



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 27<sup>TH</sup> DAY OF APRIL, 2022

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
Director  
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Civil Service Commission  
P. O. Box 312  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 00255-20

AGENCY DKT. NO. 2020-1703

**LAUREN KROPILAK, GLOUCESTER  
COUNTY, DEPARTMENT OF EMERGENCY  
RESPONSE.**

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**George Jackson**, National Staff Representative, Communications Workers of America, for appellant, Lauren Kropilak, appearing pursuant to N.J.A.C. 1:1-5.6(a)6

**Michael J. DiPiero**, Esq., for respondent, Gloucester County, Department of Emergency Response (Brown & Connery LLP, attorney)

Record Closed: February 11, 2022

Decided: March 16, 2022

**BEFORE CARL V. BUCK III, ALJ:**

**STATEMENT OF THE CASE**

Appellant Lauren Kropilak (appellant or Kropilak) appeals the action of respondent Gloucester County Department of Emergency Response (Respondent, County or Gloucester) suspending her from her Public Safety Telecommunicator (PST) position for five (5) working days of twelve-hour shifts. The charges arose from an incident that occurred on April 2, 2019.

## PROCEDURAL HISTORY

On October 24, 2019, Gloucester issued a Preliminary Notice of Disciplinary Action (PNDA) imposing charges of insubordination; conduct unbecoming a public employee; neglect of duty; and discrimination that affects equal employment opportunity including sexual harassment. The incident that serves as the basis for the charges occurred on April 2, 2019<sup>1</sup>. The PNDA imposed a suspension for ten shifts (J-1.) On December 6, 2019, Gloucester issued a Final Notice of Disciplinary Action (FNDA) modifying the suspension of appellant from ten shifts to five shifts with the same charges listed (J-2). On December 18, 2019, Kropilak appealed that action to the Civil Service Commission (Commission). The matter was transmitted to the Office of Administrative Law (OAL) on January 7, 2020, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The matter was originally assigned to The Hon. Dorothy Incarvito-Garrabrant, ALJ and was reassigned to the undersigned after Judge Incarvito-Garrabrant's appointment to the Superior Court of New Jersey. Judge Incarvito-Garrabrant issued a Prehearing Order on March 17, 2021. The hearing date, originally scheduled for August 11, 2021, was adjourned at the request of respondent with consent of appellant.

During a telephone conference on August 11, 2021, hearing dates were scheduled for October 8, 2021 and November 10, 2021. The hearing occurred on October 8, 2021 and the scheduled date of November 10, 2021, was adjourned. Closing submissions were received on January 31, 2022, and the record closed February 11, 2022.

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<sup>1</sup> The PNDA and the FNDA reference the incident date as "April 2019". During the course of the hearing the Tribunal determined that the actual date of the incident is April 2, 2019.

## FACTUAL DISCUSSION

The following constitutes either background information, information contained in unchallenged submissions or conclusions reached by an investigation which were not challenged. As such I find the following as FACT:

The Gloucester County Department of Emergency Response is comprised of a Public Safety Division (PSD) and police division. (T55). The governance of the PSD includes the Chief Dispatcher, Supervising Public Safety Telecommunicators, Senior Public Safety Telecommunicators (Senior PST), and the Public Safety Telecommunicators (PST). (T55). There are a minimum of six dispatchers on the public safety side and a minimum of sixteen dispatchers on the police side. (T55). There are two Senior PSTs: one fire side and one police side. (T55). Typically, each Senior PST has a PST working under them as a second called Corporals. (T56). Corporals act "in place of" a Senior PST when supervisors are off. (T56).

Corporals receive on-the-job training and prosecutor's office training. (T57). The Senior PST should lead and shadow the Corporal and show them the rules and responsibilities. (T57). If there is an incident during a shift, it has to be reported through an incident report. (T58). The incident report progresses up the ranks to the Senior PST or supervising PST. (T58).

Appellant has worked for the County in the PST position since December 2006. (T64; R-1). Since April 2019, Christina Thompson (Thompson) has been appellant's direct supervisor on B shift (R-1). Appellant has at times acted as a Corporal on the B shift. (T64; R1). Appellant has no disciplinary record prior to this incident.

On June 11, 2015, Katie Wolf (Wolf) began working as a PST on the D Shift (R-1) with Tim Weyand (Weyand), another PST, who had worked for the County since December 2009 (R-1). At some point in or around 2017, Weyand began working on D Shift. On October 17, 2018, Wolf began to memorialize inappropriate comments made by Weyand to Wolf (R-1).

In January 2019, Wolf was reassigned to B Shift (R-1). Subsequently, Weyand was also transferred to B Shift where Christina Thompson (Thompson) was the supervisor (R-1). Thompson reported to Diane Morgan (Morgan) (R-1).

On the day of the April 2, 2019 incident, Kropilak, Wolf, Weyand, Joe Schraham (Schraham), Jen Fox (Fox) and Sheryl Neely (Neely) were working in the 911 call center. (T45; T66). Wolf and Kropilak were assigned to zone 5, the Deptford board. (T65,66). Weyand was assigned to zone 3, the Woodbury board. (T66). Schraham was assigned to a one-man board in zone 1. (T66; T76). The supervisor on duty was Senior PST Neely. (T45; T49; T71). There was no Corporal assigned on the date of the incident. (T75). On the date of this incident, both Neely and Fox were permanent supervisors. (T47). Neely was the supervisor in charge. (T47;T71).

Weyand was watching a television program about a pre-teen or teenage girl and a forty-something year old man running away together. (T45). In response to the program, Wolf made a comment that it was disgusting. (T45). Weyand responded to Wolf, "well, Katie, you're used to fuckin' old men so this shouldn't bother you." (T45) . Wolf responded, "don't you ever talk to me like that again. This is disgusting." (T45).

Senior PST Neely observed the exchange between Wolf and Weyand. (T45; T77). Neely laughed about the response and stated "Oh, Timmy, don't say that." (T45;T48). Wolf responded, "Cheryl, you're going to let this happen literally in front of me. You're a supervisor. This has been going on so long." (T45-46).

At the time of Wolf and Weyand's exchange, Kropilak was covering for Schramm, who had gone on a break. (T66). While covering Schramm's post in the call center, Kropilak heard that Wolf and Weyand's voices were raised. (T67). At the time of the exchange, Kropilak was completing her job duties which included answering the radio for officers, taking calls from the public, documenting events in the departments CAT system and answering phone calls from officers on the street. (T67;T68;T69).

Kropilak recalled hearing Wolf say: "It's not funny" or "This isn't funny" and "Please shut up". (R-1). When Schraham returned to his desk, Kropilak returned to her assigned zone next to Wolf. (T68). Kropilak observed that Wolf appeared upset. (T46; R1). Accordingly, Kropilak asked Wolf whether she was okay. (T68; R1). Wolf told Kropilak that she was okay, but she did not like comments that Weyand had made. (T68; R1). Wolf did not repeat the comments made by Weyand and only indicated that the statements had something to do with another employee, Larry Kennie (Kennie). (T35; T68; T69; T83). Wolf did not inform Kropilak that she was being sexually harassed. (T69). Kropilak did not speak to Weyand. (T31; R1).

After Neely laughed about the incident, Wolf asked Fox if she should report the incident to her Chief. (T47). Fox responded, "no, not right now". (T47). Wolf recalled that Kropilak observed that she was clearly upset but could not recall whether Kropilak was in the room and observed the exchange between her and Weyand. (T48;T49). Wolf also testified that she specifically told Neely and Fox about the harassment and that they were both very aware of the incident. (T47;T48). If Kropilak would have been aware of the harassment and required to report it, she would have made the report to Neely. (T85). But it was not corroborated by anyone that Kropilak heard the exchange between Wolf and Weyand. (T67).

Specifics as to recollections of the individuals present will be reviewed by their testimony.

Subsequent to the event, the County initiated an EEO investigation into Wolf's complaint that she, beginning in 2018 through 2019, had been sexually harassed by Weyand. (T17; R-1). The EEO investigation was conducted by Joseph Antinori, Esq. (Antinori, an attorney from the law firm Brown and Connery. (T17). Antinori summarized that the basis of Wolf's complaint was that "Weyand was making sexual remarks to her that she found unacceptable and unwanted and inappropriate for the workplace." (T-17).

On the Discrimination Complaint Processing Form, Wolf indicated that she had reported the sexual harassment to her supervisors throughout the year. (R-1). Wolf informed Antinori that she had verbally reported Weyand's comments to the following

employees: Supervisor Jenn Fox, Senior PST Sheryl Neely, and PST Lauren Kropilak. (T27; R-1).

On October 4, 2019, Antinori interviewed Kropilak. (T28; R-1). During her interview, Kropilak recalled comments made by Wolf in April 2019 (R-1). Kropilak also informed Antinori that she was not aware of any incidents between Wolf and Weyand outside of the April 2019 incident (R-1). Antinori recalled that Kropilak indicated that Wolf only reported that the incident had something to do with Wolf and Kennie . (T35). The investigative report reflects that Kropilak stated she could not recall Wolf relaying what Weyand had said but it had something to do with Wolf and Kennie (R-1).

On October 4, 2019, Antinori interviewed Senior PST Neely, a twenty-one-year veteran PST, who has worked on B shift for two and a half years (R-1). During her interview, Neely denied that Wolf complained to her about comments by Weyand (R-1). Neely further indicated that she was not aware of any problems or arguments between Wolf and Weyand (R-1).

On October 8, 2019, Antinori interviewed Fox, who is a Senior PST and supervisor on the D shift (R-1). Fox informed Antinori that Wolf never complained to her about any inappropriate or unprofessional comments made by Weyand (R-1). Fox further informed Antinori that she thought that Weyand and Wolf would engage in banter back and forth and got along (R-1).

Wolf further informed Antinori that Christine Ebner (Ebner), Tammy Kiszaleski (Kiszaleski), Kristine Franco-McGovern (Franco-McGovern) and Trish Sloss (Sloss) may be able to corroborate her claims that Weyand made inappropriate comments (R-1).

Antinori interviewed Ebner, who indicated that Wolf never complained to her about comments by Weyand (R1). Antinori interviewed Kiszaleski, Franco-McGovern, and Sloss who corroborated Wolf's allegations (R1). Wolf also reported the Weyand had made inappropriate comments about two gay employees Mike Simpson (Simpson) and Troy Menna (Menna) (R-1).



Antinori found that “more likely than not one or more supervisors were aware of Weyand’s conduct.” (R-1). Antinori concluded that Neely and Fox denied knowledge of Weyand making any inappropriate remarks or Wolf reporting any inappropriate remarks to them (R-1). But Fox did admit that Weyand may have made comments that others may have found offensive and took no action to address the comments with Weyand (R-1). Antinori also found that Kropilak acknowledged hearing the comments that Wolf made in April 2019. Antinori did not question Kropilak’s credibility in the investigation (R-1).

At the conclusion of his EEO investigation, Antinori determined that Weyand made the statements that Wolf attributed to him and that those statements were of a sexual and inappropriate nature. (T23).

## **TESTIMONY**

### **Respondent**

Antinori is an attorney with Brown and Connery. He performs EEO investigations for clients whose employees have reported harassment or retaliation or discrimination. He issued a report based on Wolf’s complaint(s) regarding Weyand’s behavior (R-1). The report consists of, among other things, statements made by various employees regarding the Wolf complaint. Statements made by Wolf and Kropilak deal with the date in question as well as a wider time frame.

Wolf is a PST for Gloucester. She testified that she had documented the harassment to which she was subjected since 2018 and had reported the harassment to her supervisors and fellow workers; including appellant who was a Corporal on a number of occasions when Wolf was working. Regarding the date of the incident - Wolf did not testify that Kropilak heard Weyand’s comments, but Wolf did state that Kropilak came to her (Wolf) thinking that Wolf looked upset.

**William E. Holstrom** (Holstrom), testified as to procedures and training normally employed by Gloucester.

## Appellant

Kropilak has been employed by Gloucester as a Public Safety Telecommunicator (PST) since 2006.

During the course of her testimony, she stated that although she observed what she referred to as a “spat” on the day of the incident, she did not hear the specifics of the comments Weyand made to Wolf, but she did approach Wolf as a “friend” rather than in her capacity as a “Corporal” after the incident of April 2, 2019. She did not deny speaking with Wolf, but did not agree that she was made aware of Weyand’s comments that day.

## DISCUSSION

A fact finder is obligated to weigh the credibility of witnesses. The fact finder must choose to accept or reject whether a witnesses’ testimony is credible. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). Credibility is the value given to a witness’ testimony. It is best described as that quality of testimony or evidence that makes it worthy of belief. “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950), (citations omitted).

A credibility determination requires an overall assessment of the witness’ story “in light of its rationality or internal consistency and the manner in which it hangs together with other evidence.” Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The fact finder should also consider the witness’ interest in the outcome, or any motive or bias. The fact finder may reject testimony because it is inherently incredible, improbable, inconsistent with common experience, contradicted by other testimony, or it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Antinori’s testimony dealt with the information he gleaned from his investigation. His conclusion was redacted but the full report was provided at the conclusion of the

hearing and marked as P-3. The report reflected statements made by, among others, Wolf and Kropilak. The statements in the report were somewhat contrary to the testimony of Wolf and Kropilak at the time of the hearing. The discrepancies will be addressed below. The tribunal is not making a determination on Antinori's credibility but lets the document speak for itself, noting that the only objection to R-1 was to the redacted portions which were "re-inserted" without objection at the conclusion of the hearing. The interviews in the report speak for themselves and the report evidences the working environment at the Gloucester County Emergency Response Department to be a maelstrom of dysfunction. Or perhaps a cesspool of dysfunction.

Holstrom testified to procedural issues and matters. The main point elicited from him dealt with the phrase/ concept "At the Board" and the position of authority such position/ statement carried. Holstrom testified that he was unaware of the term being used to connote someone in a position of authority in the room at a particular time. Both he and his testimony were credible and not challenged by either party.

Wolf testified credibly as to her ongoing harassment and complaints to her supervisors and colleagues. Her testimony did not necessarily deal with the specifics of the April 2, 2019 event but dealt with the harassment to which she was subject over a broader time frame. In her statement in P-1 at one point before discussing April 2, 2019 event it was stated "Wolf informed Antinori that Christine Ebner, Tammy Kiszaleski, Kristine Franco-McGovern and Trish Sloss may be able to corroborate her claims that Weyand made inappropriate comments (R-1). Antinori interviewed Ebner, who indicated that Wolf never complained to her about comments by Weyand (R1). Antinori interviewed Kiszaleski, Franco-McGovern, and Sloss who corroborated Wolf's allegations (R-1). Wolf also reported the Weyand had made inappropriate comments about two gay employees Mike Simpson and Troy Menna (R-1). The report stated that, "Kropilac-Culligan (sic) commented to Wolf that she looked upset, and Wolf replied that it was extremely upsetting." (R-1).

Her testimony was somewhat inconsistent with the information reported in R-1 and there was a contradiction as to whether or not she actually reported the specifics of the

"spat" of April 2, 2019 to Kropilak on that date. No contemporaneous statements of the incident at the time were provided.

Kropilak testified credibly that she was aware of the "spat" on the date of the incident but was not aware of the content or context of the discussion. She was only aware that Wolf was upset. It is unchallenged that she did not make a report to her superior that day regarding the incident.

Based upon a review of the documentary evidence, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following as additional **FACTS** in this matter:

On April 2, 2019 a verbal incident occurred between Wolf and Weyand. Kropilak, attending to her work, was unaware of the content or context of the incident. Kropilak later approached Wolf to check on Wolf as Wolf seemed upset. Kropilak, did not report the incident or her observations to supervisor that day.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The Civil Service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See, Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1971); Mastrobattista v. Essex County Park Commission, 46 N.J. Super. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provision of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

In an appeal concerning a major disciplinary action, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11:2-21; N.J.A.C. 4A:2-14 (a). The State has the burden to establish by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. Super. 143 (1962); In re Polk License Revocation, 90 N.J. Super. 550 (1980).

The first issue in this proceeding is whether a preponderance of the credible evidence establishes that the appellant's actions on April 2, 2019, constitute a violation of the charges set forth in the FNDA. If so, the second issue is whether the violation warrants the five shift(s) suspension from employment or a lesser penalty, if any.

Kropilak is charged with violating the provisions of N.J.A.C. 4A:2-2.3 relating to insubordination, conduct unbecoming a public employee, and neglect of duty.

"Insubordination" is not defined in N.J.A.C. 4A:2-2.3. Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Therefore, the term "insubordination" incorporates not only acts of disobedience, but also acts of non-compliance and non-cooperation, and it can occur even where no specific order or direction has been given to the allegedly insubordinate person.

Here, when Kropilak observed a "spat" between two employees, whether or not she was aware of the content of the "spat" she was under an affirmative obligation to report this to her superior. However, she testified (as did Wolf) that her supervisor, Neely, was in the room at the time of the April 2, 2019 incident. No testimony contradicted the testimony that Neely was present, therefore I take that as FACT.

Accordingly, I **CONCLUDE** that respondent has not demonstrated, by a preponderance of the credible evidence, that Kropilak's conduct on April 2, 2019,

constituted insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2), and that such charge must be **DENIED**.

There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. In Jones v. Essex County, CSV 3552-98, Initial Decision (May 16, 2001), adopted, Merit Sys. Bd. (June 26, 2001), <http://njlaw.rutgers.edu/collections/oal/>, it was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. In Karins v. City of Atlantic City, 152 N.J. 532 (1998), an off-duty firefighter directed a racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase "unbecoming conduct" is an elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for municipal employees and confidence in the operation of municipal services. Id. at 554. In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), the court stated that a finding of misconduct need not "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."

From the information and testimony provided, April 2, 2019, Kropilak's conduct did not constitute such that it could adversely affect morale or efficiency, destroy public respect for governmental employees and confidence in the operation of public services. I **CONCLUDE**, therefore, that respondent has not demonstrated, by a preponderance of the credible evidence, that Kropilak's conduct on April 2, 2019, constituted conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and that such charge must be **DENIED**.

"Neglect of duty" has been interpreted to mean that an employee "neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, Civil Service

Commission (March 27, 2009), [njlaw.rutgers.edu/collections/oal/](http://njlaw.rutgers.edu/collections/oal/). The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

Here, the general atmosphere of this workplace could arguably lead an employee to be unaware of the position he or she holds at a particular time and in light of particular circumstances. The Conduct and Performance Policy Prohibition of Discrimination, Harassment or Hostile Environments in the Workplace (R-15) states under Section III. Employee Responsibilities "Any employee who believes that he or she has been subjected to any form of prohibited discrimination/ harassment, or who witnesses others being subjected to such discrimination/ harassment is encouraged to promptly report the incident(s) to a supervisor or directly to the County agency's Equal Employment Opportunity Officer or to any other persons designated to received workplace discrimination complaints."

Notwithstanding Kropilak stated she was approaching Wolf "as a friend" she was still under an obligation to report the "spat" she observed regardless of whether she was an acting Corporal or an ordinary PST and regardless of whether her supervisor Neely was present – redundant as it may seem.

Taken to the extreme then, on April 2, 2019, Kropilak's conduct was such that she did neglect the duty to report this "spat." Her obligation to do so as detailed above. Therefore, I **CONCLUDE**, that respondent has demonstrated, by a preponderance of the credible evidence, that Kropilak's conduct on April 2, 2019, constituted neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7), and that such charge must be **SUSTAINED**.

The charge "Discrimination that affects equal opportunity including sexual harassment" begs the question did Appellant engage in discrimination that affects equal opportunity including sexual harassment by failing to conduct herself in the manner and demeanor befitting a PST through her actions and demeanor on April 2, 2019.

Considering the facts, testimony and documentary evidence presented herein, I **CONCLUDE** that appellant's behavior did not rise to a level of discrimination that affects equal opportunity including sexual harassment, in violation of N.J.A.C. 4A:2-2.3(a)(9). I **CONCLUDE** that respondent has not met its burden of proof on this issue and that such charge must be **DENIED**.

### **PENALTY**

A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). This requires a de novo review of Kropilak's disciplinary action. 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). The question to be resolved is whether the discipline imposed in this case is appropriate.

### **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). 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 Bock, concepts of progressive discipline involving penalties of increasing severity are used



where appropriate. See In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522-24.

Here, respondent maintains a five-shift suspension is the appropriate penalty. In considering whether a five-shift suspension is appropriate given Kropilak's conduct on April 2, 2019, I took into account the testimony of both Wolf and Kropilak as well as the report information as well as the fact that Kropilak has no disciplinary history. Although her conduct did not meet the letter of the Policy, the inconsistent application of the policy must be viewed as a mitigating factor. I **CONCLUDE** that appellant's conduct warrants discipline, but that a five-shift suspension is excessive. Consistent with the concept of progressive discipline and taking into account that Kropilak has no disciplinary history, I **CONCLUDE** that a more appropriate penalty for her conduct on April 2, 2019 is a one-shift suspension.

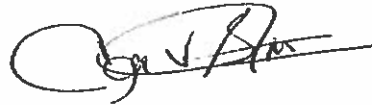
### **ORDER**

It is **ORDERED** that the charges of insubordination, conduct unbecoming a public employee, and discrimination that affects equal employment opportunity are **REVERSED**. It is further **ORDERED** that the charge of neglect of duty be and hereby is **SUSTAINED**, and that the five-shift suspension be reduced to a one-shift suspension.

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 16, 2022  
DATE

\_\_\_\_\_  
**CARL V. BUCK III, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

CVB/lam

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**APPENDIX**

**WITNESSES**

**For appellant:**

Lauren Kropilak

**For respondent:**

Joseph G. Antinori

Katie Wolf

William E. Holstrom

**EXHIBITS**

**Joint**

J-1 Preliminary Notice of Disciplinary Action

J-2 Final Notice of Disciplinary Action

**For appellant:**

A-1 R-1 (Unredacted version)

**For respondent:**

- R-1 - Confidential Investigation Report
- R-2 - Daily Shift Report 4/1/2019
- R-3 - Daily Shift Report 4/2/2019
- R-4 - Daily Shift Report 4/5/2019
- R-5 - Daily Shift Report 4/6/2019
- R-6 - Daily Shift Report 4/16/2019
- R-7 - Annual Requirements and Notifications Acknowledgement
- R-8 - HR Manual Review Employee Acceptance Statement
- R-9 - Acknowledgement of Receipt of CEPA Notification
- R-10 - Orientation Checklist
- R-11 - EEO/AA Policy
- R-12 - Acceptance of Policies & Procedures
- R-13 - PST In-Service 5/6/2019
- R-14 - PST Cultural Diversity Harassment/EEO Training
- R-15 - Conduct and Performance Policy Prohibition of Discrimination, Harassment or Hostile Environments in the Workplace
- R-16 - Conduct and Performance Policy Discipline
- R-17 - EEO Discrimination/Preventing Harassment Sign-in Sheets
- R-18 - EEO Discrimination/Preventing Harassment Handout