



Further, the appellant is not entitled to counsel fees. *N.J.A.C. 4A:2-2.12(a)* provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 *N.J. Super.* 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and major discipline was imposed. Consequently, as appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12*, counsel fees must be denied.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modifies that action to a six-month suspension.

The Commission further finds that, for the reasons set forth above, the appellant is not entitled to be reinstated or eligible to receive back pay, benefits or seniority pursuant to *N.J.A.C. 4A:2-2.10*. Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

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 20<sup>TH</sup> DAY OF SEPTEMBER, 2023

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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Civil Service Commission  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 15827-17  
AGENCY DKT. NO. 2018-1032

**IN THE MATTER OF ELLEN GANOPOULOS,  
OCEAN COUNTY, DEPARTMENT OF ROADS.**

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**Richard S. Mazawey, Esq.**, for appellant, Ellen Ganopoulos (Law Office of Richard S. Mazawey, attorney)

**Robert D. Budesza, Esq.**, for respondent, Ocean County, Department of Roads (Berry, Sahradnik, Kotzas & Benson, P.C., attorneys)

Record closed: July 17, 2023

Decided: August 8, 2023

**BEFORE CATHERINE A. TUOHY, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Ellen Ganopoulos, an intermittent bridge operator for the County of Ocean, Department of Roads, respondent, appeals her removal effective September 20, 2017, for violations of a N.J.A.C. 4A:2-2.3(a)1, Incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2.3(a)7, Neglect of duty; and N.J.A.C. 4A:2-2.3(a)12, Other sufficient cause – failure to follow work instructions. Appellant denies she was guilty of any misconduct and seeks to be reinstated to her civil service position.

## PROCEDURAL HISTORY

On August 8, 2017, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) (31-A) setting forth the charges and specifications made against the appellant. After a departmental hearing on September 20, 2017, which appellant requested but did not attend, the respondent issued a Final Notice of Disciplinary Action (FNDA) (31-B) on September 20, 2017, sustaining the charges in the PNDA and removing appellant effective September 20, 2017. Appellant filed an appeal on October 10, 2017, with the Civil Service Commission Division of Appeals and Regulatory Affairs. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on October 25, 2017, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13. The matter was heard in person at the OAL offices located in Atlantic City on October 4, 2022, October 5, 2022, January 11, 2023, and January 17, 2023. The record closed on July 17, 2023, following receipt of closing submissions.

## FACTUAL DISCUSSION AND FINDINGS

### **Testimony**

**Michael Reina** testified on behalf of the respondent. He is the superintendent of the Ocean County Bridge Department and has held this position since January 2, 2016. He first became employed with Ocean County on January 2, 2015, as the assistant superintendent of the bridge department. On August 4, 2017, he left his home at 4:00 a.m., an hour earlier than usual, to visit the Beaver Dam Bridge in order to meet with the bridge operator, Mrs. Ganopoulos, to offer her the position of a full-time bridge operator and to conduct a bridge inspection. The position opened on the retirement of another bridge operator. Mr. Reina is assigned a county vehicle with a radio and logged on to work at 4:00 a.m. by using his radio and calling in "31 Toms River on air" which would be picked up by anyone with a county radio, which included Mrs. Ganopoulos, who had a county radio in her office at the Beaver Dam Bridge tower. He arrived at the Beaver Dam Bridge at 4:45 a.m. and parked his county vehicle on the roadway east of the bridge, ahead of the bridge safety arm, so his vehicle would not fall into the "pit" if the bridge were to open. The "pit" is the opening that occurs when the bridge, a single span bridge, is

opened and the mechanical components of the bridge can be seen. The other side opens over the canal. Mr. Reina purposely arrived early to meet Mrs. Ganopoulos during her shift, which was from 10:00 p.m. to 6:00 a.m., so that she would not have to be held over the ending of her shift. He made it a practice to meet with the employees during their work time. He left his vehicle rear flashers and headlights on so it could be seen on the roadway and not be rearended.

Mr. Reina had an email exchange with the appellant a day or two prior to his visit. His predecessor, Tom Curcio, had advised him that he had unfettered access to the facilities and could do an inspection whenever he wanted in the interests of public safety and the safety of the bridge operators. The outside door to the bridge tower is always locked and when it is opened, locks automatically when it closes. Bridge department employees have keys to the bridge tower. The first floor has all the hydraulics for the bridge and is the brain center of the bridge. The lights were not on for the first floor, which was unusual since a lot of the mechanical equipment was on the first floor and you could bang into it in the dark. The bathroom is also on the first floor.

Once you enter the outer door with the key to the bridge tower, there is a second door that is unlocked and when he opened it, he was startled by the crashing sound of a metal dustpan that had been placed behind the door. A few seconds later, he heard Mrs. Ganopoulos yell "Who's there?" Mr. Reina replied, "Hi Ellen, it's Mike." She said, "Mike who" and he replied "Mike Reina." He responded to Mrs. Ganopoulos right away. He proceeded up the stairs and saw Mrs. Ganopoulos who was very upset. The lights were not on in the stairway either. He tried to explain why he was there, but she was so upset, and he got so rattled he decided to just sit down in a chair until she calmed down. He said he was so rattled by her reaction to him being there that he did not remember where the light switch was in order to turn on the lights. She was saying he had no right to be on the bridge and that he should have called first. He said he was permitted to be there, and it was nothing against her and she had not done anything wrong. As she was yelling at him, she began assembling her personal belongings, her blanket, pillow, her shoes, and jewelry. That is what he recalls seeing as he was sitting there. The bridge operators each have their own individual locker. He was trying to be quiet and calm and not escalate things since it was not his intention to get her so upset. It was scary for him because she

was so upset. He tried to have a conversation with her, and he asked her if they could talk another time, but she said no, she would not be working there any longer and she left the bridge at about 4:55 a.m. Mr. Reina was not certified to operate the bridge. Her shift was from 10:00 p.m. to 6:00 a.m., but the shift ends only when the next operator comes in, so the bridge is never left unattended. After Mrs. Ganopoulos left, he was scrambling to find the lights to turn them on. After he turned the lights on, he went outside to his car and turned on all of the vehicle's lights so that any boat traffic that was approaching would see the flashing lights. Mr. Reina then contacted Darren Smith, another bridge operator who lived down the street and to see if he could come over and to cover the bridge. The Coast Guard regulations require that a bridge operator must always be present on the bridge 24/7. Mr. Smith came in early at 5:29 a.m.

Mrs. Ganopoulos was wearing a summer-type dress and slipper socks. She changed her socks and put her shoes on which were open-toed or something similar before she left. He asked her whether she wore boots. There are cameras that allow you to see outside the bridge including the roadway, the front door, and the waterway, depending on what you want to look at. There are windows all around the bridge tower.

R-3 is a thumb drive of surveillance footage of the bridge on August 4, 2017. The video at 4:46- 4:47 a.m. shows Mr. Reina arriving at the bridge. Mrs. Ganopoulos is sitting in the chair at her desk and gets up from the chair, moves the chair and turns the hallway light on at 4:47:25 a.m., when she hears Mr. Reina coming. There are no lights on in the room. As Mr. Reina is coming up the stairs, she is in the corner by the lockers yelling down to him. She goes back to her chair, and Mr. Reina enters at 4:47:56 a.m. He checked in at the time clock and then he went outside on the rail to look around and check everything. At this point in time, Mrs. Ganopoulos is telling Mr. Reina he does not belong there, and that there is a policy. She tells him that he should have called and then she gets all of her personal items, puts her jewelry on, changes whatever she was wearing on her feet. The entire interaction with Mrs. Ganopoulos lasted approximately ten minutes. She is seen gesturing as she is talking to Mr. Reina. She is seen emptying her locker. At 4:56 a.m. she is seen folding her blanket. At 4:59:01 a.m. she leaves. Mr. Reina is seen looking for the light switch, which was behind him the entire time, but he was so frazzled he could not find it. Then he went downstairs and put his truck lights on

and came back in at 5:01 a.m. Mr. Reina comes back in and calls for another bridge operator to come in at 5:03:20 a.m. At 5:29 a.m. Darrin Smith, the relief, arrives on the bridge.

Mrs. Ganopoulos should have been able to see Mr. Reina's car from where she was sitting as well as on the monitors.

Before this incident he had never met her face to face. He had communicated with her via emails before this incident.

Looking at the video footage from the camera facing the roadway north, Mr. Reina's vehicle is shown parked on the north roadway at 4:47:22 a.m. behind the gate. His rear flashers and headlights are on.

Mr. Reina had to report this incident in the incident log because the bridge was left unattended. Mr. Reina has nothing to do with the penalty phase of this case and that would be up to the administration.

As bridge superintendent, Mr. Reina controlled the daily operations of the bridge department and its crew. He does not hire or fire employees. The limit of his authority is that he can make a recommendation for someone to get promoted. He could not offer someone a promotion without obtaining permission. The purpose of his unannounced trip to Beaver Dam on August 4, 2017, at 4:20 a.m. was to discuss and offer Mrs. Ganopoulos a full-time position from her part-time intermittent bridge operator position. Prior to him going there he had spoken to Tom Curcio to let him know that they needed a full-time operator, and he thought Mrs. Ganopoulos, who had previously expressed interest in the full-time position, should be given the opportunity. He was given the okay to offer her the position. He was not there to interview her or to state whether she would get the position. He believed she was good at her job. Mr. Reina was shown his written statement of the incident, which contained his printed name and his signature. (R-2.) He did not include in his statement that he went to the bridge that morning to offer Mrs. Ganopoulos the job because it was not important at the time that he wrote the statement. He had just come off a very stressful situation and wrote down what happened to the best

of his ability, and he never had the chance to discuss the job because of the way he was treated and that is why it is not in his statement. He had only been a bridge superintendent for a few months, and he had a bridge that was unattended, and he was panicking. The last thing he thought to put in his statement was that he went there to offer her a job. It did not dawn on him that he created the chaos by not announcing himself when he came to the bridge because he never lets anybody know he is coming. He went to the bridge to offer her a job and to do an inspection. He wrote his statement when he got back to the office on August 4, 2017, when everything was fresh in his head, and he had to document the incident.

Mr. Reina used his key to enter the bridge and proceeded to the stairway door. (R-2.) In his statement he indicated, "Once I opened the door, I was startled by what seemed to be a loud metallic bang. Looking down at the floor with the door open there laid a metal dustpan which from the position it was obviously placed in the center or the back of the door." (R-2.)

He parked his vehicle twenty to twenty-five feet north of the door. His rear emergency lights and his front headlights were on because he was in the roadway. He was driving an unmarked 2017 County Ford Explorer with county plates and emergency lights. There was no sign on the vehicle's door panel. Nobody is allowed in the building without the bridge operator calling and letting the superintendent's office know that there is someone there. All bridge personnel have ID tags and keys to enter the building. Whenever a contractor is scheduled to come to the bridge, they would advise the bridge tender of whoever is coming, whether it is the electrical contractors for the hydraulics or the generator service contractor and advise them of the time and date.

Moments after the dustpan hit the floor, Mrs. Ganopoulos yelled down, "Who is it?" Mr. Reina yelled back up, "Hi Ellen, it's Mike". He recalls Mrs. Ganopoulos kept on saying "Who? Who? Why are you here?" He always has his ID on him. He admitted that possibly the situation may have been diffused if he stated he was her supervisor and when he got up the steps showed her his ID. He did not do this because he said he identified himself to her before he even went up the stairs by saying, "Hi Ellen, it's Mike." When she asked, "Mike who?", he said, "Superintendent of Bridges." He was the only



Mike in the bridge department at the time. He recalls saying to her that he was the superintendent. He then recalls a lot of yelling about that he should not be there and that he needed permission to be there. Mrs. Ganopoulos was visibly upset. He purposely went to a chair at one point just to calm everything down. Nothing that he said or did was threatening. He had his hands on his lap and did not move. He listened to everything she was saying. He does not ever recall Mrs. Ganopoulos asking him for ID. Had she asked him for it, he would have produced it. When he walked up the stairs and first came up, Mrs. Ganopoulos was standing, and they were facing each other. His ID was in his back pocket where it always was, so it was not visible.

Mr. Reina noted in his inspection that there was an obstruction in the staircase doorway. (R-2.) This incident took place at 4:45 a.m. and the entire downstairs was dark. He believes it would make sense to leave at least one light on downstairs for safety reasons because it is a mechanical room full of equipment and it is where the bathroom is located so. He admitted energy could be conserved by keeping the lights off and using a flashlight to navigate around the equipment to access the bathroom.

The county has a duty to provide a safe place for its employees to work. To put the dustpan behind the door could act as a wedge to hold the door open or possibly prevent the door from being opened which is why he called the dustpan an obstruction from a safety standpoint. He does not know why it was there.

The PNDA lists incompetency and failure to perform a duty. (R-1.) Having the dustpan in the doorway is not evidence of either of those charges.

Mr. Reina believes that no lights being on in the stairway is a safety issue and that the stairway lights should be on. Although the lights in the bridge house are typically off so that the bridge operators can see outside, the stairway lights are usually on.

The building is a locked, secured structure with cameras, lighting, telephones and two-way communications. There was no security breach by appellant at all.

In his statement Mr. Reina made note that petitioner was not wearing appropriate work clothing and that she was wearing a dress. He also noted that she was not wearing the appropriate footwear since petitioner was wearing socks when he arrived and then put on open toed shoes while he was there. (R-2, page 2.) Mr. Reina only noticed this when he was there and did not know what petitioner was wearing from the time her shift started at 10:00 p.m. until he got there at 4:44 a.m.

Mr. Reina made reference in his report to a prior incident involving appellant and asked appellant if her former Superintendent Britton and Road Department Head Curcio also walked in early in the morning, to which petitioner did not respond. (R-2, page 1.) Mr. Reina said that they had told him this information and he did not obtain it from petitioner's personnel file. He did not recall when he had that conversation with Britton and Curcio. Mr. Reina stated that he did not go to the bridge that morning intending to catch petitioner sleeping on the job. Mr. Reina made the comment about Mr. Britton and Mr. Curcio because petitioner kept on repeating herself, telling Mr. Reina that no one was supposed to be up there. He used it as a point of reference that people had been up there before, and that Mr. Reina is allowed on the bridge whenever he deems it necessary to go there. That was the only purpose in him making the reference.

Mrs. Ganopoulos had sent Mr. Reina an email saying that she was going to be on the bridge that night, because Mr. Reina had sent her a previous email asking when he could come and speak to her. Mrs. Ganopoulos was visibly shaken when he entered the bridge that night. She had never been disrespectful to him or anyone in the department prior to that evening. Mr. Reina admitted that the bridge is a different kind of workplace than a usual office in that it is solitary in that there is only one bridge operator in a secure building, and you do not have regular interactions with other office personnel.

At the time of this incident, he had a full complement of able-bodied bridge operators, and it was not a priority for him to be trained as a bridge operator. As part of management, he was not required to be a bridge operator and it was not a prerequisite for the position of bridge superintendent.

Mr. Reina in his statement said that Mrs. Ganopoulos "chastised" him. (R-2.) She was yelling at him and repeatedly telling him he had no right to be there. She was upset and emotional and he was trying to calm the situation down. After they both sat down, he thought the situation would deescalate. She continued to chastise him by telling him he is not allowed in the building and that he has unfettered access twenty-four/seven. She continued on saying there was a policy and that he was not supposed to be there without calling first. Mr. Reina was unfamiliar with that policy at the time. He would characterize appellant's action as chastising and being disrespectful to a superior.

The only time there was a problem was when the bridge was abandoned by the operator and left unattended. Mr. Reina was not trained in operating any of the bridge equipment. Mr. Reina was alone on the bridge for approximately twenty-five to thirty minutes before Darren Smith arrived. During that time there were no calls for an opening of the bridge so there was no actual public safety emergency during that time.

Every operator has access to email, the internet, the cameras which will show them the waterway, the roadway, the downstairs of the building and to see if anybody is on the bridge who is not supposed to be.

It surprised Mr. Reina to learn that Mrs. Ganopoulos never had a password or username or any access to the county administrative programs for job postings or openings.

Operators are instructed not to let anyone in the bridge unless they call the office, and it is verified that the person is supposed to be there.

Mrs. Ganopoulos, an intermittent bridge operator from May 2014 until this incident, was capable, competent, understood and knew her job in operating the bridge in a safe and secure manner.

**Keth J. Goetting**, the retired director of the Department of Employee Relations for the County of Ocean testified on behalf of the respondent. He retired January 1, 2020,

after serving in that capacity from roughly 1990 to 2020. He had been employed by the county since 1982.

He prepared the PNDA and FNDA that were served on the appellant and filed with the civil service commission. (R-1.) He wrote them after receiving a copy of the Ocean County Notice of Employee Disciplinary Action that was prepared by Mr. Reina and/or his boss Tom Curcio. Mr. Goetting was the person who determined the penalty should be termination. Sleeping on the job is an immediate major disciplinary matter in his opinion, particularly when it seemed apparent to him from watching the video that it was a planned event, meaning that when an employee purposely is creating an environment that is intending to go to sleep or to at least not to do their job. He believes it is grounds for removal and is certainly a major disciplinary action regardless of progressive discipline they usually follow. The fact that she abandoned her position was also obviously a consideration and one of the things he discussed with the road superintendent in terms of how to respond to this. There had been a prior 2014 incident involving Mrs. Ganopoulos sleeping on duty. (R-7.) He explained that his job was often chaotic, depending on his workload and what was going on at the time. He recalls seeing the prior disciplinary matter and having a conversation with Tom Curcio regarding issuing a verbal reprimand for sleeping on duty, which Mr. Goetting thought was an unreasonably light response. He probably should have done something about it and increased the penalty, but when the document had come to Mr. Goetting, the department head, Tom Curcio, had already checked the box approved as recommended. Although Mr. Goetting had the authority to increase the penalty, he chose not to at that point. The proper penalty he believed would have been major discipline, a suspension of more than five days. He does recall speaking to Tom Curcio and maybe Bill Britton and suggested to them that the penalty was kind of light. He also asked what they were doing and what was going on? He did recall being told that there was a freeholder involved. There had been some discussions between Mr. Curcio and Freeholder Vicari at the time and he was told that he should just let it go.

Regarding the present charges, Mr. Goetting believes there were various emails between himself and Mrs. Ganopoulos regarding the charges and she had indicated that she was going to resign her position. He wrote back and said, "okay," and he would

accept her resignation in good standing since there had been no hearing. He recalls Mrs. Ganopoulos wrote back to him either the same day or the next day, indicating that she changed her mind, and she did not want to resign. She wanted to proceed with the hearing. Mr. Goetting emailed her and stated that he accepted her request to rescind her voluntary resignation in good standing. (P-1.) Mrs. Ganopoulos had indicated that she hurt her back and they converted her status to being on a medical leave of absence pending disciplinary action. Up until the time the FNDA was issued, appellant was being paid. She was not a salaried employee. She received pay based on hours worked.

There is no policy regarding supervisors or superintendents visiting the bridge location. The county is a twenty-four-hour operation, seven days a week and supervisors going out in the field to talk to employees is appropriate. There is absolutely no policy that there must be notification that a supervisor is coming to visit an employee.

Mr. Goetting was the director of employee relations for the county for thirty years between 1990 to 2020. He was not physically present on the bridge on the date of the incident August 4, 2017. He does not believe Mr. Reina told him that he observed Mrs. Ganopoulos sleeping on August 4, 2017. He did not tell Mr. Goetting that she asked him for identification. Mr. Goetting had not looked at Mrs. Ganopoulos' personnel file until the incident of August 4, 2017. He signed R-1 as the director of employee relations and his signature is located at the lower lefthand corner of the document, which he authored on August 8, 2017. He first became aware of the August 4, 2017, incident when he received a copy of the notice of employee disciplinary action form the same date. He recalls talking to Tom Curcio, the road superintendent. He also looked at the video in detail several times from all the different camera angles and he may have also reviewed the Point Pleasant police report regarding the incident before preparing the PNDA, but he was not sure. Tom Curcio told him that there had been an incident on the bridge with an employee sleeping on duty and that there was a conflict with a supervisor which resulted in the bridge was abandoned. There was a period of time that the bridge was unmanned, and he watched the video. His conversation with Mr. Curcio caused him to watch the video. Mr. Goetting concluded that Mrs. Ganopoulos should be terminated. If he had learned that she was not sleeping it may have factored into his decision, but the issue of leaving the bridge and abandoning her post is certainly significant. Whether it was an argument

with a supervisor and then walking off the job in anger, is a slightly different scenario than someone being woken up and then becoming angry and walking off the job. All these things are factors to be considered and he still may have reached the same conclusion. If she were not sleeping on duty, it could possibly be a mitigating factor; however, he was under the impression that she was sleeping on the bridge. If his assumption turned out to be incorrect, it may have affected his decision on termination. Abandoning her post was a criterion he took into consideration. He concluded that she abandoned the bridge when he watched the video, but Tom Curcio said there was a fight or argument between her and her supervisor and that she walked off the job. Mr. Curcio's source of information regarding the facts of August 4, 2017, was from Mr. Reina. Mr. Goetting does not believe he spoke to Mrs. Ganopoulos regarding her version of what happened on the bridge on August 4, 2017, before preparing R-1.

Mr. Goetting had no knowledge of there being any emergent medical issue that caused Mrs. Ganopoulos to leave the premises. From his watching the video, there did not appear to be a medical issue and an ambulance was not called. They did not take her out on a gurney. She packed up her belongings, got up and walked out. It was not brought to his attention until days later that she had an issue with her back, but he does not believe she left the bridge because of her back. Mr. Goetting believes Mrs. Ganopoulos left her post because she was upset with her boss showing up unannounced even though he did sign on the radio and he did email her. She was upset and she walked off the job. That was his impression. Mr. Goetting was shown the medical records from the Ocean County Medical Center for August 4, 2017, by attending physician Dr. Michael Levin for Ellen Ganopoulos indicating she should be excused from work for one to two days for hyperventilation and a panic attack. (P-5.) Mr. Goetting does not recall seeing this document before. He did remember that she had indicated in an email that she had injured her back because of a broken office chair. Mr. Goetting did not recall seeing an August 8, 2017, note from Dr. Gary Cardiello of CarePoint Health, that was sent to the attention of John Lachman, who was a senior bridge operator. (P-6.) The note read "To whom it may concern this is to inform you that Ellen Ganopoulos is my patient. She is under my care for supraventricular tachycardia, SVT and accelerated hypertension. Due to her medical diagnosis, she is medically unable to work from 8/5/17 until further notice."

Mr. Goetting is familiar with the process of progressive discipline which is highlighted in the county's personnel handbook and is extrapolated from the New Jersey Administrative Code. Employees are progressively disciplined in order to change their behavior and resolve problems in the workplace. If there is a minor infraction in one's work history, the first line of discipline is not to terminate the worker but to use less restrictive means. However, when the infraction is so severe and so over the pale, progressive discipline is not the response. The most severe discipline is termination. No one gets terminated for even sleeping a minor period of time on the very first infraction and they look for alternative discipline. An employee may be working in the middle of the night and may doze off and that is not something that would be a terminable offense. Mr. Goetting was not present on the bridge at the time of this incident. He did view the video and reports and believed his actions were appropriate based on the facts that he had at the time. If there had been no sleeping on the job on August 4, 2017, it might have altered his opinion. His decision was based on the video which he watched from the beginning to the end. He concluded that the employee was sleeping on duty and abandoned her post, and he believes the punishment of termination was appropriate. He made that determination without having the benefit of the doctors' notes set forth in P-5 and P-6. The termination decision he made was based on progressive discipline and the prior incident of sleeping on duty on September 5, 2014.

An email sent by Mr. Goetting to Mrs. Ganopoulos on August 9, 2017, at 12:30 p.m. indicates that Mr. Goetting did have Dr. Cardiello's report. (P-12.)

The standard county employee annual performance evaluation for Ellen Ganopoulos for January 1, 2016, to December 31, 2016, indicated that she performed satisfactorily. (R-8.) The employee evaluation for January 1, 2014, to December 31, 2014, which covered the time of her first discipline of September 5, 2014, in R-7, where she was allegedly sleeping eighteen times, was also an overall satisfactory evaluation. (R-8.) Her discipline for the September 5, 2014, infraction was a verbal reprimand. The 2014 evaluation also indicated that "Ellen accepts responsibility, takes and follows, direction, has great communication skills." She maintains a clean and safe area." John Lachman wrote on March 26, 2015, "Ellen has responded well to her training and always looks to improve herself."

The 2014 evaluation would appear to be better than the 2016 evaluation. Mr. Goetting does not put a lot of credence in the evaluations because it is not unusual for a department head to send in satisfactory evaluations when they understand not everyone is satisfactory.

Mr. Goetting watched the video from the beginning of Mrs. Ganopoulos' shift at 10:00 p.m. until Mr. Smith comes on the bridge as relief at 5:29 a.m.

Exhibit R-9 is the timeline of what is depicted in the video thumbnail drive marked as R-3, that Mr. Goetting directed Ryan Reilly, Chief of Administrative Services in the employee relations department, to prepare.

The video from August 3 to August 4, 2017, was played. At 9:59:22 Mrs. Ganopoulos enters the bridge wearing a dress and dress shoes with a heel before starting her shift. The prior operator leaves at 10:00. At 10:02:30 she is dusting the floor with a mop. At 10:16 she is mopping. At 10:47 the lights go off. At 10:48:48 she goes down the stairs with the mop and dustpan. At 10:58:53 there was no dustpan in her hand, and she had positioned the chair on top of the stairs. At 12:58 she changes her footwear. At 12:58:05 she puts her shoes in the bag and has socks on her feet. She took off her sweater. At 1:01:38 she goes back downstairs. At 1:24:14 she is back upstairs with the mop. The next note at 4:09 says sleeping with pillow and blanket. (R-9.) At 4:46 Mr. Reina is swiping in.

In the video Mr. Goetting saw a person who prepared themselves in a chair and sat down and put their head on a pillow and was asleep for a better part of at least an hour. Mr. Goetting believed what he saw from 4:09 until Mr. Reina became physically apparent that Mrs. Ganopoulos spent that entire time sleeping. Her position was turned looking at the computer screen.

**Ellen Ganopoulos** testified on her own behalf. She currently resides in North Hanover, Burlington County and has resided there for four years. She attended Kearney High School and left in 1984 to attend Lincoln Tech in Union, New Jersey for automotive



mechanics and graduated with a certification in non-diesel automotive mechanics. She is a private pilot and in the last fifteen years also became an animal assisted disaster response crisis counselor.

She heard about the job in December 2013 when Commissioner Vicari called her husband to see if he was interested in the overnight-intermittent bridge operator position. He was not but she was. She would start at the night position and hopefully would be able to eventually get days. She applied for the job in April 2014 and was told to report to the Beaver Dam Bridge, where she met for an interview with the Supervisor Bill Britton and lead operator, John Lachman. They discussed her mechanical background and experience with heavy machinery. She went to the county physician to get medical clearance and began training in May of 2014. She came during daylight hours for the two-week training to learn how to operate the bridge and worked with every single bridge operator. They felt she would be an excellent bridge operator and she started in May 2014, as an overnight intermittent bridge operator with designs to go full-time during daylight hours. She did not get a uniform because she was an intermittent bridge operator. She was given a key and a handbook. She worked the "A" shift, which was the first shift of the day, even though it started at 10:00 p.m. During her two weeks of training, she was working with another operator. After her two weeks of training, she worked alone.

On a usual day, she would park her car, walk up to the bridge house, and meet with the operator previously on duty and talk about the day. She would check to see if anything was going on and whether any boats were still on the water that had not come back in yet. It would be rare that someone was coming back in when she started her shift and ninety percent of her openings were in the early morning. She would watch her co-worker walk down to their car to make sure that they got to the car safely. Once in their car, they would honk the horn and wave to each other. She would then check her mail and see if there was anything going on. She would call her mother at 10:00 p.m. to let her know she got to work safe, and everything was fine. She would then begin her evening, which was mostly cleaning duties. There was not a lot of maintenance done on her shift because it was dark, so anything outside of the bridge house was not assigned to her. There was not a lot of action until about 4:00 a.m., so she did her cleaning duties

to keep busy. She was told that her supervisors would be reviewing her performance on the cameras at least once a week. There are night vision cameras in the control room and outside the bridge. Her supervisor at the time was Bill Britton. She only received one evaluation during her four years there. The last evaluation she did not learn of until after her termination.

Bill Britton did come to the bridge unannounced during her night shift to see if she was performing her job properly in September 2014. He came during the filtering process which is usually from 1:30 a.m. – 3:30 a.m. and the process is very loud when the hydraulic units lift the bridge, and you can hardly hear anything. It was about 2:30 a.m. and she heard noises in the building. She got up to look around and looked downstairs. She turned the lights on in the stairwell and asked if somebody was there. Nobody answered so she went back to watching a movie. She still heard noises and said the place was "creeping her out." She thought maybe there was an animal downstairs and was hoping she did not have to go to the bathroom until the next operator came into work. She realized there was something going on downstairs, and she was not going to go downstairs, so she went back to watching the movie. About eight minutes later she heard the voice of a man directly behind her in the dark, "Ellen." She turned around and saw two men who she did not recognize and was frozen with fear. She said, "Oh my God" when she realized that there were two men who came in through the building. She then said, "I don't know what's happening" and she was frozen. It was Bill Britton, but she did not recognize him. She said, "I don't know what's happening" and he, Bill Britton, said "You look scared, everything's okay, everything's okay, don't worry, you are not going to get fired, you're not going to get fired" and she said, "I'm not scared because I thought I was going to get fired, I'm scared because I thought I was going to get murdered." As she was looking at them, she could see an ID around his neck and it said, "Ocean County." He also had a clipboard and was from the county. Tom Curcio, who she had never seen before was in the corner and he had on a shirt that said, "Ocean County Department of Bridges and Roads." Bill Britton said to her that they had been watching her and that she was doing a great job, but they noticed at night that she was taking two end tables and putting them together and laying on them. They had been watching her for two weeks and told her she could not do that anymore. She admitted that she had been doing it for two months but did not know it was something she was not supposed to

do. She had asked for a chair where her feet could reach the floor but was denied so she figured she could elevate her feet on the end tables to prevent her feet from swelling. She said to him that she is the first one to take corrective action if she is doing something she should not be doing. Bill Britton said that they had been watching her and it looks like she is sleeping, and she knows she cannot do that. Mrs. Ganopoulos apologized but stated that when she was hired, she was told that if she wanted to sleep on the shift that she could because she had asked what she should be doing when she is not cleaning if there is nothing to do. She was told by Mr. Britton that if she wanted to read, or watch tv or sleep, that it was fine, as long as she did not miss a call. Mrs. Ganopoulos apologized if she was doing something she should not be doing and suggested that they all meet with human resources and the gentlemen she spoke with when she applied for the job to make sure it was clear what she could or could not do and that they were all on the same page moving forward. Mr. Britton said that they did not need to do that and that is fine, she could sleep if she wanted to, but just be sitting up in the chair. Mrs. Ganopoulos replied, "No thank you" and stated that there will be no sleeping on her shift. Mrs. Ganopoulos was aware that her co-workers were sleeping and that they kept chaise lounge pillows under the microwave and would bring them in the hallway and would sleep there. She would come in and find her co-workers sound asleep.

The first evaluation for the period January 1, 2014, through December 31, 2014, was for her first year on the job. (R-8.) This evaluation was done by Bill Britton, and she thanked him for the evaluation. As far as things she could improve upon, he suggested that she start making more decisions for herself rather than going to everybody else and asking them. However, she felt it was a very good evaluation. Mr. Britton stated in the evaluation that she was a joy to work with. She received a copy of this evaluation from John Lochman, the lead operator. She never saw the evaluation for 2016 in R-8 until preparing for this hearing, and in her opinion, one was never done. She did not know who authored this evaluation. This also was a satisfactory evaluation. The employee performance evaluation, supervisor's comments, dated March 26, 2015, filled out by John Lochman noted, "Ellen has responded well through her training and is always looking to improve herself."

The Ocean County Employee Probationary Evaluation indicates that Mrs. Ganopoulos' appointment date was May 15, 2014. (R-8.) This is a thirty/sixty/ninety-day review evaluation done by John Lochman stating her performance was satisfactory.

Between Mrs. Ganopoulos' starting date of May 15, 2014, and August 1, 2017, her only discipline was for the incident in September 2014 involving Messrs. Britton and Curcio. She was written up for this incident. She decided that she was not going to come back the following year because of this incident and had been contacted by Commissioner Vicari. She did not feel it was safe for her to work there if people were going to sneak into the building and pop out of the dark. This was not an acceptable workplace for her, especially since she did not know what anyone looked like aside from her co-workers. Mrs. Ganopoulos said it was terrifying, two strange men coming out of the dark at her. Thankfully her fear response is to freeze because if she started throwing things or screaming, they all could have gotten hurt, or something could have been damaged. She was contacted by Commissioner Vicari while she was on vacation in Hawaii, and he asked her if the men came into the building without using the intercom and she told him yes. She told him she was going to file a complaint and let them know that she was not going to come back next year. She would finish out the year and not leave them hanging. Commissioner Vicari asked her to think about it and asked her if she would like to stay on. Mrs. Ganopoulos told him that she would but that she did not like the night shift. He told her that eventually another shift would open up and asked her if there was anything that the county could do to make her change her mind. He emphasized to her that he was not trying to talk her out of filing a complaint and she believed him. She told him there was no security, she is a woman working alone and it is really scary if somebody comes in and she does not know who they are. She suggested that they just pick up the intercom on the way in the door and just tell her who they are and that they are coming in so that she does not get scared. He told her he would see what he could do and get back to her. Commissioner Vicari called her two days later and told her that he spoke to Bill Britton and some other people whose names she did not remember and told her that if anyone is going to come to the bridge on her shift they are going to call ahead and they are going to pick up the intercom. She told him that she did not need anyone to call ahead and understands that supervisors want to come in and do their inspections. All she was asking for was that someone pick up the intercom on the

way in the building so that she would not be frightened. Commissioner Vicari told her that would be a guarantee from the county. She agreed to come back the next year. This conversation with Commissioner Vicari took place in September 2014. She never saw this policy in writing. She had no visits from any supervisors from September 2014 until the last day of her employment which was August 4, 2017.

When she arrived at work a few minutes before 10:00 p.m. on August 3, 2017, she spoke with the previous bridge operator, Raymond Corey, who told her that there would be a state inspection the next day and he had been cleaning all day. She told him she would clean some more and would mop the control room. Mrs. Ganopoulos explained that they do not get a lot of action up there in the bridge house, so it was kind of a big deal that the state was coming in for an inspection. Ray left, walked down to his car while Mrs. Ganopoulos was watching to make sure he got to his car okay. He drove by, honked his horn and she waived and then went back in the bridge house. She then called her mother to say she was at the bridge, and everything was okay.

Mrs. Ganopoulos stated that night was a little different because they had received a new set of directives in an email indicating that they were on the "G" drive, and she did not have access to that drive. She called over to the other bridge operator on the Mantoloking Bridge, Joey Galletto, and he did not have a "G" drive either. Mrs. Ganopoulos said other operators had access to programs that she did not. She believes that it was because she was part-time, and they were full-time. Her lack of access to administrative programs had no effect on the events of August 4, 2017.

The bridge is considered a high security, restricted area. Her supervisor on August 4, 2017, was Michael Reina, who had been supervisor for approximately two years. He had never come for a visit during her shift prior to the August 4, 2017, incident. She heard Mr. Reina's testimony during this hearing that he came that evening to offer her a promotion. She had a close relationship with the other bridge operators and had known them for four years. They were some of the most kind and professional men she had ever worked with. She knew that Raymond Corey was sick and that he was going to be leaving and that he wanted her to take his position when he left. In talking to the other operators, with the exception of Darren Smith, they all wanted her to be a full-time

operator when the time came. It was her goal to get the full-time day job, as working nights was a stress on her health and her husband. There was no full-time position open for Mike Reina to offer her when he says he came to the bridge to offer her a full-time position that night, since no one had put in to leave.

Mrs. Ganopoulos had no advance knowledge that Mr. Reina was coming before he arrived on August 4, 2017. She did not know Mr. Reina aside from a couple of emails exchanged occasionally. She knew that there was to be a state inspection that day. He arrived in a white SUV county vehicle. It did not have the utility lights on, just the rear flashers, was all she saw. It was approximately 4:47 a.m. and her shift ended at 6:00 a.m. She was watching a movie on the desktop monitor and the window was opened to her left. She heard something and out of the corner of her right eye saw movement on the quad and saw that there was a man approaching the bridge house. She first thought that perhaps the state inspector arrived early. She got up and went to her locker and looked for her pepper spray because he was coming in the door, and he did not use the intercom. She heard him come in the door because the door is right beneath her. She yelled out "Who is in the building? Identify yourself or I'm calling the police." She saw her lunch bag sitting there which contained her keys which also had pepper spray on it and picked up her lunch bag. Mrs. Ganopoulos had her lunch bag with her while testifying and identified it, explaining that it had been referred to as her "pillow" in the video, but was her lunch bag.

As he was coming in, he did not turn the lights on but left all the lights off. She heard him open the door at the bottom of the stairwell, where the dustpan was and when the dustpan fell over, she heard a man's voice say, "Nice burglar alarm." He just kept coming up and did not turn the lights on in the stairwell. Mrs. Ganopoulos turned the lights on in the stairwell and said, "Who are you and what are you doing in the building?" Mr. Reina said, "It's Mike, I want to talk to you." She said, "Fine, okay. I need to see your ID please." He responded, "No." At this point she said she was really scared and said to him again, "I'm sorry, I need to see your ID, please." He said "No, you don't." She did not know who he was and had never seen him before. He did say it was Mike and could have been Mike Reina, which certainly made sense. Even though he did not give his last

name she still could assume it was Mike Reina, but she did not know for sure, and it was odd that he did not follow policy to pick up the intercom.

Photographs marked P-12 through P-30 were shown to Mrs. Ganopoulos. P-12 shows the control unit to control the traffic lights, the gates, as well as to lower and open the bridge. To the left is the quad screen, which has night vision cameras, and you can change to look where you want, so when the video was being shown and Mrs. Ganopoulos kept turning her head to the right, she was responding to cars driving past. Exhibit P- 12 also shows how dark it is outside as there were no streetlights on the bridge. They were required to keep the lights out and that is why night vision cameras were installed. If you turned on the lights, you would not be able to see out the windows at all. Exhibit P- 13, time stamped 4:47:12, shows Mike Reina before he got to the front door and Mrs. Ganopoulos is shown in the upper right-hand corner in a seated position with her head turned looking at the quad and she is alert. Exhibit P-14 is time stamped 4:47:12 and Mike Reina is not in the building yet. Exhibit P-15, time stamped 4:47:15, shows that Mrs. Ganopoulos has turned and is not sleeping. Exhibit P-15 is time stamped 4:47:15 and shows Mrs. Ganopoulos getting up and not sleeping. Exhibit P-16, time stamped 4:47:15 shows a man holding a coffee and putting a key in the door. Exhibit P-17 shows Mrs. Ganopoulos standing up and going towards her locker to get her pepper spray. P- 18, time stamped 4:47:17 shows the man still attempting to come in the door. He was using a key, but the bridge operators used a four-digit code. Exhibit P-19, time stamped 4:47:20 shows her digging in her locker still looking for her pepper spray and is a good depiction of the whole control room. Exhibit P- 20, time stamped 4:47:20, shows the man has opened the door and has not used the first intercom. There is another intercom on the other side of the door, but he has not used it. Exhibit P- 21, time stamped 4:47:22 shows the man did not turn on the lights and is coming in the dark, so she believed it was a man sneaking into the building, who was going out of his way to not let her know he was coming in. If he had put on the lights, then she would have known he was not trying to conceal his arrival. This exhibit shows a blind spot and there are no night vision cameras in that room. Exhibit P- 22, time stamped 4:47:27 shows that he did not turn the lights on in the stairwell and he kept coming through in the dark. She turned the lights on in the stairwell. Exhibit P- 23, time stamped 5:20:19 is after Mrs. Ganopoulos left. What is depicted is that all the lights are on, and you can see that Mike Reina was wearing a T-

shirt, jeans, and sneakers. No lanyard, no ID, or shirt indicating he was from the county. She believes she left exactly at 5:00 a.m. or very close to that time. Mike Reina put the lights on in the control room after she left.

Exhibit P-24, time stamped 1:01:26 shows that she is wearing boots, which looked like Ugg boots, but were cheap imitations. Exhibit P-25, time stamped 9:46:02, shows operator Raymond Corey operating with the lights out and using the stairwell lights for illumination. It also shows that he has his feet up on the end table and she was not allowed to do that. In the upper right-hand corner of the photograph are slipper socks she left on the desk. They were for the arms of the chair, which were ripped up and not for her feet.

Mrs. Ganopoulos offered to buy her own chair to adjust it so it would be low enough for her feet to touch the ground because her legs would fall asleep at night. When Commissioner Vicari asked her if there was anything she needed she requested a chair. She saw Commissioner Vicari three weeks later and he told her that Tom Curcio denied her request for a chair because he did not want her to be comfortable.

Exhibit P-26, time stamped 10:38:32 shows the slipper socks and also shows that she has a blanket over the chair which she threw on when she first came in at night because the chair was old, dirty and smelled, so she did not want her clothes to get dirty. This photograph also shows that she has turned the quad screen so that it is facing towards the desk because she cannot do anything without being able to look at that screen. She was watching a movie on the regular desktop when Mike Reina came in. This was permissible and she could watch movies on Amazon prime.

Exhibit P- 27, time stamped 1:03:11 shows her lunch bag. It was not a pillow on the desk, it was her lunch bag. She understands why someone would mistakenly think it was a pillow as it had a floral pattern and was "droopy."

Exhibit P-28, time stamped 4:59:19 was when she was leaving. She had changed out of her boots and into her sandals which were her street shoes she changed out of when she was there. On the left is the blanket that was covering the chair and her lunch



bag is shown. On the right side is a big black bag which was her purse. She is leaving at 4:59:19 and heading towards the hospital. She was supposed to work until 6:00 a.m. She did not abandon her post. She testified "I was practically begging Mike Reina to call in another operator. When he threatened me, I was – I was scared, I was having a physical reaction to the threat. I put my hand over my heart, I was –I couldn't catch my breath. I was terrified. All I could hear for about thirty seconds was the sound of my own heart beating in my ears and I said, 'Okay, this is not good,' and I thought I was having a heart attack I was so scared." She made this clear to Mr. Reina many times.

The dustpan fell over at the bottom of the step, and she heard Mr. Reina say "nice burglar alarm" so she knew he was coming up the stairs. He had not turned the stairwell lights on and was coming up in the dark and she asked him, "Who are you and what are you doing in this building?" He said, "It's Mike, I want to talk to you." She said "Okay, fine, I need to see your ID please." He said no so she said it again that she needed to see his ID and he said, "No you don't" and now she was terrified. She went over to her desk and thought she may need to call the police. She sat down in her chair and as he walked from the stairwell over towards where she was, she said to him "I am sorry, but I need to see your ID and you cannot come into this building on my shift without using the intercom first." He put his coffee down and said, "Let me tell you something, I can do anything I want, any time I want, to anybody I want." She was looking at him when he said it and was in the chair and turned away and said, "I need to call the police." Her heart was beating so fast she thought she was having a heart attack. She turned the movie off that she was watching. He walked behind her and walked outside onto the walk around the bridge house. She grabbed her phone and her purse and was going to run downstairs and lock herself in the bathroom when he came back in and saw her. She slid her purse under the desk because she did not want him to see that she was about to make a run for it. He went over and sat in the chair in front of the exit. She said, "Listen, I don't understand what's happening here, I don't know what's going on. I am very scared right now. I was told that people wouldn't come in here and frighten me. I saw you coming in, I saw you. You didn't use the intercom, okay, maybe you forgot, but you know I have to ask you for your ID. I don't understand what's happening here." Mr. Reina barked at her and asked, "Why are you in the dark?" She said, "Well, I'm required to be in the dark. If I turn the lights on, I won't be able to do my job, I won't be able to see out the windows,

I wouldn't be able to use the controls because I wouldn't be able to see. I'm supposed to be in the dark, but listen," she said, "I'm having a really hard time breathing, I have a problem with my heart. I am going to need to go to the hospital, I cannot catch my breath." He asked her if she used the cameras and she said she did and they have been on since he came there and they have been functioning properly all night, but that she needed to go to the hospital. She could not catch her breath and needed to get some help and he was just staring at her. She said, "Listen, I don't know what's going on here, I was told by the county that people wouldn't come in here and scare me," and he said to her that he heard she had a problem with a couple of other guys in the past and she said yes, with Tom Curcio and Bill Britton, but everything was resolved and she did not have a problem with anyone. She did not want to have a problem, but she needed to go, and another operator needs to be called in. He was just sitting there staring at her with his legs opened and his coffee in his crotch with his hand behind the coffee. She told him that she did not know what was happening here, she needed to go and get some help and he was just sitting there staring at her. She thought he was going to jump out of the seat any minute at her.

Mrs. Ganopoulos suspected this was Mike Reina because of the reference to the prior incident with Tom Curcio, but it was odd that he would not show her his ID when she asked. She then thought maybe it was Mike Reina and as her supervisor was testing her because it would be a violation not to ask for ID. She told him she needed to go to the hospital and get some help. Mr. Reina said that's too bad and why doesn't she file a complaint with Keith Goetting and Tom Curcio and see what happens. Mrs. Ganopoulos threw her hands up and said, "Okay fine, I'm just going to go," and that is when she started packing her things up and getting out of there. She changed into her street shoes, and he sat there watching her the whole time. She told him five times "I cannot catch my breath, I have a problem with my heart, I need to go to the hospital." He did not offer her assistance or give her permission to go. He had his legs spread apart his coffee in his crotch and the hand behind the coffee in his crotch. She did not know if he was masturbating or was going to expose his penis, she was just not going to look and continue to get her stuff together. She said at one point she was afraid to go past him. She was afraid for her life and did not know what he was going to do to her, it was like he wanted her to be there alone with him.

At no time when she was there with Mr. Reino did he offer her a promotion. To this day she does not know why he was there since he was not doing an inspection because he had no paperwork for an inspection. He did not introduce himself as her supervisor. He just snuck in.

Exhibits P- 29 and P-30, time stamped 10:05:15 and 10:05:17 on August 3, 2017, show the HPU room initially with the lights on and when Raymond Corey leaves the room, he turns the lights off. Mr. Corey was on the shift prior to hers.

Mrs. Ganopoulos prepared Exhibit 31A to list her personal cell phone calls after she left the bridge. She called the Mantoloking bridge operator, Chris Deschler. As soon as she walked out the door she was hyperventilating, and it took her three minutes to walk to her car. When she got to her car, she needed to go to the hospital but did not know how to get there. She called Chris Dischler and told him she was having an emergency and was going to go to the emergency room but did not know how to get there. He told her he did not know how to tell her to get there and that she should call 911. Chris Deschler asked her if she needed him to call in another operator and she told him she did not know but that Mike was on the bridge but that there was something wrong with him. Chris told her not to worry about it and that he would take care of it. She then called her mother so she would not worry if she did not get home on time. The first two telephone numbers listed in P-31A are the Mantoloking bridge telephone numbers. Mrs. Ganopoulos stated that in an emergency she was required to alert her supervisor or call the other bridge operator to start the process. She did both. The first call to Chris was dropped, the second call was two minutes and the third call listed was to her mother and was for two minutes. The fourth call was to her husband, and she left a message since he was a locomotive engineer and did not have on his phone. The fifth call she made was to 911 when she did not think she was going the right way to the hospital, and she stayed on the 911 call until she reached the hospital, and they were waiting for her. She explained her cardiac issues which involved a damaged mitral valve in 2011 and supraventricular tachycardia. The last call listed shows an incoming call from John Lachman, the lead bridge operator, while she was in the emergency room. Exhibit P-31B explains all the calls listed on P-31A. Mrs. Ganopoulos called 911 at 5:19 a.m. and arrived

at the emergency room at 5:25 a.m. and was there for three hours. John Lachman called Mrs. Ganopoulos while she was at the hospital because Chris Dischler called him.

Mrs. Ganopoulos received a document from the hospital that she was diagnosed with having had a panic attack and hyperventilation syndrome and was to follow up with her personal physician. (P-5.) Her general practitioner, Dr. Cardiello put her on Coreg and submitted a doctor's note to the county. (P-6.) She believes her doctor put her out of work for three months; however, she was terminated by the county. The reasons for her termination were for insubordination, not wearing her uniform, leaving her post, and sleeping. She remembers speaking to Keith Goetting about why she was being disciplined and he said that she was asleep with a pillow and a blanket and when the dustpan fell over, she woke up and started yelling at her supervisor. Mrs. Ganopoulos told Mr. Goetting that did not happen and to watch the video and match up the time stamps because she was reacting to Mr. Reina's presence before he was even inside the building.

Mrs. Ganopoulos believes she was wrongfully terminated. She removed herself from her post at 5:00 a.m. on the morning of August 4, 2017, to go to the hospital. She was under physical, emotional, and medical distress and was incapable of operating the bridge, while her heart was pounding with fear with a man sitting in the corner, blocking the exit, with his hands in his crotch. As soon as she told him she was having a medical emergency and could not breathe, he should have taken her out of service and replaced her with someone safe enough to operate that bridge. Mr. Reina did not do his job and created an unsafe workplace for her on August 4, 2017.

On cross-examination, as an intermittent bridge operator, Mrs. Ganopoulos worked from Memorial Day through the first week in October of each year.

Mrs. Ganopoulos was previously disciplined as reflected in P-7. The September 6, 2014, discipline prepared by Bill Britton, the head of the bridge department indicated that she was sleeping four hours out of every eight-hour shift for eighteen days. (P-7.) Mrs. Ganopoulos stated she rarely slept, maybe occasionally for five or ten minutes. In the form she indicated that she had been reclining for an hour or two, off and on, but

never for extended periods of time. She was not sleeping when Bill Britton and Tom Curcio came to the bridge on September 6, 2014. Bill Britton wrote, "On 9/6/14 Tom Curcio and I stopped by Beaver Dam Bridge at 3 a.m. Saturday morning, 9/6 and discussed with Ellen her conduct and the verbal disciplinary and action she received during our visit. I explained to her that lying down/sleeping was unacceptable and that it would not be tolerated. Ellen refused to sign the verbal disciplinary action and was given a copy." (P-7.) Mrs. Ganopoulos stated that Mr. Britton told her she could sleep sitting in the chair.

Mrs. Ganopoulos was going to quit after this incident and County Freeholder (now Commissioner) Vicari became involved. She told Commissioner Vicari that she would finish out the year but was not going to come back next year. She understood that supervisors were going to come by and do inspections, but she could not afford to be scared like that if they were going to sneak into the building. Commissioner Vicari told her that there would now be a policy that whoever was going to come into the building would pick up the intercom at the door on the way in and let her know who they were. Although Mrs. Ganopoulos knew that the bridge was a secured location and that you needed a key or code to access it, people such as police and fire personnel had access to it. However, she admitted that it was a secure facility, and that people cannot just walk in at any old time.

As far as the requirement for steel toed boots, Mrs. Ganopoulos used OSHA inserts in her Ugg-like boots for her work shoes.

Exhibit R-9 references certain times events that occurred on the video during the course of the evening. At 9:59 p.m. she entered the control room. At 10:18 p.m. she put a blanket over the seat. At 10:39 p.m. she turned off the lights. At 10:47 p.m. she went downstairs with a dustpan in her hand and left it leaning against the inside door. This was one of three things she did every night for the past three years. It was meant to make a lot of noise and was her way of dealing with her insecurity of being in the building after there had been two attempted break-ins that were reported to the police. Nobody ever got in but that is what prompted her to put the dustpan inside the second door because she was scared working in there. She then comes back up the stairs at 10:58 p.m. and

moves the seat she was not using to the front of the stairs so she would not fall over it in the dark. She then put on her boots. She was working in her sandals from 10:00 p.m. until she put her boots on at 1:00 a.m. She got distracted and probably should have put them on earlier. The timeline indicates that between 4:09 a.m. and 4:47 a.m. Mrs. Ganopoulos was sleeping with a pillow. Mrs. Ganopoulos denied it was her pillow, but rather it was her lunch bag. She had her lunch bag and purse on the desk.

The video shows Mrs. Ganopoulos standing up at 4:47:17, when she had been sitting in the chair at 4:47:15. At 4:47:17 Mr. Reina is at the outside door and Mrs. Ganopoulos is standing up and walking over to her locker area in order to get her pepper spray out of the locker. She looked down the stairs and turned the light on and saw him walking up the stairs. She asked him who he was and what he was doing in the building. He said it was Mike and he wanted to talk to her. She admitted that he had keys to get in the building, but when she asked him for his ID he said no, and she got really scared. Mrs. Ganopoulos said she was not sleeping when Mr. Reina arrived, despite the timeline claiming she was sleeping from 4:09 to 4:47. She was watching a movie and had her right hand under her chin and would switch while she was watching the movie. The chair was also broken so she could not sit back in it. Mrs. Ganopoulos' testimony was that she was not sleeping at any time between 4:09 to 4:47. When Mr. Reina came up, he swiped in. After she asked him for ID and told him he could not come in on her shift without using the intercom first, Mrs. Ganopoulos said that Mr. Reina said, "Let me tell you something, I can do anything I want, to anybody I want, any time I want." Mrs. Ganopoulos was terrified as she felt he was threatening her. This is when she put her hand over her heart. Mr. Reina walks behind her and she turns off the movie and picks up her phone and was going to call the police. She threw her phone in her purse and was going to run down the stairs, but Mr. Reina came back in from the walk around. It was pointed out that she does not leave the area until 4:58 a.m. and is there another ten minutes. She did not call the police. Mrs. Ganopoulos said she still did not know it was Mike Reina because he did not show her his ID. Mrs. Ganopoulos testified she realized it was him when he referred to the prior incident with Bill Britton and Tom Curcio. She then said she knew it probably was Mike Reina, but it was his behavior that was upsetting. She told him she was having a problem and needed to go to the hospital because she could not catch her breath. She did not call 911 because she was panicked and afraid. She told Mr. Reina five times to

get a replacement. She packed up all her things and put in her earrings that were sitting on the desk. Her back was turned to him as she was getting things out of her locker and packing. There was no conversation going on between them during this time. The video shows her folding up her blanket. Mr. Reina asked her if she was coming back tonight and she said she was sorry, she could not work under these conditions and swiped out at 4:58 a.m. and left the bridge. The minute she walked out the door she became hysterical and broke down and then drove to the hospital. She calmed down during the three-minute walk from the bridge to her car.

Mrs. Ganopoulos took all her jewelry off because she was doing a lot of cleaning and she would get sweaty, and the jewelry would turn black.

She initially resigned her position after this incident, but later rescinded her resignation. She was aware that to be employed by Ocean County, she had to live in Ocean County. They moved to Burlington County in 2018.

**Joseph Galletto** testified on behalf of the appellant. He is a permanent bridge operator for Ocean County and has been employed by the county thirty-six years. He is familiar with Ellen Ganopoulos, as she was a summertime bridge operator at the Beaver Dam Bridge. He believes he learned she was terminated when John Lachman advised that they were filling the position. Mr. Galletto was contacted by Mike Reina at 5:00 a.m. the morning of August 4, 2017, and asked if he could come into work because he said he went in and caught Ellen sleeping and that she started screaming, yelling and left the bridge. Mr. Galletto advised Mr. Reina that he was off that day and that Darren was supposed to come in at 6:00 a.m. so Mr. Reina said never mind, he would call Darren.

Mrs. Ganopoulos contacted him a few days after and advised him that she was terminated from her position. She told him that Mike had entered the building and would not identify himself and that he scared the hell out of her. Mr. Galletto said he was shocked and believed that was the end of the conversation. He said he was shocked because why would he not just show his identification.

Mr. Reina became supervisor of the bridge department in 2015. Mr. Reina always visited his shift unannounced with no notice. His shift was 7:00 a.m. to 3:00 p.m. He never asked him for identification because he had met him. When Mr. Reina was hired, Mr. Britton brought him up to introduce him to Mr. Galletto. He had no idea if Mrs. Ganopoulos had ever met Mr. Reina.

Mr. Galletto has known Mr. Reina for approximately seven and a half years and has been in his company before and described his demeanor as volatile at times.

**Joseph H. Vicari** testified on behalf of the appellant. He is the Director of the Ocean County Board of Commissioners and employed by Ocean County. He held that position in 2014. He has an educational background and was a teacher for many years, then a school administrator and then the superintendent in Berkeley Township. During the time frame from 2013-2014, he had retired and was working full-time as a county freeholder, one of five members of the Ocean County Board of Chosen Freeholders. He supervised several departments including personnel and building and grounds. In 2013-2014, Freeholder Jim Lacey had brought up to the Board that they could not get a bridge operator because the salary was low, yet the position required a highly qualified and trained individual who could handle the major responsibility in operating the bridge. Security was very important. Although it was an entry level job, someday the person hired would be hired full-time by the county.

As a commissioner, if someone recommended a person for a job, he would facilitate the process by giving their name to the department head. Mr. Vicari does not hire, fire, or evaluate people. The normal process was that an application went to the department head to the supervisor. Bill Britton was the supervisor at the time and called Commissioner Vicari back and said he was impressed with Mrs. Ganopoulos and that she was overqualified for the job and more qualified than some people that were working there. They had never had a female before, but Mr. Britton felt she could do the job and gave her the job with the stipulation that she would be strictly evaluated and after three months decide if the job was being done. Mr. Britton got back to Commissioner Vicari and said she was proficient, and her work record was excellent, and she had satisfied all her evaluations and he wanted to keep her as she was an asset to the department. Mr.



Britton called the Freeholder as a courtesy to see how things were going. He has been a freeholder for forty-two years and hears things.

Mr. Britton was the one who mentioned to Commissioner Vicari that if you can do your job, you were allowed to sleep on the job, provided they were available if a boat came or there was an emergency like a car accident. Commissioner Vicari knew this to be true because a good friend, Rocco Depella, worked full-time for Central Region High School and his second job was with the bridge department. He had to do his job with no accidents, but he was allowed to sleep. From what Commissioner Vicari understood, this was a common policy and was never questioned. The key thing was that the person had to do their job and they realized it was very hard to get anyone at nighttime from 8:00 p.m. to 6 a.m. It was basically the honor system and was unsupervised only at night provided there were no problems with the bridge opening and closing. Fishermen would usually leave 3:00 a.m. – 5:00 a.m., and as far as he is aware, they have never had any problems with the bridge not being opened, according to Rocco Depella and other people.

Mrs. Ganopoulos was very well qualified, and he is aware that there was a problem at one time with people going in to supervise. In September 2014, he became aware of a situation where Mr. Britton and Mr. Curcio made an unannounced visit to the Beaver Dam Bridge while Mrs. Ganopoulos was on duty. Commissioner Vicari consulted with the other commissioners since nothing like this had ever happened before. The bridge was secured with one door in and out. The Board was upset that they used their key to sneak into a building with a female. That had never happened before, and the Freeholder Board was collectively not only upset but outraged. There was some discussion about disciplining them or firing them from their positions, which did not happen. They did not want to embarrass Bill Britton or Tom Curcio for their poor judgment. The Board wanted to work out a policy so this would not happen again. Both Mr. Britton and Mr. Curcio were really embarrassed when they were confronted with this and did not think it was going to go to that extent. To be clear, there was no policy that you had to call first or make an appointment or get permission to go in. What you had to do was use the intercom system when you were at the door to let the person know so they would not be startled. Freeholder Vicari stated that no one that he talked to in the administrative staff had ever gone into the building at night. If an administrator or supervisor wanted to go into the

building at night, especially with a female present, all they had to do was use the intercom to say they are entering the building, which is the fair and right thing to do.

Commissioner Vicari is familiar with Mike Reina and thinks he is a good guy. He helped him with one of his freeholder campaigns and Commissioner Vicari helped Mr. Reina on his reelection as mayor. He was aware that Mr. Reina became a supervisor in the Ocean County Bridge Department in 2015, but Commissioner Vicari had very little contact with him and did not interfere with the operation of the bridge. Mr. Reina would report to his direct supervisor, Tom Curcio, who would report to the County Commissioner, Carl Block.

The intercom policy was in effect in 2015.

On August 4, 2017, Commissioner Vicari had a long-standing pre-scheduled 9:00 a.m. visit to the Mantoloking and Beaver Dam Bridges. Tom Curcio drove, and Mike Reina went with him to visit both bridges as they were having issues regarding the operations of the bridges including leaks in the windows, problems with the electric, the cameras and the traffic. They went to the Mantoloking Bridge first and then went to the Beaver Dam Bridge. The purpose of his visit was a routine inspection to make sure the building was safe and just to be visible to see if the employees had any concerns. The first thing he did at both bridges was to use the intercom system, as the policy applied to everyone. When he went upstairs at both bridges, he noted there were problems with the windows and water was seeping in. Commissioner Vicari was in charge of buildings and grounds, and he was going to make sure the windows were fixed.

After he was at the Beaver Dam Bridge with Mr. Reina and Mr. Curcio the morning of August 4, 2017, he learned that there had been an incident earlier in the morning with Mr. Reina and Mrs. Ganopoulos. He was being dropped off by Mr. Curcio and was already out of the car when Mr. Reina rolled down his window and asked him if he could speak to him. This was at approximately 9:00 a.m. – 10:00 a.m. Commissioner Vicari said they had just been together for hours and he brought it up as he was leaving. Mr. Reina said there was a problem with Ellen Ganopoulos. Commissioner Vicari was surprised as he was told by Tom Curcio that she had been doing a good job. Mr. Reina

said that at 4:30 a.m. he had parked his car, leaving lights on and that Mrs. Ganopoulos should have seen the lights. He entered the door with his key and walked upstairs and saw Mrs. Ganopoulos on the floor with a yoga mat wrapped up in a blanket. He said he corrected her and woke her up. He was unbelievable. His hands were shaking, and his eyes were glassy. He was frightened and said, "There is something wrong with her. She's crazy. She attacked me." Mr. Reina said she cursed at him, and no one has ever spoken to him like that before. Commissioner Vicari asked Mr. Reina to settle down because Mr. Reina was emotional and to tell him exactly what happened. Commissioner Vicari asked him what he was doing there at 4:30 a.m. Mr. Reina said he had to see her and that it was his job to go see her. He said the lights were out in the building, but the main thing was that she was sound asleep when he went in. She became uncontrollable and said she had severe chest pains, and she could not breathe. Commissioner Vicari asked him what did at that point. He thought Mr. Reina was going to say he dialed 911, but Mr. Reina said he did not do anything and got in another argument with her. Then she got dressed and told Mr. Reina several times that she was serious, that she had to go to the hospital. Commissioner Vicari was stunned. Mrs. Ganopoulos then left and went to the hospital.

When Mr. Reina was telling Commissioner Vicari what happened, Commissioner Vicari turned to Mr. Curcio and asked him if Mr. Reina was told that he had to use the intercom so that you do not startle the person, especially anyone at night, male or female. Commissioner Vicari then turned back to Mr. Reina and told him that was the policy. Mr. Reina told Commissioner Vicari that he went there to see Mrs. Ganopoulos between 4:00 a.m. - 4:30 a.m. because he had never seen her. Commissioner Vicari asked if anyone had ever done an inspection or went to see someone at night, but he never received an answer.

Commissioner Vicari spoke to Carl Block at approximately 4:30 p.m. that day and was advised that Ellen Ganopoulos had called and said she had a heart attack and had this problem. Commissioner Vicari asked if he called her to see what her condition was, and he said that he did not but would have someone else call from the department.

Commissioner Vicari was later told by Administrator Carl Block, Assistant Administrator Mike Fiore and Personnel Director Keith Goetting that Mrs. Ganopoulos did not go to the hospital and that she falsified records. Commissioner Vicari later learned that this was a lie, that when she left the bridge, she got into her car and went right to the hospital. Commissioner Vicari stated that he had never heard of a person being treated the way Mrs. Ganopoulos was treated. Commissioner Vicari, as personnel liaison, was told by administration that Mrs. Ganopoulos abandoned her position and was sleeping on the job and was terminated. He had said that it was not true and that she was not sleeping on the job. He was not privy to the whole procedure but was aware Mrs. Ganopoulos had a departmental hearing and was represented by counsel.

On cross-examination, Commissioner Vicari explained that the policy regarding using the intercom prior to entering the bridge was an oral policy that only applied to the two bridges that was individually discussed with the Board of Freeholders. It came about partly as a result of the 2014 incident with Mrs. Ganopoulos, but it had been a policy prior to that but not utilized. So, after the 2014 incident it was reinstated.

Commissioner Vicari testified that sleeping on the job was permissible, even though he is aware that the regulations for bridge operator state that sleeping on the job is not permitted. He is aware of that and that is how it should be, but unfortunately, the people that they hired and trust, such as Bill Britton, told the employees they could sleep on the job as long as the bridge is opened up when it is supposed to be.

The bridge regulations also indicate that no employee shall leave their post until properly relieved. (R-5.)

The September 5, 2014, Notice of Discipline against Ellen Ganopoulos was brought because she was sleeping on the job. She had put two end tables together with a blanket on top. (R-7.) Commissioner Vicari was not aware it was eighteen times, but he was aware that Carl Block came into his office at the time and said she was caught sleeping and she said that she was told that she could sleep on the job, which Commission Vicari knew to be true. Commissioner Vicari said that discipline had to be progressive and that he knows for a fact that people did much worse than this and did not

get discipline. There cannot be two standards for a man that works there and another for Ellen Ganopoulos and the culture is that if you are a female, you are treated differently than a male. Commissioner Vicari did not review the tape of this incident, but this is the second time Mrs. Ganopoulos was being brought up on charges of sleeping on the job.

### **Discussion**

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it “hangs together” with other evidence. Carbo v. United States, 314 F.2d 718 (9<sup>th</sup> Cir. 1963); see In re Polk, 90 N.J. 550 (1982). Credibility findings “are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). 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).

On January 11, 2023, we conducted day three in this hearing and the parties stipulated that the two main issues in this case were whether appellant was sleeping on the job the morning of August 4, 2017, and whether she abandoned her post without being properly relieved. The issues of whether the lights should have been on or off or whether appellant was in violation of the uniform policy for not having steel-toed boots was agreed to not be the main issues.

There was conflicting testimony as to whether sleeping is permissible on the job despite the official policy prohibiting sleeping on the job. Although appellant maintains she was not sleeping, she stated that Bill Britton had advised her from the previous incident in September 2014, that you could sleep as long as you were sitting in a chair and as long as you did not miss any calls. Commissioner Vicari testified that although there is a policy prohibiting sleeping on the job, he knows of individuals sleeping on the job.

I have reviewed the video footage on the flash drive (R-3) from the bridge control room and it does not appear to confirm that appellant was actually sleeping on the job from the time between 4:09 a.m.– 4:47 a.m. on August 4, 2017, as respondent claims. The glare on the video makes it difficult to see what appellant is doing, although it does appear that she is moving at times during the time period in question. Appellant maintains that she was not sleeping but sitting up watching a movie during this time.

Mr. Goetting testified that there was no policy regarding supervisors or superintendents providing notice of their visits to the bridge. The county is a twenty-four-hour operation, seven days a week and supervisors going out in the field to talk to employees is appropriate. There is no policy requiring that a supervisor has to notify an employee before coming to visit an employee at work. Although Commissioner Vicari testified that there was an oral policy initiated that a supervisor visiting the bridge should use the intercom prior to accessing the bridge house, there was no written county policy to this effect. Interestingly, this oral policy came about following the September 6, 2014, 3:00 a.m. visit by Britton and Curcio to the bridge when Mrs. Ganopoulos was working and her subsequent complaint to Commissioner Vicari regarding their visit to the bridge at that hour. In any event, Mrs. Ganopoulos believed that Mr. Reina was required to use the intercom prior to entering the bridge. Mr. Reina believed that as the supervisor he was free to make unannounced visits to the bridge to make sure all was in order. Both Mr. Reina and Mrs. Ganopoulos testified that Mrs. Ganopoulos was angry and upset that he came into the bridge house without calling her on the intercom first.

Ellen Ganopoulos' testimony that she was so upset and in fear for her safety that she left her post after she experienced a medical emergency the morning of August 4, 2017, when Mike Reina visited the bridge unannounced was not credible in light of the facts. The most important of which was that the bridge was a secured facility. No one had access but authorized personnel. This was the reason she utilized the dustpan behind the door, to alert herself to someone entering the building. Mike Reina used his key to gain access to the bridge house and swiped in after he walked up the stairs. Mrs. Ganopoulos' testimony that she did not know who he was, feared for her safety, tried to locate her pepper spray, and considered escaping by running past him and running

downstairs and then locking herself in the bathroom, and calling the police, was so exaggerated as to be unbelievable, as was her testimony regarding her fears of any sexual impropriety by Mr. Reina as he sat in the chair across the room from her.

She admits that she knew her supervisor's name was Mike, he had a key to access the secured facility and he identified himself as he came up the stairs and said "Ellen, it's Mike," and then he swiped in. She even admitted later in the testimony that she should have realized it was Mike Reina, her supervisor, especially once he referenced the prior incident with Britton and Curcio. Those supervisors also had made a previous unannounced visit to her at the bridge on September 6, 2014.

Mrs. Ganopoulos testified that Mr. Reina asked her as she was leaving whether she was coming back to work tonight and she replied that she was sorry, she could not work under these conditions.

A review of the flash drive (R-3) indicates that more than ten minutes elapses from the time Mr. Reina enters the bridge control room (4:48 a.m.) to the time Mrs. Ganopoulos leaves the bridge control room (4:59 a.m.) Unfortunately, there is no audio on the flash drive to capture what was being said between the parties. However, during this time, Mrs. Ganopoulos is seen sitting in her chair with her back to Mr. Reina who is seated across the room. She is also seen standing up and emptying her locker, folding up her blankets and packing up her bags. She changes her shoes and puts on her necklace and puts in both her earrings which had been laying on her desk. There does not appear to be any haste in her actions. When she finally has all her bags packed and is ready to go down the stairs, she turns around and goes back to the time clock to swipe out. Her arms are full as she leaves the bridge with her blankets and two bags. (P-28.) When asked by Mr. Reina whether she was coming back to work that night she replied that she was sorry, she could not work under these conditions and she left.

Mrs. Ganopoulos' testified that the minute she walked out the door she became hysterical and broke down and then drove herself to the hospital. Although she may have decided to go to the hospital sometime after abandoning her post, the video evidence

does not support her experiencing a medical emergency that caused her to leave her post.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

Appellant was employed by respondent as an intermittent bridge operator at the Beaver Dam Bridge from May 15, 2014, until this incident of August 4, 2017, which resulted in her removal, effective September 20, 2017. Her hours of work were from 10:00 p.m. – 6:00 a.m. As an intermittent bridge operator, appellant worked from the last weekend in May to the first weekend in October.

There is no policy regarding supervisors or superintendents visiting the bridge location. The county is a twenty-four-hour operation, seven days a week and supervisors going out in the field to talk to employees is appropriate. There is no written county policy requiring that a supervisor provide notice that they are coming to visit an employee.

The Ocean County Bridge Operating Procedures manual states: "An employee found asleep during his tour of duty will be subject to discipline." (R-5, page 5, paragraph 3.)

The Ocean County Bridge Operating Procedures manual states: "Reporting for Duty: Bridge personnel are required to report for duty at the time indicated on the work schedule of the bridge. A minimum of ten (10) minutes before that time is considered reasonable for the exchange of information and preparation for work, Employees will relieve one another at their regular workstations. **NO EMPLOYEE WILL LEAVE HIS/HER POST UNTIL HE/SHE IS PROPERLY RELIEVED.** Regular work hours on the Mantoloking Bridge are 7am to 3 pm, 3 pm to 11 pm and 11 pm to 7 am and on the Beaver Dam Bridge are 6am to 2pm, 2pm to 10 pm and 10 pm to 6am." (R-5, page 8, paragraph 13.)



Michael Reina has been the superintendent of the Ocean County Bridge Department since January 2, 2016, after serving as the assistant superintendent of the bridge department since January 2, 2015. His predecessor on the job was William Britton. Thomas Curcio was the county road supervisor.

An Ocean County Notice of Employee Disciplinary Action, dated September 5, 2014, was issued to Mrs. Ganopoulos for incompetency, inefficiency or failure to perform duties; inability to perform duties; and neglect of duties for a series of violations that had occurred in 2014 on July 31, August 1, August 2, August 3, August 7, August 8, August 9, August 14, August 15, August 16, August 17, August 16, August 17, August 21, August 22, August 23, August 28, August 29, and August 30, August 30, when appellant "was observed laying down what is to believe sleeping for an average of 4 hours out of her 8 hour shift." William Britton, her supervisor noted "I was viewing recorded video for other reasons and at the time noticed Ellen was taking 2 end tables that are used in the bridge house and placing them in front of the office desk, she would then cover them with what appeared to be a mat or blanket, turn the desk chair so that the seat would face the tables, take a second desk chair and place it between the camera and the tables to what appears to me was to block the camera view (I don't see any other reason for placing the chair in this location) she would then take the portable VHF radio place it on the desk and then lay down on the tables and chair, cover herself with a blanket and would stay in this position (laying down) for a period of about 4 hours (until about 5am give or take) with no apparent movement, get up, put everything back in its place and wait for her relief. This is totally unacceptable, and she can not properly perform her duties as a Bridge Operator laying down for a 4 hour period." (R-7, page 1.)

A handwritten comment by Mrs. Ganopoulos notes, "I have been reclining for an hour or two off and on, never extended periods of time, - EG." (R-7, page 1.)

The Recommended Disciplinary Action/Corrective Action for these violations was verbal counseling. (R-7, page 2.) William Britton's recommendation for corrective action was to consider this a verbal warning that if her actions continue termination is possible. He indicated on the form that on September 6, 2014, "Tom Curcio and I stopped by Beaver Dam Bridge 3 am Saturday morning 9/6 to discuss with Ellen her conduct and the

Verbal Disciplinary Action she received during our visit. I explained to her that lying down/sleeping was unacceptable and that it would not be tolerated, Ellen refused to sign the Verbal Disciplinary Action and was given a copy." (R-7, page 2.) The form indicates that the Department Head, J. Thomas Curcio approved the recommended action on September 11, 2014.

Appellant's Employee Probationary Evaluations done at thirty/sixty/ninety-day intervals (June 14, 2014, July 14, 2014, and August 14, 2014,) were all satisfactory and she was retained. (R-8.)

Appellant's Employee Performance Evaluation for January 1, 2014, to December 31, 2014, was "Exceeds Expectations" in most categories with several "Outstanding" and a couple of "Satisfactory" ratings. (R-8.)

Appellant's Employee Performance Evaluation for the period January 1, 2016, to December 31, 2016, was "Satisfactory" in all categories. (R-8.)

At approximately 4:45 a.m. on August 4, 2017, Mike Reina, superintendent of bridges stopped by the Beaver Dam Bridge, unannounced, to perform an inspection. He used his key to enter the bridge house and proceeded to the stairway door. When he opened the door to the stairwell, he heard a metallic bang and discovered there was a metal dustpan that appellant had placed there as an alert system that someone was entering the premises. Appellant, who was on duty at the time yelled out "Who's there?". Mr. Reina identified himself, came up the stairs and swiped in.

Ms. Ganopoulos was upset and repeatedly stated he had no right to come to the bridge house unannounced and he should have used the intercom. Mrs. Ganopoulos packed up her belongings and left her post at 4:59 a.m. in violation of county and Coast Guard regulations, without being properly relieved. Mrs. Ganopoulos' shift did not end until 6:00 a.m.

Ms. Ganopoulos testified that Mr. Reina asked her as she was leaving whether she was coming back to work tonight and she replied that she was sorry, she could not work under these conditions. She then left the bridge.

The bridge was left unattended until a replacement bridge operator was called in and arrived at 5:29 a.m.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority bears the burden of establishing the truth of the allegations by a preponderance of the credible evidence. 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 (Sup. Ct 1940) (citation omitted). Stated differently, 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, 275 (1958); see also Loew v. Union Beach, 56 N.J Super. 93,104 (App. Div. 1959).

Appellant was charged with violations of a N.J.A.C. 4A:2-2.3(a)1, Incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2.3(a)7, Neglect of duty; and N.J.A.C. 4A:2-2.3(a)12, Other sufficient cause – failure to follow work instructions.

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).

I have found as fact that at approximately 4:45 a.m. on August 4, 2017, Mike Reina, superintendent of bridges, stopped by the Beaver Dam Bridge, unannounced, to perform an inspection. He used his key to enter the bridge house and proceeded to the stairway door. When he opened the door to the stairwell, he heard a metallic bang and discovered that appellant had placed a metal dustpan behind the door as an alert system that someone was entering the premises. Appellant, who was on duty at the time yelled out "Who's there?". Mr. Reina identified himself, came up the stairs and swiped in. Mrs. Ganopoulos was upset and repeatedly stated he had no right to come to the bridge house unannounced. Mrs. Ganopoulos packed up her belongings and left her post at 4:59 a.m. in violation of county and Coast Guard regulations, without being properly relieved. Mrs. Ganopoulos testified that Mr. Reina asked her as she was leaving whether she was coming back to work tonight and she replied that she was sorry, she could not work under these conditions.

The bridge was left unattended until a replacement bridge operator was called in and arrived at 5:29 a.m.

As an intermittent bridge operator at the Beaver Dam Bridge appellant was responsible for opening the drawbridge during her 10:00 p.m. to 6:00 a.m. shift. By abandoning her post at 4:59 a.m. on August 4, 2017, she left the drawbridge unattended and failed to perform her duties as bridge operator and neglected to perform her duties as bridge operator by leaving her post before she was relieved. She also failed to follow work instructions as set forth in the Ocean County Bridge Operating Procedures manual which states under the "Reporting for Duty" section that no employee will leave their post until they are properly relieved.

Based on the above, I **CONCLUDE** that respondent has sustained its burden of proving that appellant violated N.J.A.C. 4A:2-2.3(a)1, Incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2.3(a)7, Neglect of duty; and N.J.A.C. 4A:2-2.3(a)12, Other sufficient cause – failure to follow work instructions.

**Penalty**

The remaining issue is penalty. The Civil Service Commission's review of a penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Brock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense); see also in re Herrmann, 192 N.J. 19, 33 (2007) (DYFS worker who snapped lighter in front of five-year-old):

. . . 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 judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty 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. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

Appellant has been found to have violated N.J.A.C. 4A:2-2.3(a)1, Incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2.3(a)7, Neglect of duty; and N.J.A.C. 4A:2-2.3(a)12, Other sufficient cause – failure to follow work instructions. Respondent seeks appellant's removal from her position as an intermittent bridge operator.

Although I have sustained all the charges against Mrs. Ganopoulos, I am not inclined to remove her based-on theories of progressive discipline. Despite any political intercession appellant may have received that resulted in her receiving lesser discipline from the September 6, 2014, incident, the fact remains that appellant has had no prior major discipline. All she has is a prior verbal warning from the September 6, 2014, incident. Although abandoning her post as a bridge operator is a significant violation and involves issues of public safety, respondent was able to have another bridge operator report to the bridge within about a half hour to cover the remainder of Mrs. Ganopoulos' shift. Mrs. Ganopoulos abandoned her post at 4:59 a.m. and a replacement bridge operator reported to the bridge at 5:29 a.m. Therefore, the bridge was left unattended for a relatively short amount of time and there is nothing in the record to indicate that there were any emergencies or that the bridge needed to be opened during that time. Although I have sustained the neglect of duty, failure to perform duty and failure to follow work instruction charges for appellant's abandoning her post on August 4, 2017, her performance evaluations prior to this incident had been satisfactory and better.

I **CONCLUDE** that considering principles of progressive discipline, the imposition of a 180-day suspension without pay is appropriate for the sustained charges of N.J.A.C. 4A:2-2.3(a)1, Incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2.3(a)7, Neglect of duty; and N.J.A.C. 4A:2-2.3(a)12, Other sufficient cause – failure to follow work instructions.

Therefore, I **CONCLUDE** that the original penalty of removal be **MODIFIED** to a 180-day suspension without pay.

**ORDER**

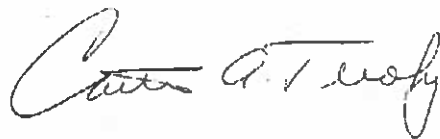
It is **ORDERED** that the charges as set forth above are **SUSTAINED**.

It is also **ORDERED** that the penalty of removal be **MODIFIED** to a 180-day suspension without pay.

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. 40A:14-204.

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.



August 8, 2023

DATE

CATHERINE A. TUOHY, ALJ

OAL DKT. NO. CSV 15827-17

Date Received at Agency:

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Date Mailed to Parties:

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CAT/gd/lam



**APPENDIX**

**WITNESSES**

**For appellant**

Ellen Ganopoulos  
Joseph Galletto  
Joseph H. Vicari

**For respondent**

Michael Reina  
Keith J. Goetting

**EXHIBITS**

**For appellant**

- P-1 Emails from September 13, 2017, to September 18, 2017, between Keith Goetting and appellant
- P-2 Copy of appellant's paycheck and paystub for October 4, 2017
- P-3(a) Copy of photo of Reina and Darrin Smith August 4, 2017, bridge video control room 2
- P-3(b) Copy of photo of Darrin Smith 8/4/17 bridge video control room 2
- P-4 Point Pleasant Police Report, dated August 6, 2017
- P-5 Ocean Medical Center discharge instructions, dated August 4, 2017
- P-6 Doctor's note from Gary Cardiello, M.D., dated August 8, 2018
- P-7 OPRA request and response, dated August 6, 2017
- P-8 OPRA request by appellant, dated August 4, 2017
- P-9 Copies of photos from bridge video control room 2, dated August 4, 2017
- P-10 Ocean County Bridge Operating Procedures
- P-11 Personnel File/Evaluations
- P-12 Photo of quad
- P-13 Photo of petitioner in control room
- P-14 Photo of Reina arriving at entrance

- P-15 Photo of petitioner in control room
- P-16 Photo of Reina unlocking door
- P-17 Photo of petitioner in bridge control room
- P-18 Photo of Reina unlocking bridge control room door
- P-19 Photo of petitioner in bridge control room
- P-20 Photo of Reina opening control room door
- P-21 Photo of Reina entering bridge control room in the dark
- P-22 Photo of Reina entering room in the dark
- P-23 Photo of Reina in t-shirt, jeans and sneakers entering bridge control room
- P-24 Photo of petitioner in bridge control room with boots on
- P-24(a) Example of boots worn by petitioner for work
- P-25 Photo of third shift worker, Raymond Kuri before petitioner's arrival for work
- P-26 Photo of bridge control room
- P-27 Photo of bridge control room and petitioner's lunch bag
- P-28 Photo of petitioner leaving bridge control room
- P-29 Photo of 3<sup>rd</sup> shift worker Raymond Kuri leaving at end of his shift
- P-30 Photo of 3<sup>rd</sup> shift worker Raymond Kuri leaving at end of his shift
- P-31(a) Petitioner's list of calls made from her cell phone, dated August 4, 2017
- P-31(b) Petitioner's chronology of phone calls made after leaving bridge

**For respondent**

- R-1 Preliminary Notice of Disciplinary Action (31-A); Notice of Employee Disciplinary Action dated August 8, 2017; and Final Notice of Disciplinary Action (31 – B)
- R-2 Statement of Mike Reina
- R-3 Video thumb drive
- R-4 Job Description
- R-5 Ocean County Bridge Operating Procedures
- R-6 Bridge Operator's Training Check List Sheets
- R-7 Notice of Employee Disciplinary Action, dated September 5, 2014
- R-8 Employee Performance Evaluation and Employee Probationary Evaluation
- R-9 Video (R-3) time line