



STATE OF NEW JERSEY

In the Matter of Akmal Aquil,
Newark, Department of Water and
Sewer

FINAL ADMINISTRATIVE ACTION
OF
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2024-334, 2024-335,
2024-336 and 2024-337
OAL Docket Nos. CSV 08761-21, CSV
08762-23, CSV 08766-23 and CSV
08768-23
(Consolidated)

ISSUED: APRIL 30, 2025

The appeals of Akmal Aquil, Laborer 1, Newark, Department of Water and Sewer, 15, 20, 25 and 30 working day suspensions, on charges, were heard by Administrative Law Judge Daniel J. Brown (ALJ), who rendered his initial decision on March 17, 2025. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on April 30, 2025, adopted the ALJ's Findings of Facts and Conclusions. Additionally, it adopted his recommendation to affirm the 15 working day suspension. However, it did not adopt his recommendations to modify each of the 20, 25 and 30 working day suspensions to 15 working day suspensions. Rather, the Commission upheld the 20, 25 and 30 working day suspensions.

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

notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007).

In this matter, the ALJ performed an analysis of the penalty to be imposed. In that regard, the ALJ stated:

The next question is the appropriate level of discipline. A progressive discipline system has evolved in New Jersey to provide job security and protect employees from arbitrary employment decisions. Progressive discipline is an appropriate analysis for determining the reasonableness of the penalty. *See West New York v. Bock*, 38 N.J. 500, 523–24 (1962). 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. *In re Carter*, 191 N.J. 474, 484 (2007) (quoting *In re Polk*, 90 N.J. 550, 578, (1982) (internal quotes omitted)). Indeed, bypassing progressive discipline occurs only when the misconduct is severe, rendering the employee unsuitable for continuation in the position or when the application of progressive discipline would be contrary to the public interest. *In re Herrmann*, 192 N.J. 19, 33 (2007). For example, when the work of the appellant involves public safety and when the misconduct of the appellant causes a risk of harm to persons or property. *Id.* Here, I acknowledge that appellant’s misconduct was serious and was repeated. I also acknowledge that appellant has a significant history with at least five prior instances of discipline, including two instances of major discipline. However, I take into consideration appellant’s long history with Newark. Appellant has worked in different capacities for Newark since 1990. I also take into consideration that appellant attended prayer services at least part of the time that he was absent from job sites.

Accordingly, I **CONCLUDE** that an aggregate suspension of ninety days is unreasonably harsh. I **CONCLUDE** that appellant should serve a fifteen day suspension on each of the four FNDAs for a total aggregate suspension of sixty days.

The ALJ’s analysis above is curious. He indicates the tenets of progressive discipline, then essentially ignores them. The Commission declines to do so. The professed reasons for the ALJ’s recommended reductions was the appellant’s “long history” and the fact that he was absent from the job site for portions of time due to prayer services. The Commission is not persuaded that these reasons mitigate against the originally imposed penalties. In this regard, while the appellant had a “long history,” the ALJ acknowledged that said history included two prior major disciplines, including a 10 working day suspension in 2020. Also, the proffered reasons the appellant was repeatedly absent from the job site without authorization

does not serve as a reason to impose a lesser penalty. Clearly, regardless of the reasons, an employee cannot repeatedly unilaterally choose to be absent from the job site without authorization and expect that such misconduct would not be met with increasing harsh disciplinary penalties. As such, the Commission finds that the originally imposed penalties of 15, 20, 25 and 30 working day suspensions were appropriate under the tenets of progressive discipline and should serve as a warning to the appellant that future misconduct may lead to increasingly severe penalties, up to removal from employment.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant for 15, 20, 25 and 30 working days was justified. The Commission therefore upholds those actions and dismisses the appeals of Akmal Aquil.

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 30TH DAY OF APRIL, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CSV 08761-23,
CSV 08762-23, CSV 08766-23 &
CSV 08768-23
AGENCY DKT. NOS. 2024-337,
2024-336, 2024-335 & 2024-334

**IN THE MATTER OF AKMAL AQUIL, CITY OF
NEWARK, DEPARTMENT OF WATER AND
SEWER.**

Vanesha P. Cadet, Esq., for appellant (Oxfeld Cohen, P.C., attorneys)

**Tiffany A. Friend, Assistant Corporation Counsel, for respondent (Kenyatta K.
Stewart, Corporation Counsel)**

Record Closed: January 23, 2025

Decided: March 17, 2025

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

STATEMENT OF THE CASE

Appellant is employed as a laborer with the City of Newark. On multiple occasions, appellant abandoned his work site without prior approval and without notifying his supervisor or co-workers. Appellant also entered the director's office without permission and engaged in aggressive and confrontational behavior toward the director. Should

appellant be disciplined? Yes. Under N.J.A.C. 4A:2-2.3(a)(6), an employee that engages in conduct unbecoming a public employee, may be subject to discipline.

PROCEDURAL HISTORY

On May 27, 2022, the City of Newark, Department of Water and Sewer (Newark), served appellant with a Preliminary Notice of Disciplinary Action (PNDA).

In its notice, Newark charged appellant with incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); 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 in violation of N.J.A.C. 4A:2-2.3(a)(12).

Specifically, in that Notice, Newark charged that on May 6, 2022, appellant was offered the opportunity to work overtime from 7:00 p.m. to 12:00 a.m. at McClellan Street to perform cleaning of catch basins. On or around 7:30 p.m., Supervisor Dillard Murray called appellant asking about his location and his response was that he was at the Masjid praying. Appellant was advised that Mr. Hill was waiting for him at the job site. On or around 8:10 p.m., Mr. Murray called petitioner again but got no answer. Supervisor Murray drove to McClellan Street where Mr. Hill was waiting alone and unable to start the job. Since petitioner and the other laborer assigned to the job were not there, Supervisor Murray started helping Mr. Hill. The PNDA sought a fifteen-day suspension, and appellant requested a departmental hearing. On June 7, 2023, Newark conducted a departmental hearing.

A Final Notice of Preliminary Disciplinary Action (FNDA) dated July 28, 2023, sustained all the charges and suspended appellant for fifteen days beginning on July 31, 2023, and ending on August 18, 2023.

On July 15, 2022, the City of Newark, Department of Water and Sewer (Newark), served appellant with a Preliminary Notice of Disciplinary Action (PNDA).

In its notice, Newark charged appellant with incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); 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 in violation of N.J.A.C. 4A:2-2.3(a)(12).

Specifically, in that Notice, Newark charged that on June 24, 2022, appellant was assigned to work with the catch basin crew at Raymond Boulevard and Chapel Street. On or around 12:00 p.m., the appellant decided to leave for the day and was taken back to Central Avenue to punch out. The appellant did not request the afternoon off as per the Department's policy and procedures. The job was not completed since there was not enough personnel available to finalize the task.

The PNDA sought an indefinite suspension, and appellant requested a departmental hearing. On June 7, 2023, Newark conducted a departmental hearing.

A Final Notice of Preliminary Disciplinary Action (FNDA) dated July 28, 2023, sustained all the charges and suspended appellant for twenty days beginning on August 21, 2023, and ending on September 18, 2023.

On September 9, 2022, the City of Newark, Department of Water and Sewer (Newark), served appellant with a Preliminary Notice of Disciplinary Action (PNDA). In its notice, Newark charged appellant with incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); 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 in violation of N.J.A.C. 4A:2-2.3(a)(12).

Specifically, in that Notice, Newark charged that on August 5, 2022, appellant was assigned to work with the catch basin crew at Raymond Boulevard and Chapel Street. On or around 12:40 p.m., the appellant walked off a job site and returned two hours later. When the appellant was warned about his behavior, he told his supervisor to write him up. The appellant also told his supervisor that nothing was going to happen. Additionally,

on August 26, 2022, the appellant violated policy by entering the director's office without first speaking to the front desk to determine if the director was available. The director was involved in a zoom meeting that was disrupted when appellant entered his office without permission and became argumentative when he was asked to leave.

The PNDA sought petitioner's removal, and appellant requested a departmental hearing. On June 7, 2023, Newark conducted a departmental hearing.

A Final Notice of Preliminary Disciplinary Action (FNDA) dated July 28, 2023, sustained all the charges and suspended appellant for twenty-five days beginning on September 19, 2023, and ending on October 24, 2023.

On January 28, 2023, the City of Newark, Department of Water and Sewer (Newark), served appellant with a Preliminary Notice of Disciplinary Action (PNDA). In its notice, Newark charged appellant with incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); 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 in violation of N.J.A.C. 4A:2-2.3(a)(12).

Specifically, in that notice, Newark charged that on January 6, 2023, appellant walked off a job site at 280 Hawthorne Avenue around 12:10 P. M. abandoning his assignments without permission from his supervisor.

The PNDA sought a thirty-day suspension, and appellant requested a departmental hearing. On June 7, 2023, Newark conducted a departmental hearing.

A Final Notice of Preliminary Disciplinary Action (FNDA) dated July 28, 2023, sustained all the charges and suspended appellant for thirty days beginning on October 25, 2023 and ending on December 11, 2023.

On August 29, 2023, appellant appealed the FNDAS.

On September 5, 2023, the Civil Service Commission transmitted the cases to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

I consolidated the matters with the consent of the parties. On September 26, 2023, November 8, 2023, December 7, 2023, and January 16, 2024, I held prehearing conferences under N.J.A.C. 1:1-13.1 to discuss hearing availability, the nature of the proceeding, the issues to be resolved, and any unique evidentiary problems. I permitted additional time for discovery and scheduled the hearing for April 23, 2024. Newark, with the consent of appellant's counsel requested an adjournment of the hearing date of April 23, 2024. I granted the adjournment request and rescheduled the hearing for June 5, 2024. Appellant's Counsel, with the consent of Newark requested an adjournment of the hearing date of June 5, 2024. I granted the adjournment request and rescheduled the hearing for September 11, 2024.

I conducted the hearing on September 11, 2024, and October 17, 2024. On January 22, 2025, I received summations from both parties and closed the record. On March 10, 2025, I requested an extension of time to file an initial decision, which was approved.

DISCUSSION AND FINDINGS OF FACT

Incident on May 6, 2022

On May 6, 2022, appellant was offered the opportunity to work overtime from 7:00 p.m. to 12:00 a.m. Appellant accepted the overtime and was assigned the task of cleaning catch basins. Newark alleges that appellant and a co-worker did not report as directed. Instead, Newark alleges that appellant and his co-worker went to the Masjid or mosque for a special religious service without permission and without notifying their supervisor or coworker. Regarding the incident on May 6, 2022, appellant's supervisor contacted the appellant prior to the overtime session on March 22, 2022 and he told appellant to respond to McClellan Street at 7:00 p.m. to clear out a basin. The supervisor

became aware that only one of the workers was at McClellan Street. The supervisor telephoned appellant and discovered that appellant and a co-worker were at the Masjid offering prayers. Appellant did not arrive at the job site until 8:45 p.m. When appellant arrived at the job site, he arrived without his Personal Protective Equipment (PPE) that was necessary to safely perform the task. The supervisor instructed appellant to punch out and told him that he was off the clock. The supervisor suggested that appellant and his co-worker receive a written warning with no overtime for that evening.

A second supervisor wrote a report that was introduced into evidence that stated he went to McClellan Street around 8:10 p.m. on May 6, 2023, and appellant and a co-worker were not there. The supervisor assisted the one worker that was there to clean the catch basin.

Appellant testified at the hearing and provided a written statement that was introduced into evidence. In his testimony and his written statement, appellant said that he and his co-worker told the operator who was a co-worker that they were going to Masjid to pray and that they would meet the operator on McClellan Street. Additionally, appellant testified that he and his co-worker started checking the catch basins from Central Avenue around Washington Street and Sherman Avenue. Appellant admitted that he and his co-worker stopped to attend services at the Masjid and that they did so without permission or prior authorization from a supervisor. Appellant stated that because of the weather they believed that the prayers would be combined, shortening the overall time of the service. Appellant believed that he and his co-worker were not two hours late because they worked before stopping to offer prayers. Appellant acknowledged that he was not wearing his PPE when he arrived at the job site. Appellant testified that he left his PPE in his vehicle because the area was not flooded.

Incident on June 24, 2022

Newark alleged that on June 24, 2022, appellant was assigned to the catch basin crew and left the job site without permission before the work was complete. Per multiple reports that were introduced into evidence, appellant was assigned to work on the catch basin truck and clean catch basins. Specifically, appellant and a co-worker were

assigned to clean a catch basin at Raymond Boulevard and Chapel Street. When he was at the job site, appellant asked a supervisor to drop him off at a prayer service. The supervisor agreed and took appellant to punch out so that appellant could attend the 12:00 p.m. prayer service. Appellant then said he was taking half a day off. He did not request this half day off prior to that moment. Because of appellant's actions, his assigned task was not completed. Appellant provided a written statement that was introduced into evidence where he acknowledged that he took half a day off to attend a religious service.

Incident on August 5, 2022

Newark alleged that on August 5, 2022, appellant walked off a job site without prior approval and did not return to work until approximately two hours later. Regarding the incident on August 5, 2022, Appellant's supervisor prepared a report that was introduced into evidence. The report stated that appellant walked off a job site at 169 Frelinghuysen Avenue around 12:40 p.m. and returned to 239 Central Avenue at around 2:55 p.m. The supervisor told appellant that his behavior was an unacceptable pattern of unexcused absences on Fridays. Appellant responded that the supervisor should write him up and that nothing was going to happen. A co-worker prepared a report which stated that appellant quit the job and left the job site without notifying him.

Incident on August 26, 2022

Newark alleged that on August 26, 2022, the appellant barged into Director Adeem's office without first speaking to a supervisor and without notifying the front desk in violation of Newark's accepted practice and procedure. The public works superintendent witnessed the event on August 26, 2022, and prepared a report that was introduced into evidence. The report supported Director Adeem's testimony that appellant walked by the front desk. Appellant then entered Director Adeem's office in the middle of a zoom meeting and disrupted that meeting. Director Adeem testified that appellant became argumentative with him as the director was attempting to get the appellant to leave his office. I **FIND** that Director Adeem testified credibly and that his credibility was enhanced by documentary evidence. Based upon Director Adeem's testimony, I **FIND** that appellant attempted to see the Director without first speaking to a

supervisor or asking anyone at the front desk if the Director was available and I **FIND** that appellant did this in violation of Newark's procedure concerning the procedure that employees must follow to meet with Director Adeem.

Incident on January 6, 2023

Newark alleged that, on January 6, 2023, appellant walked off a job site and abandoned his assigned task without receiving approval from his supervisor. Appellant's co-worker noted, in a report that was introduced into evidence, that he was assigned to fill gravel with appellant. The co-worker stated that he did not see appellant when doing a cold patch. The co-worker also noted that he did not speak with appellant before appellant left the job site. The Appellant's supervisor noted that appellant left a job site at 280 Hawthorne Avenue without permission. Additionally, the supervisor noted that appellant abandoned his assignment and left the area. The supervisor recommended that appellant be suspended for his actions.

Religious accommodations afforded to Newark's employees

Kareem Adeem is Newark's Director of the Water Department. He is also a practicing Muslim. Director Adeem testified that approximately ten to fifteen percent of Newark's employees are Muslim. Director Adeem testified that is known and understood that employees who are of the Muslim faith attend a congregational prayer on Friday afternoon's between 12:30 and 1:00 p.m. Director Adeem testified that most Muslim employees choose to attend this prayer service over the lunch break. Director Adeem testified that this is permitted and a grace period of thirty to forty minutes in addition to the thirty-minute lunch break is provided if the employee informs his or her supervisor that they are leaving to attend the prayer service. However, Director Adeem testified that if a Muslim employee is in the middle of a critical task such as repairing a water main break, fixing a pipe or turning a resident's water on and the worker cannot go to Masjid or other place of worship, the worker is afforded to pray at his or her job site when the critical task is complete. Mr. Adeem also stated that it is improper for an employee to leave the site to pray if there are only a few employees at a work site. Mr. Adeem explained that this is because the absence of that employee may put the overall safety of the site of the job

into question and jeopardize the safety of the workers remaining at the site. In that situation the employee should and is afforded the opportunity to pray at the job site. Additionally, Director Adeem stated that if an employee leaves the job site to pray at a place of worship, it is the employee's responsibility to return to work in a timely manner at the conclusion of the prayer service.

Appellant's efforts to change his work schedule

Appellant testified that he requested to change his work schedule from Monday through Friday to Sunday through Thursday. Appellant stated that he filed a complaint with Newark when his request was not approved. Appellant introduced documents into evidence that corroborated his testimony. Appellant submitted a written request to change his work schedule that is dated June 22, 2022. The written request states that the appellant was resubmitting his request to observe a religious service on Fridays by changing his work schedule from Monday through Friday to Sunday through Thursday for religious reasons. Appellant testified that he is a practicing Muslim and there are services of particular significance on Friday afternoons. On August 31, 2023, appellant submitted another written request to change his shift. That written request stated that appellant was requesting a change of schedule from Sunday through Thursday for religious accommodations based on seniority as per Article 7 of the Religious Discrimination and Accommodation in the Federal Workplace Act. At first glance, this testimony and documentary evidence seem to create a reasonable inference that appellant was leaving work site on Fridays afternoons strictly for religious reasons. However, the remainder of appellant's testimony makes it clear that this was not the case.

At the hearing, appellant admitted not arriving at the job site on May 6, 2022, until 8:30 p.m. Appellant also admitted knowingly leaving job sites on various Friday afternoons without receiving prior permission from his supervisor or informing his supervisor or coworkers. Additionally, Director Adeem testified that appellant admitted to him that he did not tell his supervisors that he was leaving for religious services or that his return from those services was delayed. Appellant testified that he was going to attend services on Friday afternoons whether he had approval from his supervisors or not. Appellant testified that he was aware that he was not being victimized because of his

religious beliefs. Appellant testified that he believed that these charges were brought against him because he resigned as a water inspector and became a laborer. Appellant further testified that he and Director Adeem were of the same faith and sometimes attended services together. Appellant referred to Director Adeem as his brother. Appellant testified that a dispute developed between him and Director Adeem when appellant left his position as a water inspector and accepted a position as a laborer because Director Adeem helped appellant obtain the position as an inspector. The schedule for an inspector was Sunday through Thursday while the schedule for the position as a laborer that appellant accepted was Monday through Friday. Appellant testified that he believed Director Adeem denied appellant's request for a schedule change because of Adeem's animus toward appellant. Appellant testified that he had seniority over the laborer who had the Sunday to Thursday schedule. Because of this, appellant believes his request for a schedule change to Sunday through Thursday should have been approved. Director Adeem testified that the position as a laborer which the appellant accepted had a Monday through Friday work schedule. Director Adeem testified that he informed appellant of this prior to appellant accepting the position as a laborer. Director Adeem testified that the position as a laborer with the Sunday through Thursday schedule was filled at the time appellant asked to be a laborer and has remained filled. Therefore, according to Director Adeem, it would not be possible to accommodate appellant's request to work as a laborer and to have a Sunday to Thursday work schedule. I **FIND** that appellant testified credibly when he admitted that he repeatedly left his assigned work sites without permission on Friday afternoons. I also **FIND** that appellant did not communicate with his supervisor when his return to work would be delayed, or appellant would not return to work at all. I give great weight to the appellant's testimony that he was aware that Newark didn't file charges against him based on his religious beliefs because appellant testified to it even though it was against his self-interest to do so.

Based upon the appellant's admissions, I **FIND** that on May 6, 2022, appellant arrived at the job site an hour and a half late without permission from his supervisor. Additionally, I **FIND** that on June 24, 2022, appellant left his job site and did not return without properly receiving prior permission to take a half day off. I further **FIND** that

appellant left job sites without properly communicating with his supervisor or receiving permission from his supervisor on August 5, 2022, and January 6, 2023.

Appellant's Work and Disciplinary History

Appellant is employed in Newark's Department of Water and Sewer. He started working for Newark in the Division of Parks in 1990. He became a permanent employee in 2008. Appellant continued to work for Newark until he was laid off in 2010. Appellant worked as a per diem employee for the sanitation department from 2010 to 2014. In 2014, Director Adeem was a manager in the water department. Director Adeem recommended that appellant come to the water department as a permanent employee. Newark agreed and in 2014, appellant worked as a laborer in the water department. Appellant testified that Director Adeem laid out the red carpet for him. In 2015, appellant became a laborer in the water department. Appellant was promoted to water inspector. He resigned as an inspector in 2019 and again became a laborer. Mr. Adeem described appellant as a good employee when he comes to work. Appellant's disciplinary history was made part of the record at the hearing. Mr. Adeem testified that appellant has been disciplined approximately five to seven times with two of those times being major discipline. An exhibit was introduced into evidence concerning discipline imposed upon appellant in 2020. The appellant was found to have engaged in, conduct unbecoming, neglect of duty and other sufficient cause for that incident. Appellant was suspended for ten days and required to complete an anger management course because of that incident.

DISCUSSION AND CONCLUSIONS OF LAW

Charges

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. Indeed, "[t]here 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).

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing as to both guilt and the penalty is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); W. New York v. Bock, 38 N.J. 500 (1962). 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). One can describe preponderance 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).

"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)).

Under N.J.A.C. 4A:2-2.3(a)(2), insubordination is a recognized ground for discipline. There is no specific definition for insubordination under the statute. Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." This definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience.

Under N.J.A.C. 4A:2-2.3(a)(1), an incompetent employee is unable to execute his job responsibility and is subject to termination. See Klusaritz v. Cape May Cnty., 387 N.J. Super. (App. Div. 2006) (upholding removal of an accountant who was incapable of preparing a bank reconciliation and unsuitable for the job). Absence of judgment alone can be sufficient to terminate an employee in a sensitive position that requires the public trust in that judgment. See In re Hermann, 192 N.J. 19, 32 (2007) (DYFS worker without prior discipline terminated for waving a lit cigarette in the face of a five-year-old).

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).

Given my findings of fact, I **CONCLUDE** that a preponderance of the credible evidence exists that appellant engaged in conduct unbecoming a public employee on May 6, 2022, June 24, 2022, August 5, 2022, August 26, 2022, and January 6, 2023. I **CONCLUDE** that the remaining charges on May 6, 2022, June 24, 2022, August 5, 2022, August 26, 2022, and January 6, 2023, are duplicative. Therefore, I **CONCLUDE** that a preponderance of evidence does not exist to sustain these charges. As a result, all remaining charges are **DISMISSED**.

Penalty

The next question is the appropriate level of discipline. A progressive discipline system has evolved in New Jersey to provide job security and protect employees from arbitrary employment decisions. Progressive discipline is an appropriate analysis for determining the reasonableness of the penalty. See West New York v. Bock, 38 N.J. 500, 523–24 (1962). 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. In re Carter, 191 N.J. 474, 484 (2007) (quoting In re Polk, 90 N.J. 550, 578, (1982) (internal quotes omitted)). Indeed, bypassing progressive discipline occurs only when the misconduct is severe, rendering the employee unsuitable for continuation in the position or when the application of progressive discipline would be contrary to the public interest. In re Herrmann, 192 N.J. 19, 33 (2007). For example, when the work of the appellant involves public safety and when the misconduct of the appellant causes a risk of harm to persons or property. Id. Here, I acknowledge that appellant's misconduct was serious and was repeated. I also acknowledge that appellant

has a significant history with at least five prior instances of discipline, including two instances of major discipline. However, I take into consideration appellant's long history with Newark. Appellant has worked in different capacities for Newark since 1990. I also take into consideration that appellant attended prayer services at least part of the time that he was absent from job sites.

Accordingly, I **CONCLUDE** that an aggregate suspension of ninety days is unreasonably harsh. I **CONCLUDE** that appellant should serve a fifteen day suspension on each of the four FNDAs for a total aggregate suspension of sixty days.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that appellant be suspended for sixty days.

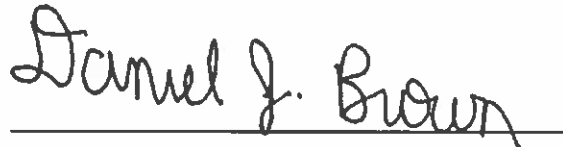
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

March 17, 2025

DATE

A handwritten signature in black ink that reads "Daniel J. Brown". The signature is written in a cursive style and is positioned above a horizontal line.

DANIEL J. BROWN, ALJ

Date Received at Agency:

March 17, 2025

Date Mailed to Parties:

March 17, 2025

dr

APPENDIX

Witnesses

For Appellant:

Akmal Aquil

For Respondent:

Kareem Adeem

Johnny Taylor

James Harvey

Natanya Harris

Exhibits

For Appellant:

A-1 Appellant's June 22, 2022 shift change request

A-2 Appellant's September 8, 2022 Member Complaint Form

A-3 Appellant's August 31, 2023 shift-change request

For Respondent:

R-1 FNDA dated 1/8/21, PNDA dated 1/4/20, charges, settlement agreement

R-2 FNDA dated 7/28/23, PNDA dated 5/27/22, charges, incident report

R-3 FNDA dated 7/28/23, PNDA dated 7/15/22, charges, PNDA dated 7/14/22,
charges, settlement agreement

R-4 FNDA dated 7/28/23, PNDA dated 9/9/22, charges, incident report

R-5 FNDA dated 7/28/23, PNDA dated 1/23/22, charges, incident report

R-6 Not in Evidence

R-7 Not in Evidence