STATE OF NEW JERSEY

In the Matter of Eric Adams,
City of Newark

CSC Docket No. 2023-228
OAL Docket No. CSV 06620-22

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: MAY 22, 2024

The appeal of Eric Adams, Assistant Director of Finance, City of Newark, of his removal, effective June 28, 2022, on charges, was heard by Administrative Law Judge Leslie Z. Celentano (ALJ), who rendered her initial decision on April 15, 2024, upholding the removal. No exceptions were filed.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on May 22, 2024, accepted and adopted the ALJ's Findings of Fact and Conclusions and her recommendation to uphold the removal.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Eric Adams.

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 22ND DAY OF MAY, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Dulce A. Sulit-Villamor
Deputy Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 06620-22
AGENCY DKT. NO. 2023-228

IN THE MATTER OF ERIC ADAMS, CITY OF NEWARK, DEPARTMENT OF FINANCE.

Robert R. Cannan, Esq., for appellant (Markman & Cannan, LLC, attorneys)

Christopher K. Harriott, Esq., for respondent (Florio Kenny Raval, LLP, attorneys)

Record Closed: March 1, 2024 Decided: April 15, 2024

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE

Appellant, Eric Adams (appellant or Adams), appeals the decision of respondent, City of Newark (respondent or City), removing him effective June 28, 2022. By memo dated June 22, 2022, from the business administrator, Mr. Pennington, appellant was advised that he was suspended pending the outcome of an investigation regarding a communication sent to the Mayor's chief of staff on June 14, 2022. In the Final Notice of Disciplinary Action respondent advised appellant of the following sustained charges:

N.J.A.C. 4A:2-2.3(a)(1)—Incompetency, inefficiency or failure to perform duties

N.J.A.C. 4A:2-2.3(a)(2)—Insubordination

N.J.A.C. 4A:2-2.3(a)(3)—Inability to perform duties

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

PROCEDURAL HISTORY

A departmental hearing was not held and nothing in the record indicates that appellant had requested a hearing. By Final Notice of Disciplinary Action dated July 27, 2022, appellant was removed effective June 28, 2022.

The matter was transmitted to the Office of Administrative Law on August 3, 2022, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

A telephone conference was held on November 3, 2022, during which appellant indicated he would be seeking counsel to represent him. Another telephone conference was scheduled for March 6, 2023; however, neither party dialed in for the call. Appellant secured counsel, and a telephone conference was held on August 23, 2023. While acknowledging that proceedings he filed in federal court remained pending, appellant wanted a hearing date in this matter, and so the hearing was scheduled for October 26, 2023, and was held on that date. A post-hearing brief on behalf of respondent was received on November 17, 2023. No post-hearing brief was filed by appellant, and after allowing time for him to do so, the record closed on March 1, 2024.

ISSUES

1. Whether respondent has proven the charges by a preponderance of the credible evidence.

2. Whether the penalty of removal effective June 28, 2022, was justified and reasonable if a charge or charges are sustained.

FACTUAL DISCUSSION AND SUMMARY OF TESTIMONY

What follows is not a verbatim accounting of the testimony, but rather a summary of the testimonial and documentary evidence I found to be relevant to resolving the issues in this matter.

Eric Pennington is the business administrator for the City of Newark, a position he has held since July 1, 2018. He is a licensed attorney in New York and New Jersey and is active but not current with his continuing legal education (CLE) requirements. Prior to the lapse in CLE, he was active. Mr. Pennington attended Rutgers Law School. He was a municipal court judge in Orange for ten years and is currently the chief operating officer of the City. He is responsible for overseeing 3,000 employees, 1,000 temporary workers, and the City's budget. He reports directly to the mayor. Each department head reports to him, and the Office of Administration, Office of Management and Budget, and Office of IT do as well. He is also the appointing authority for the City and hires and fires employees and imposes discipline where required.

Pennington knows the appellant, whom he described as the former assistant finance director. Appellant reported to the director of finance and chief financial officer, Ms. Smith, who in turn reports to Pennington.

In June 2022 he learned of an email that appellant had sent to Amiri Baraka ("Baraka"), who is the chief of staff to Newark mayor Ras J. Baraka ("the Mayor") and the Mayor's brother. Mr. Baraka assists with running the City and gives advice and counsel to the Mayor. He is "the most confidential person and the Mayor's right hand man." Baraka reported that he had a concerning text or email that was entirely inappropriate and asked Pennington how to proceed.

Pennington identified Baraka's email address and indicated that Baraka has emailed him from that address before.

Pennington testified that he was "stupefied" to see the email, which he felt was entirely inappropriate and warranted serious action. He determined then to suspend appellant. He also made the Mayor aware at some point and spoke to the corporation counsel, Kenyatta Stewart, about the matter. He felt that because of appellant's position and the inappropriateness of the communication, appellant could not continue in a significant role in the City. He found the content of the email threatening.

Pennington testified that the City has an antiviolence-in-the-workplace policy and that appellant's email violates that policy and could result in discipline up to and including termination.[1] He testified that he found a few of the statements in the email threatening, including, "don't give a FCK" and the "digging a grave" comment. Appellant had previously told Mr. Pennington that he had been shot some years ago so these situations don't concern him, and he can take care of himself. Pennington indicated that he has lost confidence in appellant as an employee and questions whether he has the sound judgment required of his position and a representative of the City of Newark. Appellant had been the second-in-command in the Finance Department and was entrusted with sensitive and confidential information at all times. His email message to the chief of staff was inappropriate and offensive, and he used a colloquial, derogatory term in saying "Nigga." This shows a lack of judgment and inability to hold a high position in the City. Racially offensive language is prohibited in City policy and violates the antiharassment and antidiscrimination policy.[2]

On June 22, 2022, Pennington directed Ms. Daniels to send a memo (R-2) suspending appellant pending the outcome of the investigation of the communication. The suspension was indefinite. Pennington testified that, to his astonishment, appellant came into work while suspended, and that he never authorized him to return. This solidified his belief that appellant could not hold the position, and he then took action to terminate him.

[1] The FNDA does not charge a violation of this policy.
[2] The FNDA does not charge a violation of this policy.

On June 27, 2022, a letter was sent to appellant (R-3) terminating his employment. It came from the director of personnel, and Pennington directed that it be sent.

The Final Notice of Disciplinary Action (R-4) was dated July 27, 2022, and effective June 28, 2022. Pennington directed that it be completed and served on appellant, and indicated that the charges were enumerated. He agreed that the copy provided was unsigned, but believes that appellant did sign one. He was not aware that appellant ever asked for a department hearing, and testified that his termination had nothing to do with the lawsuit appellant still had pending against the City or his support of political rivals of the Mayor.

On cross-examination, Pennington agreed that R-2 says nothing about possible termination, and also agreed that the memo refers to a June 14, 2022, text, but the text was actually on June 15, and it was Baraka texting him the content of the email from the prior date. Pennington also agreed that the FNDA indicated that charges were continued on another page, but there was no other page attached, and ultimately no charges regarding violation of the antiharassment policy or the antidiscrimination policy are enumerated. He agreed that there was no mention in the FNDA about City policy violations and he does not recall if there was an additional attached page with details that may have related to those violations. He also agreed that there was no report of the investigation done here.

Pennington also agreed that there had been multiple other occasions where employees had threatened other employees, but he stated that the fact that the threat was made to the Mayor's chief of staff was not the primary issue here; rather, it was the person making the threat. That was the greatest concern here, not the recipient of the threat. He asserted that even though the email was sent at 7:58 a.m., outside of work hours, employees at that level cannot conduct themselves that way.

On redirect examination, Pennington testified that the document at issue is an email of June 15, 2022, and that the chief of staff showed it to him on his phone. The investigation consisted of reviewing the message, speaking with the chief of staff about the message and his reaction to it, and determining as business administrators that the

message was inappropriate. He did not need more information in deciding to take action against appellant and felt that termination was sufficiently supported based on all the charges. The memo was sent advising appellant of his suspension (R-2) until the investigation was complete. Suspension, however, means do not come to work, and there is no need to make that any clearer to appellant or anyone else. The conduct is definitely conduct unbecoming in his view and also violates City policy. Pennington added that appellant returning to work while suspended expedited his decision to terminate him because no one had any idea why he showed up at the office, and they were concerned as to what his intentions were.

Eric Adams testified that he has never spoken to anyone conducting an investigation into this matter. He is sixty-four years old and has an engineering degree from Rutgers, as well as a master's degree in business administration, also from Rutgers. He worked in economic development and the enterprise zone for Mayor Booker. In 2014 he became assistant finance director. He had to test for the position and tied for first place with another individual. He became assistant finance director in December 2014 or January 2015. His day-to-day work included looking over contracts the City entered into, purchase orders, and some auditing. He reported to Ms. Smith, but she was out at times, so he was often acting finance director. He indicated that he is a sixty-year resident of Newark and has been involved in Newark politics for fifty years because his mother was a district leader, and he has helped in every election since he was ten years old.

Adams testified that the campaign offices for the Mayor's team and the people he was working with were across the street from each other. He said that there was constant banter and yelling back and forth, and he testified that he saw the chief of staff on June 14 after the election and that he felt as though "he and the mob were going to fight" him (Adams). Adams said that he ran outside and pushed his candidate back into the office, then slammed the door and locked it. He said that there was a mob outside the other headquarters that included the chief of staff, the Corporation Counsel, and the deputy mayor, and that they remained outside taunting his group, making threats and saying things like, "you're going to lose your jobs." Adams indicated that he did not speak to the chief of staff that night, but sent an email the next morning. He testified that the email was personal and not related to work, and that he has emailed the chief of staff on a

personal level before, maybe twenty times. He testified that the purpose of the email was congratulatory, and then he referred to the mob threatening him the night before and indicated that the chief of staff had been yelling into a bullhorn. He also testified that "Nigga" is a term of endearment with friends when you are joking. He was not going to cause harm to anyone, and agreed that he told Pennington he had been shot in a robbery

as a teenager. He also agreed that he reported to work the rest of the week after the email and learned of his suspension the following Monday. He was never interviewed and never told that his suspension was without pay; indeed, he thought he would be paid, but he was not. No one asked him any questions regarding the West Ward campaign office incidents, but he did tell Daniels, the assistant business administrator, about it. He indicated that when he did not get his paycheck, he went to the City to see why he was not paid, and went back one other time because he needed something from his office to finish a report. He testified that there was a corrective action plan he was working on that would have meant $125 million in grants to Newark, and the report needed to go to the State and to the federal government. He said that he would have been blamed if it was not done, so he went back to his office while suspended to finish that report. He indicated that the guard let him into his office, and he got the audit book and then left. Adams indicated that he had access to emails while suspended. He also agreed that he never did submit the report, but was "working on it." He said that once he was terminated, he did not send the report anywhere. He wants to go back on the job for another year and a half until he can retire.

On cross-examination, Adams testified that a reasonable person would not be threatened by reference to a grave, testifying that "it's a saying" in Newark. He also testified that using the word "Nigga" is appropriate because it's a "term of endearment" if you are black. He also indicated that he was not aware that he could request a hearing when suspended. Adams asserted that his termination was for "pretextual reasons" and that it was retaliation for filing his previous lawsuit.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act and regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:2-1.1 to 4A:2-6.3. A civil service employee who commits a wrongful act related to his or her duties or who gives other just cause may be subject to major discipline. N.J.S.A. 11A:2-6, -20; N.J.A.C. 4A:2-2.2, -2.3.

In an appeal such as this from a disciplinary action that resulted in the termination of employment, the appointing authority has the burden of proving the charges upon which it relied by a preponderance of the competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. 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). Preponderance may also be described as the greater weight of the credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Credibility, or, more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself, as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954). Both guilt and penalty are re-determined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

In the within case, appellant was charged with incompetency, inefficiency or failure to perform duties; insubordination; inability to perform duties; conduct unbecoming a public employee; neglect of duty; and other sufficient cause pursuant to N.J.A.C. 4A:2-2.3(a).

Conduct Unbecoming a Public Employee

"Conduct unbecoming" a public employee is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has

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

I **FIND** that appellant's conduct in sending an offensive, threatening, and disrespectful email to his supervisor was violative of any standard of decency and good behavior, and adversely affected the morale and efficiency of the workplace. This type of behavior can serve to destroy the public's respect for and confidence in public employees. I **CONCLUDE** that respondent has met its burden of proving by a preponderance of the credible evidence that appellant's conduct supports the charge of conduct unbecoming, N.J.A.C. 4A:2-2.3(a)(6).

Insubordination

Insubordination has been defined to include acts of non-compliance, non-cooperation, and affirmative acts of disobedience. Here, Adams sent a patently offensive email to a supervisor which was not justified under any scenario. Then, after being suspended, he chose to return to the City offices without authorization, purportedly to finish a report he never did finish, absurdly suggesting that he was required to continue his work while suspended. This conduct was disruptive, and, I **CONCLUDE**, an act of insubordination, N.J.A.C. 4A:2-2.3(a)(2).

Neglect of Duty; Incompetency, Inefficiency or Failure to Perform Duties; Inability to Perform Duties

Neglect of duty has been interpreted to mean that "an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, 2009 N.J. AGEN LEXIS 112, at *10 (Feb. 5, 2009) (citation omitted), adopted, 2009 N.J. AGEN LEXIS 988 (Mar. 11, 2009). The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job. In the within matter, I **CONCLUDE** that the appointing authority has failed to prove by a preponderance of the credible evidence the remaining charges of incompetency, inefficiency or failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1), inability to perform duties, N.J.A.C. 4A:2-2.3(a)(3), and neglect of duty, N.J.A.C. 4A:2-2.3(a)(7), and those charges should be dismissed.

Other Sufficient Cause

I **FURTHER CONCLUDE** that appellant has given other sufficient cause for disciplinary action, and that the appointing authority has demonstrated by a preponderance of the credible evidence that the charge of a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, must be sustained.

When dealing with the question of penalty in a de novo review of a disciplinary action against a civil service employee, the Civil Service Commission is required to reevaluate the proofs and "penalty" on appeal based upon the charges. N.J.S.A. 11A:2-19; Henry, 81 N.J. 571; Bock, 38 N.J. at 519.

In a disciplinary proceeding, an employee's past record "may be resorted to for guidance in determining the appropriate penalty for the current specific offense." Bock, 38 N.J. at 523. This past record includes "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously called to the attention of and admitted by the employee." Id. at 524. Prior disciplinary actions against Adams consisted of two suspensions, one for three days in 2015/2016 and another for four days in 2019. Both suspensions were for conduct unbecoming a public employee and insubordination. Those suspensions should have served as sufficient warning to appellant that any future infractions could result in removal. The discipline imposed must be reflective of the gravity of the current specific offense, and I **CONCLUDE** that appellant's egregious conduct towards his superior justified respondent in taking disciplinary action against appellant, and based upon the totality of the circumstances and consistent with the concept of progressive discipline and the seriousness of the offense, in imposing the penalty of removal.

ORDER

It is hereby **ORDERED** that appellant's removal, effective June 28, 2022, based upon charges of insubordination, conduct unbecoming a public employee, and other sufficient cause is **AFFIRMED**. As the appointing authority has not met its burden of proving the charges of incompetency, inefficiency or failure to perform duties; inability to perform duties; and neglect of duty by a preponderance of the competent and credible evidence, it is **ORDERED** that those charges be and are hereby 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. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 15, 2024
DATE

LESLIE Z. CELENTANO, ALJ

Date Received at Agency: April 15, 2024

Date Mailed to Parties: April 15, 2024

dr

APPENDIX

WITNESSES

For Appellant:

Eric Adams

For Respondent:

Eric Pennington

EXHIBITS

For Appellant:

None*

For Respondent:

R-1 Text or email from appellant to Baraka

R-2 Suspension memo dated June 22, 2022

R-3 Employment termination letter dated June 27, 2022

R-4 Final Notice of Disciplinary Action dated July 27, 2022

*Appellant emailed a link to a video and pictures with no date or time stamps which he indicated were "for discovery." No pictures or videos were offered into evidence during the hearing.