

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 his exceptions, the appellant argues that the removal should be modified since the ALJ relied on, in part, an erroneous finding that he was placed on a remote work schedule to separate him from his co-workers during most of the duration of the investigation. The Commission rejects this argument. Even if accurate, the upheld misconduct by the appellant is egregious and worthy of removal, regardless of how the appointing authority dealt with him at the time.

In this matter, the ALJ stated:

When determining the appropriate penalty, Cidoni's mitigating factors include Cidoni's age, apology during the hearing (footnote omitted) and expression of remorse. He also has no prior discipline with the County. The aggravating factors are Cidoni's comments during the three incidents, foul language and threats that offend publicly accepted standards of decency. Cidoni's words negatively impacted the work environment, a readily-apparent outcome.

If the disciplinary charges against Cidoni did not include his threat to shoot his supervisor, perhaps a lesser penalty would be appropriate for the pedestrian incident and for calling his supervisor a bitch. That, however, is not the case here. Accordingly, **CONCLUDE** that Cidoni's behavior was so egregious as to warrant his removal, without regard to progressive discipline because Cidoni's misconduct was serious, offensive and disrupted the operations of the Office and the quality of life and morale of Cidoni's colleagues in the Office.

The Commission wholeheartedly agrees that the appellant's egregious actions in this matter fall well short of what is expected of a public employee. 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 removing the appellant was justified. The Commission therefore upholds that

action and dismisses the appeals of Carl Cidoni.

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 6TH DAY OF DECEMBER, 2023



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Chairperson
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 05301-22

AGENCY DKT. NO. 2022-3253

**IN THE MATTER OF CARL CIDONI,
MIDDLESEX COUNTY DEPARTMENT
OF PURCHASING.**

Seth Gollin, Esq., Staff Attorney for AFSCME New Jersey Counsel 63, for appellant Carl Cidoni, pursuant to N.J.A.C. 1:1-5.4(a)(6)

Boris Shapiro, Esq., for respondent Middlesex County Department of Purchasing (Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys)

BEFORE KIMBERLEY M. WILSON, ALJ:

Record Closed: September 21, 2023

Decided: October 27, 2023

STATEMENT OF THE CASE

Appellant, Carl Cidoni (Cidoni), a Graphic Artist I at respondent Middlesex County Department of Purchasing (County), appeals disciplinary action seeking his removal for conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)6 and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)12, based on threatening and inappropriate comments he made during the workday. Cidoni generally argues that the

County has not proven these charges against him, and that removal is a harsh and inappropriate penalty.

PROCEDURAL HISTORY

On or around June 13, 2022, the County issued a Final Notice of Disciplinary Action (FNDA) against Cidoni, removing him from his employment effective June 14, 2022. (R-1.) Cidoni appealed, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on June 27, 2022, to be heard as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

After status conferences and adjourned hearing dates, the hearing was held on May 25, 2023, and May 31, 2023. The record remained open to allow counsel to submit post-hearing summation briefs on September 18, 2023. After a brief adjournment to allow Cidoni's counsel to submit his post-hearing summation brief by September 20, 2023, the record closed on September 21, 2023.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are not in dispute, and so I **FIND**:

1. Cidoni was working for the County as a Graphic Artist I when on or around May 26, 2022, the County served a Preliminary Notice of Disciplinary Action on him. (R-1.) Cidoni waived his preliminary hearing through his union representation. (Ibid.)
2. On or around June 13, 2022, the County served an FNDA on Cidoni. (Ibid.) The charges in the FNDA were: (i) conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)6; and (ii) other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)12, including, but not limited to, a violation of County Human Resource Policy Section 1:5A-3, which pertains to employee conduct and work rules. (Ibid.)

3. The disciplinary charges in the FNDA were based on three incidents. (Ibid.) The first incident (referred to as the pedestrian incident) occurred in or around April 2022, when “Cidoni was overheard in the office talking loudly about almost getting ‘hit’ while out walking for lunch and stating that he gave the individual the middle finger. . . .[W]hen describing the situation he referred to the individual as ‘a woman because a lady wouldn’t act like that towards someone’ or words to the same effect. He also made reference to suggest that he would not have reacted in the matter that he did if she was not Caucasian.”
4. The second incident (referred to as the April 14, 2022, incident) occurred on or around April 14, 2022. (Ibid.) During either a conference call or virtual meeting, Cidoni “was overheard by several individuals loudly making the comment that he was going to ‘shoot’ a representative from the County’s contracted marketing vendor, and that after a ‘pause’ then stated ‘with a water gun,’ or words of the same effect.”
5. The third incident (referred to as the May 9, 2022, incident) occurred on or around May 9, 2022. (Ibid.) Cidoni “was overheard loudly referred to the same representative from the County’s contracted marketing vendor, that he previously stated he was going to ‘shoot’ her, referring to her as a ‘bitch.”
6. The County’s Human Resource Policy Section 1:5A-3, titled “Employee Conduct and Work Rules,” states the following: “To assure orderly operations and provide the best possible work environment, the County expects employees to follow rules of conduct that will protect the interests and safety of all employees, County government and the public. It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. The consumption of alcohol and/or the use of a controlled dangerous substance without medical authorization during working hours is strictly prohibited.” (Ibid.)

7. Cidoni was removed from his employment with the County effective June 14, 2022. (Ibid.)

Testimony

For respondent:

Several employees in the County's Office of Marketing (Office) testified about the incidents. They are:

1. Jeffrey Caban (Caban), a former graphic artist in the Office.
2. Marnina Salomon (Salomon), a graphic artist in the Office.
3. Roxanne Guarino (Guarino), a content writer in the Office.
4. Adam Brooks (Brooks), a multimedia and video manager in the Office.
5. Joseph Revolinsky (Revolinsky), the County's Chief of Personnel and Labor Relations.
6. Betty Matthews (Matthews), senior account clerk in the Office.

Several employees for the County's third-party vendor, TopRight Partners (TopRight),¹ testified about the incidents. They are:

1. Pat Berryhill (Berryhill), a former account director for TopRight.
2. Judi Friedman (Friedman), managing partner and chief engagement officer for TopRight.
3. Karen Gold (Gold), creative director for TopRight. The graphic artists in the Office reported directly to Gold.

The following discussion is not a summary of all testimony, but an encapsulation of the testimony relevant to the disciplinary charges against Cidoni.

¹ TopRight Partners is a marketing company with an office in Atlanta, Georgia. TopRight collaborated with the County to develop annual marketing campaigns and strategies.

The pedestrian incident

Brooks testified that in April 2022, he overheard a conversation between Cidoni and Matthews in the Office. Cidoni had come back to the Office from lunch, and Brooks was sitting at his desk, working. According to Brooks, Cidoni told Matthews that he was almost hit by a car as he was walking in a crosswalk during his lunch break. Cidoni said that he gave the driver the middle finger, an obscene hand gesture, and the driver returned the gesture. Matthews told Cidoni that he should not make that gesture to a lady, and Cidoni responded that a lady would not act that way. Later in the conversation, Cidoni stated that if the driver had been white, she would not have acted the way she did. In this conversation, Cidoni never mentioned what the driver's skin color was.

Matthews testified similarly about the pedestrian incident, indicating that Cidoni said he did not move out of the way when the driver almost hit him. Cidoni made comments about the driver's gender and race, calling her a bitch² and the N-word,³ referring to African Americans. Matthews described Cidoni's comments as very vulgar. Her conversation with Cidoni occurred both outside of the building where the Office is located and within the Office; she did not state whether Cidoni's comments about the driver's gender and race were made outside of the Office or within it.

County management never questioned Matthews about the language that Cidoni used in the pedestrian incident. Matthews' testimony that Cidoni called the driver a bitch and used the N-word was the first time she discussed the specific language Cidoni used regarding the pedestrian incident.

The April 14, 2022 incident

Caban, Salomon and Guarino's testimony regarding the April 14, 2022, incident was substantially similar. All three were among the employees working with Cidoni in the Office that afternoon.

² The definition of "bitch" is a female dog or a malicious, unpleasant person, particularly a woman.

³ In her testimony, Matthews stated that Cidoni used the N-word, a euphemism for the word "nigger," a racial slur directed at African Americans.

Caban, who was sitting about seven to ten feet away from Cidoni, said that it appeared that Cidoni received a notification at his desk about a point of feedback on one of his assignments, and Cidoni seemed very frustrated over the notification. In response, Cidoni said aloud, "Shit. What did she change now? I'm going to shoot her." (R-2.) The "her" in the comment was Gold, who was the Office's point person for providing certain feedback on design projects.

Salomon, who sat about four feet away from Cidoni in an adjacent cubicle, recalled Cidoni's exact words were, "Oh. I'm going to shoot her." Salomon said the room stopped for a minute from his statement, and then he made a follow up remark, "with a water gun." (R-4.) Salomon believed there was a significant pause in time between the two statements because Cidoni took note of the quietness in the Office after his first statement.

Guarino, who was working at her desk adjacent to Cidoni and facing away from him, heard him say, "I'm going to shoot her." (R-5.) There was a moment of silence, and then Cidoni said, "I didn't say that." (Ibid.) Guarino testified that she responded, "I heard you," and then Cidoni said, "with a water gun," as if he was adding this to his prior statement. (Ibid.) Guarino was facing Cidoni and told him, "I heard every word you said." (Ibid.)

Caban testified that Cidoni made the statement with a serious tone, startling the designers around Cidoni and making several uncomfortable. Cidoni appeared genuinely annoyed at the point of feedback, and his comments were not light-hearted. Salomon testified that she was shocked by and concerned about Cidoni's comment. She said it was a very intense, angry statement, which made the comment alarming.

After Cidoni's comment, Caban stepped away from his desk with Salomon and wrote an email to Patrick Gallagher (Gallagher), Director of Human Resources for the County, and Shannon Tambini (Tambini), Director of the Office. (R-2.) In this email,

Caban mentioned that Cidoni made the supplemental "with a water gun" remark, but Caban did not testify about this portion of Cidoni's comment. (Ibid.)

The May 9, 2022 incident

On or around May 11, 2022, Berryhill, Friedman and Gold had dinner with Salomon. Salomon was the newest designer on the team and seemed very upset, so they had dinner with her to find out what was going on. When they asked her, Salomon was demonstrably upset and said Cidoni was driving her to distraction, cursing under his breath, constantly talking loudly and interrupting conversations. Salomon could hear Cidoni even when she was wearing headphones. Salomon confided that Cidoni created a toxic workplace.

The day after this dinner, in the Office, Gold asked Cidoni to complete a task, something that Berryhill did not recall but described as very basic. Berryhill said that the task was something she knew that Cidoni could complete very well. Cidoni began complaining loudly. Berryhill was one aisle over at a desk, and she watched Cidoni walk towards his desk. As he walked by Berryhill, Cidoni muttered aloud, "I can't work with that bitch." Berryhill testified that this was not a stressful situation where a person would lose their temper.

Brooks testified that he has heard Cidoni call Gold a bitch several times and estimated that he heard Cidoni say that he could not stand her about ten times within over an unspecified time.

The County's Investigation⁴

Revolinsky testified that he began an investigation of Cidoni after he received a copy of Caban's April 14, 2022, email originally sent to Patrick Gallagher (R-2.)

⁴ The County presented evidence of other workplace incidents involving Cidoni. Those incidents were not included in the FNDA and not considered for this Initial Decision.

Revolinsky contacted Tambini to obtain background information and then sent letters to certain individuals requesting responses, including a letter to Salomon. (R-3.)

Revolinsky reviewed the responses that he received (R-4; R-5; R-8), and on May 26, 2022, he interviewed Cidoni with Cidoni's union representative present. Revolinsky based his interview questions to Cidoni on the responses that he received.

Revolinsky memorialized the responses Cidoni gave during this interview. (R-9.) Cidoni denied stating that he was going to shoot Gold and denied calling her a bitch. Cidoni did not indicate to Revolinsky that he did not recall this incident. (Ibid.) For the pedestrian incident, Cidoni also denied talking about getting hit by a car while out walking for lunch or that he gave the driver the middle finger. (Ibid.) Cidoni did not indicate to Revolinsky that he did not recall this incident.

In this written statement, Cidoni acknowledged that he read the statement and that it accurately reflected his remarks to Revolinsky during the interview. (Ibid.)

Disciplinary charges against Cidoni

Revolinsky testified that the disciplinary charge against Cidoni for other sufficient cause brought is linked to the County's Human Resource Section 1:5A-3. (R-1.) The County terminated Cidoni's employment because the safety of everyone who enters a County office to conduct business is a concern. Revolinsky testified, "Given the current events concerning shootings in the workplace, [Cidoni's] comments were just considered unacceptable." (T1 127:20-24.) Revolinsky also noted that the County has a zero tolerance policy regarding workplace violence.

The County did not suspend Cidoni during the investigation, but he was placed on a remote work schedule during that time. Cidoni was also told not to attend a scheduled event in June 2022 that Gold was expected to attend.

Revolinsky was not aware of any prior discipline against Cidoni. After Revolinsky completed the investigation, Cidoni's employment with the County was terminated.

For appellant:

Carl Cidoni received an email from Revolinsky and Gallagher indicating that they needed to see him. Cidoni attended a meeting with Revolinsky and one of the union representatives, and Revolinsky advised Cidoni that they were investigating him. During that meeting, Revolinsky asked Cidoni a series of questions.

As for the pedestrian incident, Cidoni testified that he did deny talking about getting hit by a car while out for lunch and stating that he gave the driver the middle finger when he met with Revolinsky. (R-9.) Cidoni said that he did not remember any of this and was not going to agree to something that he did not know about during the meeting. He later testified that he denied items that he did not remember, saying that he was under quite a bit of duress in the meeting. Cidoni did recall the pedestrian incident afterwards.

Cidoni denied calling the driver the N-word. When asked to describe the incident presently, Cidoni indicated that he was returning to the Office from lunch and a driver turning the corner almost hit him. Cidoni said the driver got combative, and he gave the driver the finger. The driver returned the gesture. Cidoni said his conversation with Matthews about this incident took place in Matthews' cubicle in the Office. He did not recall a conversation with Matthews outside of the Office, because he did not know whether he went to lunch with Matthews that day.

Cidoni denied mentioning the driver's race during his discussion of the pedestrian incident with Matthews. He denied saying that if the driver had been white, he would not have acted that way, and he also did not recall calling the driver a bitch.

As for the April 14, 2022 incident, Cidoni recalled that he had a conversation with Gold about something that he did not remember, but the conversation upset him. Cidoni did recall saying something along the lines of "Let's shoot her with a water gun," but it

was not meant in a nasty or mean way. In his testimony, Cidoni referred to comedians Rodney Dangerfield and Henny Youngman, where the little pause preceding the "with a water gun" was intended to be the punchline. His intention was not to hurt or harm anyone, and Cidoni testified as follows:

I realize now that you know, these statements in this culture are not acceptable, but we're in a different world and I am a senior citizen. I just turned seventy-four years old and I come from a different generation where certain things didn't get you in trouble, you know?

Your actions got you in trouble more than words, but I do understand where they would be upset, yes, but my intention was never to hurt or harm or insult anybody in that respect.

[T2 87:13-22.]

Cidoni disagreed with Caban's testimony that Cidoni's water gun comment was not made in a lighthearted manner and that Cidoni was genuinely annoyed.

Regarding the May 9, 2022 incident, Cidoni did not remember whether he called Gold a bitch. His testimony was as follows:

. . . I don't remember. I'm being honest with you. I don't - - it's been a long time and I don't - - sometimes I can't remember what I had for breakfast, but I'm being honest with you.

[T2 78:4-9.]

He also denied saying that he was going to murder anyone. He later testified that he would never call a woman a bitch in an office setting.

Cidoni testified that Tambini never spoke to him about being disruptive in the Office. The County has never brought any other disciplinary charges against him.

Cidoni said that his colleagues in the Office never acted as though they were afraid of him. He said that he was always lighthearted around them, and they were cordial to him. He said that he was cordial with them as well. He would maybe get upset and maybe mutter something under his breath, but it was not aimed at anyone.

Cidoni testified that his colleagues could have lied about him and colluded against him. He believes that his colleagues, including Gold, wanted him out of the Office. To him, these disciplinary charges came out of nowhere. He thinks getting fired is a "little overboard," as the County could have advised him what he's not supposed to do. He acknowledged that he was getting fired because he said something stupid, which would not have happened thirty years ago, and that there is more scrutiny now because of mass shootings.

Cidoni testified that from these disciplinary charges that he has learned to watch what he says around people. He may be an older guy, but he has room to learn. It was not his intention to hurt or insult anyone. He has suffered for the past year financially and emotionally from losing his job. He also stated that his statements were blown out of proportion. He apologized to anyone if they were hurt by his words and felt remorse that this happened.

On cross-examination, Cidoni acknowledged that there was a difference between denying something he allegedly did and denying that he did it. Cidoni testified that he denied many of the allegations against him during the meeting with Revolinsky because he was not going to agree to something he did not remember. Cidoni never went to

Revolinsky afterwards to discuss or revise the answers that he provided. He reviewed the exhibits that Revolinsky had (R-4; R-5; R-8) and remembered some of the incidents.

Additional findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' 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).

Having had the opportunity to hear and view all of the witnesses during their testimony and review the County's documentation, I accept the testimony of all of the County's witnesses as credible. Each testified consistently and forthrightly about their respective involvement with Cidoni in the workplace. Guarino and Salomon were uncomfortable during their testimony, which can be attributed to the fact they were confronting Cidoni about the comments he made in the Office and their collective concern about Cidoni potentially returning to their work environment.

After reviewing Cidoni's testimony, I find his testimony largely not credible, except for those instances where he admitted to his conduct. His testimony regarding the incidents was inconsistent with the responses he provided in his signed statement to Revolinsky during the investigation. For example, Cidoni testified that he did not remember whether he said that he would murder Gold; however, this testimony is different than his statement made with Revolinsky and his union representative, where he denied stating that he was going to shoot Gold. (R-9.) While Cidoni may have been nervous about testifying because his employment at the County was at stake, he had difficulty

answering straightforward questions and contradicted himself. For these reasons, I do not accept Cidoni's testimony as credible.

Accordingly, I **FIND** the following additional **FACTS**:

1. In or around April 2022, Cidoni told Matthews in the Office that he was almost hit by a car as he was walking in a crosswalk during his lunch break. Cidoni said that he gave the driver the middle finger, an obscene hand gesture, and the driver returned the gesture. Matthews told Cidoni that he should not make that gesture to a lady, and Cidoni responded that a lady would not act that way. Later in the conversation, Cidoni stated that if the driver had been white, she would not have acted the way she did.
2. On or around April 14, 2022, in the afternoon in the Office, Cidoni said aloud, "I'm going to shoot her." Cidoni's comment was about Gold.
3. After assessing his colleagues' response to his comment, Cidoni followed up his initial comment by stating "with a water gun."
4. In or around May 2022 in the Office, Cidoni stated aloud, "I can't work with that bitch," referring to Gold.
5. Prior to his removal, the County had not brought any other disciplinary charges against Cidoni.
6. The County did not suspend Cidoni during the investigation, but he was placed on a remote work schedule during that time. Cidoni was also told not to attend a scheduled event in June 2022 that Gold was expected to attend.

LEGAL ANALYSIS AND CONCLUSION

A civil service employee's rights and duties are governed by the Civil Service Act (Act) and regulations promulgated pursuant thereto. See N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. The purpose of the Act is to "ensure efficient public service for state, county, and municipal government." In re Johnson, 215 N.J. 366, 375 (2013)(citing Comm'ns Workers of Am. v. N.J. Dep't. of Personnel., 154 N.J. 121, 126 (1988)). The Act should be construed liberally toward attainment of merit appointments and broad tenure protections. See Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, "[t]here is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which could range from a reprimand, suspension, or removal from employment. See N.J.S.A. 11A:1-2(c); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2(a); N.J.A.C. 4A:2-2.9. Consistent with public policy and the Act, public entities should not be burdened with an employee who fails to perform their duties satisfactorily or engages in misconduct related to their duties. See N.J.S.A. 11A:1-2(a). Thus, a public entity may impose major discipline upon a civil service employee, including removal from their position. See N.J.S.A. 11A:1-2c; N.J.A.C. 4A:2-2.2(a).

For appeals concerning major disciplinary action, the appointing authority bears the burden to prove the charges by a preponderance of the competent credible evidence. See N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (N.J. 1940). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). OAL hearings on civil service removal appeals are de novo, both as to guilt and the penalty to be imposed. See Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); W. New York v. Bock, 38 N.J. 500, 507, n.1, 512 n.3 (1962).

Here, the County charged Cidoni with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)6 and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)12. Each of the charges will be addressed.

1. Conduct unbecoming a public employee.

Appellant is charged with violation of N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee. Conduct unbecoming is an elastic phrase which encompasses “any conduct which adversely affects the morale or efficiency of [a governmental unit] . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” Karins v. Atlantic City, 152 N.J. 532, 554 (1998) (citing In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). “[I]t is sufficient that the complained of conduct and its attending circumstances be such as to offend publicly accepted standards of decency.” Id. at 555 (citing In re Zeber, 156 A.2d 821, 825 (Pa. 1959)).

Such misconduct need not “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) (citing Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)). “It is well settled that public employees are expected to exhibit appropriate behavior, both on and off the job, in order to project a positive image to the public that they serve and the taxpayers who fund their positions. Any conduct that serves to diminish the public’s trust in the integrity of its employees is intolerable.” In re Green, Dep’t of Human Servs., 2006 N.J. AGEN LEXIS 632, *5 (June 7, 2006)(emphasis added).

Cidoni’s behavior in the Office includes his discussion about giving a member of the public the middle finger and then stating that a white lady would not have returned that gesture to him. Cidoni also threatened to shoot his supervisor within his colleagues’ hearing and called the same supervisor a bitch. All of this behavior offends publicly

accepted standards of decency and does not evince appropriate behavior that projects a positive image to the public. None of this behavior is good or morally correct.

Cidoni's conduct also adversely affects the morale or efficiency of a governmental unit. Cidoni's threat to shoot Gold and calling her a bitch, which others in the Office were able to hear, directly affected his colleagues and challenged the chain-of-command in the Office. It is important to note that Cidoni was not just threatening a co-worker; he threatened his supervisor and called her a demeaning, foul name. Such behavior does not a healthy work environment make.

Cidoni argues that the conduct unbecoming charge should not be sustained because all of the conduct at issue happened within the Office and the County made no showing that his behavior affected respect for public employees or confidence in municipal services. This argument focuses on the internal work environment, that basically Cidoni's behavior in the Office did not impact others. The facts, however, show otherwise.

First, Cidoni himself admitted that in the pedestrian incident, he gave a member of the public the middle finger. But for the incident outside of the Office, where Cidoni gave a member of the public the middle finger, there likely would not have been the resulting conversation in the Office.⁵

Second, Cidoni overlooks the portion of the definition of conduct unbecoming a public employee that discusses the morale or efficiency of a government unit. Cidoni's colleagues were visibly uncomfortable during their testimony and appeared to be discomfited that Cidoni may return to work with them. His conduct clearly directly affected the morale within the Office.

⁵ The County has not brought an individual charge against Cidoni for the portion of the pedestrian incident that occurred outside of the Office.

Finally, Cidoni has cited to no legal authority, whether case law, statute, regulation or other authority, to support his argument. The absence of legal citation merely underscores the lack of merit to Cidoni's argument.

I **CONCLUDE** that the County has satisfied its burden of proving by a preponderance of the credible evidence that Cidoni engaged in conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)(6).

2. Other sufficient cause.

N.J.A.C. 4A:2-2.3(a) defines other sufficient cause as other conduct not specifically delineated in the regulation which would violate "the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." In re Boyd, Cumberland Cnty. Dep't of Corrs., 2019 N.J. CSC LEXIS 621, *115 (July 3, 2019), adopted Comm'r, id. at 1-2 (Aug. 14, 2019). N.J.A.C. 4A:2-2.3(a)12 is essentially a catchall provision for why an employee may be subject to major discipline. "An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority." In re Mumford, 2014 N.J. CSC LEXIS 478, *33 (April 17, 2014), adopted Comm'r, id. at 1-13 (June 5, 2014).

Here, Cidoni's conduct, his discussion about giving a member of the public the middle finger and then stating that a white lady would not have returned that gesture to him, and calling his supervisor a bitch, violates the standard of good behavior for someone in the public eye who upholds that which is morally and legally correct. In addition, Cidoni's threat to shoot Gold during the April 14, 2022, incident violates the County's policy on employee conduct and work rules, which the County expects its employees to follow rules to protect the safety of all employees. I **CONCLUDE** that the County has also satisfied its burden of proving by a preponderance of the credible evidence that Cidoni's conduct constituted other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a)(12).

PENALTY

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline guides the determination of a penalty. See In re Carter, 191 N.J. 474, 483-84 (2007). However, “[p]rogressive 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. . . .” In re Herrmann, 192 N.J. 19, 33 (2007). Removal has been upheld where the acts charged, with or without a prior disciplinary history, have warranted imposition of that sanction. See In re Carter, 191 N.J. at 484. Therefore, an employee may be removed from his or her employment, without regard to progressive discipline, if their conduct was egregious. See id. at 484-85; In re Herrmann, 192 N.J. at 33-34.

Cidoni argues that progressive discipline is appropriate here for the charges brought against him. He suggests that because the County has not disciplined him before, the appropriate discipline should not exceed a major disciplinary suspension, such as a thirty-day suspension without pay.

This argument has no merit. Sufficient case law supports the conclusion that the appropriate penalty for a public employee found to have threatened a colleague in the workplace is removal, regardless of their prior disciplinary history. See In re Abdul-Raheem Yasin, 2017 N.J. AGEN LEXIS 355 (May 30, 2017), adopted Comm’r, 2017 N.J. AGEN LEXIS 1022 (July 13, 2017) (adopting termination of public employee who wrote a note to his supervisor stating that he would “see you in the street” and had a prior four-month suspension); In re Hugate, 2015 N.J. AGEN LEXIS 640 (October 7, 2015), adopted Comm’r, 2015 N.J. CSC LEXIS 6 (November 9, 2015)(adopting termination of public employee who advised his colleague that if his new supervisor “hound[ed] [him] for two weeks, I am going to end up hurting him” and told another colleague that if something happened when another colleague gave him a ride home “he would shoot him and drag him into his house” with no prior discipline); In re Singer, 2013 N.J. CSC LEXIS 875 (July 12, 2013), adopted Comm’r, id. at 1-2 (adopting termination of public employee who told

a co-worker that he would kill someone if he did not get a particular position he applied for at the high school where he worked.).

Throughout his testimony, Cidoni attempted to minimize the April 14, 2022, incident, saying that his statement about shooting Gold was not meant in a malicious or mean way. The little pause preceding his comment "with a water gun" was intended to be a punchline, similar to professional comedians Rodney Dangerfield and Henny Youngman. Cidoni failed to recognize that the Office is not a comedy club, where such hyperbole would be permitted. Cidoni's colleagues in the Office perceived that Cidoni made the comments with anger and intensity. His comment was more than just expressing frustration. At a time when workplace violence, shootings and murders occur with some regularity, Cidoni's colleagues were rightfully concerned for their safety when he threatened to shoot his supervisor. Cidoni's threat cannot be countenanced.

Cidoni argues that if he were such a threat to his colleagues, the County would have immediately suspended him during its investigation, but he overlooks the fact that the County placed him on a remote work schedule during that time to keep him away from his co-workers. He was also told not to attend a scheduled event in June 2022 that Gold was expected to attend. While the County did not immediately suspend Cidoni, it took steps to ensure that Cidoni did not have physical contact with the Office or his colleagues.

When determining the appropriate penalty, Cidoni's mitigating factors include Cidoni's age, apology during the hearing⁶ and expression of remorse. He also has no prior discipline with the County. The aggravating factors are Cidoni's comments during the three incidents, foul language and threats that offend publicly accepted standards of decency. Cidoni's words negatively impacted the work environment, a readily-apparent outcome.

If the disciplinary charges against Cidoni did not include his threat to shoot his supervisor, perhaps a lesser penalty would be appropriate for the pedestrian incident and for calling his supervisor a bitch. That, however, is not the case here. Accordingly, I

⁶ Cidoni made his apology during the hearing, and his colleagues were not present. They may not know that he apologized for his workplace conduct.

CONCLUDE that Cidoni's behavior was so egregious as to warrant his removal, without regard to progressive discipline because Cidoni's misconduct was serious, offensive and disrupted the operations of the Office and the quality of life and morale of Cidoni's colleagues in the Office.

ORDER

It is **ORDERED** that Cidoni's appeal of his removal is **DENIED**. It is further **ORDERED** that the County's imposition of the discipline of removal of Cidoni from his employment effective June 14, 2022, is hereby **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.

October 27, 2023

DATE



KIMBERLEY M. WILSON, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMW/am/mph

APPENDIX

WITNESSES

For petitioner

Carl Cidoni

For respondent

Jeffrey Caban

Marnina Salomon

Roxanne Guarino

Pat Berryhill

Judi Friedman

Joseph Revolinsky

Adam Brooks

Betty Matthews

Karen Gold

EXHIBITS

For petitioner

None

For respondent

R-1 Final Notice of Disciplinary Action dated June 13, 2022

R-2 Email from Jeffrey Caban to Patrick Gallagher dated April 14, 2022

R-3 Not entered into evidence

R-4 Email from Marnina Salomon to Joseph Revolinsky dated May 26, 2022

R-5 Email from Roxanne Guarino to Joseph Revolinsky dated May 26, 2022

R-6 Not entered into evidence

R-7 Not entered into evidence

R-8 Undated letter from Pat Berryhill to unspecified recipients

R-9 Post-interview admission/denial sign off dated May 26, 2022