notify her of the call and her failure to answer the call certainly has a tendency to destroy public respect in the delivery of governmental services. Therefore, I **CONCLUDE** that Ms. Robitaille exhibited conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6).

The last charge against Ms. Robitaille is N.J.A.C. 4A:2-2.3(a)(7), neglect of duty. Ms. Robitaille emphasizes that there was no witness had personal knowledge that she was sleeping and this is true. It is also true that Mr. Mellish could have asked her whether she was sleeping either when he called or when he conducted his investigation. In the alternative, he could have asked Mr. Hauss whether Ms. Robitaille had been sleeping. The fact that the investigation could have been more thorough does not obfuscate the fact that Ms. Robitaille was the cause of her not answering the radio, duty phone or Active 9-1-1 application. What Mr. Mellish knew was that when Ms. Robitaille answered the phone after missing the call, she sounded groggy. He also knew that she had trouble getting the attention of Mr. Hauss and had to call his name three times. In addition, Mr. Mellish knew the most important fact, that in a position in

which the most important duty is to answer calls within two minutes, Ms. Robitaille missed a call.

### PENALTY

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); W.N.Y. v. Bock, 38 N.J. 500 (1962). Ms. Robitaille requests that a negative inference be drawn from the fact that the Department did not present a witness from Human Resources to testify as to why the penalty of removal was chosen. I decline to do so in this instance. This is a hearing de novo so it is the obligation of the factfinder to determine penalty, which the Civil Service Commission can then accept, reject or modify. It is not necessary to have the witness who recommended the penalty testify when the nature of the offense and the prior record of the appellant are the main factors in the penalty determination.

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. W.N.Y. v. Bock, supra, 38 N.J. at 523–24. Factors determining the degree of discipline include the employee’s prior disciplinary record and the gravity of the instant misconduct.

Ms. Robitaille has had two prior charges of neglect of duty and failure to perform duties for which she has received major discipline. She received a suspension of fourteen twelve-hour shifts for her neglect of duty in September 2012 and a suspension of thirty shifts for neglect of duty in November 2013. In addition, she was also charged with conduct unbecoming a public employee in connection with the fourteen shift suspension. These prior disciplinary actions are not ancient history, but fairly close in time to the conduct at issue in the present case, which took place in December 2015. In addition, she had two minor suspensions and a reprimand.

Ms. Robitaille has charged the Department with imposing disparate treatment because Mr. Hauss received only a written warning. This argument would have merit if she did not have two major suspensions in her disciplinary history. Ms. Robitaille's first offense was a verbal warning or reprimand for failing to follow job procedures; Mr. Hauss received similar discipline. There is certainly an argument to be made that Mr. Hauss received too light a penalty, but based on the record before me, I cannot conclude that Ms. Robitaille's penalty was too harsh. Based on the severity of the offense and Ms. Robitaille's prior disciplinary history, I **CONCLUDE** that the penalty of removal was appropriate.

**ORDER**

I **ORDER** that the action of the respondent Gloucester County Department of Emergency Response removing Ms. Robitaille from her position as EMT for 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; and N.J.A.C. 4A:2-2.3(a)(7), neglect of duty is hereby **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, 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.

March 19, 2018

DATE

  
LISA JAMES-BEAVERS, ALJ

Date Received at Agency:

March 19, 2018

Date Mailed to Parties:

March 20, 2018

/caa

**APPENDIX**  
**WITNESSES**

**For Appellant:**

Andrew Lovell  
Christopher Mellish  
Christopher Rosser  
Caroline Pope

**For Respondent:**

Amy Robitaille

**EXHIBITS**

**For Appellant:**

- A-1 Disciplinary Memorandum from Chris Rosser to Dan Hauss
- A-2 Preliminary Notice of Disciplinary Action
- A-3 Final Notice of Disciplinary Action

**For Respondent:**

- R-1 Rested and Fit for Duty Policy
- R-2 Graphic Representation of Dispatches
- R-3 CD with Video Depiction of Station
- R-4 Pictures A-D of EMS Station 82-7
- R-5 Recording of Initial Dispatches
- R-6 RSAN Audit of Original Dispatch Info
- R-7 Confirmation of Email Notification
- R-8 Dispatch Records December 30, 2015 to January 2, 2016
- R-9 Readiness and Response Policy

- R-10 Record of Disciplinary Actions
- R-11 Special Reports
- R-12 Lt. Mellish's December 31, 2105 Email Report
- R-13 Summary of Lt. Rossner's Investigation
- R-14 Pager
- R-15 Radio
- R-16 Duty cell phone with charger
- R-17 Policy No. 2012-12 Uniforms and Appearance
- R-18 Electronic sign-off sheet