



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Michael La Montagne,
Police Officer, Little Egg Harbor Township,
Police Department

CSC Docket No. 2023-2634
OAL Docket No. CSR 05660-23

ISSUED: APRIL 11, 2024

The appeal of Michael La Montagne, Police Officer, Little Egg Harbor Township, Police Department, removal, effective April 19, 2023, on charges, was heard by Administrative Law Judge Rebecca C. Lafferty (ALJ), who rendered her initial decision on March 11, 2024. Exceptions were filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on April 10, 2024, adopted the ALJ's Findings of Facts and Conclusions and her recommendation to uphold the removal.

Upon its *de novo* review of the ALJ's initial decision as well as the entire record, including the exceptions filed by the appellant, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the testimony of the witnesses. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. See *Matter of J.W.D.*, 149 *N.J.* 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." See also, *In re Taylor*, 158 *N.J.* 644 (1999) (quoting *State v. Locurto*, 157 *N.J.* 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A.* 52:14B-10(c); *Cavaleri u.*

Public Employees Retirement System, 368 N.J. Super. 527 (App. Div. 2004). The exceptions filed by the appellant in this matter 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. In that regard, the ALJ made detailed credibility determinations and corresponding findings based on those determinations. The ALJ specifically found that the appellant's testimony was not credible, as at times it was self-serving and non-sensical and at other times it was contradictory, particularly in light of the evidence presented. Therefore, 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.

Similar to its assessment of the charges, the Commission's review of the penalty is also *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990).

Clearly, the appellant's egregious misconduct in this matter warrants removal from employment. Regardless of a lack of a disciplinary history in his short-term employment, the appellant's actions fall well short of what is expected of a Police Officer and certainly are likely to undermine the public trust. As stated by the ALJ, the "appellant failed to adhere to any of these standards. What is most troubling about appellant's behavior was that it was a repeated course of conduct over a significant period of time . . . In all of the incidents . . . [the] appellant failed to exercise tact, restraint and good judgment." As such, contrary to the appellant's exceptions, the Commission finds the penalty of removal neither disproportionate to the offenses nor shocking to the conscious.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Michael La Montagne.

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 10TH DAY OF APRIL, 2024



Allison Chris Myers
Chairperson
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 05660-2023

AGENCY DKT. NO. N/A

2023-2634

**IN THE MATTER OF MICHAEL LA MONTAGNE,
LITTLE EGG HARBOR TOWNSHIP
(POLICE DEPARTMENT).**

Charles J. Uliano, Esq., for appellant, Michael La Montagne (Chamlin, Uliano & Walsh, attorneys)

Andrea E. Wyatt, Esq., for respondent, Little Egg Harbor Township Police Department (Rothstein, Mandell, Strohm, Halm & Cipriani, P.A., attorneys)

Record Closed: February 2, 2024

Decided: March 11, 2024

BEFORE REBECCA C. LAFFERTY, ALJ

STATEMENT OF THE CASE

Appellant, Michael La Montagne (La Montagne or appellant), appeals his removal as a police officer effective April 19, 2023, by the respondent, Little Egg Harbor Township Police Department (LEHTPD). At the time of his removal, appellant held the Civil Service title of police officer. Respondent removed appellant based on the following charges

contained in the Final Notice of Disciplinary Action (FNDA), dated April 27, 2023¹: Count I – N.J.A.C. 4A:2-2.3(a)(6) – Conduct Unbecoming a Public Employee; Count II – N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause; Count III – N.J.S.A. 2C:17-3 – Criminal Mischief; Count IV – N.J.S.A. 2C:33-4 – Harassment; Count V – N.J.S.A. 2C:20-25(e) – Computer Criminal Activity; Count VI – LEHPD Rule and Regulation 3:1.7 – Obedience to Laws and General Orders; and Count VII – LEHPD Rule and Regulation 3:13.5 – Truthfulness. (R-1.)

PROCEDURAL HISTORY

On June 21, 2023, appellant filed an appeal of the FNDA. On June 26, 2023, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 40A:14-202(d). Pre-hearing conferences were held on July 26, 2023, and August 8, 2023. On this same date of August 8, 2023, a letter was received from appellant's counsel waiving the 180-day requirement established under N.J.S.A. 40A:14-201 and implemented by N.J.A.C. 4A:2-2.13. A pre-hearing order was entered on August 10, 2023. See August 10, 2023 Prehearing Order.

On September 5, 2023, respondent filed a Notice of Intent pursuant to N.J.A.C. 1:1-15.12, to offer the prior transcribed testimony of an individual from a hearing on a Final Restraining Order (FRO) in lieu of testifying at the OAL hearing. By letter, dated September 13, 2023, the parties were informed that the application was premature at that time. See September 13, 2023 Letter.

There was a one-day hearing held September 19, 2023. The parties were given time to obtain the transcript of the hearing and submit summation briefs, and upon receipt of summation briefs, the record was closed on November 29, 2023. The record was re-opened on December 12, 2023, to obtain a missing video from a flash drive. The record

¹ An initial FNDA, dated April 19, 2023, was served on an incorrect form. A second FNDA, dated April 27, 2023, was served on the correct form.

closed on December 14, 2023. The record was re-opened again on January 24, 2024, to obtain additional documentation, and closed on February 2, 2024.

FACTUAL DISCUSSION AND FINDINGS

RELEVANT TESTIMONY

For respondent

Chief James Hawkins (Hawkins), testified on behalf of the respondent. Hawkins has been employed by the LEHTPD for over twenty-five years and has held the rank of Chief of Police for the past two years. Hawkins explained that the LEHTPD Rules and Regulations (Rules) are issued under his authority and direct specific actions and/or conduct of police department employees. The Rules are distributed through a document management system where employees are required to review and electronically sign off after reviewing them. Paragraph 3:1.7 of the Rules provides that all employees are required at all times to obey all laws, ordinances, general orders, and Rules of the police department. (R-2, page 12.) Paragraph 3:13.5 (Truthfulness), provides that at all times, employees are required to be honest and truthful in all aspects - be it in preparing reports or providing testimony, whether or not they are under oath. (R-2 page 30.) La Montagne was aware of these Rules having reviewed and electronically signed off on them on January 23, 2020². (R-3.)

Hawkins stated that General Orders (GO) are issued by the chief of police and are issued through the same document management system as the Rules. They establish the policies and procedures of the police department. GO #2016-001 sets the policy for computer, internet, and e-mail usage. (R-4.) It prohibits the use of the police department's computer systems to gain access to databases for information for personal

² Hawkins testified that La Montagne electronically signed off on the Rules on January 23, 2020, however, that is the date listed as the revision date of the Rules. According to R-3, La Montagne signed off on the Rules on January 30, 2020.

gain. (R-4.) La Montagne was also aware of this GO having reviewed and signed off on it on March 20, 2018. (R-5.)

On or about January 25, 2023, he received an Internal Affairs (IA) report authored by Detective Sergeant Kenneth Schilling, regarding various incidents involving La Montagne. (R-6.) Upon review of the report, a Preliminary Notice of Disciplinary Action (PNDA) was issued, a departmental hearing was held, and a FNDA was issued. (R-1.)

On cross examination, Hawkins stated that La Montagne was not suspended at the time of the IA investigation or department hearing, he was on administrative leave. He had no previous discipline. He went on to state that in or around June or July of 2022, he had requested that La Montagne undergo a fitness for duty examination. While La Montagne was found fit for duty, he remained on administrative leave until the date he was terminated.

Hawkins confirmed that he was aware that the criminal charges against La Montagne were dismissed, and the temporary restraining orders (TROs) were dissolved. He further stated that La Montagne utilized the NDT in the police car to look up J.H. When asked, he acknowledged that GO #2016-001 does not specifically identify computer equipment in police cars within its text. He testified that every officer knows that the "Spillman" records management system records all lookup inquiries, and a department can run a report to see the lookups made by any officer. Hawkins acknowledged that if a person makes a mistake in interpreting a question during an IA investigation, that is taken into account before a final decision is made on charges to be filed.

On re-direct, Hawkins testified that La Montagne was placed on paid administrative leave in January 2022, until the municipal charges were disposed of, and he remained on administrative leave pending the outcome of IA investigation. La Montagne remained on administrative leave after he was found "fit for duty" because there were additional reports of misconduct in the interim that required investigation.

Detective Sergeant Kenneth Schilling (Schilling), also testified on behalf of the respondent. He has been a police officer for twenty-three years and has been assigned to the IA division for five years.

On January 18, 2022, Schilling was advised that La Montagne was arrested in Stafford Township regarding an incident that took place on January 15, 2022. As a result, an IA investigation was opened at the direction of Hawkins. He obtained and reviewed the report, statements, and body-worn camera footage from the Stafford Township Police Department (Stafford PD). (R-7.) On January 15, 2022, N.F. reported to the Stafford PD that she was involved in a domestic incident with La Montagne. According to N.F., she and La Montagne were both at the Element Bar in Stafford Township sitting across the bar from each other but were not there together. La Montagne left first, then about one hour later, she left. As she was leaving, she saw La Montagne's vehicle on the road behind her. There was some conversation between the two, and they pulled into a nearby church parking lot to talk further. N.F. claimed that while in the church parking lot, La Montagne broke the side view mirror off her truck, took her cellphone and smashed it on the ground, and took the key fob to her truck. When this occurred, N.F. left the church parking lot and drove directly to the Stafford PD to report the incident and file criminal charges against La Montagne – specifically: Theft of the Key Fob (N.J.S.A. 2C:20-3(a)), and Criminal Mischief for the damage to the truck and cell phone (N.J.S.A. 2C:17-3(a)(2)). (R-8.)

On August 16, 2022, Schilling conducted an interview with N.F. regarding the January 15, 2022 incident. (R-9.) La Montagne was also questioned about the incident during the IA interview on December 22, 2022. (R-11.)

Schilling went on to state that the second incident involving La Montagne occurred on May 6, 2022, in Lacey Township. Schilling was notified of the incident and was able to obtain and review copies of the police report which included statements and videos. (R-12).

According to the report, on May 6, 2022, La Montagne contacted the Lacey Township Police Department (Lacey PD) for assistance at N.F.'s residence in retrieving compact discs (CD's) containing body worn camera footage from the January 15, 2022 incident. He had gone to her residence on May 6, 2022, to retrieve the CD's but N.F. refused to return them – stating that she would only turn them over to the police. When the police spoke to her, N.F. reiterated a pattern of harassment and stalking by La Montagne. She also disclosed that he had, in the past, looked up license plates of individuals whom he believed she had associated with – one person in particular being J.H. Schilling, discussed this encounter with N.F. during her interview on August 16, 2022. (R-9.)

As part of his investigation, he ran a New Jersey Division of Motor Vehicles (NJDMV) report for J.H. to get his driver's license number as well as a registration query to determine what vehicles he owned. (R-13 and R-14.) The registration query revealed that J.H. owned a Ford F-250 truck with license plate ZXXXXX³. After pulling this information, he contacted another officer to run a report from their "Spillman" carrier - the Ocean County Sheriff's Department - to see if J.H.'s vehicle tags had ever been run by any LEHTPD computers.

The report for the vehicle look-up found that on September 25, 2021, at 05:55:21, user/badge number 16106, using workstation 16-008, requested a full lookup of the license plate associated with J.H.'s vehicle. (R-15.) Schilling went on to state that a full lookup provides an array of information on the subject of the lookup. (R-13.) In this case, the officer who looked up J.H.'s information was identified as "MLamontagne", badge number 16106, which was La Montagne's name and badge number. (R-15.) Schilling went on to state that La Montagne was on shift on September 25, 2021, from 6 a.m. to 6 p.m. (R-16.) He went on to note that officers are not authorized to utilize the LEHTPD system to obtain driver information for personal reasons.

³ Actual license plate number not shown for privacy purposes.

As part of the IA investigation, he telephonically interviewed J.H. at which time J.H. confirmed that he knew N.F. According to J.H., he has never had any issues with any LEHTPD officers. Schilling went on to state that when he interviewed La Montagne, La Montagne confirmed that he knew who J.H. was but denied ever running his tag. (R-11.)

Schilling was advised of a third incident involving La Montagne that occurred on May 9, 2022, in Lacey Township. As part of his investigation, he obtained and reviewed the Lacey PD's report and video. (R-17 and R-19.) According to the report, on May 9, 2022, while patrolling the area near N.F.'s house, the officers observed an occupied car with no front license plate parked near N.F.'s home. The car drove off and the Lacey Township officers conducted a motor vehicle stop. La Montagne was driving the vehicle and told the officers that he was invited to be there and was permitted to leave.

As part of his interview on August 16, 2022, Schilling interviewed N.F. regarding the May 9, 2022 incident. (R-9.) N.F. stated that La Montagne was sending her text messages during the May 9, 2022 incident. N.F. later emailed Schilling numerous text message exchanges with La Montagne. In particular, text messages from the evening of May 9, 2022, read as follows⁴:

La Montagne:	Really you tell me to meet you Lol I need you to answer the phone when they pull me over
N.F.:	Why are you calling me at 11pm at night we're in bed I'm turning my phone off
La Montagne:	I'm pulled over by Lacey
N.F.:	Why
La Montagne:	Why didn't you come out I pulled up like you said
N.F.:	What are you talking about
La Montagne:	They let me go
N.F.:	Just go to the station they just rolled up to my house 6 cars deep There making me go to the station

⁴ This is an exact transcription of the text messages as presented, including any typographical or grammatical errors.

La Montagne: [N.F.] you need to fix your texts
please
N.F.: Why the fuck were you here
La Montagne: I messaged you on snap to see
you
I love you
Don't let them see your phone
Refuse
And say we were suppose to go to
the cemetery
That's it
End of story
I can't go back into town or they
will pull me over
Tell them yohh in told me to come
to the station
You can refuse to go you don't
have to go
You have that right
I'm going to the station
I'm here
N.F.: Your so fucked

(R-18, pages 14-18.)

Schilling testified that he was advised that La Montagne's wife, A.L.M., applied for a TRO on July 26, 2022, with the Stafford PD. As part of his investigation, he was able to obtain and review Stafford PD's Incident Report. (R-20.) A.L.M provided the police department with a clip from a Ring video camera in March 2022, where the La Montagnes were arguing over a cell phone and A.L.M. fell as La Montagne grabbed the phone from her. (R-21.) The Honorable Mark A. Schneider granted the TRO. (R-22.) On the same date that A.L.M. applied for a TRO, N.F. also sought a TRO against La Montagne, which was granted by the Honorable Benjamin H. Mabie, III. (R-23.) Schilling obtained and reviewed both applications for TROs.

Two additional incidents involving La Montagne and N.F. occurred on July 23, 2022. The first occurred in the afternoon while N.F. was at a friend's house for a party and La Montagne showed up unannounced and uninvited. (R-9.) The cellphone video clip provided by N.F. from that afternoon shows La Montagne in an idling vehicle outside

the residence identified by N.F. as her “friend’s house”. (R-24.) In the video La Montagne states in part, “I’m telling you; I will tell [F.H.] about everything. I will send him the videos of you having sexual intercourse with me in your bedroom.” (R-24.)

The second incident on July 23, 2022, occurred later that evening when N.F. was at home in bed. La Montagne entered N.F.’s home through an unlocked side door, went up to her bedroom and tried to kiss her while holding her hands and wrists. (R-9.) N.F. told La Montagne that she did not want to be involved with him anymore and he became upset. (R-9.) She was able to get him to go downstairs and outside the house with her and then she tried to lock him out. (R-9 and R-25.) La Montagne tried to get back into N.F.’s home first by trying the front door, then running around to the back, where he was able to get into the house. (R-26.) Both videos were consistent with N.F.’s recitation of the events in her interview on August 16, 2022, and in her application for a TRO.

On cross-examination, Schilling stated that La Montagne was notified that he was the subject of an IA investigation but was unsure of the exact date of the notice. He confirmed that the criminal charges were dropped or dismissed and that La Montagne took responsibility for the damage to N.F.’s truck. Schilling denied that he deemed N.F.’s version of events as not credible – stating that it is a situation with two sides to the story. Schilling recalled that La Montagne mentioned that there were text conversations over “Snapchat” but did not know the dates of those text messages. At the time of the May 9, 2022 incident, both La Montagne and N.F. went to the Lacey PD where N.F. told the officers to stay out of their business. Schilling did not know exactly what La Montagne said to the officers. When asked, he confirmed that A.L.M.’s TRO was dismissed on September 15, 2022, and N.F.’s FRO was denied on November 17, 2022.

Schilling further testified that prior to the IA interview, he identified each case involving La Montagne with his attorney at the time, Mr. Rosenberg, and indicated that he was going to go over each incident individually – providing background on each case. Schilling did not specifically mention that he was going to ask La Montagne about J.H.

and a potential lookup, but he stated that it was part of the second case that he discussed with Mr. Rosenberg.

Schilling confirmed that N.F. told him that La Montagne had looked up J.H.'s tag and contacted him. Schilling also confirmed that when he contacted J.H., J.H. denied contact with La Montagne. Schilling further stated that La Montagne denied contacting J.H. utilizing the lookup, rather he contacted J.H. through Facebook. Schilling's understanding of Brady-Giglio is that if an officer is deemed to be untruthful in a case, that officer would not be able to testify in future cases that he is involved in, which is an official duty.⁵

Schilling described "Spillman" as a computer aided dispatch (CAD) system and every officer should know that any lookup they conduct will be recorded. He further confirmed that La Montagne had no prior discipline to his knowledge.

In his IA interview, La Montagne described his relationship with N.F. as rocky. In their respective interviews, both La Montagne and N.F. admitted that there were times when N.F. invited La Montagne to her home where he would stay for several days.

On re-direct, Schilling stated that as an IA officer, he is not required to provide a list of questions to the subject of the investigation. He further testified that La Montagne denied looking up J.H.'s license plate without hesitation or surprise. He confirmed that the report from the Lacey PD on May 6, 2022, would be part of the IA interview, and the allegation concerning the lookup of J.H.'s license plate was contained within that report.

Michael La Montagne testified on his own behalf. He was hired by the LEHTPD in February 2016, and has not had any discipline until this matter. He is married to A.L.M. but engaged in an extramarital affair with N.F. for approximately one-and-a-half years. N.F. was also in another relationship - she was engaged to F.H., with whom she lived. N.F. and F.H. had been together for about twelve years and had two children together.

⁵ Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972).

He stated that F.H. was a commercial fisherman who was sometimes gone for a week or two at a time and it was during those times that he would stay at N.F.'s residence.

At the time of the January 15, 2022 incident, he and N.F. had been conducting their affair for about ten months. At that point they had agreed to separate from their significant others. La Montagne stated that he had already told his wife that he wanted a divorce, but N.F. had not yet told F.H. that she wanted to break up. La Montagne was also aware of N.F.'s relationship with J.H., but La Montagne said he chose to forgive her. On January 15, 2022, they planned to go on a date to a bar to watch NFL playoff games. According to La Montagne, N.F. told F.H. that she was going to a friend's house for the evening so she went to her friend's house, took a few "snaps" using Snapchat so F.H. would believe she was there, and then was to meet La Montagne at the bar.

Prior to arriving at the bar, La Montagne and N.F. got into a disagreement over a "snap" that N.F. had sent on Snapchat that caused La Montagne to question her. They met at the Shop Rite parking lot to continue their discussion after which he informed N.F. that he did not want to hang out with her that evening, and that he was going to go back to the bar with his friends. N.F. arrived at the bar prior to La Montagne and sat directly across from his friends. According to La Montagne, N.F. was trying to taunt him through text messages throughout the night. After a while, La Montagne left the bar, but about an hour later he received another "snap" from N.F. with a picture of her with his friend and his friend's wife. Concerned that she was going to tell his friends about their relationship, he went back to the bar after N.F. did not respond to his texts.

When he arrived back at the bar, the bar was closed but he noticed N.F. turning the wrong way on a one-way street and in the opposite direction of her house. He caught up to her vehicle and tried to get her attention at a stop light - eventually getting out of his vehicle and knocking on her window. They both pulled into a church parking lot, and he got into her vehicle where they began to argue. He questioned who she was just on the phone with, and she handed her phone over for him to look through. As he was looking at her phone, N.F. received a text message from another man she had met at the bar.

He was sending N.F. his address and told her to delete the text. They both got out of her vehicle, which is when La Montagne decided to break N.F.'s phone so that she did not have the other man's contact information. At that point N.F. began to hit him and chase him around the vehicle. According to La Montagne, "I told her to stop chasing me and stop hitting me or I was going to hit her vehicle. That was the point at which I hit the mirror on the vehicle. I did not intend to break it, but it did break." (T⁶. 117:1-5.) She then got in her vehicle and said she was going to the Stafford PD.

La Montagne went on to state that after she left, he found N.F.'s vehicle key fob on the ground and went searching for her to return the key fob. He said he drove to the Stafford PD, the Lacey PD, the LEHTPD, her dad's house, and several Wawa's looking for her so that he could return the key fob. After being home for about ten minutes, he received a call from a LEHTPD officer stating that he was at La Montagne's house, and that they needed to talk. La Montagne went outside and that was when he was arrested by the Stafford PD. Criminal charges were filed, but later dismissed.

Regarding the May 6, 2022 incident, La Montagne stated he had gone to N.F.'s house to pick up an overnight bag that he left there. The bag contained CD's of video footage from the January 15, 2022 incident which N.F. had refused to return. He contacted the Lacey PD for assistance in retrieving his belongings. At that point, he blocked all forms of contact with N.F. In the following days, N.F. kept trying to contact him and even came to his house threatening to tell his wife about their relationship. La Montagne described his relationship with N.F. as a "very toxic situation" – if he broke up with her, she would pursue him, and vice versa. (T.120-13-15.)

In discussing the July 23, 2022 incidents, La Montagne stated that he went to N.F.'s friend's house, knocked on the door, and asked to speak with N.F. He went to the friend's house because he and N.F. had been in communication all day, but when she arrived at her friend's house for the party, she abruptly stopped communicating with him. According to La Montagne, prior to recording their conversation wherein he is heard

⁶ "T" refers to the transcript of the hearing held on September 19, 2023.

saying that he was going to go to her fiancé about their relationship, she had threatened to tell his wife about their relationship. The recording caught only his comments and not hers.

La Montagne went on to state that N.F. had invited him to her house that evening. They had a routine where he would wait for her to put her kids to bed before entering through the unlocked side door. He never entered the residence without her permission because he did not want to be seen by her children. They were in her bedroom talking for about forty-five minutes when they started arguing again. They both walked outside, and N.F. again threatened to tell his wife about them. He denied forcing his way into N.F.'s house the second time. According to La Montagne, N.F. did eventually speak to La Montagne's wife on July 26, 2022, and both women sought restraining orders on that date. There was a three-day hearing for N.F.'s FRO, but ultimately it was not granted.

In review of the text messages provided by N.F., it is his belief that they were altered and/or did not contain the full conversation because they communicated a lot on Snapchat. He went on to state that there were Snapchat and text messages that he was unable to retrieve that would have put the messages into context.

Regarding the IA interview on December 22, 2022, no one mentioned anything to him about misuse of LEHTPD computer prior to the start of the interview. He stated that every police officer knows that when they use the "Spillman" system for lookups, every keystroke is recorded. His recollection of the question that Schilling asked him about the lookup of J.H. was whether he had used the department's resources to contact J.H. He said he immediately answered "no" because he had not. When Schilling asked the follow up question, he again answered "no" thinking that it was connected to the first question asked by Schilling. To this date, he has no recollection of looking up J.H. in the system and asserts that he did not deliberately lie during the IA interview.

On cross-examination, La Montagne confirmed that prior to being hired by LEHTPD, he was a corrections officer for approximately four years. His original hire date with LEHTPD was in 2016, but he failed a psychological examination and had to appeal so he did not start until 2018, at which point he attended the police academy again. He agreed that he had received training in handling domestic violence matters, de-escalation techniques, and how to restrain an aggressor.

When questioned about the events of January 15, 2022, La Montagne stated that he hit N.F.'s truck to get her to stop hitting him. He agreed that such action was not part of his training in de-escalation techniques. He stated that he hit the mirror hard enough that the plastic cut his hand and caused him to bleed. He went on to state that their relationship picked back up a few days later. He acknowledged that he had texted N.F. to tell her that she would be receiving a call from the AP's office and that he told her "if there is no victim, there is no crime."

According to La Montagne, after the May 6, 2022 incident involving the property transfer, he and N.F. did not reconcile for a week or two afterwards. He did not answer the question of why he was outside of N.F.'s house on May 9, 2022, if they had not yet reconciled. He subsequently modified his earlier testimony – stating that communication between himself and N.F. stopped after the May 9, 2022 incident when he was pulled over. He was at her house because they had planned to go to the cemetery that night, which was a meeting place for the two of them when F.H. was home. He also claimed that N.F. had shown up at his house earlier in the day on May 9, 2022. While he could not say with certainty, it was his recollection that they had reconciled earlier, which is why he was outside of her house later that evening.

He confirmed that he was texting N.F. and sending messages on Snapchat during the May 9, 2022 incident, one of which was the message that she did not have to show her phone to the police. When asked, he denied the notion that the reason he did not want N.F. to show the police her phone was because it would show that they had no plans

that evening, and he was not invited. He did agree, however, that he had texted N.F. that their stories needed to be the same.

He has no proof that the text messages provided by N.F. to the police were altered. Although he previously testified that he began saving messages after the May 6, 2022 incident, he did not save anything from the evening of May 9, 2022, because it was his testimony they had reconciled, and he was not exactly sure of the date that he started saving communications – N.F. may have come to his house after May 9, 2022, and he may have started saving communications after that time.

When questioned about the July 23, 2022 incident, La Montagne stated that he did not believe that N.F. expected him to show up at her friend's house. He confirmed that they had an argument out front of N.F.'s friend's house and that sometime later that day, N.F. invited him to her house. He also confirmed that after they exited N.F.'s house for the first time that night, N.F. shut the front door and locked him out – however, locking him out did not indicate to him that she no longer wanted him in the house which is why he went around to the side door and entered the house again.

La Montagne stated that he found out about N.F. and J.H.'s sexual encounter in the morning before the start of his shift in September 2021, however he could not recall if it was the same date as the lookup. He further stated that that was a turning point in his relationship with N.F., but he still forgot that he had conducted a lookup of J.H. He is aware of his duty to be truthful in providing any statement and it is his position that he was truthful when he answered Schilling's questions. He adamantly denied ever threatening to tell F.H. about his affair with N.F.

Andrew Cirulli (Cirulli), testified on behalf of petitioner. Cirulli retired from the Department of Corrections after a twenty-year career. He has known La Montagne for about ten years. They met through mutual friends and have become friends over the years. Cirulli has an excellent opinion of La Montagne as being a truthful and trustworthy person.

Credibility

It is the obligation of the factfinder to weigh the credibility of the witnesses in determining the ultimate issues. Credibility is the value that a factfinder gives to a witness's testimony. "Credibility involves more than demeanor. It [contemplates] the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Inferences may be drawn concerning the witness' expression, tone of voice. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)).

In assessing credibility, the interests, motives or bias of a witness are relevant, and a factfinder is expected to base decisions of credibility on his or her common sense, intuition, and experience. A factfinder "is not bound to believe the testimony of any witness, in whole or in part." State v. Muhammad, 182 N.J. 551, 577 (2005) (internal quotation marks omitted.) Rather, they "may reject what in their conscientious judgment ought to be rejected and accept that which they believe to be credible." Ibid. 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).

Four witnesses testified in this matter – Hawkins, Schilling, La Montagne, and Cirulli as a character witness. I had the opportunity to hear the testimony of all of the witnesses and observe their demeanor and review the documentary evidence submitted into evidence. In so doing, I gave great weight to the testimony of Hawkins and Schilling. I found both witnesses to be candid and credible throughout their testimony. I found

Schilling's testimony in particular to be credible and his investigation and reporting of the same to be objective and thorough.

I did not find La Montagne's testimony to be particularly credible - at times self-serving and non-sensical, at other times contradictory - particularly in light of the evidence presented in this matter. As one of many examples, La Montagne testified that after the incident in the church parking lot, he drove to, at a minimum, five different locations to return N.F.'s key fob. This is after he admittedly intentionally smashed N.F.'s phone and broke her sideview mirror. Another example is seen when La Montagne was locked out of N.F.'s house in July 2022. According to La Montagne - the fact that he was locked out of N.F.'s house after an argument did not mean that he was not welcome back in the house which is why it was appropriate for him to break into the back of the house to gain re-entry. Such rationale defies logic and the statement itself, a self-serving rationalization of his conduct. Yet another example is La Montagne's statements both in the IA interview and at the hearing that he never threatened to tell N.F.'s fiancé about the affair despite being confronted with video footage that showed otherwise. (R-23.) His explanation as to why the video shows him saying exactly that - that he would tell F.H. about their sexual relationship - is that he only said it in response to N.F. saying she was going to tell his wife. Assuming that fact is true, it does not make it any less of a threat and is yet another example of a poor attempt to rationalize his behavior.

FINDINGS OF FACT

Having had the opportunity to listen to the testimony of the witnesses, to observe their demeanor, and to assess their credibility, as well as having fully considered the other evidence in the record, I **FIND** as **FACT**:

La Montagne was employed by the LEHTPD as a police officer since March 2018. As part of the policies and procedures of the LEHTPD, La Montagne was required to review and acknowledge receipt and reading of all Rules, regulations and GO of the police department. On January 30, 2020, La Montagne electronically signed that he received

and reviewed the Rules, and on March 20, 2018, La Montagne electronically signed that he received and reviewed the GO. La Montagne has no prior disciplinary history.

In January 2022, the LEHTPD began an IA investigation into La Montagne after it was reported to the LEHTPD that La Montagne had been arrested by the Stafford PD after a domestic incident on January 15, 2022, involving La Montagne and N.F. La Montagne and N.F. were engaged in a long-term, on-again, off-again, tumultuous affair – La Montagne was married, and N.F. was engaged.

Schilling authored the Supplemental Report of Investigation, dated January 6, 2023, regarding La Montagne's IA investigation, which detailed numerous incidents involving La Montagne. A Preliminary Notice of Disciplinary Action was issued in February 2023, and a departmental level hearing was held at which the hearing officer recommended removal effective April 19, 2023.

January 15, 2022

On January 15, 2022, La Montagne and N.F. ended up at the same bar independent of one another. La Montagne left first. When N.F. left sometime later, La Montagne was in the area waiting for her. The parties decided to move their cars to a church parking lot where an argument ensued or continued from an earlier encounter. During the argument, La Montagne broke N.F.'s phone, damaged her sideview mirror, and took possession of her key fob. La Montagne admitted to both acts of damaging N.F.'s property and was arrested by the Stafford PD. While La Montagne was charged with criminal mischief and theft, all charges were subsequently dismissed.

May 9, 2022

On May 6, 2022, La Montagne called the police from outside N.F.'s house to receive assistance in getting property back that belonged to him. At that time, N.F. made informal statements to the police that La Montagne was harassing and stalking her. As

such, the Lacey PD increased their patrols in N.F.'s neighborhood. On May 9, 2022, Lacey Township police officers were patrolling the area near N.F.'s house when they observed an occupied vehicle with no front license plate parked near her home. The vehicle drove off and the Lacey Township officers conducted a motor vehicle stop. La Montagne was driving the vehicle and told the officers that he was invited to be there, briefly showed them some text messages on his phone from N.F., and La Montagne was permitted to leave.

Additionally, while police were at N.F.'s house on May 6, 2022, N.F. advised police that La Montagne looks up the license plates of people that she is associated with, J.H. for example. As part of the IA investigation, Schilling had a Motor Vehicle lookup report run on J.H.'s motor vehicle, the result of which found that La Montagne had run a look up on September 25, 2021. La Montagne was on shift on that date and time.

July 23, 2022

Two additional incidents involving La Montagne and N.F. occurred on July 23, 2022. The first occurred in the afternoon while N.F. was at a friend's house for a party and La Montagne showed up unannounced and uninvited, a fact undisputed by La Montagne. The cellphone video clip provided by N.F. from that afternoon shows La Montagne in an idling vehicle outside the residence identified by N.F. as her "friend's house". In the video La Montagne states in part, "I'm telling you; I will tell [F.H.] about everything. I will send him the videos of you having sexual intercourse with me in your bedroom." (R-24.)

The second incident on July 23, 2022, occurred later that evening.⁷ As a result of the culmination of events on July 23, 2022, N.F. applied for a TRO against La Montagne on July 26, 2022, which was granted, but a FRO was later denied.

⁷ The events of the evening of July 23, 2022, while testified to at the hearing, do not give rise to any of the sustained charges as set forth in counsel's representations pursuant to J-1, and thus are not discussed in this decision.

December 22, 2022

On September 25, 2021, La Montagne looked up J.H.'s motor vehicle information after N.F. informed him that she had had a relationship with J.H. A report run through the LEHTPD "Spillman" carrier, confirmed that the lookup was done by La Montagne who was on shift that day. On December 22, 2022, during his IA interview, La Montagne denied doing the lookup on J.H. on September 25, 2021, despite the fact that he was on shift that date and his name and badge number were used to run the information.

During the IA interview, La Montagne also denied at least twice that he ever threatened to tell N.F.'s fiancé about their relationship.

March 2022

As to the events that took place in March 2022, neither A.L.M, nor La Montagne testified as to these events. The evidence presented by the respondent was embedded in hearsay in Schilling's report. As such, no findings can or will be made with regard to this incident as no credible evidence was presented.

LEGAL ANALYSIS AND CONCLUSION

A civil service employee's rights and duties are governed by the Civil Service Act (CSA) and regulations promulgated pursuant to the CSA. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1. A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be in the form of a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2, 11A:2-20; N.J.A.C. 4A:2-2. Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or engages in misconduct related to their duties. N.J.S.A. 11A:1-2(c). Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2.

In appeals concerning major disciplinary actions, 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.S.A. 11A:2-21; 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.A.C. 4A:2-1.4(a); see Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). 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).

In the instant matter, the following violations were sustained:

1. Sustained: N.J.S.A. 2C:17-3, Criminal Mischief which results in conduct unbecoming a public employee and other sufficient cause and a violation of the Little Egg Harbor Police Department Rules and Regulations which results in other sufficient cause. Purposeful damage by Officer LaMontagne during personal domestic dispute of a cellular telephone and vehicle side view mirror belonging to [N.F.].
2. Sustained: N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause for a violation of LEHPD Rules and Regulations 3:1.7. Officer LaMontagne purposefully engaged in a course of conduct towards [N.F.] that would cause a reasonable person to suffer emotional distress by prolonged presence outside her house in his car as documented by the Lacey Police Department on May 9, 2022.
3. Sustained: A violation of N.J.S.A. 2C:20-25e and the improper use of the computer to gain data on [J.H.] as a violation of LEHPD Rules and Regulations 3.1.7 which results in Other Sufficient Cause.
4. Sustained: N.J.S.A. 2C:33-4 Harassment which results in N.J.A.C. 4A:2-2.3a(6) that is Conduct Unbecoming of Public Employee and Other Sufficient Cause and a violation of LEHPD Rules and Regulations 3.1.7 which results in Other Sufficient Cause for harassing actions in a domestic relationship between July 23-26, 2022 is proven by the video taken outside of a friend of [N.F.]'s home wherein Mr. LaMontagne claims that he would reveal a

video of the sexual activity between himself and [N.F.] in order to embarrass her.

5. Sustained: Violation of LEHPD Rules and Regulations 3.13.5 Truthfulness, resulting in N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming of Public Employee and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause and Truthfulness in denying that he looked up or researched the license plate of [J.H.] in an attempt to identify him.
6. Sustained: N.J.S.A. 2C:33-4 Harassment which results in N.J.A.C. 4A:2-2.3a(6) that is Conduct Unbecoming of Public Employee and Other Sufficient Cause and a violation of LEHPD Rules and Regulations 3.1.7 which results in other sufficient cause for harassing [A.L.M.] by removing a cell phone from her hand and causing her to fall.

There are multiple incidents that give rise to the sustained charges in this case. The overarching charge that is common to all but one of the incidents in the instant matter, is conduct unbecoming a public employee.

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 the bureau . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in municipal 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 ordinary public employees. The New Jersey Supreme Court in In Re Philips, 117 N.J. 567, 576-77 (1990), stated:

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 141-42.

The incident giving rise to the first sustained charge of conduct unbecoming a public employee states in pertinent part:

Sustained: N.J.S.A. 2C:17-3(a), Criminal Mischief which results in conduct unbecoming a public employee . . . Purposeful damage by Officer La Montagne during personal domestic dispute of a cellular telephone and vehicle side view mirror belonging to [N.F.]⁸

This charge relates to the January 15, 2022 incident wherein appellant, by his own admission, intentionally smashed N.F.'s phone and damaged the side view mirror on N.F.'s vehicle.

It is clear that the appellant and N.F. had a volatile relationship, which appellant couched as "toxic". Even assuming arguendo, such conduct between the parties was typical of their relationship, it is not acceptable conduct for a law enforcement officer – an individual who is held to a higher standard of good behavior. Such conduct is offensive by any standard and is unequivocally a violation of the implicit standard of good behavior as expected of a law enforcement officer.

Based on the foregoing, I **CONCLUDE** that appellant's actions did rise to the 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 charge as it relates to the events of January 15, 2022.

The incident giving rise to the second charge of conduct unbecoming a public employee states in relevant part:

Sustained: N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee . . . Officer La Montagne purposefully engaged in a course of conduct towards [N.F.] that would

⁸ While the FNDA cites to Title 2C charges, the standard of review in this matter is a preponderance of the evidence based upon the alleged conduct and not whether the elements of the criminal charge have been met.

cause a reasonable person to suffer emotional distress by prolonged presence outside her house in his car as documented by the Lacey Police Department on May 9, 2022.

It is undisputed that appellant was sitting in his vehicle in the vicinity of N.F.'s home as observed by the Lacey PD on the evening of May 9, 2022, and was eventually pulled over. It is unclear, however, whether his presence there was invited or uninvited. Appellant contends that he was invited and that he and N.F. had plans. When pulled over by the Lacey PD, he very briefly showed text messages that satisfied the Lacey officer that his presence there was not unwanted, and he was allowed to leave. Respondent's attempt to demonstrate that appellant's presence was unwanted and uninvited relied upon text messages provided by N.F. and statements during an interview of N.F., all of which constitutes hearsay as N.F. did not testify at this hearing, and the text messages were not otherwise authenticated or corroborated by competent evidence.

While hearsay evidence is admissible in matters before the OAL, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). See also Weston v. State, 60 N.J. 26, 51 (1971).

Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, when there is a residuum of legal and competent evidence in the record. Id. at 51.

Here, there was no residuum of competent proof to support Schilling's testimony as it relates to N.F.'s interview with Schilling or the text messages shared during that interview.

For the foregoing reasons, I **CONCLUDE** that the respondent has failed to meet its burden of proof as it relates to the charge surrounding this incident.

The incident giving rise to the third charge of conduct unbecoming a public employee states in relevant part:

Sustained: N.J.S.A. 2C:33-4 Harassment which results in N.J.A.C. 4A:2-2.3(a)(6) that is Conduct Unbecoming a Public Employee . . . for harassing actions in a domestic relationship between July 23-26, 2022 is proven by the video taken outside of a friend of [N.F.]’s home wherein Mr. LaMontagne claims that he would reveal a video of the sexual activity between himself and Ms. [N.F.] in order to embarrass her.

On July 23, 2022, a cellphone video provided by N.F. shows appellant in a vehicle on the street in front of a residence that N.F. was visiting. The video shows appellant saying in part, “I’m telling you; I will tell [F.H.] about everything. I will send him the videos of you having sexual intercourse with me in your bedroom.” At the hearing, appellant did not dispute that it was him in the video, nor did he dispute that he was not invited to N.F.’s friend’s house or what he said in the video, rather he tried to explain why his statements did not constitute threats. Appellant contends that the video does not show the whole exchange between appellant and N.F. – that N.F. first stated that she would tell appellant’s wife about their relationship and that he was only responding to that statement. Even assuming that much is true, it does not take away from the fact that appellant was not invited to N.F.’s friend’s house and he did make those statements.

For the all the reasons stated above, I **CONCLUDE** that appellant’s actions on July 23, 2022, 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. For the reasons set forth in Footnote 8, no findings or conclusions will be made as to the sustained charge of N.J.S.A. 2C:33-4 Harassment.

The incident giving rise to the fourth charge of conduct unbecoming a public employee states in relevant part:

Sustained: Violation of LEHPD Rules and Regulations 3.13.5 Truthfulness, resulting in N.J.A.C. 4A:2-2.3(a)(6) . . . in denying that he looked up or researched the license plate of [J.H.] in an attempt to identify him.

LEHTPD Rules and Regulations: 3:13.5 Truthfulness, provides, "Employees are required to be truthful at all times whether under oath or not". The charge related to the IA interview stems from one exchange where appellant was asked about the lookup on J.H. Appellant's position is two-fold. First, appellant testified at the hearing that he has no recollection or knowledge that he ever looked up J.H. on the LEHTPD computer system, and thus his answer in the IA interview was truthful based on his recollection. He contends that this failure to recall resulted in a mistaken answer rather than an untruthful answer. Second, appellant asserts in his closing summation papers that the questions regarding the lookup of J.H. were vague and compound and likely to result in confusion or mistake. Specifically, appellant contends that the question posed asked appellant if he utilized the LEHTPD computer system to look up J.H. *in order to contact him*, which appellant contends that he did not, rather he contacted J.H. through Facebook. Further, it is appellant's position that he had nothing to gain by lying because he was aware that all lookups are documented by the "Spillman" system.

Respondent's position is that appellant was asked if he utilized the LEHTPD system to look up J.H., and he answered that he had not, which was untruthful as evidenced by the "Spillman" report.

In actuality, appellant and respondent are both partially correct. The first question asked appellant whether he ever ran the tag of J.H. in order "to make contact with him that way". The second question asked appellant if he ever ran the license plate of J.H. "to find out who he was". Appellant answered "no" to both questions, without any hesitation or look of surprise, and did not ask for clarification, and in fact started answering the second question before Schilling was even done asking the question. It cannot be interpreted that appellant was surprised or mistaken and I do not find it believable that he forgot that he looked up J.H. given the consequences that would result if he was deemed

to be in violation of the GO. Appellant was taking a risk in doing the lookup, that is not something that is forgotten. Additionally appellant testified that the date of the lookup on J.H. was around the time he learned of N.F.'s sexual relationship with J.H. The timing of the lookup is thus more than coincidental.

Therefore, I **CONCLUDE** that for all the above reasons, that appellant's lack of candor when questioned whether he looked up J.H.'s license plate, rises to the 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 as it relates to this charge.

The incident giving rise to the fifth charge of conduct unbecoming a public employee states in relevant part:

Sustained: N.J.S.A. 2C:33-4 Harassment which results in N.J.A.C. 4A:2-2.3(a)(6) that is Conduct Unbecoming a Public Employee . . . for harassing A.L.M. by removing a cell phone from her hand and causing her to fall.

The Ring video, as previously described above, was submitted to police in support of A.L.M.'s request for a TRO. It constitutes hearsay, was unauthenticated, and A.L.M. did not testify at the hearing as to the event seen on the Ring video. As previously discussed, I must **CONCLUDE** that respondent did not meet its burden in proving appellant's actions in March 2022, gave rise to a level of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6). For the reasons set forth in Footnote 8, no findings or conclusions will be made as to the sustained charge of N.J.S.A. 2C:33-4 Harassment.

Other Sufficient Cause

Appellant was also charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause" for the events of the following dates: January 15, 2022; May 9, 2022; September 25, 2021; July 23, 2022; December 22, 2022; and March 2022. 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.

For the reasons set forth more fully above, and below, as it relates to the incidents that occurred on January 15, 2022, September 25, 2021, July 23, 2022, and December 22, 2022, 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 for the events that took place on those dates. For the reasons stated previously, I **FURTHER CONCLUDE** that the respondent has failed to meet its burden of proof to establish other sufficient cause for the events that took place on May 9, 2022, and in March 2022.

Violations of LEHTPD Rules and Regulations and General Order 2016-001

The appellant has also been charged with various violations of the Rules and the GO for the events that took place on the following dates: January 15, 2022; May 9, 2022; September 25, 2021; July 23-26, 2022; December 22, 2022; and March 2022.

First, petitioner has been charged with violating Section 3:1.7 of the LEHTPD Rules and Regulations for the following: (1) violation of N.J.S.A. 2C:17-3 for conduct on January 15, 2022; (2) for conduct on May 9, 2022; (3) for violation of N.J.S.A. 2C:20-25(e) for conduct on September 25, 2021; (4) for violation of N.J.S.A. 2C:33-4 on July 23-26, 2022, and in March 2022.

Section 3:1.7 of the LEHTPD Rules and Regulations, Obedience to Laws, Ordinances, Rules, and General Orders, states, "Employees shall obey all laws,

ordinances, rules, and general orders of the department". Appellant's actions on January 15, 2022, by purposely and knowingly damaging N.F.'s cellular phone, breaking her side mirror, and taking possession of her key fob are in direct contravention of Section 3:1.7. As such, I **CONCLUDE** that appellant is in violation of Section 3:1.7 by his actions on January 15, 2022, and that the respondent has met its burden of proof on this issue.

As to the events of May 9, 2022, for reasons stated previously – only hearsay evidence was presented with no other independent corroborative evidence. Therefore, I **CONCLUDE** that respondent has failed to meet their burden in proving as it relates to this incident and charge.

Next, appellant was charged with a violation of Section 3:1.7 for violations of N.J.S.A. 2C:20-25(e) – Computer Criminal Activity.

While appellant testified that he did not recall conducting a lookup on J.H., based on the "Spillman" report it is undisputed that the appellant utilized LEHTPD's computer system on September 25, 2021, to run a "full lookup" on J.H. as evidenced by the "Spillman" report.

Based on all of the foregoing, I **CONCLUDE** that that appellant's actions on September 25, 2021, were in violation of Section 3:1.7 and that the respondent has met its burden of proof on this issue.

Appellant was also charged with a violation of Section 3:1.7 for an incident on July 23, 2022. Video footage captures appellant making statements threatening to tell N.F.'s fiancé about her sexual relationship with appellant. While the video footage itself is hearsay, appellant did not dispute that it was him in the video, nor did he dispute the statements that he made, rather he attempted to rationalize them. I **CONCLUDE** that such conduct/communications are a violation of Section 3:1.7.

Furthermore, regarding the incident in March 2022, for reasons stated previously – only hearsay evidence was presented with no other independent corroborative evidence – I **CONCLUDE** respondent did not sustain its burden in proving that appellant is in violation of Section 3:1.7 for the incident in March 2022.

Lastly, appellant was charged with a violation of Section 3:13.5 (Truthfulness), in his IA interview wherein he denied looking up J.H.'s license plate. Given the overwhelming weight of evidence to the contrary, I **CONCLUDE** appellant's actions in conducting a motor vehicle lookup of J.H. was in direct violation of Section 3:13.5 and that the respondent has met its burden of proof on this issue.

PENALTY

In West New York v. Bock, 38 N.J. 500, 522-23 (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 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 Herrmann, 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.

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

- Conduct unbecoming a public employee and other sufficient cause and a violation of the Little Egg Harbor Police Department Rules and Regulations which results in other sufficient cause. Purposeful damage by Officer La Montagne during personal domestic dispute of a cellular telephone and vehicle side view mirror belonging to [N.F.];
- A violation of the LEHPD Rules and Regulations 3:1.7 and the improper use of the computer to gain data on [J.H.] which results in Other Sufficient Cause;
- N.J.A.C. 4A:2-2.3(a)(6) that is Conduct Unbecoming of Public Employee and Other Sufficient Cause and a violation of LEHPD Rules and Regulations 3:1.7 which results in Other Sufficient Cause for harassing actions in a domestic

relationship on July 23, 2022, is proven by the video taken outside of a friend of [N.F.'s] home wherein Mr. LaMontagne claims that he would reveal a video of the sexual activity between himself and [N.F.] in order to embarrass her; and

- Violation of LEHPD Rules and Regulations 3:13.5 Truthfulness, resulting in N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming of Public Employee and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause and Truthfulness in denying that he looked up or researched the license plate of [J.H.] in an attempt to identify him.

The penalty sought by the respondent is removal. The appellant has no prior disciplinary history. 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. The serious nature of appellant's actions not just independent of one another, but over a period of time, warrants imposition of major discipline.

As was 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 adhere to any of these standards. What is most troubling about appellant's behavior was that it was a repeated course of conduct over a significant period of time. To make matters worse, appellant was placed on administrative leave after the January 15, 2022 incident, yet continued to engage in an alarming course of conduct while he was the subject of an active IA investigation. In all of the incidents discussed above, appellant failed to exercise tact, restraint and good judgment. In fact,

he exercised extremely poor judgment, and his actions completely undermine the public's trust and respect.

We expect at all times for law enforcement officers to be credible and candid. An officer's dishonesty in an internal affairs investigation is significant because "inconsistent statements during the course of the internal affairs investigation, [call] into question [the officer's] honesty, integrity, and truthfulness, essential traits for a law enforcement officer." Ruroede v. Boro. of Hasbrouck Heights, 214 N.J. 338, 362-63 (2013).

Based upon the facts set forth in this matter, I **CONCLUDE** that removal is the appropriate discipline for the multiple violations of: N.J.A.C. 4A:2-2.3(a)(6) - Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause; together with numerous violations of LEHTPD Rule and Regulation 3:1.7 – Obedience to Laws and General Orders; and for the violation of LEHTPD Rule and Regulation 3:13.5 – Truthfulness.

ORDER

For the reasons set forth above, it is **ORDERED** that the sustained charges of conduct unbecoming a public employee for the incidents taking place on January 15, 2022, July 23, 2022, and December 22, 2022, are **AFFIRMED**.

For the reasons set forth above, it is **FURTHER ORDERED** that the sustained charges of other sufficient cause for the incidents taking place on January 15, 2022, September 25, 2021, July 23, 2022, and December 22, 2022, are **AFFIRMED**.

For the reasons set forth above, it is **FURTHER ORDERED** that the sustained charges of conduct unbecoming a public employee and other sufficient cause for the incidents taking place on May 9, 2022, and March 2022, are **NOT AFFIRMED AND REVERSED**.

For the reasons set forth above, it is **FURTHER ORDERED** that the sustained charges of violations of the Rules and Regulations for the events on January 15, 2022, September 25, 2021; July 23, 2022, and December 22, 2022, are **AFFIRMED**.

For the reasons set forth above, it is **FURTHER ORDERED** that the sustained charges of violations of the Rules and Regulations for the events on May 9, 2022, and March 2022, are **NOT AFFIRMED AND REVERSED**.

For the reasons set forth above, it is **FURTHER ORDERED** that the following sustained charges of violations of: N.J.S.A. 2C: 17-3 for the events on January 15, 2022; N.J.S.A. 2C:20-25(e) for the conduct on September 25, 2021; and N.J.S.A. 2C:33-4 for the events of July 23, 2022, and March 2022, are **NOT AFFIRMED AND REVERSED**.

It is **FURTHER ORDERED** that the action of the appointing authority removing the appellant from his position as a police officer is **AFFIRMED** and the appeal is **DISMISSED**.

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

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



March 11, 2024

DATE

REBECCA C. LAFFERTY, ALJ

Date Received at Agency:

March 11, 2024 (via email)

Date Mailed to Parties:

March 11, 2024 (via email)

RCL/tat

APPENDIX

WITNESSES

For appellant

Michael La Montagne

Andrew Cirulli

For respondent

James Hawkins, Chief of Police, LEHTPD

Kenneth Schilling, Detective Sergeant, LEHTPD

EXHIBITS

For appellant

None

For respondent

- R-1 Final Notice of Disciplinary Action forms 31-C (dated April 27, 2023) and 31-B (dated April 19, 2023)⁹
- R-2 Little Egg Harbor Township Police Department's Rules and Regulations, dated March 12, 2015
- R-3 Electronic sign off acknowledging receipt of Little Egg Harbor Township Police Department's Rules and Regulations by Michael La Montagne

⁹ The Hearing Officer's Decision, dated April 18, 2023, was attached to the FNDA documents, but was not considered by this Tribunal. Instead, the parties were requested to provide the specific sustained charges identified in the Hearing Officer's report. See attached J-1.

- R-4 Little Egg Harbor Township Police Department General Order #2016-001 re: Computer, Internet and e-Mail Usage, dated March 18, 2016
- R-5 Electronic sign off acknowledging receipt of Little Egg Harbor Township Police Department's General Order #2016-001 re: Computer, Internet and e-Mail Usage by Michael La Montagne
- R-6 Supplementary Report of Investigation, dated January 6, 2023, prepared by Detective Sergeant Ken Schilling
- R-7 Stafford Township Police Department Incident Report, dated January 15, 2022
- R-8 Stafford Township Criminal Complaint, dated January 16, 2022
- R-9 Audio recording of interview with N.F. on August 16, 2022*
- R-10 Video recording of Internal Affairs Interview #1 of Officer La Montagne on December 15, 2022*
- R-11 Video recording of Internal Affairs Interview #2 of Officer La Montagne on December 22, 2022*
- R-12 Lacey Township Police Department External Officer Report, dated May 6, 2022
- R-13 NJDMV report for J.H., dated June 23, 2022
- R-14 Registration Information Inquiry for J.H., dated June 23, 2022
- R-15 Ocean County Sheriff's Office Spillman log printout showing searches for J.H., dated June 24, 2022
- R-16 Little Egg Harbor Township Police Department Shift Log for September 25, 2021
- R-17 Lacey Township Police Department External Officer Report, dated May 9, 2022
- R-18 Copies of various text messages provided by N.F. (45 pages)
- R-19 Lacey Township Police Department body worn camera video from May 9, 2022*
- R-20 Stafford Township Police Department Incident Report, dated July 26, 2022

- R-21 Ring camera video from La Montagne residence from March 2022*
- R-22 New Jersey Domestic Violence Civil Complaint and Temporary Restraining Order, dated July 26, 2022
- R-23 Lacey Township Police Department External Officer Report, dated July 26, 2022
- R-24 Cell phone video provided by N.F. from July 23, 2022*
- R-25 Ring camera video #1 from N.F.'s residence from July 23, 2022*
- R-26 Ring camera video #2 from N.F.'s residence from July 23, 2022*

Joint Exhibit

- J-1 List of sustained charges

* Video and audio files on thumb drive