

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF MAY, 2022

Deirdre' L. Webster Cobb

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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 10099-20

AGENCY DKT NO. 2021-427

**IN THE MATTER OF ANTHONY GRAVES,
CITY OF NEWARK (FIRE DIVISION).**

Tisha N. Adams, Esq., for Appellant

**John J. Zidziunas, Esq., for Respondent (John J. Zidziunas & Associates,
attorneys)**

Record Closed: February 23, 2022

Decided: March 28, 2022

BEFORE THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Anthony Graves, appeals a Final Notice of Disciplinary Action (FNDA), providing for a penalty of removal. The appeal was received by the OAL on October 21, 2022, pursuant to N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F-1 to -13, and N.J.S.A. 40A:14-200 et seq., and it was perfected on October 22, 2022.

The hearing was held on May 24, 2021, May 26, 2021, June 3, 2021, and June 14, 2021.

The record remained open for the parties to obtain transcripts of the proceedings and to file closing briefs. Appellant filed his closing brief dated February 9, 2022.

Respondent filed their closing brief dated February 23, 2022, whereupon the record closed on February 23, 2022.

ISSUES

Whether there is sufficient credible evidence to sustain the charges in the Final Notice of Disciplinary Action; and, if sustained, whether a penalty of removal is warranted.

SUMMARY OF TESTIMONY

Respondent's Case

Tawana Rollins testified as follows:

She is a captain with the Newark Police Department. She has been employed there for 25 years. In 2016 she was a lieutenant and was assigned to Internal Affairs, which is now called the Office of Professional Standards. Currently she is Chief of Staff to the public safety director.

She was assigned to conduct the investigation regarding Appellant by former public safety director Ambrose on May 13, 2019. She prepared an investigative report dated October 8, 2019.

When she was assigned the matter she emailed Assistant Union County Prosecutor John Esmerado regarding the criminal matter against Appellant. She was seeking supporting documents regarding the criminal trial and a toll letter showing there were no more criminal charges pending against Appellant. The toll letter provides her with authority to start an administrative investigation.

She investigated the incident of November 30, 2014 involving Firefighter Efrain Beltre. She reviewed the statement Mr. Beltre provided to the Essex County Prosecutor's Office. In his statement he said Appellant turned on his emergency lights

and pulled him over in Hillside. Mr. Beltre was on his way home. Appellant identified himself as "Graves". Appellant told Mr. Beltre he thought Mr. Beltre was his friend "Snacks", whose real name is Kevin Johnson. Appellant was driving a black Crown Victoria. The statement was transcribed by the Essex County Prosecutor's Office.

Captain Rollins stated that the pullover of Mr. Beltre was improper. The use of the strobe lights was improper. It is improper to pull over someone because you think it might be your friend. It is not proper to use a police vehicle to do this, and it was outside of Appellant's jurisdiction as it was in Hillside. Everything about the stop is wrong. Also, the time of the stop, around 5:00 p.m., is not a time Appellant was authorized to work. Former Fire Director Stewart had stated during the court proceedings that Appellant was authorized to work on illegal dumping from 10:00 p.m. to 2:00 or 3:00 a.m.

Appellant is a member of the Arson Squad. Arson investigators conduct investigations of arson in reference to a fire.

Captain Rollins also reviewed a statement by Detective Kenneth Poggi given to the Union County Prosecutor's Office. In his statement Detective Poggi advised he was pulled over by Appellant in the area of Empire and Frelinghuysen Avenue on November 30, 2014, at around 7:00 p.m. The vehicle driven by Appellant was a white Chevy Tahoe with grille lights and red and blue strobe lights in the headlights. Appellant pulled alongside Detective Poggi's vehicle. Appellant did not have any type of insignia to show he was a police officer. There was a female passenger in Appellant's vehicle. Appellant told Detective Poggi that the area was a hot area. When asked who he was Appellant stated "the police". Detective Poggi called Detective Kenneth Gaulette, a Newark Police detective, who responded to the scene. Poggi and Gaulette are friends and were scheduled to meet later that evening. Detective Gaulette asked Appellant for his credentials. At this point Appellant identifies himself as an arson investigator detailed to the police department and was working under Captain Easter for illegal dumping. Detective Poggi observed that Appellant was armed.

Captain Rollins stated that this stop was improper. He should have identified himself and the reason for the stop. Appellant should not have identified himself as the police. It was also improper to have a civilian female in the vehicle. This is a liability issue. Conducting a motor vehicle stop with a civilian is not proper. Captain Rollins also stated that Appellant being armed was improper. He was not on duty and not authorized to carry his weapon. He was not authorized to make a motor vehicle stop as it was not during the course of an arson investigation.

Captain Rollins reviewed the statement given to the Essex County Prosecutor's Office by Detective Gaulette. Gaulette stated Poggi called him as he was stopped and did not know who the person was that stopped him. Gaulette responded to the scene. Gaulette observed a male in the car with a female on the passenger side. Gaulette approached the vehicle with his badge displayed. Appellant displayed his fire arson investigator ID and stated he was Captain Graves. Gaulette noted that Appellant was not in uniform and was wearing a firearm in his holster. Once Appellant identified himself, Gaulette left as he felt Appellant had police powers as an arson investigator.

Appellant confirmed to Captain Rollins that he received authorization to use the Chevy Tahoe from the director of the Office of Emergency Management. He also confirmed that he did not get authorization from the previous fire director Stewart to use this vehicle. Appellant advised Captain Rollins he switched from the Crown Victoria to the Tahoe to start his illegal dumping detail.

She included in her report a statement from Battalion Chief Brian Kirkland given to the Union County Prosecutor's Office. His statement provided commentary of the procedures when Appellant worked the arson detail. Kirkland was the chief of staff to former director Stewart. Kirkland required Appellant to provide reports. Also that Appellant would submit overtime slips to document his actions.

Appellant told Captain Rollins he did not submit overtime slips for the two stops as he forgot.

Former Fire Director James Stewart gave a statement to the Union Count Prosecutor's Office, which Captain Rollins referenced in her report. Director Stewart stated that Appellant was dedicated, somewhat aggressive, but a good investigator. He also stated that Appellant was boisterous, harassing and had an aggressive relationship with other investigators. Stewart stated that Appellant did not work on his own time and would only be paid on standby if he worked and submitted an overtime report. Stewart also stated that Appellant advised him he used his lights to pull over Beltre.

Appellant advised Captain Rollins, when questioned why there was no documentation that he was working (on November 30, 2014), that he was under the direct supervision of Director Stewart, and that he advised Stewart he was working that night.

Comparing Appellant's testimony during his criminal trial, and the statement he made to her, Captain Rollins noted a contradiction as to how he came to use the Tahoe. In his criminal testimony he stated the Tahoe was issued by Newark PD as the Crown Victoria had service problems. In his statement to her he stated the vehicle came from the Office of Emergency Management.

Captain Rollins went on to compare Appellant's criminal trial testimony where he stated he advised Captain Easter that he would be working on November 30, 2014, and Captain Easter's statements that he did not know Appellant was working the illegal dumping unit until after November 30, 2014.

She also pointed out the discrepancy between Appellant's criminal trial testimony, where he stated he used his high beams to pull over Beltre, and Beltre's statement that Appellant used his emergency lights.

Captain Rollins went on to describe how Appellant describes how he came to have a female passenger in the Tahoe, Ms. Betty, and why he effectuated a motor vehicle stop of Poggi. The reason he noticed the vehicle was that it was in a hot spot. He pulled it over for running a red light. Captain Rollins noted that this stop was not during an arson investigation, and Appellant was not authorized to make the stop.

Captain Rollins interviewed Appellant, with his attorney present, on October 2, 2019. She used her body worn camera to record the interview. She advised the attorney that the charges are what were filed prior to Appellant being indicted. During that interview Appellant admitted he no longer did arson investigations. He stated he had not done one for approximately three to six months. He was detailed to illegal dumping. Captain Rollins noted that despite not doing arson investigations Appellant still had his weapon on. He also told her that he was canvassing streets for illegal dumping. Regarding the Poggi stop, Appellant said he told Poggi to move his vehicle as he was sitting where there are abandoned buildings and nothing around. Appellant termed this doing his job. Rollins noted that Poggi was not doing anything illegal. He then saw Poggi run a red light.

Captain Rollins noted that it was Standard Operating Procedure (SOP) that Appellant was not allowed to carry a weapon while not conducting arson investigations. When asked during the interview about carrying his weapon, Appellant stated that former Director Stewart gave him authority to carry.

Captain Rollins noted that Appellant was indicted for first degree official misconduct, second degree official misconduct and two counts of impersonating a police officer. He was acquitted of those charges. She compared Appellant's trial testimony with his statements made during his interview with her on October 2, 2019. She pointed out the discrepancies between his testimony and what he told her.

At the conclusion of her investigation Captain Rollins concluded that Appellant should have charges sustained for the two motor vehicle stops, as outlined in her report, and that the matter should proceed to a departmental hearing.

Captain Rollins reviewed her training. She went on to describe the proper way to effectuate a motor vehicle stop.

Captain Rollins did not interview Beltre. She relied on his statement and court testimony. She did not have any further questions for Beltre.

She did not speak with Lieutenant Francis of the Essex County Prosecutor's Office. His investigation was stopped and transferred to the Union County Prosecutor's Office as Appellant's wife worked for the Essex County Prosecutor's Office. She also did not speak with Sergeant David Nechamkin of the Union County Prosecutor's Office. She did not do so as she had transcripts.

She received a video from the Union County Prosecutor's Office of the motor vehicle stop of Beltre. It was very grainy and only contained that portion of the stop that occurred at the gas station. She believed the video was obtained from the gas station surveillance video. The video was approximately 46 seconds. Upon viewing the video during the hearing she did not note any red and blue strobe lights at the gas station.

During the Poggi stop, after Gaulette arrived, Appellant identified himself as an arson investigator to Gaulette. He did not so identify himself to Poggi. Captain Rollins did not interview Poggi. She relied on his sworn statement.

Gaulette left the scene of the Poggi stop once Appellant identified himself.

Captain Rollins was aware that Appellant received amended police training for arson investigators. She did not know if that training including motor vehicle stops.

Captain Rollins stated that when Director Stewart told Appellant not to repeat the motor vehicle stops, this amounted to a discipline in the form of a verbal warning.

Raul Malave, III, testified as follows:

He is employed by the City of Newark as the Assistant Director of the Department of Public Safety. He began his career as a firefighter and rose through the ranks. He described his previous positions and various training he received.

When the Department of Public Safety was formed in 2016 discipline had increased. Director Amrbose had a police background and accountability became a

bigger issue with the Fire Department. Mr. Malave described the difference between major and minor disciplines.

He is familiar with the present matter having testified at the administrative hearing. He is familiar with the N.J.S.A. 40A:24-7.1 regarding the powers and responsibilities of arson investigators. He is also familiar with the New Jersey Administrative Code relating to Civil Service employees.

After a matter is researched, a decision is made at the Director's level to charge a particular member and a Preliminary Notice of Disciplinary Action (PNDA) is completed. He described what is included in a PNDA. It is the beginning of the disciplinary process.

Mr. Malave reviewed the PNDA issued to Appellant, dated October 11, 2019. There was a prior investigation done on these charges which was halted due to a criminal investigation. Captain Rollins resumed the matter after the criminal matter was adjudicated.

The criminal investigation was originally done by the Essex County Prosecutor's Office, which was moved to the Union County Prosecutor's Office due to a conflict of interest.

Captain Rollins, then a lieutenant was assigned the investigation as a the Internal Affairs member was also a member of the Arson Squad. This was to avoid a conflict of interest. Captain Rollins prepared a report, which he reviewed. He thought the report very comprehensive. He agreed with the charges set forth in the PNDA.

Mr. Malave reviewed the charges contained in the PNDA and stated he agreed with them. He pointed out that the two major incidents were the stops of Beltre and Poggi. There are other charges set forth in the PNDA as well.

Regarding the stop of Beltre, Mr. Malave noted that anytime a member of Public Safety leaves the city limits they are supposed to get permission from a supervisor. He

then gave examples of why one would leave the city limits. You cannot take a vehicle out of the City without permission. There was no communication from Appellant with dispatch regarding the Beltre stop. Appellant did not have the authority to pull over Beltre. He was not engaged in the performance of his duties as an arson investigator at the time. At the time he was not doing arson investigations. He was doing candidate investigations. He should have not been armed when he pulled over Beltre. Arson investigation does not encompass illegal dumping or candidate investigations. Appellant failed to properly identify himself to Beltre, which is a violation of the rules and regulations.

During the stop of Poggi Appellant misrepresented himself as the "police". He did not provide identification until asked by an off duty Newark police officer (Gaulette) when he showed up on the scene. Appellant was not on duty at the time. He wasn't doing arson investigation.

Mr. Malave explained why the use of the Crown Victoria and the Tahoe were violations of the rules and regulations pertaining to apparatus. The term "apparatus" includes the vehicles driven by Appellant.

Failure to notify dispatch of the two stops was also a violation of the rules and regulations. He also noted that Article 37, regarding personal use of department vehicles, states that "members for whom vehicles are provided shall exercise extreme care in the use and operation of same. Such vehicles shall be used and employed only in connection with Department business." Neither stop was connected to any Department business. There was no call to dispatch. There was no documentation of either stop. He should not have been armed.

Permitting Ms. Betty to ride in the Tahoe was a violation of the rules and regulations. She could not be located during the investigation. She was a witness to the traffic stop. Having her ride in the vehicle put the City in a potential liability situation. Making a motor vehicle stop with her in the vehicle was "mind boggling".

Mr. Malave went on to describe how Appellant's actions were "neglect of duty", "conduct unbecoming" and "incompetency, inefficiency, or failure to perform duties", as those charges were set forth in the PNDA.

Mr. Malave also stated it was contrary to the rules and regulations for Appellant not to notify his commanding officer of his court appearances.

Mr. Malave pointed out that the illegal dumping task force is not an arson investigation. The lead agency is the police department.

Mr. Malave agreed with the Final Notice of Disciplinary Action (FNDA) that the charges in the PNDA are sustained, and that removal was the appropriate discipline.

Mr. Malave has not been trained as an arson investigator or on the proper method of making a proper motor vehicle stop.

He reviewed the PNDA dated April 6, 2016, signed by Director Ambrose. He did discuss it with Director Ambrose at that time. He did not recall what documentation he reviewed at the time. Whatever was in the file would have been available to Captain Rollins. Only he discussed the matter with Captain Rollins as Director Ambrose had recused himself at that point. He knows that Captain Rollins interviewed Appellant. Captain Rollins used interviews done by other law enforcement individuals in her report.

Mr. Malave never interviewed Beltre or Poggi or Gaulette.

Mr. Malave went on at length as to Appellant's prior disciplinary record, which had to be recreated from other sources as the file in the Arson Squad was empty.

He did review the video of the Beltre stop from the gas station. He used Beltre's report, where he stated Appellant used his overhead lights to stop him, in charging Appellant. The video only shows what happened at the gas station. It doesn't show anything prior to that.

Mr. Malave became aware of the two motor vehicle stops in 2014 when he was the Executive Officer for Fire Chief Centanni. The Beltre matter came up through the chain of command. The Poggi matter came from the Essex County Prosecutor's Office.

Mr. Malave reviewed several reports from Newark police indicating that the illegal dumping task force, including Appellant, were involved in arrests and the issuance of summonses. In one instance Appellant was the arresting officer.

When someone is "on call" there is a record of that. You just can't say "I'm on call" and carry your weapon. It must be documented. Whoever is on call has to notify Communications. This did not happen in this particular case.

Appellant's Case

James Stewart, testified as follows:

Mr. Stewart is retired from the Newark Fire Department. He retired in February 2017. He is the former Director of the fire department. He described his duties and the chain of command.

The Arson Unit was a part of the Division of Investigations. He knows Appellant. Appellant was an investigator in the Division of Investigations. Their relationship was strictly professional. He recalled that Appellant was an investigator with the Arson Squad in January 2014. Mr. Stewart described how one becomes an arson investigator. A basic course of investigation is required.

Arson investigators investigated fire incidents or any other investigation that concerned the fire department. They also had other duties, which included illegal dumping.

He reviewed a memo sent to him in December 2014 from Fire Chief Centanni. A firefighter through the union was making a complaint against Appellant for pulling him over. He told Centanni he would speak with Appellant, which he did. Appellant told

Stewart about the stop, that he thought Beltre was a firefighter Appellant thought he recognized, that he flashed his lights and the person pulled over. It was the union that influenced the firefighter to make the report. He did not discipline Appellant for this incident.

During his meeting with Appellant he did not state he used his overhead lights. The firefighter indicated that to him during a conversation in Union County.

Chief Centanni also did a memo regarding Appellant's stop of Poggi. Stewart also discussed this incident with Appellant. Appellant stated that had the area under surveillance and told Poggi to move his car. He further stated the area was under stakeout for the Illegal Dumping Taskforce.

After meeting with Appellant, Stewart told Santini he was satisfied with everything that took place and saw no reason for disciplinary action. He never disciplined Appellant. Stewart had assigned Appellant to do candidate investigations while still doing Illegal Dumping. He asked Captain Guido to not assign Appellant to arson investigations as Appellant was working on two major projects at the same time.

Mr. Stewart reviewed a letter, dated March 20, 2015, from Deputy Chief Spruill of the Essex County Prosecutor's Office, wherein Chief Spruill advised Mr. Stewart that Appellant shall not be armed as he was reassigned from arson investigation to special services. Mr. Stewart was ordered by the Mayor to remove Appellant from the Arson Squad.

Mr. Stewart authorized Appellant to work overtime while conducting illegal dumping investigations. He did not specifically limit Appellant to doing illegal dumping investigations between 10:00 p.m. and 2:00 a.m. That was generally the times when it occurred. Appellant did not set his own hours when doing illegal dumping investigations. He recalled providing authorization to Appellant to do illegal dumping investigations on November 30, 2014.

Mr. Stewart recalled that Appellant had contacted the director or OEM to use the Tahoe.

Mr. Stewart stated there is no particular article in the fire department regulations that would prevent Appellant from giving a person a ride home. The marked vehicles and unmarked vehicles are not considered apparatus.

Mr. Stewart was interviewed by the Union County Prosecutor's Office on March 2, 2016, regarding the two motor vehicle stops. He recalled making a statement under oath. He recalled telling the interviewers that Appellant had complaints made concerning him being boisterous and harassing.

He recalled telling the prosecutor's office that Appellant put his overhead lights on when stopping Beltre. He stated that this was not an authorized motor vehicle stop. He then stated he did not discipline Appellant as "I didn't consider it an unauthorized motor vehicle stop."

He did not consider the Poggi stop a motor vehicle stop at all. He also stated it was not necessary for Appellant to contact dispatch for either stop. He stated that the woman, Ms. Betty, in the Tahoe when Appellant stopped Poggi was in distress "considering the circumstances." Appellant had advised Mr. Stewart that she was elderly and had a lot of packages and could barely make her way.

He stated that the stop of Beltre outside of Newark was not in violation of the rules and regulations of the Newark Fire Department. Failure to properly identify oneself would be a violation of the rules and regulations. It would not be proper to identify yourself as "Graves". Mr. Stewart stated it was permissible conduct to not document either stop, because he did not consider them "stops". He did not believe that Ms. Betty was placed in danger by Appellant's stop of Poggi.

Appellant's failure to notify the department of his court appearance was not violative of the rules and regulations as he was suspended without pay at the time.

It would be a violation of the rules and regulations for failure to report to work when ordered and failing to provide the proper medical documentation for not reporting.

Mr. Stewart stated that Appellant could carry his weapon as he was "on call".

Anthony Graves, Appellant, testified as follows:

Mr. Graves worked for the Newark fire department for 22 years. He reviewed his positions during that tenure. He worked for the Arson Squad, internal affairs and special services.

Prior to special services he was transferred out. He was home. The arson unit came to his house and confiscated all his materials, his keys, his uniforms, his badge, and his I.D.

He went on to review his training as an arson investigator.

He worked on illegal dumping for all three directors he worked under.

Mr. Graves explained how to conduct a traffic stop. He denied he conducted a motor vehicle stop of Beltre. He denied using his overhead lights during the Beltre stop. He did not run Beltre's license plate. He did not exit his vehicle during the Beltre stop. He did not ask Beltre for his credentials. He pulled alongside Beltre and spoke with him. He did not threaten to issue Beltre a summons. He did not report the stop on his radio. He did not report it as it was not a traffic stop. He denied being on duty when he made the Beltre stop. He pulled over Beltre as he saw a Newark firefighter emblem on the vehicle and thought it was his friend "Snacks", whose real name is Kevin Johnson. He flashed his high beams and the car pulled over in a gas station. He explained he spoke with Beltre and identified himself as "Graves". Beltre responded with "Captain Graves"?". He stated he was in Hillside at that time with his weapon "because I'm on call." He denied any wrongdoing.

He confirmed that he effectuated a motor vehicle stop of Poggi on November 30, 2014 at approximately 7:00 p.m. Mr. Graves was driving a white Chevy Tahoe from Newark Police. It was a police spec vehicle from the vice squad. In the vehicle with Mr. Graves was a female passenger named Ms. Betty. He noticed a vehicle on Empire Street with no lights. In the area there is prostitution and illegal dumping. There is no lighting. He stated he wanted to see if the person was okay. He approached the vehicle and asked the driver to roll down his window. Mr. Graves stated he identified himself as Captain Graves from Newark Arson and asked if the drive was okay. It is not against Newark fire department rules to allow civilians in fire department vehicles. He explained that to assist civilians. It is community relations. He was in uniform at this time, which Mr. Graves described as a polo shirt with Captain Graves and Newark Arson on it. He had on a jacket at the time, which was the reason Gaulette stated in his testimony during the criminal trial that Mr. Graves was not in uniform. He presented his Newark Arson I.D. Mr. Graves stated he called dispatch regarding the Poggi stop but he heard there was a shots fired call. Dispatch never came back. At that time Gaulette was on the scene. He did not advise Poggi he was working under the command of Captain Easter. He was not required to report to Easter when doing surveillance for illegal dumping. He did advise Captain Easter about a week or two prior that he would be working in the area. He did not make his own hours. The Director did this. He never worked illegal dumping without Director Stewart's authorization. He did not write a report on the Poggi stop "because there was no reason to write a report." He found out Poggi was a detective from the Prosecutor's Office and decided not to write a ticket for Poggi running a red light.

He did not turn in an overtime slip for November 30, 2014 because he forgot, blaming it on his work load.

Mr. Graves described the difference between an apparatus and a vehicle, terming apparatus as fire trucks and ladder trucks. In order to drive an apparatus you need to be trained. To drive a vehicle you only need a driver's license.

Mr. Graves stated he was not required to advise his supervisor of his court appearances as he was suspended without pay.

He did not fail to report for duty on October 3, 2019. His doctor had sent a note via email.

He stated he is on call 24 hours per day, 7 days per week. Dispatch would not have his name.

He was not engaged in the performance of his arson duties when he stopped Beltre. He was on call. He had his weapon at the time as he was on call. He denied again using his overhead lights to stop Beltre. He used his high beams. Using the take down lights would be an official police stop. He never told Director Stewart he used his takedown lights.

On November 30, 2014 he was going to begin work at 7:00 p.m. At the time of the Poggi stop he was engaged in the performance of his arson investigation duties.

He stated again he did call dispatch regarding the Poggi stop, but did not write a report. He did not issue Poggi a ticket. He has issued tickets before. He tried to call Captain Easter during the Poggi stop to send a vehicle to take Ms. Betty home.

He had not conducted an arson investigation between three to six months prior to November 30, 2014. He was doing illegal dumping, which was part of his job.

He stated that he could carry his weapon 24 hours a day, 7 days a week as he was on call. He further stated he was permitted to carry a weapon when he was not on call.

Mr. Graves obtained permission to use the Tahoe from the OEM director. Director Stewart knew about the Tahoe.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is

the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see Polk, supra, 90 N.J. 550. Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I found Captain Rollins testimony credible. I will state that it would have been preferable if she had personally interviewed Poggi, Gaulette and Beltre. However, her report utilized their respective statements given under oath, and I was able to review the transcripts of their respective testimony during the criminal trial. She testified professionally and explained how she did her investigation, why she used transcripts of statements, and how she arrived at her conclusion.

I also found Assistant Director Mulave credible. He too testified professionally. Much of his testimony was based upon Captain Rollins report and his review of various documents.

I had a good deal of difficulty with former Director Stewart's testimony. I found much of what he stated to be incredible. He seemed to tailor his testimony to fit the narrative that Mr. Graves put forth during his testimony. That he found the stop of both Beltre and Poggi to be of little moment was astonishing. The Poggi stop was done with a citizen in the vehicle, and yet, he did not think it worthy of discipline. I found him

disingenuous. Much of his testimony I did not believe. He seemed to be more than willing to explain away improper conduct, particularly the stop of Poggi with Ms. Betty in the vehicle. Further, he was unaware during his testimony that Poggi was a motor vehicle stop. He was not credible.

I had a great deal of difficulty with the Appellant's testimony. I found him evasive. I also do not believe he was truthful in much of what he stated. His statement that he could carry his weapon 24 hours per day, 7 days per week, because he was on call defies credulity. He further stated he could carry a weapon even if not on call. He provided unbelievable answers as to how he pulled over Beltre by flashing his high beams. He provided unbelievable answers as to how he was somehow unable to connect with dispatch during the Poggi stop and why he failed to prepare a report as to the same. He was not credible.

FINDINGS OF FACT

I **FIND** the following **FACTS**:

1. Appellant was employed by the Newark fire department for 22 years in various capacities. At the time of his termination, he held the rank of captain and was assigned to special services.
2. Prior to his termination he was a member of the Arson Squad. He completed the requisite training to be a member of the Arson Squad as required by N.J.S.A. 40A:14-7.1(b).
3. On November 30, 2014, Appellant effectuated two motor vehicle stops.
4. The first stop was of Newark Firefighter Efrain Beltre and occurred at approximately 5:40 p.m. on Route 22 in Hillside. (Beltre criminal trial transcript, pages 38 and 39)
5. To effectuate the stop Appellant utilized his overhead lights, not his high beams. (Beltre criminal trial transcript, page 41)(A-10)
6. At the time of the Beltre stop Appellant was not on duty. (Tr. 6/14/22, pg. 11, ln. 1-3, pg. 31, ln. 3-7)

7. At the time of the Beltre stop Appellant was carrying his weapon. (Tr. 6/14/22, pg. 31, ln. 8-10)
8. Appellant identified himself as "Graves" to Beltre. (Tr. 6/14/22, pg. 40, ln. 16-17)(A-10)
9. The motor vehicle stop of Beltre was an unauthorized motor vehicle stop. Appellant used his overhead lights. Appellant had no probable cause or reasonable suspicion to pull over Beltre. (Tr. 6/14/22, pg. 41 and 42, ln. 16-17)
10. Appellant pulled over Beltre on a personal whim to see if it was his friend. (Tr. 6/14/22, pg. 41, ln. 1-4)
11. Beltre pulled into a gas station on Route 22. (A-10) Appellant also pulled into the gas station alongside Beltre's vehicle. At that time Appellant's vehicle did not have on its overhead lights. (A-32)
12. He did not call in to dispatch. He did not prepare a report. (Tr. 6/14/22, pg. 41, ln. 25, pg. 41, ln. 1-5)
13. At the time of the Beltre stop Appellant was using a Crown Victoria supplied by the Newark fire department.
14. Appellant, also on November 30, 2014, conducted a second motor vehicle stop at approximately 7:00 p.m. of Detective Kenneth Poggi of the Essex County Prosecutor's Office. At that time he was unsure if he would go home or meet with a friend. He pulled over in the area of Empire Street and Frelinghuysen Avenue to decide what he would do. (Poggi criminal trial transcript, page 81, ln. 1-25) His friend's name is Kenneth Gaulette. (Poggi criminal trial transcript, page 8, ln. 1-10)
15. He noticed a Chevy Tahoe with the window down and a person gesturing to roll down his window. He was unsure who the person was so he drove away. (Poggi criminal trial transcript, page 84, ln. 1-25)
16. He was on Frelinghuysen Avenue when the Tahoe pulled alongside him. He turned left against a redlight to get away. The car proceeded behind him with emergency lights on. (Poggi criminal trial transcript, page 86, ln. 1-25)

17. He pulled over on Empire Street where he was originally parked. (Poggi criminal trial transcript, page 87, ln. 17-20)

18. In the Tahoe were two individuals (Appellant and Ms. Betty). Appellant pulled up alongside Poggi and told him the area was hot several times. Appellant identified himself as the police when asked by Poggi. (Poggi criminal trial transcript, page 89, ln. 1-25)

19. Poggi called Gaulette who arrived on scene. Gaulette spoke with Appellant. Eventually all three were out of their vehicles talking. At this point Appellant identified himself as an arson investigator for the City of Newark and produced his ID. (Poggi criminal trial transcript, pages 101 - 109, ln. 1-25)

20. Appellant was armed when he effectuated the Poggi stop. (Tr. 6/14/21, pg.

21. Appellant was not on duty when he made the Poggi stop. I arrive at this finding of fact even though Appellant testified that he called Director Stewart at 7:00 p.m. on this date to get approval to work overtime. There were never any overtime slips submitted. There was no call into dispatch. I do not believe Appellant's testimony that he tried to call dispatch, but shots were fired and dispatch cut him off. There was a call of shots fired over the radio about the time of the Poggi stop. He certainly could have called into dispatch later. He could have written a report. His testimony too conveniently matches his version of the events. It is very different from Poggi's testimony at the criminal trial noted above.

22. The two above stops were reported to Fire Chief Centanni who sent two memos to Director Stewart regarding them, dated December 5, 2014 and December 12, 2014, respectively. (C-1)

23. Director Stewart did not impose any discipline upon Appellant. (Tr. 5/26/21, pgs. 71 & 72)

24. Appellant was indicted on July 22, 2016 and charged with Official Misconduct, Pattern of Official Misconduct, Impersonating a Law Enforcement Officer (two counts) and unlawful possession of a weapon. (C-1 and C-4)

25. Appellant was acquitted after a criminal trial on the charges on January 17, 2019. (C-1)

26. Captain Rollins, then a lieutenant, of the Newark Police Division was assigned the internal affairs investigation of the matter and prepared a report recommending discipline. (C-1)

27. Prior to her investigation a previous investigation by Lt. Antonio Cruz was tolled by the Union County Prosecutor's Office due to pending criminal charges. (C-1)

28. A PNDA was prepared, dated October 13, 2019. (C-2) After a departmental hearing a FNDA was prepared, dated September 18, 2020, wherein Appellant was found guilty of most of the charges. A penalty of termination was imposed, effective April 6, 2016.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a civil service employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 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. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). In order to carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the

competent, relevant and 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 (1962); In re Polk, 90 N.J. 550 (1982). 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 (1958). Therefore, the judge must “decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth.” Jackson v. Del., Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). This burden of proof falls on the agency in enforcement proceedings to prove violations of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

This forum has the duty to decide in favor of the party on whose side the weight of the evidence preponderates, in accordance with a reasonable probability of truth. Evidence is said to preponderate “if it establishes ‘the reasonable probability of the fact.’” Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). 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). The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The respondent must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson, supra, 37N.J. 143. The evidence needed to satisfy the standard must be decided on a case-by-case basis.

An appeal to the Merit System Board requires the Office of Administrative Law to conduct a de novo hearing and to determine appellant's guilt or innocence as well as the appropriate penalty. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987).

There 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). A civil service employee who commits a wrongful act related to his duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges

brought against him and, if so, the appropriate penalty, if any, which should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, the City of Newark bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

The FNDA in this matter sustained the following charges; N.J.A.C. 4A:2-2.3(a)(1) Incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty; N.J.A.C. 4A:2-2.3(a)(8) Misuse of public property; N.J.A.C. 4A:2-2.3(a)(11) Other sufficient cause. I concur. Respondent has met its burden of proving its case by a preponderance of the credible evidence, as follows.

“Conduct unbecoming a public employee” encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect for government employees and confidence in the operation of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Id. at 555 (citation omitted). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (citation omitted).

Police officers¹ are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They 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.” Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied,

50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

There is more than ample proof that appellant's conduct was clearly unbecoming and violated the Newark Fire Department Rules and Regulations.

As to the Beltre traffic stop Appellant clearly acted inappropriately. He effectuated a motor vehicle stop without probable cause. Indeed, his intent was not to investigate a motor vehicle or other violation. His intent was to see if the vehicle he stopped was driven by his friend. This stop was done while not on duty; while carrying a weapon he should not be carrying; and, under color of his police powers. He used his overhead lights. He failed to properly identify himself. He did not call the stop into dispatch. He filed no report as to the same.

The second motor vehicle stop was more egregious. This stop was initiated by Appellant with a civilian in the car, Ms. Betty. He placed her in grave jeopardy. He had no idea who was in the vehicle he stopped. He was not on duty. He was improperly armed. He failed to contact dispatch or file a report. A civilian in the vehicle was also contrary to the rules and regulations.

Clearly, his behavior on both stops is such that it "has a tendency to destroy public respect for government employees and confidence in the operation of governmental services" and "offend[s] publicly accepted standards of decency." Karins, supra, 152 N.J. at 554, 555. And it violates "the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann, supra, 258 N.J. Super. at 40. Law enforcement personnel should not, willy nilly, pull over people on a whim. He was not even sure the person in the vehicle he stopped was his friend. In point of fact, it was Firefighter Beltre. This was ill-conceived by Appellant.

¹ While Appellant was not a police officer, he was acting under color of police powers for arson investigators pursuant to N.J.S.A. 40A:14-7.1.

Aggravating both stops is that he made no record for either. The Appellate Division noted in In re Torres, A-1450-06T3 (App. Div. June 4, 2008), <http://njlaw.rutgers.edu/collections/courts/>, the following:

Deliberately filing a false police report is conduct that strikes at the very heart of a police officer's responsibility and undermines public confidence in police. Cosme v. E. Newark Twp. Comm., 304 N.J. Super. 191, 206 (App. Div. 1997), certif. denied, 156 N.J. 381 (1998). If a police department maintains or retains an officer after he has falsified a police report, his credibility in criminal matters as well as in other proceedings can be attacked. Moreover, citizens who are suspected of criminal activity have a right to expect that reports filed by a police officer accurately, fairly, and honestly describe what occurred. Consequently, we have no difficulty concluding that the deliberate filing of a false police report is conduct unbecoming a public employee, especially in light of the strong need to maintain discipline within law enforcement agencies, see Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980), and the capacity of a false police report to "disrupt and destroy order and discipline" in a police organization. Id. at 580.

In the instant matter Appellant's failure to create a record of the two inappropriate motor vehicle stops is akin to filing a false police report.

The FNDA has a sustained charge of Failure to Perform Duties, N.J.A.C. 4A:2-2.3(a)(1). In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980).

The fundamental concept that one should be able to perform the duties of the position is stated in Briggs v. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960), which happens to be a probationary period case involving a nurse:

Manifestly, the purpose of the probationary period is to further test a probationer's qualifications. Neither the Legislature nor the Commission has given the courts any guidance in determining the extent of assistance or orientation which a probationer must receive. Undoubtedly

her duties must be explained to her and she must be given reasonable opportunity to perform the duties expected of her. But this does not mean she is entitled to on-the-job training in the manner of performing her duties. This is what she must be qualified for—the proper performance of her duties as outlined by the appointing authority.

In the present matter, the record reflects that Appellant failed to perform several of his duties specifically involving his motor vehicle stops of Beltre and Poggi. He should have called into Dispatch. He should have filed a report for both. He should have properly identified himself.

The FNDA has a sustained charge of Neglect of Duty, N.J.A.C. 4A:3(a)(7). Appellant is charged with “neglect of duty,” N.J.A.C. 4A:2-2.3(a)(7). “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), <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. Cf. 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.

Clearly, Appellant neglected to create a record of the motor vehicle stops. He also created two potentially dangerous situations by his actions. The stop of Poggi being the more egregious as it was done with a civilian in the vehicle.

The FNDA has a sustained charge of Misuse of Public Property, N.J.A.C. 4A:3(a)(8). In the instant matter, Appellant used two separate departmental vehicles to effectuate motor vehicle stops that he should not have done. The Beltre stop was on a mere whim of Appellant to see if his friend was driving a car with firefighter insignia on it.

The second stop was done, ostensibly for a law enforcement rationale as Poggi ran a red light, with a civilian in his vehicle. In both instances he placed the individuals involved in jeopardy. This, to the undersigned, is a clear misuse of the vehicles and should be sustained.

The FNDA also has a sustained charge of Other Sufficient Cause, N.J.A.C. 4A:3(a)(12). There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against respondent as all other offense caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when "respondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm'r (April 26, 2006), <<http://njlaw.rutgers.edu/collections/oal/final/csv9122-99.pdf>>. In the instant case the charge of Other Sufficient Cause. I conclude that this charge should be sustained as respondent has demonstrated a lack of candor in the Captain Rollins' investigations. He was certainly not candid during his testimony during the instant matter. He failed to follow Newark Fire Division Rules and Regulations in the motor vehicle stops. Specifically General Order A-2, Division of Investigations, #5, submission of reports and maintenance of records relative to its activities.

N.J.S.A. 14A:14-7.1(a) sets forth the following:

Any full-time, paid member of a fire department or force who is assigned full-time or part-time to an arson investigation unit pursuant to this section shall have the same powers and authority of police officers within the municipality **while engaged in the actual performance of arson investigation duties.** (emphasis added)

Appellant was not engaged in the performance of his arson investigation duties when he effectuated the two motor vehicle stops. Even assuming *arguendo* that illegal dumping is part of an arson investigation, Appellant was not on duty when he made the stops. Yet, he was armed during both stops. He was exercising police powers during

both stops. Accordingly, Appellant was not in compliance with N.J.S.A. 14A:14-71.19(a).

Based upon the preponderance of the credible and relevant evidence in this matter it is clear that all charges in the FNDA should be sustained. The next question to be addressed is what would be appropriate discipline. Ordinarily an analysis of progressive discipline would be in order.

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, our Supreme Court first recognized the concept of progressive discipline, under which “past misconduct can be a factor in the determination of the appropriate penalty for present misconduct.” In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, supra, 38 N.J. at 522). The Court therein concluded that “consideration of past record is inherently relevant” in a disciplinary proceeding and held that an employee’s “past record” includes “an employee’s reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee.” Bock, supra, 38 N.J. 523–24.

The concept of progressive discipline has been used to reduce the penalty of removal in other cases involving a law-enforcement officer who used racist language in public but who otherwise had a largely unblemished employment record. In In re Roberts, CSR 4388-13, Initial Decision (December 10, 2013) adopted, Comm’n (February 12, 2014), <<http://njlaw.rutgers.edu/collections/oal/>>, for example, an on-duty police officer who, while arresting an uncooperative black suspect, shouted to his K-9 police dog, “Zero, bite that nigger,” had his penalty modified from removal to a six-month suspension. The ALJ had found that his misconduct was “plainly aberrational,” as his past record only included an oral reprimand for a motor-vehicle accident over the course of seven years of service and several of his minority co-workers credibly testified that he had otherwise treated citizens in an impartial and respectful manner. While the ALJ found that, due to mitigating circumstances, “termination is too severe a penalty,” he nonetheless concluded that, despite a past record that included only an oral

reprimand, the “fitting” penalty “is the longest suspension which the law allows: six months.”

While concept of progressive discipline in determining the level and propriety of penalties imposed requires a review of an individual’s prior disciplinary history, a “clean” record may be out-weighted if the infraction is serious in nature. Henry v. Rahway State Prison, 81 N.J. 571 (1980); Carter v. Bordentown, 191 N.J. 474 (2007). Further some disciplinary infractions are so serious that removal is appropriate. Destruction of public property is such an infraction. Kindervatter v. Dep’t of Env’tl Protection, CSV 3380-98, Initial Decision (June 7, 1999), <http://lawlibrary.rutgers.edu/collections/oal/search.html>.

In determining the penalty to be imposed, the court noted that none of the factors justifying mitigation of removal were present. Namely mistake, negligence, or remorse. The Court was compelled to hold that whatever the employee’s motive, and regardless of the worth of the computer, she had to be subject to major discipline. While the goal of discipline is to either remove an employee unsuitable for public service or to impose some lesser sanction when the employee may be rehabilitated, the Court held that the extraordinary serious offense in this case could not be mitigated by a prior good-service record as that mitigation is reserved only for lesser offenses.

In the instant matter, Appellant has limited prior discipline. However, his actions on November 30, 2014, put people in danger and put the Fire Division at potential liability. Further, there is nothing to mitigate his actions. While he may have good prior service, his actions were extraordinarily serious. He shows no remorse. In point of fact, he proffers he did nothing wrong at all. His actions are that of a rogue law enforcement officer who does not answer to anyone. The only penalty should be termination.

I **CONCLUDE** that the respondent has proved by a preponderance of the credible evidence that appellant was guilty of all sustained charges in the Final Notices of Disciplinary Action and that the FNDA should be upheld.

I further **CONCLUDE** that the penalty of removal is appropriate.

ORDER

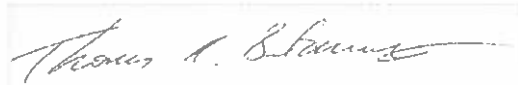
It is hereby **ORDERED** that the three Final Notices of Disciplinary Action, and the penalty of termination, is hereby **AFFIRMED**.

It is also **ORDERED** that appellant's appeal is **DENIED**, with prejudice.

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



March 28, 2022 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

List of Witnesses

For Appellant:

Michael Johnson, appellant

For Respondent:

Jennifer Romero
Capt. Michael Kassai
Deborah Zafonte
Capt. Marc D'Amore
Matthew Tani
Michael Foligno

List of Exhibits

For Appellant:

A-2 General Order A-2
A-4 Portion of collective bargaining agreement
A-5 City of Newark Ordinances
A-6 Lt. Antonio Cruz Preliminary investigation report
A-7 2/22/2014 memo from Fire Deputy Chief Norman Esparolini
A-8 memo, 3/12/14 from Graves to Stewart Memo, 3/17/14 from Graves to Stewart
A-9 Promotion list, 10/24/14
A-10 Mr. Beltre's report, 12/3/14
A-11 Graves' arson ID
A-12 12/4/2014 email from D/C Spruill, 12/5/14 memo from D/C Spruill to Ambrose

- A-13 memo from Chief Centanni to Director Stewart, 12/05/14; memo from Centanni to Stewart, 12/12/14
- A-15 8/25/2010 employee warning notice from Irizarry to Graves
- A-16 Various Trial Documents/General Orders/Summons/Title 13/Incident Reports Regarding Investigation PSB#2014-397
- A-17 Director Venable to Capt. Easter Memo, 2/4/2015
- A-18 Letter from Spruill to Stewart, 03/20/15
- A-20 Letter from Union County AP Monahan to Mr. Chester re: use of Tahoe
- A-22 Excerpts from Mr. Beltre's 1/10/2019 criminal trial testimony
- A-23 1/10/2019 Gollette transcript
- A-24 1/15/2019 excerpt of criminal trial transcript Capt. Easter
- A-25 Excerpts from Director Stewart's 1/15/2019 criminal trial testimony
- A-26 Various Articles
- A-27 8/22/2014 email Capt. Guida to Dir. Stewart, 8/22/14
- A-28 documents regarding Investigation PSB 2015-24
- A-30 NPD Incident Report, 7/2/2014; NPD Incident Reports various dates; NPD Arrest Report various dates
- A-31 1/10/2019 excerpt criminal trial transcript Poggi
- A-32 Citgo gas station video
- A-34 Newark Fire Department Rules and Regulations, Article 13
- A-37 PNDA 04/1/2016

For Respondent (City of Newark):

- C-1 Captain Rollins' Report
- C-2 PNDA 10/31/2019
- C-3 FNDA 9/18/2020
- C-4 Criminal Indictment
- C-5 Graves Criminal Trial Transcript

OAL Exhibits:

- Complete transcripts from criminal trial for the following OAL witnesses: Efrain Beltre; Kenneth Poggi; Marvin Easter, Jr.; James W. Stewart; and Anthony Graves
- Transcript of DVD statement of Kenneth Gaulette, 1/10/19, played during criminal trial