



## STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE ACTION  
 OF THE  
 CIVIL SERVICE COMMISSION

 In the Matter of James Simpson,  
 Millville, Department of Public  
 Works

 CSC DKT. NO. 2022-2832  
 OAL DKT. NO. CSV 03866-22

ISSUED: MAY 3, 2023

The appeal of James Simpson, Public Works Inspector, Millville, Department of Public Works, removal, effective May 2, 2022, on charges was heard by Administrative Law Judge Kathleen M. Calemme (ALJ), who rendered her initial decision on March 2, 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 and reply, the Civil Service Commission (Commission), at its meeting of May 3, 2023, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

As indicated above, the Commission has thoroughly reviewed the exceptions filed by the appellant and finds them unpersuasive. In this regard, the thrust of his arguments revolve around the penalty, where the appellant argues that the removal imposed was too harsh, and not in line with progressive discipline. In determining the proper penalty, the Commission's review is *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).

In this case, removal is the proper penalty. In this regard, the appellant was abjectly insubordinate without justification. Such egregious insubordinate conduct is worthy of removal without regard to progressive discipline. Progressive discipline is utilized, in part, to inform employees that their conduct was improper, and that further misconduct may lead to greater disciplinary penalties. When that misconduct is a blatant and purposeful failure to perform legitimately assigned work, that remedial aspect of progressive discipline would likely be ineffective; as it would be unlikely that an employee taking such a position would “learn” from a lesser penalty that future similar misconduct is impermissible. Moreover, where, as here, the refused duties are of significant importance to the appointing authority and may impact the public’s safety, refusal to perform such duties cannot be countenanced. Accordingly, notwithstanding the appellant’s previous years of unblemished service, the violations in this matter warrant removal from employment. This penalty is neither disproportionate to the offense nor shocking to the conscious.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of James Simpson.

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 3<sup>RD</sup> DAY OF MAY, 2023

*Allison Chris Myers*

Allison Chris Myers  
Acting Chairperson  
Civil Service Commission

Inquiries  
and  
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Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 03866-22

AGENCY DKT. NO. 2022-2832

**IN THE MATTER OF JAMES SIMPSON,  
CITY OF MILLVILLE, DEPARTMENT  
OF PUBLIC WORKS.**

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**Frank M. Crivelli, Esq.**, for appellant, James Simpson (Crivelli, Barbati & DeRose, LLC, attorneys)

**William G. Blaney, Esq.**, for respondent, City of Millville, Department of Public Works (Blaney, Donohue & Weinberg, P.C., attorneys)

Record Closed: February 16, 2023

Decided: March 2, 2023

**BEFORE KATHLEEN M. CALEMMO, ALJ:**

**STATEMENT OF THE CASE**

Appellant, James Simpson (Simpson), appeals his removal by respondent, City of Millville, Department of Public Works (Millville), from his position of Public Works Inspector for his refusal to complete construction inspections. Respondent sustained the following charges: N.J.A.C. 4A:2-2.3(a)(1) – incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(2) – insubordination; N.J.A.C. 4A:2-2.3(a)(7) – neglect of duty; and N.J.A.C. 4A:2-2.3(a)(1) – other sufficient causes.

## PROCEDURAL HISTORY

On March 21, 2022, respondent issued an Amended Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications made against appellant. (R-1.) Appellant requested a departmental hearing. On May 2, 2022, respondent issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges in the PNDA and removing appellant from his position, effective May 2, 2022. (R-2.) Appellant filed a timely appeal. The appeal was transmitted and received in the Office of Administrative Law (OAL) on May 12, 2022, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15 and N.J.S.A. 52:14F-1 to N.J.S.A. 52:14F-13.

The matter was assigned to me on June 6, 2022. After status conferences, the hearing dates were scheduled for November 30, 2022, and December 2, 2022. The record remained open to permit the parties to receive the hearing transcript and submit post-hearing briefs. All briefs were received by February 16, 2023, and the record closed that day.

## FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following as **FACT**:

1. James Simpson had been employed by Millville as a Public Works Inspector for fourteen years as of the date of his removal.
2. On January 1, 2022, Wayne Johnson became Millville's Municipal Engineer. Among his duties and responsibilities was supervisor of the employees assigned to the Public Works Department, which included Simpson.
3. The Planning Board for the City of Millville approved a large over fifty-five housing development consisting of three hundred units, with a pool, landscaping, and shared community spaces. The project, known as the

Four Seasons at Millville (Four Seasons), was being built in phases, spanning several years. The start of the project predated Johnson's appointment as Municipal Engineer, but the project continued into Johnson's term.

4. When the prior Municipal Engineer, Brian Prohowich, resigned, Millville contracted with a private engineering firm, Pennoni Associates, to handle its engineering needs. With the hiring of Johnson, Millville's relationship with Pennoni Associates ended.
5. Beginning in February 2022, Johnson initiated steps to resume inspections by his Public Works Department at the Four Seasons construction project. Johnson assigned the inspection work at the Four Seasons to his Public Works Inspector, Simpson.
6. Despite discussions between Johnson and Simpson about Simpson resuming the inspection work at the Four Seasons, Simpson did not perform the inspections. Johnson visited the site to initiate the work he had delegated to Simpson.
7. On March 3, 2022, Johnson and Simpson met with Commissioner Sooy, who as head of the Department of Revenue and Finance for Vineland, oversaw the Engineering Department. At the conclusion of the meeting, Commissioner Sooy agreed to pursue a change in job title for Simpson to Senior Public Works Inspector and seek additional compensation. In the interim, Commissioner Sooy and Johnson understood that Simpson would begin the inspection work at the Four Seasons.
8. On March 4, 2022, Johnson attempted to discuss a punch list of the inspection work needed at the Four Seasons with Simpson, but Simpson remained opposed to doing this work.
9. On Monday, March 7, 2022, Simpson called out sick from work.

10. Although Simpson returned to work on March 8, 2022, he remained steadfast in his refusal to perform the inspection work at the Four Seasons.
11. At a meeting on March 10, 2022, Commissioner Sooy informed Simpson that he was suspended without pay for refusing to do the inspection work as instructed.
12. Millville served Simpson with a PNDA, dated March 21, 2022, that charged Simpson with the following violations: conduct unbecoming a public employee, for refusing to complete construction inspections at the Four Seasons, in violation of N.J.A.C. 4A:2-2.3(a)(6); insubordination, for refusing to perform work after being instructed to do so by his supervisor, in violation of N.J.A.C. 4A:2-2.3(a)(2); neglect of duty, for failure to perform work within his job responsibilities which caused undue delay to the construction process and caused his supervisor to complete his unperformed tasks, in violation of N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause N.J.A.C. 4A:2-2.3(a)(12).
13. After a departmental hearing, Millville issued an FNDA, dated May 2, 2022, sustaining the charges in the PNDA, and removing Simpson from employment, effective May 2, 2022.
14. The Job Specification defines a Public Works Inspector as an individual, who "[u]nder direction, makes field inspections of a variety of public works construction projects to ensure compliance with plans, specifications, and standards of workmanship; does other related duties as required." Among the many examples of work provided in the Job Specification was "[m]akes field inspections of all outside utilities, construction work such as curbs, roads, drains and appurtenances thereto and checks the quality and amount of work done." Prior experience required for the job was "[o]ne (1) year of experience in the construction or installation of roads, water mains, sewer lines, or similar public works construction activities involving the

reading and interpretation of blueprints, plans specifications, and engineering drawings or surveying techniques directly related to public works construction." (J-3.)

15. The experience requirements under the Job Specification for a Senior Public Works Inspector were:

[t]wo (2) years of inspection experience of the construction of public works facilities such as roads, water mains, or sewer lines, for compliance with plans, specifications, quality of workmanship, material used and adherence to safety regulations or in the construction or installation of roads, water mains, sewer lines, or similar public works construction activities involving the reading and interpretation of blueprints, plans, specifications, and engineering drawings or surveying techniques directly related to public works construction or some combination thereof.

[J-4.]

### Testimony

The following is not a verbatim recitation of the testimony, but a summary of the testimonial and documentary evidence that I found relevant to the above-described issue.

#### For respondent

**Wayne Johnson** has been a licensed engineer for over thirty years. He became Millville's Municipal Engineer in January 2022. Prior to that position, he had worked for Millville for over twenty years in different capacities, including Director of Public Works, and as a consultant on various projects. In the four years preceding his appointment as Municipal Engineer in January 2022, Johnson had not been working for Millville in any capacity.

The Municipal Engineer is responsible for all engineering projects within the city and acts as the supervisor of the employees in the engineering department. When

Johnson started, Simpson was an inspector in the engineering department. Johnson had previously worked with Simpson on Public Works projects, and their working relationship went back fifteen years. As Simpson's supervisor, Johnson had no qualms about Simpson's abilities.

In early February 2022, Johnson asked Simpson to resume the inspections at the Four Seasons construction project that had been neglected. Simpson refused on the basis that inspection work on private projects, such as the Four Seasons, was outside of his job title. Johnson tried to impress upon Simpson that these inspections needed to be done by the Public Works Department. According to Johnson, there was no difference between Planning Board projects and other work. Because of Simpson's refusal, Johnson started doing the inspections on his own.

Simpson would not budge from his position, so Johnson arranged a meeting with Commissioner Sooy to try to find a solution. Although Johnson believed this work was part of Simpson's current job description and title, he advocated for a change of title to Senior and additional pay for Simpson. Sooy agreed those changes were warranted. The meeting among Sooy, Simpson, and Johnson appeared to be productive. Commissioner Sooy agreed to start the process to change Simpson's title to Senior Public Works Inspector and find additional money in the budget, in exchange for Simpson agreeing to immediately resume the inspection work.

Despite Johnson's optimism, problems ensued the very next day. On Friday, March 4, 2022, Johnson presented Simpson with a punch list of inspection work that needed his immediate attention at the Four Seasons site. Simpson refused to do the work and requested another meeting with Sooy. Johnson gave him the rest of the day to reconsider and told him he expected the inspections to start on Monday. Simpson did not show up for work on Monday. On Tuesday, Johnson begged Simpson to go to the project and do the inspections. Simpson refused. This was personally very hard for Johnson because he had considered Simpson to be a friend.



Johnson knew that Commissioner Sooy was considering discipline for Simpson's refusal, so he asked for another chance to talk to Simpson. Despite Johnson's efforts, Simpson never relented.

Having run out of options, Johnson told Simpson to report to the Personnel Officer, Pam Shapiro. Johnson later learned that Simpson had been fired.

Johnson had no issues with any other aspects of Simpson's work. He competently performed all other inspections. Simpson's work refusal was confined to the Four Seasons construction project.

**Commissioner Joseph Sooy** was a commissioner for Millville from 2013 through 2016. He was re-elected and started a new term on January 1, 2022. Sooy is assigned to the Department of Revenue and Finance, and included within that department are Engineering and Water and Sewer. Sooy hired Johnson as the Municipal Engineer.

Sooy knew Simpson from his first term in office. On March 2, 2022, Johnson told him that Simpson wanted to meet with him to discuss his job title. The meeting occurred on March 3, 2022. Sooy understood that Simpson believed that the inspections for the Four Seasons construction project were beyond his current civil service title. Johnson and Sooy agreed that Simpson qualified for a title change to Senior. In August 2018, Simpson had been approved for the title of Senior Public Works Inspector, but he declined the promotion. (P-3.) Sooy advised Simpson that he would check to see if the budget would allow a salary increase with the title change to Senior. In the meantime, Sooy understood that Simpson would perform the inspection work at the Four Seasons.

After the meeting, Sooy started the process for Simpson's title change and pay increase. He also reviewed the job descriptions of a public works inspector versus a senior public works inspector. Based on his review, he was satisfied that the Four Seasons' inspection work fit under both titles. However, Sooy believed that Simpson deserved more money as a long-time, well-respected employee. He had no qualms with the title change or the additional money.

However, after learning from Johnson of Simpson's continued refusal to do the inspections, Sooy advised Simpson to speak with the City Administrator, Ray Compari. On the morning of March 10, 2022, after learning that Simpson had not returned a telephone call from Compari, Sooy met with Simpson. At the March 10, 2022, meeting, Sooy told Simpson that he was suspended, pending termination for insubordination. According to Sooy, Simpson had become belligerent, and his continued refusal to obey a work order was not only unacceptable, but it was also a disservice to the taxpayers of the City of Millville.

**Pamela Shapiro** has been the Personnel Officer for Millville since August 2016. She was familiar with Simpson and had helped him with a desk audit when he felt he was working out of his title. Simpson completed paperwork for a title change to Senior Public Works Inspector. After review, the Civil Service Commission determined that Simpson was qualified for the title change to Senior Public Works Inspector. (P-3.) Millville offered Simpson the new position of Senior Public Works Inspector, but Simpson declined the position. (P-1.)

Shapiro's next contact with Simpson was in March 2022. On March 10, 2022, Shapiro was present at the meeting when Simpson was suspended for not performing his job duties.

### **For petitioner**

**James Simpson** was hired as a laborer for streets and roads by Millville in May 2005. In 2008, he started working for the Engineering Department as an Engineering Aide. While still an Engineering Aide, he also held the title of Public Works Inspector. Simpson recalled that as the years passed, the number of staff engineers decreased. When Johnson started in 2022, he was the only engineer on staff.

In 2018, Simpson filed a desk audit for a change of title to Senior Public Works Inspector. He believed that he had been doing the work at the Senior title level, but without the title. Although he qualified for the title change, he declined it. Simpson believed that the responsibility would be too much, especially without adequate

engineering support. The department had dwindled in size and Simpson felt there was a lack of support.

The Four Seasons Development is a huge housing development project that had been approved by Millville's Planning Board. The project started when Prohowich was the Municipal Engineer. When Prohowich resigned, Millville had no engineer on staff. Simpson sent a letter to the mayor addressing his concerns about doing inspections at the Four Seasons without an engineer on staff responsible for supervision. (P-16.) Thereafter, he stopped doing the inspection work, and Vineland assigned the work at the Four Seasons to an outside engineering firm.

When Johnson asked Simpson to resume the inspections at the Four Seasons, Simpson made him aware of his previous concerns. Johnson brushed off his concerns and told him the work needed to be done. Simpson maintained that he was not comfortable with doing work on private projects, without supervision.

Johnson ignored Simpson's concerns that he was not properly trained and not capable of performing the work requested. Simpson asked for a meeting with Sooy. During the meeting, Simpson's concerns were ignored. Sooy and Johnson had the wrong impression that Simpson wanted more money. That was not his issue. His issue was that the Department was woefully understaffed and could not provide him with the supervision he needed.

Simpson understood his duties were limited to public projects within Millville's right of way. Senior Public Works Inspectors were assigned subdivision work. (P-4.) In eighteen years, Simpson never refused to work on public projects and had no trepidation about public inspection work.

Simpson had worked independently and performed all duties without direct supervision. Simpson complained he had no choice because the Department had no other employees to do the work. Simpson was offered the title of Senior Public Works Inspector as of August 31, 2018, with an increase in pay. He declined the position because he had a list of concerns and did not think the pay increase was worth it.

Simpson's competency concerns were due to lack of support. Although Johnson was on staff as the engineer in charge, Simpson expressed that he did not have confidence in Johnson. He felt Johnson was too busy and had too many responsibilities.

Simpson was adamant that he never refused to do work within his title as Public Works Inspector. He claimed he did not want the title of Senior Public Works Inspector or the additional money. He was only comfortable doing inspections for public works construction projects. He made a distinction between public works projects and private projects, like the Four Seasons construction project. Simpson maintained that he was not qualified to do the work at the Four Seasons construction project. Although Johnson warned him that it was not going to end well, Simpson believed he could not be forced to do work above his title.

### **Respondent's rebuttal**

On rebuttal, **Commissioner Sooy** testified that he did not recall Simpson ever stating that he was not qualified to do the work at the Four Seasons site. He understood from their discussions that Simpson wanted more money to do this work. Sooy immediately acted to get Simpson a pay raise because he believed that Simpson deserved the new title and more pay.

**Johnson** never recalled Simpson asking for training or stating that he did not feel qualified or capable of doing the work. In Johnson's opinion, Simpson could perform the assigned work. He based his opinion on his firsthand knowledge of Simpson's capabilities over many years of observing his work. Like Sooy, Johnson thought Simpson wanted more money.

### **ADDITIONAL FACTUAL FINDINGS**

It is the obligation of the fact finder to weigh the credibility of the witnesses. Credibility is the value that a fact finder gives to a witness's testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief.

“Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness’ interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Respondent’s witnesses, Johnson, Sooy, and Shapiro, testified in an earnest manner that conveyed their desire to be clear and direct. There was no suggestion of bias against Simpson or improper motive to benefit respondent. The opposite was true. The witnesses praised Simpson as a competent and dedicated long-term employee, until this incident.

Although sequestered during the hearing, Johnson and Sooy had similar recollections about what occurred during the March 3, 2022, meeting with Simpson. Both men believed that Simpson agreed to do the inspections. Neither witness had any recollection of Simpson’s claim that he was unqualified to do the work or needed additional training. Their actions following the meeting matched their understanding. The next day, Johnson prepared a punch list of work to be done, and Sooy started the process to find more money for Simpson.

Johnson was soft-spoken and even-tempered during his testimony. His expressed concern for Simpson was genuine, as he considered Simpson a friend. Although Johnson’s employment as the Municipal Engineer started January 1, 2022, he was the former engineer for the Public Works Department and familiar with Simpson’s capabilities. Not only was Johnson familiar with Simpson’s work, but Simpson had also been performing this work for fourteen years. As such, Johnson’s testimony that Simpson could perform the assigned work was believable and plausible.

In contrast, Simpson’s concerns that he lacked the ability to do this work and needed more training was not plausible or believable. Simpson never articulated or

presented any evidence to show that his assignments from Johnson for the Four Seasons was outside the scope of his duties. Nor did he articulate what type of training he would require. His argument that the work was beyond his capabilities according to his title was diminished by the fact that in 2018, he qualified for the Senior title. (J-4.) Simpson's reliance upon his letter dated July 21, 2021, as proof that he had presented his concerns about his own abilities was also not persuasive. Simpson wrote that he did "not feel comfortable doing the inspections at the 4 season development." (P-16.) He did not say that he was not capable of performing the work. His stated concerns were because he did not have a "proper title" or the support from a "licensed city engineer on staff." Even after those concerns were met, Simpson persisted in his refusal to do this work, using his lack of comfort as an excuse. Given the above, Simpson's testimony was not believable.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** the following as additional **FACTS**:

As a Public Works Inspector, Simpson was required to make field inspections on "a variety of public works construction projects" and "other related duties as required." (J-3.) Simpson refused to perform duties assigned to him by his direct supervisor, Johnson, pertaining to needed inspections at the Four Seasons construction site. As the Public Works Inspector, Simpson was required to perform the inspection work as directed by his supervisor, Johnson, at the Four Seasons construction site. Johnson afforded Simpson every opportunity to comply with his work orders, but Simpson persisted in his refusal. There is no indication that the work Johnson assigned to Simpson was beyond his capabilities or outside of his job title.

### **LEGAL ANALYSIS AND CONCLUSION**

The Civil Service Act, N.J.S.A. 11A:1-1 to N.J.S.A. 11A:1-12.6, governs a civil service employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118

N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). To carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958); Loew v. Union Beach, 56 N.J Super. 93,104 (App. Div. 1959). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933).

The first issue in this proceeding is whether a preponderance of the credible evidence establishes that the Simpson's refusal to perform inspections at the Four Seasons construction site between February and March 2022 constitutes a violation of the charges set forth in the FNDA. (R-2.) If so, the second issue is whether the violations warrant removal from employment, or a lesser penalty under progressive discipline.

Simpson is charged with violating the provisions of N.J.A.C. 4A:2-2.3, relating to incompetency, inefficiency, or failure to perform duties; insubordination; neglect of duty; and other sufficient cause.

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain, or produce effects or results necessary for adequate performance. Clark v. New Jersey

Dep't of Agric., 1 N.J.A.R. 315 (1980). The fundamental concept is that an employee should be able to perform the duties of the position for which he or she was hired. Briggs v. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960) (employee must be qualified to perform the duties of the job as outlined by the appointing authority).

Here, Simpson's years of service demonstrated his competence to do the work required. His conduct demonstrated his unwillingness to perform the inspections that his supervisor required. Simpson never reported to Johnson that the specific work required was beyond his ability. Simpson had been performing as a Public Works Inspector for approximately fourteen years. He had qualified for the title of Senior but declined the promotion. His supervisor, Johnson, was familiar with his work and capabilities. For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden as it relates to charge N.J.A.C. 4A:2-2.3(a)(1) for failure to perform duties.

Insubordination is defined in Black's Law Dictionary 802 (11<sup>th</sup> Ed. 2019) as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been used by courts to define the term where it is not specifically defined in contract or regulation.

"Insubordination" is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

The above definitions incorporate acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the



department.” Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

Simpson's refusal to perform the inspections was an act of disobedience. Johnson gave Simpson every opportunity to comply. Simpson knew that his continued refusal caused more work for Johnson. His actions were a sign of disrespect and a challenge to Johnson's authority. I **CONCLUDE** that respondent has proven by a preponderance of the credible evidence that Simpson violated N.J.A.C. 4A:2-2.3(a)(2), insubordination.

“Neglect of duty” has been interpreted to mean that an employee “neglected to perform an act required by his or her job title or was negligent in its discharge.” In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, Civil Service Commission (March 27, 2009), [njlaw.rutgers.edu/collections/oal/](http://njlaw.rutgers.edu/collections/oal/). The term “neglect” means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). “Duty” means conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

As the Municipal Engineer and Simpson's direct supervisor, Johnson directed Simpson to perform inspections at the Four Seasons construction site. Simpson was required to perform field inspections and do all required related duties. Therefore, I **CONCLUDE** that respondent has demonstrated, by a preponderance of the credible evidence, that Simpson's refusal to perform the inspections constituted neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7).

There is no definition in the New Jersey Administrative Code for other sufficient cause; it is generally defined as all other offenses caused and derived from the other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when “[r]espondent has not given any substance to the

allegation.” Simmons v. City of Newark, CSV 09122-99, Initial Decision (February 22, 2006), adopted, Merit System Bd. (April 5, 2006), <https://njlaw.rutgers.edu/collections/oal/>. Herein, I **CONCLUDE** that respondent has not given any substance to support this charge, and dismissal of the violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause is appropriate.

### PENALTY

An appeal to the Merit System Board requires the Office of Administrative Law to conduct a de novo hearing and to determine appellant's guilt or innocence as well as the appropriate penalty. In the Matter of Morrison, 216 N.J. Super. 143 (App. Div. 1987). In determining the reasonableness of a sanction, the employee's past record and any mitigating circumstances should be reviewed for guidance. West New York v. Bock, 38 N.J. 500 (1962). Although the concept of progressive discipline is often cited by appellants as a mandate for lesser penalties, it is not.

To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. [citations omitted]

In re Herrmann, 192 N.J. 19, 33-4 (2007).

Although the focus is generally on the seriousness of the current charge as well as the prior disciplinary history of the appellant, consideration must also be given to the purpose of the civil service laws. Civil service laws “are designed to promote efficient public service, not to benefit errant employees . . . The welfare of the people as a whole, and not exclusively the welfare of the civil servant, is the basic policy underlining the statutory scheme.” State Operated School District v. Gaines, 309 N.J. Super. 327, 334

(App. Div. 1998). "The overriding concern in assessing the propriety of the penalty is the public good. Of the various considerations which bear upon that issue, several factors may be considered, including the nature of the 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, 465.

Other than the violations sustained herein, Simpson has no other disciplinary history in over fourteen years of service. While not discounting these relevant and important considerations, in this instance they are outweighed by other factors. Simpson's refusal was blatant and without justification. Johnson impressed upon Simpson the importance of performing these inspections. When Simpson refused, Johnson continued his efforts to gain compliance by arranging a meeting with the Commissioner. Johnson's patience and efforts were spurned by Simpson. Despite his superior's patience, Simpson's refusal to do the work was unjustifiable. Simpson's disregard for Johnson's authority and refusal to perform reasonable duties within his job title dictates against progressive discipline for these violations.

As more fully set forth above, Simpson's conduct was inexcusable. He continued to make excuses for his insubordination and failed to grasp the seriousness of his conduct. Such blatant refusal of reasonable and legitimate workplace directives cannot be tolerated or condoned.

Based upon the above, I **CONCLUDE** that respondent has demonstrated by a preponderance of the credible evidence the charges in the FNDA of failure to perform duties, insubordination, and neglect of duty. I further **CONCLUDE** that removal is the appropriate penalty for these sustained charges.

### **ORDER**

For the foregoing reasons, it is hereby **ORDERED** that appellant's appeal is **DENIED**, and that the Final Notice of Disciplinary Action, sustaining the charges of violations of N.J.A.C. 4A:2-2.3(a)(1) (Incompetency, inefficiency, or failure to perform

duties), N.J.A.C. 4A:2-2.3(a)(2) (Insubordination), and N.J.A.C. 4A:2-2.3(a)(7) (Neglect of duty), is **AFFIRMED**.

It is further **ORDERED** that the Final Notice of Disciplinary Action dated February 14, 2022, providing for a penalty of removal, is **AFFIRMED**.

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 2, 2023  
DATE

  
KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: VIA EMAIL, March 2, 2023

Date Mailed to Parties: VIA EMAIL, March 2, 2023

KMC/jns

**APPENDIX**

**WITNESSES**

**For appellant**

James Simpson

**For respondent**

Wayne Johnson

Joseph Sooy

Pamela Shapiro

**EXHIBITS**

**Joint**

J-1 Email exchange between Johnson and Sooy, dated March 11, 2022

J-2 Email exchange between Sooy and Shapiro, dated March 14, 2022

J-3 Job Specification for Public Works Inspector

J-4 Job Specification for Senior Public Works Inspector

**For appellant**

P-1 Email, dated April 17, 2019

P-3 Desk audit results, dated December 17, 2018

P-16 Four Seasons correspondence

P-2, and P-4 through P-15 were not offered as evidence

**For respondent**

R-1 Amended PNDA

R-2 FNDA