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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 07414-20

AGENCY DKT. NO. N/A

2020-2438

**IN THE MATTER OF RASHAD BENNETT,
GARDEN STATE YOUTH CORRECTIONAL
FACILITY.**

Samuel M. Gaylord, Esq., for appellant, Rashad Bennett, (Szaferman Lakind,
attorneys)

Eric Zimmerman, Deputy Attorney General, for respondent, Garden State Youth
Correctional Facility, (Matthew J. Platkin, Acting Attorney General, attorney)

Record Closed: February 2, 2022

Decided: May 4, 2022

BEFORE **SUSAN L. OLGATI**, ALJ:

STATEMENT OF THE CASE

Appellant Rashad Bennett, appeals the determination of the respondent, the Department of Corrections, Garden State Youth Correctional Facility ("Garden State") removing him from his position as a Senior Correctional Police Officer effective March 13, 2020, based on disciplinary charges of conduct unbecoming a public employee and other sufficient cause relating to an August 28, 2019, domestic violence incident that resulted in his arrest and a Temporary Restraining Order (TRO) filed against him. Appellant denies

the allegations and contends that his removal was in retaliation for having reported an alleged policy violation by his supervisor.

PROCEDURAL HISTORY

On August 29, 2019, the appellant was issued a Preliminary Notice of Disciplinary Action advising him of the charges against him. After a departmental hearing, a Final Notice of Disciplinary Action was issued on March 13, 2020, removing appellant from his position of employment. The sustained charges were as follows:

- N.J.A.C. 4A:2-2.3(a)6- Conduct unbecoming a public employee
- N.J.A.C. 4A:2-2.3(a)12- Other sufficient cause.
- Human Resources Bulletin 84-17 as amended
 - (C-11) Conduct unbecoming of an employee
 - (E-1) Violation of a rule, regulation, policy, procedure, or administrative decision.

[R-5.]

The specifications in support of the charges noted that:

On 8/28/19, you were involved in a domestic violence incident and arrested by the Mt. Laurel Police Department. You received a charge of 2C:12-1-b(13) Aggravated Assault-Strangulation, a 3rd Degree crime. You were also issued a Temporary Restraining Order as a result of your actions. Your actions on 8/28/19 demonstrate conduct unbecoming of a law enforcement officer and violated New Jersey Department of Corrections Rules and Regulations.

[Id.]

Appellant perfected his appeal on or about April 15, 2020. On or about August 7, 2020, the appeal was transmitted to the Office of Administrative Law for a hearing as a contested case¹. N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13.

¹ A comment on the transmittal notice states that, "Due to COVID-19 State shutdown, extremely limited staffing, and mandatory furlough during July, this appeal could not be located at the OAL until August 3, 2020." The transmittal is stamped as "received" in the OAL on August 7, 2020.

By letter dated November 24, 2020, appellant's attorney provided notice of formal waiver of appellant's right to receive a final administrative determination within 180 calendar days from the date he was initially suspended without pay.²

Upon completion of discovery, hearing dates in this matter were scheduled and held on August 18 and 19, 2021, via Zoom video-conferencing, due to on-going restrictions relating to the COVID-19 pandemic. The record remained open to allow for the filing of post-hearing briefs. Timely receipt of the hearing transcripts was delayed due to the pandemic. Upon receipt of closing briefs, the record closed on February 2, 2021. By Order of Extension, the time for filing this Initial Decision was extended to May 5, 2022.

FACTUAL DISCUSSION AND FINDINGS

Undisputed Facts

A review of the record reveals that the following is not in dispute, accordingly, I **FIND as FACT:**

Appellant began his employment with the Department of Corrections (DOC) on March 25, 2013.

On October 11, 2018, appellant was arrested in connection with a domestic violence incident involving his girlfriend, T.T.³ R-18. He was charged with harassment-striking/offensive touching under N.J.S.A. 2C:33-4(b), a petty disorderly offense. Id.

On October 11, 2018, appellant was also served with a TRO. Id. The TRO was dismissed on or about October 18, 2018. Id.

The criminal charges relating to the October 2018 incident were dismissed on or about November 21, 2018.

² See N.J.A.C. 4A:2-2.13(g)

³ Initials are used to protect T.T.'s identity.

Appellant received no administrative or disciplinary charges relating to the October 11, 2018, incident.

On August 28, 2019, appellant was arrested in connection with another domestic violence incident involving T.T. He was charged with aggravated assault under N.J.S.A. 2C:12-1b (13), a third degree crime, by knowingly obstructing the breathing or blood circulation of a person who meets the definition of a domestic violence victim and served with a TRO. R-6 and R-2.

Following an informal pretermination hearing, appellant was suspended without pay effective September 3, 2019. R-3.

The TRO filed against appellant was dismissed on or about September 9, 2019. R-8.

The criminal charges against appellant were downgraded to simple assault and were dismissed in Mt. Laurel municipal court on January 16, 2020. R-9.

Following a departmental hearing appellant was removed from his position as a Senior Correctional Police Officer on March 20, 2020.

Testimony

The following is a summary of the relevant and material hearing testimony.

For respondent:

Maria Jackson is an investigator in the Special Investigations Division (SID), of the DOC. She conducted the investigation into the 2019 domestic violence incident involving Bennett and his live-in girlfriend, T.T. Through her investigation, Jackson determined that Bennett was deemed to be the aggressor in the incident.

Bennett did not have a state-issued weapon in connection with his employment. He owned an off-duty weapon, but it had been confiscated by the prosecutor's office due to a prior [2018] domestic violence incident.

After determining Bennett's weapons status, Jackson advised DOC administration that he was not to come in contact with a duty weapon until the investigation was complete.

Due to the TRO and the criminal charges arising from the 2019 domestic violence incident and consistent with DOC and Attorney General policy, Bennett was placed in a weapon's restricted post.

After the criminal charges and the TRO against Bennett were dismissed, he was scheduled for and attended a mandatory psychological evaluation. Consistent with Attorney General guidelines, Jackson sent a certified letter to T.T. requesting an interview. She received no response from T.T.

Jackson noted that depending on the severity of charges, it is not uncommon for administrative charges to be brought within one day of an alleged incident.

Jackson also investigated Bennett's 2018 domestic violence incident. Based on information from the Mt. Laurel Police Department (P.D.), during the 2018 incident, Bennett and T.T. were involved in a struggle over a cell phone. T.T. fell and scraped her right knee. Jackson was not surprised that the 2018 incident did not result in administrative charges because it was a lesser crime than the 2019 incident.

Lieutenant Brian Darcy is the Administrative Lieutenant. He testified that based on DOC policy, correctional officers are required to conduct themselves in a professional manner both on and off duty and they are not to act in a way that betrays the public trust.

Darcy was the shift commander on the date of the 2019 domestic violence incident. He was notified of the incident by the Mt. Laurel P.D. After receiving the information,

Darcy notified the Central Office Desk (the information clearing house) and SID that Bennett had been arrested for domestic violence by strangulation.

Sections 2 and 3 of the DOC Rules and Regulations prohibit correctional officers from engaging in threatening or assaultive conduct. It is a discredit to the Department and to the officer to engage in such behavior. Bennett's actions also violated Article 1, Section 2 of the DOC's rules and regulations because by breaking the law, he violated the public's trust. All new officers receive the DOC regulations during orientation.

Bennett was charged with conduct unbecoming a public employee. Based on the Human Resources Bulletin Table of Offenses and Penalties, the proper punishment for a first infraction of conduct unbecoming a public employee can range from a three-day suspension to removal. Bennett was also charged with a violation of written rule, procedure, or policy of DOC. Punishment for a first infraction of this violation can range from an official written reprimand to removal.

The DOC proceeds with disciplinary actions even if underlying criminal charges are dismissed because the burden of proof is different in administrative proceedings. Criminal charges being dropped does not mean that the incident did not occur.

Darcy recalled that in July 2019, Bennett came to the control center to make a complaint. He told Bennett to take the complaint to the major's office because he was in the middle of handling an emergency code. Bennett began writing a note and Darcy ordered him out of the control center. As it was a controlled area, Bennett should not have been there.

Darcy did not know what Bennett's complaint was about. He was not aware of any complaint taken by the major's office from Bennett. If Bennett had reported the complaint to the major as Darcy directed, it would have been investigated.

Darcy is familiar with the DOC's smoking ban policy and confirmed that an officer could get "written up" for violating the policy.

Matthew Jankaitis has been a patrolman with the Mt. Laurel P.D. for four years. He testified that he received training in domestic violence in the academy and during his employment. He receives approximately seven to ten domestic violence calls per week. Incidents in which a domestic violence victim shows signs of injury or pain constitute a “must arrest” situations, the police have no discretion. The August 28, 2019, domestic violence incident involving Bennett was a “must arrest” situation.

On the night of the incident, other officers were already on the scene and talking to the parties when Jankaitis arrived. He was wearing a body camera that captured the events upon his arrival.

His sergeant spoke with T.T. and directed that photos of the scene be taken. Prior to Jankaitis' arrival, the officers learned that Bennett was a correctional officer. As a result, they had to notify others and determine if weapons are involved.

Jankaitis confirmed that the photos of the scene [R-13] represented what it looked like on the night of the incident. Photos of T.T.'s arm showed two scratches. Photos of her neck showed a mark. T.T. said that Bennett grabbed her neck and ripped off her chains. The chains were on the ground, so it went in “conjunction” with her statement. T.T. said Bennett pushed her elbow into the television and damaged the cable box. There was damage to the floor and cable box so those stories “aligned.”

At the station, another officer assisted T.T. in applying for the TRO. Jankaitis drafted the complaint warrant and prepared the probable cause statement. T.T. stated that she and Bennett argued about her having car trouble. She said Bennett placed his hands around her neck and held her down on the bed. She managed to get free, but he grabbed her neck again and held her against the wall restricting her breathing. She also said that Bennett threw her into the television stand.

Jankaitis noted in his report that Bennett, the defendant in the incident, had a history of mental illness. He did not recall where he got that information. A member of the public provided information to the dispatcher. He believed that the call on the domestic was made by a third party.

He noted that it is fairly common for TRO's to get dismissed. He offered that in the heat of the moment, victims want the abuse to stop. Later, they decide to drop the TRO because they do not want to hurt their partners. Jankaitis was surprised that the TRO against Bennett was dropped because T.T. was pretty upset on the night of the incident.

On cross-examination, Jankaitis noted that when he arrived at the scene, Bennett was outside. He seemed calm and he gave the Mt. Laurel P.D. his version of the events.

Jankaitis explained that he wrote "n/a" in the victim injury section of the affidavit of probable cause because they typically note an injury when a person goes to the hospital or gets medical treatment. If a person has visible signs of injury but does not complain of pain, they indicate not applicable.

The probable cause statement that the defendant strangled the plaintiff was based on the facts and evidence, including the marks on T.T.'s neck and the chains on the ground.

For Appellant:

Rashad Bennett was a Senior Correctional Officer. He worked as a correctional police officer for six years. He testified that in October 2018, he was arrested during a domestic violence incident involving T.T., his girlfriend of eight years. They are still together. A TRO was entered against him but the TRO and the charges relating to the 2018 incident were dismissed. He received no discipline or loss of pay as a result of the 2018 incident.

In July of 2019, Bennett observed his supervisor, Sergeant Multin smoking a cigarette in the control booth of the administrative segregation unit of the correctional facility. Bennett completed a special custody report dated July 22, 2019, concerning the violation and brought it to Lieutenant Darcy because his supervisor was the person he was reporting. Bennett asked Darcy for a control number. Darcy looked at the report and asked Bennett who he thought he was writing up his sergeant. Darcy ordered Bennett out of the office and directed him to the major's office. On August 1, 2019, Bennett went

to Major Giannascoli. The major gave him a control number, took the special report, and gave him forms to complete. Bennett was required to fill out the forms and submit his documents to EED [Equal Employment Division]. He did not get to complete and submit the package because "the August 28th incident happened."

On the date of the incident, T.T. was late getting home from work. It was approximately 2:30 a.m., Bennett called her to make sure everything was ok. She told him that she had a flat tire. She said she did not call him because she knew he had to work in the morning. She said she was on the phone with AAA. When T.T. arrived at their apartment, she began yelling that he did not believe her. He did not want to argue with her because he had to get up early. He wanted to avoid a confrontation with T.T. and was getting ready to leave when she hit him with a lamp. He ran to the closet to get his uniform and she started to attack him with the T.V. and "anything she could get her hands on." She hit him with a pot.

He did not recall how T.T.'s chains ended up on the floor. She broke the T.V. stand. He dropped everything and ran outside because he knew his job "was on the line." "I just had a situation prior and I didn't want to repeat that." Once outside, he approached the police and told them he was trying to leave the apartment and that his girlfriend was breaking everything up. An officer took Bennett's statement at the police station, and he was arrested and criminally charged. He was transported to jail that same day and on August 29, 2019, Major Giannascoli served him with a preliminary notice of discipline at the jail.

Bennett appeared before a Superior Court judge who sent the charges back to municipal court. The charges were reduced and were dismissed in municipal court.

His personal weapon was confiscated by the Willingboro Police Department due to his arrest and TRO resulting from the October 2018 incident. He did not get his weapon back because, as of August 2019, SID was still doing its investigation. The psychological evaluation following the 2018 incident determined that he could get his weapon back, but he was not returned to an armed post and his weapon was not returned.

On cross-examination, Bennett testified that he was harassed after he made his smoking ban violation complaint in July 2019. He was instantly “written up” for not responding to a code. However, he had no documentation of being written up. The forms given to him by the major were for reporting harassment.

Bennett further testified that T.T. was lying about the domestic violence occurring between them.

Credibility

In evaluating evidence, it is necessary for me as the finder of fact to assess the credibility of the witnesses. This requires an overall assessment of the witness’s story in light of its rationality or internal consistency and the manner in which it “hangs together” with the other evidence. Carbo v. United States, 314 F. 2d 718, 749 (9th Cir. 1963). “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself,” in that “[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances.” In re Perrone, 5 N.J. 514, 522 (1950).

A trier of fact may reject testimony as “inherently incredible” when “it is inconsistent with other testimony or with common experience” or “overborne” by the testimony of other witnesses. Conleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). “The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

As to respondent’s witnesses, I accept their testimony as credible. Maria Jackson’s testimony regarding her investigations of Bennett’s 2018 and 2019 domestic violence incidents was straightforward. Similarly, the testimony of Lieutenant Darcy was straightforward. His testimony that he did not know of the nature of Bennett’s complaint and that he ordered him out of the area and to take his complaint to the major because he was in the middle of an emergency was reasonable and rational. Finally, the testimony

of Officer Jankaitis regarding his observations on the night of the 2019 incident including the injuries sustained by T.T. and his explanation of the reasons Bennett was arrested and determined to be the aggressor and the defendant in the matter were sound and without any motivation or bias.

As to appellant, I do not accept his testimony as credible. His version of the incident including that T.T. attacked him and that he ran out of the apartment to avoid a confrontation with her and his lack of an explanation for the marks on her neck or why T.T.'s chains were broken and lying on the floor does not ring true. Additionally, his testimony that Lieutenant Darcy read his special report of the sergeant's alleged smoking ban violation is directly contradicted by the credible testimony of Darcy. His testimony that he gave the special report to the major is also called into question as there is no documentation of same. Similarly, his claim of harassment by immediately being "written up" after filing the complaint is also unsupported by evidence of any such discipline or performance action against him. Further, his explanation that he did not complete and submit the EED forms given to him by the major on August 1, 2019, because he was involved in the domestic incident twenty-seven days later—does not follow. In sum, Bennett's testimony simply does not hang together.

Video and Documentary Evidence

Body camera video from Officer Janakiatis on the date of the incident shows T.T. explaining that she and Bennett had a fight. She claimed that he started throwing her around and that he grabbed her neck and slammed her down. She claimed Bennett choked her and broke her necklaces which were on the floor.

Additional, body camera video from Officer Hampton of the Mt. Laurel P.D. shows T.T. telling the officers to look at her neck. She claimed that Bennett accused her of lying about her car breaking down on the night of the incident. She said she sent him pictures of the tow truck to prove it. She said Bennett threw her on bed and that he did "all of this."

A November 19, 2019, notarized statement signed by T.T. states:

My name is [T.T.] I am the victim in the Rashad Bennett aggravated assault case. I don't want to pursue any charges brought upon or against him.

1. After reviewing the full police report I've noticed everything in the report isn't entirely accurate. I don't want to elaborate any further as I don't want to incriminate myself.
2. Rashad Bennett didn't break or damage any of the furniture in the house however I do not remember how the items in the home were broken.
3. I tried to reach out to the prosecutor who is over this case numerous times in which I was unable to get in contact with after many attempts.
4. Rashad Bennett and I still reside together at [XXXX].

[R-10.]

ADDITIONAL FINDINGS OF FACT:

Having had the opportunity to consider the testimony of the witnesses and having considered the video and documentary evidence, I additionally **FIND** the following as **FACT:**

On the date of the 2019 incident, T.T. had visible signs of injury on her neck. Her statements to the police regarding Bennett's assault were consistent with her injuries.

Bennett was identified by the Mt. Laurel P.D. as the defendant in the 2019 incident. On the date of the incident, he was given the opportunity to file a counter complaint and counter TRO but did not do so.

In her November 2019 notarized statement, T.T. stated that Bennett did not break or damage any furniture but maintained that she was the victim of Bennett's aggravated assault.

The directive regarding the ban on smoking and tobacco products in DOC facilities is addressed to the "NJDOC Inmate Population." P-1. The directive provides among other things, that any tobacco product or tobacco paraphernalia found in the possession of an

inmate will be considered contraband. Id. The directive further provides that inmates will be issued a receipt for seized contraband and may be subject to appropriate discipline.

LEGAL ANALYSIS AND CONCLUSIONS

At issue here is whether the appellant committed the violations alleged and if so, whether the penalty imposed is appropriate.

Appellants' right and duties are governed by the Civil Service Act and accompanying regulations. N.J.S.A. 11A:1-1 to 12-6. A public employee protected by the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to their 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 proof to show that the action taken was appropriate. N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). The appointing authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982).

Conduct Unbecoming

"Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

Here, appellant is charged with conduct unbecoming a public employee based on his actions in connection with the 2019 domestic violence incident. Despite the dismissal of the criminal charges and the TRO filed against Bennett, the credible and competent evidence in the record demonstrates that T.T. suffered visible signs of injury due to appellant's actions. Although T.T. may have recanted claims of Bennett breaking or damaging furniture, she maintained that she was the victim of his aggravated assault. Her claims are supported by the police photos and the observations of the responding officers. Appellant's arguments that he was retaliated against for having made a complaint against his immediate supervisor is unsupported by any credible or competent evidence in the record. Additionally, as the DOC's smoking ban policy is directed to the inmate population, even if Bennett had reported such a claim, it is not clear that it would have resulted in formal discipline against the supervisor, thus it appears to be an unlikely basis for retaliation by respondent.

Appellant also contends that the fact he was not disciplined for a prior domestic violence incident with T.T. supports his claim of retaliation. This contention is without merit. The 2018 incident was different in nature from the 2019 incident and resulted in a petty disorderly offense charge against appellant. In the 2019 incident, appellant was initially charged with aggravated assault by strangulation, a third-degree crime. That respondent quickly filed disciplinary charges in response to this second, more serious criminal charge arising out of the 2019 domestic violence incident is reasonable and appropriate. Appellant's actions in connection with the 2019 domestic violence incident are violative of the public trust and are a discredit to himself, the Department, and all other correctional police officers.

Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes Conduct Unbecoming a Public Employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and that the charge is **SUSTAINED**.

Other Sufficient Cause

In addition to being charged with violations of the civil service disciplinary regulations, appellant is also charged with violations of the Human Resources Bulletin 84-17, for conduct unbecoming an employee and violation a rule, regulation, policy, procedure, or administrative decision.

Having concluded that appellant's conduct constitutes a violation of conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3 (a) 6, I similarly **CONCLUDE** that his actions constitute a violation under the Human Resources Bulletin, conduct unbecoming of an employee. Appellant's actions in connection with the 2019 domestic violence incident are also violative of the Law Enforcement Personnel Rules and Regulations, including Sections 2 which provides that no officer shall engage in threatening or assaultive conduct and Section 3 which provides that no officer shall act or behave in his official or private capacity to his discredit or to the discredit of the Department.

Accordingly, for the reasons previously set forth herein, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes a violation of the Human Resources Bulletin 84-17 as amended, specifically, (C-11) Conduct unbecoming of an employee and (E-1) Violation of a rule, regulation, policy, procedure, or administrative decision, and that the charge is **SUSTAINED**.

PENALTY

The Civil Service Commission's review of penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority.

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. W. New York v. Bock, 38 N.J. 500 (1962). Typically, numerous factors,

including the nature of the offense, the concept of progressive discipline and the employee's prior record are considered. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate. Thus, progressive discipline is not a "fixed and immutable rule to be followed without question. Instead, we have recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Carter v. Bordentown, 191 N.J. 474, 484 (2007).

Here, the disciplinary charges against appellant have been sustained. The seriousness of these charges relating to the 2019 domestic violence incident warrant imposition of the penalty of termination despite appellant's lack of disciplinary history. In light of these sustained disciplinary charges, returning appellant to his position as a senior correctional police officer would be contrary to the respondent's interest in maintaining the public's trust and confidence.

Accordingly, I **CONCLUDE** that the penalty of termination should be **UPHELD**.

ORDER

I hereby **ORDER** that the disciplinary charges against appellant are **SUSTAINED**. I further **ORDER** that appellant's termination is **UPHELD** and his appeal is **DENIED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 4, 2022
DATE


SUSAN L. OLGATI, ALJ

Date Received at Agency: May 4, 2022

Mailed to Parties: May 4, 2022

SLO/lam/mp

LIST OF WITNESSES

For respondent:

Maria Jackson
Brian Darcy
Matthew Jankaitis

For appellant:

Rashad Bennett

LIST OF EXHIBITS

For appellant:

- P-1 Ban on Smoking and Tobacco Products in NJDOC facilities, Jan 2013
- P-2 Bennett Special Custody Report
- P-3 Receipt Form—Re: EED and EEO AA Complaint Forms

For respondent:

- R-1 PNDA
- R-2 Notice of Informal Pre-termination Hearing
- R-3 Decision of Informal Pre-termination Hearing
- R-4 DOC Hearing Report
- R-5 FNDA
- R-6 Mt. Laurel Police Department Summons and Complaint
- R-7 Mt. Laurel Police Department Report
- R-8 Order of Dismissal of TRO

- R-9 Mt. Laurel Municipal Court Letter of Disposition
- R-10 T.T. notarized letter dated 11/19/19
- R-11 SID Investigation Report
- R-12 Law Enforcement Rules and Regulations
- R-13 Mt. Laurel Police Department Images
- R-14 Bennett Municipal Transcript
- R-15 DOC Internal Management Procedure
- R-16 HRB 84-17
- R-17⁴ Mt. Laurel Police Department video footage
- R-18 SID Investigation Report re: 2018 domestic violence incident

⁴ Note: Based on appellant's objections regarding evidence not being produced in discovery, portions of R-17, relating to a "Odara" report labeled "1008_CourtneyWay.mp45 was not admitted into evidence.