



STATE OF NEW JERSEY

In the Matter of Andrew Eckert,
Pleasantville, Police Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-567
OAL Docket No. CSR 08214-22

ISSUED: FEBRUARY 7, 2024

The appeal of Andrew Eckert, Police Officer, Pleasantville, Police Department, removal, effective January 26, 2022, on charges, was heard by Administrative Law Judge Tama B. Hughes (ALJ), who rendered her initial decision on December 15, 2024. Exceptions were filed on behalf of both parties and a reply was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on February 7, 2024, adopted the Findings of Fact and Conclusion as found in the initial decision and the recommendation to uphold the removal.

Upon its *de novo* review of the ALJ's thorough and well-reasoned initial decision as well as the entire record, including the exceptions and replies, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the testimony of the witnesses, as well as other documentary and video evidence. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient

credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appellant are not persuasive in demonstrating that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. Accordingly, upon its review, the Commission finds nothing in the record or the appellant's exceptions to question those determinations or the findings and conclusions made therefrom.

Moreover, the Commission rejects the remainder of the appellant's exceptions as unpersuasive. In this regard, the appellant argues that the ALJ erred by not permitting him to present an expert witness. The Commission is not persuaded. The ALJ presented detailed analyses of the testimony of the witnesses in conjunction with her assessment of the sufficiency of the documentary and video evidence. Based on these assessments as well as the standards for use of force, she determined that the appellant's actions clearly violated those standards. The Commission agrees.

The appellant also argues that he should receive a lesser penalty based, in part, on the fact that another officer involved who he contends used excessive force only received a six-month suspension while he was removed for unspecified "political or other motive[s]." The Commission rejects this argument. The Commission has no record of the other officer appealing the purported suspension. As such, the matter of the charges and penalty for that officer is not before the Commission and it, therefore, cannot and will not engage in a comparative penalty analysis. Moreover, even if that matter were before the Commission, in imposing the proper penalty, the Commission is generally solely concerned with the misconduct committed by the individual before it, and whether such misconduct is worthy of the penalty initially imposed.¹ In this case, it is clear that the appellant's misconduct is worthy of removal.

Similar to its assessment of the charges, the Commission's review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without

¹ The Commission notes that there are situations where a comparative penalty analysis is appropriate. Such situations include where an appellant contends that the penalty imposed as compared to other similarly situated employees was based on unlawful purposes, such as discrimination based on a protected category, reprisal or other unlawful reasons. The appellant's unsubstantiated and vague argument that his removal as compared to his colleague was based on "political or other motive[s]" is clearly insufficient.

question.” Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer, such as a Police Officer, is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990).

In her initial decision, the ALJ found the appellant’s actions sufficiently egregious to support removal without regard to progressive discipline. The Commission agrees with the ALJ that the appellant’s misconduct was egregious and wholly inappropriate for a law enforcement officer and worthy of removal without regard to progressive discipline. His actions fall well below what is expected of a Police Officer. Such actions would clearly tend to undermine the public trust and as such, the Commission finds the penalty of removal neither disproportionate to the offense nor shocking to the conscious.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeals of Andrew Eckert.

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 7TH DAY OF FEBRUARY, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 08214-22

AGENCY DKT. NO. N/A

2023-567

**IN THE MATTER OF ANDREW ECKERT,
CITY OF PLEASANTVILLE.**

Stuart J. Alterman, Esq., for appellant, Andrew Eckert (Alterman & Associates, LLC,
attorneys)

Todd J. Gelfand, Esq., for the respondent, City of Pleasantville (Barker, Gelfand,
James & Sarvas, P.C., attorneys)

Record Closed: November 1, 2023

Decided: December 15, 2023

BEFORE **TAMA B. HUGHES, ALJ**:

STATEMENT OF THE CASE

Andrew Eckert (Eckert or appellant), a police officer with the City of Pleasantville (City) Police Department (PPD or Department) (collectively respondent) challenges the sustained charges identified in the August 30, 2022, Final Notice of Disciplinary Action (FNDA), and the discipline imposed of removal.¹

¹ The sustained charges in the FNDA are as follows: Count 1 – violation of N.J.A.C. 4A:2-2.3(a)(6) – Conduct Unbecoming, Excessive and Unreasonable/Unnecessary Use of Force; Count 2 – violation of N.J.A.C. 4A:2-2.3(a)(7) – Neglect of Duty, Duty to Use Only Reasonable/Necessary Force; Count 3 – violation of N.J.A.C. 4A:2-2.3(a)(4) – Other Sufficient Cause, Excessive/Unreasonable Force; Violation of Departmental Use of Force Policy – Chapter 2, Volume 3, "policy" violation; Use of unnecessary less lethal physical force; PPD Departmental Rules and Regulations – 1:5.2 (Code of Ethics) and 3:1.30 (Civil Rights).

PROCEDURAL HISTORY

On September 9, 2022, appellant filed an appeal of the FNDA with the Civil Service Commission (CSC) which was perfected on September 16, 2022. Thereafter, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case where it was filed on September 19, 2022. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

An initial call was held on October 24, 2022, and thereafter a status call was held on November 3, 2022, at which time, after some discussion on availability, a hearing date of January 5, 2023, was agreed upon.² The parties subsequently provided several dates for their availability - one of which was January 11, 2023.

Prior to the commencement of the hearing on January 5, 2023, respondent's counsel sought the opportunity to file a motion to bar appellant's expert witness. The request was granted with moving papers received the following day - January 6, 2023. Appellant's opposition was received on January 10, 2023. By Letter Order, dated January 11, 2023, appellant's expert testimony was barred. See January 11, 2023, Letter Order.

The hearing resumed on January 11, 2023, after which two new hearing dates were added - March 14, 2023, and March 15, 2023. These dates were subsequently adjourned to June 5, 2023, and June 6, 2023, due to the parties scheduling conflicts.

Upon the close of testimony on June 5, 2023, the record remained open to allow the parties the opportunity to obtain transcripts and submit closing briefs. Upon receipt of the same, the record closed on August 31, 2023; however, the record was subsequently reopened due to questions surrounding documents submitted into evidence as well as arguments made as it relates to N.J.S.A. 40A:14-147 (forty-five-day-rule). Upon receipt of supplemental submissions, the record was formally closed on November 1, 2023.

² Hearing dates of December 15, 2022, December 30, 2022, and January 3, 2023, were offered by the Tribunal however neither party was available on the proffered dates.

RELEVANT TESTIMONY

Stacey Schlachter (Schlachter), a captain with the PPD, testified that she has been with the department for approximately twenty-three years. She was promoted to her current position in February 2022, having worked her way up through the ranks over the years. Among her current responsibilities is the oversight of Internal Affairs (IA). This was not her first exposure to IA having handled IA investigations when she was a sergeant and thereafter as a lieutenant in 2021 when she was assigned as the commander of IA. She was the commander of IA in August 2021 when the incident occurred involving Eckert.

In September 2021, an IA complaint was lodged against Eckert as it related to the detention and arrest of an individual identified as H.C. The investigation was assigned to Captain Howze. Other officers (Officer Gamble, Captain Hartman, Officer Corrado, and Officer Fernandez) were also targeted in the investigation as well. Upon completion of the investigation, the report was turned over to her for review and to provide disciplinary recommendations. (R-1). This in turn was given to Deputy Chief James Williams for review and approval.

There was a use of force policy in place in August 2021 for which officers received power point training. (R-3 and R-4.) There was no in-person training at the time due to the pandemic. The training was online and mandatory. All officers, including Eckert, were mandated to participate in the training.

On cross-examination, Schlachter was questioned about the online training that Eckert received. She acquiesced that all training for the relevant time period, was through a PowerPoint presentation. In-person training was stopped by the Department when the pandemic hit in 2019 until 2022 which was when the program was restarted in-person. If there were other reasons that the department switched to online training between 2019 – 2022, as opposed to in-person training, she was not aware of it. At no time did she herself, or the Department, give Eckert any individualized training on defensive tactics or take-down procedures. She acknowledged that the training for “Unarmed Defense and Impact Weapons”, identified as C-4 on the training sheet, was completed by Eckert on

December 12, 2020, and it took him three minutes and ten seconds to read the PowerPoint page(s) on the topic and take a test which was also electronically graded. She pointed out that while the training through the Department was online, Eckert had received in-person training when he went through the academy and possibly with his prior employer – Wildwood Crest Police Department.

Schlachter was asked about several of the power-point topics (e.g. Use of Force Goals; Control and Restraint Cuffing; Protect and Restrain, etc.) and agreed that the power-points were not training modules that informed the reader how to do or perform something, rather information modules. She also acquiesced that some of the modules had terms that were not clearly explained or defined. One such example being "Use of Force Right" and another being "how hard do you hit somebody." She went on to state that if the reader had questions, they could contact her after they completed the power-point.

She was also questioned and went through the PowerPoint on "Levels of Resistance" – nonverbal, verbal, passive, preventive and active aggression. She agreed that if a person was kicking, that that would be a form of "active aggression" - regardless of whether the kick made contact with the officer. She also agreed that an officer's use of force with a foot or knee, under that scenario would be appropriate. However, it was her belief that H.C. was using "inactive aggression." She concurred with the statement that all of the officers were present at the scene, including Eckert, were familiar with H.C. from past arrests and that he was "mentally ill."

In going through the "Levels of Control", Schlachter provided examples of each, stating for example that "constructive force" could be something verbal by the officer or displaying the service weapon or taser. "Physical contact" could involve handcuffing, maneuvering, and securing a suspect for frisking or holding the detainee's arm for transport. "Physical presence" was the visual of seeing a uniformed officer or the badge. "Physical force" could involve striking with hands and feet, wrestling a suspect to the ground, wrists, or arm locks. Physical force could also include mechanical force, use of a baton or chemical agents to restrain a suspect. She concurred that no mechanical force was used when H.C. was detained. The final level of control is "deadly force." According

to Schlachter, Eckert did not use deadly force. She acknowledged, however, that one of the other officers (Gamble), did use deadly force during the incident, and that he was still employed by the Department.

Schlachter concurred that H.C. was given a significant amount of verbal direction by the officers, including Eckert, which he disregarded. Aside from the wrap and handcuffing, no other mechanical devices were used. She also agreed that even when H.C. was handcuffed and seated prone on the ground, he continued to move around, kicking out at the officers and Emergency Medical Technicians (EMT) that were present. She was cognizant of the fact that Officer Hernandez (Hernandez) used physical force – specifically strikes and punches in H.C.'s thigh to stop moving when he (H.C.) was handcuffed on the ground. Schlachter agreed that when Eckert threatened to hurt H.C., it could be construed as “constructive force” to get H.C. to comply with his commands.

She disagreed with the notion that H.C. was a threat, instead concurring with the findings of the IA investigator, Captain Vaughn Howze, that H.C. was not a threat. This was based upon the fact that Eckert was pushing or holding H.C. down so that he could not kick or lash out at the officers or EMT personnel. She was aware that other officers present and the EMT personnel, reported that H.C. was trying to lift himself up off the ground.

When the question was posed as to what other takedown maneuver could Eckert have utilized based upon the PowerPoint training that he received, she questioned which time use of force as there were several. She went on to state that when Eckert took H.C. to the ground to handcuff him, he broke H.C.'s wrist. While Eckert was not charged with breaking H.C.'s wrist and there was no medical proof that the break actually occurred at the time of the arrest, based upon the body- camera audio, she believed it occurred when Eckert was handcuffing H.C.

She did not know if H.C. was under the influence of crack cocaine the night he was arrested and conceded that if he were under the influence of the narcotic, that he may be viewed as more of a threat. She also acknowledged that H.C.'s brother-in-law, who was spoken to after the incident, conveyed that H.C. had cognitive issues and a drug habit.

Stephanie Baumeister (Baumeister), an EMT with TriCare Medical Transportation, testified that she and her partner were working on August 24, 2021, when a call came in from the PPD regarding a possible head injury that needed evaluation. Upon arrival, there was a handcuffed male (H.C.) on the ground being aggressive and screaming in Spanish. One of the officers informed them that H.C. was breaking into a vehicle and then tried to run away, at which point he was tackled to the ground. H.C. hit his head on the ground and was knocked out for a few seconds but came to right away. There was a small abrasion on the left side of forehead.

When they tried to approach H.C. on his left side where he was injured, he would scream, kick out his legs and/or bend them, and spit at any and everyone. He did the same thing when they tried to face him to talk to him and calm him down. As he was kicking out and/or bending his legs, he would attempt to push himself off Eckert's legs in an attempt to stand up. She did not realize his hands were cuffed behind his back until he was dragged backwards onto the curb. Throughout the encounter, all of the officers at the scene were attempting to calm H.C. down.

Baumeister estimated that H.C. was approximately six to ten feet from the fence when this was taking place.³ At one point, she saw Eckert grab H.C. by his shirt to drag him backwards to sit on the curb to get him to stop kicking and attempting to stand up and flee. When he (Eckert) went to do this, he tripped on the curb. H.C. at the time was attempting to twist out of Eckert's grip and his behavior became more erratic. It was at that point the other officers came in with the "wrap" which is a device used to stop a patient from harming themselves or others and prevents kicking. She described how the wrap was put on the patient, the end result similar to a "hogtie." Once the wrap was secured, H.C. was placed on the stretcher and secured in the ambulance.

On cross-examination, Baumeister acknowledged that it was conjecture on her part that H.C. was attempting to flee the scene. She based this opinion on H.C.'s actions in attempting to lift himself off the ground, but he was unable to do so because Eckert

³ A couple of times Baumeister testified that she had depth perception issues, so her estimates were just that, estimates.

was holding him down by the shoulders. At one point, H.C. got one of his legs underneath him, which was when Eckert grabbed him and dragged him across the pavement straight backwards onto the curb.

She did not recall Eckert seeking assistance from the other officers present until after he tripped on the curb as he was dragging H.C. to the curb. She saw Eckert pull H.C. back towards the curb and trip and H.C. twisting out of his grip, landing H.C. between the fence and curb. That was when the other officers came over to assist.

When questioned further on her observations, including her comment that H.C. twisted out of Eckert's grip, she stated that was her supposition because Eckert himself was not twisting to do something, he was dragging H.C. straight backwards and tripped on the curb. H.C. landed on the ground between the fence and the curb on his shoulder. She did not see H.C.'s head go into the fence nor were there any new marks on his head or face. She also did not see H.C. go "airborne."

Baumeister could not recall how long she and her partner were at the scene. However after being shown the "run sheet", she agreed that they were on the scene for approximately fourteen minutes. (R-5.) She went on to add that the entire time she was there, including when Eckert dragged H.C. backwards, H.C. was kicking, screaming, and spitting. Every time she and her partner approached H.C. he would escalate his behavior; however, Eckert was able to keep him seated throughout. According to Baumeister, Eckert continuously told H.C. to calm down and let them (EMTs) help him. She did not recall hearing Eckert, or any other officer make any taunting or nasty remarks.

Vaughn M. Howze, Jr. (Howze), testified that he has been employed by the PPD for over twenty-seven years and currently holds the position of captain assigned to support services which is administrative in nature. Among other current responsibilities, he handles bills, payroll, and human resource issues. From time to time, he is also assigned to handle IA investigations and has approximately seven years of experience in handling IA investigations.

He was assigned as the lead IA investigator surrounding the events of H.C.'s arrest on August 24, 2021, and started gathering documentation/reports at that time. As part of his investigation, he reviewed the body-camera footage of the officers that were present at the scene, reviewed the PNC Bank surveillance footage, interviewed those who were present, and reviewed the use of force reports that were filled out by the officers. All of his findings were incorporated into his report. On or about September 21, 2022, the Atlantic County Prosecutor's Office sent a letter to the chief of police informing him that the matter was being referred back to the PPD to handle the matter on their end.⁴

On cross-examination, Howze was questioned about his training and experience in IA. In response, he stated he had taken a couple of courses years prior; however, he could not recall when he took the courses or what rank he held at the time. He also attended a couple of seminars hosted by the Atlantic County Prosecutor's Office wherein IA was one of the topics of discussion. During his time in IA, he has conducted approximately twenty-four IA investigations. None of his prior investigations involved excessive use of force.

Regarding use of force training, he received use of force training in the academy and updated training during in-service training. In-service being both in person and online.⁵ He was also a K-9 officer for a number of years as well as an emergency response team member - so use of force was integral in that training. Additionally, he was a defensive tactics instructor early on in his career. He agreed with the statement that to become proficient in the various levels of use of force, in-person instruction is important. He was familiar with levels of use of force and agreed that the use of force which Eckert utilized on H.C. was a combination of constructive and physical force. He also agreed that despite being given lawful directions/demand, H.C. did not comply and continued to struggle.

⁴ Appellant's counsel questioned Howze extensively on when he reviewed the body camera and reports, dates of interviews and when he made determinations in this case - raising the issue of whether the charges were timely in accordance with N.J.S.A. 40A:14-147, also known as the "45-day rule". Both counsel were given leave to argue the issue in their summation briefs.

⁵ Howze testified that in-person in-service stopped sometime in 2018/2019.

He is familiar with the New Jersey Attorney General's guidelines on how to conduct an IA investigation. It was not until after he reviewed all of the body-camera footage and interviewed the witnesses that he formulated an opinion on whether Eckert used excessive force during the arrest of H.C.

When asked what he learned from the body-camera footage that he reviewed, Howze stated that with regard to Officer Gamble's (Gamble) body-camera footage, he noted that there was an interaction between Gamble and H.C. and that Gamble detained H.C. by using force to take him (H.C.) into custody. While Gamble believed that H.C. had committed a crime, review of the body-camera footage alone made him (Howze) question whether a crime had actually been committed. He did not question that Gamble saw H.C. in the vehicle, it was a question of whether H.C. was about to steal something or had already stolen something. After review of Gamble's body-camera footage and his statements, it was his (Howze) determination that Gamble had used deadly force when he did a knee strike to H.C.'s head and rendered him unconscious. Howze acknowledged that Gamble was administratively charged for his use of force and was still employed by the PPD.

He disagreed with the statement that H.C. could be seen on the body-camera footage kicking and spitting; however, he acknowledged that that was what Baumeister said in her interview.⁶ He went on to point out however, that he did not have any corroborating evidence on this point. He was also cognizant of the fact that both Gamble and Eckert were familiar with H.C. from prior arrests/interactions. H.C. was known to have drug and alcohol issues and carry weapons on his person. He was also aware that at the time he was arrested, H.C. was found to have a razorblade in his possession and that the officers believed him to be under+ influence of drugs and/or alcohol. When asked, Howze agreed with the statement that just because a person is handcuffed, does not mean that they could not harm an officer with their feet, head, or elbows.

⁶ Howze was candid in his testimony that he could not rely solely on Baumeister's statements that H.C. was kicking and spitting explaining that the EMTs have a cooperative work environment with the PPD and she may not want to put herself in a position that she would have to make a statement against one of the officers, even if she did not personally know the officer, which in this case was Eckert.

Howze was cognizant of the fact that a "wrap" was used on H.C. and that before the "wrap" was put on him, H.C. was resistant to the restraints that had been put on him and continued to "squirm." He was aware that at one point Hernandez punched H.C. in the thigh to get him to stop kicking.

When asked how many times he viewed Eckert's body-camera footage, Howze responded that he had watched it multiple times. He did not believe that H.C. was attempting to get out of the handcuffs. In the multiple times that he watched the video, he never noticed the laceration on H.C.'s left wrist until the hearing date. He speculated that the abrasions were from the handcuffs - most likely from his constant moving. Howze would not commit to the statement that the lacerations were a result of H.C.'s attempt to get out of the handcuffs. Based upon his review, while H.C. was struggling in the handcuffs, it appeared as though H.C. was attempting to adjust the cuffs -- a belief that was supported by H.C.'s complaints of hand and wrist pain.

After being shown Eckert's body-camera footage while on the stand, Howze agreed that while seated on the ground, H.C. continued to move, and rocked back and forth. At one point, the fingers of his right hand were on the ground with his palm off the ground and he turned his lower body to the right. Howze agreed H.C.'s actions could have been viewed as an attempt to push himself off the ground. He did not know how close the curb was to where H.C. was seated on the ground, nor did he know how far the fence was from the curb.

Howze acknowledged that with the exception of Eckert's comment, "if you don't stop I'm going to hurt you", his initial verbal interaction with H.C. was appropriate and without hostility. Upon further questioning, Howze agreed that Eckert's comment about hurting H.C. was an acceptable "constructive" use of force. He also recalled Eckert telling him that he thought that H.C. was attempting to flee.

When questioned on this last point and the fact that the use of force policy (R-9) provides that deadly force can be used if a suspect is fleeing, Howze clarified that such force could only be used under certain circumstances. He agreed that the arrest scene

was chaotic but disagreed with the notion that it was difficult to secure H.C. and handcuff him.

In going through Eckert's taped interview, Howze went through the type of force used, and reported by Eckert against H.C. Before the interview started, Eckert reported that when he wrote the use of force report a couple of days after the incident, he did not have the benefit of reviewing his body-camera footage, so everything he wrote was from memory. With regard to use of force #3, Eckert reported that it was his belief that H.C. was attempting to get up and flee.

When questioned further on the PPD's use of force policy, Howze agreed that an officer can use physical force when a subject is physically resisting. He defined physical force indicating that it can include, among other things, an officer using their hands to manipulate a subject by wrestling resisting subject or using a wrist or arm lock. Howze also defined reasonable belief which is more than an assumption. He agreed with the statement that officers when confronted with a set of facts, need to figure out what is going on in seconds and figure out a course of action. He also agreed that there were authorizations and limitations in the PPD use of force policy which allowed for the use of physical force or mechanical force when the officer reasonably believed, for instance, that the detained person was attempting to escape. (R-3.)

In Eckert's case, Howze agreed that at one point, when Eckert was standing behind H.C. and holding him down by the shoulders, that H.C. attempted to push himself up. He also agreed that Eckert grabbed H.C. and pulled him from right to left and spun and tossed him. Howze did not agree with the statement that Eckert tripped on the curb as he was attempting to pick him up. It was his opinion that Eckert had already released H.C. causing H.C. to go into the fence and then he (Eckert) tripped on the curb, losing his balance. Minutes later Howze modified this last statement indicating that Eckert had either already released H.C. or still had a grasp of him.

When questioned whether Baumeister's testimony supported Eckert's version of events and the body-camera footage, Howze again reiterated that he did not take Baumeister's testimony at face value and in fact was skeptical about the accuracy of her

recitation of events. As an example, Baumeister's stated that H.C. was kicking and spitting at Eckert, yet that is not what he said.

Andrew Eckert testified that he has been in law enforcement for several years. Starting in 2011, he worked for the United States Border Patrol where he attended the Border Patrol Academy. Thereafter, in 2013, he attended the Cape May County Police Academy for Class II law enforcement officers and worked as a Class II officer for the Wildwood Crest Police Department. In June 2017, he again attended the Cape May County Police Academy, this time for basic training for police officers, and was hired as a full-time officer with the Wildwood Crest Police Department. He was a corporal when he left the Wildwood Crest Police Department to work for the City.

He received training on defensive tactics in all three of the academies that he attended. However, he has not received any in-person training on defensive tactics or use of force outside of the academy setting. With some exception, all training at both the Wildwood Crest Police Department and the PPD was done through a power point presentation – where he was required to read the departmental policies and initial that he had both read and understood the policies. He did receive in-person training to become a drug recognition expert, a firearms instructor, and a member of the county swat team.

Over the course of his law enforcement career, he has received several awards/accommodations. He has also been subject of one discipline which involved an incident where he backed his patrol vehicle into a fence while in pursuit of a suspect.

He was working on the evening of August 24, 2021, having picked up an overtime detail for DUI/distracted driving, when a call came in from Gamble, seeking help and asking that a call be put in for rescue. Given the tenure of his voice, he (Eckert) believed that Gamble may be in danger, so he cleared his location, and left with Hernandez, who was also working the detail with him, to assist Gamble.

Upon his arrival, he observed Gamble standing over someone - but he could not tell who it was or what was going on. Believing it could be an overdose, he questioned Gamble if the Narcan was necessary; however, he immediately shifted gears when he

heard Gamble tell the subject (H.C.) to stop resisting. Upon hearing this, he (Eckert) put his gloves on and went to assist Gamble who had H.C.'s left arm in a handcuff. He assisted Gamble by controlling H.C.'s legs which he was flailing and kicking. Hernandez took control of H.C.'s right arm and after a brief struggle, they were able to handcuff H.C.'s right arm as well. Eckert noted that they had difficulty in securing the second cuff because of H.C.'s shirt and/or jacket that he had on. Throughout the encounter, H.C. yelled in Spanish, that his leg and arms hurt and called them abusers.

According to Eckert, handcuffing H.C. was made even more difficult because H.C. would not give them access to his arm – force had to be used to handcuff him. Even after he was handcuffed, H.C. kept trying to reach into his right pocket and/or his fanny pack necessitating him (Eckert) to administer a pain compliance technique, or wrist lock, to prevent him from reaching into his pockets.

He is familiar with H.C., having arrested him on prior occasions. He was aware that H.C. had a history of drug use; was known to be combative; carried weapons such as a razor blades or box cutters; and was noncompliance with police orders.

After H.C. was handcuffed, Gamble explained how he had come upon H.C. and how H.C. had attempted to flee on bike and that he (Gamble) had to tackle H.C. to prevent him from leaving scene. Due to a knee injury that resulted from tackling H.C., Gamble walked away, so he (Eckert) took charge of H.C. - placing him in a seated position on the ground. He put his hands on H.C.'s shoulders at pressure points near his collarbone, to bring him into compliance so that the EMTs could look at his head. He was familiar with the EMTs but did not know them personally – he just recognized them from prior jobs.

As the EMTs, particularly Baumeister, was attempting to render aid, H.C. continued to yell and scream, rocking back and forth, and kicking and flailing his legs. H.C. was repeatedly told to calm down and stop resisting, however, he refused to comply. Throughout this exchange, he was concerned that H.C. would injure the EMTs due to his continuous kicking and flailing. At one point, H.C. brought his right leg underneath him and placed his hand on the ground to push himself up.

When H.C. did this, he released the hold that he had on H.C.'s shoulders and grabbed the back of H.C.'s shirt and spun to try to stop him from standing up. As he pulled on H.C.'s shirt, he took a few steps back and tried to perform a leg sweep which would have allowed him to put H.C. back on his stomach. (3T 76:16 to 24.) The maneuver was not as simple as pulling H.C. right back to the ground. To overcome H.C.'s leverage and force, he tried to spin and perform a leg sweep. He was unable to complete the maneuver because after taking two or three steps back and beginning the spin, his right foot hit the curb and then his left foot hit it as well, causing him to be off balance. (3T 76: 22 to 77:4.) He let go of H.C. because he did not want to land on top of him. H.C. hit the fence and he was able to catch himself on the fence. It was not very wide between the curb and the fence. The other officers who were present at the scene were focused on other things, so it was just him and EMT Baumeister that were focused on H.C.

After H.C. hit the fence, he searched him and found a razor blade in his right front pocket which was the same pocket that H.C. had attempted to reach earlier. H.C. was then placed in the prone position. He had not been searched earlier given how quickly the events unfolded upon his arrival. Throughout all of this, H.C. continued to yell and would not comply with commands to stay still. A "wrap" restraint was retrieved and H.C. was placed in the wrap and then placed on the stretcher and transported to the hospital. Prior to being transported to the hospital, he learned that H.C. had an active warrant out of Superior Court. He also learned that the reason Gamble had called for backup was because H.C. hit his head on Gamble's knee causing momentary unconsciousness when he was stopped from fleeing the scene earlier.

He does not believe he used excessive force on H.C. He used the necessary physical force to prevent H.C. from fleeing. He believed that H.C. was attempting to flee when he pushed to stand up. This belief was based upon H.C.'s repeated request/demand to be let go. Thus, when H.C. attempted to stand up, based upon his prior conduct, he reasonably believed that if H.C. was successful in getting up, he would attempt to flee and/or injure someone. As such, he believed he was authorized to use force to stop him.

Eckert walked through the footage from his body camera, explaining the events as they unfolded. He explained that there were a couple of issues taking place on the night in question - one involving H.C. who was suspected of breaking into a vehicle and a separate domestic violence situation. From his vantage point of standing over H.C., he felt, as opposed to saw, H.C. attempting to stand. He felt H.C. tense up against him as he applied pressure to keep him down. Eckert again reiterated that it was his belief that H.C. was attempting to stand up and flee.

At one point, H.C. turned his right leg to a ninety-degree angle with his knee under him with all of his weight being held up by his hand and his knee. This is called "posting" which is a defense maneuver that is taught in the academy. It is a way to stand up from a seated position by getting one knee with one hand under you and the other hand used to keep an attacker away. In H.C.'s case, while his hands were handcuffed, he could still use the maneuver to push himself off the ground and into a standing position to either flee or fight.

Eckert went on to state that when he felt H.C. push up against him, he (Eckert) transitioned to physical force to change H.C.'s momentum from going forward and potentially standing up, to going backward. It was his thought to do a variation of a leg sweep – pull H.C. backward and put him directly on the ground. However, when he pulled H.C. backward, H.C. was able to push up a little bit causing him (Eckert) to take more than one or two steps backwards. This in turn caused him to change what he had originally intended to do, to actually taking H.C.'s legs out from underneath him by performing a leg sweep - spinning to his left and using his right leg behind H.C.'s legs to bring him (H.C.) down to the ground. However, when he was pulling H.C. back, and attempting to put his right leg behind H.C.'s legs and use the momentum to carry H.C. to the ground, his right foot came down on the top of the curb and then came off of the curb and his left foot came up against the curb. As he became unbalanced, he let H.C. go so that he would not fall on him. He was able to catch himself on the fence. Eckert went on to note that throughout all of this, H.C. continued to yell and scream and be combative.

At no time did he intend to injure H.C., in fact, when he arrived at the scene, his first thought was that there was an overdose, and that medical assistance was needed.

When the EMTs arrived at the scene, he attempted to hold H.C. down so that he could receive medical treatment.

On cross-examination, Eckert was asked if he initiated the take down or leg sweep when H.C. was in the sitting or standing position. In response, he stated that H.C. was seated but he was attempting to stand up, which was when he initiated an action to prevent him from standing by pulling him backwards. Because of H.C.'s momentum in attempting to stand, he (Eckert) could not just pull H.C. backward to the ground, so he changed tactics and took a step or two backwards. As he was stepping backwards, H.C. was able to get his feet underneath him which was why he (Eckert) moved to do a leg sweep using his momentum of stepping backwards to perform the sweep – a move he claimed was done just prior to hitting the curb. He denied “dragging” H.C. back towards the curb rather he “pulled him”. He agreed however, that a leg sweep cannot be performed on a person that is seated on the ground.

Eckert also agreed that as a result of his “take down”, H.C. became airborne before hitting the fence. However, he prefaced this statement by adding that H.C. became airborne as a result of both of their actions. When asked how H.C., who was handcuffed with his hands behind his back, contributed to the incident, Eckert stated that H.C. stood up and got his feet under him. This action hindered his ability to pull H.C. down and rotate him onto his stomach. When questioned further how and when H.C. stood up, Eckert responded that he equated H.C. getting his foot underneath himself with standing up. (3T 140:10 to 142:4.)

Eckert was also questioned about his knowledge of H.C.'s past contacts with the police. He agreed that none of H.C.'s prior interactions with the police involved crimes of violence – no assaults on police officers, eluding, fleeing from the police or resisting arrest.

In discussing why, he believed that H.C. was attempting to flee, Eckert stated that this belief stemmed from what H.C. was stating, his repeated attempts to stand, and refusal to comply with his orders. Therefore, it was logical to believe that H.C. would attempt to escape police custody if he got up off the ground.

He concurred with the statement that just because you can use physical force does not mean you can use just any type of physical force; it has to be objectively reasonable. He further concurred with the statement that as a police officer, he had a duty and an obligation to use the least amount of force necessary to accomplish an objective.

Eckert was also questioned extensively on the use of force form that he filled out - particularly use of force number four. He explained that when that use of force was initiated, H.C. was seated. This is why he noted "sitting" as H.C.'s position. He explained that he was not able to control H.C. in the seated position because H.C. was attempting to stand up, which was why he used force. When asked why he didn't just take H.C. to ground where he was seated as opposed to dragging/pulling him backwards and around to the curb which was several feet away, Eckert stated that that is not what he did. First, he did not "drag" H.C. Second, H.C. was attempting to push off of him (Eckert) using his hand. Eckert went on to explain that if he had pushed H.C. forward, he may have hit the EMT in front of him or the medic truck. He instead chose to use H.C.'s momentum to pull him backward.

Regarding his training while employed with the PPD, Eckert concurred that he received use of force training bi-annually as required by the Attorney General's Office. On a separate note, Eckert was questioned who referred to H.C. as a "cabrones", and what it meant. In response Eckert stated that it was a derogatory term, loosely translated to mean "dirt bag" and he was the one who said it about H.C. He was also questioned about his comment that H.C. was combative in his prior contacts with him. When questioned in depth on his prior testimony, Eckert acknowledged that at no time was H.C. physically combative towards him or other officers on prior occasions.

FINDINGS OF FACT

When assessing credibility, inferences may be drawn concerning the witness' expression, tone of voice, and demeanor. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness' interest in the outcome, motive, or bias should be considered. 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 (9th Cir. 1963).

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).

After hearing the testimony and in review of the documentary and/or video evidence presented in this matter, I had difficulty giving great weight to the testimony of certain witnesses.

One such witness is Baumeister. Among other things, she testified that when she tried to approach H.C. to assess his injuries, he would scream, kick out his legs and/or bend them and spit at any and everyone. She also testified that as H.C. kicked out and/or bent his legs, he would attempt to push himself off Eckert's legs in an attempt to stand up.

During her interview with Howze, she stated that H.C. was kicking and spitting, and when she got near him, he thrashed about. She went on to note that at one point, when she went to assess him, he thrashed out more, so Eckert picked H.C. up and dragged him backwards and put him down on the curb right by the fence.

Review of body-camera footage in this matter (Eckert, Hernandez, and Gamble) did not support her testimony of H.C. continuously kicking, thrashing, or spitting when she attempted to evaluate him upon her arrival and prior to being placed in the "wrap." Nor was there footage that H.C. was attempting to push himself off of Eckert's leg in an effort to stand up. At least once or twice he turned in Eckert's direction and appeared to hit his leg, but Eckert moved his foot out of the way. What is clear is that when the EMTs arrived at the scene, H.C. was already handcuffed with his hands behind his back and seated on the ground. There is no question that he was continuously squirming, agitated, and vocal, but not to the level described by Baumeister. Baumeister is seen standing right next to

H.C. and bending over him. She is not standing away out of arm or leg reach. Additionally, contrary to her statement to Howze that H.C. was put down on the curb by the fence by Eckert, he was thrown into the fence. Also noteworthy is her follow-up report to TriCare, there was no mention of the difficulty that she had evaluating H.C. as she had testified to – indeed, on the last page of the report, where the responder is asked: “response factors affecting care”, her answer was “none.”

I also found Eckert’s testimony to be an evolution of what he had originally reported during the IA interview and had difficulty reconciling his version of events with other evidence presented in this matter as well as his own testimony. During his IA interview as it related to “Use of Force #4” on his reporting form (R-9), he stated that:

[T]he pressure points weren’t effective. He was actually, able to start to stand up, so I kind of took control of his back, and that’s when I turned and spun and we ended up hitting into the fence and he then went down on the ground in the prone position. (P-6.)

A few minutes later in the interview, when talking about the pressure points that he applied while H.C. was seated with his hands on H.C.’s shoulders, Eckert stated:

They [pressure points] were ineffective that he was, actually, able to start to stand himself up, which is why I had to transition to a different type of force, which ended up being the taking control of him and turning and just –because of where we were in terms of, you know, location, the fence happened to be behind me. I never intended to throw him into a fence or push him into a fence. I was just trying to get him back to the ground to get him under control and, unfortunately, it just so happened that there was a fence a few feet behind me. (P-6)

Nowhere in the interview does Eckert mention that H.C. was kicking and spitting, he just says combative. Nowhere in the interview does he mention that he attempted two forms of “take down” maneuvers one of which was a leg sweep which is significant because he was being interviewed by IA due to the level of force he used and being asked to justify it. He does not talk about hitting the curb or why he released H.C. Instead, all that he said was that H.C. was “able to start to stand up”, so he turned and spun and

ended up in the fence. The inference being that the proximity of the fence somehow was the reason that H.C. was flung into it.

In review of Hernandez's body-camera footage, the curb and fence were several feet away, not right behind him. When he testified, Eckert went into great detail of how he initially attempted to pull H.C. backward but because of H.C.'s momentum in attempting to stand, he switched the take-down maneuver to a leg sweep. He explained how his foot went up on the curb and then he lost his balance. He explained how he had crossed the distance from where H.C. was seated to how H.C. ended up airborne and hitting the fence. None of this was conveyed in the IA interview. Again, his testimony appears to be an evolution of a story to explain away what is seen on the body-camera footage.

In sum, his explanation of events do not appear to add up.

I found Howze's investigation timely and thorough. I also found his testimony to be candid and straight forward as was Schlachter's testimony.

With the above in mind, having considered the testimonial and documentary evidence offered by the parties, I **FIND as FACT**:

Eckert has been employed by the PPD as a patrol officer since 2019. Prior to that he was employed by the Wildwood Crest Police Department and the United States Border Patrol. Over the course of his law enforcement career, which started in 2011, he has attended three law enforcement academies - the Border Patrol Academy, and the Cape May County Police Academy twice. In all three of the academies, he was trained in defensive tactics and use of force. He has not had in-person training on use of force or defensive tactics since 2019. All training through the PPD is done online. Since his hire with the PPD, he has participated in multiple online use of force training sessions and tested on the same.

He was on duty on August 24, 2021, when a call for an assist and an ambulance came in from Gamble. He and Hernandez, who was working the same detail as Eckert,

responded to the call. Upon their arrival they found that Gamble had H.C. on the ground and was attempting to handcuff him. H.C. was flailing around as they attempted to handcuff him – all the while yelling/screaming in Spanish. Multiple officers were present at the scene, including Eckert.

As H.C. was being handcuffed and then seated on the ground with his hands behind his back, the EMTs arrived and approached H.C. to evaluate him. H.C. had been rendered momentarily unconscious by Gamble when he had detained H.C. when he attempted to flee the scene on his bike.

Eckert took control of H.C. and stood behind him with his hands at certain pressure points on H.C.'s shoulders, to prevent him from moving and standing up. Throughout this time, H.C.'s hands were handcuffed behind his back, and he was seated on the ground. From the vantage point of both Hernandez's and Eckert's body-camera footage, H.C. was several inches away from Eckert's feet. He was not right up against Eckert's legs. Both EMTs were standing in front and then on the side of H.C. as they evaluated him. They were both within leg-kicking reach; however, neither EMT appeared to have an issue with H.C. kicking out at them. H.C. throughout this time continued to yell, scream, whimper, and squirm on the ground.

At least once or twice on Eckert's body-camera footage (R-7), H.C. could be seen to turn his body and inadvertently hit Eckert's foot but he did not appear to be leveraging himself up. (R-7.) At one point (R-7 at 00:54:25), H.C. turned his body with his palm on the ground and rocked forward and to the right. When he did this, Eckert grabbed him by his shirt and pulled him backward several feet towards fence. (R-8 at 00:54:26.) As he started pulling H.C. backward, Eckert turned to his left and continued to pivot around – physically dragging H.C. around with him. (R-8 at 00:54-28.)

At no time did H.C. get his feet under him or stand up, nor did he have an opportunity to get his feet on the ground or stand up due to the abruptness of Eckert's actions and momentum of the same. After dragging H.C. several feet, Eckert can be seen on Hernandez's body-camera footage, lifting his right thigh/leg and hoisting H.C. up and over. He then let go of H.C. causing him to hit the fence which was approximately

three feet from the curb. (R-8 at 00:54:26.) There was no leg sweep, nor can Eckert be seen tripping on the curb as he hoisted H.C. up and over into the fence. He tripped after he had let go of H.C. and as his left foot appears to come up against the curb.

On September 10, 2021, an IA Complaint was submitted by Sergeant Michael Figueroa, wherein he alleged that Eckert had used excessive force against H.C. on August 24, 2021. The matter was referred to the Atlantic County Prosecutor's Office for review and subsequently returned to the PPD on September 21, 2021, to take whatever action the PPD deemed appropriate.

Howze was assigned to handle the PPD IA investigation on September 14, 2021. The investigation took over two months to complete and involved, among other things, extensive interviews of officers and eyewitnesses present, review of body-camera footage, and a review of reports generated as a result of the incident. While the investigation targeted Eckert, other areas of concern were also identified as it related to other officers. Howze's report, which was approximately forty-three pages long, was finalized on December 7, 2021. Thereafter, Schlachter signed off on the report on December 22, 2021, and provided disciplinary recommendations. The report and recommendations were in turn given to Deputy Chief Williams for review and approval. Thereafter, on January 26, 2022, less than forty-five days later, the PNDA was issued.

LEGAL ANALYSIS AND CONCLUSION

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. That discipline, depending upon the incident complained of, may include a reprimand, suspension, or removal from employment. N.J.S.A. 11A:1-2, 11A:2-20; N.J.A.C. 4A:2-2.

The appointing authority employer has the burden of proof to establish the truth of the disciplinary action brought against a civil service employee. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); see Atkinson v. Parsekian, 37 N.J.

143, 149 (1962). Evidence is considered 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). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro Bottling Co., 26 N.J. 263, 275 (1958).

Appellant's status as a police officer subjects him to a higher standard of conduct than ordinary public employees. In Re Philips, 117 N.J. 567, 576-77 (1990)

It has been held that a finding of misconduct by a police official need not be predicated on the violation of any particular department rule or regulation. In re Emmons, 63 N.J. Super. 136, 140 (App.Div.1960). Viewed in this context, the four regulations cited in counts three and four reflect an "implicit standard of good behavior which devolves upon one who stands in the public eye as the upholder of that which is morally and legally correct." Id. See Asbury Park v. Department of Civil Serv., 17 N.J. 419, 429 (1955); In re Tuch, 159 N.J. Super. 219, 224 (App. Div.1978).

The obligation to act in a responsible manner is especially compelling in a case involving a law enforcement official:

[A] police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public, particularly in a small community. . . . [Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div.1965), certif. denied, 47 N.J. 80 (1966).]

Nor can a police officer complain that he or she is being held to an unfairly high standard of conduct. Rather, "it is one of the obligations he undertakes upon voluntary entry into the public service." In re Emmons, supra 63 N.J. Super. at 142.

With the above in mind and turning to the case at bar, appellant was determined to have violated:

N.J.A.C. 4A:2-2.3(a)—General causes:

- (6) Conduct unbecoming a public employee – excessive and unreasonable/unnecessary use of force;
- (7) Neglect of duty - duty to use only reasonable/necessary force;
- (12) Other sufficient Cause – excessive/unreasonable force, violation of Departmental Use of Force policy; Pleasantville Police Department rules and regulations: 1:5.2 Code of Ethics, par 3: unnecessary use of force and 3:1.30, Civil Rights violation

The incidents giving rise to the charges and date that it occurred were identified as:

During the course of an arrest on August 24, 2021, Officer Andrew Eckert used excessive/unreasonable/unnecessary force during the course of an arrest, specifically by picking up a suspect who was handcuffed behind his back and lifting the suspect into the air, tossing him into the area of a fence and curb. See FNDA.

N.J.A.C. 4A:2-2.3(a)(6)—Conduct Unbecoming a Public Employee

Conduct unbecoming a public employee is an elastic phrase that encompasses conduct that “adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services.” Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

Suspension or removal may be justified where the misconduct occurred while the employee was off duty. In re Emmons, 63 N.J. Super. at 140.

Appellant's status as a police officer subjects him to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576–77 (1990). Law-enforcement employees, such as a police officer, represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).

Appellant argues that the amount of force used during the arrest and detention of H.C. was reasonable. H.C. was both violent and dangerous and there were civilians milling about - including EMTs, throughout H.C.'s detention. The force used – a leg sweep gone awry, was necessary to stop H.C. from fleeing post-arrest. Graham v. Connor, 490 U.S. 386, 394, 104 L. Ed. 2d 443, 109 S. Ct. 1865 (1989), Groman v. Township of Manalapan, 47 F.3d 628 (3d Cir. 1995), and Sharrar v. Felsin, 128 F.3d 810 (3rd Cir. 1997)

Respondent also cites to Graham; however, contends that H.C. was not a threat, nor was he a flight risk, and that the level of force used was both unnecessary and unreasonable.

Respondent is correct.

The Supreme Court in Graham explicitly stated that all claims where law enforcement officers have been charged with use of excessive force, in the course of an arrest, investigatory stop, or other "seizure" of a free citizen, should be analyzed under the Fourth Amendment and its "reasonableness" standard, rather than under a "substantive due process" approach". Graham at 395. The Court further found that:

Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the countervailing governmental interests at stake. Our Fourth

Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See Tennessee v. Garner, 471 U.S. at 8-9 (the question is "whether the totality of the circumstances justify[es] a particular sort of . . . seizure").

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, nor by the mistaken execution of a valid search warrant on the wrong premises. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.

As in other Fourth Amendment contexts, however, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. See also Terry v. Ohio, supra, at 21 (in analyzing the reasonableness of a particular search or seizure, "it is imperative that the facts be judged against an objective standard"). An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force, nor will an officer's good intentions make an objectively unreasonable use of force constitutional. [citations omitted]

[citations omitted] Graham at 397.

Appellant has been in law enforcement since 2011 and is an experienced law enforcement officer. Since entering law enforcement, he has attended three academies wherein he received extensive in-person training on use of force and defensive tactics. At each of the municipalities that he has worked, he has also received ongoing use of force training.⁷ At the time of H.C.'s detention and arrest, he had been with the PPD for approximately two years.

When appellant arrived at the scene, he assisted in the handcuffing of H.C., who was prone on the ground. H.C. was known to the officers at the scene having been arrested in the past for theft. He was arrested on August 24, 2021, for allegedly breaking into a car. He was known to have a drug problem; however, by appellant's own admission, H.C. had no history of violent crimes or assaults on police officers.

Prior to the appellant's arrival at the scene, by all accounts, H.C. had been forcefully removed from his bike when he attempted to flee the area, and momentarily lost consciousness. While H.C.'s hands were being cuffed behind his back, he (H.C.) was screaming, moaning, and appeared to be in pain. (P-4, R-7 and R-8.) Once handcuffed H.C. was pulled up into the seated position on the ground with the appellant standing behind him with his hands on H.C.'s shoulders at certain "pressure points" to prevent him from getting up. Multiple officers were present and walking around at the scene. There is no question that throughout this time, H.C. was agitated, squirmed, and vocal – yelling and/or speaking out, but he remained pinned on the ground in front of the appellant. Notably, both EMTs were able to approach H.C. – neither appeared concerned about their safety, nor did they appear to have difficulty approaching H.C. to assess his condition.

At one point, H.C. moved around his body and placed his palms on the ground and rocked forward and to the right. When he did this, appellant grabbed him by the shirt and dragged him backward several feet – pivoting as he moved backwards and released H.C. who flew into the chained fence. When he landed, the appellant stood over H.C. who was laying on the ground with his hands cuffed behind his back and told him to "knock it

⁷ When appellant was hired by the PPD, due to the pandemic, in-person training was stopped and switched to online training.

the fuck off.” (R-8.) While the appellant argues that he was attempting to do a leg sweep but he tripped and it went awry, no credible evidence was presented that such a maneuver was attempted or that the situation called for it or for a “take down” which the appellant appears to use interchangeably.

From the perspective of a reasonable officer on the scene, it is clear that H.C. did not pose an immediate threat. He was being detained by Gamble for an attempted car burglary. While H.C. initially attempted to flee the area on bike, this attempt was thwarted by Gamble who knocked H.C. off his bike causing him (H.C.) to momentarily lose consciousness. When appellant arrived at the scene, H.C. was already on the ground and detained, which is when appellant stepped in to assist. Multiple officers were present at the scene and while H.C. was known to carry weapons such as boxcutters and/or razorblades, he was not searched until after he was thrown into the fence by the appellant. Therefore, any argument that there was concern for officer and civilian safety that justified the use of force in question, falls woefully short. This argument is underscored by the fact the EMTs did not appear to have concern for their safety when they approached H.C., nor did the officers appear to have concern on their behalf.

I **FIND** as fact, that contrary to the appellants assertion, H.C. was not attempting to use the appellant as leverage to stand up, nor was he able to get his feet under him. On this point, even if H.C. was attempting to stand up, which is debatable, he never had a chance because the appellant swung him around and dragged him back with such velocity that he could not have gotten his feet under him even if he wanted to. Even if he had gotten to his feet, fleeing would have been improbable given the fact that he was handcuffed and surrounded by law enforcement.

In sum, I **CONCLUDE** that appellant's use of force against H.C. was both unreasonable under the circumstances, and excessive. I further **CONCLUDE** that appellant's actions did rise to a level of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and that the respondent has met its burden of proof on this issue.

N.J.A.C. 4A:2-2.3(a)(7) - Neglect of duty

Neglect of Duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term “neglect” connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). “Duty” signifies conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. C.f., State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term “neglect of duty” is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep’t of Military and Veterans Affairs, 97 N.J.A.R. 2d (CSV) 564; Ruggiero v. Jackson Twp. Dep’t of Law and Safety, 92 N.J.A.R. 2d (CSV) 214.

As with the first count, appellant contends the amount of force used during the arrest and detention of H.C. was reasonable. H.C. was both violent and dangerous and there were civilians milling about - including EMTs, throughout H.C.’s detention. The force used – a leg sweep gone awry, was necessary to stop H.C. from fleeing post-arrest. Appellant acknowledges that his attempt to use a leg sweep so close to the curb may not have been the most prudent course of action but in no event did it rise to the level of neglect of duty. Appellant further contends that his actions are mitigated by the fact that he has not had in-person training on defensive tactics since 2017.

Under the PPD Use of Force Policy – Physical Force involves:

[C]ontact with a subject beyond that which is generally utilized to affect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject’s physical resistance to the exertion of the officer’s authority, or to protect persons or property. Examples include wrestling a resisting subject to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation.

(R-3, Section 1(J).)

“Reasonable Belief” is defined as:

[A]n objective assessment based upon an evaluation of how a reasonable police officer with comparable training and experience would react to, or draw inferences from, the facts and circumstances confronting and known by the officer at the scene.

(R-3, Section 1(K).)

Use of Less Lethal Force is found under Section II(A) of the Use of Force Policy and state in pertinent part:

1. Officers may use physical force or mechanical force in the performance of their duties when they reasonably believe that the use of force is immediately necessary tin the following situations:
 - a. To protect themselves or others against the use of unlawful force by another person and the officer's immediate intervention is necessary, or:
 - d. To prevent the escape of an arrested person from custody.

Appellant is an experienced officer who has had extensive training over the years on use of force – both in person and online. To argue that mitigating factors are present in this matter because he (appellant) has not had in-person training on defensive tactics since 2017, is not only self-serving but disturbing that appellant believes that lack of in-person training should somehow factor into whether his actions were reasonable under the circumstances. Additionally, such argument is inconsistent with appellants in-depth testimony as it relates to his use of pressure points to subdue H.C. while seated on the ground and the defensive tactics – i.e. how he was attempting to perform a leg sweep and/or take down of H.C.

As set forth more fully above, appellant was not close to the curb – in fact he was several feet away from the curb when he grabbed H.C. by the shirt and swung him around. While it appears that his left foot slipped on the curb, it was not until after he had released

his hold on H.C. While the appellant testified that he was attempting a “leg sweep” and/or a “take down”, I found such testimony to be inconsistent with both his interview by IA, and the body-camera footage. I further **FIND** that appellant’s conduct to be both unreasonable and excessive in light of the circumstances.

For the foregoing reasons, I **CONCLUDE** that appellant neglected his duty when he used unnecessary, unreasonable, and excessive force on the appellant in violation of N.J.A.C. 4A:2-2.3(a)(7) and that the respondent has met its burden of proof on this issue.

N.J.A.C. 4A:2-2.3(a)(12)—Other Sufficient Cause

Appellant has been charged with other sufficient cause – excessive/unreasonable force; violation of PPD Use of Force Policy and use of unnecessary less lethal physical force. (R-3, page 1 and Section II). Appellant was also charged with violation of PPD Rules and Regulations – Section 1:5.2 (Code of Ethics) and Section 3:1.30 (Civil Rights). (R-2)

Appellant asserts that the respondent failed to bring the charges within the requisite forty-five days as set forth in N.J.S.A. 40A:14-147 (forty-five-day-rule). As such, the two PPD Rule and Regulation charges of ethics and civil rights violations should be dismissed. In the alternative, appellant argues that the respondent has failed to meet its burden of proof on the charges in question by failing to prove that he (appellant) had the requisite *mens rea*.

Respondent contends that the “private individual” exception to N.J.S.A. 40A:14-147 applies in this matter, as such the charges in question fall outside of the forty-five-day rule. IMO Walter Zapoluch, OAL Docket No. CSV 11659-09 (Final Decision September 21, 2010), 2010 N.J. CSC Lexis 884 (September 21, 2010); In Re Zapoluch, 2012 N.J. Super. Unpub. Lexis 340*; 2012 WL 488882. Additionally, citing to In Re Joyce, because the charges were based on violations of the New Jersey Administrative Code as well as violations of PPD rules and regulations, they fall outside of the forty-five-day-rule. McElwee v. Borough of Fieldsboro, 400 N.J. Super. 388 (2008); In Re Joyce, 2008 N.J. Super. Unpub. Lexis 2882; 2008 WL 5083151

Respondent also contends that the appellant, unlike his colleague Gamble who was dealing with a fleeing suspect, had time to consider his actions and the level of force that was necessary and justified. Citing to Graham v. Connor, 490 U.S. 386; 109 S. Ct. 1865; 104 L. Ed. 2d 443, respondent asserts that the appellant cannot justify the level of force that was used and that H.C. had a constitutional right to be free from excessive and unreasonable force which is what the appellant used.

Forty-five-day-rule

N.J.S.A. 40A:14-147 - Removal, suspension of police officer, states in relevant part:

Except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. . .

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The 45-day time limit shall not apply if an investigation of a law enforcement officer for a violation of the internal rules or regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State. The 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement of this paragraph for the filing of a complaint against an officer shall not apply to a filing of a complaint by a private individual.

A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint. . .

I concur with the appellant that this matter does not fall under the “private individual” exception. Unlike Zapoluch, H.C. did not initiate the IA investigation, rather, a critical incident report was filed against the appellant for excessive force by his supervisor triggering the IA investigation. Additionally, H.C. did not file his lawsuit until two years after the incident occurred, which was after the PNDA and FNDA were issued, and after the instant appeal was filed. Given this, any claim that these counts fall outside of the forty-five-day-rule exception under the private individual exception lacks merit.

I do not, however, concur with the appellant that the charges were untimely. The incident occurred on August 24, 2021. Upon the filing of the IA complaint, the matter was referred to the prosecutor’s office, who, on September 21, 2021, issued a declination letter and turned the matter back to the PPD for whatever administrative action they deemed appropriate. The IA investigator, Howze, over the next several weeks, reviewed body-camera footage and interviewed witnesses, including the appellant. The last person he interviewed was H.C. on December 7, 2021. On that same date, the IA report was finalized. (R-1.) Two weeks later, Schlachter reviewed the IA file/report and sustained the charges on December 22, 2021, and thereafter made disciplinary recommendations to the chief. While it is unclear when the IA report and recommendations were sent to the chief, it is clear and undisputed that Schlachter signed off on the IA file and sent her recommendations to the chief who is the only person that can approve the proposed disciplinary action. It is not until the chief signs off on the proposed discipline that a PNDA can be issued. See N.J.S.A. 40A:14-118. In this case, the PNDA was issued on January 26, 2022. Even if the chief had signed off on Schlachter’s recommendations on December 22, 2021, the PNDA was issued well within the forty-five-day-rule as set forth under N.J.S.A. 40A:14-147.

While the appellant claims that the PNDA should have been issued in November 2021 after he was interviewed and Howze had sufficient information to complete the IA report, such argument overlooks the fact that one last key witness – H.C., was interviewed

after the appellant. The IA investigation also identified other collateral targets which were also addressed in the report. The IA report itself was lengthy and thorough and there was no evidence or testimony presented that there was any undue delay in initiating the investigation, conducting the interviews, reviewing the evidence, finalizing the report, and thereafter submitting it for review and recommendations. McElwee v. Borough of Fieldsboro, 400 N.J. Super 388 (2008); In re Hairston, 2019 N.J. Super. Unpub. Lexis 683. Nor can the appellant claim surprise that charges were brought or that he was prejudiced in any way.

For all of the foregoing reasons, I **CONCLUDE** that the PPD Rules and regulations violations were timely filed and ripe for consideration.

With the above in mind and turning to the charges at hand, appellant has been charged with other sufficient cause – excessive/unreasonable force; violation of PPD Use of Force Policy and use of unnecessary less lethal physical force. (R-3, page 1, and Section II.) Appellant was also charged with violation of PPD Rules and Regulations – Section 1:5.2 (Code of Ethics) and Section 3:1.30 (Civil Rights). (R-2.)

Other Sufficient Cause

Appellant was also charged with violating N.J.A.C. 4A:2-2.3(a)(12), “Other sufficient cause.” This catch-all provision of the code means that a finding of misconduct deserving of discipline need not “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 39-40 (App. Div. 1992) (citing references omitted). As set forth in the findings of fact and as discussed above, appellant’s conduct in this case violated the standard of good behavior expected of police officers. Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause by a preponderance of credible evidence.

The appellant has also been charged with violation of the PPD Rules and Regulations §1:5.1 (Code of Ethics) and § 3:1.30 (Civil Rights) state in pertinent part:

§ 1:5.1

I WILL never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

§ 3:1.30 Civil Rights

All employees shall observe and respect the civil rights of all persons.

Appellant argues that these charges require a level of intent or *mens rea* none and that the respondent failed to present any evidence that could be used to infer or establish that he had an intent to injure or violate H.C.'s civil rights.

This argument appears to be selective and ignores the overall intent of the policies in question. Not all ethical violations or civil rights violations involve a nefarious motive or intent. Whether the appellant intended to use unreasonable and excessive force or not, does not negate the fact that unreasonable and excessive force was in fact used in violation of H.C.'s civil rights and the departmental policy which the appellant swore to uphold.

Appellant also contends that it is significant that no other officer was charged with civil rights violations because it was their obligation to intervene if they felt that another officer had or was utilizing excessive force. Given this fact, it is clear that the PPD "tacit[ly]" admitted that no civil rights violation had occurred. Appellant also itemizes all of the civil rights lawsuits/complaints that could have been filed against him but were never filed.

It is unclear how the appellant makes such a quantum leap with this logic/argument. Indeed, it could be equally argued that the events unfolded so quickly that the other officers had no way to intervene. With regards to the itemized list of lawsuits or criminal charges that were never filed, appellant makes a lot of assumptions that warrant no further discussion. The reality is, it is of no moment what another entity has or has not done as it relates to pressing charges or filing a complaint, and no inference can be drawn one way or the other. What is relevant is the evidence presented in this matter which unequivocally shows that the appellant used unreasonable and excessive force on H.C. given the circumstances.

For all of the foregoing reasons cited herein, and above, I **CONCLUDE** that appellants conduct did rise to a level of a violation of the PPD Rules and Regulations R1:5.2 and R 3:1.30 and that the respondent has met its burden of proof on this issue.

PENALTY

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, the New Jersey Supreme Court first recognized the concept of progressive discipline, under which “past misconduct can be a factor in the determination of the appropriate penalty for present misconduct.” In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, 38 N.J. at 522). The Bock Court therein concluded that “consideration of past record is inherently relevant” in a disciplinary proceeding, and held that an employee’s “past record” includes “an employee’s reasonably recent history of promotions, commendations, and the like on one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee.” Bock, 38 N.J. at 523–24.

“Although we recognize that a tribunal may not consider an employee’s past record to prove a present charge, Bock, 38 N.J. at 523, 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, 205 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Here, the respondent has proven by a preponderance of the credible evidence the following charges against the appellant:

1. Conduct Unbecoming in violation of N.J.A.C. 4A:2-2.3(a)(6)
2. Neglect of Duty in violation of N.J.A.C. 4A:2-2.3(a)(7)
3. Other Sufficient Cause in violation of N.J.A.C. 4A:2-2.3(a)(4) – Excessive/Unreasonable Force; Violation of Departmental Use of Force Policy – Chapter 2, Volume 3, "policy" violation; Use of unnecessary less lethal physical force; PPD Departmental Rules and Regulations – 1:5.2 (Code of Ethics) and 3:1.30 (Civil Rights).

The penalty sought by the respondent is removal.

Although the Civil Service Commission applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's disciplinary history may be outweighed if the infraction at issue is of a serious nature. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The concept of progressive discipline is recognized in this jurisdiction, but:

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

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

[In re Herman, 192 N.J. 19, 33-34 (2007), (citing Henry, 81 N.J. at 580).]

A singular incident of absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. Id. at 32.

The appellant has one prior discipline for backing into a fence post with his patrol vehicle. Over his years of service in law enforcement, he has received multiple awards/commendations for among other things: marksmanship, lifesaving, DUI arrests, and meritorious service during an active shooter incident. He also received an academic award when he was at the police academy.

While the penalty of termination for an officer with little to no disciplinary history is significant, the appropriate focus must be given to the nature and seriousness of the appellant's actions on August 24, 2021.⁸ The appellant's conduct was serious and committed by someone who swore an oath to enforce the law courteously, appropriately, without ill will or malice, and never employing unnecessary force or violence. Given the serious nature of these actions—even without a prior disciplinary history—imposition of major discipline would be warranted.

It does not appear that the appellant's actions were out of malice or ill will, rather out of impatience, frustration, anger, or a combination of all three, over H.C.'s continuous lack of adherence to his commands to calm down and sit still. Despite H.C.'s refusal to sit still and calm down, he was not a threat nor was he a flight risk under the circumstances. He was seated on the ground with his feet in front of him and his hands cuffed behind his back. The appellant was standing behind him holding him down by the shoulders. Even if H.C. had been able to get his leg underneath him to leverage himself up, his hands were still cuffed behind his back, his mobility was limited and there were several law enforcement officers present that would have prevented him from escaping.

⁸ Respondent's insinuation that there may be prior incidents that went unreported are inflammatory and utterly unsupported and therefore disregarded in their entirety.

While appellant's conduct may have been an aberration, given the totality of the circumstances, the type and level of force used - which notably was not in the heat of the moment, was unreasonable and excessive and not in furtherance of a legitimate law enforcement objective.

As succinctly stated in Moorestown Township v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966):

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

In this case, appellant failed to use restraint and good judgment to the detriment of the public - in particular, to H.C.

Based upon the facts set forth in this matter, I **CONCLUDE** that removal is the appropriate discipline for the violations of: N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming; N.J.A.C. 2-2.3(a)(7) - Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(4) - Other Sufficient Cause; Departmental Use of Force Policy; and Departmental Rules and Regulations – 1:5.2 (Code of Ethics) and 3:1.30 (Civil Rights).

ORDER

For the reasons set forth above, it is **ORDERED** that all charges entered on the August 30, 2022, FNDA by the PPD, are hereby **SUSTAINED**.

I further **ORDER** that the action of the appointing authority removing the appellant from his position as a police officer is **AFFIRMED**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 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.

December 15, 2023
DATE



TAMA B. HUGHES, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TBH/gd/lam

APPENDIX

WITNESSES

For appellant

Stephanie Baumeister
Andrew Eckert

For respondent

Stacey Schlachter
Vaughn M. Howze, Jr.

EXHIBITS

Joint Stipulations

J-1 Final Notice of Disciplinary Action

For appellant⁹

P-1 Officer Eckert Use of Force Training Log*
P-2 Axom Body-Cam Log**
P-3 Attorney General Guidelines
P-4 Officer Gamble Body-Camera footage*
P-5 Not in Evidence
P-6 Officer Eckert Internal Affairs Interview

For respondent

R-1 Pleasantville Police Department Internal Affairs Report
R-2 Pleasantville Police Department – Rules and Regulations
R-3 Pleasantville Police Department – Use of Force Policy
R-4 Unarmed Defense & Impact Weapons
R-5 Medical Transport

⁹ P-2 and P3 entered into evidence over respondent's objection.

- R-6 Not in Evidence
- R-7 Officer Eckert Body-Camera Footage*
- R-8 Officer Hernandez Body-Camera Footage*
- R-9 Use of Force Reporting*

*Documents/footage on thumb drive #1

**Documents/footage on thumb drive #2