



STATE OF NEW JERSEY

In the Matter of Robert Nguetsop,
 Department of Transportation

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2020-1741 and 2021-
 85
 OAL DKT. NOS. CSV 01314-20 and
 CSV 06684-20

(Consolidated)

ISSUED: FEBRUARY 22, 2022

The appeals of Robert Nguetsop, Electrical Mechanic, Department of Transportation, 15 and 30 working day suspensions, were heard by Administrative Law Judge Joan M. Burke (ALJ), who rendered her initial decision on January 13, 2023. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, including a thorough review of the exceptions, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of February 22, 2023, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision and her recommendation to reverse the suspensions.

The Commission makes the following comments. As indicated above, the Commission thoroughly reviewed the exceptions filed by the appointing authority in this matter. In that regard, the Commission finds them unpersuasive as the ALJ's findings and conclusions in reversing the charges were based on her thorough and comprehensive assessment of the record and are not arbitrary, capricious or unreasonable. The ALJ's determinations were based predominantly on her assessment of the credibility of the witnesses. Upon its *de novo* review of the record, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659

(citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appointing authority are not persuasive in demonstrating that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations or the findings and conclusions made therefrom. Accordingly, since the suspensions have been reversed, the appellant is entitled 45 working days of back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10(d)3*.

ORDER

The Civil Service Commission finds that the actions of the appointing authority in suspending the appellant were not justified. The Commission therefore reverses those actions and grants the appeals of Robert Nguetsop. The Commission further orders that the appellant be granted 45 working days of back pay, benefits and seniority. The amount of back pay awarded is to be reduced as provided for in *N.J.A.C. 4A:2-2.10(d)3*. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22ND DAY OF FEBRUARY, 2023



Allison Chris Myers
Acting Chairperson
Civil Service Commission

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and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 01314-2020
AND CSV 06684-2020
AGENCY DKT. NOS. 2020-1741
AND 2021-85

**IN THE MATTER OF ROBERT NGUETSOP,
NEW JERSEY DEPARTMENT OF
TRANSPORTATION.**

(Consolidated)

Robert Nguetsop, pro se

**Nonee Lee Wagner, Deputy Attorney General, for the respondent New Jersey
Department of Transportation (Matthew J. Platkin, Attorney General, State
of New Jersey, attorney)**

Record Closed: December 12, 2023

Decided: January 13, 2023

BEFORE JOAN M. BURKE, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The New Jersey Department of Transportation (respondent or DOT) brings a major disciplinary action against Robert Nguetsop (appellant or Nguetsop). Respondent alleges that appellant violated, N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, defined as NJDOT Guidelines for Employee Conduct and Discipline, Section 1,A,1- Unauthorized Absence; Section 1,A,D- Leaving Assigned Work area without Permission; Section 2,H,

Failure to Follow Rules, Regulations, Policies and/or Procedures; N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, defined as NJDOT Guidelines for Employee Conduct and Discipline, Section 3, E,1. Falsification; and N.J.A.C. 4A:2-2.3(a)12 Other Sufficient Cause defined as NJDOT Guidelines for Employee Conduct and Discipline Sections 5,A-Willful Disregard of Safety Regulations/Provisions; Section 2,B, Incompetency, Inefficiency, or Failure to Perform Duties and Section 2,C Neglect of Duty.

On December 12, 2019, respondent served appellant with a Preliminary Notice of Disciplinary Action (PNDA) that informed him that he would be suspended for fifteen working days. Appellant requested an internal disciplinary hearing; however, his request was not filed timely. A Final Notice of Disciplinary Action (FNDA), dated January 2, 2020, was personally served on appellant. The FNDA sustained the charges of other sufficient cause as set forth in the PNDA as failure to follow rules, regulations, policies and procedures; a willful disregard of safety regulations/provisions; incompetency, inefficiency, or failure to perform duties; and neglect of duty. The FNDA upheld the fifteen working days suspension that was set to begin on January 22, 2020, ending on February 11, 2020. Appellant requested an appeal of the major disciplinary action on April 17, 2021.

On June 9, 2020, respondent served appellant with a PNDA that informed him that he would be suspended for thirty working days. The effective date of the suspension was not finalized at that date. Appellant did not request an internal disciplinary hearing. A FNDA dated June 25, 2020, was personally served on appellant. The FNDA sustained the charges of other sufficient cause as set forth in the PNDA as, unauthorized absence, leaving assigned work area without permission; failure to follow rules, regulations, policies and or procedures and falsification. The FNDA upheld the thirty working days suspension that was set to begin on July 6, 2020, ending on August 14, 2020.

On January 29, 2020, and July 29, 2020, respectively, the Civil Service Commission, Division of Appeals and Regulatory Affairs, transmitted the within matters to the Office of Administrative Law (OAL), for determination as contested cases pursuant

to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On June 21, 2021, an order for consolidation was issued. After several prehearing conferences were conducted, a hearing date was assigned. The matter was scheduled to be heard on December 21, 2021, however the appellant's father passed away in Cameroon, West Africa, and appellant requested an adjournment to attend the funeral. A hearing was held on June 1, 2022, via ZOOM, however, appellant said he did not read the exhibits that were given to him because of difficulty understanding the written English. After a short discussion off the record with the parties, the matter was continued to July 15, 2022, to allow the appellant the opportunity to obtain a translator/interpreter. Hearings were conducted via ZOOM on July 15, 2022, and September 28, 2022. The parties submitted closing briefs on December 12, 2022, and the record closed at that time.

TESTIMONY

For Respondent:

Billy Nees (Nees) testified that in 2019 he worked for the NJDOT as a microelectronic system's technician. He held that position for three years. His duties entailed assisting electronic mechanics, made repairs, maintained traffic signals and traffic safety, and trained other electricians. Nees worked in the field as well as in the shop. Nees testified that he worked briefly with the appellant on projects during their regular shifts and overtime shifts.

Cabinet Incident

Nees testified that there was a cabinet damaged in Cherry Hill and he went out with his crew to dismantle the damage cabinet and to make repairs and prepare for the new cabinet. Nees testified that the cabinet enclosure houses all the electronic equipment, inputs and wires from the amber, yellow and red lights that makes up the traffic light for the intersection. As per Nees the appellant delivered the incorrect cabinet, and it was delivered much later than expected. He delivered the stainless-steel cabinet

that is used in the City of Camden. The stainless-steel cabinet is used in areas where there is "high vandalism" because it is more difficult to be broken in. He and his crew installed the stainless-steel cabinet so that the intersection could be up and running. He believed that the cabinet remained installed until he left the DOT. Nees testified that there was no difference between the appearance of the stainless-steel and the aluminum cabinet and was not sure if the weights were different as well. Nees testified that he expected the appellant around 1:00 p.m. but he arrived about 3:30 p.m. During this time, the intersection was out and not running.

On cross examination, Nees testified that he never saw the appellant at the Route 30 and Washington location. Nees testified that the appellant spent all day building the cabinet in Cherry Hill and sent it out to him to be installed. Nees admitted that the appellant did not drive to the location that day. Nees testified that all he knew was that the appellant built the cabinet.

On re-direct, Nees testified that the appellant was left in the shop to work on the cabinet and when the cabinet was completed, the appellant was to take it to the site for Nees and his crew to install. Nees was not sure whether the appellant was the one that dropped off the cabinet.

Time Dispute - June 20, 2019

Nees was asked to recall an incident that had occurred with the appellant on June 19, 2019. Nees testified that on March 6, 2020, he wrote an email to Anderson summing up the occurrence on June 19, 2019. (R-13.) He wrote that he and the appellant worked the morning of June 19, 2019. Id. He drove the work vehicle and they returned to the office at around 11:30 a.m. They were scheduled to work on traffic signals and controls until 4:00 p.m. However, when they got back, the appellant told him he had to leave early. The appellant then got into his car and left. Id. Nees testified that it is the protocol that when people are leaving early, they are to let their supervisor know. There was no supervisor in the office, but appellant told Nees that he was leaving. (R-13.)

On re-direct, Nees testified that their time worked are usually entered into eCATS the electronic time system. Nees stated that the supervisor of each individual crew approved the employee's eCATS. An employee must request the time off and it also gets entered into eCATS.

Ronald Anderson (Anderson) is currently the area regional electrical supervisor with NJDOT. This position he has held for the past three years. In June 2019, he was a crew supervisor. He manages employees by directly supervising their daily activities, job duties, and also time keeping. He was the appellant's supervisor. His relationship with the appellant was the same as with any other subordinate he had to supervise.

Cabinet Incident

On the day of the incident with the cabinet, Anderson testified that he was at the DOT's workshop in Cherry Hill, where he instructed the appellant to load the cabinet onto the truck and take it to the site that morning. He said he told the appellant to do this at 8:30 a.m. in the morning. He did not know what time he arrived at the site until the next day when he was told by Mitch Troth, that appellant arrived at 3:30 p.m. Anderson testified that he was told that the job was completed but with the improper cabinet that was delivered. The cabinet that was delivered was a special tamper resistant cabinet that was ordered for another location. This cabinet is heavier and stronger. There are noticeable differences between the cabinets. The stainless-steel is "a lot stronger and a lot heavier." The stainless-steel cabinets are approximately five pounds heavier than the aluminum cabinets. The two cabinets are located at the same facility but at different locations. The stainless-steel cabinets were stored behind the Cherry Hill electrical facility away from the standard cabinets that were used day-to-day. The aluminum cabinets were kept up front by the building in front of the micro-tech workshop before the garage, for easy access. Anderson testified that he pointed to the cabinet and instructed the appellant to load it onto a truck and to deliver it to the area as soon as possible. Anderson testified that he clearly indicated to the appellant which cabinet he was to take. Anderson

testified that the wrong cabinet was delivered, and this never happened before. Anderson said a crew was sent out after hours to replace the cabinet with the aluminum one. After this incident occurred, he spoke with Mitch Troth and the appellant. He said the appellant said it was "Mitch's fault."

On cross examination, Anderson testified that he requested a demotion of the appellant's position based on his performance. Anderson, when pressed whether he was at the Cherry Hill location on the date of the incident, said he may have had training and was not sure, but recalled that he was there and did point out the cabinet to the appellant to take it to the site. Anderson reiterated that he told the appellant to load up the unit onto a safety truck and drive it to the location. Anderson testified that he has had difficulty in communicating with the appellant because of his dialect and have discussed this with him. Anderson testified that the cabinets look all the same, but he recalled showing the appellant the cabinet that he was to have taken to the required location.

Anderson was asked whether he was at training the day and was not in Cherry Hill. Anderson said he may have been at training but not sure. He said he would have to get the video surveillance of the day to see whether he was at the facility or not. Anderson reiterated that he was in Cherry Hill the morning and took the appellant through the tech shop and pointed to his left "to the cabinet that was second in line, closest to the employee parking lot." The appellant insisted that Anderson was not there and all the instructions he received that day was from "Bob". Anderson testified that the cabinet he told the appellant to take out would have been prebuilt, because it was outside the tech shop garage. There were four cabinets located there, one of each type. The standard cabinet need no repairs and appellant's only responsibility was to inspect the cabinet. Most if not all cabinets are ready because incidents occur so often, the cabinets must be ready to go. The cabinets therefore are prebuilt. Anderson recalled that there were about four cabinets that would not have to be repaired or to be preassembled on the date of the cabinet incident. The four types of cabinets are: system cabinet, standard P cabinet, guaco cabinet and a PAC cabinet. Anderson testified that only the cabinet that should not have been taken would need assembling.

Route 30 and Colby Avenue Incident

Anderson testified that the appellant was tasked with replacing an Un-interruptible Power System (UPS). Anderson explained that a UPS is a battery backup system that keeps the traffic signal at an intersection operating upon a loss of power from the utility company. In repairing the UPS, it would require powering down the intersection to remove the wiring for the old UPS to install the new UPS to restore power to the cabinet. When the system is powered down the traffic lights do not work. They are considered to be "dark".

When the power is scheduled to be out at an intersection there is usually a protocol to be followed. If the person is working alone, he is to first contact the municipal police department for traffic control. If they are not available, he would call the New Jersey State Trooper. If they are unavailable arrangements would be made with the DOT to get their own personnel to provide some type of traffic control. If the DOT is providing their own personnel, arrangements would be made to not allow traffic to cross the intersection at the time of "power down or power up." The cabinets are required to be labeled with the potential of electrocution and the proper Personal Protective Equipment (PPE) must be worn.

The appellant on this day did not follow the protocol. The appellant did not take the things needed to do the repair. Usually the DOT provide safety gear, high-visibility vests, gloves for the employees' protection along with traffic safety cones. Anderson testified that a report submitted by "Bill," that no safety control devices were in place for the motoring public. Anderson admitted that he was not there but testified that there was a report submitted by "Bill," that no safety control devices were in place for the motoring public. The appellant had no personal PPE on his person. There were no early warning signs to notify the public of what was about to happen. There were no police present, and no arrangements with the DOT.

Anderson testified that he sent Keith Samuelson (Samuelson) out with the equipment to give to the appellant. Samuelson was told not to assist the appellant as it was out of his title level. Samuelson reported back to Anderson, that the appellant attempted to hand him energized conductors from live wires that were connected directly to the public utility. Samuelson refused to take the wires and the appellant continued to give it to Samuelson. Anderson was not sure how Samuelson was electrocuted but somehow, he was "shocked." Anderson said Samuelson explained that when he refused to take the wires from the appellant, the wires touched the exterior or the interior of the cabinet "conducting arcing" on contact. Anderson explained that arcing had occurred. An arc is when an energized conductor comes in contact with a ground source. In the process of doing that it creates a direct short and the conductor material, whether it be copper or aluminum, vaporizes extremely fast causing molten metal and gases to expand rapidly and create an arc. This is extremely dangerous.

According to Anderson, the appellant should have placed signs on all approaches to the intersection, put up five to six cones to notify the motoring public that the road was closed. He should have had his protective gear on, which he did not. He should not have turned any of the intersection off without a call to the police or follow the protocol. Anderson reiterates that Keith Samuelson spoke with him immediately after he returned from the location. Anderson said that Samuelson refused medical treatment. Anderson recommended discipline for this issue which he reported to the regional supervisor, but he did not recall if he spoke with the appellant.

Time Discrepancy

Anderson testified that usually the appellant never took off while under his supervision without informing him. However, he recalled that the appellant must have put in the wrong time in, and he had to revise the timesheet. (R-17, R-18.) He was not sure why he had to revise the timesheets. In reviewing the timesheets, he thought that "maybe he didn't have vacation time because I don't see vacation on the seventeenth. I do see vacation on the eighteenth." Anderson testified that emergency overtime is required to

perform their duties because of the three hundred sixty-five day/twenty-four hours operation that the DOT runs. Time is usually entered into eCATS¹.

Anderson was asked about Exhibit R-20, a timesheet for January 31, 2020, with a note written on the timesheet. Anderson testified that he was not the appellant's supervisor at the time. Anderson was asked if he is able to read the activity and self-activity codes on an eCATS timesheet. He testified that the acronym LWOP means "leave without pay"; N162- is their job description and GENLV is general leave. The difference between GENLV and LWOP is that the former is based on the use of benefit time that has been accumulated by the employee and the latter is due to a suspension.

Anderson testified that the appellant habitually submitted timesheets that were improper and has been counseled on how to complete them but has failed to follow. Timesheets were done in appellant's absence only as a courtesy so that he could be paid. Anderson could not recall if the appellant had leave three hours early on June 24, 2019. (R-17.) He had revised the appellant's timesheet in eCATS. (R-19.) Anderson is able to track employees benefit time and the employees also have the ability to track their benefits as well. If the employee used vacation time that they did not have, Anderson would revise the timesheet to reflect accordingly. Anderson testified that the appellant has habitually submitted timesheets that were incorrect. Issues encountered with the appellant, were requesting time off or taking time off but not putting in for the time off when he submitted his time in eCATS.

Mark Bayous (Bayous) is the regional electrical supervisor. He has held this position since March 2018. He is responsible for overseeing the electrical operation of the Region South Electric consisting of a facility in Cherry Hill, Hamilton, and Petersburg. He oversees forty employees and maintains 9000 streetlights, over 900 traffic signal intersections and fifteen bridges. He has a support staff of eight supervisors, two levels of supervision, six crew supervisors and two assistant regional supervisors. In June of

¹ The time system used by the DOT for all employees to record the time and amount of work completed daily.

2019, he was in charge of the electric crew that oversaw the appellant in Cherry Hill. The appellant was a microelectronic systems technician at the time. The appellant's job was to fix and repair traffic signal equipment, electronic equipment, programming and related duties. Shortly thereafter he was demoted.

Cabinet Incident

On November 19, 2019, Bayous sent an email to Emily Hall, a representative from Human Resources. (R-9.) Bayous said he was told that the appellant was instructed at 9:00 a.m. to take a pre-assembled cabinet to Route 30 and Washington and replace the damaged one. The appellant stayed in the shop until 3:00 p.m. and then took the cabinet to the site. He, dropped it off at 4:00 p.m., told the men at the site that he couldn't stay and got back into his truck and went home. The next day Bayous found out that the wrong cabinet was delivered. The appellant had dropped off a specialty cabinet. The specialty cabinet was designed not to be broken into. The DOT discovered that in certain location people were opening the aluminum cabinets and charging their phones. Bayous testified that after the wrong cabinet was installed, it had to be removed. The correct cabinet was then installed. This resulted in a liability to the department in the way of equipment, extra manpower and crew for removal, installation of a new cabinet and taking the wrong cabinet back to the shop. This action by the appellant led to failure of his probation. There are two two-months probationary period. Appellant failed his first two months' probation and the second two months' probation. Human Resource extended him another two months and this incident removed him from his title as he eventually failed the third probationary period as well.

Bayous testified that there is a visible difference between the two cabinets. The aluminum cabinet has a dull finish and weighs about 150 pounds; while the stainless-steel cabinet has a high gloss finish and weighs about 250 pounds. The weight would also be a noticeable difference between the two cabinets when loading onto the truck. Bayous testified that the cabinet has to be loaded into the back of the appellant's truck. He was not sure if the appellant had help from another person or if he used a forklift to

load it onto the truck. Once the cabinet is loaded into the truck it should have been driven to Route 30 and Washington. Bayous testified that normal operating procedure would require the intersection to be turned off completely or what is referred to as "being dark" while the new cabinet is installed. It usually takes one hour to remove the old cabinet and to install the new one. He became aware of the situation the next morning. He said that the cabinet remained at the location for a couple weeks before it was swapped out.

Route 30 and Colby Avenue Incident

Bayous testified that the appellant while performing his daily duties at the site, found that a UPS was malfunctioning. UPS means uninterruptible power supply. The UPS is used when the electricity goes out. The appellant had gone out there and found that there was a malfunction of the UPS. Instead of calling his immediate supervisor for assistance, he called another mechanic, which is out of the chain of command to take the materials he needed to repair the UPS. The electrical mechanic then called his direct supervisor for permission, to take the equipment to the appellant. Upon arriving at the site, the worker, Samuelson, noticed that there was no safety set up; no public notice, and appellant did not have on his personal protective gear. The appellant was working on an energized circuit without high voltage gloves, a hard hat, a vest or safety glasses. He turned the intersection light off in all directions without a police officer on site or for approximately three minutes. He handed Samuelson a live energized wire which led to the electrocution to Samuelson's hand. The live energized wire made contact with the inside of the cabinet- causing a short circuit an arc flash (energized circuit goes to ground resulting in a spark or explosion.) The work was completed, and Samuelson left the scene.

Bayous testified that there were five breaches of protocol involved in this situation. The appellant was up to date on all his safety trainings in order to work. He completed a three-day course in high voltage training and knew all the protocols but avoided all of them. Bayous stated that this was a very dangerous situation not only for Samuelson safety but for the motoring public. Bayous was made aware of the incident through the

chain of command. He stated that Samuelson reported it to his crew supervisor who then relayed it to the assistant regional supervisor who then told him. As a result, he filed a PR180 for disciplinary action. This was not the first time he had to file a disciplinary action. He testified that this was one of two dozen progressive disciplinary actions. He requested removal of the appellant from the department and also from his position. The appellant was demoted to an electrical mechanic. According to Bayous, the appellant's demotion was based on failure to achieve reasonable knowledge of core subject, failure to complete work assignments accurately and in a timely fashion and failure to adequately perform the basic duties of his position.

Time Discrepancy

Bayous testified that one of many disciplinary actions that was done was for "theft of time," whether it was for leaving the job early or taking a vacation day, while putting in eight hours on his timesheet. Bayous sent an email to Emily Hall on February 20, 2020, wherein he stated that the appellant "submitted a fraudulent timesheet after his supervisor advised him to change his time due to leaving the job early." (R-12.) Bayous testified that on approximately ten different occasions the appellant falsified his timesheet resulting in him being paid for time that he was not on the job. Bayous was made aware of this through the chain of command. On January 18, 2020, the appellant requested to leave early for one hour and put in a timesheet that did not reflect that one hour. (R-20.) The appellant's supervisor Ortiz had to adjust the timesheet. (R-20, page 4.) There was a change from eight and a half to seven and a half hours. Ibid. Bayous stated it is not common to amend the timesheet after the fact. However, with the appellant this is a recurring problem with his timesheet.

In June 2019, he requested to leave three hours early. The supervisor was out on the road. He did not let anyone know he was leaving early. He could have gone to a crew supervisor, assistant regional supervisor, or a regional supervisor. The time would have been denied because it is not protocol to work without pay. However, he should have made the request if he could not get in touch with his immediate supervisor, there

were eight other supervisors appellant could have asked. Bayous stated that leave without pay must be requested in writing prior to the day you would need the day-off or time off without pay. The very next day after this incident, appellant came in at 8:30 a.m. instead of at 7:30 a.m. and said because of traffic he was unable to make it in at 7:30 a.m. Bayous believed that Anderson wrote another PR180 disciplinary action form on the appellant for leaving without permission.

On cross examination he was asked if the appellant could drive at the time of the cabinet incident. Bayous responded that he was told that the appellant had an issue with DWI in New York and cannot drive. This was brought to his attention at the time of the Route 30 and Washington incident. After the PR180 for disciplinary action regarding the cabinet incident, it was found out that he should not be driving. appellant was told not to drive a vehicle until further notice after that. Bayous said it was the appellant that dropped the cabinet off at 4:00 p.m. and left. Bayous testified that he recommends discipline, but it is human resources that determines penalty. Bayous said he would not have hired appellant, but his hands were tied as the appellant finished in the top three for the electronic exams. For this position he expected that the appellant would have had some previous professional experience in the area. He testified that the appellant has been given more training than any other person in the department.

When asked if there were any incident report made out on Samuelson after being electrocuted, he was told that Samuelson refused medical services.

Mitchell Troth (Troth) testified that he is currently retired from the DOT as an assistant regional electrical supervisor. He worked for the DOT for thirty-five years. In his previous position he assisted with the daily operation of the unit. He usually goes out in the field and supervise the supervisors under him and the people they in turn supervised. Troth testified that he supervised the appellant when he was a crew supervisor, and the appellant was a bucket truck operator. In addition, when Troth became as an assistant regional supervisor, he also supervised the appellant at the Cherry Hill office.

The appellant's duties at the Cherry Hill location were to repair traffic signals out in the field and highway lighting equipment. Troth testified that he was familiar with cabinets that electrical engineers worked on. Troth testified that it was only after the cabinet incident that he became aware that there were various types of cabinets. He said he has worked with the DOT for over thirty-five years but did not know about the cabinets.

Cabinet Incident

On the day of the incident with the cabinet, Troth recalled receiving a call from Ron Anderson, who was the supervisor in Cherry Hill, that the traffic light was knocked down at Washington and Rte. 30. It was a twofold issue because the traffic signal was knockdown, and the falling signal pole struck the cabinet. At the time, he was the crew supervisor at the Hammonton location. The appellant and Nees were with him in Hammonton. He dispatched the appellant and Nees to the location to survey the damage and see what was needed. He did not know how the appellant got to Cherry Hill, but when he got there the appellant was already in the shop working on a cabinet for the Route 30 and Washington location.

Troth testified that most traffic signal cabinets come prewired and depending on the location and the needs of that location, the cabinet is customized tailored in what is called phasing. When customizing a cabinet, some things looked at are the detection equipment, whether it's a radar or camera and whether a UPS has to be installed. Troth testified that the severity of the damage to the cabinet, will determine the amount of time that a cabinet must be worked on. It can take anywhere from two hours to a full eight-hour day. Troth testified that he was with the appellant when he completed the cabinet. In fact, he helped him worked on the cabinet. He recalled after it was done it was loaded onto either a bucket truck with straps to load it or it was a cone truck. A crew met them at the shop to take it back to the location. The cone truck has safety equipment, signs

and is usually used to transport cabinets to other locations. The cabinet was sent to the location and installed. It was only after the installation, Troth discovered that it was the wrong cabinet. Troth said he was not familiar with the Cherry Hill shop. Troth testified that Anderson told him that he had specifically told the appellant that there were three types of cabinets, and the stainless-steel one has a red tag. However, he did not know about that. Troth testified that the difference between the cabinets is not easily noticeable. Troth testified that it was the first time he was around the stainless-steel cabinets because he never knew they existed. The stainless steels are heavier, maybe a slight color difference.

Troth on cross examination testified that when he arrived at the tech shop the cabinet was already there. If he had known, it was the wrong cabinet he would have spoken up. Troth testified that because he worked in Hammonton, he was not aware of the types of cabinets at the Cherry Hill office. He was just told by Anderson that he had told the appellant about the types of cabinets. Troth admitted that he was the appellant's supervisor, and it was his job to instruct the appellant. There is no policy or an appointed person to transfer the cabinet to the site- they all just get together and help. Troth admitted that the appellant did not transport the cabinet to the location. They just collectively put it on the truck.

On re-direct Troth said there was a difference in the welding of the cabinets which is only noticeable because of his familiarity with welding. Troth said, if you look at the cabinet, tig welding is tighter and mig welding is wider, but not noticeable if you are not familiar with welding. The aluminum cabinet would be lighter. At the time he installed the video detection system in the cabinet. According to Troth, the other work that is involved with the cabinet, depends on whether there is battery backup or whether "pretty diverse phasing" is required. Troth testified that it was best to work on the cabinet at the shop instead of at the site. Troth was not sure if the appellant was demoted from his position as an electronic micro-tech at the time of the incident. Troth reiterated that every cabinet location has different things, lanes, timing etc., so you always have to make a few changes to a cabinet. There is battery backup, the circuitry is complex, camera system,

fire system - all that needs to be worked on. If there are any issues that occurred with the appellant over the years, he would call him in and speak with him about it.

Peter Ortiz (Ortiz) was a crew supervisor for the DOT. He is currently retired. He was the crew supervisor at the Cherry Hill location. He worked for the DOT for approximately twenty-three years. As a crew supervisor he runs a crew which maintained and repaired traffic signals, highway lighting and draw bridges. He is familiar with the appellant as he worked with him on his crew and when he went to the ladder truck crew for five to six years. As a crew supervisor he worked along with the crew; watched and made sure everything was going correctly; any mistakes he would catch and correct them.

Time Discrepancy

In addressing the time discrepancy, Ortiz testified that eCATS is the way employees reported hours worked and how much time put into a job. If an employee requested vacation or sick time, Ortiz would approve the time, depending on the employee's available vacation or sick time. Ortiz testified that he did all the timesheets for his crew to include the appellant's timesheet. Ortiz testified that he completed all the timesheets because he knew when the employees he supervised worked and the hours that they worked. Ortiz was asked about Exhibit R-20, which was identified as the appellant's eCATS timesheet, for the pay period ending January 31, 2020. Ortiz testified that the designation LWOP meant work without pay - suspension no pay status. There was a change made to this timesheet - with a note that stated: "due to employee absence I had to change his time that he put in as 8.5 hrs. 7.5 to reflect the proper time so I could sign off on it. Robert requested to leave the job early as per Ron Anderson." (R-20, at 4.) Peter Ortiz was the author of this notation in eCATS. However, Ortiz testified that he did not make that change. Ortiz testified that he was not involved with the change and believed it was changed by Bayous. Ortiz testified that Bayous is the regional supervisor for the southern region. As such, Bayous is the top supervisor for the region. Bayous did not have contact with appellant all the time. Everyone would report to Bayous. According to Ortiz, Ron Anderson was a crew supervisor for the micro-tech crew. After Ortiz signs

off on the timesheets, then the assistant regional supervisor signs off on it and then Bayous does the final check and signs off on them. In this instance, there were three persons who signed off on the timesheet before it was finalized, Ortiz, Anderson and Bayous.

Ortiz testified that Bayous and the assistant regional supervisor had the ability to change the timesheet - it is not the usual thing to do. This is done in unusual or exceptional circumstance. Ortiz testified that Bayous told him he changed the timesheet and made the corrections because it was incorrect. Ortiz was not sure if the change made was to Exhibit R-20. He did however recall being told that the appellant's timesheet had to be changed because it was not correct. Ortiz testified that he did not know how Bayous would know the timesheet needs to be changed unless someone told him. Regional supervisor had direct contact with the assistant regional supervisor.

On cross Ortiz testified that if there was a mistake, he would check it and make sure it was correct. He had a good relationship with the appellant. Ortiz admitted that the supervisors above him had the ability to go in and make changes to the eCATS when they had to. He was not sure who edit the timesheet. There was a Bob Wolfd (sic) who was temporary acting supervisor prior to Anderson. However, he was adamant that he did not make this change to the timesheet as represented on Exhibit R-20. Ortiz said it could not have been him since he was told about the change after it was made.

Keith Samuelson (Samuelson) is an electric mechanic with the DOT for four and half years. His duties involve trouble shooting, maintaining, installing and making repairs to equipment. He is familiar with the Appellant as they both worked at the Cherry Hill "yard".

Route 30 and Colby Avenue Incident

Samuelson testified that he was the worker that went out that day to take materials to the appellant. Samuelson testified that it was around lunch time when Anderson asked him to drop off materials to the appellant. In an about way, he was not sent to work, but

just to "drop off" the materials. Therefore, he did not have his safety gears with him. He did not know what the initial issue was as he was on a separate crew from the appellant. However, he assumed it was a micro-tech issue that needed to be repaired. According to Samuelson, a micro-tech engineer performs programming, work on the camera system and handles the circuitry and hardwiring, anything that would allow the control cabinet to perform as directed.

Samuelson testified that the appellant was working on a UPS system. He stated that the UPS or uninterrupted power source has a backup system. When the utility goes out for the traffic signal, the battery backup can provide an alternate source of power until the utility company can make repairs to keep the traffic light working. According to Samuelson, parts for the UPS system were at the shop in Cherry Hill and Anderson asked him to take the parts to the appellant who was in the field. When he arrived, the appellant was working in the control cabinet. He does not recall what safety measures were in place, but the appellant did have cones around the area and around his truck. It was just the two of them and they were in a parking area. The traffic signal was working. While he was there the traffic signal was turned off.

Samuelson testified that he cannot speak about what the procedures was at the time of the incident. The practice by the DOT currently, when someone is doing that type of work, they would be working in tandem with another person; either a supervisor - most time it is a supervisor and there would be coordination with the Local Police Department (LPD) for detour signs, cones or stop signs. Depending on what the job is, they would coordinate. He has seen it done many different ways. He was not familiar with the Colby Avenue intersection as it is not one of his assigned locations. However, it runs eastbound/west bound; two to three lanes each direction and the side street are a single lane each direction. Samuelson was asked if the intersection would require precautions before shutting off the traffic signal. He said he can only speak to what would occur today, but it is usually left to the discretion of the supervisor. However today, there would be LPD, detour signs or cones, some "sort of other presence there to coordinate traffic control."

Samuelson testified that working around any energized circuits including UPS be hazardous. To minimize the potential dangers, they wear huge visibility vests, gloves and they received training on working around energized circuits. Experience is built up overtime working with the circuits. Samuelson did not recall all the details of the incident; however, he recalled there were cones around the work zone and around the cabinet. The cabinet is located in a parking lot. The appellant asked for help when he was changing around the service entrance cable to the equipment. They both engaged in changing the wires around the cabinet- he did not expect to work but he helped changed around the wires. Samuelson testify that while the appellant was working, he held things out of the way and while he was holding them out of the way, he got too close to the ground, and the wires accidentally discharged onto the cabinet which was grounded.

Samuelson testified that electricity acts in different ways and it takes the fastest path to ground. Arcing is the jump between the conductor and the grounded surface, for example lightening, which is a discharge of energy that goes very fast to the ground, exhibits a bright glow of light, a spark. The spark looks like and arc when it jumps from the conductor to the ground surface. As he pulled the wires through, there was an accidental discharge against the cabinet door. Samuelson testified that he was folding one of the wires in the panel and he got too close to the door and accidentally discharge to the ground. He did not know the wire was energized. He had seen the traffic light went out and thought it was deenergized. There was no damage or minimal to the cabinet. Samuelson said he did not get electrocuted or shocked although the arc was close to his hand. Samuelson testified that it could have been dangerous. He was not wearing his protective gear because he was not dispatched to the scene.

Samuelson testified that the repairs that had to do with UPS is usually considered more of an advanced repair. He said he was not sure of the protocol at the time of this incident. However, he now is more experienced and if he is involved with the type of repairs that the appellant was conducting, he would be paired up. Not necessary paired up with an equal mechanic or micro-tech but he could also be paired up with a foreman.

Samuelson referenced to the old saying, "multiple sets of eyes - the more sets of eyes you have, the better." Samuelson testified that he had a good relationship with the appellant. Samuelson clarified that the site where this incident occurred, the cabinet was permanently anchored to the sidewalk near a Dunkin Donuts' parking lot. It was still an intersection, but the cabinet was on the actual corner. There was no shoulder to park their vehicles, so they parked off the road in the parking lot right next to the cabinet.

The appellant (Nguetsop) testified that the trouble for him began when Anderson and Mark Bayous came to Cherry Hill. Bayous started off by saying the appellant had stolen something from the DOT. The appellant took the micro-tech civil service exam and was among the top three individuals that passed and that was why Bayous could not recruit him. The Civil Service requested that Bayous hired him because the other two individuals that had passed the civil service exam were placed someplace else. Nguetsop testified that he has been very sick as a result of these matters. Nguetsop testified that he broke his shoulder, loss his wife and home. Nguetsop stated that Bayous wrote a lot of things in the documents about him which are not true. The appellant testified that his own supervisor, after working for over thirty years with the DOT, did not know that there were two types of cabinet, how should he have known.

Nguetsop insisted that Anderson was not at the Cherry Hill location on the day of the cabinet incident as he was at a training. Nguetsop testified that he was not supposed to build the cabinet as he was demoted from his micro-tech title, and they had taken away his truck. He was asked to build the cabinet. Appellant contends that Bayous demoted him and hired his friend who never took the civil service test, because Bayous had promised to give the job to the friend when he became chief.

As for the timesheet, Nguetsop said that his supervisor, Ortiz, testified that he never changed the timesheet. Nguetsop did not have much to say further on that. Appellant testified that life has been hard for him. He is from Africa and coming to the United State he has had difficulties, however, wherever he worked he has given the best of himself.

On cross examination Nguetsop said that he did not appeal the demotion from micro-tech to electrical mechanic because no "judgement or anything" was made. Appellant testified that he did go to the Civil Service and complained, and nothing was done. The appellant testified that when he does something wrong, he is accustomed to his supervisor speaking with him about it. In incidents such as what is alleged to have occurred at Route 30 and Colby, Bayous was to have called the supervisor and appellant in and discuss it. This the appellant testified was never done. Nguetsop testified that the union did not help him. Bayous lied or made up the allegations of the Route 30 and Colby incident. Anderson never called him and spoke with him. Appellant testified that it is false when it is stated that the intersection was out for three minutes. He testified that three minutes is a long time for one to turn off a traffic light intersection. He contends that sparks always occur when you are an electrician, however the wires are protected. The traffic light wires take just a second to connect. So, the traffic light is left on while connecting the UPS. Appellant was asked if he had on his protective gear on at the time of this incident. He responded, "just like a Band Aid on a wound, all the time."

The Cabinet Incident

The Appellant testified that the cabinet was built with his supervisor. If there was something wrong with the cabinet, his supervisor would have told him. However, based on this incident, it was the first time he knew about the stainless-steel cabinet. Mitch Troth was his supervisor at the time of the cabinet incident. According to the appellant, Ron Anderson was at training the day of the incident. Appellant admitted to building the cabinet with his supervisor but insisted that he never went to the site that day. He insisted that he was not the one who dropped off the cabinet at the location and left as stated in the allegation. Appellant testified that Troth went out sick and while he was working out of the at Cherry Hill office, Anderson became his supervisor.

FINDINGS OF FACT

In view of the contradictory testimony presented by the parties, the resolution of the charges against the appellant requires that I make credibility determinations in order to find the critical facts. A credibility determination requires an overall assessment of the witness's story in light of its rationality, 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). For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth. In re Perrone, 5 N.J. 514, 521-22 (1950) See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997.)

Having had the opportunity to carefully observe the demeanor of Bayous and Anderson it is my view that neither was credible in their testimony. It was clear from their testimony that they had personal issues with the appellant which clouded their ability to act in a professional manner in their roles as supervisors. Their version of the facts was inconsistent, and completely lacking in any credibility.

Anderson testified that he instructed the appellant around 8:30 a.m. to load the cabinet onto the truck and take it to the site. He was told the next day that the appellant did not get there until 3:30 p.m. He testified that there is noticeable difference between the cabinets. The stainless-steel cabinets are approximately five pounds heavier than the aluminum cabinets. When pressed on cross examination, Anderson was not sure if he was at the Cherry Hill shop all day, he may have been at a training, however he insisted that he was at the shop the morning of the incident and did point out to the appellant

which cabinet to take. He testified that the standard cabinet need no repairs and the appellant's only responsibility was to inspect the cabinet.

Mark Bayous said he was told that the appellant was instructed at 9:00 a.m. to take a pre-assembled cabinet to Route 30 and Washington and replaced the damaged one. The appellant stayed in the shop until 3:00 p.m. and then dropped it off at 4:00 p.m. He told the men at the site when he took it that he could not stay and got back into his truck and went home. This was not corroborated by anyone or any testimony. Bayous said there was a visible difference between the cabinets. The aluminum cabinet weighs 150 pounds, and the steel cabinet weighs 250 pounds. I also did not **FIND** Bayous credible as to the Colby incident, where he reported that a worker, Samuelson was electrocuted, and the intersection went dark for three minutes.

I found Nees to be confused. He testified that his job was to disassemble the old cabinet and prepare for a new cabinet. The appellant was to take out a new cabinet to the location. He was to drop the cabinet at around 1:00 p.m., but he did not drop it off until 3:30 p.m. On cross examination Nees testified that he never saw the appellant at the Route 30 and Washington Location. Then on re-direct Nees testified that the he was not sure if the appellant was the one that dropped off the cabinet.

I found Troth to be credible. I had the ability to observe his demeanor, and tone during the hearing. He testified in a respectful and straightforward manner. He explained that he was the appellant's supervisor. He said the day of the cabinet incident began when he received a call from Anderson to let him know that the traffic light was knocked down at the Washington and Route 30 location. Nees and the appellant were with him at the DOT's Hammonton location. He dispatched both the appellant and Nees to the location to survey the damage. The appellant then went to the Cherry Hill location to assemble a cabinet to replace the one that was damaged. As per Troth, most traffic signals come prewired and depending on the location, the cabinet is then customized tailored to fit the needs of the specific location. Troth was with the appellant when he completed the cabinet. In fact, he worked on the cabinet with him. When it was done, it

was loaded on to either a bucket truck or a cone truck. However, Troth testified that a crew met them at the shop and took the cabinet to the location. The appellant never transported the cabinet to the location. Troth was the appellant's supervisor and admitted that in thirty-five years working at the DOT he did not know of the two different cabinets. If he had known there was a difference, he would have corrected the appellant. Troth testified that the difference he noted with the cabinets was in the welding of the cabinets. This is only noticeable because of his familiarity with welding. I therefore **FIND** Troth's testimony as **FACT**.

I **FIND** the testimony of Keith Samuelson credible as he was the one that was with the appellant at the Route 30 and Colby Avenue incident. He was sincere and thorough in his testimony. He explained that he was not familiar with the protocols at the time of the incident. However, he noted that if that job was to have occurred today, the appellant would not be the only one sent to do the job. He would have another colleague or a supervisor with him. Samuelson stated that he was never electrocuted or that the intersection was dark for three minutes. I therefore **FIND** as **FACT** that Samuelson was not injured or electrocuted at the Colby incident. I further **FIND** that the intersection did not go dark for three minutes as reported in the FNDA.

I **FIND** the testimony of Peter Ortiz credible. He explained that as a crew supervisor he completed all the timesheets because he knew when the employees worked. He adamantly denied making any corrections to the appellant's timesheet on January 31, 2020. (R-20, R-21.) He explained how the timesheets are signed off by three persons; himself, Anderson and Bayous. The changed that was made, was done by Bayous to the timesheets as reflected in R-20 and R-21. I therefore **FIND** as **FACT** that Ortiz did not make the changes to the pay period end date of January 31, 2020.

I do not **FIND** Bayous or Anderson credible as to what occur with the three hours that was taken by the appellant and whether it was done without notifying his supervisor. Bayous testified that the appellant requested benefit time off but was advised that he did not have accrued time. In an email dated January 6, 2020, from Emily A. Hall in the

Bureau of Employee Relations, Bayous was asked who the electrical supervisor was the appellant spoke to, the morning of June 20, 2019, regarding the use of benefit time. Anderson was copied on this email as well. A response was noted from "Ron." However not sure if it came from Anderson, as there was no email address on top of the statement to identify who it actually came from. (R-13.) In this response it stated

The issue we have is the fact that Robert requested 1 hour originally and was told he had no benefit time, he took 3 hours without authorization and did not report it to me the following day or put it in a request in eCATS. Mr. Nguetsop was never given permission to leave work early that day by myself or any other supervisor in this department and never reported the absence to supervision when he returned to work the following day.

(R-13.)

The email chain also had a response from Billy Nees, who was asked to recall what happened on "the day in question." This email was dated March 10, 2020. In this email Nees recalled that he had worked with the appellant the morning and they both returned to the shop around 11:30 a.m. The appellant told him that he was going to leave early. Id. Anderson sent an email, dated March 11, 2020, to Emily Hall which states: "Good morning, Emily, I received Billy Neese's statement in regard to Robert's unauthorized leave on June 14, yesterday at the end of the day. If you have any further questions don't hesitate to ask." Id. Anderson reference June 14 as the unauthorized date, however the FNDA states it was June 20, 2019. In addition, Anderson testified that he could not recall what happened why he had to revise the timesheet on June 24, 2019. (R-17, July 15, 2022, transcript page 61.) He also testified that the defendant never took off without letting him know while under his supervision. him. This timesheet was also revised by Emily Hill on March 6, 2020, and by Richard Anderson on March 10, 2020. (R-17, R-18, R-19.)

I **FIND** the appellant credible. He testified that he was demoted at the time of the incident, and he was not the one that took the cabinet to the Route 30 location. I further

FIND him credible as to the Colby incident, wherein he testified that he always wore his protective gear and that three minutes is a long time for an intersection to be out and that was not the case.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The first issue is whether the respondent has proven the charges by a preponderance of the credible evidence. The second issue is whether the forty-five-working-day suspension was justified and reasonable if a charge or charges are sustained.

The New Jersey Civil Service Law protects classified employees from arbitrary dismissal and other onerous sanctions. Prosecutor's, Detectives and Investigators Ass'n v. Hudson County Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). The law provides relief to civil service employees from public employers who may attempt to deprive them of their rights. Prosecutor's, 130 N.J. Super. at 41. To this end, the law is liberally construed. Mastrobattista v. Essex Cty. Park Comm'n, 46 N.J. 138, 147 (1965). Consistent with this policy of civil service law, there is a requirement that in order for a public employee to be fined, suspended, or removed, the employer must show just cause for its proposed action. The Merit System Board is charged with the duty of ensuring that the reasons supporting disciplinary action are sufficient and not arbitrary, frivolous, or "likely to subvert the basic aim of the civil service program." Prosecutor's, 130 N.J. Super. at 42 (quoting Kennedy v. Newark, 178 N.J. 190 (1959)).

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 4A:2-6.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and

regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(11). If sufficient cause is established, then a determination must be made on what is a reasonable penalty.

In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. The concept of progressive disciplinary action is described in West New York v. Bock, 38 N.J. 500, 519 (1962). In Bock, the officer had received a thirty-day suspension and seventeen minor-disciplinary actions during eight years of service. The prior disciplinary actions and the suspension of thirty days were strongly considered in determining if the thirty-day suspension was warranted. A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522-24.

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 enumerated at N.J.A.C. 4A:2-2.3. The specific charges in this matter are that appellant is guilty of other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). Appellant is also charged with violation of NJDOT Guidelines for Employee Conduct and Discipline:

Section 2-H Failure to follow Rules, Regulations, Policies and /or Procedures

Section 5-A Willful Disregard of Safety Regulations/Provisions

Section 2-B Incompetency, Inefficiency, or Failure to Perform Duties.

Section 2-C Neglect of Duty

Section 1 A-1 Unauthorized absence

Section 1A,D Leaving Assigned Work Area without
Permission

Section 3-E,1 Falsification

[R-6, R-11.]

In an appeal such as this from a major disciplinary action the appointing authority has the burden of proving the charges upon which it relied 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); In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Jaeger v. Elizabethtown Consol. Gas Co., 124.

In the instant matter, the charges stem from three incident which this tribunal has designated as the cabinet incident, the Colby Avenue incident and time discrepancy. In the cabinet incident, it was alleged that the appellant was instructed to take a cabinet that was preassembled to the location where there was a damaged cabinet. The appellant's crew supervisor, Anderson testified that he instructed him to take a pre-assembled cabinet at 8:30 a.m. The next day Anderson was told that the appellant did not get to the location where the new cabinet was to be installed until 3:30 p.m. (Transcript at 37.) Regional Electrical Supervisor, Bayous, testified that the appellant was instructed at 9:00 a.m. to pick up a preassembled cabinet and deliver it to the job-site at 30 and Washington so it could be installed. Bayous testified that the appellant stayed inside the shop until 3:00 p.m. He then "dropped the cabinet off promptly at four o'clock, explained to the men on site that he couldn't stay to work overtime and got in his truck and went home. . ." (Transcript 97-98.) However, the appellant's supervisor Troth, testified that he was with the appellant, worked on the cabinet with the appellant, and they both loaded it onto a car or work truck, but the appellant was **not** the one that took the cabinet to the location. Having found the testimony of Troth credible and that of Anderson and Bayous not credible, I therefore **CONCLUDE**, that the respondent has not satisfied the burden of

proving by a preponderance of the credible evidence the allegations set forth in the June 17, 2019, incident.

As to the Colby incident which occurred on June 14, 2019, Anderson testified that he sent Samuelson out to drop off materials that the appellant had forgotten that were necessary to complete the job at Route 30 and Colby. He further testified that Samuelson told him that the appellant handed him live wires that were connected and as a result he was electrocuted. Bayous testified that it was reported to him that Samuelson was electrocuted and that the appellant had turned off the functional intersection light for two minutes without proper safety precautions in place. Samuelson testified that he was never electrocuted. He was the one that volunteered to assist the appellant. The intersection went dark for one second when they reconnect the wires. What was so important to Samuelson's testimony, was when he stated that if someone was doing the work that the appellant was asked to do, now, there would be a requirement for someone to be with him. This is a two person job. The question then becomes, why was the appellant alone working at the site, and then blamed for incompetence. I **CONCLUDE** that the respondent has not satisfied the burden of proving by a preponderance of the credible evidence the allegations set forth in the June 14, 2019, incident.

Regarding the discrepancy on January 18, 2020, timesheet, the appellant's supervisor, Ortiz testified that he puts in all the time for the workers as he is aware of the time they work. He did not make the changes to the June 18, 2020, timesheet and was only told by Bayous after the change was made. I **CONCLUDE** that the respondent has not satisfied the burden of proving by a preponderance of the credible evidence the allegations set forth in the time discrepancy of January 18, 2020, incident.

Regarding the June 20, 2019, the allegation is that the appellant requested one hour in benefit time to leave work early but he left work three hours early without notifying his supervisor. However, in the email chain, the appellant was noted to request time off with the supervisor and was advised that it would most likely be "W/O pay." (R-13.) His supervisor at the time was Anderson who did not recall why the timesheet was amended.

I therefore **CONCLUDE** that the respondent has not satisfied the burden of proving by a preponderance of the credible evidence the allegations set forth in the time discrepancy of June 20, 2019.

Since, the respondent failed to meet its burden as to any of the charges brought against Nguetsop I, therefore, **CONCLUDE** that no penalty shall be assessed.

ORDER

Accordingly, it is **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary Action of New Jersey Department of Transportation, against appellant, Robert Nguetsop on January 2, 2020, is hereby **REVERSED**.

It is **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary Action of New Jersey Department of Transportation, against appellant, Robert Nguetsop on June 25, 2020, is hereby **REVERSED**.

It is **ORDERED** that the fifteen-working-day suspension recommended by the respondent under OAL Docket No. CSV 01314-20 / Agency No. 2018-1841 is **REVERSED**.

Furthermore, it is hereby **ORDERED** that the thirty-working-days suspension recommended by the respondent under OAL Docket No. CSV 06684-20 / Agency No. 2021-85 is **REVERSED**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision

within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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



January 13, 2023
DATE

JOAN M. BURKE, ALJ

Date Received at Agency:

Date Mailed to Parties:

JMB/tat

APPENDIX

LIST OF WITNESSES

For Appellant:

None.

For Respondent:

Ronald Anderson, Assistant Regional Electrical Supervisor

Mark Bayos, Regional Electrical Supervisor

Billy Nees, Electrical Mechanic

Peter Ortiz, Crew Supervisor Electrical Operations

Keith Samuelson, Electrical Mechanic

EXHIBITS

For Appellant:

P-1 Appellant's letter brief, December 9, 2022

For Respondent:

R-1 Logbook: Rt. 30 & Colby/Grant (UPS replacement)

R-2 Logbook: Rt.40 & Washington Ave (Cabinet)

R-3 Appellant's training record

R-4 NJDOT Policy & Procedure: Discipline, October 3, 2016

R-5 NJDOT Policy & Procedure: Benefit Time and Leaves, July 1, 2008

- R-6 Final Notice of Disciplinary Action: #2019-146, January 2, 2020
- R-7 Preliminary Notice of Disciplinary Action: #2019-146, December 3, 2019
- R-8 Job Specification: Micro-Electronics Systems Technician
- R-9 E-Mail: Mark Bayos to Emily Hall, November 19, 2019
- R-10 Preliminary Notice of Disciplinary Action: #2019-297, June 4, 2020
- R-11 Final Notice of Disciplinary Action: #2019-297, June 25, 2020
- R-12 E-Mail: Mark Bayos to Emily Hall, February 20, 2020
- R-13 E-Mail: Ronald Anderson, Jr. to Emily hall and Mark Bayos, March 11, 2020
- R-14 NJDOT Highway Maintenance Management system daily work report, January 18, 2020
- R-15 Official reprimand, October 20, 2018
- R-16 Official reprimand finalization letter, November 16, 2018
- R-17 Timesheet, June 21, 2019
- R-18 Timesheet, approved in employee's absence, June 21, 2019
- R-19 Timesheet, approved in employee's absence, January 31, 2020
- R-20 Timesheet, approved in employee's absence, January 31, 2020
- R-21 Timesheet comments, January 22, 2020 - January 31, 2020
- R-22 Respondent's brief, December 9, 2022.