



STATE OF NEW JERSEY

In the Matter of Samuel Torres,
Jersey City, Police Department

CSC DKT. NO. 2021-626
OAL DKT. NO. CSR 00286-21

:
: **FINAL ADMINISTRATIVE ACTION**
: **OF THE**
: **CIVIL SERVICE COMMISSION**
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ISSUED: AUGUST 24, 2022

The appeal of Samuel Torres, Police Officer, Jersey City, Police Department, removal, effective November 18, 2020, on charges, was heard by Administrative Law Judge Sarah H. Surgent (ALJ), who rendered her initial decision on July 14, 2022. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of August 24, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ'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 Samuel Torres.

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 24TH DAY OF AUGUST, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
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Civil Service Commission
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 00286-21

AGENCY DKT. NO. N/A

**IN THE MATTER OF SAMUEL TORRES,
JERSEY CITY (POLICE DEPARTMENT).**

Leonard C. Schiro, Esq., for appellant Samuel Torres (Mets Schiro McGovern,
attorneys)

James B. Johnston, Esq., for respondent Jersey City (Police Department) (Peter
J. Baker, Corporation Counsel)

BEFORE **SARAH H. SURGENT**, ALJ:

Record Closed: May 31, 2022

Decided: July 14, 2022

STATEMENT OF THE CASE

Appellant Samuel Torres (Torres) appeals from respondent Jersey City (Police Department's) (JCPD's) disciplinary action terminating his employment as a police officer effective November 18, 2020. Torres maintains that the Final Notice of Disciplinary Action (FNDA) charges should not be sustained, and that his removal was unwarranted, which JCPD disputes.

PROCEDURAL HISTORY

After his termination, Torres timely requested a fair hearing on December 2, 2020, but the appeal was deemed defective because no Preliminary Notice of Disciplinary Action (PNDA) was provided. The appeal was deemed perfected on December 18, 2020, when the Civil Service Commission (CSC) received two PNDAs. The direct appeal was received by the Office of Administrative Law (OAL) on December 23, 2020, where it was filed to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On January 26, 2021, a telephonic status conference was to have been held, but one of the parties was unavailable due to an illness in the family. After several telephone conferences and hearing adjournments at the parties' requests for various reasons, the hearing commenced via videoconference on October 6, 2021 and, after several further adjournments, was concluded via videoconference on April 20, 2022. The record was left open until May 31, 2022, for post-hearing submissions, and closed on that date. Torres waived the 180-day return-to-payroll rule under N.J.S.A. 40A:14-201a, in writing.

FACTUAL DISCUSSION AND FINDINGS

These salient points are not in dispute. I therefore **FIND** the following as **FACT**.

Torres became a Jersey City police officer in 2005. (R-8 at 2). This matter arose after Torres was arrested for a domestic violence (DV) incident with his wife, D.T., and was subsequently found to be not fit for duty.

May 25, 2019 Arrest and Complaint

On May 25, 2019, Torres was arrested and charged with both aggravated and simple assault, N.J.S.A. 2C:12-b(1), -1a(1), after a physical altercation with D.T.. (R-4;

R-5). The complaint-warrant alleged: (1) that Torres "attempt[ed] to cause serious bodily injury to [D.T.], specifically by charging and 'tackling' [D.T.] to the ground in the bathroom causing [D.T.] to hit the back of her head on the bathroom sink causing a complaint of pain to the head and hip as well as a small laceration to the forehead;" and (2) that Torres "purposely, knowingly or recklessly caus[ed] bodily injury to [D.T.] specifically by throwing a television remote control and striking [D.T.] in the back." (R-4). As a result of the DV arrest, all of Torres' weapons were seized. (R-6 at 3).

D.T.'s May 25, 2019 Sworn Witnessed Written Statement

On May 25, 2019, D.T. wrote a sworn witnessed statement declaring, in relevant part:

My husband arrived home at about 11:30 pm on 5/24/19. I was already asleep, in bed. He came up the stairs and woke me up by asking me if I had ever dropped the civil restraint that was in place from a previous incident. He seemed intoxicated so I quickly responded yes and tried going back to sleep to avoid engaging him. He took a brief shower and then came to bed. There he continued making accusatory and demeaning comments at me. I finally got fed up and began responding to him in my defense.

After a few minutes of arguing, I got up out of bed to use the restroom. As I approached the bathroom, he threw the television remote control at me. I felt it hit me and it landed past me on the bathroom floor. The remote shattered on impact. I instinctively went towards him with my right hand in a fist but I stopped myself from hitting him. He began yelling, 'Hit me!' and I told him that I was going to call the police to have him removed. I began walking away from him, back toward the bathroom. At that point he got up out of bed, ran toward me, and tackled me to the ground. We ended up on the bathroom floor which is adjacent to my bedroom. I hit the back of my head against the bathroom sink and, because he fell on top of me, he hit his face on the edge of the sink.

[(R-7).]

D.T. also stated that she had a scrape on her knee, a small scratch on her face, pain in her left hip from the fall, and a headache from hitting her head. (R-7 at 3).

On December 3, 2019, the criminal charges against Torres were dismissed in West Orange Municipal Court. (R-6 at 6). As a result of the May 25, 2019, incident, which was Torres' third arrest for DV, on February 27, 2020, Torres was ordered to report to the Institute for Forensic Psychology (IFP) for a fitness for duty (FFD) evaluation. Id. at 7.

Dr. Krista Dettle's May 4, 2020 Psychological FFD Report

Torres was evaluated by Dr. Krista Dettle (Dettle), a licensed psychologist with IFP, on February 27, 2020. (R-8). Dettle had previously evaluated Torres' FFD on August 21, 2017, after his May 15, 2017, arrest for allegedly assaulting D.T. Those charges were later dismissed. (R-9 at 1-2, 4). As of October 11, 2017, Dettle found Torres FFD, with the caveat that he continue therapy with his treating psychologist, Dr. Mike Abrams (Abrams), on a weekly basis, for at least three months. (P-9 at 6, 8).

Dettle's May 4, 2020, report states the following. Torres was evasive and inaccurate in his reporting. For instance, in reply to questions about how many times he had been psychologically evaluated for employment purposes, Torres reported once, however his prior records indicated that he had had at least four job-related psychological evaluations prior to the 2020 evaluation. (P-8 at 4). He was evaluated when he initially applied for his job at JCPD. (P-8 at 4-5). He was referred for a FFD evaluation with Dettle's partner, Dr. Matthew Guller (Guller) at IFP in May 2015, following a DV incident with D.T. (P-8 at 5). He was found not fit for full duty, but was found capable of serving in a non-safety sensitive/modified duty capacity. Ibid. It was recommended that he enroll in mental health counseling. Ibid. In September 2015, Guller found Torres FFD after Torres completed anger management counseling with Anthony Jenkins (Jenkins). Ibid. On August 21, 2017, as stated above, Torres was evaluated by Dettle after his second DV arrest. Ibid.

On February 27, 2020, Torres reported to Dettle that he had been in treatment with Abrams for the past two years, and had not seen any other mental health providers, notwithstanding his documented anger management counseling with Jenkins. Ibid. Torres denied ever having been prescribed any psychotropic medication, contrary to his prior records, and when confronted, admitted that he had been prescribed Zolpidem (generic Ambien) after the first DV incident. Ibid. He had made a similar denial about prescribed medications in his 2017 FFD evaluation. (R-8 at 5; R-9 at 4).

Dettle reported that Torres was “vague and evasive” about his disciplinary history with JCPD. Id. at 2. He initially denied ever having been disciplined or reprimanded on any job, but then admitted that he had been suspended for one month after the DV incident in this case. Ibid. He denied ever having been the subject of a citizen’s complaint, then admitted that he had been the subject of five to seven citizens’ complaints, which he said were unsubstantiated. Ibid. He reported that he had been the subject of numerous Internal Affairs (IA) investigations, and that most of them were unfounded. Ibid. He denied being the subject of any IA investigations related to any DV incident with his wife, id. at 2-3, notwithstanding JCPD Lieutenant Eddie Nieves’ (Nieves) May through August 2019 IA investigation of the DV incident in this case, (R-6). Dettle noted that Torres’ background information provided by JCPD indicated that Torres’ IA history included thirteen citizen complaints, three special investigations related to his DV incidents with D.T., and three sustained complaints for: (1) using excessive force on a handcuffed detainee in March 2017, which resulted in a loss of two days of accrued time, (R-11); (2) assault (DV) in May 2017, which resulted in a loss of thirteen days of accrued time, (R-10); and (3) an off-duty road rage incident in March 2018, which resulted in a loss of twenty days of accrued time, (R-12). (R-8 at 3).

Torres admitted that he had been arrested five times: for simple assault in 1999; for driving under the influence in 2002; for DV simple assault in 2015; for DV aggravated assault in 2017; and for DV aggravated assault in 2019. Ibid. Contrary to prior IFP FFD reports, Torres denied ever having been named in a restraining order, and ever having been involved with the Division of Child Protection and Permanency (DCPP). Ibid. Also

contrary to prior IFP reports, Torres denied that he and his wife were ever separated. Ibid. When asked when the last time he was involved in a physical altercation outside the line of duty was, Torres reported “1999,” but when confronted about the three DV incidents, he conceded that those would be physical altercations as well. (R-8 at 6).

With respect to the incident at issue, Torres reported:

Prior to this incident, my wife and I have been at odds due to differences in financial philosophy and outlook. During a heated argument, I flicked a remote control at her, hitting her in the back. She then rushed at me as to want to hit me, but I grabbed both her wrists and pushed her back as to get her to back off. As I was pushing her back, I stepped over her feet and tripped, causing us both to fall. I landed on the bathroom vanity door causing a laceration to my forehead. She proceeded to call West Orange police where I was arrested. She told them I tackled her.

[(R-8 at 6) (emphasis added).]

When Torres stated that he wished he had started treatment with Abrams earlier than two years ago, Dettle pointed out that Torres was still engaged in DV behavior after two years of treatment. Id. at 7. Torres replied, “[t]he fact is, I’m not suicidal or homicidal and I shouldn’t have been arrested.” Ibid. He explained that he and his wife had not sought marital counseling despite multiple recommendations to do so because “before we can work on our relationship, I have to be back to full duty. This takes precedence.” Ibid. He also stated that D.T. should understand that you “you don’t touch the pot while it’s still hot.” Ibid.

Dettle reviewed a reference letter from Abrams, dated December 2, 2019, indicating that Torres had been in treatment with him for two years and that Abrams believed that Torres is “fit for duty as a police officer and suffers no mental defect that would warrant denying his firearm privileges.” (P-6). Abrams opined that Torres

“suffers from persistent depressive disorder, which is a state of chronic mild depression. At times, his depressive affect will be expressed as irritability or mild anger. Despite this minimal

vulnerability, he is quite lucid, has firm insight into his behavior, and has good executive control. He has committed to stay in treatment as necessary and to immediately seek my help during any period of negative mood. However, I do not believe it is essential for [him] to be in regular psychotherapy in order to function adequately as a police officer.”

[(R-8 at 9; P-6 at 1).]

When Dettle spoke with Abrams by telephone on April 29, 2020, she reports that Abrams stated he had not recently seen Torres due to the COVID-19 pandemic (pandemic), and that their plan was to have telephone sessions once per month. Abrams explained that Torres may “give a worse impression” than is warranted because he “postures as hyper-masculine,” and as such, he can be perceived as “adversarial to women in authority,” which could be an aspect of culture, but is “not presenting in his on-duty work.” (R-8 at 9). Abrams stated “I don’t think it extends to his wife or his career,” and “I don’t think he’s a risk or danger as an officer,” though Abrams understands that “safety at home is predictive of safety on the street.” Ibid. Abrams stated that Torres’ presentation with Dettle was “clearly stupid,” but that it was one of “sincerity,” rather than psychopathology, otherwise Torres would have lied to Dettle about his actions. Ibid. Abrams offered to help Torres “save his job” by conducting “semi-confidential” therapy through which Torres could be monitored by JCPD. Ibid.

Dettle noted that during her 2017 conversation with Abrams after Torres’ second DV arrest and 2017 FFD evaluation, Abrams indicated that Torres’ behavior was a “function of major depression manifesting or presenting as anger,” and that Torres posed a “minimal future risk.” Ibid. Dettle noted that despite Abrams’ 2017 professional opinion, Torres had “engaged in acts of aggression, impulsivity and poor judgment both on and off duty since that time.” Ibid.

Dettle also conducted a collateral telephone interview with D.T. about the May 25, 2019 incident. Ibid. D.T. stated, “[b]asically what I wrote is what happened.” Ibid. D.T. stated that she did not have any serious reservations about Torres carrying a weapon or

serving as a police officer, and that she “was afraid in that moment because he was drinking and [she] didn’t know what would happen, but not now.” Id. at 9-10.

Dettle concluded:

This man has been arrested five times since 1999; four of these arrests involve physical altercations and two of these arrests involved alcohol. Three of these arrests took place in the last five years and were related to DV incidents with his wife.

Following his first DV arrest, the subject attended anger management counseling. He continued in psychotherapy during his second and third arrests. In 2017, the subject's treating psychologist, Dr. Abrams, asserted that the subject is at “minimal” risk for future violence; however, he was arrested again for DV in 2019. Dr. Abrams continues to assert at present that the subject is not a risk or danger, but rather that the subject simply presents as “adversarial with women in authority,” and that this does not impact his work as an officer. He further describes the subject as having a depressive disorder that manifests as anger and irritability. Dr. Abrams wrote that he does not believe that psychotherapy is essential for the subject at this time, but told the undersigned that he would be willing to continue treating the subject on a “semi-confidential” basis in an effort to help him “save his job.”

The subject presented with limited insight during his interview with the undersigned. He further approached the psychological testing in a severely defensive manner and was inconsistent in his reporting of his own life history (e.g., disciplinary record, mental health history). Despite more than two years of psychological treatment, the subject continues to externalize the DV incidents as “bad circumstances” in which he feels he should not have been arrested. In 2017, he admitted to grabbing his wife's neck and “manhandling” her, but denied the desire to cut off her oxygen supply. During the present evaluation, he attempted to rationalize placing his hands on his wife and “wished” that the undersigned could understand why he did so. He further asserted that he and his wife will not separate due to the financial impact it would have. In addition, they have not sought marital therapy, though it was encouraged by Dr. Guller in 2015 and the

undersigned in 2017. The subject asserted that his return to work takes precedent over seeking this treatment.

Since 2017, the subject has engaged in acts of aggression, impulsivity and poor judgment both off duty and on duty (e.g., excessive force, road rage), despite a course of anger management counseling and two years of psychotherapy. Given his history of treatment and unremitting negative behaviors, his prognosis is seen as poor. Re-arming this man given his propensity for aggression is seen as posing a serious risk to the community and officer safety. Should this man be retained in service, and any of his actions cause harm to a citizen or fellow officer, it would be impossible to defend a stance that clear warnings of such risk had not been previously evident.

Based upon the interview of the subject, a review of background, collateral interviews of Dr. Abrams and [D. T.], and psychological testing, the subject evidences a psychological condition or impairment that would be likely to interfere with his ability to safely and effectively function as a police officer (as per the standards of the International Association of Chiefs of Police FFDE Guidelines). As a result, he is seen as psychologically not fit for duty

Moreover, given that this man has received a significant amount of mental health treatment, and this treatment has not been able to prevent continued instances of aggressive, impulsive, and dangerous behaviors, he is seen as psychologically unfit for duty, and he is seen as unlikely to be restored to duty in a reasonable period of time

.....
The following recommendations are made with a reasonable degree of psychological probability:

Not fit for duty with little chance of recovery. This individual suffers a degree of mental illness or disability in his job-related conduct that is of sufficient magnitude so that the undersigned finds the subject impaired and unlikely to be restored to duty in a reasonable period of time.

[(R8 at 10-12).]

Nieves' Interviews of D.T. and Torres

Nieves, of JCPD's Internal Affairs Unit (IAU), conducted a Special Investigation of the May 25, 2019 DV incident. (R-6 at 1). As part of his investigation, Nieves interviewed both D.T. and Torres. (R-6 at 6-7, 10-11). According to Nieves' report, on February 11, 2020, D.T. was interviewed telephonically and stated that Torres had been out drinking on the night of the incident and that she was already in bed when he came home. (R-6 at 6). They had an argument about a previous incident and D.T. got out of bed. Ibid. Torres ran toward her, tackled her, and they both fell into the bathroom. Ibid. D.T. stated that she was not injured, but that Torres hit his head against the bathroom sink. Ibid. D.T. then stated that Torres threw a television remote control at her which grazed the side of her leg, and that she had a small scratch from the fall when she was tackled. Ibid. She stated that she would have no problem with Torres being returned to full duty, id. at 6-7, that Torres had been going through counseling for the past few months, and that they were on good terms. Id. at 7. She stated that she did not believe that Torres had a drinking problem, and that it "just happened to be a bad night for him." Ibid. D.T. acknowledged that she has a civil restraint order against Torres since their second DV incident, that they were not supposed to live together, but that they had nevertheless reconciled. Ibid.

Nieves interviewed Torres on June 8, 2020. (P-6 at 10). According to Nieves' report, on the night of the incident, Torres had been out drinking at two social clubs in Jersey City, but he was "not drunk out of his mind," and had only consumed two to three beers. Ibid. He and D.T. had an argument about the civil restraint order, which Torres felt that D.T. was using against him. Ibid. Torres did not remember who started the argument, but when D.T. got out of bed, he threw the remote control at her "not to injure her[,] but it was a reaction." Ibid. He later stated that he threw the remote at D.T. in frustration and anger, but that it did not hit her. Ibid. (emphasis added). He claimed that D.T. approached him, and he grabbed her forearms and pushed her backwards. Ibid. He stated that in doing so, he tripped over her feet and fell on top of D.T. and struck his head on the bathroom sink. Ibid. He stated that he did not tackle or strike D.T. Ibid.

Torres was suspended from duty with pay on June 8, 2020, as a result of Dettle's finding that he was not FFD. Id. at 12.

Torres' June 12, 2020 PNDAs and November 18, 2020 FNDA

On June 12, 2020, Torres was served with two PNDAs. (J-1; J-2). A departmental hearing was held on November 12, 2020, and November 18, 2020, and Torres was served with the FNDA removing him from office effective November 18, 2020. (J-3). The sustained charges were as follows:

- 1) JCPD Rule 3:105: Assault
- 2) JCPD Rule 3:108: Conduct
- 3) JCPD Rule 3:123 Obedience to Laws, Regulations and Orders
- 4) N.J.A.C. 4A:2-2.3 General Causes (A)6. Conduct Unbecoming a Public Employee
- 5) N.J.A.C. 4A:2-2.3 General Causes (A)1. Incompetency, inefficiency or failure to perform duties.
- 6) N.J.A.C. 4A:2-2.3 General Causes (A)3. Inability to perform duties.

[Ibid.]

The "[i]ncidents giving rise to the charge(s) and the date(s) on which it/they occurred" were described as follows:

On 5/25/19, P.O. Samuel Torres used unnecessary force against his wife, [D.T.], during a domestic dispute. Officer Torres was arrested and charged with Simple and Aggravated Assault by the West Orange Police Department. This was Officer Torres' third arrest for Domestic Violence.

On 02/27/2020, P.O. Samuel Torres was ordered to report to the Institute for Forensic Psychology for a fitness for duty examination as a result of his third arrest for domestic violence. Licensed Psychologist Krista Dettle, Ph.D[,] conducted the fitness for duty examination and determined P.O. Samuel Torres was "Not fit for duty with little chance of recovery."

[Ibid.]

Torres' Exhibits

Torres did not supply any expert psychological report. He only supplied the above-described reference letter from Abrams, (P-6), along with a letter dated July 22, 2020, from Dr. Albert Castellon (Castellon) of a residential treatment program in Florida stating, in relevant part, "Torres began treatment on 6/30/2020 and was discharged from FHE Health – First Responders Program on 07/22/2020 after completing his course of treatment with our facility. Mr. Torres can return to work with no restrictions and is medically cleared to perform his duties on 07/29/2020," (P-5). There was no competent credible evidence to support those hearsay statements.

**SUMMARY OF RELEVANT TESTIMONY, CREDIBILITY DETERMINATIONS
AND FURTHER FINDINGS OF FACT**

Nieves and Dettle testified on behalf of JCPD. I **FIND** that their testimony was spontaneous, straightforward, in keeping with their reports, and that each of them was highly credible. I therefore adopt their reports and testimony as **FACT**. No witnesses testified on behalf of Torres. However, I **FIND** D.T.'s contemporaneous May 25, 2019 written sworn statement, above, as **FACT** under the residuum rule, N.J.A.C. 1:1-15.5, as it is supported by her 911 call recording, the responding officers' body-worn camera (BWC) recordings, and Dettle's testimony about her conversation with D.T.

Nieves' Testimony

Nieves has worked for JCPD for approximately twenty-seven years. He has been working in the IAU for the past six and one-half years, and he became a Lieutenant approximately two and one-half years prior to the hearing. He is the Executive Officer and second-in-command in the IAU. Aside from this case, Torres has been investigated

by IA in the past, and has been arrested and evaluated three times for DV incidents with D.T., in 2015, 2017, and 2019.

Torres' May 25, 2019, DV arrest triggered an IA investigation, which Nieves conducted. Nieves reviewed the West Orange Police Department's arrest reports, the BWC recordings, the 911 call recording, the December 2, 2019 letter from Abrams, a March 3, 2020 email from Torres to then-IAU Captain Georgy Rotondo (Rotondo), and D.T.'s sworn written statement. He interviewed both D.T. and Torres. At the conclusion of his investigation, Nieves submitted an investigation report. Torres was referred to IFP for the FFD evaluation to determine whether he could be re-armed, after his weapons were taken away.

June 12, 2020 PNDAs and November 18, 2020 FNDA

Nieves personally served Torres with the two PNDAs dated June 12, 2020, (J-1; J-2), and Rotondo, the IAU Commander, served Torres with the FNDA dated November 18, 2020, (J-3). Nieves recited the sustained charges and incidents giving rise to the charges and the dates on which they occurred. Ibid. He also explained the departmental rules and regulations on the sustained charges. Rule 3:105, ASSAULT, provides that "[m]embers will not use unnecessary force upon anyone." (R-3). Rule 3:108, CONDUCT, provides that "[m]embers will not engage in any conduct which constitutes conduct unbecoming an officer or neglect of duty. They will conduct their private and professional lives in such a manner as to be a credit to the department." Ibid. Rule 3:123, OBEDIENCE TO LAWS, REGULATIONS AND ORDERS, provides that "[m]embers will observe and obey all federal and state laws, municipal ordinances, rules, regulations, procedures and orders of the department." Ibid.

Although the criminal charges were ultimately dismissed, Nieves was concerned that another DV incident had occurred with Torres and that D.T. was injured and complained of pain. (R-4). Nieves reviewed the West Orange Police Department Incident Report. (R-5). Nieves was concerned that the report indicated that Torres was

intoxicated and confronted his wife about the civil restraint order and whether or not it was still in effect, an argument ensued, and Torres threw and hit her with the television remote control, then tackled her and she hit the back of her head. Ibid.

Nieves' August 10, 2020 IA Investigation Report

Nieves testified about his August 10, 2020, IA investigation report. (R-6). With respect to D.T.'s 911 call, he listened to the audio recording in which D.T. alleged that she was attacked by Torres. (R-6 at 1). Nieves summarized the West Orange Police Department's police report. Id. at 2. D.T. stated that she told Torres she was going to call the police, and Torres tackled her to prevent her from making the call. Ibid. The argument began because Torres wanted to know if the civil restraint order against him had been dropped after the prior DV incident. Torres had been arrested three times for DV incidents with D.T. Restraint orders are used to protect DV victims from future acts of violence and/or harassment. Nieves asked D.T. for a copy of the order, but never received it.

Nieves found D.T.'s sworn written statement to be "disturbing." Id. at 4. Torres had confronted D.T. about the civil restraint order, threw the remote control at her, tackled her, and they both hit their heads on the bathroom sink. Ibid. Torres had a cut over his eyebrow which required stitches. D.T. reported that she sustained a scrape to her knee, a scratch on her face, pain in her left hip, and a headache from hitting her head on the sink. Id. at 5. When D.T. was asked to be more specific about how Torres tackled her, she replied, "He rushed towards me and used his body weight to tackle me. When we fell his arms were almost around me, making him unable to break his fall. His body weight forced me down and through the bathroom doorway toward the sink." Ibid. Nieves believed that Torres must have been very angry at that time.

Nieves testified about Abrams' December 2, 2019, letter, his February 11, 2020 telephone interview with D.T., Dettle's FFD report, in keeping with my factual findings, above. (P-6 at 6-7). Nieves interpreted Torres' March 3, 2020, email to Rotondo to mean

that Torres felt that Dettle was “subjective” during the FFD interview. (R-6 at 9). Nieves found Dettle’s report to be comprehensive and credible. (R-8). Nieves was troubled by Torres’ statement to Dettle that “you don’t touch the pot while it’s still hot.” Id. at 7. Nieves took that to mean that Torres blamed D.T. for the incident, because she should have known better not to confront him while he was still “hot,” and that Torres had anger difficulties.

Nieves explained that police officers are held to a higher standard, and are not supposed to explode in anger, but rather, control their tempers and emotions. As to Torres’ statement to Dettle that “[a]s cops we are told we should know better, but it happens. Then we have to prove we are not homicidal or suicidal,” (R-8 at 7), Nieves believed that Torres was shifting the blame for his conduct to others, and believed that the burden was then unfairly shifted to Torres to prove that he was not a threat. When Dettle pointed out that if violence continued to escalate, Torres’ children could ultimately lose a parent, Torres replied, “I understand what you’re saying. It’s my dilemma. I wish you could see why I put my hands on her. She threatened to hit me,” and “[i]f she was here, she would tell you the same thing.” (R-8 at 7). When Dettle pointed out that D.T. had not hit Torres, and that he could have chosen to leave the situation, id. at 7-8, Nieves interpreted that to mean that D.T. was able to control her emotions, and not act on them. Nieves was concerned by Dettle’s conclusion that Torres “attempted to rationalize placing his hands on his wife and ‘wished’ that [Dettle] could understand why he did so,” id. at 10, because Torres was attempting to justify his conduct toward D.T.

Nieves testified about D.T.’s sworn written statement, in keeping with my above factual findings. (R-7). Officers in JCPD are trained in de-escalation techniques to avoid further problems. In the incident at issue, Torres did not de-escalate the situation. Instead, he escalated the situation when he yelled “hit me!,” after D.T. approached him with a closed fist but controlled herself and did not strike him.

October 11, 2017 DV Incident

With respect to Dettle's IFP FFD report dated October 11, 2017, after Torres' second DV incident with D.T., Nieves stated that D.T. had dropped a DV restraining order against Torres in exchange for a civil restraint order so that Torres could be re-armed and return to work. (R-9 at 2-3). As to that 2017 DV incident, Torres stated that he and D.T. were arguing, and D.T. "got a little too close in my face, right here, and the volume . . . I grabbed her hard and said get away from me.' He asserted that his intention was never to 'deprive her of oxygen.'" (R-9 at 5). Torres further stated, "I don't want to make excuses. I didn't hit her. But I did grab her and manhandle her." Ibid.

Progressive Discipline

With respect to progressive discipline, Torres was not disciplined for the January 18, 2015, DV incident. On January 9, 2018, Torres was served with an FNDA for the second DV incident, with a sustained charge of violating JCPD Rule 3:105: Assault. (R-10). The incident giving rise to that charge was that "[o]n 5/16/17 . . . Torres violated JCPD Rule 3:105 by grabbing [D.T.] by the neck during an argument. The West Orange Police Department later arrested . . . Torres on Domestic Violence Assault charges." Ibid. A forfeiture of thirteen days of accrued leave time was ordered. Ibid.

On January 9, 2018, Torres was served with an FNDA for a sustained charge of violating JCPD Rule 108: Conduct unbecoming. (R-11). The incident giving rise to the charge was that "[o]n March 30, 2017, . . . Torres pulled [redacted] from the holding cell bench in B.C.I. onto the floor, after Mr. [redacted] failed to get up when told to do so. Mr. [redacted] was still handcuffed to the bench at the time." Ibid. A forfeiture of two days of accrued leave time was ordered. Ibid. Nieves viewed this as "another anger management issue" with Torres.

On April 4, 2018, Torres was served with an FNDA for the sustained charges of violating "JCPD Rule 3:108: Conduct unbecoming, JCPD Rule 3:109, Conduct Toward the Public, JCPD Rule 3:123: Obedience to Laws, Regulations and Orders, and 4A:2-2.3, General Causes (A)6, Conduct Unbecoming a public employee." (R-12). The incidents

giving rise to those charges were that “[o]n 11/20/2017, [Torres] violated JCPD Rule 3:108 by being involved in a road rage type incident while coming to work and using profane language and unnecessary force upon [redacted]. Video and audio recordings were obtained of this incident.” Ibid. “On 11/20/2017, [Torres] violated JCPD Rule 3:109 by using harsh, violent, and profane language towards [redacted]. . . . Torres’ interaction was recorded on a 911 call.” Ibid. “On 11/20/17, . . . Torres improperly issued summonses to [redacted] that did not occur in Jersey City[.] On 02/09/18, the summonses were dismissed in the Hudson County Superior Court based upon the recommendation of Assistant Prosecutor Karyn Darish, Chief of the Internal Affairs Unit at the HCPO.” Ibid. “On 11/20/17, . . . Torres violated 4A:2-2.3, General Causes (A)6[.] Conduct Unbecoming a Public Employee by being involved in a road rage type incident, identifying himself as a police officer and using profane language. . . . Torres also used unnecessary force to escort [redacted] back into his vehicle and improperly issued him summonses.” Ibid. A forfeiture of twenty days of accrued leave time was ordered.

May 25, 2019 911 Call and BWC Recordings

The recording of D.T.’s May 25, 2019 911 call to the police was played during the hearing. (R-13). On the recording, D.T.’s voice was calm and clear. She stated that she needed a police officer to come to her home because her husband had just attacked her. She stated that she wanted her husband to be removed from the house. She reported that she was uninjured, but that he was injured because he hit his head on the sink. Ibid.

A responding officer’s BWC recording was played. (R-14). It depicted D.T.’s home, Torres, and D.T., who stated that Torres came home intoxicated, woke her up, argued with her, and then threw a remote control at her. Torres then stated that “[he] fell on the f[*****]g cabinet,” and D.T. replied, “because he was tackling me . . . I have a mark on my neck because he was grabbing me.” D.T. stated that she wanted Torres out of her house, and that “he won’t never do that to me again.” She stated, “this is the last time,” “we have a history,” and “he’s hit me before.” Ibid. She recounted that he came home intoxicated, woke her up, started an argument about the civil restraint order from two

years prior, and whether it was dismissed. D.T. stated that she got out of bed, and told him to leave, and he threw the remote control at her. It hit her, but she was not sure where on her body. It glanced off of her body then hit the bathroom floor and shattered.

She reacted, and approached him with her hand balled up in a fist, but she restrained herself and did not strike him. She told Torres that she was going to call the police, "and that just triggered him." She walked away, and the next thing she knew she was "flying back" from the bedroom into the bathroom. She was not sure if Torres grabbed her neck, but she felt a mark on it. Then Torres tackled her to the floor, and she hit the back of her head on the bathroom sink and Torres hit his brow on the sink or sink cabinet. He fell on top of her. She was afraid that he was going to hit her again. The first thing she thought of was that Torres was going to kill her. She started screaming to her daughter for help.

When Torres realized that he had hit his head, he realized that he had made a mistake and started apologizing. D.T. stated, "I refuse to let it happen again, this is it." She explained that there was a civil restraint against him, and that he was not even supposed to be in the house. The restraint obligated Torres to pay the mortgage, to pay for the family's health insurance, and restrained him from being in the house. However, the couple had reconciled, and Torres had been living in the house for "the past almost two years, year and a half." They "worked things out," but D.T. never dropped the restraint order. The officer then stated, "he's going to have to go."

Another responding officer's BWC recording was also played, where D.T. again recounted the incident. (R-14). She stated that their sixteen-year-old and ten-year-old children were in the house at the time of the incident. She agreed to go to police headquarters to give a written statement. She reported that every time Torres drinks, he starts bringing up "old stuff," and that "he just can't get past our past." When Torres realized what he did, he tried to "down play it, like it was nothing," because he stated that he did not hit D.T. D.T. stated that she did not deserve to be treated the way Torres treated her. Another responding officer's BWC recording was played in which D.T. stated

that the television remote control had shattered all over the bathroom floor. (R-14). D.T. stated that the thrown remote control hit her hard, and again recounted the details of the incident.

Nieves' Recorded Interviews with D.T. and Torres

Nieves' February 11, 2020, recorded telephone interview with D.T. was played during the hearing. (R-16). The recording was consistent with my above findings of fact concerning that interview based upon Nieves' report about the interview, except that D.T. added that Torres "was a little drunk." (R-6 at 6-7). Nieves noted that that was concerning because Torres' prior DV incidents also involved alcohol.

Nieves' June 8, 2020 recorded in-person interview with Torres was also played during the hearing. (R-17). The recording was consistent with my above findings of fact concerning that interview based upon Nieves' report about the interview, (R-6 at 10-12), except that Torres stated that he "threw or flicked" the remote control at D.T., said that he hit his head on the sink cabinet, and said "Thank God it was me," meaning he was glad that D.T. was not injured the way that he was. (R-17).

Torres also stated that he was embarrassed that he let his emotions get the best of him, and by his lack of control. He stated that "having to go through this again" had "completely destroyed" his reputation. Torres stated that he was not "drunk-drunk," and that he had started the argument. Torres stated that he thought his career as a police officer was over. Torres also stated that even though he "knew his truth," "to this day" D.T. would say that he tackled her, rather than tripping over her feet. Torres denied that D.T. threatened to call the police prior to the physical altercation and falling incident, and stated that D.T. called the police "immediately after I landed on top of her." Torres also maintained that he was not intoxicated at the time, and that he did not intentionally injure D.T. (R-17).

On cross-examination, Nieves agreed that the May 25, 2019 criminal charges were ultimately dismissed, and that he himself had not responded to the May 25, 2019 DV scene in West Orange. He agreed that his findings in his August 10, 2020 IA report, (R-6 at 11-12), were largely based upon the May 25, 2019 DV incident reports and arrest and Dettle's May 4, 2020 report. Nieves agreed that he received Castellon's July 22, 2020 letter about Torres' inpatient treatment, which indicated that Torres could return to work. (P-5; R-6 at 12). Nieves looked up the treatment program online, and stated that it appeared to be a reputable operation, but that he was not personally familiar with it. Nieves was unaware of any arrests of Torres since Torres completed that program, but noted that once Torres was removed from JCPD, there was no notification requirement, and Nieves conducted no inquiries in that regard.

Nieves also acknowledged that he had reviewed Abrams' letter dated December 2, 2019, indicating that Torres was fit for duty. (P-6; R-6 at 6). Nieves conceded that in his role in the IAU, he was aware that other officers had been investigated for DV incidents. However, I sustained JCPD's objection to any revelations that would violate JCPD's confidentiality policies and procedures regarding IA investigations. Nieves conceded that some other officers who had been investigated for DV incidents were "back on the job."

On re-direct examination, Nieves testified that DV criminal charges against JCPD officers are commonly dismissed. Nieves noted that Abrams' letter did not mention any type of psychological tests having been administered, and that there was no background information or reason for the referral to Abrams. (P-6). However, Nieves noted from Dettle's report, that she had administered the Minnesota Multiphasic Personality Inventory-2, the Personality Assessment Inventory, the Beck Depression Inventory—2, the Personal Problems Checklist for Adults, the "Why are you Here" assessment of Torres' written perception of the reasons for his referral, and a Biographical Summary Form. (R-8 at 2). Nieves agreed that the two letters submitted by Torres from Abrams and Castellon did not include any evidence of psychological testing or bases for the opinions rendered in the letters, and that the letters made no mention of Torres' prior

sustained disciplinary proceedings. (Compare R-8 at 3, with P-5 and P-6). Nieves also agreed that neither of the letters Torres submitted contained any information about the reasons for his referral, (P-5; P-6), as opposed to Dettle's report, which described the reasons for referral in detail, (R-8 at 6-8). Nieves agreed that there were no analyses provided by Castellon or Abrams, as opposed to Dettle's detailed conclusion. (Compare P-5 and P-6, with R-8 at 10-11).

On re-cross-examination, Nieves agreed that Dettle's report stated that "[i]n addition to the tests named below [Torres] was given an in-depth clinical interview of approximately 60 minutes duration." (R-8 at 2). Nieves agreed that Torres had been in residential treatment for approximately thirty days in Florida, but stated that there was no explanation as to why he was in treatment, or whether a FFD evaluation was actually conducted. (See P-5). Nieves believed that it was a drug and alcohol treatment program for first responders. Nieves agreed that JCPD had hired and paid Dettle for Torres' FFD examination.

Dettle's Testimony

Dettle is a licensed psychologist in the States of New Jersey and New York. She received her Ph.D. in psychology from Seton Hall University in 2014, after receiving her Bachelor's and Master's Degrees in psychology. She has been employed by IFP since 2016, and she became a partner in 2019. She performs pre-employment psychological examinations and FFD examinations, primarily for police and public safety applicants and members. She has performed over 10,000 pre-employment examinations, including for applicants in New York, and over 250 FFD examinations.

Dettle was retained by JCPD to perform Torres' psychological FFD examination in 2020. In conducting FFD examinations, Dettle uses the Psychological Fitness-for-Duty Guidelines (Guidelines) that were created by The International Association of Chiefs of Police Psychological Services Section. (R-18). Those Guidelines detail the purpose of an FFD evaluation, how the evaluation should be conducted, and who should conduct the

evaluation. Dettle followed those Guidelines in conducting Torres' FFD examination, just as she does for all FFD examinations.

Dettle identified her May 4, 2020, and October 11, 2017, FFD examination reports on Torres. (R-8; R-9). In 2017, Dettle found Torres to be fit for duty and she recommended that he continue therapy. (R-9 at 8). The purpose of the 2020 evaluation was to determine if there was any psychological condition or impairment that would affect Torres' performance in the role of a police officer, (R-8 at 1), and thus put himself, other officers, or the public at risk. For the 2020 examination, Dettle interviewed Torres for sixty minutes. (R-8 at 2).

The FFD psychological tests administered were as follows. (R-8 at 2). The Minnesota Multiphasic Personality Inventory (MMPI), which is a 338-item measure of adult psychopathology, and the most widely used self-report measure of broadband psychopathology. It is administered along with the Personality Assessment Inventory (PAI) to limit reliance on any single data source, given the high-stakes nature of FFD evaluations. The PAI is a comprehensive 344-item test of adult psychopathology. The Beck Depression Inventory (BDI) is a 21-item self-report measure of symptoms of depression. The Personal Problems Checklist for Adults is a 208-item checklist of problems that covers different domains of functioning, including social functioning, family, home, finances, religion, emotions, legal issues, health, habits, attitude, and crises. The "Why Are You Here?" form asks the subject to write in their own words what their perceptions are of the reasons that they were referred for the evaluation. The form is included in the battery of psychological tests to assess a subject's awareness of the reason that they were referred, and it also gives them a platform to express in their own words what the situation is. The Biographical Summary Form is a form that asks subjects questions about their age, their schooling, and many questions about their biographical information.

JCPD informed Dettle that the reason for Torres' referral was that Torres was arrested and charged with aggravated and simple assault for a DV incident with his wife.

With respect to Torres social history, Dettle found that some of the most important points were that Torres denied being previously disciplined or reprimanded, even though JCPD had provided Dettle with information to the contrary. JCPD had also made Dettle aware of prior instances of anger management and use-of-force issues with Torres, including that he had prior incidents of excessive force in 2017 and 2018. Those events were important to Dettle's analysis because they demonstrated a pattern of past behavior that would be predictive of future behavior, and given that Torres' pattern of aggression is documented since at least 1999, the incidents both off-duty and on-duty create a pattern of aggressive behavior. Dettle opined that Torres' arrest for DUI in 2002 was significant because it could indicate that Torres had problems with alcohol, judgment, and impulsivity.

As to the 2017 DV incident, Torres explained to Dettle that he was arguing with his wife over money, and stated, "[t]his is the honest to God truth, I never open hand or closed fist hit her. I grabbed her. Even this time, I flicked the remote at her." (R-8 at 3) (sic passim). Dettle was concerned by that statement because it indicated physical violence, that Torres did not understand that his conduct was physical violence, and that Torres was trying to justify his conduct.

Dettle found Torres credibility during the 2020 evaluation to be dubious, whether due to an integrity issue by lying or due to memory issues, because Torres falsely reported that he had never been the subject of a DV restraining or civil restraint order, and he initially denied his disciplinary history. (R-8 at 2-3). Torres falsely reported that he had never been separated from D.T. (R-8 at 4). Torres also falsely reported that he had not seen any therapist other than Abrams, even though he had anger management counseling with Jenkins. (R-8 at 5). Torres also initially denied that he had ever been prescribed any type of psychotropic medication. (R-8 at 5). Dettle opined that Torres' false statements were not appropriate for a police officer, because police officers are held to a higher standard in which their memories need to be intact in order to report details of incidents in a logical, chronological order, and they need to be able to report incidents with integrity, uphold the law, and abide by the law themselves. Dettle also found it

problematic that after several years of self-reported “frequent” therapy with Abrams, Torres was continuing to experience the same issues. (R-8 at 5, 11).

With respect to the 2020 FFD evaluation, Dettle found it troubling that Torres stated, “you don’t touch the pot while it’s still hot” and that he was not homicidal or suicidal, and should not have been arrested, (R-8 at 7), as if Torres believed that if he were not homicidal or suicidal, he should not have been arrested and subjected to a FFD evaluation, but rather should be found fit for duty. Dettle stated that police officers know and understand the laws, Torres knew that he had a physical altercation with D.T., and that he knew what would happen if he was involved in a DV incident. Dettle also found it troubling that Torres had ignored previous advice to seek marital counseling because the marital issues were at the root of his removal from full duty, and Torres was not taking his marital issues seriously.

Dettle interpreted Torres’ “pot while it’s still hot” comment as a metaphor for anger, and that Torres was implying that D.T. should not have engaged with him while he was angry because she should have known what the outcome would be. In essence, Dettle believed that Torres was victim blaming. Dettle found that Torres clearly had an anger issue, due to his pattern and history of aggressive actions. Dettle found that Torres had no insight into his anger issues, and that he merely stated that “[a]s cops we are told we should know better, but it happens. Then we have to prove we are not homicidal or suicidal.” (R-8 at 7). Dettle found those statements to be dismissive, and indicated that Torres was not taking responsibility for his actions and not seeing them as problematic.

When questioned whether he understood that physical violence escalates and could result in somebody becoming seriously injured or dying, and pointing out that serious injuries could have resulted from both he and D.T. hitting their heads in the bathroom, Torres responded, “I grabbed her to stop her.” Ibid. When asked why he chose to escalate the situation by putting his hands on D.T. rather than leaving the room, Torres sat in silence, and did not answer the question. Ibid.

When Dettle explained that if the violence continued to escalate, the children could lose a parent, Torres replied, “I understand what you’re saying. It’s my dilemma. I wish you could see why I put my hands on her. She threatened to hit me,” and “[i]f she was here, she would tell you the same thing.” Ibid. Dettle opined that Torres has little insight into how physical violence escalates and limited understanding that there are other options rather than escalating physical violence.

With respect to the results of Torres’ psychological testing, Dettle found that on the MMPI, Torres was severely defensive in his approach to the test, meaning that he would not admit to typical human flaws, so much so that the results were invalid, and the test could not be interpreted. (R-8 at 8). On the PAI, he was also overly defensive and minimizing of any issues, such that it could not be said that the absence of any elevations indicated that there was no problem. In other words, the results were an underestimate of any current psychopathology because Torres was so defensive. On the BDI-2, Torres did not endorse any symptoms associated with depression, and that often happens when examinees are defensive because the face validity of the BDI-2 assessment clearly asks about depression, so if an examinee wants to present in the best possible light, they will deny symptoms of depression, unless they’re seeking help. Dettle found that to be problematic because Abrams reported that Torres was experiencing depression and that was what he was in treatment for. (R-8 at 9; P-6 at 1).

In keeping with her report, (R-8 at 9), Dettle stated that when she was able to speak with Abrams by telephone, Abrams indicated that he had not recently seen Torres due to the pandemic, but the plan was to have phone sessions once a month. Abrams indicated that he felt Torres would give a worse impression than was warranted because he postures as hyper-masculine, and can be seen as adversarial to women in authority, and that that was simply an aspect of his culture and did not present in his work on duty. Abrams specifically indicated that he did not think that that issue extends to Torres’ wife or his career. Abrams stated that he did not find Torres to be a risk or danger as an officer, but then stated that he does understand that safety at home is predictive of safety “on the street” as a police officer. Abrams stated that Torres’ presentation with Dettle was

“stupid,” but that it was one of sincerity rather than psychopathology, because otherwise Torres would have lied about his actions specifically with regard to this incident. Abrams offered to help Torres save his job by having more frequent semi-confidential therapy so that Torres could be monitored.

Dettle interpreted the term “hyper-masculine” to mean that Torres needed to assert his masculinity—that it was exaggerated or excessive—and she opined that if that were true, that would be a problem, because as a law enforcement officer, Torres should treat people equally. Dettle took Abrams' diagnosis into account when drawing her own conclusions, pursuant to the Guidelines. (R-18). She took into account multiple methods and data sources to optimize the accuracy of her findings, by speaking with Abrams and D.T., using reliable, valid testing instruments, in addition to interviewing Torres.

With respect to interviewing D.T., Dettle explained that pursuant to Attorney General Guidelines, she is required to call a complainant and give them an opportunity to make a statement, if they wish to do so. Dettle asks specific questions from a script, advising the complainant that she has a copy of the police report and asking the complainant if there is anything else they would like to add. D.T. replied that basically what D.T. wrote was what happened. (R-7; R-8 at 9). D.T. stated that she had no serious reservations about Torres carrying a weapon or serving as a police officer. D.T. added that she was afraid during the incident because Torres was drinking and she did not know what would happen, but that she and Torres had reconciled. Dettle interpreted D.T.'s statement about being afraid as meaning that D.T. felt threatened during the incident.

Dettle testified about her FFD conclusion, (R-8 at 10-12), in keeping with my findings of fact, above. She added that Torres' escalating lengthy pattern of arrests and DV incidents was problematic because police officers are expected to remain calm, cool, and collected, and only use force when absolutely necessary. Dettle noted that after Torres' first DV arrest, he attended anger management counseling, then he continued in psychotherapy with Abrams after his second and third DV arrests. Dettle discounted Abrams' 2017 opinion that Torres posed a minimal future risk because Torres was

arrested twice thereafter. Dettle highlighted Torres' limited insight, and his inability to grasp the severity of his actions and to take responsibility for them meant that Torres was not learning and that is why incidents have continued to happen.

Dettle noted that when Torres admitted to grabbing his wife's neck and manhandling her in 2017, but denied a desire to cut off her oxygen supply, she interpreted that to mean that he believed it was acceptable for him to grab her neck and manhandle her because he did not desire to kill her. Dettle believed that Torres was still trying to justify his actions, just as when he said in his 2020 evaluation, "you don't touch the pot while it's hot."

Dettle reiterated her ultimate conclusion that, based upon her interview of Torres, her review of his background, her collateral interviews of Abrams and D.T., and Torres' psychological testing, Torres evidences a psychological condition or impairment that would be likely to interfere with his ability to safely and effectively function as a police officer, and that he is therefore psychologically not fit for duty.

On cross-examination, Dettle agreed that Guideline 4.2 states, "[w]hen deciding whether to conduct an FFDE, both the employer and examiner may benefit from considering its potential usefulness and appropriateness given the specific circumstances, and the employer may consider whether other remedies (e.g., education, training, discipline, physical FFDE) are appropriate." (R-18 at 2). She explained that is a threshold Guideline to determine whether a FFD referral should be accepted, not whether the FFD evaluator should recommend other remedies. In New Jersey, DV incidents and restraining orders are automatic triggers for an FFD evaluation. After the evaluation, Dettle makes every effort to try to rehabilitate a subject prior to finding that they are unfit for duty, such that it would be very rare that a subject would immediately be found unfit for duty the first time they were evaluated, because the subject would be given an opportunity for rehabilitation. That is why Dettle found Torres FFD, but recommended that Torres continue with his counseling in her 2017 FFD report, with the expectation that no further incidents would occur. (R-9 at 8). Dettle disagreed with the proposition that

increasing the frequency of Torres' counseling with Abrams would change Torres' 2020 FFD evaluation, because Abrams' counseling obviously was not working, even though Abrams opined that there were no issues.

Dettle also disagreed with the proposition that, in light of his alleged hyper-masculinity, as reported by Abrams, Torres' evaluation might have been more favorable had he been interviewed by a male psychologist. Dettle stated:

If he's uncomfortable with women, then should he be a police officer? If he has an issue with women and that's why he puts his hands on his wife, . . . maybe that's . . . an issue for him. But if it is an issue that he has a problem with women, then that's an issue for being a police officer. It doesn't matter who conducts the evaluation, man or woman, we go through the same procedures, and we follow the same guidelines, and we ask the same questions. And if the subject treats me differently than a man, that's about the subject and not about me or my evaluation skills.

With respect to the FHE Health – First Responders Program, (P-5), Dettle explained that “[i]t is an inpatient and residential program for first responders. Typically, they would go there for addiction issues.” She was unaware of that summer 2020 treatment at the time of her May 4, 2020 report, (R-8), and only learned of it at the November 2020 Departmental hearing. Dettle did not make another evaluation after learning of that treatment because there was no JCPD referral for another evaluation.

LEGAL ANALYSIS AND CONCLUSIONS

I.

A civil service employee's rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments

and broad tenure protections. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583, 586 (App. Div. 1972). However, "[t]here is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

Indeed, a civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2c; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2(a). Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or engages in misconduct related to their duties. See N.J.S.A. 11A:1-2c. Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2c; N.J.A.C. 4A:2-2.2(a).

In appeals concerning major disciplinary action such as termination, the appointing authority bears the burden to prove the FNDA charges by a preponderance of the competent credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (internal quotation marks omitted). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro Bottling Co., 26 N.J. 263, 275 (1958). OAL hearings on civil service removal appeals are de novo, both as to guilt and the penalty to be imposed. Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); W. New York v. Bock, 38 N.J. 500, 522, n.1, n.3 (1962).

Police officers are held to a higher standard of conduct than ordinary citizens and other public employees. In re Phillips, 117 N.J. 567, 576-77 (1990); In re Emmons, 63 N.J. Super. 136, 141-42 (App. Div. 1960). "An officer cannot complain that [they are] being held up as a model of proper conduct; it is one of the obligations [they undertake] upon voluntary entry into the public service. [Their] obligations are greater if [they

undersire] to maintain [their] position as [a] police officer.” Emmons, 63 N.J. Super. at 141-42.

Law enforcement officers represent “law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). In military-like settings such as police departments, prisons, and correctional facilities, it is of paramount importance to maintain strict discipline of employees. See Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div. 1971); Newark v Massey, 93 N.J. Super. 317, 323 (App. Div. 1967). Indeed, “a finding of misconduct by a police official need not be predicated on the violation of any particular department rule or regulation,” as “an ‘implicit standard of good behavior . . . devolves upon one who stands in the public eye as the upholder of that which is morally and legally correct.’” Phillips, 117 N.J. at 576 (quoting Emmons, 63 N.J. Super. at 140).

“New Jersey has a strong policy against domestic violence.” Cesare v. Cesare, 154 N.J. 394, 400 (1998). Society reposes in police officers responsibilities that are simultaneously weighty, sensitive, and fraught with dangerous consequences to themselves, other police officers, and the public.” In re Vey, 135 N.J. 306, 308 (1994). “[P]olice work is not just another job and . . . some people should not serve as police officers.” Ibid. “Police officers are expected to protect members of the public [including their significant others,] and to deal courteously with them, not to engage in outrageous behavior that violates the very rules and laws that they are sworn to uphold.” In re Jones, Jersey City Police Dep’t, 2010 N.J. AGEN LEXIS 30, *17 (Jan. 20, 2010). The OAL and the CSC have previously held that if a police officer physically abuses their spouse and is subsequently deemed to be unfit for duty, removal is the appropriate remedy. See, e.g., In re McCloy, 2011 N.J. AGEN LEXIS 960, *9-*11 (June 9, 2011); In re Allen, City of Newark, 2008 N.J. AGEN LEXIS 61, *27-*28 (Jan. 30, 2008);

II.

Torres contests all of the FNDA charges. (J-3). Although the Administrative Code does not specifically define the general causes for major discipline delineated in N.J.A.C. 4A:2-2.3(a), those general causes have been defined by well-established case law.

The FNDA Charges

1. JCPD Rule 3:105: Assault

JCPD Rule 3:105 provides that “[m]embers will not use unnecessary force upon anyone.” (R-3 at 14) (emphasis added). The plain language meaning of unnecessary force is force in excess of what a police officer reasonably believes is necessary to de-escalate a physical encounter with another person. In this case, I **CONCLUDE** that JCPD has proved by a preponderance of the credible evidence that Torres used excessive force against D.T. twice. In the midst of an argument which the inebriated Torres started about whether D.T. had dropped the 2017 civil restraint order against him, D.T. tried to de-escalate the argument by getting out of bed and starting to walk away. Torres then threw and struck her with the television remote control, with such force that it shattered when it deflected off of D.T.’s body and hit the bathroom floor. Although D.T. then approached Torres with a balled-up fist, she did not strike him, and again walked away. When D.T. announced that she was going to call the police, Torres tackled her with such force in the bedroom that they landed in the bathroom, both striking their heads on the bathroom sink/cabinet.

2. JCPD Rule 3:108: Conduct

JCPD Rule 3:108 provides that “[m]embers will not engage in any conduct which constitutes conduct unbecoming an officer or neglect of duty. They will conduct their private and professional lives in such a manner as to be a credit to the department.” (R-3 at 15) (emphasis added).

“Conduct unbecoming” is an elastic phrase which encompasses “any conduct which adversely affects the morale or efficiency of [a governmental unit] . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998) (quoting Emmons, 63 N.J. Super. at 140). “[I]t is sufficient that the conduct complained of and its attending circumstances “be such as to offend publicly accepted standards of decency.” Id. at 555 (quoting In re Zeber, 150 A.2d 821, 825 (1959)). “It is well settled that public employees are expected to exhibit appropriate behavior, both on and off the job, in order to project a positive image to the public that they serve and the taxpayers who fund their positions. Any conduct that serves to diminish the public’s trust in the integrity of its employees is intolerable.” In re Green, Dep’t of Human Servs., 2006 N.J. AGEN LEXIS 632, *5 (June 7, 2006) (emphasis added).

In light of his proved misconduct, I **CONCLUDE** that JCPD has proved by a preponderance of the credible evidence that Torres’ above-described actions were the epitome of conduct unbecoming. He was inebriated, yelled at D.T., and assaulted her, twice, leading to a police response, his arrest, and an FFD evaluation. Those events clearly tend to destroy the public’s respect for JCPD police officers and confidence in JCPD’s operations.

3. JCPD Rule 3:123: Obedience to Laws, Regulations and Orders

JCPD Rule 3:123 provides that “[m]embers will observe and obey all federal and state laws, municipal ordinances, rules, regulations, procedures and orders of the department.” (R-3 at 18). By virtue of my above and below conclusions, I **CONCLUDE** that JCPD has proved by a preponderance of the credible evidence that Torres violated JCPD Rule 3:123.

4. N.J.A.C. 4A:2-2.3(a)6: General Causes. Conduct Unbecoming a Public Employee

For the reasons stated in my analysis and conclusion regarding JCPD Rule 3:108,

I **CONCLUDE** that JCPD has proved by a preponderance of the credible evidence that Torres' conduct was conduct unbecoming a public employee.

5. N.J.A.C. 4A:2-2.3(a)1: General Causes. Incompetency, inefficiency or failure to perform duties

As to the charge of incompetency, inefficiency, or failure to perform duties, incompetency has been defined as a "lack of the ability or qualifications necessary to perform the duties required of an individual. . . . [and a] consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." Sotomaver v. Plainfield Police Dep't, OAL Dkt. No. CSV 09921-98, Initial Decision (December 6, 1999), https://njlaw.rutgers.edu/collections/oal/html/initial/csv9921-98_1.html, (internal citation omitted), adopted, Merit Sys. Bd. (January 24, 2000), <https://njlaw.rutgers.edu/collections/oal/final/csv09921-98.pdf>. Inefficiency has been defined as the "quality of being incapable or indisposed to do the things required" of an employee in a timely and satisfactory manner. Glenn v. Twp. of Irvington, 2005 N.J. AGEN LEXIS 35, *2, Initial Decision (February 25, 2005), adopted, Merit Sys. Bd. (May 23, 2005), <https://njlaw.rutgers.edu/collections/oal/final/csv5051-03.pdf>. Failure to perform duties has been defined as "failure to take an action reasonably anticipated from the duties of the position as set forth in the civil service regulations and job description." In re Fernandez, Camden County Bd. of Soc. Servs., 2014 N.J. AGEN LEXIS 229, *34, adopted, Comm'r (June 18, 2014), https://njlaw.rutgers.edu/collections/oal/final/csv00652-12_1.html. 2021 N.J. CSC LEXIS 518, *30-31.

In light of Torres being disarmed, his lack of FFD, his pattern of arrests and discipline both on and off duty involving violence toward D.T. and citizens, his disregard for the laws, rules and regulations governing his conduct, and his obvious anger management issues, I **CONCLUDE** that JCPD has proved by a preponderance of the credible evidence that Torres is incompetent, inefficient, and failed to perform his duties as a police officer, both on and off duty.

6. N.J.A.C. 4A:2-2.3(a)3: General Causes. Inability to perform duties

As to the charge of inability to perform duties, Torres has been disarmed and found unfit for duty. I therefore **CONCLUDE** that JCPD has proved by a preponderance of the credible evidence that Torres is unable to perform his duties as a police officer.

III.

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline requires consideration. In re Stallworth, 208 N.J. 182, 195-96 (2011); Bock, 38 N.J. at 523. When deciding what disciplinary action is an appropriate penalty, the fact finder shall consider the nature of the sustained charges and the appellant's past record. Bock, 38 N.J. at 523-24. The employee's past record is said to encompass their reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Ibid. Consideration as to the timing of the most recently adjudicated disciplinary history should also be given. Id. at 524.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Ibid. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all of the circumstances, to shock one's sense of fairness. Ibid. Removal has been upheld where the acts charged, with or without a prior disciplinary history, have warranted imposition of that sanction. Ibid. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Ibid.; In re Herrmann, 192 N.J. 19, 33-34 (2007). Indeed, progressive discipline "is not a necessary consideration 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.” Herrmann, 192 N.J. at 33.

Sworn law enforcement officers are recognized as a “special” kind of public employee. Armstrong, 89 N.J. Super. at 566. Their primary duty is to enforce and uphold the law, exercise tact, restraint, and good judgment, and represent law and order to the citizenry. Ibid. Hence, they must present an image of personal integrity and dependability to garner the respect of the public. Ibid.

I **CONCLUDE** that Torres’ egregious misconduct and lack of fitness for duty warrants automatic removal, without regard to progressive discipline. Torres’ mental illness and anger management problems mitigate against him, not in his favor. His explosive anger poses a danger not only to D.T., but also to prisoners, colleagues, neighbors, and the public at large. His misconduct and lack of fitness for duty undermines the public trust in law enforcement officers and inspires fear of the very people we should be able to turn to in times of trouble. He has brought disrepute to himself and to JCPD. He is unsuitable for continuation as a police officer, and restoring him to that position would be contrary to the public interest.

However, even if the concept of progressive discipline were applied, I **CONCLUDE** that Torres’ misconduct and lack of fitness for duty in this case warrants his removal. Torres’ prior disciplinary history includes:

1. A January 18, 2015 DV incident with D.T., for which no discipline was imposed;
2. A January 9, 2018, forfeiture of thirteen days of accrued leave time for violating JCPD Rule 3:105, Assault, by grabbing D.T. by the neck during a May 16, 2017, DV incident. (R-10);

3. A January 9, 2018 forfeiture of two days accrued leave time for violating JCPD Rule 3:108, Conduct, by pulling a handcuffed prisoner from a holding cell bench to the floor when the prisoner was still cuffed to the bench. (R-11); and
4. An April 4, 2018 forfeiture of twenty days of accrued leave time for violating JCPD Rules 3:108, Conduct, and 3:109, Conduct, 3:123 Obedience to Laws, Regulations and Orders, and N.J.A.C. 4A:2-2.3(a)6, Conduct unbecoming a public employee, by engaging in a road rage incident, identifying himself as a police officer, using profane language toward and unnecessary force upon a citizen, and improperly issuing that citizen summonses. (R-12).

Under the totality of the facts and circumstances in this case, and Torres' other disciplinary history, I **CONCLUDE** that termination is the only appropriate penalty, both under the egregious misconduct and progressive discipline standards. Torres' disturbing pattern of escalating misconduct over a five-year period does not bode well for D.T., Torres, his neighbors, his colleagues, JCPD, its prisoners, and the public at large.

ORDER

It is therefore **ORDERED** that the charges in the November 17, 2020 FNDA are hereby **SUSTAINED**; and it is further

ORDERED that Torres be and is hereby removed from his position as a police officer in JCPD, effective November 18, 2020; and it is further

ORDERED that Torres' petition of appeal is hereby **DISMISSED**.

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. 40A:14-204.

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 14, 2022
DATE


SARAH H. SURGENT ALJ

Date Received at Agency: July 14, 2022

Date Mailed to Parties: July 14, 2022

SHS/dw

APPENDIX

Witnesses

For appellant:

None

For respondent:

JCPD Lieutenant Eddie Nieves

Dr. Krista Dettle, Ph.D.

Exhibits

Joint Exhibits:

J-1 PNDA dated June 12, 2020, re May 25, 2019 DV incident

J-2 PNDA dated June 12, 2020, re February 27, 2020 referral for FFD evaluation

J-3 FNDA dated November 17, 2020, re May 25, 2019 DV incident and February 27, 2020 referral for FFD evaluation

For appellant:

P-5 Letter from Dr. Albert Castellon, MD of Psychiatry, dated July 22, 2020, with accompanying brochure about the Shatterproof program for first responders

P-6 Letter from Dr. Mike Abrams, Ph.D., dated December 2, 2019

For respondent:

- R-3 Relevant JCPD Rules and Regulations
- R-4 Complaint-Warrant for Torres' arrest, dated May 25, 2019
- R-5 West Orange Police Department Incident Report, dated May 29, 2019
- R-6 Nieves' Internal Affairs Report, dated August 10, 2020
- R-7 D.T.'s handwritten sworn statement, dated May 25, 2019
- R-8 Dettle's FFD Psychological Report on Torres, dated May 4, 2020
- R-9 Dettle's FFD Psychological Report on Torres, dated October 11, 2017
- R-10 FNDA dated January 3, 2018, re May 16, 2017 DV incident
- R-11 FNDA dated January 3, 2018, re March 30, 2017 prisoner abuse incident
- R-12 FNDA dated April 4, 2018, re November 20, 2017 road rage incident
- R-13 Audio recording of D.T.'s May 25, 2019 911 call re DV incident
- R-14 West Orange Police Department BWC recordings from May 25, 2019
- R-15 Not in evidence
- R-16 Audio recording of Nieves' February 11, 2020 interview of D.T.
- R-17 Audio recording of Nieves' June 8, 2020 interview of Torres
- R-18 Psychological Fitness-for-Duty Evaluation Guidelines