STATE OF NEW JERSEY

In the Matter of Albert Alvarado City of Vineland, Department of Public Works CSC DKT. NO. 2016-3504 OAL DKT. NO. CSV 05861-18	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

ISSUED: AUGUST 17, 2018 BW

The appeal of Albert Alvarado, Laborer 1, City of Vineland, Department of Public Works, removal effective December 2, 2015, on charges, was heard by Administrative Law Judge John S. Kennedy, who rendered his initial decision on July 11, 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 August 15, 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 Albert Alvarado.

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 15TH DAY OF AUGUST, 2018

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
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

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 05861-16
AGENCY DKT. NO. 2016-3504

IN THE MATTER OF ALBERT ALVARADO, CITY OF VINELAND, DEPARTMENT OF PUBLIC WORKS.

Kevin D. Jarvis, Esq., for appellant, Albert Alvarado (O'Brien, Belland & Bushinsky, LLC, attorneys)

Michael E. Benson, Esq., for respondent, City of Vineland, Department of Public Works (Buonadonna & Benson, attorneys)

Record Closed: May 30, 2018 Decided: July 11, 2018

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

STATEMENT OF THE CASE

Albert Alvarado (appellant, Alvarado) appeals the removal from his job as a Laborer 1 by the City of Vineland (appointing authority, Vineland) for violations of N.J.A.C. 4A:2-2.3(a)(5) (conviction of a crime); N.J.A.C. 4A:2-2.3(a)6 (conduct unbecoming a public employee); and N.J.A.C. 4A:2-2.3(a)12 (other sufficient cause), specifically, interfering with the duties of a police officer; refusing the lawful order of a police officer; and based on City Policy 3140 Conduct: (1) Neglect of Duty; (7) Disorderly Conduct; (8)

Conviction of a Crime; (9) Violation of a Statute, Rule or Regulation Relating to Public Employment; (12) Conduct Unbecoming a Public Employee; (15) Failure to Follow Work Rules; (16) Failure to Follow Safety Rules; (18) Putting Life or Self, Co-Workers or Public in Danger. The charges arise from appellant's actions while on duty on July 17, 2015.

PROCEDURAL HISTORY

On December 2, 2015, Vineland served on appellant a Preliminary Notice of Disciplinary Action for removal of appellant effective December 1, 2015. On February 12, 2016, a departmental hearing was held. Vineland issued a Final Notice of Disciplinary Action sustaining the charges on March 18, 2016. Appellant filed an appeal with the Civil Service Commission on or about March 30, 2016. The matter was filed with the Office of Administrative Law (OAL) as a contested case on April 15, 2016, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was heard on June 15, 2017, and September 30, 2017. The record closed on May 30, 2018, after the parties submitted post hearing briefs.

FACTUAL DISCUSSION

The following facts are not in dispute in this matter and as such I **FIND** them as **FACT**:

Appellant was employed as a laborer by Vineland. On July 17, 2015, he was working on a road crew repairing pot holes at the intersection of eastbound Landis Avenue and southbound Mill Road at approximately 1:30 pm with another laborer, Kyle Suprun. Another crew was working on eastbound Landis Avenue doing sink hole repair under the supervision of then Acting Director of Public Works, Joseph DiCriscio. There was no signage relating to either work site. Vineland Police Sergeant Baron McCoy (now deceased) and then Officer Nick Dounoulis (now Sergeant) were both members of the Traffic Unit. On July 17, 2015, while returning to the police department from lunch, Dounoulis and McCoy initially observed the road crew of DiCriscio and advised him of the signage problem. DiCriscio advised that they had just finished the street repair and complied with the officers' instructions to wrap up the work site without incident. As the

officers continued eastbound on Landis Avenue, they encountered the other road crew at the intersection of Landis and Mill Road. An encounter ensued between the officers and appellant which resulted in appellant being arrested and charged with Obstructing Highways and Other Public Passages, N.J.S.A. 2C:33-7B(1), and Obstructing Administration of Law, N.J.S.A. 2C:29-1. A municipal court trial was conducted on November 16, 2015, and appellant was convicted of violating the charge under 2C:33-7B(1) and was fined. During the hearing before this tribunal, appellant was ordered to sequester his witness, Kyle Suprun. Although the witness was not in the court room on the first hearing day, appellant secretly recorded the proceedings and shared the testimony with Mr. Suprun who had not yet testified. When these circumstances were disclosed and after counsel had an opportunity to brief the issue, I ordered that Mr. Suprun's testimony be barred.

Testimony

Lieutenant John McCann testified on behalf of Vineland. He is a twenty-two-year veteran with Vineland Police Department (VPD) and served as training lieutenant for a year and a half on July 17, 2015. On that date, McCann responded to the scene of appellant's arrest to investigate a complaint filed by Suprun against McCoy. He prepared a supplemental report. (R-1.) When McCann arrived at the scene, no one was present. He went to a nearby convenience store and was approached by an individual who identified himself as Joe Kubiak. Mr. Kubiak advised McCann that he observed the road crew site at the intersection of Landis and Mill Road and also observed a police officer and road crew member yelling at each other. Mr. Kubiak observed appellant directing traffic at the site in a safety shirt and a whistle. Appellant waived Mr. Kubiak through the intersection and nearly caused an accident. McCann is familiar with the intersection of Landis Avenue and Mill Road and explained that it is a high volume intersection that has been the location of many serious motor vehicle accidents.

Joseph DiCriscio next testified on behalf of Vineland. He has since retired after working for Vineland for forty-four years. On July 17, 2015, he was serving as Acting Director of the Public Works Department and had been repairing sink holes with a small crew. Between 1:00 and 1:30 pm, DiCriscio's crew were working in the outside eastbound

lane of Landis Avenue when they were visited by Seargent McCoy and Officer Dounoulis. DiCriscio was advised that the work site was without any signage and he agreed to break down the work site within five to ten minutes. This work site was not in an intersection and DiCriscio did not consider it a traffic obstruction. He complied with the police directions and the site was broken down within ten minutes. He was not aware at the time that appellant's work crew was approximately 300 feet ahead of them.

While heading to another job site with his crew, DiCriscio arrived at appellants job site and noticed the same officer interacting with appellant and Suprun. Appellant was noticeably angry and was pacing by the police car repeating "This is bullshit." McCoy told appellant to remove the traffic cones that were in the street and move the dump truck that was blocking the intersection off of the road. Based on the location of the work site and the dump truck, vehicles were unable to make a right from eastbound Landis Avenue onto Mill Road. The intersection in question is very busy. Appellant had a whistle around his neck and was directing traffic. When McCoy instructed appellant to remove the traffic cones, he refused. DiCriscio also instructed appellant to remove the cones but he may not have heard him because appellant was angry. McCoy then got out of the police vehicle and threw the cones off of the roadway onto the curb approximately twenty feet away. Appellant went to the center of the roadway and started taking photos. McCoy told him several times to get off of the roadway and when he refused, appellant was arrested. Dicriscio noted that appellant was somewhat out of control and was not listening to the police but he did not feel that appellant's work site was a safety concern.

Sergeant Nick Dounoulis next testified on Vinelands behalf. He has been employed with VPD for seventeen years, five as a special police officer and twelve as a full-time police officer. On July 17, 2015, he was working under McCoy in the Traffic Unit. The Traffic Unit's primary function is to ensure the safety of the roadway. He has received training and holds certificates in traffic safety. (R-2.) McCoy had also taken traffic safety courses and was the VPD Chaplain and pastor for his church. Dounoulis worked directly with McCoy for seven years and had never known him to use obscene language and never heard McCoy swear.

Part of the Traffic Unit's duties is to check construction sites. On July 17, 2015, he and McCoy were returning to the police department after having lunch and first come upon DiCriscio's work site. McCoy told DiCriscio that his work site was not set up properly because there were no advance warning signs of the road work and DiCriscio agreed to break down the work site without any incident. The officers could not see appellant's work site from DiCriscio's. After they left DiCriscio's work site, they came upon appellant's work site. There were no advance warning signs and appellant was attempting to direct traffic in an unsafe manner. The intersection of Landis Avenue and Mill Road is a very high traffic area with heavy commercial traffic. There was more congestion at appellant's work site than at DiCriscio's. Appellant's dump truck was partially into the intersection and blocking one lane on Landis Avenue and Mill Road. McCoy felt it necessary to intervene to remove the dangerous condition. He has shut down many work sites and has never before or since been met with non-compliance. He first spoke to Suprun and advised him they needed to shut down the job site. Suprun became defensive and explained that he was doing his job. Appellant involved himself in that conversation and started yelling, swearing and got out of hand. Appellant stated "This is bullshit" several times. McCoy gave appellant three of four opportunities to comply with his directions and told appellant that if he did not comply, he would be arrested. Appellant did not follow McGoy's directions. Instead he walked into the intersection and started taking photos. McCoy arrested appellant while he was standing in the box of the intersection. Appellant was not charged with having an improper work site. The entire incident lasted about ten minutes.

Albert Alvarado, appellant, testified on his own behalf. He was employed as a laborer and was primarily repairing potholes on the streets of Vineland. He has received training for his job and has completed safety courses which include the use of cones and signage requirements as well as the use of hand signals for directing traffic. On July 17, 2015, appellant was instructed by his supervisor to fill potholes along Landis Avenue with his co-worker Kyle Suprun. They started working at the intersection of Landis and Mill Road around 1:30 pm and set up a short taper of cones to block one lane of travel along Landis Avenue. No advance warning signage was utilized and the work was conducted in unison with the traffic lights at the intersection. By the time the police arrived at the scene, they had already completed filling the potholes at the

location. McCoy immediately started yelling at them and asked where the signs were. Appellant explained to McCoy that they did not need signs. McCoy threatened to shut them down and appellant suggested to the officer that he was out of control and unprofessional. DiCriscio was present when appellant was speaking to McCoy. He did not remove the cones when instructed by McCoy because they police vehicle was still at the scene and it would have been unsafe without the cones. Appellant feels he was arrested for taking photos. He admits that he had a whistle for safety but did not attempt to direct traffic. He asserts that he did not argue with the officer or raise his voice and did not make any statements to provoke the officers. He did not curse or yell at McCoy.

Prior to conducting a legal analysis and making conclusions, it is necessary to address the arguments of the parties regarding the credibility of the testimony. "The interest, 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). The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See, Spagnuolo v. Bonnet, 16 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness'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). A fact-finder "is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521–22 (1950); see, D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

The present matter revolves entirely around what appellant said and did when the police arrived at his work site. Although McCoy is now deceased it is clear from the other

witnesses that testified that appellant had a heated verbal confrontation with McCoy. Both DiCriscio and Dounoulis testified that appellant was yelling and both recall him using the phrase "this is bullshit" several times. This is also corroborated by the statements made to McCann by the individual he spoke to in the convenience store, Mr. Kubiak, who indicated that appellant was yelling. Appellant, on the other hand asserts that he did not argue with the officer or raise his voice and did not make any statements to provoke the officers. He did not curse or yell at McCoy. I deem appellant's version of the incident is not credible. Not only does his testimony not jive with the others in this case, he also was convicted of violating the charge under 2C:33-7B(1) and was fined in municipal court. Furthermore, appellant's credibility is tainted by his attempt to influence his witness by recording an entire day of testimony and then playing that testimony for his witness. Such action suggests that appellant is inclined to do or say anything to support his version of the incident.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** the following additional **FACTS**: Appellant had a heated verbal confrontation with McCoy and stated "this is bullshit" several times. McCoy gave appellant three of four opportunities to comply with his directions and told appellant that if he did not comply, he would be arrested. Appellant did not follow McCoy's directions, instead he walked into the intersection and started taking photos. McCoy arrested appellant while he was standing in the box of the intersection. Appellant was not charged with having an improper work site. Appellant was angry, out of control and was not listening to the police.

LEGAL ANALYSIS AND CONCLUSIONS

In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:-2.21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on

appeal, based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

The respondent has sustained charges of violations of N.J.A.C. 4A:2-2.3(a)(5) (conviction of a crime); N.J.A.C. 4A:2-2.3(a)6 (conduct unbecoming a public employee); and N.J.A.C. 4A:2-2.3(a)12 (other sufficient cause), specifically, interfering with the duties of a police officer; refusing the lawful order of a police officer; and based on City Policy 3140 Conduct: (1) Neglect of Duty; (7) Disorderly Conduct; (8) Conviction of a Crime; (9) Violation of a Statute, Rule or Regulation Relating to Public Employment; (12) Conduct Unbecoming a Public Employee; (15) Failure to Follow Work Rules; (16) Failure to Follow Safety Rules; (18) Putting Life or Self, Co-Workers or Public in Danger.

With regard to the charge of conviction of a crime, appellant was convicted of obstructing highways and other public passages, a petty disorderly offense. He was charged with violating both N.J.A.C. 4A:2-2.3(a)(5) and City Policy 3140(8). Appellant's petty disorderly persons offense is not "a conviction of a criminal act under N.J.A.C. 4A:2-2.3(a)(5) as disorderly persons offenses are considered petty offenses and are not crimes within the meaning of the Constitution of the State. See, N.J.S.A. 2C:1-4b. Accordingly, I **CONCLUDE** that the appointing authority has not met its burden in demonstrating support to sustain a charge of conviction of a crime pursuant to N.J.A.C. 4A:2-2.3(a)(5). Therefore, the charge of violation of N.J.A.C. 4A:2-2.3(a)(5) is hereby **DISMISSED**. However, the City's Conduct Policy 3140(8) provides that discipline may be given for "conviction of any criminal act or offense." A forfeiture of public office under N.J.S.A. 2C:51-2 does not require a conviction of a crime, rather the conviction of an "offense" is sufficient. James Slater v. Sheriff's Office of Bergen County, OAL Dkt. No. 7465-91. N.J.S.A. 2C:1-14(k) defines an "offense" as a crime, disorderly persons offense or petty disorderly persons offense. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of conviction of any criminal act or offense pursuant to the City's Conduct Policy 3140(8). The charge of violation of the City's Conduct Policy 3140(8) is hereby **SUSTAINED**.

Respondent also sustained charges against appellant for Conduct Unbecoming a Public Employee, N.J.A.C. 4A:2-2.3(a)(6). To the extent that the appellant is charged with

violation of the City's Conduct Policy 3140(12), which addresses unbecoming conduct, consideration of such violation will be addressed in concert with the current analysis.

"Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 NJ. 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 v. City of Atlantic City, 152 N.J. at 555 [quoting In re Zeber, 156 A.2d 821, 825 (1959)]. Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) [quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)]. Suspension or removal may be justified where the misconduct occurred while the employee was off-duty. In re Emmons, 63 N.J. Super. at 140.

In the present matter, the record reflects that appellant had a heated verbal confrontation with McCoy and stated "this is bullshit" several times in the presence of the public. Appellant was angry, out of control, and was not listening to the police. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of conduct unbecoming a public employee. Charges of violations of N.J.A.C. 4A:2-2.3(a)(6) and the City's Conduct Policy 3140(12) are hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause). Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Specifically, appellant is charged with violations of interfering with the duties of a police officer; refusing the lawful order of a police officer; and based on City Policy 3140 Conduct: (1) Neglect of Duty; (7) Disorderly Conduct; (8) Conviction of a Crime; (9) Violation of a Statute, Rule or

Regulation Relating to Public Employment; (12) Conduct Unbecoming a Public Employee; (15) Failure to Follow Work Rules; (16) Failure to Follow Safety Rules; (18) Putting Life or Self, Co-Workers or Public in Danger.

Appellant's conduct was such that he violated this standard of good behavior. The City's Conduct Policy concerning Failure to Follow Work Rules, Failure to Follow Safety Rules, Neglect of Duty and Putting Life or Self, Co-Workers or Public in Danger were all implicated during appellant's confrontation with the VPD. Appellant, as a public employee, has an obligation to obey the law while performing his job. That includes following the directions of police officers within their jurisdiction. He refused to take down the work site after the VPD determined it to be unsafe and a danger to the traveling public in violation of appellants duty to follow the commands of the VPD and his supervisor, Joseph DiCriscio. As such, I **CONCLUDE** that appellant's actions fit this charge. Charges of violations of N.J.A.C. 4A:2-2.3(a)(12) and interfering with the duties of a police officer; refusing the lawful order of a police officer; and based on City Policy 3140 Conduct: (1) Neglect of Duty; (7) Disorderly Conduct; (8) Conviction of a Crime; (9) Violation of a Statute, Rule or Regulation Relating to Public Employment; (12) Conduct Unbecoming a Public Employee; (15) Failure to Follow Work Rules; (16) Failure to Follow Safety Rules; (18) Putting Life or Self, Co-Workers or Public in Danger are hereby **SUSTAINED**.

PENALTY

In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523–24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for removal. See Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J.

Super. 453 (App. Div. 1978); In re Herrmann, 192 N.J. 19 (2007). The question to be resolved is whether the discipline imposed in this case is appropriate.

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197–98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense); see also In re Herrmann, 192 N.J. 19, 33 (2007) (DYFS worker who snapped lighter in front of five-year-old):

> . . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.
>
> Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

As set forth is appellant's disciplinary record, attached to Vineland's post hearing submission and now moved into evidence as B-1 through B-8, appellant has exhibited insubordinate, disobedient, vulgar and threatening conduct during his employment. On September 25, 2015, appellant created a disturbance to the point of upsetting the City Personnel Manager and staff uneasy and uncomfortable. Appellant was suspended for five days without pay which was reduced to one day if he agreed to take an anger management class. (B-1.) Appellant did not engage in the anger management course and the five day suspension remained. (B-2.) On September 16, 2015, appellant falsely claimed to be on light duty and refused to work. He was sent home without pay and disciplined with a reprimand. (B-3.) On June 11, 2015, appellant was given a reprimand for disobedient and insubordinate behavior towards a supervisor by refusing to perform weed waking. Instead, appellant said to the supervisor to "get some fucking goats." (B-4.)

On April 23, 2010, appellant was suspended indefinitely without pay for having an argument with a City contracted doctor when the doctor refused to prescribe him Percocet. Appellant became enraged and disrespectful. (B-6.) Following his April 2010 suspension, appellant harassed Public Works employees demanding his return to work and irately yelled and cursed at staff. (B-5.) As far back as 1982, appellant engaged in insubordinate and disrespectful conduct towards authority by cursing at a Forman (B-7) and engaging in arguments at work. (B-8.) After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the behavior by appellant herein and in light of the seriousness of the offense and in consideration of appellant's prior disciplinary record, I **CONCLUDE** that the removal of the appellant is appropriate.

ORDER

Accordingly, I **ORDER** that the action of the Appointing Authority is **AFFIRMED**, as set forth above.

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.

July 11, 2018
DATE

JOHN S. KENNEDY, ALJ

Date Received at Agency: July 11, 2018

Date Mailed to Parties: July 11, 2018

/dm

APPENDIX
LIST OF WITNESSES

For Appellant:

Albert Alvarado

For Respondent:

Lieutenant John McCann
Joseph DiCriscio
Sergeant Nick Dounoulis

LIST OF EXHIBITS

Joint Exhibits:

J-1 Final Notice of Disciplinary Action, dated February 12, 2016
J-2 Preliminary Notice of Disciplinary Action, dated December 2, 2015

For Appellant:

P-1 Google Maps of Area
P-2 Photos of cones
P-3 Appellant's safety course completion records
P-4 Work Zone Slides
P-5 Statement of Joseph DiCriscio
P-6 Articles of other incidents

For Respondent:

R-1 McCann Supplemental report, dated July 17, 2015

R-2 Work Zone safety certificate of Nicholaos Dounoulis, dated April 12, 2013

R-3 McCoy incident report, dated July 17, 2015

R-4 a-d Google Photos

R-5 Complaint against appellant, dated July 17, 2015

R-6 Transcript of Municipal Court Docket, dated December 15, 2015

B-1 - B-8 Disciplinary History of Appellant