



STATE OF NEW JERSEY

In the Matter of Robert Clark,
Monroe, Police Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2020-1098 and
2020-1099
OAL Docket Nos. CSV 15108-19 and
CSR 14606-19
(Consolidated)

ISSUED: MAY 3, 2023

The appeal of Robert Clark, Robert Clark, Police Officer, Monroe, Police Department, 90 working day suspension and removal, effective November 1, 2017, on charges, was heard by Administrative Law Judge Susan G. Olgiati (ALJ), who rendered her initial decision on March 16, 2023. Exceptions were filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on May 3, 2023, adopted the ALJ's Findings of Facts and Conclusion and her recommendation to uphold the removal.

Upon its *de novo* review of the ALJ's thorough and well-reasoned initial decision as well as the entire record, including the exceptions filed by the appellant, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the witnesses. In this regard, 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 v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appellant 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. The Commission finds nothing in the record to question this determination or the findings and conclusions made therefrom.

Similar to its assessment of the charges, the Commission's review of the penalty is also *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 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, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 *N.J.* 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also, *In re Phillips*, 117 *N.J.* 567 (1990).

In this matter, the Commission agrees with the ALJ's recommendation to uphold the removal. While the appellant argues in his exceptions that progressive discipline should be applied, the Commission disagrees. In this regard, the ALJ stated:

Here, while I note that appellant, as reflected in his personnel file, engaged in certain commendable conduct, the respondent has amply demonstrated that appellant's actions herein demonstrate a total disregard for his duties and responsibilities as a law-enforcement officer and violate the public trust. His actions further demonstrate a complete lack of judgment, personal integrity, and dependability and are contrary to the high standards of good conduct required of a law-enforcement officer.

Accordingly, in light of the totality and seriousness of the sustained disciplinary charges, I **CONCLUDE** that returning appellant to his position as a police officer would be contrary to the respondent's interest in maintaining discipline and order within the police department and in maintaining the public's trust and confidence. Thus, I **CONCLUDE** that the penalty of removal is appropriate and should be upheld.

The Commission wholeheartedly agrees.

Clearly, the appellant's egregious misconduct in this matter warrants removal from employment. While the appellant had been employed for a lengthy period of time, with only minimal prior discipline¹, his actions in this matter fall well short of what is expected of a law enforcement employee and certainly are likely to undermine the public trust. As such, the Commission finds the penalty of removal neither disproportionate to the offenses nor shocking to the conscious.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending and removing the appellant was justified. The Commission therefore upholds those actions and dismisses the appeals of Robert Clark.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF MAY, 2023



Allison Chris Myers
Acting Chairperson
Civil Service Commission

¹ Similar to the ALJ, and utilizing the same reasoning, the Commission did not consider the 90 working day suspension decided in this matter as part of the appellant's past disciplinary history for purposes of determining the proper penalty for the removal matter. Regardless, the Commission agrees with the ALJ's assessment that the sustained infractions underlying the removal are egregious and warrant removal regardless of the appellant's past record.

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CSR 14606-19 and
CSV 15108-19

AGENCY DKT. NOS. N/A and 2020-
1028 *2020-1029*

**IN THE MATTER OF ROBERT CLARK,
MONROE TOWNSHIP (POLICE DEPARTMENT).**

Christopher Ross, Esq., for appellant Robert Clark (The Vigilante Law Firm,
attorneys)

Michael J. DiPiero, Esq., for respondent Monroe Township Police Department
(Brown and Connery, attorneys)

Record Closed: December 15, 2022

Decided: March 16, 2023

BEFORE SUSAN L. OLGATI, ALJ:

STATEMENT OF THE CASE

Appellant, Robert C. Clark (hereafter "Clark" or "appellant"), appeals the determination of the respondent, Monroe Township Police Department (hereafter "Monroe" or "Monroe PD" or "respondent"), removing him from his position as a police officer based on disciplinary charges arising out of four internal investigations alleging various and multiple conduct in violation of the New Jersey Administrative Code and of Monroe's rules and regulations. Appellant also appeals the determination of the

respondent suspending him for ninety days based on disciplinary charges and allegations arising out of a separate internal affairs investigation concerning his response to a March 6, 2017, motor-vehicle stop of his fiancée. Appellant denies the allegations, argues that Monroe has not met its burden of proof, and contends that the penalty of removal is not warranted.

PROCEDURAL HISTORY

On May 4, 2017, appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) seeking a ninety-day suspension based on charges and allegations arising out of Monroe's internal affairs investigation (IA-0811-17-0008) (R-30) of appellant's response to the March 6, 2017, motor-vehicle stop of his fiancée, Salina Singh.

On November 1, 2017, appellant was served with a second PNDA and suspended without pay due to multiple and various charges and allegations arising out of four other internal affairs investigations conducted by Monroe (IA-0811-17-0003, IA-0811-17-0024, IA-0811-17-0026, and IA-0811-17-0027). (R-71.)

On September 27, 2019, appellant was served with a Final Notice of Disciplinary Action (FNDA) arising out of the internal affairs investigation (IA-0811-17-0008) of his response to the March 6, 2017, motor-vehicle stop of his fiancée. (C-2.) The FNDA charged appellant with:

G.O.¹ 1:2 Rules and Regulations: Chapter 1:5-2 Code of Ethics, 3.1.3 Obedience to the Law and Rules, Chapter 3.1.8 General Conduct, Compromising Criminal Cases/Investigations, Chapter 3:11.5, Conduct Toward Public, and 3:3.5 Truthfulness G.O. 3:18 Mobile Video Recording Systems, Operation (in-Car Cameras) Chapter 3, Section E (2) and G (1) G.O. 5:8 Criminal Justice Information System, Security Provisions, Chapter 3 Section E, N.J.S.A. [sic²] 4A:2-2.3(a)6. Conduct unbecoming a public employee.

[C-2.]

¹ General Order

² The correct citation is to N.J.A.C.

The incidents giving rise to the charges were listed as:

On 3/6/17 at 1937 hours, case #17-8098, Officer Clark responded to a motor vehicle stop in the area of town which he was not assigned to patrol. He responded to the motor vehicle stop not to "backup" Officer D'Amico but to assist his fiancé [sic], Salina Singh because she called him on the cell phone when she was being pulled over.

This can be determined both in Officer Clark's statement and in the [mobile video recording (MVR)] footage when Ms. Singh is clearly heard telling someone the name of the officer that pulled her over, as Officer D'Amico approaches the vehicle. Officer Clark admitted that Ms. Singh called him when she was pulled over.

Salina Singh was operating a 2016 Chevy pickup truck registered to Officer Clark. She had a suspended driver's license and outstanding warrants totaling \$2,642.00.

Once on location Officer Clark asked Officer D'Amico multiple times if he would allow him to just park the truck on the side of the road and give Ms. Singh "professional courtesy." This interaction was also recorded on the MVR recordings and Officer Clark admitted to it in an interview.

At the motor vehicle stop Officer Clark acted inappropriately towards the public (Salina Singh) when he approached the truck and yelled at her for a short period of time. This was also recorded on the MVR and Officer Clark admitted to the interaction during the interview.

Officer Clark did not activate his MVR system or his overhead lights while on the motor vehicle stop. This is clearly evident in the MVR footage recovered from other vehicles present at the scene.

A database audit of [Criminal Justice Information Services (CJIS)] revealed that Officer Clark performed a full CJIS inquiry on Salina Singh on two (2) separate occasions 11/29/2015 and March 15, 2016. An interview with Officer Clark confirmed that the inquiries were for personal reasons and not related to any criminal investigations.

A database audit of Pro Phoenix revealed that Office Clark performed multiple inquires of events related to Salina Singh

since 2/21/2016. An interview with Officer Clark confirmed that the inquiries were for personal reasons and not related to any criminal investigations.

This is the second time within the last 12 months Officer Robert C. Clark was alleged to have [sic] his status as a sworn law enforcement officer to intervene on behalf of himself and/or a friend.

[Ibid.]

The penalty imposed for these charges and allegations was a ninety-day suspension.

On September 27, 2019, appellant was also served with a second FNDA arising out of internal affairs investigations IA-0811-17-0003, IA-0811-17-0024, IA-0811-17-0026, and IA-0811-17-0027 (C-3), charging him with the following:

N.J.A.C. 4A:2-2.3(a)6—Conduct Unbecoming a Public Employee, General Order 1:2 Rules and Regulations Chapters 2:13 and 3:13³—Obedience to Law and Rules (relating to Monroe IA-0811-17-0027).

IA-0811-17-0003: General Order 1:2 Rules and Regulations Chapter 2:1.3 Police Officers, General Order 1:2 Rules and Regulations Chapter 3:1.3 Obedience to Law and Rules. General Order 1:2 Rules and Regulations Chapter 3:1.3 Withholding Information and N.J.A.C. 4A:2-2.3(a)6—Conduct Unbecoming a Public Employee.

IA-0811-17-0024: General Order 1:2 Rules and Regulations Chapter 3:6.1 Alcoholic Beverages and Drugs and N.J.A.C. 4A:2-2.3(a)6—Conduct Unbecoming a Public Employee.

IA-0811-17-0026: General Order 1:2 Rules and Regulations Chapter 3:7-11 All Other Conduct and N.J.A.C. 4A:2-2.3(a)6—Conduct Unbecoming a Public Employee.

[C-3.]

³ Citation to rules and regulation chapters appear to be in error, correct citation appears to be chapters 2:1.3 and 3:1.3.

The incidents giving rise to these charges were listed as:

On 8/5/17, Clark was accused of theft of appliances from his landlord. These appliances were listed by Clark on Craig's List [sic] for sale. (Monroe IA-0811-17-0027).

IA-0811-17-0003: On 1/30/2017 a complaint was received that Officer Clark was abusing prescription medications and obtaining them illegally. This case was investigated by GCPO then turned over to Monroe PD IA. Multiple complaints and witnesses came forward during this investigation reporting that Officer Clark had some involvement with improper use of prescription medication. Communication [sic] between Officer Clark and Megan Barger, which were captured, revealed Officer Clark solicited Megan Barger for Percocet. Those same communications revealed that Officer Clark was made aware of a crime committed by Megan and Officer Clark failed to act or report said crime.

Statements by multiple witnesses indicated that Officer Clark traveled to Lindenwold and/or Pine Hill with Robert Marzi and Salina Singh. He stated that he did not participate in the purchase of illegal drugs, however marijuana was purchased, Officer Clark transported Marzi and Singh to his home with marijuana in his vehicle.

Officer Clark admitted to selling his personal handgun illegally to an unknown male that he met online. Officer Clark could not remember where he met the male to sell the handgun and did not process the paperwork required by law. Officer Clark admitted that he used the [sic] illegal drugs prior to being hired as a police officer which contradicts statements he made on his employment application.

IA-0811-17-0024: On August 1st, Officer Clark was ordered to submit to a reasonable suspicion drug test. New Jersey State Toxicology reported Officer Clark tested positive for Oxymorphone on August 17, 2017. Office Clark was last prescribed this medication on 5/31/2016, approximately 14 months prior to the drug test. Officer Clark was also prescribed Percocet earlier that year. Officer Clark had oral surgery on 7/31/2017. At that time he was prescribed medication that would not be responsible for the positive test. NJS Lab confirmed that Officer Clark listed Percocet on his medication sheet which is consistent with the positive test for Oxymorphone. During an interview with Officer Clark he stated that his oral surgeon approved him to take Percocet from his 2016 prescription. Personnel at the doctor's office

denied the conversation and had no record in Officer Clark's chart.

IA-0811-17-0026: On July 28, 2017 at approximately 1330 hours, Officer Clark was an involved party in a dispute in Bellmawr NJ. The dispute was described as "heated" in nature and in public view. During the dispute Officer Clark was found to be violating local/state traffic laws, specifically by driving against the flow of traffic, causing a hazardous condition. Officer Clark improperly identified himself as an "off duty" police officer and produced a police badge, knowing that he was not permitted to do so while he was currently on suspension from duty, and he was required to turn in all police badges/insignia that would allow him to do so, Officer Clark had in his possession, in an unsecured center console of his vehicle, his off duty firearm, OC spray and an expandable baton. Officer Clark transported his weapon improperly, having no legitimate purpose to have the weapons in the vehicle. He admitted to not travelling to or from a range at the time.

[ibid.]

The penalty imposed for these charges and allegations was removal effective November 1, 2017.⁴

Appellant waived his right to a departmental hearing on all charges and requested a hearing in the Office of Administrative Law (OAL). On or about October 10, 2019, the appeal of his removal (CSR 14606-19) was filed at the OAL for a hearing as a contested case. N.J.S.A. 40A:14-202(d). Thereafter, on or about October 24, 2019, the appeal of appellant's ninety-day suspension (CSV 15108-19) was transmitted to the OAL for hearing. N.J.S.A. 52:14-1 to -15; N.J.S.A. 52:14F-1 to -23.

On or about November 4, 2019, appellant provided written confirmation of his waiver of rights under N.J.A.C. 4A:2-2.13(g) concerning the issuance of a final agency decision within 180 days of his appeal.

⁴ November 1, 2017, is the date of appellant's suspension without pay. (See R-71.)

A hearing on the removal charges was scheduled to begin on March 31, 2020. However, due to the State shutdown caused by the COVID-19 pandemic, the hearing was adjourned.

Thereafter, the parties agreed that appellant's suspension should be placed on the inactive case list pending outcome of the hearing on his removal, and on August 26, 2020, an Order of Inactivity was issued by the undersigned.

On November 3, 2020, appellant filed a Motion in Limine and a Motion for Summary Decision.⁵ Respondent filed opposition in response to the motions. On December 3, 2020, oral argument was held on the motions, and for the reasons placed on the record, the undersigned issued an Order denying the motions.

Additional hearing dates were adjourned based on ongoing pandemic restrictions preventing the in-person hearing jointly requested by the parties. The matter was rescheduled and held on April 19, 2022, May 2, 2022, and June 13, 2022. At hearing, the parties requested and agreed that despite the prior Order of Inactivity in the suspension matter, the removal and the suspension matters (CSR 14606-19 and CSV 15108-19) should be heard together. As a result, the matters were consolidated for purposes of hearing.

At hearing, appellant renewed his motion regarding respondent's hearsay evidence, and the motion was denied.

Following the hearing, the record remained open to allow the parties to obtain transcripts and submit written closing arguments. Upon receipt and review of the parties' closing arguments, oral argument was scheduled and held on November 21, 2022, to address the various legal arguments raised by the parties. Upon receipt of clarifying information requested by the undersigned, the record closed on December 16, 2022.

⁵ The Motion in Limine sought to exclude certain hearsay evidence to be presented by respondent. The Motion for Summary Decision sought dismissal of charges arising out of IA-0811-17-0024, arguing that respondent lacked reasonable suspicion to require appellant to submit to a drug test.

By Orders of Extension, the time for filing this Initial Decision was extended until March 16, 2023.

FACTUAL DISCUSSION AND FINDINGS

Undisputed Facts

A review of the record reveals that the following is undisputed. Accordingly, I **FIND** as **FACT**:

Appellant began his employment as a Monroe police officer in approximately 2005.⁶ He remained working in this position for approximately twelve years.

In or about 2017, appellant was the subject of five separate internal affairs investigations arising out of conduct and various allegations of conduct occurring approximately throughout 2015–2017.

Based on the disciplinary charges arising out of the internal investigations, appellant was suspended and thereafter removed from his employment effective November 1, 2017.

Testimony

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

For respondent

John McKeown is a former Monroe chief of police. He served in this position for six years. He was familiar with appellant and described him as performing “average,” “unremarkable” police work. In 2016 there was a change in appellant’s behavior that led to a series of internal affairs investigations. In January 2017, Monroe police officer

⁶ Based on a review of the documentary evidence it appears that appellant completed his police academy training in December 2005. (R-75.)

Michael Matkowsky filed an internal affairs complaint concerning possible unlawful drug use by Clark. During that internal investigation, Monroe sought and received permission from the Gloucester County Prosecutor's Office (GCPO) to conduct a reasonable-suspicion drug test of Clark. Additional allegations and investigations of Clark followed.

During a March 6, 2017, motor-vehicle stop of Clark's fiancée, Salina Singh, Clark requested a "professional courtesy," meaning that she was not to be taken into custody. The request was not appropriate. There were also allegations that Clark told other officers that Singh was "off limits" or "untouchable," meaning that she was not to be arrested or stopped.

On or about July 28, 2017, McKeown was referred a call from the Bellmawr Police Department (PD) inquiring about Clark's employment status in connection with a traffic stop of Clark that was described as a "rolling domestic." McKeown was advised that Clark identified himself as a police officer and there was a concern about the badge he presented. Clark was serving a suspension on the date of the stop. Consistent with the suspension, Clark's department-issued firearm, badge, and identification would have been confiscated. At the time, he was not permitted to represent himself as a police officer.

The sergeant also advised that Clark had a firearm in the center console of his car and that they also found a police baton and can of OC (pepper) spray.

There was also an internal investigation of Clark's use of criminal information databases to conduct "look-ups" of his fiancée for personal rather than official-use purposes.

On cross-examination, McKeown confirmed that Clark did not receive any citations in connection with the Bellmawr traffic stop. The decision to issue citations was left to the jurisdiction of the Bellmawr PD. McKeown did not ask the responding officers to take Clark's weapon.

Stephen Farrell is a former Monroe deputy chief of police. As such, he was a supervisor of internal affairs investigations. He testified that there was a lengthy criminal investigation with the GCPO concerning Clark's possible use and/or purchase of drugs. The prosecutor's office returned the case to Monroe for an administrative investigation. Farrell participated in the department's reasonable-suspicion drug test of Clark. Clark had to be tested twice because he failed to properly follow the instructions for sealing the specimen container. As a result, he had to submit another sample. Clark voluntarily submitted to the drug test. The results of the drug test came back positive for Percocet.

Michael Matkowsky is a Monroe police officer and has worked there for six years. He testified that in January 2017 he had a conversation with Sergeant McBride concerning information he had been hearing about Clark. It was an "everyday occurrence" at the briefings that officers would hear a "new story" about Clark. He heard that Clark went to Lindenwold with Officer Robert Marzi and bought prescription drugs. He also heard that Clark told other officers that Singh was "off limits."

Matkowsky also witnessed Clark's car parked at the municipal court and saw him go with Salina Singh, who was a defendant, to the back of the court, where the prosecutor was located. Matkowsky thought that was a conflict of interest.

On cross-examination, Matkowsky confirmed that he had no firsthand knowledge concerning the allegations of Clark going to Lindenwold to buy drugs. He also acknowledged that he did not witness Clark speak with the prosecutor while in court with Singh. He further acknowledged that Clark never told him that Singh was "off limits."

Gene Sulzbach is currently the Monroe deputy chief of police. In January 2017 he was a detective assigned to conduct several of the internal affairs investigations of Clark.

IA-0811-17-0003

Officer Matkowsky filed a complaint that included criminal allegations of use and possession of CDS (controlled dangerous substance). (R-1.) Sulzbach worked

concurrently with the GCPO on the investigation. The administrative case was superseded by the criminal investigation.

During the investigation, Sulzbach and detective Stacy Lick of the GCPO conducted many interviews. The investigation took approximately one year because new information and complaints came in.

In addition to interviewing Matkowsky, they also interviewed and took a recorded statement of Officer Roy Pierson. Pierson's recorded statement was played at hearing. (R-11.) In his recorded interview, Pierson advised, among other things, of an incident when A. Latino, a prisoner he was transporting to the hospital, mentioned that Clark was using "Oxy 30s." Pierson also advised of information he overheard about a trip Clark took to Lindenwold with Robert Marzi. He also advised of an incident that occurred during his first year on the job involving Clark's alleged actions during a stop of an individual, P. Panarello, at a gas station.

Pierson also mentioned Q. Barnett, an individual who made a complaint in 2016 about a Monroe police officer using drugs. Monroe opened an internal investigation based on Barnett's complaint, but the officer was never identified.

During the investigation, Sulzbach and Lick interviewed Barnett about his prior complaint. He immediately identified Clark as the subject officer of his complaint. Barnett claimed that he sold Percocet to Clark in the past.

They also learned of statements made by K. Federici, during her arrest by Officer Shipley, about Clark's alleged use of prescription drugs. Portions of the video of her arrest was played at hearing. (R-81.)

Sulzbach and Lick determined that Federici's allegations required investigation, and through the prosecutor's office requested a "consensual" investigation with Federici. They attempted to get Clark to ask Federici for "Percs," as Federici claimed he had done in the past, but it did not "pan out." They obtained screen shots of Federici's communications with Singh and Clark that were included in the investigation. (R-15.)

Also during the investigation, a Monroe business owner contacted the department to advise that she continued to see Clark's police car parked behind the pizza shop near her business. She was concerned about possible criminal activity, but provided no evidence that Clark had violated any laws. Nothing came of that allegation.

Megan Barger, Salina Singh's sister, was another person interviewed during the investigation. Her recorded interview and statement were played at hearing. (R-16a.) Screen shots of June 2015 Facebook messages between Barger and Clark concerning Percocet and marijuana were included in the investigation and introduced at hearing. (R-7.)

Additionally, Barger made claims concerning Clark's sale of his handgun. These claims were also investigated. Clark did not provide Monroe with the bill of sale for his handgun. As the gun seller, it was incumbent on him to complete the purchase form.

Clark was also interviewed during the investigation. Portions of Clark's recorded statement were played at hearing. (R-16b.)

IA-0811-17-0008

Sulzbach was assigned to a second internal affairs investigation of Clark concerning his response to a March 2017 motor-vehicle stop of Singh. She was pulled over by Monroe police officer Anthony D'Amico. Clark was working at the time and chose to respond to the scene.

Portions of the dashcam/MVR footage of the incident from Officer D'Amico and Officer Marino (another responding officer) were played at hearing. (R-32; R-33.) D'Amico muted his microphone during the incident when he was speaking with Clark. That is not allowed. D'Amico received counseling/discipline regarding his actions. At the time of the stop, D'Amico asked Sergeant McBride to come to the scene. He was uneasy with Clark being there.

Clark told Sulzbach that he responded to the scene as the backup officer. He also said that Singh had called him, but that he did not answer her call.

As part of his investigation, Sulzbach also discovered that Clark was using the CJIS and Pro-Phoenix criminal databases to conduct “look-ups” for personal reasons. Clark admitted that he conducted look-ups of “tags” of people going to his father-in-law's house. This type of use is not permitted.

IA-0811-17-0024

Sulzbach was assigned to a third internal affairs case of Clark. This investigation was a culmination of the other cases—particularly IA-0811-17-0003. Based on the information learned from the other investigations and on general work-related issues, they decided to apply for a reasonable-suspicion drug test of Clark. The request was discussed with the chief and a letter was sent to the prosecutor's office. (See R-34; R-37.)

Sulzbach administered the August 2, 2017, reasonable-suspicion drug testing of Clark and Chief Farrell acted as a monitor. Portions of the video of Clark's drug test were played at hearing. (R-82.) During the testing, Clark failed to follow the instructions regarding placing his identification number in the sealed specimen container. As a result, he had to provide another sample. Clark tested positive for oxymorphone, which is consistent with Percocet use. (R-39.) Once Clark tested positive, they had to determine whether he listed the Percocet on his drug sheet and whether it was legally prescribed to him at the time. The lab confirmed that Percocet had been listed. Clark was instructed to have his prescribing doctors contact Monroe. Dr. Eslami, the doctor with whom Clark most recently treated, did not prescribe him Percocet. (R-47.) Clark saw Dr. Hofstetter the previous year. (R-46.) Clark claimed he was told by one of the women at Dr. Eslami's office that he could take the Percocet previously prescribed to him in 2016 by another doctor. Sulzbach contacted Dr. Eslami's office to verify Clark's claims. The office advised that they would not have given Clark permission to do so and had no record of the request in his chart. Percocet was the only drug detected in his lab report. (R-44.) Thereafter,

Clark was suspended/placed on paid administrative leave pending the outcome of the investigation.

Sulzbach conducted a recorded interview of Clark on October 11, 2017, regarding his positive drug test. (R-83.) Sulzbach reinterviewed Clark on October 19, 2017, regarding his claim that he received permission from Dr. Eslami's office to use the previously prescribed Percocet. (R-84.) Thereafter, a new allegation was brought against Clark for conduct unbecoming relating to his untruthfulness during the interview.

On cross-examination, Sulzbach acknowledged that officers interviewed had no firsthand knowledge of Clark's "Lindenwold trip," but had only heard rumors regarding same.

He also acknowledged that certain information had been left out of Detective Lick's March 2, 2017, report regarding the interview of Q. Barnett. The missing information included that Singh ended a relationship with Barnett and began dating Clark, that Barnett was mad at Singh for leaving him, and that Barnett allegedly made up the report of Clark's drug abuse out of anger.

Sulzbach also acknowledged that he incorporated into his investigation report Detective Lick's summary of text messages between K. Federici and Clark. He agreed that Lick's use of the text messages was not "100 percent accurate." He also acknowledged that the consensual intercept with Federici did not result in Clark buying any drugs.

Regarding the charges and allegations relating to Clark's sale of his handgun, Sulzbach acknowledged that Clark did not admit to "illegally" selling the handgun. Rather, that was the conclusion Sulzbach reached as result of his investigation.

Roy Pierson has been a Monroe police officer since 2014. He gave a recorded statement in connection with the internal investigation of Clark. Portions of his recorded statement were played at hearing. (R-11.) He testified about the statements made to him by A. Latino concerning Clark's alleged use of Percocet.

Pierson also heard rumors at a shift dinner about Clark and another officer going to another town to try to buy pills.

Pierson was familiar with Salina Singh. He believed that he had arrested her.

Clark approached him in the patrol room and advised that he was dating Singh and that she was "off limits." Pierson understood that to mean that he was to try not to stop her, or write her up, to "give her a break."

He also testified regarding an October 31, 2015, arrest/wellness check of a pedestrian, P. Panarello, and another individual. During the stop, Clark took Panarello into the bathroom. When they came out, Clark advised that she had given him pills and he asked what they wanted to do regarding charging her or destroying the pills. Pierson thought it was "a little strange." He wrote a report regarding the arrest of Panarello's companion. He did not include Clark's bathroom incident with Panarello in the report, because it was a "chain-of-evidence" issue. Pierson did not witness the incident. If Clark wanted to charge Panarello with possession or take possession of the pills, Clark should have prepared a supplemental report.

On cross-examination, Pierson confirmed that he reported Latino's statements to his supervisor at the time they were made, but that he did not make a complaint to internal affairs.

He further confirmed that he had no personal knowledge of Clark traveling with another officer to buy pills.

John McBride is a police officer in Monroe. He was the supervisor on duty the night of Singh's March 2017 motor-vehicle stop. He was asked to respond to the scene. Singh had a suspended license and outstanding warrants. Clark's request for a "courtesy" was not appropriate. McBride told Clark that he should not be at the scene, and told him to leave.

He described Clark as a “good guy.” He was a good officer who had a “good touch” with the public. He never “really” gave his supervisors a hard time. At a certain point, however, Clark had some issues that arose. McBride had some concerns regarding Clark and his family. He wanted Clark to maintain his level of performance, and “normalcy.” McBride was also concerned about the public and the other officers on the squad. Clark told McBride about the rumors of him abusing narcotics. Clark was concerned about the rumors affecting his job. He felt people were out to get him because of his relationship with Singh.

On cross-examination, McBride confirmed that upon his arrival at the scene, Clark did not attempt to thwart Singh’s arrest and complied with his orders. He also confirmed that from the public’s perspective, the incident would have looked like a normal traffic stop.

He was aware that Clark was going through a divorce in or about 2015–2016 and that his ex-wife had relatives in the department. He was also aware that Clark had bariatric surgery around the time same and that Clark looked “skinnier” as a result.

Stacy Stockdill testified that she worked for Dr. Hofstetter, D.D.S., for twenty years. She confirmed Clark’s prescriptions from Dr. Hofstetter. (R-46.) At their office, a patient’s request for a medication change would be documented in the patient chart. She never authorized a medication change without the doctor’s permission. She did not recall any instance in which Dr. Hofstetter approved a patient’s phone request to take Percocet that had been prescribed the year before.

Hannah Wszelaki has worked for Turnersville Family Dentistry for nine years. She testified that she primarily works for Dr. Eslami. She never approved a patient’s request to change medication without the doctor’s approval. She confirmed Clark’s records relating to his July 31, 2017, tooth extraction. (R-47.)

She did not recall receiving a phone call from Clark. She explained that if a patient called their office requesting a medication change, the patient would be placed on hold while the doctor was consulted directly. A request for a medication change would be

noted in the patient's chart. Upon being contacted in connection with the internal investigation, Wszelaki checked with her coworkers and confirmed that they had not spoken with Clark about a request for a medication change. There was nothing in his chart reflecting such a request or permission given for same.

Anthony Canonica is a retired Monroe detective. He testified that he was assigned to the internal affairs investigation of Clark's traffic stop/"rolling domestic" in Bellmawr. On the date of the stop, Clark was on administrative leave/suspension, where officers are required to turn in all their department weapons and identification. He was not allowed to have his badge at that time and not permitted to hold himself out as an officer. While on administrative leave/suspension, officers retain the same right to carry a weapon as other citizens. An individual may transport a weapon in their car if they are going to a certified gun range or going from one of their residences to another, but there are certain restrictions. Clark's transportation of his weapon in the passenger compartment of his vehicle while on administrative leave was a violation of department policy. During the investigation, Clark told him that he didn't realize the weapon was in his car. He said he was in the process of moving out of his rental home.

Canonica was also assigned to the internal investigation of Clark's alleged theft of appliances from his landlord, Shane Papson. As part of the investigation, Canonica was provided with social-media posts showing that the missing items were listed for sale on Craigslist under an account using Clark's name and phone number.

Kevin Stinger is a Bellmawr police officer. He testified regarding his involvement in the July 2017 traffic stop of Clark. Stinger was dispatched to assist Detective Stires of the Brooklawn Police Department (PD) with what Stires described as a "rolling domestic." When Stinger arrived at the scene, Clark's vehicle was on the wrong side of the road—in the opposing lane of a very busy intersection. There was a question about Clark's badge so he called Monroe. Monroe's Human Resources office confirmed that Clark was a police officer, but could not provide any additional information regarding his status. Stinger's supervisor, Sergeant Marrone, handled the rest of the communications with Monroe. Clark received no charges in connection with the stop.

On cross-examination, Stinger confirmed that when he arrived on scene, Clark was parked up against the curb in the opposing lane of traffic. He was off to the farthest side of the lane, but there was not enough space to drive two vehicles in the lane. Passing cars had to go into the opposite lane. Stinger further confirmed that during the stop he arrested an individual who was traveling with Clark, and that Clark did not prevent him from doing so.⁷

During the hearing, at the undersigned's request, Stinger prepared a drawing depicting the scene of the July 2017 traffic stop and the location of Clark's car. (C-1.)

John Marrone is a Bellmawr police officer. He testified that Bellmawr was dispatched to the scene by Detective Stires of the Brooklawn PD. Clark's vehicle was facing east in the westbound lane. The area where Clark's car was stopped is very busy. The positioning of his car caused a traffic hazard because it is a two-lane road and his car was "kind of" blocking the entrance to Route 42. Marrone gave a recorded statement in connection with the internal investigation. Portions of his recorded statement were played at hearing and he agreed to the accuracy of same. (See R-57b.) Clark advised that he was a Monroe police officer and was on suspension. He showed a badge but had no identification. Clark advised that he was off duty. His weapon was in the armrest/center console—the type that "you can lift up and reach in." Clark's weapon was unloaded and the "ammo and magazine" were in the back. The OC spray and baton were also in the center console. Marrone spoke with Chief McKeown and made sure it was okay for Clark to have his weapons. Clark was cooperative during the stop and did not ask for courtesies or favors (Ibid.)

On cross-examination, Marrone confirmed that he did not see Clark "flash" his badge. He also acknowledged that Chief McKeown had no problem with Clark getting his weapon back.

John Stires is currently a retired Brooklawn detective. He testified that on the date of the July 2017 traffic stop he was coming off of Route 42, and saw a car driving

⁷ The investigation report provides that during the stop, Stinger became aware that Clark's passenger Salina Singh had outstanding warrants, and that she was taken into custody without incident. (R-53 at 4.)

against traffic. A woman was outside of the car and it looked like she and the driver were engaged in a verbal dispute. His recorded statement was played at hearing and he was in agreement with same. (R-56a.) In his recorded statement, Stires said that the driver was holding a wallet with a badge out of the window. He contacted Bellmawr for assistance and advised that the driver was "badging" him. The badge was disheveled. He thought the driver might be impersonating an officer. He asked for identification, but the driver said he did not have any. "Towards the end," the driver said he was suspended. Stires asked if he had a weapon and the driver said that he did. Officer Marrone of the Bellmawr PD retrieved the weapon from the car. It was unloaded. A woman passenger was taken into custody due to numerous traffic warrants.

On cross-examination, Stires acknowledged that Clark did not ask for any "courtesies or favors."

Shane Papson testified that he knew Clark from high school. Clark called him and asked if he, or anyone he knew, had a house for rent. Papson was in the process of purchasing his parents' home and was planning on renting his house, but was not quite ready to do so. When Clark contacted him, he decided to adjust his schedule. He talked with his parents to see if they would move sooner so that Clark could move in and Papson would not have to put his house on the market. He and his family lived in a camper for three months until his parents' house was ready for them to move in.

Papson had a month-to-month rental agreement with Clark. (R-67.) The rental came with a refrigerator, microwave, stove, and washer and dryer that were to remain in the home. Clark could not keep up with his rent payments. Clark was behind a month or so and was looking to move. He was supposed to move out before July 1, 2017. Papson offered that if Clark left by mid-July, he would not charge him for the month. Papson called Clark a few days later and found out he was still in the house. Papson offered to help Clark move because he wanted to get another renter. During the walk through, Papson noticed that the refrigerator was missing. He believed Clark said it broke. The washing machine that he had purchased approximately the year before was also missing. He believed that Clark said that it was also broken. They moved through the house quickly because he wanted Clark out. As they were pulling out of the driveway, Papson

called his father to have the locks changed. Thereafter, he called the police to report the thefts. The Internal Affairs Complaint form signed by Papson on August 5, 2017, accurately represented his complaint against Clark. Pictures of Papson's kitchen and his missing appliances, listed for sale, were posted on Craigslist. (R-69.) Papson's recorded internal affairs interview was played at hearing. (R-73b.) Papson did not give Clark permission to remove the refrigerator or washing machine. Clark moved out of the house on August 4, 2017. He did not pay his July rent.

On cross-examination, Papson denied that at the criminal trial he testified that the issue of the missing appliances was just a misunderstanding between Clark and him.

For appellant

Robert Clark testified that during his employment with Monroe he served in special positions including, for approximately five years, as a field training officer responsible for training new recruits. He also participated in the police Explorer Program.

In approximately 2016–2017, Clark was going through a divorce and, as a result, experiencing financial difficulties. His ex-wife was related to other officers in the department. Her brother and father were sergeants at the time of his suspension. Her brother later became the chief of police. Following the divorce, Clark was treated differently in the workplace. He began dating Singh in approximately February 2016. Singh's family was known to the department before they started dating. He looked up Singh's criminal history and found only charges of driving while suspended. He felt that the other officers judged him for his relationship with Singh. He believed that his discipline was "ratcheted up" because of his divorce and relationship with Singh.

During 2016–2017, his physical appearance changed because he had stomach-sleeve surgery. He lost a significant amount of weight. He recalled hearing rumors about him abusing prescription medication. He has never abused or illegally obtained prescription medication.

Clark was questioned by Detective Sulzbach about taking a “hit” of a marijuana joint prior to his police application process. He acknowledged that he took a “puff,” but his father received information from another Monroe detective that he should not say anything and move on.

Regarding allegations relating to his trip to Lindenwold with Robert Marzi (and Singh), he explained that he did not go there to purchase drugs. They were talking about getting some “weed.” He asked to be let out of the car. They were telling him he was being too paranoid. He left because he was really upset. It wasn’t something to be joked about. He did not see any drugs and did not confirm that any drugs were purchased. He later learned they were just “messing around” with him.

To his knowledge, Singh did not abuse prescription medication. Singh had spinal surgery when she was young. When they first started dating she was on “pain management.” When all the rumors started about him, Singh even dropped her pain management so there would be no question about it. (T3, 17:11–18.)

He denied the allegations regarding the Panarello stop, and denied the allegations made by Latino, Barnett, and Federici. He locked Federici up several times on “DWI” charges. He also claimed that prior to this administrative hearing he received a text from Federici in which she called him a “piece of shit.”

Regarding the allegations that he illegally sold his handgun, Clark testified that he filled out the proper paperwork but lost it during the move. There was a lot going on during the time of his move. He had the Bellmawr stop and his car was repossessed. He received no training on the proper procedures for selling a weapon. He had no idea he could be selling it illegally.

He was “written up” quite a bit around the time of his divorce and when he began dating Singh. He was written up for the Bellmawr stop. When he was threatened with being charged with a handgun violation, he “made sure that [he] got rid of anything [he] had.” He made sure the guy to whom he sold his gun was a correction officer.

On the date of the July 2017 Bellmawr traffic stop, Clark had a loaner car and was going to buy another car. He and his mother had a disagreement. She got out of the car and walked across the street. He pulled over and was talking with her when the police arrived. His weapon was unloaded and locked in the center console. He did not "flash" a badge during the stop. The badge he had belonged to his father, a retired Monroe police officer. The badge was with a bunch of boxes in his car. He told the responding police that he was not identifying himself as an officer and that he was suspended. The only reason the issue came up was because he told them he had a weapon.

Megan Barger is Singh's sister. He knew her prior to his relationship with Singh. Barger is known to the department as an informant. His text message/comment to Barger about Percocet was made in a "joking context."

Regarding his July 31, 2017, tooth extraction, his doctor gave him medication that made him sick. He called the doctor and said that he still had an old prescription for Percocet, which did not make him sick, and they said it would be okay to take it. That was the only Percocet that he took.

Regarding the allegation of theft of appliances, Clark had a friendly relationship with Papson. He called Papson around the time of his divorce. Papson said he was thinking of renting his home and asked Clark if he wanted to rent it.

During the (move-out) "walk through" of the house, Papson said he felt bad about Clark's divorce and gave him bedroom sets, furniture, mattresses, a TV stand, a couch, and a love seat. Papson said he had newer appliances at his parents' house and that Clark could keep the washer and dryer. The refrigerator in the rental home broke. Singh's uncle, whose name he could not recall, tried to fix it but it was "shot." The washer broke before the refrigerator and Papson told him he could do whatever he wanted with it because he had given it to him. Later, Papson said that his wife was giving him a hard time and asked for the washer back. Clark did not understand why he was criminally charged with theft. He wanted to contact Papson to make things right. He felt bad about the misunderstanding. Papson was generous to him.

Regarding, the motor-vehicle stop of Singh, Clark was assigned to an area north of Washington Avenue. He responded to the stop because he knew that Officer D'Amico was alone. He first realized that Singh was the subject of the stop when he pulled up and saw his truck. He did not answer Singh's call prior to responding to the scene. Clark was angry with Singh because she knew "not to do that"—especially in his truck. He asked for a courtesy, but did not ask that she not be issued a summons. He only wanted to be allowed to pay Singh's warrants. He did not want her to be arrested in front of her children. After the stop, Clark was constantly pulled over in Monroe and he felt harassed.

Singh told Clark of an incident in which Officer Pierson touched part of Singh's "female anatomy" during a pat down. She claimed that Pierson threatened to arrest her if she told anyone. Clark asked Pierson about the incident, and he got defensive. After that, they "parted ways."

On cross-examination, Clark explained that he received only one prior suspension. It was for two days—during the time of his Bellmawr traffic stop.

During his recorded interview, he advised about Singh "getting off of pain management." He also told Sergeant McBride, Lieutenant Rebecca, and Lieutenant Sulzbach about this. There were some things that Sulzbach did not put on the record. Clark told Sulzbach that Singh went off of pain management to protect him and his career. He found out there were a couple of times that Singh tried to get "some" from family because she could not deal with the pain, but "we stopped that from happening." (T3, 63:8-13.)

Clark did not file a complaint regarding Singh's allegation of being inappropriately touched by Pierson. Singh did not want to file a formal complaint, and he addressed the incident with Pierson directly.

It was not appropriate for Singh and Marzi to joke about buying drugs, because Clark was a police officer. He told them he did not want any part of it and did not want to hear about it.

He explained that he joked with Barger about wanting Percocet for his hip because she was an informant. He tried to talk like the informants to make them more comfortable in speaking with him.

Regarding the sale of his personal weapon, he previously sold one of his weapons and spoke to the range master about the process. He was not permitted to talk to anyone in the department when he later sold his other weapon. He was written up every time he spoke to someone. He acknowledged that he could not recall the name of the correction officer who bought his gun. He did not recall where the correction officer worked, or how he came into contact with him.

Regarding the theft of appliances, Clark explained that he does not use Craigslist. He acknowledged, however, that the pictures posted on Craigslist depicted the inside of the house he rented from Papson. Clark does not know who sold the appliances.

Regarding his response to Singh's motor-vehicle stop, he missed the call Singh made to him. He thinks she said she was talking to her father at the time. He did nothing to impede Singh's arrest once he was informed that a courtesy would not be extended.

He explained that he conducted "look-ups" of Singh only. The look-ups he conducted on her father and sister were done in connection with prior investigations. He looked up Singh to dispel the rumors about her. He told his sergeant and the chief about it right away. He acknowledged that it was not proper. He offered that earlier in his career he had arrested Singh on a traffic warrant.

Documentary/Audio-Visual Evidence

Facebook messaging between Megan Barger and Clark, on or about June 29, 2015, consists of the following conversation:

Clark⁸: Ummm perc?

Barger: Lol no luck i was trying to find sum myself too. Im home now but prob can find some tomorro

Clark: Lol

Barger: Salinas goin to get teeth pulled at 8am so hopefully she gets sutin ill let u kno. She might not tell me cuz shes a greedy bitch but I told her ill but some

Clark: Lol. Ok. Listen I'm not working but I could go for some perc 15's. I'm in pain. Lol Got my kid here. Did you get a missed call? That's my number.

Barger: Lolohh ill see if he has them But if he don't got any idk where else lol? Lol no i dnt git a missed call

Clark: Lol. I'm out sick because my fucking hip is on fire. 609280 [REDACTED]

Barger: This is his so called dimes i don't smoke only here and there

[photograph of green vegetation purported to be marijuana is attached]

Clark: What the fuck nicks were bigger then that in my day. Lol

Barger: K ill call you if I find anything They r usually in circles but idk if anyone has any but Q said hes out until next week smh.

Clark: That's because it is the end of the month. Lol

Barger: Wat happen to ur hip

Clark: I don't know. It hurts like hell. I guess fleeting old suck ass. Lol

Barger: YOOO I GOT SOME GOOD SHIT. I jus broke into their bedroom and i wne tin his book bag and found his stash and took some pics.

Clark: Let me see the pics?
Some Percs?

Barger: It was in his book bag and he proly has some

[attached photograph of several small plastic bags containing an unidentified substance and folded paper currency]

Clark: Lol

[attached photograph of hand holding small plastic bag with green vegetation]

Barger: He prolly has some on him 6ell someone wait by forest hills nd stop them
lol

Clark: I will. What kind of car? White

Barger: Yeh they shuld b almost home now.

[R-7⁹ at MT RC0130–35.]

During an October 19, 2017, recorded interview, appellant, among other things, spoke about his trip with Marzi and Singh. He advised that Marzi “met up” with people. He acknowledged that they were talking about something “he did not want to know about.” He believed Marzi wanted drugs—he thought marijuana. Clark wanted nothing to do with it and advised that they should drop him off. They dropped him off at the Wawa, “did the thing they needed to do,” then picked him back up and went home. (R-16b, 07:29–012:13; see also T1, 170:11–174:24.)

In response to questions about the sale of his personal handgun, appellant advised that he sold the weapon he had during the July 28, 2017, Bellmawr traffic stop to a correction officer. He confirmed that the sale occurred around the time of his move. He received the bill of sale and the buyer had all his paperwork. He had the buyer sign “a piece of paper” and Clark was supposed to get something mailed to him but it was not. He moved thereafter. He could not remember the name of the purchaser. It was “online.” He did not recall where they met. He did not know where the paperwork was but offered

⁹ The above exchange reflects the content of the Facebook message chain between Barger and Clark, (R-7) and includes the typographical errors and text abbreviations used therein. The descriptions of the photos included within the message chain have been added. Additionally, for ease of reference here, names have been added before each message to identify the “speaker.” At oral argument following the hearing in this matter, the parties expressed their agreement with the above designation of the speaker.

to look for it. He thought that he should still have the paperwork. He explained that he was living out of boxes. (R-16b, 29:40–32:37; see also T1, 179:15–183:8.)

Clark also confirmed that when he was approximately eighteen years old, and on leave from the military, he took a drag or two of marijuana when driving to a party with friends. (R-16b, 37:25–39:50.)

Regarding prescription drugs, Clark said he was never “into” prescription-drug use. He offered that Salina was on prescription medication with “pain management,” but that he had since gotten her off it and “everything else.” He was aware that when she “ran out,” she would “grab some” from others. He knew about it but did not say anything, he turned away. Since then, he got her off “that” and she has been “clean” for a while. (R-16b, 43:19–47.)

A Craigslist posting listed for sale the refrigerator and washing machine that were missing from Papson’s home. The posting listed “Bobby” as the contact and included appellant’s phone number. Photographs depicting the appliances inside of Papson’s home were included in the posting. (R-69.)

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. Congleton 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 the following:

I accept the testimony of John McKeown as credible. His testimony regarding the internal investigation of appellant and his involvement with appellant's July 2017 Bellmawr stop was straightforward and reasonable.

Stephen Farrell's testimony regarding the internal investigation of appellant jointly conducted with the CGPO and his involvement in monitoring appellant's reasonable-suspicion drug test was also straightforward and reasonable. Thus, I accept his testimony as credible.

Michael Matkowsky's testimony regarding the rumors he heard about appellant was credible. However, he acknowledged that he had no firsthand information of same. Similarly, while his testimony regarding appellant's appearance in municipal court with Singh was reasonable, he readily acknowledged that he did not witness appellant speaking with the prosecutor on Singh's behalf. For these reasons, his testimony is of limited value, and I therefore give it little weight.

I accept the testimony of Gene Sulzbach as credible. His testimony, regarding the scope of the internal investigations of appellant, the various and multiple sources of information coming into the Monroe PD concerning appellant's alleged involvement in the inappropriate use of prescription drugs, the basis of Monroe's reasonable-suspicion drug testing, and the results thereof, was reasonable and without bias or improper motive.

Overall, I accept the testimony of Roy Pierson as credible. His testimony that appellant told him that Singh was off limits was straightforward and reasonable. His testimony concerning statements made to him by arrestee A. Latino and the rumors Pierson heard about appellant going to another town to purchase pills was also credible.

However, as he acknowledged that he had no firsthand knowledge of these reported incidents, I give this portion of his testimony little weight.

Finally, while I accept his testimony concerning the circumstances of the 2015 stop of P. Panarello as reliable, I find it troubling that he did not report Clark's alleged actions at that time.

I accept the testimony of John McBride as credible. His testimony concerning his involvement in the March 2017 motor-vehicle stop of Singh, including the inappropriateness of appellant's request for a professional courtesy, appellant's compliance with his directive to leave the scene, and his opinion that the incident would have appeared to the public as a normal stop, was reasonable and rational. Additionally, his opinion of appellant was also straightforward and without bias or improper motive.

I also accept the testimony of Stacy Stockdill and Hannah Wszelaki as credible. Their testimony concerning the practice of their offices regarding a patient request to change prescription pain medication was reasonable and reliable.

The testimony of Anthony Canonica concerning the investigations he conducted of appellant was straightforward and reasonable. Thus, I accept his testimony as credible.

I also accept as credible the testimony of police officers Kevin Stinger, John Marrone, and John Stires concerning their involvement and observations in connection with appellant's July 2017 traffic stop in Bellmawr. Their testimony was straightforward, reasonable, and largely consistent. Moreover, their testimony was without reason for improper motive or bias.

I also accept the testimony of Shane Papson as credible. His testimony concerning appellant's rental of his home and the circumstances of the appliances missing from the home was reasonable, rational, and without reason for bias or improper motive.

As to the testimony of appellant, I do not accept his testimony as credible. His testimony that his request of Megan Barger for Percocet was a joke is not reasonable or rational. Similarly, his suggestion that he was speaking to Barger as an informant is not credible given that he advised her that he was not working and that he requested the Percocet for his own use.

Additionally, his testimony concerning his trip with Marzi and Singh does not ring true. Nor does him claim that he later found out that they were only joking about buying drugs.

His testimony that he sought and obtained permission from Dr. Eslami's office to take Percocet previously prescribed to him by another doctor is not reasonable, particularly in light of the widely recognized problem of opioid abuse. Moreover, his testimony on this issue is overborne by the more reasonable and credible testimony of Stockdill and Wszelaki.

Given that I do not accept appellant's testimony concerning permission obtained to use the Percocet previously prescribed to him, I similarly do not accept his testimony that following his July 31, 2017, tooth extraction, the only Percocet he used was that which had been previously prescribed to him by Dr. Hofstetter in 2016. This testimony is not only improbable given his moves and his inability to locate other important items, but keeping the previously prescribed Percocet appears contrary to his acknowledgement that Singh was on "pain management"; that she had, at times, taken pain medication from others; and that he had gotten her off of "pain management" and she had been "clean" for a while.

His testimony concerning the sale of his personal weapon, including his inability to recall the name of the correction officer to whom he claimed to have sold the weapon and his inability to recall much of the details of the sale, was not reasonable or reliable. Additionally, his testimony that he obtained proper paperwork in connection with the sale was both internally inconsistent and inconsistent with his prior statements made during his recorded interview with internal affairs. More specifically, appellant alternately claimed that he obtained all the paperwork in connection with the sale, that it was never

mailed to him, that it was lost during the course of his move, and/or that he should still have the documentation. Thus, appellant's testimony on this issue is not reasonable, rational, or reliable.

Additionally, his testimony that he did not display a badge in connection with his July 2017 traffic stop in Bellmawr is also not credible, given that it is contradicted by the more credible and unbiased statement of Officer Stires. Similarly, appellant's testimony that his weapon was locked in the center console is contradicted by the more credible and unbiased statement of Officer Marrone.

I also do not accept as credible appellant's testimony concerning the theft of appliances from his landlord, Shane Papson. His testimony that the appliances were broken and removed from the home in an attempt to fix them and then thrown out without notifying his landlord is not reasonable and does not ring true. Further, appellant's testimony is contradicted by the Craigslist posting of the missing appliances for sale under appellant's first name and using his phone number. Finally, appellant's testimony that the incident was merely a misunderstanding is contradicted by the unbiased and credible testimony of Papson.

Finally, I do not accept as credible appellant's testimony that he responded to the March 2017 motor-vehicle stop of Singh as backup to his fellow officer. Appellant's testimony is contradicted by the fact that upon arrival he requested a professional courtesy, he did not activate his police lights, and there is no MVR footage from his police car. Additionally, his testimony that he did not answer the call Singh made to him and that he was unaware that she was the subject of the stop until he arrived at the scene does not ring true.

In sum, appellant's testimony does not hang together and is contradicted by the other more credible and reasonable evidence in the record. Appellant's testimony appears to be an attempt to make excuses for his improper conduct and/or to deflect attention away from himself and place blame on others for the disciplinary charges filed against him.

Hearsay

Appellant argues that statements attributed to others interviewed during the course of Monroe's internal investigation of appellant's alleged improper involvement with prescription drugs, including statements made by Q. Barnett, K. Federici, and A. Latino, constitute hearsay and should be given no weight because they had no opportunity to cross-examine these individuals.

Subject to the judge's discretion, hearsay evidence is admissible in the trial of contested cases, and shall be accorded whatever weight the judge deems appropriate taking into account the nature, character, and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a). However, while hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). Our Supreme Court has found that the residuum rule, N.J.A.C. 1:1-15.5(a) and (b), permits hearsay evidence to corroborate or strengthen competent proof, so long as the final administrative decision is not based solely on hearsay evidence and contains "a residuum of legal and competent evidence in the record to support [the decision]." Weston v. State, 60 N.J. 36, 51 (1972).

Here, the particular statements attributed to these individuals regarding their alleged interactions with appellant and their particular allegations of his improper use and/or purchase of prescription drugs are not supported by a residuum of legal and competent evidence in the record.¹⁰ Therefore, I afford no weight to the statements of these individuals.

¹⁰ In arriving at my decision in this matter, I am guided by the charges and specifications within the two FNDAs served on appellant. While the statements attributed to these individuals generally relate to the charges arising out of IA-0811-17-0003, a review of the charges and specifications therein reveal no reference to these individuals or to the specific allegations they made.

Findings of Fact

Having had the opportunity to consider the testimony of the witnesses, observe their demeanor, and assess their credibility, and having considered the substantial documentary and audio-visual evidence in the record, I **FIND** the following as **FACT**:

Appellant admitted that prior to his employment he took a “puff” or “drag” or two of a marijuana cigarette. He did not include this information in his Monroe police officer application.

On or about June 29, 2015, during a Facebook messaging conversation with Megan Barger, appellant asked Barger for Percocet for pain he was experiencing in his hip. Appellant advised Barger that he was not working. Barger advised appellant that she had found a “stash” of some “good shit,” and appellant again asked her about Percocet. Barger sent appellant photos of the “stash” she found and he commented that “nicks” were bigger than that in his day. (R-7.)

Appellant acknowledged in his recorded statement that Barger told him that she had been “popping” Percocet.

In approximately 2016–2017 appellant was going through a divorce.

In or around this same time, appellant had bariatric surgery and lost a significant amount of weight.

In approximately February 2016 appellant began dating Salina Singh.

In June 2016 appellant began renting a house from Shane Papson. (R-67.)

On or about January 30, 2017, Office Matkowsky made an internal affairs complaint concerning, among other things, rumors he heard of appellant’s alleged use/misuse/purchase of prescriptions drugs.

Appellant admitted that during a trip with Robert Marzi and Salina Singh he was made aware of their plans to buy drugs. He claimed that he responded by asking to be let out of the car. He acknowledged that after they “did the thing they needed to do,” they picked him back up and went home. (R-16b.)

On March 6, 2017, appellant responded to the motor-vehicle stop of Singh by Officer D’Amico. At the time he was working in another area of town. Appellant did not activate his police-vehicle lights.

MVR system footage of the March 6, 2017, incident was obtained from Officer D’Amico and Officer Marino, a secondary responding officer. (R-32; R-33.) No MVR footage was available from appellant’s vehicle. (R-24 at MT RC0258.)

Monroe’s rules and regulations require MVR systems to be activated during all motor-vehicle stops. Officers providing assistance or backup to an officer conducting a stop are required to activate their MVR systems. (See R-29 at MT R0247 [G.O. 1.2, Rules and Regulations, Chapter 3:18—Mobile Video Recording Systems, Operation (In-Car Cameras].)

At the time of the motor-vehicle stop, MVR footage captured Singh talking on the phone and giving the name of the officer conducting the stop.

At the time of the motor-vehicle stop, Singh was driving appellant’s truck. Her license was suspended and she had outstanding warrants. Upon arriving at the scene, appellant requested a professional courtesy of Officer D’Amico.

As a result of appellant’s response to the scene, Officer D’Amico requested the presence of his supervisor, Sergeant McBride. Upon his arrival, McBride instructed appellant to leave the scene.

Appellant admitted to conducting criminal history “look-ups” of Singh for personal rather than official reasons.

On July 28, 2017, the appellant was stopped by police in Bellmawr, NJ, for what was described as a "rolling domestic."

During that traffic stop, appellant was observed driving on the side of the road, in the opposite direction of traffic, and engaging in a verbal dispute with his mother, who was out of the car.

The intersection where appellant was stopped was very busy. His car partially blocked the lane of travel and created a potential traffic hazard.

On the date of the traffic stop, appellant was serving a twenty-four-hour suspension. Due to the suspension, appellant's police badge and service weapon were removed, and he was not permitted to identify himself as a police officer.

During the traffic stop, appellant displayed a police badge out of his car window. The badge belonged to his father. Appellant also had in the car his unloaded personal weapon, and his police OC spray and baton. These items were all located in the unsecured center console of the car.

Appellant admitted that at the time of his July 2017 traffic stop he was on his way to buy a car.

Appellant was cooperative during the traffic stop and received no traffic violations or other charges in connection with the stop.

On July 31, 2017, appellant had a tooth extraction performed by Dr. Eslami. Dr. Eslami prescribed appellant Vicodin in connection with the extraction. (R-47.)

Appellant was ordered to submit to a reasonable-suspicion drug test administered by Monroe on August 2, 2017. The result of the drug test came back positive for oxymorphone, consistent with use of Percocet.

Appellant previously received prescriptions for sixteen Percocet tablets from his dentist, Dr. Hofstetter, on January 20, 2016, and then again on May 31, 2016. (R-46.)

Neither Dr. Eslami nor Dr. Hofstetter gave appellant permission to use Percocet, previously prescribed to him by Dr. Hofstetter in 2016, in connection with his July 31, 2017, tooth extraction.

Appellant made inconsistent statements regarding the paperwork obtained in connection with the sale of his personal handgun and was unable to produce any paperwork in connection with same. Appellant also admitted that he had no idea he could be selling his weapon illegally.

Appellant was behind on his payments for the home he rented from Shane Papson. He moved out of the rental home on or about August 4, 2017.

When appellant vacated the rental home, the washing machine and refrigerator belonging to Papson were missing. The missing appliances were posted for sale on Craigslist under the contact name "Bobby" and using appellant's phone number. (R-69; R-74.)

On or about August 5, 2017, Papson filed a complaint of theft against appellant in connection with missing appliances. (R-61.)

Appellant was indicted on a criminal charge of theft by unlawful taking—moveable property in connection with the missing appliances from Papson's rental home. On or about June 18, 2019, following a criminal trial, appellant was found not guilty. (P-4.)

LEGAL ANALYSIS AND CONCLUSIONS

At issue here is whether the appellant committed the violations alleged and, if so, whether the penalty imposed is appropriate. In determining this issue, I am guided by the charges and allegations contained within the two FNDAs served on appellant. (C-2; C-3.)

Here, respondent generally argues that the evidence demonstrates that appellant violated his duties as a law-enforcement officer and that removal is the appropriate penalty.

Appellant raises multiple arguments contending that respondent failed to meet its burden of proof. Appellant contends that the four internal investigations underlying his removal are flawed and founded on baseless, secondhand rumors about his personal life, and that Monroe rushed to judgment against him. Appellant argues that there is no credible evidence to establish that he was involved with illegal prescription medication and solicited Megan Barger for Percocet. He further argues that respondent inappropriately relied on text messages that Detective Lick of the GCPO manipulated to fit the narrative that he was soliciting drugs from K. Federici. Appellant also contends that respondent failed to produce at hearing various individuals who made statements about his alleged improper use/abuse/purchase of prescription drugs during the internal investigation. Additionally, he argues that there is no firsthand information to support that he traveled to Lindenwold to purchase prescription drugs. Appellant further argues that there is no evidence that he sold his gun illegally. He also contends that respondent did not present the elements of any crime committed in connection with the missing appliances from Papson's home and that he was acquitted of criminal theft charges. Finally, he argues that the penalty of removal is excessive, unreasonable, and capricious.

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).

As a law-enforcement officer, appellant is held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). In Moorestown

Township v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966), the court noted:

It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.

Conduct by a police officer that indicates “an attitude of mind and approach to the obligation of his office fundamentally at variance with his sworn duty” is a violation of the required standard of behavior inherent in the position. Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429–30 (1955). Adherence to this high standard of conduct is an obligation that a law-enforcement officer voluntarily assumes when he enters public service. In re Emmons, 63 N.J. Super. 136, 142 (App. Div. 1960).

Conduct Unbecoming

“Conduct unbecoming a public employee” pursuant to N.J.A.C. 4A:2-2.3(a)(6) is an elastic phrase that 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. at 140. 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. at 429).

Here, appellant is charged with conduct unbecoming a public employee in connection with each of the five internal investigations underlying the FNDAs seeking his disciplinary removal and suspension.

FNDA Seeking Removal

IA-0811-17-0003

Appellant engaged in conduct unbecoming a public employee by soliciting Barger for Percocet. As an initial matter, I do not accept appellant's testimony and claim that the request was made in a joking manner. His request for and attempt to improperly/illegally obtain Percocet are clearly contrary to his responsibilities as a law-enforcement officer to uphold and enforce the law and are violative of the public trust. Moreover, even if I were to accept appellant's contention that his request was intended as a joke, his actions demonstrate a total lack of judgment appropriate to the position of a police officer.

Appellant also engaged in conduct unbecoming during his trip with Marzi and Singh. While I don't accept appellant's version of the incident as credible, his admitted response to his companions' plan to buy drugs was to ask that he be let out of the car. Rather than taking appropriate action, appellant's claimed/admitted only response was to turn a blind eye to the planned criminal activity. Aside from violating his duties to uphold and enforce the law and to take appropriate action in response to suspected criminal activity, appellant's claimed response constitutes a complete lack of judgment and personal integrity, and is contrary to the high standard of conduct required of a law-enforcement officer.

Appellant's actions in connection with the sale of his handgun also constitute conduct unbecoming. Appellant's inability to recall key information regarding the sale, his inability to produce any paperwork in connection with the sale, and his admitted unfamiliarity with the requirements for the sale of his weapon demonstrate a lack of judgment and candor, and an indifference to the law and to his duties as a police officer, and present a serious risk of danger to the public and his fellow officers.

IA-0811-17-0024

Appellant engaged in conduct unbecoming a public employee in connection with this investigation by lying about the source of the Percocet he took following his July 31, 2017, tooth extraction and the permission he claimed to have obtained from his doctor to take Percocet previously prescribed to him in 2016 by another doctor. Appellant's actions herein demonstrate a lack of truthfulness and candor, and violate the high standard of conduct and personal integrity required of a law-enforcement officer.

IA-0811-17-0026

Appellant also engaged in conduct unbecoming a public employee in connection with his July 2017 traffic stop in Bellmawr. During this incident, appellant was engaged in a verbal dispute with one of his passengers and was driving in the opposite direction of traffic. His actions created a potential traffic hazard and a concern that appellant was engaged in a "rolling domestic." Appellant's actions caused other police officers to initiate a traffic stop to ensure the safety of appellant's passengers and the safety of the passing vehicles. Additionally, despite being suspended at the time, and having no authority to act as a police officer, appellant displayed a police badge in an attempt to identify himself as a law-enforcement officer. The condition of the badge caused the responding police officer to suspect that appellant might have been impersonating a police officer. Further, appellant transported his personal handgun without any legitimate purpose or authorization. These actions, in addition to violating departmental policy and procedure, demonstrate a lack of truthfulness and candor and a disregard for the traffic laws and for the safety of the traveling public, and further demonstrate a lack of the good judgment and character required of a law-enforcement officer.

IA-0811-17-0027

Appellant also engaged in conduct unbecoming a public employee in connection with his involvement with the refrigerator and washing machine missing from Papson's rental home and his involvement in/awareness of the posting of these appliances for sale on Craigslist under his name and phone number. Appellant's actions, in addition to

demonstrating a lack of truthfulness and candor, represent a total disregard of his duties as a police officer and are violative of the public trust.

FNDA Seeking Suspension

IA-0811-17-0008

Appellant's actions in connection with his response to the July 2017 motor-vehicle stop of his fiancée constitute conduct unbecoming. Rather than assisting his fellow officer, appellant responded to the scene in order to assist his fiancée and requested a professional courtesy on his and/or his fiancée's behalf. His presence and actions at the scene were not appropriate and interfered with the efforts of the officer conducting the stop, causing that officer to seek the assistance of a supervisor. Further, appellant was untruthful and misrepresented not only the reason for his response but his prior communication with Singh and his awareness that she was the subject of the motor-vehicle stop. Here, appellant also allowed his personal relationship to influence his official duties. His actions in connection with this charge are contrary to his duties and responsibilities as a law-enforcement officer, are violative of the public trust, and demonstrate a lack of candor and personal integrity.

Accordingly, I **CONCLUDE** that despite appellant's arguments to the contrary, the respondent has proved, by a preponderance of the credible and competent evidence, that appellant's actions constitute conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and that this charge as contained within the FNDAs seeking appellant's removal and his ninety-day suspension is **SUSTAINED**.

Other Charges

In addition to the charge of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), the FNDA seeking appellant's removal also charged him with multiple and various violations of Monroe's rules and regulations, including General Order (Written Directive System) 1:2, Rules and Regulations:

Chapter 2:1.3, Police Officers, which outlines the general duties and responsibilities of a Monroe police officer;

Chapter 3:1.3, Obedience to Law and Rules, which provides that employees shall obey all laws, ordinances, rules, policies, and procedures, as well as any other directives of the division;

Chapter 3:1.4, Withholding Information, which provides that employees shall report any and all information concerning suspected criminal activity of others;

Chapter 3:6-1, Alcoholic Beverages and Drugs, which generally prohibits an employee from appearing or being on duty while under the influence of alcohol or drugs, and generally requires an employee to disclose the use of prescription medication that affects his ability to perform the essential functions of his job without posing a direct threat to self or others; and

Chapter 3:7-11, All Other Conduct, which provides:

Misconduct by a police officer need not be predicated on the violation of any particular division rule or regulation. Police officers are called upon to exercise tact, restraint and good judgement in their relationship with the public and must present an image of personal integrity and dependability in order to have respect of the public. The division will take appropriate disciplinary action against any officer whose actions violate this standard of good behavior.

FNDA Seeking Removal

IA-0811-17-0003

In connection with this internal investigation, the FNDA also charged appellant with violations of Chapter 2:1.3, Police Officers, Chapter 3:1.3, Obedience to Law and Rules, and Chapter 3:1.4, Withholding Information. Here, for the reasons previously set forth herein, the respondent has demonstrated that appellant's actions in connection with the

specifications of this charge, including his solicitation of Barger for Percocet and his awareness of her use and/or possession of illegal drugs, his actions in traveling with Marzi and Singh and his awareness of their plan to buy illegal drugs, his actions in connection with the sale of his personal weapon, including but not limited to his admitted unfamiliarity with the requirements of the sale and his inability to recall key details of the sale and/or his lack of candor, and finally his failure to report his prior use of marijuana on his Monroe police application, are violative of Chapter 2:1.3, Chapter 3:1.3, and Chapter 3:1.4.

Accordingly, I **CONCLUDE** that the respondent has proved these charges by a preponderance of the credible and competent evidence, and that the charges are **SUSTAINED**.

IA-0811-17-0024

In connection with this internal investigation, the FNDA also charged appellant with violations of Chapter 3:6.1, Alcoholic Beverages and Drugs. Here, while the respondent generally argues that appellant was involved in the improper use and/or abuse of prescription medication and I have concluded that appellant's actions constitute conduct unbecoming, respondent presented no evidence or explanation as to how appellant's actions violated the provisions of this policy, which appear to primarily prohibit conduct relating to an employee appearing or being on duty while under the influence of alcohol or drugs, and/or require an employee to disclose the use of prescription medication that affects his ability to perform the essential functions of his job without posing a direct threat to self or others. Respondent presented no evidence that appellant, despite his other conduct, was, while on duty, under the influence of drugs or using prescription medication that impaired his ability to perform the essential functions of his job.

Accordingly, I **CONCLUDE** that respondent has failed to prove this charge by a preponderance of the credible and competent evidence and that the charge is **REVERSED**.

IA-0811-17-0026

In connection with this internal investigation, the FNDA also charged appellant with violations of General Order 1:2, Rules and Regulations, Chapter 3:7-11, All Other Conduct. Here, for the reasons previously set forth herein, the respondent has demonstrated that appellant's actions in connection with his July 2017 traffic stop violated this departmental charge. Like the charge of conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6), the departmental charge of All Other Conduct is not predicated on the violation of any particular division rule or regulation. Rather, under this provision of the rules and regulations, Monroe police officers are required to exercise good judgment and present an image of personal integrity and dependability to maintain the respect and confidence of the public.

Accordingly, as I have previously concluded that appellant's actions constitute conduct unbecoming a public employee, I similarly **CONCLUDE** that the respondent has proved by a preponderance of the credible and competent evidence that appellant's actions also violate General Order 1:2, Rules and Regulations, Chapter 3:7-11, All Other Conduct, and that this charge is **SUSTAINED**.

IA-0811-17-0027

In connection with this internal investigation of the reported theft of appliances from Papsen's home, the FNDA also charged appellant with violations of General Order 1:2, Rules and Regulations, Chapter 2:1.3, Police Officers, and Chapter 3:1.3, Obedience to Law and Rules.

Here, for the reasons previously set forth herein, I **CONCLUDE** that the respondent has proved these charges by a preponderance of the credible and competent evidence and that the charges are **SUSTAINED**.

FNDA Seeking Suspension

IA-0811-17-0008

In connection with this internal investigation of appellant's response to the July 2017 motor-vehicle stop of his fiancée, the FNDA charged appellant with multiple and various violations of Monroe's rules and regulations, including General Order 1:2, Rules and Regulations:

Chapter 1:5-2, Code of Ethics, which sets forth the Law Enforcement Code of Ethics and which generally provides, among other things, that an officer's fundamental duty is to serve the community, that an officer will behave in a manner that does not bring discredit to himself or to his agency, and that an officer will not act officiously or permit personal feelings or friendships to influence his decisions.

Chapter 3:1-8, General Conduct, Compromising Criminal Cases/Investigations, which provides that employees shall not interfere with the proper administration of criminal justice;

Chapter 3:11-3, Conduct Towards the Public, which among other things provides that employees shall be courteous and orderly in dealing with the public;

Chapter 3:3.5,¹¹ Truthfulness, which provides that employees are required to be truthful at all times whether under oath or not;

G.O. 3:18, Mobile Video Recording Systems, Operation (In-Car Cameras);¹²

Chapter 3, Section E(2) and G(1) G.O. 5:8, Criminal Justice Information System, Security Provisions, Chapter 3, Section E.¹³

¹¹ The correct citation to the Truthfulness provision of the rules and regulations is—Chapter 3:13-5.

¹² See R-29 at MT RC0247.

¹³ See R-29 at MT RC0247.

Here, for the reasons previously set forth herein, respondent has demonstrated that appellant's actions in response to the motor-vehicle stop of his fiancée also constitute a violation of Monroe's General Order 1:2, Rules and Regulations, Chapter 1:5-2, Code of Ethics, Chapter 3:1-8, General Conduct, Compromising Criminal Cases/Investigations, and Chapter 3:13-5, Truthfulness. Accordingly, I **CONCLUDE** that respondent has proved these charges by a preponderance of the credible and competent evidence and that these charges are **SUSTAINED**.

Additionally, as appellant admitted that he conducted criminal-history "look-ups" of his fiancée for personal rather than professional/official use, I **CONCLUDE** that respondent has also proved, by a preponderance of the credible and competent evidence, the charge relating to appellant's misuse of the Criminal Justice Information System, and that this charge is **SUSTAINED**.

Further, as appellant admitted that he did not activate his police lights upon arriving at the scene, and as I have found that there was no MVR footage available from appellant's car, and that Monroe's rules and regulations require activation of the MVR system during all motor-vehicle stops, I **CONCLUDE** that respondent has proved this charge of by a preponderance of the credible and competent evidence, and that the charge is **SUSTAINED**.

Finally, in connection with the July 2017 motor-vehicle stop of Singh, appellant is also charged with a violation of Monroe's General Order 1:2, Rules and Regulations, Chapter 3:11-3, Conduct Towards the Public, based on his conduct in yelling at Singh during the stop and respondent's contention that Singh is a member of the public. (See C-2.) While I have previously concluded that appellant's conduct in connection with this incident constitutes conduct unbecoming and various other violations of Monroe's General Order 1:2, Rules and Regulations, respondent's interpretation of this provision appears overly broad and inapplicable in this instance.

Accordingly, I **CONCLUDE** that respondent has failed to prove the charge of Chapter 3:11-3, Conduct Towards the Public, by a preponderance of the credible and competent evidence, and that this charge is **REVERSED**.

Penalty

The Civil Service Commission's review of the penalty to be imposed 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, for the reasons previously set forth herein, respondent has amply demonstrated that the sustained charges in connection with the FNDA seeking appellant's removal and arising out of internal affairs investigations IA-0811-17-0003, IA-0811-17-0024, IA-0811-17-0026, and IA-0811-17-0027 are sufficiently egregious and warrant his removal despite appellant's relative lack of prior disciplinary history.¹⁴

Appellant's disciplinary history lacks any prior major discipline, but includes the following minor disciplinary actions:

¹⁴ Appellant was served with an FNDA seeking his ninety-day suspension on the same date that he was served with the FNDA seeking his removal. Thus, the suspension charge is not considered for purposes of establishing prior or progressive discipline.

A written reprimand issued on October 19, 2017, for violations of General Orders in connection with appellant's actions on June 18, 2017, in responding to a call for service and failing to properly document and investigate the complaint. (R-75 at MT RC0453.)

A three-day (twenty-four-hour) suspension issued on July 20, 2017, for violations of General Orders in connection with appellant's May 16, 2017, failure to appear for a mandatory Monroe Municipal Court appearance. (R-75 at MT RC0454.) This suspension was served on July 28 and 29, 2017, over the course of two twelve-hour days.

A written reprimand¹⁵ for violations of General Orders, including violation of 4A:2-2.3 General Causes, Chapter 6, conduct unbecoming a public employee, in connection with appellant's conduct on May 10, 2016, in entering a Williamstown Walmart with a person who was barred from the store. The disciplinary charge provides:

While inside your companion was asked to leave by the store manager. You demanded information from the store manager about the female companion of yours. You identified yourself as a Monroe Township Police Officer to that manager and another supervisor in an effort to gather information and to sway the manager's decision by using your status as a police officer. The manager also asked you to leave because she was now uncomfortable with your actions. You refused to leave Walmart and remained inside to the point that off-duty uniformed officers were called to escort you from the store.

[R-75 at MT RC0460.]

While this prior discipline ultimately resulted only in a written reprimand, the lowest form of discipline, it is significant in that it represents another incident in which the appellant engaged in conduct unbecoming a public employee and improperly used his position as a police officer to assist a companion.

¹⁵ Appellant was originally issued on June 24, 2016, a three-day (twenty-four-hour) suspension in connection with the incident. Thereafter on June 27, 2016, the suspension was rescinded by an agreement that in exchange for appellant's letter of apology to the manager of Walmart, the suspension would be reduced to a written reprimand. (See R-75, MT RC0460-64.)

Here, while I note that appellant, as reflected in his personnel file, engaged in certain commendable conduct, the respondent has amply demonstrated that appellant's actions herein demonstrate a total disregard for his duties and responsibilities as a law-enforcement officer and violate the public trust. His actions further demonstrate a complete lack of judgment, personal integrity, and dependability and are contrary to the high standards of good conduct required of a law-enforcement officer.

Accordingly, in light of the totality and seriousness of the sustained disciplinary charges, I **CONCLUDE** that returning appellant to his position as a police officer would be contrary to the respondent's interest in maintaining discipline and order within the police department and in maintaining the public's trust and confidence. Thus, I **CONCLUDE** that the penalty of removal is appropriate and should be upheld.

As I have determined that the penalty of removal should be upheld, it is unnecessary to address the penalty of suspension. However, for completeness of the record, in light of the sustained charges of the FNDA seeking appellant's ninety-day suspension, I also **CONCLUDE** that the penalty of the ninety-day suspension is appropriate and should be **AFFIRMED**.

ORDER

I hereby **ORDER** that as set forth herein, the disciplinary charges are **SUSTAINED**. I further **ORDER** that appellant's removal is **AFFIRMED** and his appeal is **DISMISSED**. I additionally **ORDER** that appellant's ninety-day suspension is **AFFIRMED** and his appeal of that discipline is also **DISMISSED**.

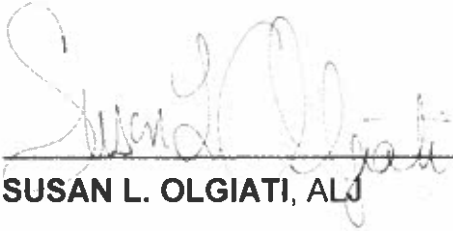
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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

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

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

March 16, 2023
DATE


SUSAN L. OLGIATI, ALJ

Date Received at Agency:

March 16, 2023

Mailed to Parties:

March 16, 2023

SLO/

APPENDIX

LIST OF WITNESSES

For respondent:

John McKeown

Stephen Farrell

Michael Matkowsky

Gene Sulzbach

Roy Pierson

John McBride

Stacy Stockdill

Hannah Wszelaki

Anthony Canonica

Kevin Stinger

John Marrone

John Stires

Shane Papson

For appellant:

Robert Clark

LIST OF EXHIBITS

Court Exhibits

- C-1 Officer Stinger drawing depicting the scene of Clark's July 2017 motor vehicle stop
- C-2 FNDA (ninety-day suspension)
- C-3 FNDA (removal)

For respondent:

IA-0811-17-0003

- R-1 MTPD Complaint Form (January 30, 2017) (*MT RC0068-0070*)
- R-2 MTPD IA Complaint Classification Form (January 30, 2017) (*MT RC0086*)
- R-3 MTPD IA Investigation Report (October 30, 2017) (*MT RC0075-0085*)
- R-4 Sergeant John McBride's Supervisor Worksheet (March 11, 2017) (*MT RC0097-0099*)
- R-5 Letter from Sergeant Stacie Lick to Chief John McKeown Re: IA Investigation0003 (July 19, 2017) (*MT RC0100*)
- R-6 GCPO Investigation Report (July 20, 2017) (*MT RC0103-0126*)
- R-7 Facebook Conversation Between Clark & Megan Barger Re: Drugs (June 15, 2015) (*MT RC0130-0135*)
- R-8 Clark's Registered Weapon Information (*MT RC0136-0138*)
- R-9 MTPD IA Investigation Allegations & Conclusions (October 30, 2017) (*MT RC0062-0065*)
- R-10 Officer Michael Matkowsky's Recorded Statement (*thumb drive*)
- R-11 Officer Roy Pierson's Recorded Statement (*thumb drive*)¹⁶
- R-12 Officer Matthew Shipley's Recorded Statement (*thumb drive*)
- R-13 Consensual Intercept Between Kristin Federici & Salina Singh (*thumb drive*)
- R-14 Cellebrite Extraction (*thumb drive*)

¹⁶ All of respondent's audio-visual recorded exhibits were produced on one thumb drive

- R-15 Photographs of Kristin Federici's Cellular Telephone (*thumb drive*)
- R-16a Megan Barger's Recorded Statement (*thumb drive*)
- R-16b Clark's Recorded Statement (*thumb drive*)

IA-0811-17-0008

- R-17 MTPD Reportable Incident Form (with Supervisor Worksheet) (March 6, 2017) (*MT RC0253-0256*)
- R-18 MTPD IA Complaint Classification Form (March 6, 2017) (*MT RC0265*)
- R-19 MTPD Case Incident Report (March 6, 2017) (*MT RC0266-0269*)
- R-20 Sergeant John McBride's Supervisor Worksheet (March 11, 2017) (*MT RC0282-0284*)
- R-21 Letter from Sergeant Gene Sulzbach to Clark re: MTPD's IA Investigation 0008 (March 20, 2017) (*MT RC0277*)
- R-22 Email Conversation Between Sergeant Gene Sulzbach & Tara Rockhill Re: "Look Ups" on "Salina Singh" (with Search Results) (March 21, 2017) (*MT RC0285-0299*)
- R-23 Email Conversation Between Sergeant Gene Sulzbach & Steve Bruynell Re: "Look Ups" on "Salina Singh" on ProPhoenix (with NCIC Audit Results) (March 20-21, 2017) (*MT RC0300-0317*)
- R-24 MTPD IA Investigation Report (April 24, 2017) (*MT RC0257-0264*)
- R-25 ProPhoenix Splash Screen Notification (*MT RC0321*)
- R-26 Gloucester County HR Manual, Chapter 7, Section 10 (*MT RC0322-0330*)
- R-27 Gloucester County Emergency Response Center Computer Access Request Form (*MT RC0342*)
- R-28 Gloucester County Acceptable Use Policy (with Clark's Signed Acceptance of Policy Form) (*MT RC0343-0349*)
- R-29 MTPD IA Investigation Allegations & Conclusions (April 25, 2017) (*MT RC0246-0249*)
- R-30 PNDA (May 10, 2017) (*MT RC0241-0242*)
- R-31 FNDA (September 27, 2019) (*MT RC0243-0244*)
- R-32 Officer Anthony D'Amico's MVR Footage (*thumb drive*)
- R-33 Officer Daniel Marino's MVR Footage (*thumb drive*)

IA-0811-17-0024

- R-34 Letter from Sergeant Gene Sulzbach to Chief John McKeown Re: Reasonable Suspicion to Drug Test Clark (July 31, 2017) (*MT RC0015-0016*)
- R-35 Letter from Sergeant Gene Sulzbach to Clark Re: Reasonable Suspicion Drug Test (July 31, 2017) (*MT RC0030*)
- R-36 Email Conversation Re: Reasonable Suspicion to Drug Test Clark (July 31-August 1, 2017) (*MT RC0017-0019*)
- R-37 MTPD Reportable Incident Form (August 1, 2017) (*MT RC0007*)
- R-38 MTPD IA Complaint Classification Form (August 1, 2017) (*MT RC0014*)
- R-39 MTPD IA Investigation Report (October 30, 2017) (*MT RC0008-0013*)
- R-40 MTPD Drug Testing Submission Roster Re: Clark's Reasonable Suspicion Drug Test (August 2, 2017) (*MT RC0027-0028*)
- R-41 State of NJ Toxicology Laboratory Law Enforcement Drug Testing (LEDT) – Chain of Custody (August 2, 2017) (*MT RC0029*)
- R-42 Letter from Deputy Chief Stephen Farrell to Clark Re: Reasonable Suspicion Drug Test (August 2, 2017) (*MT RC0031*)
- R-43 Letter from Chief Stephen Farrell to Clark Re: Administrative Leave Pending Outcome of Reasonable Suspicion Drug Test (August 2, 2017) (*MT RC0032*)
- R-44 State of NJ Toxicology Laboratory Law Enforcement Drug Testing (LEDT) Toxicology Report (August 17, 2017) (*MT RC0040*)
- R-45 Letter from Sergeant Gene Sulzbach to Clark Re: Positive Drug Test (August 30, 2017) (*MT RC0041*)
- R-46 Authorization for Release of Records from Dr. Robert Hofstetter's Office and Copies of Clark's Prescriptions (September 5, 2017) (*MT RC0042-0046*)
- R-47 Letter from Dr. Ali Eslami's Office and Copies of Clark's Prescriptions (undated) (*MT RC0047-0048; 0813*)
- R-48 New Allegation Form Re: Conduct Unbecoming a Public Employee (October 12, 2017) (*MT RC0051-0052*)
- R-49 MTPD IA Investigation Allegations & Conclusions (October 30, 2017) (*MT RC0058-0060*)

IA-0811-17-0026

- R-50 MTPD Reportable Incident Form (July 28, 2017) (*MT RC0150*)
- R-51 MTPD IA Complaint Classification Form (July 28, 2017) (*MT RC0161*)
- R-52 Bellmawr PD Incident Report (July 28, 2017) (*MT RC0176-0177*)
- R-53 MTPD IA Investigation Report (September 29, 2017) (*MT RC0151-0160*)
- R-54 Letter from Sergeant Anthony Canonica to Clark Re: IA Investigation 0026 (August 7, 2017) (*MT RC0162*)
- R-55 MTPD IA Investigation Allegations & Conclusions (October 3, 2017) (*MT RC0147-0148*)
- R-56a Detective John Stires' Recorded Statement (*thumb drive*)
- R-56b Chief John McKeown's Recorded Statement (*thumb drive*)
- R-56c Christine Scola's Recorded Statement (*thumb drive*)
- R-56d Clark's Recorded Statement (*thumb drive*)
- R-57a Officer Kevin Stinger's Audio Statement (*thumb drive*)
- R-57b Sergeant John Marrone's Audio Statement (*thumb drive*)
- R-58 Radio Transmissions – CD-R (*thumb drive*)

IA-0811-17-0027

- R-59 MTPD Incident Report (dated, August 5, 2017) (*MT RC0207-0210*)
- R-60 MTPD Reportable Incident Form (dated, August 5, 2017) (*MT RC0190*)
- R-61 MTPD Complaint Form (dated, August 5, 2017) (*MT RC0197*)
- R-62 MTPD IA Complaint Classification Form (August 5, 2017) (*MT RC0199*)
- R-63 MTPD IA Investigation Report (August 12, 2017) (*MT RC0191-0196*)
- R-64 GCPO Consensual Interception Authorization Form (August 8, 2017) (*MT RC0200*)
- R-65 NJ Consensual Intercept Report (dated, August 9, 2017) (*MT RC0201*)
- R-66 Consensual Interception Texts Between Shane Papson & Clark (*MT RC0202-0205*)
- R-67 Rental Agreement Between Shane Papson & Clark (*MT RC0211-0214*)
- R-68 Text Message Screenshots of Conversation Between Shane Papson & Clark (*MT RC 0215*)

- R-69 Craigslist Postings of Shane Papson's Appliances (*MT RC0216-0231*)
- R-70 GCPO Complaint/Summons (dated, September 25, 2017) (*MT RC0234*)
- R-71 PNDA (dated, November 1, 2017) (*MT RC0235-0237*)
- R-72 MTPD IA Investigation Allegations & Conclusions (June 21, 2019) (*MT RC0187-0188*)
- R-73a Shane Papson's Recorded Statement (*thumb drive*)
- R-73b Clark's Recorded Statement (*thumb drive*)
- R-74 Craigslist Postings/Photographs (*thumb drive*)

Additional Exhibits

- R-75 Clark's Personnel File (*MT RC0378-0634*)
- R-76 MTPD General Orders (*MT RC0635-0678*)
- R-77 MTPD Policies & Procedures Manual (*MT RC0679-0758*)
- R-78 MTPD Employee Handbook (*MT RC0759-0807*)
- R-79 Clark's Medical Records from Dr. Eslami's Office (*MT RC0808-0809; 815-0819*)
- R-80 Clark's Additional Prescriptions from Dr. Eslami's Office (*MT RC0821-0822*)
- R-81 Video Footage from Kristin Federici's Arrest (March 3, 2017) (*thumb drive*)
- R-82 Video Recording of Clark's Drug Test (dated, August 2, 2017) (*thumb drive*)
- R-83 Detective Gene Sulzbach's Recorded Interview of Clark Re: Positive Drug Test Results (October 11, 2017) (*thumb drive*)
- R-84 Detective Gene Sulzbach's Recorded Interview of Clark Re: Clark's Contention that Dr. Eslami's Office Authorized his Consumption of Previously Prescribed Percocets (October 19, 2017) (*thumb drive*)
- R-85 FNDA

For appellant:

IA-0811-17-0003

- P-1 Officer Shipley Incident Report, March 4, 2017 (*MT RC0093-0096*)
- P-2 Kristin Federici Facebook Messenger Messages

OAL DKT. NOS. CSR 14606-19 and CSV 15108-19

P-3 Officer Pierson Incident Report, October 31, 2015 (*MT RC0141-0145*)

IA-0811-17-0027

P-4 Jury Verdict Sheet, June 18, 2019 (*MT RC0240*)