



## STATE OF NEW JERSEY

DECISION OF THE  
CIVIL SERVICE COMMISSION

In the Matter of James Corcoran,  
Fair Lawn Police Department

CSC Docket No. 2024-338  
OAL Docket No. CSR 08527-23

ISSUED: JULY 3, 2024

The appeal of James Corcoran, Police Lieutenant, Fair Lawn, Police Department, removal, effective August 15, 2023, on charges, was heard by Administrative Law Judge Daniel J. Brown (ALJ), who rendered his initial decision on May 22, 2024. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, as well as relevant portions of the video in evidence, the Civil Service Commission (Commission), at its meeting on July 3, 2024 did not adopt the ALJ's recommendation to uphold the removal. Rather the Commission reversed the removal.

In the ALJ's initial decision, he dismissed portions of the charges dealing with the appellant's alleged physical mishandling of a detainee. Upon its *de novo* review of the record, the Commission finds nothing in the record evidencing that dismissal was improper. Additionally, the ALJ found that:

Detective Jonnese Arrington of the Bergen County Prosecutor's Office investigated the internal affairs complaint. Detective Arrington testified that during her investigation, appellant provided statements which the investigator found to be false. Appellant told Detective Arrington that D.U. was being uncooperative, belligerent, and banging on the cell door and that this caused appellant to enter the processing room. However, the video footage showed that prior to appellant entering the processing room, D.U. was not acting in an uncooperative or belligerent manner. Instead, D.U. appeared to be dozing off until appellant entered the

processing room. At that point, appellant and D.U. engaged in a verbal argument. Additionally, appellant stated during the investigation of the internal affairs complaint stated that he removed the shoelaces from D.U.'s sneakers prior to giving the sneakers to D.U. The video showed that D.U. was given his sneakers with shoelaces in them while D.U. was in the holding cell. Appellant also admitted this fact during his testimony.

As such, he upheld the charges of falsification. Upon its review, the Commission cannot agree. Its review of the record, including the relevant portions of the videos, indicates that the ALJ's finding that the appellant provided false information that the detainee "was being uncooperative, belligerent, and banging on the cell door and that this caused appellant to enter the processing room," since the detainee appeared to be "dozing" at that time is not supported. In this regard, the relevant portions of the video show, albeit without audio, that at approximately 3:36 the handcuffed detainee is brought into the *holding room* and the door is closed. Between that time and approximately 3:42 he remains there until an officer enters, leaving the door open, uncuffs the detainee and takes his possessions. During this time, the detainee appears to be talking to the officer, gesturing and somewhat animatedly interacting with the officer. For most of the time after the officer leaves, with the door remaining open, the detainee paces around the room as well as sits, gestures with his arms and appears to be getting increasingly agitated as he appears to continue to converse with or talk at officers out of view. Just after 3:55, the detainee leaves the holding room and returns less than two minutes later with a ripped shirt and a bloodied lip. It is also noted that there is no video evidence in the record to refute that the appellant did not enter the adjacent *processing room* at some point during the above described periods and witnessed some or all of the detainee's behavior in the holding room prior to the altercation. Thus, it seems more likely than not that whenever the appellant entered the *processing room* before the altercation, he witnessed the detainee acting in this manner, which certainly is not "dozing," but more accurately described as, at least, animated.<sup>1</sup> As such, the Commission cannot uphold the charges against the appellant that he offered false information when he stated that the detainee "was being uncooperative, belligerent, and banging on the cell door and that this caused appellant to enter the processing room."

Moreover, while both the video evidence and the appellant's admission support that he did not remove the detainee's shoelaces initially, given the circumstances, the Commission does not find that statement to support the charge of falsification. The appellant's statement was provided to the investigator many months after the incident and while, clearly, every detail is important, the fact that the appellant did not accurately indicate that the detainee was initially given back his sneakers and only subsequently were the laces removed, does not seem to have been a critical part of the incident. While it may be that the giving back of the sneakers with the laces

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<sup>1</sup> The detainee does appear "dozing" for large stretches of the video in evidence, but all of this occurs after the altercation.

was a violation of some policy or procedure, the record does not evidence that the appellant was charged with such infraction. Rather, the fact that the appellant inaccurately reported that detail, which, given that the thrust of the investigation was apparently regarding the alleged use of force against the detainee, and not focused on the status of his sneakers, the appellant misreporting this detail many months later does not persuade the Commission that such inaccuracy rises to the level of a false statement that requires disciplinary sanction. Accordingly, the Commission finds that the charges underlying that statement are not sustained.

Additionally, the Commission notes that it rejects the appellant's exceptions filed in this matter regarding *N.J.S.A.* 40A:14-147. The Commission finds that the ALJ properly analyzed and applied *N.J.S.A.* 40A:14-147 in this matter and, had the Commission not dismissed the charges as per above, there would be no basis to dismiss any of the charges based on *N.J.S.A.* 40A:14-147.

Finally, the Commission notes that the appointing authority argues in its reply that the removal should be upheld since the appellant has been designated as a "Brady" officer based on his lack of candor and thus, cannot successfully perform his duties. *See Brady v. Maryland*, 373 U.S. 83 (1963); *See also, In the Matter of Victor Vasquez, et al.*, Docket No. A-3428-20 (App. Div. May 23, 2024). In this regard, the Commission disagrees as it has reversed the charges regarding the appellant's alleged false statements.<sup>2</sup>

Since the removal has been reversed, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from the first date of separation without pay until the date of actual reinstatement. Further, as the appellant has also prevailed, he is entitled to reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses the removal and grants the appeal of James Corcoran.

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<sup>2</sup> The Commission makes no determination as to the status of the appellant's "Brady" designation going forward.

The Commission orders that the appellant be granted back pay, benefits, and seniority from the appellant's first date of separation without pay to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for the appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 3<sup>RD</sup> DAY OF JULY, 2024




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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 08527-23

AGENCY DKT NO. 2024-338

**IN THE MATTER OF JAMES CORCORAN,  
FAIR LAWN POLICE DEPARTMENT.**

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**Marcia J. Mitolo, Esq.,** for appellant James Corcoran (Limsky Mitolo, attorneys)

**Gregory A. Randazzo, Esq.,** for respondent Fair Lawn Police Department (Cleary,  
Giacobbe, Alfieri, Jacobs, LLC, attorneys)

Record Closed: May 15, 2024

Decided: May 22, 2024

BEFORE, **DANIEL J. BROWN, ALJ:**

**STATEMENT OF THE CASE**

Appellant appeals from the decision of the respondent to remove him from his position as a Police Officer on charges of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7) and other sufficient cause relating to an allegation of improper treatment of a detainee. The charge of other sufficient cause includes an allegation of misconduct and the failure to follow departmental policies regarding use of force, truthfulness, and the temporary detention of an inmate in violation of N.J.A.C. 40A:14-147. Should respondent's removal of appellant be sustained? Yes. Respondent has established by a preponderance of the competent, relevant, and credible evidence that the appellant was untruthful while giving

a statement to an internal affairs investigator during an investigation of the treatment of a detainee. Appellant's removal is warranted because appellant knowingly made false statements during the internal affairs investigation, calling into question his honesty, integrity, and truthfulness, which are necessary traits for a law enforcement officer.

### **PROCEDURAL HISTORY**

On January 12, 2023, a Preliminary Notice of Disciplinary Action was filed seeking appellant's removal. The parties stipulated that appellant was served the Preliminary Notice of Disciplinary Action on January 12, 2023. Appellant requested a departmental hearing which was held on April 17, 2023. Thereafter, a Final Notice of Disciplinary Action was issued on August 9, 2023, sustaining the charges in the PNDA and removing appellant from his position effective August 15, 2023. Appellant appealed that removal action on August 10, 2023. The matter was filed simultaneously with the Civil Service Commission and the Office of Administrative Law (OAL), under the expedited procedures of P.L. 2009, c. 16, N.J.S.A. 40A:14-202(d), for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The appeal was perfected on August 29, 2023, and the case was assigned to me.

Telephonic case management conferences were held on September 12, 2023, October 17, 2023, and October 25, 2023. On October 27, 2023, via a letter from appellant's counsel appellant waived the requirement that a final decision be issued within 180 calendar days of appellant's suspension without pay pursuant to N.J.S.A. 40A:14-201b(1). The hearing was conducted on November 1, 2023, November 6, 2023, and November 30, 2023. The parties then filed written summations. Oral argument on the written summations was held on March 18, 2024. On May 6, 2024, the parties submitted a joint stipulation. On May 15, 2024, the parties submitted a copy of the videos that were played during the hearing, and the record was closed.

### **FACTUAL DISCUSSION**

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the

witnesses and assess their credibility, I **FIND** the following **FACTS**:

D.U. was arrested by Officers Rodriguez and DiGuglielmo of the Fair Lawn Police Department in the early morning hours of November 1, 2021. He was brought to the Police Department to be processed and placed in a holding cell. The holding cell was connected to the processing room. Appellant was the on-duty tour commander and was therefore responsible for D.U. while he was a detainee. Appellant came into the processing room while D.U. was in the holding cell. Video footage showed that petitioner allowed D.U. to have his sneakers with the shoelaces in them.

Video footage showed that the door to the holding cell was not closed while D.U. was being processed. The video shows that appellant closed the door to the holding cell when the processing of D.U. was complete.

While petitioner was in the processing room and D.U. was in the holding cell, there was a verbal altercation between appellant and D.U. The video shows that D.U. exited the holding cell and entered the processing room. The verbal altercation between D.U. and appellant escalated into a physical altercation. In his complaint against appellant, D.U. stated that appellant grabbed him by his red tee shirt and ripped him from the holding cell. Video of the holding cell that was played at the hearing shows that D.U.'s statement was false. The video footage of the holding cell did not show appellant grabbing D.U. by his tee shirt and ripping him from the holding cell. In the complaint, D.U. further alleged that Officers Rodriguez and DiGuglielmo tried to stop appellant's assault of D.U. This statement is contradicted by subsequent statements by D.U. where D.U. claimed Officers Rodriguez and DiGuglielmo did not do anything to prevent the appellant from assaulting him.

D.U. provided a statement regarding the incident where he alleged that appellant grabbed him by his shirt causing his shirt to rip. According to D.U.'s statement, appellant struck him with a closed fist in the face and threw him against a back wall in the processing room. In a different statement, D.U. said that appellant punched him in the face and then ripped his shirt. The video footage did not show what occurred in the processing room. The video showed D.U. in the holding cell before and after the incident and showed that

D.U.'s shirt was ripped, his neck was scratched, and his lip was bloodied as a result of the incident with appellant. D.U. did not testify at the hearing and no explanation was provided regarding the inconsistencies between his complaint, the video, and his statements to Detective Arrington. Because of those inconsistencies, I **FIND** that D.U.'s statements regarding the incident lack credibility and I give those statements little to no weight. Appellant testified that, as he attempted to guide D.U. back to the holding cell, D.U. pushed appellant's arm away. Appellant stated that he then placed D.U. in a compliance hold. According to appellant, once D.U. became compliant, appellant released the hold and escorted D.U. back to his cell. Officers Rodriguez and DiGuglielmo were present in the processing room at the time of the incident. Officers Rodriguez and DiGuglielmo both testified that they did not see appellant strike D.U. I **FIND** appellant's testimony on this issue to be credible. I find that appellant did not assault D.U. but that he placed D.U. in a compliance hold after D.U. smacked appellant's hand as appellant attempted to guide D.U. back to his holding cell.

Appellant testified that following the incident he instructed the dispatcher to call for medical aid for D.U. According to appellant, when he advised D.U. that medical aid was on the way, D.U. stated that he did not want medical aid. Instead, D.U. told appellant that he wanted information on how to file an internal affairs complaint. Appellant testified that he instructed the dispatcher to cancel the request for medical aid for D.U. based upon D.U.'s statement that he did not want medical aid. The Computer Aided Dispatch report generated as part of D.U.'s arrest does not show that medical aid was ever called for D.U. or that the medical aid was ultimately canceled.

D.U. was ultimately provided with information on how to file an internal affairs complaint and he filed a complaint against appellant. Detective Jonnese Arrington of the Bergen County Prosecutor's Office investigated the internal affairs complaint. Detective Arrington testified that during her investigation, appellant provided statements which the investigator found to be false. Appellant told Detective Arrington that D.U. was being uncooperative, belligerent, and banging on the cell door and that this caused appellant to enter the processing room. However, the video footage showed that prior to appellant entering the processing room, D.U. was not acting in an uncooperative or belligerent manner. Instead, D.U. appeared to be dozing off until appellant entered the processing



room. At that point, appellant and D.U. engaged in a verbal argument. Additionally, appellant stated during the investigation of the internal affairs complaint stated that he removed the shoelaces from D.U.'s sneakers prior to giving the sneakers to D.U. The video showed that D.U. was given his sneakers with shoelaces in them while D.U. was in the holding cell. Appellant also admitted this fact during his testimony.

The parties stipulated that on September 29, 2022, the Bergen County Prosecutor's Office contacted appellant as a courtesy to advise him of the status of the investigation of D.U.'s complaint against appellant and to ask if appellant was considering retirement. The parties further stipulated that, within one week of that phone call, counsel for appellant contacted the Bergen County Prosecutor's Office and advised that appellant would not be retiring. Detective Arrington authored an investigative report dated December 13, 2022, and concluded her investigation on December 14, 2022. Per a case disposition sheet from the Bergen County Prosecutor's Office, Detective Arrington's report was then submitted to members of senior management of the Bergen County Prosecutor's Office for review. The case disposition sheet documents that Detective Arrington's investigative report was reviewed by five members of senior management of the Bergen County Prosecutor's Office starting on December 16, 2022, and concluding on January 5, 2023. The Bergen County Prosecutor's Office sent a letter dated January 9, 2023, to Fair Lawn's Borough Manager regarding the completion of the investigation, Detective Arrington's findings, and the recommendation from the Prosecutor's Office that appellant be terminated from his position as a police officer.

Appellant's disciplinary history was also made part of the record. Appellant is a twenty-three-year veteran of the Fair Lawn Police Department. He has had twenty-seven internal affairs complaints and ten sustained disciplinary complaints. Appellant has also had four verbal reprimands and three demeanor complaints. Appellant has been suspended three times. The most severe discipline the appellant received during his time with the Fair Lawn Police Department was a suspension for six days.

### **ANALYSIS AND CONCLUSIONS OF LAW**

#### **Appellant's Motion to Dismiss**

Appellant contends that Respondent violated N.J.S.A. 40A:14-147 by not meeting the statute's time limits to file charges within 45-days after which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. Appellant argues that respondent possessed sufficient information to file charges regarding the incident on September 29, 2022. September 29, 2022, was the date that the Bergen County Prosecutor's Office contacted appellant to determine if appellant would consider retirement in lieu of charges being filed against him. The Preliminary Notice of Disciplinary Action was not filed until January 12, 2023. Appellant maintains that Respondent's failure to file the Preliminary Notice of Disciplinary Action within 45 days on September 29, 2022, mandates a dismissal of the charges against appellant.

N.J.S.A. 40A:14-147 provides:

Except as otherwise provided by law, no permanent officer of the police department or force shall be removed from his office, employment or position...except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. The complaint shall be filed in the office of the body, officer or officers having charge of the department or force wherein the complaint is made, and a copy shall be served upon the member or officer so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint.

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

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

[(emphasis added)].

In the case of Grubb v. Borough of Hightstown, 331 N.J. Super. 398 (Law Div. 2000), the court discussed the statutory construction and interpretation of N.J.S.A. 40A:14-147, to determine whether the administrative charges against a police officer were filed in a timely manner. In that decision, the court stated:

The construction of any statute begins with a consideration of its plain language. A statute should be given its plain meaning if it is 'clear and unambiguous on its face and admits of only one interpretation.' Ultimately, the courts seek an interpretation that will 'make the most consistent whole of the statute.' The primary task for the court is to effectuate the legislative intent in light of the language used and the objects sought to be achieved. The court fulfills its role by construing a statute in a fashion consistent with the statutory context in which it appears.

[Id. at 406. (Citations omitted)]

The plain language of 40A:14-147 clearly states that the 45-day time limit for charges to be brought does not commence until the person filing the complaint obtains sufficient information to file the matter. Appellant argues that the 45-day time limit commenced on September 29, 2022, the date that the Bergen County Prosecutor's Office contacted appellant to inquire if appellant would retire in lieu of charges being filed. Appellant's interpretation is contrary to the plain meaning of the statute. Here, Detective Arrington, who conducted the investigation into the incident, did not complete her investigation until December 14, 2022, and the Preliminary Notice of Disciplinary Action was served on appellant on January 12, 2023. Respondent was compliant with the statute as the service occurred twenty-nine days after the completion of the investigation. As such, I **CONCLUDE** that the service of the PNDA was not in violation of N.J.S.A. 40A:14-147.

### The Charges

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex DOC Park Comm'n, 46 N.J. 138, 147 (1965). Governmental employers also have delineated rights and obligations. The Act sets forth that it is State policy to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b).

However, "there is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against him and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, respondent bears the burden of proving the charges against appellant by a preponderance of credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

Although administrative hearings follow a relaxed evidentiary standard, there must be substantial or sufficient, credible evidence in the record to support the charges. N.J.S.A. 52:14B-10(a); In re Taylor, 158 N.J. 644, 656-57 (1999). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro Bottling Co., 26 N.J. 263 (1958). Therefore, I must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna and W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to

"generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959) (citation omitted). Preponderance may also be described as the greater weight of 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 itself as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

One of the charges in this case is conduct unbecoming a public employee. "Conduct unbecoming a public employee" is an elastic phrase encompassing conduct that adversely affects the morale or efficiency of a governmental unit or that tends to destroy public respect for governmental employees and confidence in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998). The complained-of conduct and its attending circumstances need only "be such as to offend publicly accepted standards of decency." Ibid. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)).

The 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 even where the misconduct occurred while the employee was off duty. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

Police officers and correction officers are held to a higher standard of conduct than other citizens due to their community roles. In re Phillips, 117 N.J. 567 (1990). Indeed, adherence to this high standard of conduct is an obligation that a law enforcement officer voluntarily assumes when entering public service. Emmons, 63 N.J. Super. at 141-42. In Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966), the court explained a stricter standard of conduct applies to police officers because of the nature of the position:

[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 ....  
[Ibid.]

A police officer's dishonesty during an internal affairs investigation is particularly significant because it calls into question the officer's honesty, integrity, and truthfulness, which are necessary traits for a law enforcement officer. Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 362 (2013).

Based on appellant's false statement to Detective Arrington that D.U. was being uncooperative, belligerent, and banging on the cell door prior to appellant entering the processing room and appellant's testimony that he permitted D.U. to have his shoes with his shoelaces in the holding cell, I **CONCLUDE** that a preponderance of the evidence exists that appellant engaged in conduct unbecoming a public employee.

In this case, appellant was also charged with neglect of duty. Generally, "neglect of duty" means that an employee has failed to perform and act as required by the description of their job title. Briggs. v. Dept. of Civil Service, 64 N.J. Super. 351, 356 (1980); In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" intends conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (internal citation omitted). Also, neglect of duty can arise from an omission or failure to perform a task imposed upon a public employee that indicates a deviation from usual standards of conduct. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). 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. A failure to perform duties required by one's public position is self-evident as a basis for imposing a penalty without good cause for that failure.

Appellant had a duty not to allow D.U. to have his shoelaces inside of the holding cell as he could have used those shoelaces to inflict harm upon himself or others. Based on the video that appellant had his shoes with the laces while he was in the holding cell and appellant's admission of this during his testimony, I **CONCLUDE** that a preponderance of the evidence exists to sustain Respondent's charge that appellant neglected his duties.

Respondent also charged appellant with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye. As part of the charge of other sufficient cause, respondent alleges that appellant engaged in misconduct under N.J.S.A. 40a: 14-147.

Misconduct under N.J.S.A. 40A:14- 147 "need not be predicated on the violation of any particular department rule or regulation," but may be based merely upon the "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." In re Phillips, 117 N.J. 567, 576 (1990) (quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). Because "honesty, integrity, and truthfulness [are] essential traits for a law enforcement officer," the Court has upheld termination where, for example, an officer made conflicting statements to internal affairs investigators about an off-duty altercation. Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 362- 363 (N.J. 2013).; See also State v. Gismondj, 353 N.J. Super. 178, 185 (App. Div. 2002) ("[T]he qualifications required to hold [a law enforcement] position require a high level of honesty, integrity, sensitivity, and fairness in dealing with members of the public ... ").

Based upon appellant's knowingly false statements to Detective Arrington, I **CONCLUDE** that a preponderance of the evidence exists to sustain respondent's charge of other sufficient cause in that appellant engaged in misconduct.

The charge of other sufficient cause includes violations of policies and procedures established by the Fair Lawn Police Department. Those charges allege that appellant

violated the Fair Lawn Police Department's policies on use of force, truthfulness, and temporary detention. Each of those allegations will be addressed below.

The relevant portion of the Fair Lawn Police Department's policy on excessive force states that an officer may use physical force when the officer reasonably believes that force is immediately necessary to overcome force directed at the officer. D.U. alleged that appellant assaulted him while he was detained at the Fair Lawn Police Department. D.U. did not testify at the hearing. D.U. provided differing versions in the complaint and in his statements D.U.'s statements were also contradicted by the video evidence. Appellant testified that he did not punch D.U. but that he placed him in a compliance hold after D.U. resisted appellant's attempt to guide D.U. back to the holding cell. Officers Rodriguez and DiGuglielmo corroborated appellant's testimony that he did not punch D.U. Therefore, I **CONCLUDE** that Appellant did not assault D.U. I find that appellant placed D.U. in a compliance hold after D.U. smacked his hand and that appellant acted in conformity with the Fair Lawn Police Department's policy on excessive force.

The relevant portion of the rules and regulations of the Fair Lawn Police Department provides that all employees shall not knowingly withhold information, lie, give misleading information, or falsify oral or written communications in any official report, internal affairs interview, or investigation. In this case, Detective Arrington's testimony and the video footage shows that appellant made knowingly false statements to Detective Arrington during Detective Arrington's internal affairs investigation. Accordingly, I **CONCLUDE** that a preponderance of the evidence exists to sustain Respondent's charge that appellant violated the policy of the Fair Lawn Police Department on truthfulness.

The relevant portion of policy of the Fair Lawn Police Department on temporary detention provides that a detainee is not to be given his shoelaces in the holding cell as the shoelaces could be used to inflict injury upon the detainee or others. Video footage and appellant's own testimony confirm that appellant allowed D.U. to have his sneakers with the laces in them while D.U. was in the holding cell. Therefore, I find that appellant violated Fair Lawn's temporary detention policy by providing the D.U. with his shoelaces in the holding cell. Accordingly, I **CONCLUDE** that a preponderance of the evidence exists to sustain Respondent's charge that appellant violated the policy of the Fair Lawn



Police Department on temporary detention on this issue.

The temporary detention policy of the Fair Lawn Police Department also provides that a temporary detention room, like a holding cell, is a location where a detainee is locked in and left unattended while they are not being processed. Video footage showed that the door to the holding cell was not closed while D.U. was being processed. The video shows that appellant closed the door to the holding cell when the processing of D.U. was complete. As the cell door was left open while D.U. was being processed and closed by the appellant when processing was complete, I **CONCLUDE** that appellant did not violate the temporary detention policy on this issue. Based upon appellant's violations of the policies of the Fair Lawn Police Department on temporary detention and truthfulness, I **CONCLUDE** that a preponderance of the evidence exists to sustain respondent's charge of other sufficient cause for violations of departmental policies.

For all the reasons set forth above, I **CONCLUDE** that respondent has met its burden on conduct unbecoming a public employee, neglect of duty and other sufficient cause.

#### Discipline

The next question is the appropriate level of that discipline. A progressive discipline system has evolved in New Jersey to provide employees with job security and protect them from arbitrary employment decisions. West New York v. Bock, 38 N.J. 500 (1962). However, where the underlying conduct is egregious, 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).

Progressive discipline requires consideration once it is determined that an employee violated a statute, regulation, or rule concerning his employment. W. New York v. Bock, 38 N.J. 500 (1962). Where the underlying conduct is egregious, however, imposing a penalty up to and including removal is appropriate, regardless of an individual's disciplinary record. In re Herrmann, 192 N.J. 19 (2007). In determining the

reasonableness of a sanction, the employee's record and any mitigating circumstances provide guidance. Bock, 38 N.J. 500.

Indeed, the Civil Service Commission may increase or decrease the penalty under progressive discipline. N.J.S.A. 11A:2-19; In re Carter, 191 N.J. 474, 483–86 (2007). Thus, an employee's prior disciplinary record is relevant to determining an appropriate penalty for a subsequent offense, and the question upon appellate review is whether such punishment is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." Ibid. at 483-84 (quoting In re Polk, 90 N.J. 550, 578, (1982) (internal quotes omitted)). Generally, [courts] "accord substantial deference to an agency head's choice of remedy or sanction, seeing it as a matter of broad discretion, . . . especially where considerations of public policy are implicated." Division of State Police v. Jiras, 305 N.J. Super. 476, 482 (App. Div. 1997).

The concept of progressive discipline provides that "discipline based in part on the consideration of past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Hermann, 192 N.J. at 21 (citing Bock, 38 N.J. at 522 (1962)). An employee's record includes "an employee's reasonably recent history of promotions, commendations, and the like on the 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. 523-524.

Although the focus is generally on the seriousness of the current charge and the appellant's prior disciplinary history, this tribunal must also consider the purpose of civil service laws. Civil service laws "are designed to promote efficient public service, not to benefit errant employees. The welfare of the people, not exclusively the welfare of the civil servant, is the basic policy underlying our statutory scheme." Gaines, 309 N.J. Super. at 334. Indeed, "[t]he overriding concern in assessing the propriety of [the] penalty is the public good.

Here the charges of conduct unbecoming a public employee, neglect of duty and other sufficient cause are very serious. Additionally, appellant has a lengthy disciplinary

history. Appellant is a twenty-three-year veteran of the Fair Lawn Police Department. He has had twenty-seven internal affairs complaints and ten sustained disciplinary complaints. Appellant has also had five confidential reports, four verbal reprimands and three demeanor complaints. Appellant has been suspended three times. The most severe discipline the appellant received during his time with the Fair Lawn Police Department was a suspension for six days. Given the seriousness of the offenses and the lengthy disciplinary history, removal of appellant is the appropriate penalty.

Alternatively, in considering the issue of appropriate discipline, this Court may consider whether the serious nature of appellant's conduct warrants termination based on the serious nature of the misconduct alone and absent a progressive discipline analysis. This Court notes that Courts routinely eschew progressive discipline and uphold terminations of police officers for severe misconduct. See *McElwee v. Borough of Fieldsboro*, 400 N.J. Super. 388, 397 (App. Div. 2008) (finding police officer's continued refusal to patrol as instructed was "misconduct is so serious that progressive discipline need not be imposed"); See also *Ruroede*, 214 N.J. at 362 (termination warranted for police officer who made "inconsistent statements during the course of the [IA] investigation").

Here, appellant had an obligation to tell the truth during the internal affairs investigation and did not do so thereby substantiating the charge of conduct unbecoming a public official. Appellant stated to Detective Arrington that D.U. was being uncooperative, belligerent, and banging on the cell door and that this caused appellant to enter the processing room. Additionally, appellant stated to Detective Arrington that he removed the shoelaces from D.U.'s sneakers prior to giving the sneakers to D.U. Video footage directly contradicted both statements by appellant. The video footage showed that D.U. appeared to be dozing off until appellant entered the processing room. The video footage also showed that D.U. put his sneakers on in the holding cell and that the sneakers had shoelaces in them. Appellant also admitted during his testimony that he allowed D.U. to have his sneakers with the shoelaces while D.U. was in the holding cell. Since truthfulness is an essential element of the duties of a police officer, appellant's lack of truthfulness in his statements to Detective Arrington was so egregious as to warrant his termination for good cause based upon the serious nature of appellant's misconduct.

**ORDER**

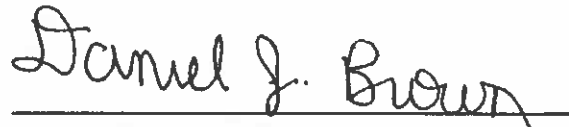
Given my findings of fact and conclusions of law, I **ORDER** that the charges of conduct unbecoming a public employee, neglect of duty and other sufficient cause are **SUSTAINED** and that appellant be and is hereby removed from his position with the Fair Lawn Police Department.

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.

May 22, 2024  
DATE

  
**DANIEL J. BROWN, ALJ**

Date Received at Agency: May 22, 2024

Date Mailed to Parties: May 22, 2024

dr

**APPENDIX**

**LIST OF WITNESSES**

**For Appellant:**

James Corcoran

**For Respondent:**

Justin DiGuglielmo

Juan Rodriguez

Glenn Cauwels

Jonnese Arrington

**LIST OF EXHIBITS IN EVIDENCE**

**Joint Exhibits:**

- J-1a Preliminary Notice of Disciplinary Action, dated January 12, 2023
- J-1b Final Notice of Disciplinary Action, dated August 9, 2023
- J-2 Videos of entrance to police department, hallway and holding cell.
- J-3a Photo of Processing room
- J-3b 2<sup>nd</sup> photo of processing room
- J-3c Receipt for evidence
- J-3d Letter from Bergen County Prosecutor to Fair Lawn Borough Manager
- J-3e Case disposition sheet
- J-3f Internal affairs investigation report
- J-3g Internal affairs report form
- J-3h Fair Lawn Police Department Internal affairs investigation report and attachment log
- J-3i Fair Lawn Police Department citizen complaint information sheet
- J-3j Fair Lawn Police Department officer report of appellant
- J-3k Fair Lawn Police Department officer report of Officer Rodriguez
- J-3l Fair Lawn Police Department call detail report
- J-3m Use of force report

J-3n Witness advisement form signed by appellant  
J-3o Bergen County Prosecutor's Office's Internal Affairs complaint notification  
J-3p Fair Lawn Police Department's Internal Affairs complaint notification  
J-3q Witness advisement form signed by Officer DiGuglielmo dated July 22, 2022  
J-3r Witness advisement form signed by Officer Rodriguez dated July 22, 2022  
J-3s Witness advisement form signed by Dispatcher Russell dated September 29, 2022  
J-3t Witness advisement form signed by Officer DiGuglielmo dated July 27, 2022  
J-3u Not in evidence  
J-3v Letter from Appellant's attorney to Bergen County Prosecutor's Office dated August 29, 2022  
J-3w Representative Acknowledgement form dated September 22, 2022  
J-3x Representative Acknowledgement form dated August 8, 2022  
J-3y Representative Acknowledgement form dated July 26, 2022  
J-3z Processing photos of D.U.  
J-3aa Not in evidence  
J-3ab Complaint W-2021-191 against D.U.  
J-3ac Complaint W-2021-190 against D.U.  
J-3ad Plea agreement for D.U.  
J-3ae Not in evidence  
J-3af Not in evidence  
J-3ag Not in evidence  
J-3ah Fair Lawn Municipal Court disposition codes  
J-3ai Subpoena Duces Tecum  
J-3aj Not in evidence  
J-3ak Not in evidence  
J-3al Not in evidence  
J-3am Not in evidence  
J-3an Not in evidence  
J-3ao Not in evidence  
J-3ap Not in evidence

J-3aq	Not in evidence
J-3ar	Not in evidence
J-3as	Not in evidence
J-3at	Not in evidence
J-3au	Not in evidence
J-3av	Not in evidence
J-3aw	Victim notification form
J-3ax	Not in evidence
J-3ay	Not in evidence
J-3az	Not in evidence
J-3aaa	Not in evidence
J-3aab	Bergen County Jail Medical Intake form for D.U.
J-3aac	Not in evidence
J-3aad	Not in evidence
J-3aae	Not in evidence
J-3aaf	Not in evidence
J-3aag	Not in evidence
J-3aah	Not in evidence
J-3aai	Not in evidence
J-3aaj	Not in evidence
J-3aak	Not in evidence
J-3aal	Not in evidence
J-3aam	Bergen County Jail receiving screening form for D.U.
J-3aan	Bergen County Jail verification of inmate/ detainee information for D.U.
J-3aao	Bergen County intake skin assessment for D.U.
J-3aap	Not in evidence
J-3aaq	Not in evidence
J-3aar	Not in evidence
J-3aas	Not in evidence
J-3aat	Not in evidence
J-3aau	Not in evidence
J-3aav	Not in evidence
J-3aaw	Not in evidence

J-3aax Letter from Detective Arrington to D.U. dated July 14, 2022  
J-3aay Not in evidence  
J-3aaz Not in evidence  
J-3aaaa Not in evidence  
J-3aaab Not in evidence  
J-4 Rules and regulations for the Fair Lawn Police Department  
J-5 Temporary detention Use of force policy for the Fair Lawn Police  
Department  
J-6 Use of force policy for the Fair Lawn Police Department  
J-7 Color processing photos of D.U.