

1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and discipline was imposed. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12(a)*, counsel fees must be denied.

ORDER

The Civil Service Commission finds that the action of the appointing authority in disciplining the appellant was justified. The Commission therefore modifies the fine equal to a nine working day suspension to a fine equal to a three working day suspension. The Commission further orders that appellant the appellant is entitled to reimbursement of the fine equivalent to six working days.

Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

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 16TH DAY OF FEBRUARY, 2022

Deirdre L. Webster Cobb

Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 00600-20

AGENCY REF. NO. 2020-1768

**IN THE MATTER OF COLLIN CAESAR,
CITY OF JERSEY CITY, DEPARTMENT
OF PUBLIC SAFETY.**

Paul L. Kleinbaum, Esq., for appellant Collin Caesar (Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys)

James M. LaBianca, Assistant Corporation Counsel, for respondent City of Jersey
City (Peter J. Baker, Corporation Counsel, attorney)

Record Closed: November 19, 2021

Decided: January 20, 2022

BEFORE **KELLY J. KIRK, ALJ**:

STATEMENT OF THE CASE

The City of Jersey City Department of Public Safety fined firefighter Collin Caesar equivalent to nine (9) working days for conduct unbecoming a firefighter, disobedience of orders, and neglect of duty.

PROCEDURAL HISTORY

On or about May 31, 2017, Collin Caesar was served with two Preliminary Notices of Disciplinary Action (PNDA), for conduct unbecoming a firefighter and neglect of duty relative to a May 4, 2017, incident, and for conduct unbecoming a firefighter and disobedience of orders relative to a May 24, 2017, incident. (P-7; P-8.) The City of Jersey City (City) Department of Public Safety held a hearing on December 12, 2019, after which it issued a Final Notice of Disciplinary Action (FNDA) sustaining several charges and fining Caesar "6 CT's," which is equal to nine working days. (P-1.)

Caesar appealed, and the Civil Service Commission transmitted the contested case to the Office of Administrative Law (OAL), pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on January 13, 2020. The hearings were held on January 21, 2021, and March 24, 2021. The record closed on November 19, 2021, upon receipt of the parties' post-hearing briefs.

EVIDENCE AND FINDINGS OF FACT

Background

Collin Caesar testified on behalf of appellant. Deputy chief Joseph Menendez and chief Steven McGill testified on behalf of respondent. Based upon a review of the evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Caesar has been employed by the City as a firefighter in the Jersey City Fire Department (JCFD or Department) for over sixteen years. Caesar was first assigned to the arson unit in 2011. As an arson investigator, he investigated all reports of fires in the City and documented the fires, inventoried evidence, and formulated findings reports.

Menendez is the deputy chief of the JCFD. He was the arson commander for eight years until January 2021. In May 2017 he was battalion chief in charge of the

arson unit. Menendez was Caesar's supervisor. Steven McGill was the chief of the JCFD in May 2017 and had direct oversight over the arson investigation unit.

The Rules, Regulations and Manual of Instruction (JCFD Rules and Regulations), also known as the "Red Book," is intended to instruct the members of the fire department in the rules and regulations of the JCFD, which are applicable to all members. (R-4.) The JCFD also has Arson Investigation Unit Standard Operating Procedures (Standard Operating Procedures), the purpose and scope of which are to provide a method of fire and arson investigation consistent with recognized practices and standards. (R-5.) The Standard Operating Procedures include, *inter alia*, Section 2 (procedures, outlines, protocols and training) and Section 3 (equipment/maintenance). (R-5.)

A Form F.D. 489, dated December 12, 2019, subject "Formal Hearing of Firefighter Collin Caesar," from deputy chief Henry DiGuilio to McGill states:

On this date, was designated to oversee proceedings of a Formal Hearing involving Firefighter Collin Caesar. Also present to hear the Charges and facts of the case were Battalion Chief Richard Gorman and Firefighter Corey Green (#2363).

With respect to Incident #1 of May 4, 2017, the loss of a Fire Department Camera used by the Arson Investigation Unit for collecting evidence.

Charge #1—Conduct Unbecoming a Firefighter: Not Guilty due to the fact that, proper notifications of the loss were made and documented.

Charge #2—Neglect of Duty: Guilty of this charge due to the fact that any trained Firefighter is to be aware of the whereabouts of their equipment at all times especially equipment that holds evidence for an investigation.

With respect to incident #2 of May 24, 2017, the filming and/or video of Firefighter Gomez without her permission and also posting it on a social media site.

Charge #1—Conduct Unbecoming a Firefighter: Guilty for recording a uniformed employee without their knowledge

and violating Department Policy with respect to Social Media Posting.

Charge #2—Disobedience of Orders: Guilty for not adhering to rules set down by Chief of Department as set forth in Interdepartmental Memorandum Dated March 15, 2017 titled "Communication of Fire Department Business to Non-Fire Department Personnel."

[R-16.]

A day CT is ten hours, and a night CT is fourteen hours. Each charge was for two CTs, and six CTs is the equivalent of three twenty-four-hour periods, or nine eight-hour working days.

Camera Incident

On May 4, 2017, Caesar was working a twenty-four-hour shift. At 2:09 p.m. he responded to the City's Linden Avenue impound lot to conduct an origin-and-cause investigation on a tractor-trailer fire believed to have been arson. (P-4.) He had taken a few photographs with Camera One, which is the camera he was assigned as part of his equipment to perform his duties, when a report of a working fire came in for Montgomery Street. Caesar, without completing the tractor-trailer investigation, responded to Montgomery Street at 3:06 p.m. and documented the scene (photographed the scene and interviewed witnesses and responding companies/officers) with Camera One.

After Caesar finished documenting Montgomery Street, a fire officer asked Caesar if he would take one of his firefighters to Bayonne to pick up a part because the ladder company had broken down on scene. Caesar informed the officer he first needed clearance from the deputy chief. After Caesar obtained clearance from the deputy chief, he drove the firefighter to Bayonne. They were in Bayonne for a while, and after the part was finally found they returned to Montgomery Street. Caesar was asked if he would drive the firefighters to get lunch, as the truck was still broken down. After Caesar finished assisting, he reported back to the arson-unit headquarters at 6:09 p.m., whereupon he discovered Camera One was not in his possession. Caesar returned to Montgomery Street because the fire truck was still there and JCFD still had control of the area. He

canvassed the area and asked if anyone had seen the camera, but no one had. Caesar called Menendez and told him what had transpired. Caesar went back to headquarters and retrieved Camera Two and rephotographed the scene. Camera One was never located. There were no problems with the photographs on Camera Two.

In May 2017 the JCFD maintained a logbook wherein all firefighters log chronologically the unit's daily activities. Caesar compiled his notes and logged them into the logbook and started his report. Caesar's entry on May 4, 2017, at page 415 of the logbook reflects "Equipment" in the margin and states: "Arson "CAMERA ONE" misplaced at scene of FD #9300-17, used "Camera Two" to reshoot fire scene." (P-4.)

A Form F.D. 489, dated May 4, 2017, stamped received by the chief's office on May 5, 2017, subject "DIGITAL CAMERA," from Caesar to chief Darren Rivera, states:

On May 4, 2017, I, Inv. Caesar #2085, while on the scene of FD#9300-17 misplaced the Olympus Digital Camera assigned to the Arson Unit identified as "Arson One." I have canvassed the scene and area around the apparatus with negative results.

[R-6.]

A Form F.D. 489, dated May 11, 2017, subject "Loss of Camera #1 from Arson Unit," from Menendez to McGill states:

On May 4, 2017, FF. Collin Caesar reported on page 415 in the journal a loss of the department camera. The camera was misplaced at the scene of 345B Montgomery St. The Fire Department file number is #9300-17. On the morning of May 5, 2017 at the change of shifts, FF. Caesar explained to me he was short one camera. I advised FF. Caesar to author a 489 to the Chief of Department. He compiled [sic] and the report was forwarded. See charges and specifications.

[R-2.]

Caesar was not ordered or asked to submit a report to the police department about the lost camera.

A Form F.D. 489, dated May 11, 2016 [sic], subject "Charges and Specifications," from Menendez to McGill, states:

The following charges and specifications are placed against Firefighter Collin Caesar Badge #2085, assigned to Arson Investigation Unit, Group B.

According to the Rules and Regulations of the Jersey City Fire Department, Article VXII—Section 2—Any member, clerk, or employee shall be subject to reprimand, loss of furlough days, suspension, deduction of pay, reduction in rank or dismissal according to the nature and aggravation of his or her offense for any of the following Causes:

Charge #1: Conduct not becoming a Fireman

Charge #2: Neglect of duty

Specifications:

On May 4, 2017, FF. Collin Caesar stated he misplaced the Fire department camera while conducting an investigation into the cause of a fire. In violation of the rules and regulations of the Jersey City Fire Department Article VII—Section 236.

[R-3.]

On June 6, 2017, arson unit investigator Dexter Smith reported to the Jersey City Police Department that a "TG 870 Olympus Camera, Silver & Black, 8GB" had been "LOST" on May 8, 2017, at Linden Avenue East between 1500 and 1809 hours. (P-5.)

The Arson Investigation Unit Standard Operating Procedures includes "A Standard Operating Procedure for the Use of Digital Imaging Cameras by the First Responding Officer," which states that its purpose is, in part, that "[p]hotographic evidence can greatly enhance a criminal investigation by providing visual graphics of the scene, of evidence or of injured victims and can provide prosecutors with the evidence they need to successfully prosecute cases," and that its policy is, in part, that "photographs and digital images can provide a vital piece of evidence in a criminal investigation and prosecution," and that the agency has adopted standard operating procedures "[t]o ensure the highest integrity in the

use of digital imaging evidence in a court of law." (R-5.) Among the procedures are: "At the beginning of each tour of duty, it shall be the responsibility of the officer to ensure that . . . the issued digital camera is in proper working order," and at the conclusion of the officer's tour of duty, the officer shall "turn in the camera's memory card to the appropriate officer or unit" and "download the unaltered images." (R-5.)

The May 31, 2017, PNDA reflects the charges relative to the camera incident as follows:

According to the Rules and Regulations of the Jersey City Fire Department, Article XVII—Section 2: Any member, clerk, or employee shall be subject to reprimand, loss of furlough days, suspension, deduction of pay, reduction in rank or dismissal according to the nature and aggravation of his/her offense for any of the following causes:

Charge #1: Conduct Unbecoming a Firefighter

Charge #2: Neglect of Duty

[P-7.]

It further reflects the incident giving rise to the charges as:

On May 4, 2017, FF Collin Caesar stated he misplaced the Fire Department camera while conducting an investigation into the cause of a Fire. In violation of the rules and regulations of the Jersey City Fire Department Article VII—Section 236.

[P-7.]

Video Incident

A March 15, 2017, Interdepartmental Memorandum from McGill, ostensibly to "ALL MEMBERS," regarding "Communication of Fire Department Business to Non-Fire Department Personnel" states:

Based on the Rules and Regulations and Manual of Instruction—Article VII, it is strictly prohibited that any member of this Fire Department to [sic] share information via oral or written about any department's actions and/or procedures without permission of the Chief of the Department. This shall include but not [be] limited to members of your family, members of the general public, city officials including mayor, council-persons, etc., news media and/or via internet.

Failure to comply with all of the above will subject member and/or members to progressive steps of discipline.

Please be advised that these rules will be strictly enforced. There will be zero tolerance for these infractions.

[R-15.]

Yaisa Gomez was employed by the City as a firefighter in the JCFD. On May 24, 2017, Gomez was involved in a motor-vehicle accident while driving a JCFD vehicle. Upon returning the vehicle to headquarters, Caesar approached Gomez and asked her about the motor-vehicle accident. Caesar video-recorded the discussion and later posted the video to WhatsApp.

A Form F.D. 489, dated May 26, 2017, subject "Motor vehicle accident on internet What's App," from Menendez to McGill, states:

On May 24, 2017 while off duty I Battalion Chief Menendez received a telephone call from FF. Caesar around 18:45 hours. He explained to me he had a disagreement with FF. Gomez. He stated he placed a video of his conversation about her motor vehicle accident with #4206, via internet to a What's App group chat. When FF. Gomez found this information out, she was angry with FF. Caesar. He was physically upset and apologetic on the phone for his actions. I asked if he was physically okay and mentally capable of performing his duties. He answered yes. And did not need any assistance.

I then telephoned FF. Gomez on her cellular phone. I asked her if she was ok and she stated yes. Why? What's up? I told her FF. Caesar called me and told me what had transpired. She then stated she was not satisfied with FF. Caesar's attitude. She said he was childish and should

maintain a higher standard. I asked if she needed and [sic] help to which she stated no. She states she wanted to finish her 489 of the vehicle accident and go home.

I spoke to both parties at length. I was not able to view a video. FF. Caesar is on Vacation and returns June 1, 2017 and FF. Gomez is in the DCJ academy and graduates on June 8, 2017. I had scheduled to have 489's written by all concerned parties and conduct an investigation into this matter. On page 426 of the Officer's Journal for the Arson Unit I wrote in detail on the night of the incident. On May 25, 2017 at 12:00 hours I received a phone call from yourself, about the actions that had transpired on May 24, 2017 between the parties and did I know of a video. Charges and Specifications are being levied on FF. Caesar from this conversation.

[R-10.]

A Form F.D. 489, dated May 25, 2016 [sic], subject "Charges and Specifications," from Menendez to McGill, states:

The following charges and specifications are placed against Firefighter Collin Caesar Badge #2085, assigned to Arson Investigation Unit, Group B.

According to the Rules and Regulations of the Jersey City Fire Department, Article VXII—Section 2—Any member, clerk, or employee shall be subject to reprimand, loss of furlough days, suspension, deduction of pay, reduction in rank or dismissal according to the nature and aggravation of his or her offense for any of the following Causes:

Charge #1: Conduct not becoming a Fireman

Charge #2: Neglect of duty

Specifications:

On May 24, 2017 at 1830 hours FF. Caesar placed a video via the internet of a conversation with FF. Gomez's department vehicle accident to other person outside the Jersey City Fire Department. In violation of the rules and regulations of the Jersey City Fire Department Article VII—Section 377.

[R-11.]

The May 31, 2017, PNDA reflects the charges relative to the video incident as follows:

According to the Rules and Regulations of the Jersey City Fire Department, Article XVII Section 2, Any member, clerk, or employee shall be subject to reprimand, loss of furlough days, suspension, deduction of pay, reduction in rank or dismissal according to the nature and aggravation of his/her offense for any of the following causes:

Charge #1: Conduct Unbecoming a Firefighter

Charge #2: Disobedience of orders

[P-8.]

It further reflects the incident giving rise to the charges as:

On May 24, 2017 at 1830 hours FF Caesar placed a video via the internet of a conversation with FF Gomez regarding her automobile accident with a department vehicle to other persons outside the Jersey City Fire Department. In violation of the rules and regulations of the Jersey City Fire Department Article VII—Section 377.

[P-8.]

Testimony

Joseph Menendez

Menendez was not aware if Caesar was ever given a copy of the Red Book.

The JCFD has equipment protocols and specific guidelines for any lost equipment. Lost equipment must be reported immediately to the firefighter's immediate superior and a Form F.D. 489 is authored by the person who lost the equipment, to be sent to the immediate supervisor and then up the chain of command to the chief. Lost equipment must also be entered into the logbook by the firefighter. In May 2017, Menendez's job included review of the logbook. Caesar notified him that he had

misplaced a camera used in the arson unit for evidence, and Caesar reported the misplaced camera in the logbook. Menendez advised Caesar to complete a Form F.D. 489, which Caesar immediately completed, fulfilling his obligations.

A firefighter investigator photographs the scene so the photographs can be shown to a judge in court. Part of the procedure is to photograph the scene before investigation and during investigation, so that if items are moved, there can be a chronological photo display of the scene from first arrival. Photographing and documenting the scene are taught at the criminal justice academy class and as part of training. If the JCFD loses control of the scene, the evidence collected is not admissible, and it requires a warrant from a judge to return to the scene to obtain more evidence or conduct further investigation. There is a risk of evidence being diminished if not captured immediately. The procedures for how to document an arson scene, including taking photographs, interviewing people, and taking samples, are spelled out in the arson general order in chronological steps. Once on duty, a firefighter is entrusted with care of his or her equipment for the duration of the tour. Misplacing a camera would fall under Article VII, Section 236. The JCFD has a field manual for every investigator on all procedures, including taking video-recorded statements, photographing scenes, step-by-step investigations, putting a booklet together, evidence collection, witness statements, evidence identification, and taking samples to the station to be examined by the laboratory. The Standard Operating Procedures are part of the arson unit rules and regulations within the JCFD. The procedures apply to arson investigators' use of equipment. Arson unit rules and regulations were not cited as part of the violation for the misplaced camera. Menendez used the Red Book.

Menendez was not aware of any compromised evidence as result of rephotographing the scene with Camera Two. Menendez did not make the decision to charge Caesar. He was directed to by the chief because there was evidence on Camera One and it was never recovered. Menendez did not order an investigation to find out what happened to the camera and there was no police report filed at the time. There is a risk that other photos are out there and not recovered.

With regard to the video incident, Caesar explained to Menendez that Gomez had gotten into an accident with a JCPD unmarked arson-unit vehicle on her way to the police academy and he was questioning her about it. Caesar said he put a video of the conversation on a site, and Gomez approached him and was not happy and said she was going to tell the deputy chief, so Caesar thought he was going to be in trouble. Caesar did not explain why he did it. Caesar was very upset and apologetic on the phone. Menendez did not have WhatsApp and he never saw the video. After speaking with Caesar, Menendez called Gomez, and traveled to JCPD headquarters to speak to her personally about it. Gomez told Menendez that she received a phone call about the video from someone they had gone to South Africa to train with. Gomez was a little upset about it. She was upset that she was not aware she had been filmed, and she did not like what was said about her in the video. She thought Caesar was being childish and an ass, and that he should maintain a higher standard. Gomez said Caesar was questioning her about the accident on the Parkway, what she did during the accident, how she was driving, how she got to work after that, and how long it took. Gomez said Caesar was asking her nonsense questions and she got annoyed. Menendez asked her if she had reported it to the chief working—a higher rank than Menendez—but she said that she had not and that she just wanted to cool off right now and make Caesar sweat a little bit. She also told Menendez she did not need any assistance. Menendez prepared the Form F.D. 489, and he received approval from McGill for charges. It was McGill's idea to bring Section 377 charges. He cited Section 377 because Caesar shared Department business with persons outside the JCFD by placing a video on the internet about another firefighter and a Department vehicle. Affairs of the JCFD require permission from the chief to disclose.

Steven McGill

The arson-unit rules are from 2007 and 2008, before the arson unit was disbanded in 2009 and reconstituted two or three years later. The arson unit has standard equipment protocols that include use of digital cameras. Arson-unit firefighters go through extensive training. Part of training is use of digital cameras to immediately capture evidence, including maybe even an address, street signs, and vehicle license plates. Photos are a very important part of the investigation, especially in court. It is

important to maintain control of the scene because of chain of custody. If a fire were started due to a criminal offense, it gets to the next level, where arson-unit firefighters are law-enforcement officers and must follow procedures and chain of custody as though police officers. McGill prepared the PNDA. Caesar neglected his duty, because he had a basic duty to safely secure the camera assigned to him and he lost it. Caesar followed proper protocols to report the loss—he reported it to the deputy chief and logged it in the logbook. When lost City property comes to his attention, he usually instructs the firefighters to get a police report and instructs the supervisor to find out what happened. McGill asked Menendez for further information, like what scene was photographed and when it was rephotographed, and if it was arson. Since Camera One had evidence on it, a police report should have been filed when the camera was lost, but it was not done correctly, and nobody filed a report. McGill told Menendez to get it done, and Smith filed a report. McGill did not know if Caesar was told to file a police report.

Menendez told McGill he had spoken to Gomez about the video incident. McGill reviewed the video and had a discussion with Gomez about what happened. Gomez said she received calls from other people who said they saw video online, and that was how she found out about it. Gomez saw the video on the website, and she was able to view it. Gomez was not happy about it, and she complained that it was put on social media and she was embarrassed. McGill was not sure if the video was sent to Gomez, or how she viewed it. Caesar did not have approval from McGill to post the video, and McGill had no knowledge that any other supervisor had given approval. McGill issued the March 15, 2017, memo because the internet and social media were not covered in JCPD Rules and Regulations, which date back to the 1920s.

Collin Caesar

This is Caesar's first disciplinary action. He would not have done anything he knew was a violation of JCFD Rules and Regulations, and he does not conduct himself to get into trouble. Caesar was never given a Red Book, or a copy of it in any other form. He did what he did and owned up to his actions. McGill never spoke to him about either incident. The far-reaching, devastating effects of the six-CTs penalty far outweigh

the approximately \$2,800 cost. A major penalty would leave a stain on his record that could lead to reduced points on any promotional exam and affect his pension. He lost Police Training Commission qualifications because he was kept out of the arson unit for these incidents.

Caesar has had no prior incidents with lost equipment while in the arson unit. Menendez never advised that there was any problem with the Camera Two photos or the evidence. The fire was accidental. McGill never spoke to him regarding the lost camera. Caesar never found out what happened to the camera. He was not given a copy of the Arson Investigation Unit Standard Operating Procedures when he started in the arson unit in 2011 or at any time thereafter. He never saw the Arson Investigation Unit Standard Operating Procedures. There was no field manual when he started in the arson unit. He was not an investigator at that time, he was only assigned to the arson unit. He received training from the Division of Criminal Justice on documenting scenes, and use of equipment to document the scene.

He posted the video to a closed WhatsApp group. The WhatsApp Group consisted of a group of six or seven 9/11 JCFD and FDNY first responders, including Caesar and Gomez. He posted the video to WhatsApp because when they had been overseas, they made funny videos and photos of each other to entertain themselves. His intent was not malicious. He became aware of a problem with posting the video because Gomez called him and said she was going to report him to the chief. He told Gomez he did not understand and asked why she would say that because he thought it was whimsical. Gomez did not see it that way and was upset, so Caesar aptly apologized to her and removed the post. After he got off the phone with Gomez, he called Menendez and told him what transpired because he was afraid for his job. Menendez told him to remove the post and apologize and Caesar told Menendez that he had. Caesar never received a copy of the March 15, 2017, Interdepartmental Memorandum and was never advised in any form that posting a video of that nature was against the JDFD Rules and Regulations. He would not have posted the video if he had been aware. At the time he did not think that he had done anything wrong or that he had violated any JCFD Rules and Regulations.

Factual Discussion

It is observed that although the logbook and Form F.D. 489s from Caesar and from Menendez reflect that the camera was misplaced at the scene of Montgomery Street, the police report filed by Smith reflects that the camera was misplaced at the scene of Linden Avenue. Additionally, Menendez and McGill testified that the Linden Avenue photographs were not of an active fire, but rather were of a tractor trailer that had been involved in possible arson that had been brought to the City's impound lot, and while the Montgomery Avenue photographs were of an active fire, it was determined that the fire was accidental. Caesar rephotographed the Montgomery Avenue fire the same day, while the JCFD still had control of the scene. Caesar was also able to rephotograph the tractor trailer, which remained at the City lot. While the testimony of all three witnesses was generally consistent, McGill seemed to have less specific knowledge of the underlying facts of either incident, and his testimony about where the camera was lost and when Caesar rephotographed the scene was inconsistent with the other testimony and documents.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C.

4A:2-2.3(a), including “conduct unbecoming a public employee,” “neglect of duty,” and “other sufficient cause.” N.J.A.C. 4A:2-2.3(a)(6), (7), and (12). In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The FNDA reflects that Caesar was charged with conduct unbecoming a public employee, neglect of duty, and disobedience of orders, for the following incidents:

On May 4, 2017 FF Caesar misplaced a camera while conducting an investigation, in violation of rules and regulations JCFD Article VII—Section 236.

And on May 24, 2017 FF Caesar placed a video via the internet of a conversation with another firefighter in violation of rules and regulations JCFD Article VII—Section 377.

[P-1.]

N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming. However, the Appellate Division has held that conduct unbecoming a public employee is “any conduct . . . which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). Moreover, a finding of conduct unbecoming need not be predicated upon violation of any rule or regulation. Ibid.

With respect to the camera incident, Article VII, Section 236, of the JCFD Rules and Regulations states: “A member of the Department is responsible for the good care, proper maintenance and serviceable condition of the Department property issued for, or assigned to, his use.” It is not disputed that Caesar was responsible for the good care, proper maintenance and serviceable condition of Department property. It is not disputed that arson-unit firefighters are specially trained and an extension of law enforcement in an arson situation, or that it is critical to maintain custody and control of equipment when documenting an arson scene. Thus, it is common sense that one would need to keep track of equipment necessary to perform job functions. However, there was no

allegation that Caesar did not take good care of the camera or maintain it in serviceable condition. Rather, the charge stems solely from the fact that the camera was lost while assigned to Caesar, during which time Caesar had been called from the scene of another investigation to assist at Montgomery Street, and then he transported members to Bayonne to pick up a part for the disabled fire truck and thereafter to get lunch. In so doing, Caesar inadvertently misplaced the camera. Both Menendez and McGill testified that Caesar timely contacted Menendez about the lost camera, logged it in the logbook, and submitted a Form F.D. 489, thereby complying with all requirements. Further, Caesar has no prior history of having lost JCFD equipment, nor was there any allegation that he had damaged, stolen, or sold the camera, which certainly would be the type of conduct that might warrant disciplinary action.

Based upon the record, I **CONCLUDE** that Caesar's conduct in misplacing the JCFD camera while conducting an investigation was not conduct unbecoming a firefighter, nor was it neglect of duty that warrants disciplinary action. Thus, I further **CONCLUDE** that no penalty should apply to the May 4, 2017, incident.

With respect to the video incident, Article VII, Section 377, of the JCFD Rules and Regulations states: "It will be regarded as a breach of discipline for a member of the Department to prepare and publish an interview of any affairs pertaining to the Department, except by permission of the Chief." Although Caesar denied receipt of the JCFD Rules and Regulations, the Standard Operating Procedures, and the March 15, 2017, memo, and there was no documentation, such as a signed receipt, presented by the respondent, it does not change that Caesar surreptitiously recorded a fellow JCFD firefighter and JCFD vehicle involved in an accident and then disseminated the video to others outside the JCFD. While it does appear Caesar's intention in sharing the video with a group of friends via WhatsApp was to be funny and not malicious, it was inappropriate and a violation of the prohibition on publicly sharing JCFD business. Accordingly, I **CONCLUDE** that Caesar's conduct was unbecoming a public employee and violated JCFD Rules and Regulations.

With respect to the penalty, the Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be

substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must utilize the evaluation process set forth in West New York v. Bock, 38 N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations, and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated.

Caesar has been a JCFD firefighter for over sixteen years with no prior disciplinary history. Accordingly, I **CONCLUDE** that a penalty of two CTs is appropriate.

ORDER

I hereby **ORDER** that the charges relative to the camera incident are **REVERSED**. I further **ORDER** that the charges relative to the video incident are **SUSTAINED**, and that the penalty of six CTs is **MODIFIED** to two CTs.

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.

January 20, 2022



DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

January 20, 2022

Date Mailed to Parties:

January 20, 2022

db

APPENDIX

List of Witnesses

For Appellant:

Collin Caesar

For Respondent:

Joseph Menendez

Steven McGill

Exhibits In Evidence

Joint

J-1 Joint Stipulations

For Appellant:

P-1 FNDA, dated December 24, 2019

P-2 (Not in Evidence—duplicate of R-4)

P-3 Form F.D. 489 (Digital Camera) (duplicate of R-6)

P-4 Log notes

P-5 Jersey City Police Department Report of Lost or Stolen Property

P-6 (Not in evidence)

P-7 PNDA, May 31, 2017 (camera)

P-8 PNDA, May 31, 2017 (video)

P-9 (Not in evidence)

For Respondent:

R-1 (Not in Evidence)

R-2 Form F.D. 489 (Loss of Camera #1 from Arson Unit)

R-3 Form F.D. 489 (Charges and Specifications—May 11, 2016 [sic])

R-4 JCFD Rules and Regulations

R-5 Arson Investigation Unit Standard Operating Procedures

- R-6 Form F.D. 489 (Digital Camera) (duplicate of P-3)
- R-7 (Not in Evidence)
- R-8 (Not in Evidence)
- R-9 (Not in Evidence—per Order dated January 20, 2021)
- R-10 Form F.D. 489 (motor-vehicle accident on internet What's App)
- R-11 Form F.D. 489 (Charges and Specifications—May 25, 2016 [sic])
- R-12 (Not in Evidence—per Order dated January 20, 2021)
- R-13 (Not in Evidence—per Order dated January 20, 2021)
- R-14 (Not in Evidence)
- R-15 Interdepartmental Memorandum, March 15, 2017
- R-16 F.D. Form 489 (Formal Hearing of Firefighter Collin Caesar)
- R-17 Video (CD)