



STATE OF NEW JERSEY

In the Matter of Samad Washington
City of Newark Police Department

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

CSC DKT. NO. 2014-1963
OAL DKT. NO. CSV 02415-14

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ISSUED: [AUGUST 17, 2018 BW

The appeal of Samad Washington, Police Officer, City of Newark, Police Department, three-month suspension (92 calendar days), on charges, was heard by Administrative Law Judge Joann LaSala Candido, who rendered her initial decision on July 16, 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, at its meeting on 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 suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Samad Washington.

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

Deirdre' 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
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02415-14

AGENCY DKT. NO. 2014-1963

**IN THE MATTER OF SAMAD WASHINGTON,
CITY OF NEWARK POLICE DEPARTMENT.**

Anthony Fusco, Esq. (Fusco & Macaluso, attorneys)

**Karron Rizvi, Esq., Assistant Corporation Counsel, for respondent (Kenyatta
Stewart, Corporation Counsel)**

Record Closed: July 12, 2018

Decided: July 16, 2018

BEFORE JOANN LASALA CANDIDO, ALAJ:

STATEMENT OF THE CASE

Samad Washington (appellant) appeals his ninety-day suspension as a police officer with the City of Newark (respondent) which sustained charges against him alleging that he violated N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty, and departmental policies and procedures Rules and Regulations 18.8, acts of insubordination, Rules and Regulations Chapter 3:1. 2-4, demonstration of respect, Rules and Regulations Chapter 5:1.1, conduct unbecoming, and Rules and Regulations Chapter 5:4.1, obedience to orders. The specification reads:

On April 4, 2013, at approximately 12:25 p.m., at 311 Washington Street, Communication Division, Police Officer Samad Washington, assigned as dispatcher, did commit an act of insubordination to Lieutenant Robert Clark, a superior officer, to wit: Lieutenant Clark gave Officer Washington instruction regarding his dispatch duties at which time Officer Washington became verbally confrontational and questioned Lieutenant Clark. Officer Washington stood up walked towards Lieutenant Clark while glaring at him as he made threatening remarks, "You need to remember who you're talking to." Officer Washington attempted to walk up onto the supervisor's Platform and was physically blocked by Police Officers Alnesa Mallory and Michael Walski. Officer Washington continued to push towards the platform, Captain Wilfredo Mercado then exited his office and Assisted in the restraint of Officer Washington, who was eventually escorted from the dispatch floor.

On April 4, 2013, at approximately 12:25 p.m., at 311 Washington Street, Communication Division, Police Officer Samad Washington, assigned as dispatcher, did receive a lawful verbal order from Captain Wilfredo Mercado, a superior officer, directing Officer Washington to leave the dispatch floor and go to the hallway, he did disobey this order when he failed to comply as directed.

Appellant disputes the charges sustained enumerated above in the Final Notice of Disciplinary Action dated February 4, 2014.

On February 26, 2014, the matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case. The matter was heard by former Administrative Law Judge Joan Bedrin-Murray on April 20, 2015, and September 16, 2015. The matter was re-assigned to Judge Leslie Celentano on December 20, 2017, upon Judge Bedrin-Murray leaving the OAL, before being re-assigned to the undersigned on June 29, 2018. The record closed on July 12, 2018, upon receipt of the appellant's complete disciplinary record.

FINDINGS OF FACT

Based upon a consideration of the testimonial and documentary evidence presented in the file, I **FIND** the following **FACTS**:

1. Appellant, a police officer, has been employed by respondent at the time of this hearing for twenty-four years. He was assigned to the prison and processing division, Squad B.
2. On or about April 4, 2013, while a dispatcher and wearing headsets, appellant received a call from an officer in the East District who was attempting to pull over a suspicious vehicle. He was wearing his headsets while dispatching. Washington was attempting to get the location of the officer to send back-up.
3. Lieutenant Robert Clark was appellant's immediate supervisor. On April 4, 2013, Lieutenant Clark announced that he needed the air to dispatch a message and waited approximately five seconds before taking over Channel 3 that appellant was communicating on. Lieutenant Clark was looking for a police vehicle when he took the air.
4. Appellant told Lieutenant Clark that he had the air when the lieutenant interrupted. Appellant and Clark loudly spoke to each other about the interruption and two fellow officers walked out of the dispatch room with appellant after being directed by Captain Wilfredo Mercado to leave the area on more than one occasion.

CONCLUSIONS OF LAW

The City of Newark Police Department has the burden of proving the charges against Officer Samad Washington by a preponderance of the credible evidence. N.J.S.A.11A:1-1 to 12-6. Preponderance is the greater weight of credible evidence and convincing power presented, not necessarily dependent on the number of witnesses. State v. Lewis, 67 N.J. 47 (1975). Moreover, the evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). And, where the standard is reasonable probability, the evidence must

be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Lowe v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant is charged with insubordination. The Civil Service Commission utilizes a more expansive definition of insubordination than a simple refusal to obey an order. In re Chaparro, CSV 4112-10, Initial Decision (November 12, 2010), modified, CSC (March 18, 2011) (citing In re Stanziale, A-3492-00T5 (App. Div. April 11, 2002), <<http://njlaw.rutgers.edu/collections/courts/>> (appellant's conduct in which he refused to provide complete and accurate information when requested by a superior constituted insubordination)); In re Lyons, A-2488-07T2 (App. Div. April 26, 2010), <<http://njlaw.rutgers.edu/collections/courts/>>; In re Moreno, CSV 14037-09, Initial Decision (June 10, 2010), modified, CSC (July 21, 2010), <<http://njlaw.rutgers.edu/collections/oal/>>; In re Bell, CSV 4695-09, Initial Decision (May 12, 2010), modified, CSC (June 23, 2010), <<http://njlaw.rutgers.edu/collections/oal/>>; In re Pettiford, CSV 8804-07, Initial Decision (March 13, 2008), modified, Merit System Board (May 21, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>. (Moreno, Bell, and Pettiford all concerning disrespect of a supervisor.)

~~The Civil Service Commission also has determined that an appellant is required to comply with an order of his or her superior, even if he or she believed the orders to be improper or contrary to established rules and regulations. See Palamara v. Twp. of Irvington, A-5408-05T3 (App. Div. February 28, 2005), <<http://njlaw.rutgers.edu/collections/courts/>>; compare, In re Allen, CSV 11160-04, Initial Decision (May 23, 2005), remanded, Merit System Board (July 14, 2005), CSV 09132-05 Initial Decision, (November 22, 2005), adopted, Merit System Board (January 26, 2006), <<http://njlaw.rutgers.edu/collections/oal/>> (in which the Board determined that the appellant's disobedience was justified by concerns for the safety of the clients on a bus and reversed his removal).~~

In this case, there is sufficient evidence that appellant was insubordinate when directed to leave the dispatch room and failing to do so until his fellow officers escorted him out as well as engaging in an argument with a superior. I therefore **CONCLUDE** that appellant engaged in conduct that amounted to insubordination and disrespect.

"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 Atl. 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, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (Pa. 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)).

Based upon all of the foregoing, including the evidence and certifications submitted, I **CONCLUDE** that appellant violated the rules and policies of the Institution when he confronted his superior in an argumentative manner and needed to be escorted out of the dispatch area by at least two fellow officers. I therefore **CONCLUDE** that ~~respondent has satisfied its burden of proving, by a preponderance of the credible~~ evidence conduct unbecoming a public employee.

I further **CONCLUDE** that respondent has met its burden of proving, by a preponderance of the credible evidence, all charges against appellant.

Respondent suspended the appellant for ninety days. Violation of Newark Police Department Rules and Regulations of insubordination or disrespect for any superior officer and as per N.J.A.C. 4a:2-2.3(a)(2) insubordination, in regard to the established conduct for a law enforcement unit, public employees who are protected by the provisions of the Civil Service Act may be subject to major disciplinary action for a variety of offenses involving their employment. An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority. The same holds true for conduct unbecoming. In determining the reasonableness of a sanction, the employee's past record and any mitigating

circumstances should be reviewed for guidance. W. New York v. Bock, 38 N.J. 500 (1962). However, the courts should not adhere to rigid disciplinary guidelines in assessing penalties. To determine whether sufficient cause exists to justify the sanction, the conduct must be examined considering certain factors. Moreover, the employee's conduct must be evaluated in context with its relationship to the nature of the job and the circumstances, which may impact specific conduct. On appeal, the Board may modify a penalty originally imposed. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980). Indeed, the Board is empowered to substitute its judgment on the appropriate penalty, even if the local appointing authority has not clearly abused its discretion. Henry, 81 N.J. at 579. However, the penalty imposed may not be so disproportionate to the offense and the mitigating factors that the administrative decision is arbitrary and unreasonable. Feldman v. Town of Irvington Fire Dep't, 162 N.J. Super. 177, 182 (App. Div. 1978), overruled on other grounds by Steinel v. Jersey City, 99 N.J. 1 (1985). The following charges have been sustained:

1. 03/22/93 - Two-day suspension for False Statement.
2. 12/22/92 - Three-day suspensions for Disobedience of Orders.
3. 02/24/94 - Division Answering Subpoena.
4. ~~10/30/95 - Two-day suspension for Disobedience of Orders.~~
5. 07/17/99 - Five-day suspension for Acts of Insubordination.
6. 05/23/00 - Sixty-day suspension for Acts of Insubordination.
7. 10/30/06 - Reprimand

The determination as to the appropriate penalty is properly considered in the context of the ongoing and continuous violations of Newark Police Department policy and the disregard for standing orders. Also considered, but of less import, is the prior disciplinary record, consisting of seven disciplinary actions, ranging from a two-day suspension to a sixty-day suspension. I **CONCLUDE** that the nature of the conduct, against the backdrop of the prior disciplinary record here, amply justifies the ninety-day suspension.

ORDER

It is **ORDERED** that the charges of insubordination, conduct unbecoming, and the Newark Police Department Rules and Regulations against appellant are and hereby shall be **SUSTAINED**.

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, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 16, 2018
DATE

Joann Lasala Candido
JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

July 16, 2018

Date Mailed to Parties:

ljb

July 16, 2018