



STATE OF NEW JERSEY

In the Matter of Joseph Pettit,
Dennis Township, Department of
Public Works

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-1265
OAL Docket No. CSV 0958-21

ISSUED: APRIL 11, 2024

The appeal of Joseph Pettit, Laborer 1, Dennis Township, Department of Public Works, removal, effective November 6, 2021, on charges, was heard by Administrative Law Judge Elaine B. Frick (ALJ), who rendered her initial decision on February 5, 2024. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on April 10, 2024, rejected the recommendation contained in the ALJ's initial decision and acknowledged the attached settlement, which provides for the appellant's resignation in good standing effective November 6, 2021.

In this matter, the parties contacted the Commission subsequent to the issuance of the ALJ's initial decision. Specifically, the parties indicated that they had settled the matter and forwarded the settlement to the Commission for review and acknowledgment. The policy of the judicial system strongly favors settlement. See *Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), cert. denied, 35 N.J. 61 (1961). This policy is equally applicable in the administrative area. A settlement will be set aside only where there is fraud or other compelling circumstances. Upon review of the settlement, the Commission finds that it complies with Civil Service law and rules. As such, the Commission rejects the initial decision and acknowledges the settlement.

ORDER

The Civil Service Commission rejects the initial decision and acknowledges the settlement.

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

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Dulce A. Sulit-Villamor
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Attachments



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 09858-21

AGENCY NO. 2022-1265

**IN THE MATTER OF JOSEPH PETTIT,
DENNIS TOWNSHIP, DEPARTMENT
OF PUBLIC WORKS.**

Joseph Pettit, pro se

**Charles Schlager, Esq., for respondent, Dennis Township Department of Public
Works (Blaney, Donohue & Weinberg, P.C., attorneys)**

Record closed: December 27, 2023

Decided: February 5, 2024

BEFORE ELAINE B. FRICK, ALJ:

STATEMENT OF THE CASE

Respondent, Dennis Township Department of Public Works (the Township or respondent), imposed discipline of removal from employment upon Joseph Pettit (Pettit) for multiple sustained charges under N.J.A.C. 4A:2-2.3(a), including inefficiency, failure to perform duties; insubordination; conduct unbecoming a public employee; neglect of duty; and other sufficient cause, due to alleged conduct in violation of the Township's employee handbook. Pettit challenges the discipline imposed and seeks to be reinstated to his employment as a Laborer 1 for the Township's Department of Public Works.

PROCEDURAL HISTORY

Respondent issued a Final Notice of Disciplinary Action (FNDA) on November 5, 2021, imposing discipline of removal from employment, effective November 6, 2021, upon Pettit. He appealed the determination. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on December 2, 2021, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

The parties appeared for the initial telephonic conference. A discovery schedule was established. Pettit failed to appear for the next scheduled telephonic conference. He failed to provide a timely and reasonable explanation for his failure to appear. The file was marked to be returned to the transmitting agency due to Pettit's apparent abandonment of the matter.

Pettit later explained that he had been hospitalized and was recovering from a medical condition. His file was reinstated and at a subsequent telephonic conference, respondent's counsel indicated that he intended to file a motion in limine regarding an evidence issue. A motion filing schedule was established. Requests to extend the motion filing schedule were permitted. Ultimately, the motion was withdrawn with confirmation by Pettit that he did not intend to rely upon the evidence in question or to attempt to introduce same at the hearing. An Amended Prehearing Order issued.

The hearing was conducted in person at the OAL on June 29, 2023. A written summation submission schedule was established. Requests to extend the briefing schedule were granted, due to issues that arose in obtaining the transcripts. Both sides submitted written summations. Counsel submitted typed transcripts prepared by an automated computer program. The record closed on December 27, 2023, upon review and confirmation of the receipt of the summations and transcript.

FACTUAL DISCUSSION AND FINDINGS

The following information was derived from the testimony and evidence and determined to be undisputed. I thus **FIND** as **FACTS** the following:

Joseph Pettit was employed as a Laborer 1 for the Township in the Department of Public Works (DPW). He was hired in 2017.

The Township issued a Preliminary Notice of Disciplinary Action (PNDA) on October 28, 2021, to Pettit, charging him with having violated multiple sections of N.J.A.C. 4A:2-2.3(a) and having engaged in conduct that violated the Township's employee handbook. (R-C.) An attachment to the PNDA included a continuation of the issued charges and a narrative of an incident on September 10, 2021, giving rise to the charges. The anticipated discipline was removal from employment, pending a hearing. (R-C.)

Pettit did not request a departmental hearing. The Township issued a Final Notice of Disciplinary Action (FNDA) on November 5, 2021, removing Pettit from his employment, effective November 6, 2021. (R-B.) The FNDA listed the sustained charges of:

- N.J.A.C. 4A:2-2.3(a)1, inefficiency, failure to perform duties;
- N.J.A.C. 4A:2-2.3(a)2, insubordination;
- N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee;
- N.J.A.C. 4A:2-2.3(a)7, neglect of duty;
- N.J.A.C. 4A:2-2.3(a)12, other sufficient cause, including, not limited to conduct that violates the Township employee handbook and specifically:
 - R.2.3. attendance and punctuality – failure to properly report an absence;
 - R.1.19. inefficiency, insubordination, conduct unbecoming a public employee, violation of policies, improper use of sick leave, failure or refusal to submit a certification requested by the Township, and other sufficient cause.

(R-B.)

The FNDA had an attachment, still noted to be "Attachment to PNDA 31-A" with a narrative format of the incident giving rise to the charges, having occurred on September 10, 2021. (R-B.) It was alleged that co-worker, Brandon Sibitzky, (Sibitzky) told Pettit what the work orders were for the day and Pettit responded with "who do the fuck do you think you are. [Y]ou ain't my fucking boss, go fuck yourself." (R-B.) Another co-worker, David Blood, described Pettit's outburst as angry and "not joking" and that Blood had to

approach the employees, believing an altercation could arise and instructed them to "knock it off and go their separate ways." (R-B.)

The FNDA attachment further describes that when the DPW Supervisor Frank Laughlin was advised of the incident, he ordered the three employees to write statements about the incident, before going home. Pettit responded "I am not doing a report unless I get paid overtime." (R-B.) He repeated a similar response when advised by Laughlin that he had to write the statement and would not get overtime. Pettit left the building where this exchange occurred, and while proceeding out through the parking lot, followed by Laughlin, Pettit had a verbal exchange with co-workers Blood and Sibitzky. Laughlin advised Pettit to leave to avoid an escalation and Pettit left the facility. (R-B.)

The FNDA attachment further indicates that Blood and Sibitzky filed complaints against Pettit. When Pettit learned of the complaints, he filed a complaint against Blood for using defamatory, derogatory, and inappropriate language. During an interview regarding the incident, Blood did not recall making such statements to Pettit. Shortly after that interview, Pettit requested to meet with a Township council person, who was the Deputy Mayor. During that meeting, and during a subsequent meeting with the Deputy Mayor, Pettit alleged he had an audio recording of Blood's use of defamatory, derogatory, and inappropriate language. It was later determined the alleged recording was not done on the incident date in question. (R-B.)

During the second meeting with the Deputy Mayor, Pettit waited for Supervisor Laughlin to arrive and then stated to him that he was leaving for the rest of the day. Pettit left the building. Laughlin found Pettit's announcement that he was leaving to be "totally inappropriate" and that Pettit needed to request leave time and the leave request would need to be approved. Since Pettit did not indicate the reason he was leaving, it was classified as sick leave, yet there was no mention by Pettit that he was ill or had a doctor's appointment. Pettit was later contacted by the Township administrator, who allegedly advised Pettit he would need to produce a doctor's note to go out on leave. Pettit alleged that he had left at 9:30 a.m. and was using two hours of compensatory time and that the other one and a half hours could be taken out of his pay. Pettit's response was deemed to be refusal to obey a direct order. (R-B.)

The third page of the attachment to the FNDA described a different incident date. It is stated in that attachment page that on July 9, 2020, Pettit had left a voicemail message that he would be absent from work. Later he was allegedly observed by a DPW supervisor to be working at a property doing work for his own landscaping business. Pettit returned to work on July 14, 2020. He was directed to declare the type of leave time he used. Pettit responded it would be sick time. When advised by his supervisor that he had been observed doing landscaping work during the time he claimed to be sick, Pettit became confrontational, making demands that there had to be pictures or physical proof of him moving. Pettit again was confrontational at the end of the shift with his supervisor. He later admitted that he was at the site on July 9, 2020, where he allegedly had seen mowing, but claimed he was there only to speak to an individual about setting up future side jobs. (R-B.)

The Township terminated Pettit from his employment, effective November 6, 2021. (R-B.) Pettit appealed the discipline imposed, contending he should not have been removed and sought to be reinstated to his employment. However, in Pettit's written summation, he now contends that instead of reinstatement to employment, he should be compensated for one year's salary from the date of his termination, estimating that to be \$31,000.

Testimony

David Blood testified for the Township. He has worked for the Township for twenty-two years as a driver and laborer in the DPW. He worked on occasion with Pettit

On September 10, 2021, Blood was at the DPW garage loading fuel into one of the mowers. Co-workers Sibitzky and Pettit were there. It was approximately 1:00 p.m. Blood was not their supervisor but was the most senior employee among the three.

Blood commented that they would be weed whacking then would be done for the day. Sibitzky agreed with him and stated things that needed to be done. Pettit looked at Sibitzky and said, "You're not my fucking boss, fuck you!" Pettit's posture was

"threatening." Blood observed Sibitzky's face and posture to also be "a bit threatening as well." Blood told them to knock it off and go their separate ways. Blood told them to separate because he thought things were going to escalate physically between the two.

Blood then told the DPW Supervisor, Frank Laughlin, what had occurred. Laughlin asked Blood to fill out a report. Blood completed a handwritten one paragraph statement regarding the incident and provided it to Laughlin before Blood left for the day. (R-D3b.)

Blood was aware that Supervisor Laughlin also asked Sibitzky and Pettit to write a report about the incident. He heard Laughlin state to the others that they all needed to write a report.

He acknowledged that during his years of employment in DPW, he has heard others curse while at work.

Brandon Sibitzky testified for the Township. He has been employed by the Township in the DPW for three years as a laborer. His supervisor is Frank Laughlin.

On September 10, 2021, Laughlin told Sibitzky to tell the other employees about what needed to be done. Sibitzky did so, and Pettit told him "Who the fuck are you? You're not my boss!" Sibitzky was told by co-worker Blood that he needed to separate from Pettit and walk away. Sibitzky did that.

Supervisor Laughlin later asked Sibitzky to write a statement. He did that on September 10, 2021. (R-D3a.) His handwritten statement indicates that he was putting diesel fuel in a mower, and he stated to Pettit what the supervisor told them needed to be done and Pettit stated "Who the fuck are you. You[re] not my fucking boss." (R-D3a) Sibitzky wrote "I was just agreeing with Dave [Blood] and Joe [Pettit] went and got pissed off at me." (R-D3a.)

He acknowledged during his testimony that he has heard co-workers curse on occasion. It is done jokingly. He confirmed he never saw Pettit physically strike anyone on the job.

Frank Laughlin testified for the Township. He has been employed by the Township for approximately sixteen years. He started as a laborer and in the early part of 2020 became the supervisor of the DPW. He is in charge of assigning the DPW workers what their duties are for the day. The DPW handles maintenance of the Township roads and roadsides, mowing township property, plowing, trimming roadsides, drain maintenance, and handling basic upkeep of the Township. He acknowledged there have been occasions where he had advised an employee of the tasks to be done, and has had the employee transmit the information to the co-workers.

On September 10, 2021, he returned to the DPW garage where his office is located. He was in his office when Blood, a DPW employee, came in and advised that he had to be a "referee" and that he was not going to play that part anymore. Blood explained what had occurred with Pettit and Sibitzky, and Laughlin told Blood he would need Blood and Sibitzky to write statements.

Laughlin told Blood and Sibitzky they needed to write statements about the incident. He then found Pettit and asked him if he could write a statement and Pettit questioned why he had to do so. When Laughlin told Pettit he needed his statement about what happened, Pettit said he was not writing a statement.

Blood and Sibitzky wrote statements and gave them to Laughlin. It was getting close to the end of the shift, which was at approximately 2:00 p.m. as of that time. He approached Pettit and asked him again to write a statement. Pettit asked if he would be paid overtime and Laughlin told him "no" and he needed Pettit to stay and write his statement. "Pettit refused to stay to write the statement without being paid overtime." (R-D2.)

Pettit went out to the parking lot and seemed agitated, so Laughlin followed him. Pettit started a conversation with co-workers that was "escalating quickly." Laughlin told them to "knock it off" and told Pettit to get into his truck and go home.

On October 21, 2021, Laughlin's office was used for a meeting Pettit had with the Deputy Mayor of the Township and counsel for the Township, Charles Schlager. Laughlin

saw Pettit when the meeting was done and told him what his tasks would be for the rest of the day. Pettit said he was going home then turned and walked out the door. He never indicated what type of leave time he was using or why he was going home. Laughlin testified that Pettit had done the same thing in the past. He will call out or leave work and not ask to do so, and does not specify the type of time he is using for leave, such as vacation time, sick time, or compensatory time.

The following day, on October 22, 2021, Laughlin sent an email to the Township Administrator, Jessica Bishop (TA Bishop). (R-D1.) He was alerting her that Pettit had left work the day prior without indicating what kind of time he was using. Laughlin did so because of Pettit having done the same thing previously, leaving work or calling out, without specifying the leave requested.

Laughlin confirmed that the Township Employee Handbook is distributed to all new employees, at the start of their employment. (R-F.) The Handbook includes the township's policies applicable to employees. Pettit received the handbook. (R-E.)

Policy 2.3, entitled "Attendance & Punctuality" provides procedures to be followed when an employee is unable to work as scheduled. (R-F.) The policy states that absences or lateness are to be reported on a daily basis by the employee to their immediate supervisor. The policy notes "Failure to properly report an absence or lateness may result in non-payment of sick leave time as well as disciplinary action and/or ineligibility for paid leave payment." (R-F.) Laughlin indicated that Pettit failed to follow these provisions of the policy.

Policy 1.19 of the Handbook is entitled "Discipline/Termination." (R-F.) The policy lists reasons when an employee may be subject to discipline, with such discipline being "up to and including termination." (R-F.) Some of the reasons listed are "incompetence, inefficiency or failure to perform duties" and "insubordination." (R-F.) Laughlin indicated that Pettit failed to perform a duty and was insubordinate when he failed to complete a statement about the September 10, 2021, incident when Laughlin specifically directed him to do so. Pettit did not follow the direct order of his supervisor. Laughlin testified Pettit's behavior was "conduct unbecoming a public employee" by conducting himself in the manner that he did, by failing to provide a statement and leaving the premises without telling Laughlin the

purpose.

Laughlin issued an "Employee Disciplinary Report" to Pettit, regarding the incident of September 10, 2021. (R-D.) Checked off as to the nature of the incident were boxes next to the categories of "insubordination" and "failure to follow instructions" and "leaving without permission." (R-D.) Attached with the disciplinary report was Laughlin's statement he authored about the incident of September 10, 2021. (R-D2.) He had done other disciplinary reports regarding Pettit, but could not recall the date or incidents when he had done so. When he completes an employee disciplinary report, he turns it in to the Township's administrator.

Laughlin confirmed that policy 2.4 of the Handbook, entitled "Time Records" indicates that employees are required to record their time worked using the Township's time recording system. (R-F.) Laughlin confirmed that the time clock that was to be used to punch in and out was not functioning during the time of Pettit's employment.

On cross-examination, Laughlin acknowledged that he has cursed at work and has heard others curse. He confirmed he never witnessed Pettit being involved in a physical altercation at work with another employee.

He confirmed that other employees have left work early. If they do so, they are required to ask permission from him and he either approves or disapproves the request. He maintains a logbook to keep track of the days and times employees ask for time off. He marks in the logbook on a daily basis. If he is not in, TA Bishop completes the entries.

Jessica Bishop testified for the Township. She was hired in August 2018 by the Township as the chief financial officer. She still holds that position as well as the position of qualified purchasing agent. She also became the township administrator as of August 2019 and continues to serve in that position. As township administrator she is responsible for daily oversight of matters that do not fall under other department supervisors. She handles human resources matters, employee discipline, timekeeping for payroll, insurance coverage, and serves as liaison between the Township Board and the department heads. She was involved with negotiating a collective bargaining agreement. The Township is a civil service

municipality.

Pettit was a laborer for the Township, and his position is covered under a collective bargaining agreement. TA Bishop confirmed that Pettit received a copy of the Township Handbook when he signed the receipt for handbook on July 6, 2017. (R-E.)

The Township policy has incorporated the civil service process on how disciplinary matters are handled. The PNDA is first issued to the employee who is subject to discipline, such as the PNDA issued to Pettit. (R-C.)

TA Bishop was involved in the drafting of the PNDA and coming up with the charges to be issued. She did not witness the incident. She usually requests from the department head written statements from all the people involved. Here, she got the written reports and summarized them in the PNDA. Based upon the statements provided, she determined that the Township would seek removal of Pettit from his position of employment.

The FNDA was signed by TA Bishop and issued on November 5, 2021. (R-B.) Pettit was removed from his employment, effective November 6, 2021. There were fewer charges listed as sustained charges in the FNDA compared to the PNDA, but the attachment pages from the PNDA remained the same when affixed to the FNDA.

TA Bishop confirmed that she has an open door policy. She knew Pettit from when he was serving as the clean communities coordinator. She did not recall ever having Pettit in her office crying, but he was in her office "angry." She confirmed that the DPW workers do not clock in and out and that none of the Township's departments use time clocks.

Joseph Pettit testified on his own behalf. He indicated that this is a minor incident, only about him cursing at a co-worker. Every other co-worker has cursed on the job or heard someone curse. It is a common thing in the DPW garage. They all joke around and they all curse.

He admittedly got irate on September 10, 2021. Sibitzky was the youngest guy there and should have been doing the weed whacking. They all hate weed whacking. It bothered

Pettit that Sibitzky told him what to do.

Pettit admitted "I cursed, I yelled at the kid, I was mad. I'll admit to that." He did not see a problem with that. He admitted to being angry. He denied that he looked like he was going to approach or hit Sibitzky. He did not attack Sibitzky. They went their separate ways when Blood told them to do so. During Pettit's cross examination of Sibitzky, he apologized to Sibitzky for having raised his voice and having used the "f" word at him. Sibitzky responded "Okay. Yes."

Pettit explained that they had been working a 6 a.m. to 1 p.m. shift for several days due to the pandemic. He confirmed later in his testimony that the shifts ran through to 2 p.m., not 1 p.m. The date of the incident was a Friday, which is the day they do bulk trash pickup which involves lifting up couches, beds, furniture, and household appliances. It is the "worst" day of the week. They had done the bulk pick up in the morning, came back to the garage, the incident occurred, and then they did the mowing and weed whacking.

Pettit said he "was done" after that, meaning he was done for the day, and exhausted. He had no breaks and no lunch break. They had worked straight through, so he was leaving and was not going to stay to fill out a report, especially over the "minor" incident.

Laughlin had approached Pettit while he was in the break room and tried to ask Pettit about what happened and asked him to write a report. Pettit admitted that he told Laughlin he was not staying unless he got paid overtime. He admitted he did not want to stay, and he would not write a report. He admittedly refused to write a report because he was not being paid to do so.

Pettit testified he got angry when he learned he was getting written up because Sibitzky said that Pettit hurt his feelings, so Pettit wanted to leave. After Pettit told Laughlin he was not staying to write a report unless he got overtime pay, he left. He went outside the garage and saw Blood and Sibitzky standing there. Laughlin followed him out and told him to leave. Pettit asserted that when Laughlin told him that, Pettit was walking out into the parking lot, and he did leave to go home. "So that was following an order by my supervisor."

Pettit did stop as he was walking out of the garage into the parking lot and started talking with Blood and Sibitzky who were there. It was not a casual conversation. Pettit admittedly was upset and irritated at the whole thing. The others did not respond to him.

Pettit testified that he went directly home, wrote his report, and turned it in at 5:45 a.m. on Monday morning before he started work for the day.

Pettit confirmed that on October 21, 2021, after meeting with attorney Schlager and the Deputy Mayor in Laughlin's office at the garage, Pettit was angry. He was upset and frustrated from the meeting. Laughlin walked into his office when the meeting was done, and Pettit was sitting there. He told Laughlin he was leaving for the rest of the day and all Laughlin said was "okay." Pettit walked out and left for the day. Laughlin did not ask him anything else. Pettit confirmed that under the Township's policy it is the employee who has the responsibility to request and provide the type of time to be taken.

Pettit received the PNDA. He did not ask for a hearing. He asked for a grievance through his shop steward and that did not get worked out. He then got the FNDA. He appealed his removal.

Pettit explained that he complained to the Deputy Mayor because Pettit lives in the Township and he voted for the Deputy Mayor, who is the Commissioner in charge of public works. The Deputy Mayor was the only one of the seven to nine commissioners to ever talk to Pettit.

It drives him "insane" that everybody curses at each other at work. This was a minor matter. Pettit believes he is a good worker. He had been appointed to serve as the clean communities coordinator previously and did that for about a year until he stepped down from the position. He was sent to college classes by the Township, and received certifications confirming he attended the training. (P-1, P-2, and P-3.)

Credibility Analysis

A fact finder is required to weigh the credibility of witnesses. The fact finder must

determine whether to accept or reject an individual's testimony, based upon their credibility. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). Credibility is the value given to the individual's testimony. It is best described as the quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950), citations omitted.

A credibility determination requires an overall assessment of the witness' story "in 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). A fact finder should consider the witness' interest in the outcome, or any motive or bias. Testimony may be rejected because it is inherently incredible, improbable, inconsistent with common experience, contradicted by other testimony, or overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Pettit's co-workers who testified as direct witnesses of the incident of September 10, 2021, provided consistent testimony. There was no animosity felt from the witnesses towards Pettit, although there was a sense of discomfort or unease detected in their relationship to him and being in his presence. Pettit admitted to cursing and raising his voice and admittedly indicated he was angry that the "young guy" was telling him what to do and had gotten to do mowing instead of the universally hated job of weed whacking. The co-workers' testimony is deemed credible and reliable.

Laughlin's testimony regarding Pettit refusing to complete a statement unless paid overtime is consistent with Pettit's admission to same regarding the incident of September 10, 2021. Laughlin's description of how Pettit walked out on that date and encountered Blood and Skibizky in the parking lot was confirmed by Pettit himself.

Laughlin's testimony likewise is similarly consistent with Pettit's admission to leaving work after the meeting on October 21, 2021, in the DPW garage office, and that Pettit was frustrated and angry and did not provide further information as to his leave. Laughlin's testimony is also deemed credible and reliable.

Pettit admitted to his actions on the dates in question. His contention is that the discipline imposed was not appropriate, given what he believes to have been a "minor" incident and that cursing is done in the workplace regularly. His admissions were appreciated yet diminished by a lack of heartfelt remorsefulness. His testimony was delivered in a forthright manner, more so with forceful righteousness, rather than persuasiveness. He continually had to be redirected to focus his testimony to the judge, rather than turning and directing his commentary in an argumentative manner at counsel and the Township administrator in the hearing room.

Based upon a review of the documentary evidence, and having had the opportunity to observe in person and assess the witnesses' testimony, I **FIND** as further **FACTS**:

On September 10, 2021, Pettit was angry and frustrated that a younger co-worker, Sibitzky, told him the remaining tasks to be done for the day, and Pettit stated in a raised voice and aggressive manner "Who the fuck are you? You're not my fucking boss!" The aggression from Pettit towards Sibitzky was evident to the most senior co-worker present, Blood, who told the men to go their separate ways to deescalate the situation, and they did so.

Pettit admittedly refused to write a statement about the incident when directed to do so by his supervisor, Laughlin, on September 10, 2021. Pettit admittedly was angry about the situation and refused to stay to write the report because he would not get overtime pay, and he was "done" after the day of work. He admittedly walked out of the garage without having written a statement and made remarks towards Blood and Sibitzky in the parking lot, witnessed by supervisor Laughlin, who had to direct Pettit to leave to deescalate the situation. Pettit did leave.

Pettit admittedly was angry and frustrated on October 21, 2021, after his meeting with attorney Schlager and the Deputy Mayor in the DPW garage office. He admittedly told Laughlin that he was leaving for the day and did not request the leave time or advise Laughlin what type of leave time he was using. He stated he was leaving and did so.

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee's rights and duties are governed by the Civil Service Act and regulations promulgated by the Commission. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Service Association v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972), citing Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 145, 147 (1965).

A civil service employee who commits a wrongful act related to their employment is subject to discipline. Such discipline may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2; 11A:2-6; 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 they engage in misconduct related to their duties. N.J.S.A. 11A:1-2(a); 11A:2-20. Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position of employment. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2.

The appointing authority employer has the burden of proof to establish the truth of the major 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); and 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 Consolidated 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 a given conclusion." Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958).

Here, Pettit is alleged to have acted in a manner to warrant imposition of the discipline of removal for having violated multiple charges. Each charge is addressed below.

1. N.J.A.C. 4A:2-2.2(a)1, inefficiency, failure to perform duties

Pettit is alleged to have violated this provision of inefficiency and failure to perform duties for having left the workplace on September 10, 2021, without having completed a written report, in contravention of a direct order from his supervisor. Pettit admittedly left without completing the report due to his anger, his failure to be paid overtime to do so, and that he was "done" and worn out from a hard day at work. I **CONCLUDE** that Pettit admittedly failed to perform a task he was directed to do on September 10, 2021, and thus violated N.J.A.C. 4A:2-2.3(a)1, for failure to perform his duty. I thus **CONCLUDE** the Township's determination that this charge was sustained is **AFFIRMED**.

2. N.J.A.C. 4A:2-2.3(a)2, insubordination

Pettit admittedly was insubordinate on September 10, 2021, by failing to complete the written report as directed to do so by his supervisor, Laughlin. I **CONCLUDE** Pettit's behavior violated N.J.A.C. 4A:2-2.3(a)2, as he was insubordinate on that date, and thus the Township's determination that this charge was sustained is **AFFIRMED**.

3. N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee

The term "unbecoming conduct" has been broadly defined and recognized as conduct that adversely affects the morale or efficiency of the government unit or workplace or has the tendency to destroy the public's respect for public employees and destroy the public's confidence in the delivery of public services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). On September 10, 2021, Pettit admittedly cursed at a younger employee due to his anger and frustration at his perception of being told what to do by a younger co-worker and having had to complete a job task that was less desirable, rather than the younger co-worker being assigned to the job. He admittedly was angry, used foul language directed at the co-worker, and had to be told to walk away from the situation. Likewise, after refusing to write a report, he abruptly walked out, directed comments in a raised voice towards his co-workers, and had to be told to leave to deescalate the situation. Similar

angry behavior admittedly was done by Pettit on October 21, 2021, when he abruptly told his supervisor that he was leaving work on that day and walked out without having been granted permission to do so or take leave.

I **CONCLUDE** the actions, angry statements, and aggression by Pettit on September 10, 2021, adversely affected the morale and efficiency in the workplace. I further **CONCLUDE** such repeated anger and frustration by Pettit on October 21, 2021, and his walking out of the job that day, is behavior that destroys the public's respect and confidence in a public employee to function in the workplace efficiently and appropriately. I thus **CONCLUDE** and **AFFIRM** the Township's determination was appropriate in that Pettit demonstrated conduct unbecoming a public employee on September 10, 2021, and October 21, 2021, in violation of N.J.A.C. 4A:2-2.3(a)6.

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

The Township asserts that Pettit neglected his duty by failing to write the written report and for having walked out of work without obtaining approval to do so on approved leave. These circumstances have been addressed through the affirmation of the charges of N.J.A.C. 4A:2-2.2(a)1, inefficiency, failure to perform duties, and N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming. I **CONCLUDE** this charge of neglect of duty under N.J.A.C. 4A:2-2.3(a)7, shall be **DISMISSED**, as it is repetitive under these circumstances and shall be considered merged with the prior two sustained charges and thus dismissed.

5. N.J.A.C. 4A:2-2.3(a)12, other sufficient cause

The subsection of "other sufficient cause" set forth in N.J.A.C. 4A:2-2.3(a)12 is considered the catchall provision of the regulation. Other sufficient cause has been described as any other conduct, not delineated within the regulation, which would "violate the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." In re Boyd, Cumberland County Dept. of Corrections, CSC Dkt. No. 2019-1198, OAL Dkt. No. CSR 15990-18, Hon. Catherine Tuohy, ALJ; affirmed in final decision, 2019 N.J. CSC Lexis 621. "Other

sufficient cause" is thus conduct otherwise not listed within the eleven causes cited in N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline.

The Township asserts that Pettit's conduct violated the Township's employee handbook, specifically the policy of R.2.3, attendance and punctuality – failure to properly report an absence and R.1.19, inefficiency, insubordination, conduct unbecoming a public employee, and violation of policies for improper use of sick leave, failure to submit a written report, and other sufficient cause. As to the assertion that there is other sufficient cause demonstrated by Pettit's conduct in violation of the handbook policy R.1.19, all of the reasons identified by the Township have already been addressed under the other sections of N.J.A.C. 4A:2-2.3, with sustained findings of violations of inefficiency, failure to perform duties; insubordination; and unbecoming conduct. I **CONCLUDE** that the charge of other sufficient cause, for a violation of R.1.19, is repetitive and thus shall merge and be **DISMISSED** as a reason for demonstrating a violation of N.J.A.C. 4A:2-2.3(a)12, other sufficient cause.

The Township's policy regarding attendance and punctuality, policy R.2.3., failure to properly report an absence, is alleged to have been violated by Pettit by his walking out of work announcing to Laughlin that he was leaving for the day on October 21, 2021. Pettit admittedly did so after becoming angered and frustrated from the meeting with counsel Schlager and the Deputy Mayor. The township's policy requires an employee to report lateness or absences on a daily basis to their supervisor and failure to properly report same may result in non-payment for their leave time, as well as disciplinary action. I **CONCLUDE** that on October 21, 2021, Pettit walked out of work without having properly requested permission to do so from his immediate supervisor, and without specifying the type of leave he sought to utilize for his absence for the remainder of the workday. Thus, I **CONCLUDE** Pettit violated the Township's policy R.2.3, which demonstrates a violation of other sufficient cause, N.J.A.C. 4A:2-2.3(a)12. I **CONCLUDE** that the Township's determination that other sufficient cause was demonstrated when Pettit violated the Township's policy R.2.3, shall be **AFFIRMED**.

PENALTY

It has been determined that Pettit's conduct on September 10, 2021, and October 21, 2021, violated the four charges of N.J.A.C. 4A:2-2.3(a)1, inefficiency, neglect of duty; (a)2, insubordination; (a)6, conduct unbecoming, and (a)12, other sufficient cause, for having violated the Township's attendance and leave policy. If a determination has been made that a civil service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523-524. The past record is said to encompass the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Id. Consideration should also be given as to the timing of the most recently adjudicated disciplinary history. West New York, 38 N.J. 524.

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. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Thus, the theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Id. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of fairness. Id. Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Carter, 191 N.J. at 484. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Id.

No testimony or documentary evidence was presented to indicate that Pettit had a prior history of discipline, but for Laughlin's remark that he previously completed employee disciplinary forms for Pettit, yet had no specific recollection of why he did so or

Pettit's conduct. This is presumably the first discipline imposed upon Pettit during his employment with the Township. There is a third attachment page to the FNDA regarding an incident in July of 2020 regarding Pettit's time and attendance. However, there was no testimony or other supporting documentation presented at the hearing from either side regarding such information. Thus, the alleged time and attendance issue from 2020 is disregarded as any form of prior discipline to consider under the policy of progressive discipline.

The Township asserts that removal of Pettit was appropriate, due to his behavior on September 10, 2021, in the workplace towards his co-worker, his insubordination in failing to complete a written report, and his behavior in leaving the workplace and needing to be directed to leave to deescalate his situation as he was leaving and commenting towards his co-workers. Pettit contends the situation was minor, as nothing physical occurred between the men. He admittedly was angry that the "young guy" told him what to do, and that the young guy got to do mowing, rather than the job of weed whacking which they all did not like to do. He admitted to cursing and raising his voice towards his co-worker. He used aggressive and foul language at his co-worker demanding "Who the fuck are you? You're not my fucking boss!" He had to be told by his more senior co-worker to step away to deescalate the incident. Pettit attempts to downplay his behavior by asserting that everyone has cursed at the workplace and his co-workers admitted same, although they indicated cursing was done in a joking manner and not as an aggressive expletive towards another employee.

Pettit admittedly was angry when he refused to write the report as ordered by his Supervisor and chose to leave the workplace. He admittedly made comments towards his co-workers in the parking lot as he left, requiring his supervisor to direct him to "just leave" to deescalate the situation. He admittedly was angry and frustrated after his meeting in the DPW garage office on October 21, 2021, and walked out simply telling his supervisor he was leaving for the day, without properly requesting leave.

All such behavior and actions by Pettit are unacceptable workplace behavior and demeanor. His behavior, statements, and insubordination, have been found to violate four charges, warranting major discipline. In mitigation of the circumstances, Pettit did

walk away from the incident and his co-workers when he was immediately directed to do so by a senior co-worker who witnessed Pettit's aggressive and demeaning statements. His actions and aggressiveness cannot be condoned, yet the situation is not of the level of egregiousness to warrant removal without regard to progressive discipline. Likewise, his leaving on October 21, 2021, after the meeting without getting approval, was disruptive, inappropriate, and violated the time and attendance policy, but not behavior that was egregious to warrant removal without regard to progressive discipline.

Considering the concept of progressive discipline, and without any prior disciplinary history presented, I am constrained to **CONCLUDE** that removal is not appropriate discipline to impose upon Pettit. This does not diminish the seriousness of his inappropriate behavior and comments on two occasions in the workplace, all with the alarming common thread of Pettit admittedly being angered, frustrated, and acting out inappropriately to his co-workers and being insubordinate to his supervisor. His abrupt choice to leave, without proper authority to do so, at least took himself out of the workplace setting, away from his co-workers. Yet he had to be directed to leave after the September 10, 2021, incident, to deescalate his heightening anger and aggressiveness towards others. Such behavior cannot be tolerated, nor brushed off as minor cursing.

It is acknowledged that Pettit has no prior disciplinary history presented, and he otherwise attempted to better himself in the workplace by having attended courses on point with his duties as a laborer in the DPW. What is troubling is Pettit's failure to recognize and acknowledge the seriousness of his anger management issues at work, and his inability to properly regulate such emotion and aggressiveness when presented with circumstances he perceives as challenging or threatening to his ego and standing in the workplace. Such behavior was demonstrated on September 10, 2021, and was not under control by him as of October 21, 2021, and was demonstrated during the hearing with his challenging temperament.

Taking into consideration the circumstances of Pettit's behavior, his admissions, and mitigation of no prior history of discipline presented, I **CONCLUDE** discipline of a ten working day suspension for inefficiency, failure to perform duties is warranted; as well as discipline of a thirty working day suspension for insubordination; as well as a forty-five

working day suspension for conduct unbecoming; and a fifteen working day suspension for other sufficient cause, for having violated the Township's policies. Collectively, I **CONCLUDE** a total of one hundred working days suspension should be implemented.

In addition, Pettit shall be required to complete an anger management program, consisting of classes, therapeutic sessions, training, or other such programming to address his anger management and appropriate communication and behavior in the workplace and to learn how to regulate himself and possess self-control when posed with challenging circumstances perceived in the workplace. The program may be one offered by the employer or available through the Civil Service Commission Employee Advisory Service, or other private counseling or programming, acceptable to the Township. Such programming shall require Pettit to attend or participate, at a minimum, twenty hours of training or therapeutic type sessions. This may require Pettit to attend programs offered by more than one provider, to ensure he has completed at least twenty hours of such programming, training, or therapeutic sessions targeting anger management and effective workplace communication. Such programming may be provided remotely or online, but shall require at least ten of the twenty mandated hours of in person instruction, meeting, training, or therapeutic time.

All such mandated anger management shall be completed at the sole cost and expense of Pettit. He must provide proof of enrollment or anticipated participation in such programming to the employer within ten days of his return to employment and must demonstrate completion of the program(s) within seventy days of his return to employment. If his attendance at such sessions or programs is required to be done during his work hours, he must utilize any leave time that is available to him, or he must get approval to leave work during the session time and shall not be compensated for his absence from work. If the employer is able to arrange such programming whether on site or presented at another location, and the employer advances the cost for the programming, Pettit shall be required to reimburse the employer within thirty days of presentation of the invoice from the Township to Pettit. I **CONCLUDE** that compliance with the anger management programming is a condition of Pettit's reinstatement to employment and continued employment, subject to further discipline as the Township may choose to so proceed against Pettit, for his failure to comply with same.

ORDER

It is **ORDERED** that the charges sustained by the Township as to Pettit for violating N.J.A.C. 4A:2-2.3(a)1, inefficiency, neglect of duty; (a)2, insubordination; (a)6, conduct unbecoming, and (a)12, other sufficient cause, for having violated the Township's attendance and leave policy, are **AFFIRMED**.

It is **ORDERED** that the charges of N.J.A.C. 4A:2-2.3(a) for neglect of duty and for other sufficient cause on the basis of violation of Township policy R.1.19, have been merged and **DISMISSED**.

It is **ORDERED** that the discipline of removal imposed by the Township upon Pettit under the FNDA of November 5, 2021, shall be **REVERSED** and **VACATED**.

It is **FURTHER ORDERED** that the discipline of a collective one hundred working day suspension shall be imposed upon Pettit for having violated the sustained charges identified herein.

It is **FURTHER ORDERED** that Pettit must attend anger management programming as set forth above, with a minimum of twenty hours of sessions or training time, ten of which must be in person, at Pettit's sole cost and expense, within the time frame as specified above, as a condition of his reinstatement to employment and continued employment. In the event of non-compliance with this requirement by Pettit as set forth above, the Township may choose to proceed with discipline as it deems fit.

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.



February 5, 2024
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EBF/gd

APPENDIX OF PROCEEDING

WITNESSES

For petitioner/appellant

Joseph Pettit

For respondent

David Blood

Brandon Sibitzky

Frank Laughlin

Jessica Bishop

EXHIBITS

For petitioner/appellant

- P-1 Rutgers Office of Continuing Professional Education, Clean Communities Certification Program completion certificate, October 2020
- P-2 Rutgers Office of Continuing Professional Education, Irrigation Systems: Repair & Maintenance, certificate of completion, February 27, 2020
- P-3 Rutgers Office of Continuing Professional Education, Tree Pruning certificate of completion, February 20, 2020

For respondent

- R-A Rice Notification November 5, 2021
- R-B FNDA November 5, 2021
- R-C PNDA October 28, 2021
- R-D Employee Disciplinary Report, incident date September 10, 2021
 - R-D1 Email statement October 22, 2021, by DPW Assistant Supervisor Frank Laughlin
 - R-D2 Statement September 13, 2021, by DPW Supervisor Frank Laughlin
 - R-D3a Statement September 10, 2021, by Brandon Sibitzky
 - R-D3b Statement September 10, 2021, by David Blood

OAL DKT. NO. CSV 09858-21

R-D3c Statement September 10, 2021, by Joseph Pettit

R-E Receipt for employee handbook, July 6, 2017

R-F Township of Dennis Employee Handbook