



STATE OF NEW JERSEY

In the Matter of Michael Fleury,
Millville, Department of Parks and
Public Property

**DECISION OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2024-1622
OAL Docket No. CSV 02311-24

ISSUED: APRIL 30, 2025

The appeal of Michael Fleury, Maintenance Worker 1, Grounds, Millville, Department of Parks and Public Property, removal, effective November 13, 2023, on charges, was heard by Administrative Law Judge Rebecca C. Lafferty (ALJ), who rendered her initial decision on March 6, 2025. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on April 30, 2025, adopted the ALJ's Findings of Facts and Conclusions. However, it did not adopt her recommendation to modify the removal to a six-month suspension and that the appellant undergo retraining. Rather, the Commission upheld the removal.

In this matter, the ALJ found that the appellant was guilty of all but one of the infractions alleged. Upon its *de novo* review of the ALJ's determinations in that regard, the Commission agrees with the ALJ's findings and finds nothing in the record or the appointing authority's exceptions to demonstrate that the ALJ's findings regarding the charges were arbitrary, capricious or unreasonable. In this regard, the Commission rejects the appointing authority's arguments regarding the ALJ's credibility determinations. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474

(1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri v. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). The Commission finds no persuasive evidence in the record or the appellant's exceptions to demonstrate that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable.

Regarding the penalty, similar to its assessment of the charges, 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 appellant has one minor prior discipline in his history; however, it also involved the improper operation of equipment. The appropriate focus must be given to the nature and seriousness of the appellant's actions. The serious nature of appellant's actions certainly warrants the imposition of major discipline.

In this matter, it was undisputed that the appellant, as the bucket truck driver/operator, had the duty to ensure the safety of the crew, and in particular the individual in the bucket, Butcher. While I found previously that the events of November 13, 2023, were accidental in nature rather than intentional, they were still serious. The appellant knew it was his duty and responsibility to make sure that the bucket was completely resting on the platform before he put the truck in motion and failed to do so. His actions were negligent, if not careless, and

resulted in very serious damage to the respondent's only bucket truck, putting it out of service for six months, but more importantly could have resulted in very serious injuries to Butcher. Quite frankly, the appellant was lucky that no one was injured.

After having considered all of the proofs offered in this matter, and in light of the seriousness of the offense and in consideration of the appellant's prior disciplinary record, I **CONCLUDE** that the appellant should be **REINSTATED**; however, the appellant's conduct was egregious enough as to warrant a one-hundred and twenty (120) day suspension without pay¹, which, in part, is meant to impress upon him, as well as others, the seriousness of the infractions. I **FURTHER CONCLUDE** that the appellant shall undergo complete re-training on the operation of the bucket truck.

The appointing authority believes the removal should be upheld. The Commission agrees. The ALJ explicitly states above that the appellant's actions were "negligent, if not careless" and resulted in serious property damage and could have resulted in serious injury. Moreover, the ALJ previously indicated that while the appellant only had prior minor discipline, it too was for utilizing equipment improperly. In this regard, the Commission cannot support the modification to a 120 working day suspension, as it finds the appellant's improper actions so seriously jeopardized the safety of his co-workers, it cannot countenance permitting him an additional opportunity. Thus, the Commission finds that the removal neither disproportionate to the offense, nor shocking to the conscious.

ORDER

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

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹ Per *N.J.A.C.* 4A:2-2.2(c), this is considered 120 working days. The appellant, in his reply to exceptions, mistakenly indicates his belief that the penalty referred to calendar days.

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

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02311-2024

AGENCY DKT. NO. 2024-1622

**IN THE MATTER OF MICHAEL FLEURY,
CITY OF MILLVILLE, DEPARTMENT OF
PARKS AND PUBLIC PROPERTIES.**

Matthew B. Madsen, Esq., for appellant, Michael Fleury (O'Brien, Belland & Bushinsky, LLC, attorneys)

Kyle D. Weinberg, Esq., for respondent, City of Millville, Department of Parks and Public Properties (Blaney, Donohue Weinberg, attorneys)

Record Closed: January 21, 2025

Decided: March 6, 2025

BEFORE REBECCA C. LAFFERTY, ALJ

STATEMENT OF THE CASE

Appellant, Michael Fleury (Fleury or appellant), appeals his removal as a maintenance worker effective November 13, 2023, by the respondent, City of Millville, Department of Parks and Public Properties (City or respondent) for violations of various protocol when he moved a bucket truck while the bucket was still extended with a person in the bucket. The following charges are contained in the Final Notice of Disciplinary Action (FNDA), dated January 25, 2024: Count I – N.J.A.C. 4A:2-2.3(a)(1) –

Incompetency, inefficiency or failure to perform duties; Count II – N.J.A.C. 4A:2-2.3(a)(7) – Neglect of Duty; Count III – N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause, including but not limited to violations of the City of Millville’s Personnel Policies, specifically: 46-42(A)(18) – Failure to perform duties, inefficiency or substandard performance; 46-42(A)(33) – Neglect of Duty; 46-42(A)(15) – Violation of established safety and fire regulations; and 46-44(A) – Incompetence, inefficiency of failure to perform duties. (R-2.)

PROCEDURAL HISTORY

On February 2, 2024, the appellant filed an appeal of the FNDA. On February 20, 2024, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 40A:14-202(d). Pre-hearing conferences were held on March 12, 2024, and May 9, 2024, and a pre-hearing order was entered on May 10, 2024. See May 10, 2024, Prehearing Order. There was a one-day hearing held on July 29, 2024. The parties were given time to obtain the transcript of the hearing and submit summation briefs, and upon receipt of summation briefs, the record was closed on October 16, 2024. The record was reopened on November 21, 2024, to obtain additional documentation. The record closed again on January 21, 2025.

DISCUSSION OF FACTS

Tanner Cossaboon (Cossaboon) testified on behalf of the respondent. He has been employed by the City as a laborer in the Parks and Public Property department for approximately two years. His duties include cleaning the parks, picking up trash, mowing the grass, building maintenance and cleaning, and putting up decorations for various holidays.

On November 13, 2023, Cossaboon was assigned to assist with putting up winter decorations on High Street, specifically attaching snowflakes to streetlight poles approximately twenty-five feet off the ground. David Woody (Woody), David Butcher (Butcher), and Fleury were also assigned the task of decorating High Street on November

13, 2023. Cossaboon's assignment was to take the snowflakes off the trailer and hand them to Butcher, the person in the bucket, who was taking down the banners that were hanging on the streetlight poles and then hanging the snowflakes up on the poles. Woody was driving the truck with the attached trailer carrying the decorations and Fleury was driving the bucket truck. Prior to the incident, the group had hung snowflakes on about eighteen streetlight poles, with the streetlight poles being approximately eighty feet apart from one another.

As it was nearing the end of the project, Cossaboon handed a snowflake over to Butcher in the bucket and it was hung on the streetlight pole. He picked up another snowflake and started walking to the next streetlight pole when he heard yelling. As he turned around, he saw the bucket truck driving forward with the bucket extended in the air and it collided with a "decently sizeable" tree branch. Cossaboon described the impact with the tree branch as "pretty forceful" because it snapped the tree branch off and bent the bucket. Butcher ducked as the bucket hit the tree, but he was uninjured. Cossaboon was a couple of dozen feet ahead of the bucket truck at the time he made his observations. The bucket was approximately twelve to fifteen feet in the air and between one-half and three-quarters of the distance to the next light when it struck the branch. There were no prior incidents with the bucket truck that day as they hung the other decorations. After the incident, the truck was immediately put in park, the bucket was brought down, and Fleury got out of the truck to check on Butcher. Fleury then called their supervisors, Ed Gandy (Gandy) and Samantha Cruz (Cruz). There was damage to the bucket that caused it not to be able to be placed in the proper resting position, and the truck was out of operation for several months.

The safety procedures require the bucket truck to be in neutral with the parking brake on while the bucket is up in the air, and the bucket must be back in the resting position before the truck is put into motion again. Once the truck is in gear, the power to the bucket is lost and the person in the bucket can no longer control the bucket. Fleury was trained on how to properly use the bucket truck, and Fleury is the one who trained Cossaboon how to operate the bucket truck.

David Butcher (Butcher) also testified on behalf of the respondent. He has been employed as a laborer by the City in the Parks and Public Property department for approximately nine years, the first three years as a seasonal employee.

On November 13, 2023, Butcher was assigned the role of the person in the bucket taking down the banners and attaching snowflake decorations on the streetlights on High Street. He had been given this assignment several times before. The decorations were placed on the streetlights for a length of six blocks from the intersection with Main Street to the intersection with Broad Street. There was a total of eighteen snowflakes to hang, three per block, and the snowflakes were hung about twenty to twenty-five feet high in the air. Fleury was assigned to drive the bucket truck, and Cossaboon and Woody were assigned to the ground crew.

At the time of the incident, they had almost completed the assignment with only one snowflake left to hang. Butcher had just finished hanging and plugging in the second to last snowflake, and using the controls in the bucket, he brought the arm of the bucket back over the truck so that he could lower the bucket down to its resting place. It was at that time that the truck started moving forward and he was unable to control the bucket, and he realized that Fleury did not know he was still in the bucket. Butcher yelled to Fleury, "Mike, stop the truck! Mike, stop the truck!". When he saw the tree branches coming, he ducked into the bucket for protection. Fleury stopped the truck after the collision with the tree branch. The bucket was still about twenty to twenty-five feet in the air and the truck traveled approximately eighty feet before the collision with the tree branch. Butcher stated that he was unable to bring the bucket down once the truck started moving because the bucket controls were overridden. He described the impact with the tree branch as "pretty heavy" and "pretty firm" – causing the bucket to vibrate on impact. Butcher confirmed that he was uninjured because he ducked down into the bucket.

Butcher testified that the proper procedure is for him to give the driver directions using hand signals while the bucket is in its resting position on the truck. The driver of the truck then stops the truck and gets out to observe. After being handed the decoration

from the ground crew, Butcher moves the bucket up to the correct position to attach the decoration. Once the decoration is attached, he brings the bucket back down using the controls, and the driver gets in the truck as the bucket is placed in its resting position and the truck is moved to the next location. The driver could also look in his mirrors to confirm the bucket is in the resting position. Whenever the truck is moving, the bucket should be in its resting position on the truck. The driver is responsible for the safety of the individual in the bucket.

This procedure was followed without incident for the first seventeen decorations to be hung on the streetlight poles that day. Butcher has been in the bucket on other occasions with Fleury driving the truck and has not had any issues. Butcher is not aware of an emergency button on the bucket but is aware that there is a button that will shut the truck off from the bucket. He did not attempt to press the button as the truck was moving while he was in the bucket in the air, and he does not know what would have happened if he pressed it while the truck was in motion.

David Woody, Jr. (Woody) also testified for the respondent. He has been employed as a laborer by the City in the Parks and Public Property department for one year.

On November 13, 2023, he was assigned to hang snowflakes on High Street with Cossaboon, Butcher, and Fleury. Woody's assignment that day was to drive the truck and trailer that had the snowflakes on it. They had just finished hanging the second to last decoration when the collision occurred. Woody did not observe the actual collision – but from what he observed the bucket hit a tree branch as the truck was moving forward with the bucket in the air. The tree branch that had fallen to the ground was a big, thick branch. He estimated that the bucket with Butcher in it was approximately fifty feet in the air and stated that Butcher himself did not hit the branch because he ducked down. The collision happened at the end of the assignment and there were no prior issues that day. Fleury contacted Cruz and told her about the collision. He did not think that Fleury told Cruz that Butcher was in the bucket at the time of the collision, but he was not a party to

that conversation. After the collision the truck was taken to fleet maintenance to assess the damage.

Woody worked with the bucket truck in the past and was trained by Fleury and Gandy in the safety protocols. For safety reasons, the bucket is supposed to be down on the platform before the vehicle is moved. Woody stated that he would be uncomfortable with Fleury returning to the field to work with him – he would not trust him.

Edward Gandy (Gandy) testified on behalf of the respondent. He has been employed by the City for twenty years, first in the position of park maintenance worker two, and now as the assistant maintenance supervisor. As the assistant maintenance supervisor, his duties include overseeing jobs to completion, supervision of maintenance personnel, supervision for safety concerns, and leading the group. His role includes supervision of Fleury.

Gandy was not working on November 13, 2023, but he received a call from Fleury in which Fleury stated, "I'm fired!" multiple times. Fleury reported that there was an accident with the bucket truck, specifically that Butcher was in the bucket and that the bucket hit a tree branch, but no one was hurt. Gandy came into work and went to the scene and from what he observed, the accident was more than what had been described to him based on the height of the branch that was hit, meaning that the bucket could not have been near the platform as reported by Fleury. Butcher told Gandy that he had only swung the bucket away from the pole, he had not yet started to bring the bucket down onto the truck. Gandy described the distance between the pole and the tree as being approximately seventy to eighty feet apart. He also described the tree branch that was hit being approximately one to two feet in diameter, and approximately twenty feet off the ground.

Gandy testified that according to protocols and procedures, when the truck is moving, the bucket should be completely down on the platform, and Fleury is familiar with the protocols and procedures. Gandy trained Fleury on the protocols of operating the

bucket truck and trusted him to train others, including police officers, on the proper procedures. The training took one full day and encompassed all aspects of the bucket and the truck including driving the truck, operating the bucket, the safety controls in the bucket, and the ground controls. There was also informal on-the-job training. There is no test or written examination that an employee must pass before being permitted to operate a bucket truck, and no written materials were distributed to Fleury regarding the bucket truck training or operation. Gandy could not recall if Fleury received any safety training from the Joint Insurance Fund on the bucket truck operation.

It is the bucket truck operator's responsibility to make sure the man in the bucket is safe. The bucket truck operator should not even enter the truck until the bucket is down on the platform. Even if he does, all mirrors point to the bucket so the driver can check before he takes the truck out of gear. In this case, Fleury would have had to check his mirrors for traffic and would have noticed that the bucket was not lowered. He stated that Fleury knew or should have known how to operate the bucket truck at the time of the incident because he and Fleury worked with the bucket truck more often than others due to their experience – taking the majority of the projects that required the use of a bucket truck.

Gandy testified that Fleury and Butcher did not have a great relationship. Butcher liked completing his tasks in ways that frustrated Fleury, and Fleury would often yell at Butcher if he was not completing tasks in the way Fleury thought they should be completed. Gandy said that he had a conversation with Fleury about not yelling at Butcher and letting Butcher complete his tasks in the way that works for him even if it is not the most efficient way. Gandy further testified to a conversation that he had with Fleury that took place a few months prior to the accident. He said that Fleury stated that if he could "take one person out" it would be Butcher. Gandy said he told Cruz about the conversation and after that they tried not to schedule Fleury and Butcher to work together if it could be avoided. He testified that on the day of the incident, he discussed with Cruz the individuals to be assigned to the task of hanging the decorations and stated that all were capable of performing the duties involved – there was no discussion about whether

Fleury and Butcher should not be working together because the comments Fleury made were long passed, the job needed to get done, and they were short-handed. Gandy agreed that the correct assignment was putting Butcher in the bucket and having Fleury operate the truck and supervising the job. Despite the task being able to be completed by three individuals, four were assigned to the task.

Based on Fleury's experience with the bucket truck, the circumstances of the accident and given Fleury's previous comments about Butcher, Gandy believed that ill will was involved in the events of November 13, 2023. Gandy testified that he believes that the other employees would feel unsafe if Fleury was to return to employment and it would impact his ability to assign Fleury to work with other individuals.

The bucket truck incurred approximately \$15,000 worth of damage and was out of circulation for approximately six months, which affected the City's ability to complete certain tasks such as trimming tree limbs/branches before and after storms and attending to electrical work. The City had to rely on outside contractors to complete some of the work.

Samantha Cruz (Cruz) testified on behalf of the respondent. Cruz has been employed by the City for twenty years, the last six years of which she has served as the manager of Parks and Public Properties. Her duties include supervision of all building maintenance for the City, supervision of the maintenance of the parks, playgrounds, and recreational events, supervision of the laborers in the Parks and Public Properties department and assisting the Mayor. On November 13, 2023, Fleury called her around 8:00 a.m. to advise her of the collision of the bucket truck with the tree. She asked him if the bucket was still in good condition and directed that if there was no other damage, they should finish hanging the decorations and then drop the truck off at fleet to have it looked over. Fleury did not mention to her that Butcher was in the bucket when the bucket hit the tree, and she did not ask him if anyone was in the bucket when it hit the tree. Cruz did not recall having a conversation with Gandy about who should perform the duties of

hanging the decorations that day. No one ever complained about Fleury operating the bucket truck prior to that day.

Upon arriving at work that day, she went straight to fleet to look at the truck, where she observed scratches on the bucket and the bent bucket bracket assembly. She then went to the location of the incident and observed the broken branch on the ground and estimated that the bucket was approximately twelve to fifteen feet in the air when it hit the tree branch, and that the light pole was approximately one hundred feet from the tree. She could not say how fast the truck was going at the time it struck the tree, but based on the size of the tree branch, it had to have hit it "pretty hard". Cruz took a picture of the tree where the branch snapped off during the collision. (R-3.) Additionally, Cruz took a picture of the bent bracket assembly on the bucket system of the truck. (R-4.) Cruz also took a picture of the tree that was hit by the bucket, which shows the point of impact on the tree, including the height of the branch, and the distance from the streetlight. (R-5.)

Cruz testified that Fleury was trained on the operation of the bucket truck by Gandy and, in turn, Fleury trained others on the operation of the bucket truck. Cruz further testified that employees must also go through other "generalized" trainings including defensive driving, "tool box" talks, and "little classes and seminars". She stated that safety is the primary focus in the department. She did not know which, if any, of the trainings Fleury attended, but she assumed that he would have attended them at some point since he had been there for eight years.

Cruz observed that at times people, including Fleury, can become frustrated with Butcher based on his lack of communication and how he completes tasks. Fleury never told Cruz that he did not want to work with Butcher.

The bucket truck was out of service for approximately six months – the time it took to obtain the replacement parts and for the repairs to be completed. The total cost of repairs to the bucket truck, which included almost a whole new bucket assembly, was \$13,736.32. (R-7.) Due to the age of the truck, it had to be sent away for repairs. In the

meantime, the City of Vineland loaned one of its trucks and a few men to the City for several days to finish hanging the winter decorations. The City was also forced to utilize an outside vendor during that time the bucket truck was out of service to address minor tree trimming issues. Additionally, the City rented a lift to finish hanging the decorations, but the lift did not work with the pitch of the road. The cost of the lift rental was \$1,557.76. (R-6.)

Cruz testified that she does not feel comfortable putting Fleury on assignment with any of the current employees as they have expressed concern about him coming back on the job. She believes the City is opening itself up to liability by putting Fleury back on the job.

Pamela Shapiro (Shapiro) testified on behalf of the respondent. Shapiro is employed by the City as the Human Resources Manager. Her job duties include hiring employees, developing employees, dealing with union contracts, and discipline of employees. Shapiro testified that from the City's perspective, termination was the appropriate discipline in this case because Fleury would be a huge liability to the City – the other employees had expressed that they were not comfortable with him returning to work, and in her role as Human Resources Manager, she would not be comfortable with bringing him back to work.

Fleury previously received a one-day suspension in 2022 for horseplay/disorderly conduct, conduct unbecoming a public employee, misuse of public property, including motor vehicles, and other sufficient cause for doing “donuts” on City lawnmower causing \$700 worth of damage to the lawnmower, and for setting off firecrackers in a warehouse. (R-8.)

Michael Fleury testified on his own behalf. He served in the Army from 1996 to 1999. His previous employment consisted of landscaping, reading meters, and car sales. He started working for the City in 2015 as a part-time, seasonal employee, then became a full-time employee in late 2015 or in 2016. As a full-time employee, he worked as a

laborer and then became a ground maintenance worker one in approximately 2023. As a ground maintenance worker, Fleury's duties included maintaining the City's parks and buildings, tree trimming, etc. Some of his duties included the operation of the bucket truck to trim trees, assist other departments, and hang decorations. Fleury worked as part of the bucket truck crew less than fifteen times per year and served as the bucket truck driver for approximately half of those tasks. The determination of the driver of the bucket truck is based on seniority. The driver is responsible for the complete and total operation of the bucket truck, including the safety of the entire crew.

Gandy trained Fleury on the operation of the bucket truck by taking him to a yard or field and going through the steps of how to operate the bucket truck. The training lasted an hour or two. Fleury was not given any manuals or written materials on the operation of the bucket truck, nor was there any sort of test or exam given. He was also not observed operating the bucket truck before he was permitted to operate the truck. Despite agreeing that he knows how to operate the bucket truck, Fleury disagreed that he was properly trained. He also stated that there's a button in the bucket labeled "emergency power" that he asked about several times, but he was never provided an explanation of that button.

On November 13, 2023, his shift began at 5:00 a.m. On that date, he was assigned to drive the bucket truck, and the crew consisted of Butcher (assigned to the bucket), Woody, and Cossaboon, who were both assigned to the ground crew. The assignment was to hang winter decorations. Fleury worked with Woody off and on for the last year, and he believed that they had a good working relationship. He worked with Cossaboon the most and thought they had a great working relationship. Fleury worked with Butcher for about six or seven years and he thought they got along "okay" but was frustrated observing the ways that Butcher would complete certain tasks and seemed to not understand instructions completely.

At the time of the incident, they had completed hanging eighteen of the decorations. Fleury testified that Butcher had taken down the American Flag decoration

and hung the snowflake decoration and as Fleury saw Butcher “rotating back to the truck”, he got back into the truck himself. Once he saw Woody get into the other truck and Cossaboon start walking down the street, he released the air brakes and put the bucket truck into gear and started following Cossaboon. Fleury stated that he was not aware that the bucket had not been fully lowered when he began to drive. As he drove forward, he felt a little resistance when the bucket made contact with the tree branch, and when he looked behind him, he saw the tree branch fall. At that point he immediately stopped the truck and got out to make sure that Butcher was not hurt – Butcher said he was okay but was a little shaken up. He did not hear Butcher yelling for him over the noise of the truck. Fleury testified that when he got out of the truck Butcher was ten to twelve feet in the air and he “couldn’t believe I had made that mistake”. He further stated that he just did not realize that Butcher was still in the air when he put the vehicle into gear, he just instinctively started following Cossaboon when he started walking, but there was never any intent to harm or scare Butcher. Butcher reported that after the impact, the bucket was not rotating into the arm all of the way.

Fleury then called Cruz to report the incident. He told her that he was pulling the truck forward and hit a tree with the bucket in the air. He did not believe that he told Cruz that Butcher was in the bucket during the collision, and she did not ask him if anyone was in the bucket, although Cruz had checked in on the crew prior to the accident and Butcher was in the bucket at that time. She told them to hang the last of the decoration, then Fleury took the truck to fleet maintenance to have it looked over.

Fleury also spoke to Gandy later in the day to inform Gandy that he was sent home from work pending a departmental hearing and would not be in work the next day. Fleury testified that in the past he had observed Gandy move the bucket truck with the bucket in the air when they were hanging and taking down the wreath around the clock at City Hall to avoid crushing the bushes underneath.

Fleury stated that the distance from the pole to the tree was about three car lengths so approximately sixty feet. He further stated that High Street is not busy at that time of

day, but there is occasionally traffic in both directions. He testified that he briefly checked the side mirror but did not see any traffic, nor did he see the bucket and he did not realize that he did not see the bucket.

Fleury stated that there is no official protocol for when the driver of the truck should get back into the vehicle – some guys stay in the truck the whole time. On November 13, 2023, he did not get out of the truck for some poles. He further testified that the radio does not work so it was not on at the time, and the windows were up at the time, but Fleury testified that there is no protocol regarding the position of the windows during operation of the truck.

Fleury explained his comment about “taking out” Butcher meant taking him out for food, drinks, etc. and treating him. Neither Gandy, nor Cruz ever had any conversation with Fleury regarding this particular comment. Fleury was never aware of this allegation that he wanted to harm Butcher. Fleury expressed his desire to return to work and that this type of incident would not happen again.

Credibility

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

In assessing credibility, the interests, motives or bias of a witness are relevant, and a factfinder is expected to base decisions of credibility on his or her common sense, intuition, and experience. A factfinder “is not bound to believe the testimony of any witness, in whole or in part.” State v. Muhammad, 182 N.J. 551, 577 (2005) (internal quotation marks omitted.) Rather, they “may reject what in their conscientious judgment ought to be rejected and accept that which they believe to be credible.” Ibid. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Seven witnesses testified in this matter – Cossaboon, Butcher, Woody, Gandy, Cruz, Shapiro, and Fleury. I had the opportunity to hear the testimony of all the witnesses and observe their demeanor and review the documentary evidence submitted into evidence. While I found all the witnesses to be generally candid and credible throughout their testimony, there were some discrepancies particularly regarding the height of the bucket when it struck the tree branch and the distance the bucket truck traveled between the streetlight pole to the tree branch.

Cossaboon and Cruz both estimated that the height of the tree branch was approximately twelve to fifteen feet high, Fleury estimated ten to twelve feet high, Gandy stated twenty feet high, Butcher testified twenty to twenty-five feet high, and Woody said it was fifty feet high. After reviewing the testimony and the picture taken by Cruz (R-5), I **FIND** the testimony that the bucket was approximately twelve to fifteen feet high when it impacted the tree branch to be more accurate.

Fleury was straightforward in his testimony and was forthcoming in acknowledging his mistakes, although he did dispute his prior discipline and the underlying actions leading to the prior discipline. Fleury was not overly apologetic, but I also did not find any ill will or intent to cause harm to another person, specifically Butcher. I gave greater weight to Fleury’s testimony that the events of November 13, 2023, were accidental in nature and find it more credible than the testimony of Gandy on this issue.

Gandy first testified that Fleury must have had a “brain fart”, implying that Fleury’s actions were accidental. However, he later testified that Fleury made comments which he perceived as a threat to Butcher, which Fleury disputed were threatening. It is not believable to me that if Fleury had made comments that were perceived as a physical threat to a co-worker, that Fleury’s supervisor would simply try to keep the two individuals on different crews and not pursue any sort of disciplinary or other action or even speak to Fleury about the comments. The implication that Fleury had a predetermined plan to harm Butcher after waiting all morning until almost the entire project was complete is simply not believable. It is more credible to me that the crew was almost complete with its early morning assignment with one last decoration to hang, and Fleury was simply rushing to hang the last decoration to complete the assignment and failed to double check that the bucket was in its resting position before putting the truck into motion. After reviewing the testimony, I **FIND** the testimony that the events of November 13, 2023, were accidental more credible than the testimony that they were intentional.

FINDINGS OF FACT

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

Fleury has worked for the City since 2015, first as a part-time, seasonal employee, then as a full-time employee. He most recently worked as a ground maintenance worker one since approximately 2023. As a ground maintenance worker, Fleury’s duties included maintaining the City’s parks and buildings, tree trimming, etc. Some of his duties included the operation of the bucket truck to complete various tasks. Fleury worked as part of the bucket truck crew less than fifteen times per year and served as the bucket truck driver for approximately half of those tasks.

Fleury was trained by Gandy on the operation of the bucket truck. The bucket truck training was comprised of Gandy taking Fleury to one of the City’s fields or yards

and going through the steps of how to operate the bucket truck. The training was completed within one day. Fleury was not given any manuals or written materials on the operation of the bucket truck, nor was he given any test or exam before being permitted to operate the bucket truck regularly. The procedures taught required the bucket truck to be in neutral with the parking brake on while the bucket is up in the air, and the bucket must be back in the resting position on the platform before the truck is put into motion again. The driver can also look in the mirrors to confirm the bucket is in the resting position. Once the truck is in gear, the power to the bucket is lost and the person in the bucket can no longer control the bucket. It is undisputed that the driver/operator of the bucket truck is responsible for the complete and total operation of the bucket truck including the safety of the entire crew.

On November 13, 2023, Fleury's shift began in the early morning around 5:00 a.m. On that date, he was assigned to drive the bucket truck, and the crew consisted of Butcher (assigned to the bucket), Woody, and Cossaboon, who were both assigned to the ground crew. The assignment was to hang winter decorations on streetlight poles on High Street that were approximately twenty-five feet in the air. It is undisputed that the correct procedures for the operation of the bucket truck were followed without incident for all the decorations hung on the streetlight poles prior to the incident on November 13, 2023.

As they completed hanging the second to last decoration, Fleury observed Butcher "rotating back to the truck" in the bucket and got back into the truck himself. Once he saw Woody get into the other truck and Cossaboon start walking down the street, he put the bucket truck into gear and started following Cossaboon. Fleury did not see that the bucket had not been fully lowered and was not aware that the bucket had not been fully lowered when he began to drive. Fleury testified that he "couldn't believe I had made that mistake".

As he began to drive forward, Butcher yelled to Fleury, "Mike, stop the truck! Mike, stop the truck!", but Fleury did not hear Butcher yelling at him over the noise of the truck. When Butcher saw the tree branches coming at him, he ducked into the bucket for

protection. As he was driving forward, Fleury felt resistance when the bucket made contact with the tree branch and then he saw the tree branch fall behind him. He immediately stopped the truck and went to check on Butcher who reported that he was not injured but was shaken up. Butcher described the impact with the tree branch as "pretty heavy" and "pretty firm" – causing the bucket to vibrate on impact. Cossaboon who observed the impact with the tree branch from the ground described it as "pretty forceful" because it snapped the tree branch off and bent the bucket.

Based upon the testimony and the picture taken of the tree that was impacted (R-5), Butcher was approximately twelve to fifteen feet in the air at the time of impact, which necessitates the finding that Butcher would have begun to lower himself from the approximately twenty-five foot high streetlight pole to approximately twelve to fifteen feet high before the truck began to move forward.

Fleury immediately reported the incident over the phone to Cruz. He told her that he was pulling the truck forward and hit a tree with the bucket in the air. He did not specifically tell Cruz that Butcher was in the bucket during the collision, and she did not ask him if anyone was in the bucket. After finishing the last decoration at Cruz's direction, Fleury took the truck to fleet maintenance to have it looked over. Cruz took a picture of the tree where the branch snapped off during the collision. (R-3.) Additionally, Cruz took a picture of the bent bracket assembly on the bucket system of the truck. (R-4.) Cruz also took a picture of the tree that was hit by the bucket, which shows the point of impact on the tree including the height of the branch. (R-5.)

Fleury also spoke to Gandy later in the day and reported that there was an accident with the bucket truck, specifically that Butcher was in the bucket and that the bucket hit a tree branch, but no one was hurt. He also informed Gandy that he was sent home from work pending a departmental hearing and would not be in work the next day and believed that he was "fired".

Butcher has been in the bucket on other occasions with Fleury driving the truck and has not had any issues. Butcher is aware that there is a button that will shut the truck off from the bucket, but he did not attempt to press the button as the truck was moving. No one ever complained about Fleury operating the bucket truck prior to that day. Fleury did not intend to harm or scare Butcher.

The bucket truck was out of service for approximately six months – the time it took to obtain the replacement parts and for the repairs to be completed. The total cost of repairs to the bucket truck, which included almost a whole new bucket assembly, was \$13,736.32. (R-7.) The City was also forced to utilize an outside vendor during that time the bucket truck was out of service to address minor tree trimming issues. Additionally, the City rented a lift to finish hanging the decorations, but the lift did not work with the pitch of the road. The cost of the lift rental was \$1,557.76. (R-6.)

Cruz and Gandy were both aware of some tension between Fleury and Butcher, and Cruz observed that at times people, including Fleury, became frustrated with Butcher based on his lack of communication and how he completes tasks. Gandy said that he had a conversation with Fleury about not yelling at Butcher and letting Butcher complete his tasks in the way that works for him. Fleury never told Cruz that he did not want to work with Butcher.

Gandy had previously told Cruz about a conversation he had with Fleury months before the incident that he perceived as threatening towards Butcher. After that they tried not to schedule Fleury and Butcher to work together if it could be avoided, however, neither Gandy nor Cruz ever had any conversation with Fleury regarding this particular comment or took any official disciplinary or any other action.

Gandy and Cruz discussed the individuals to be assigned to the task of hanging the decorations and determined that all were capable of performing the duties involved – there was no discussion about whether Fleury and Butcher should not be working together because the comments Fleury made were long passed, the job needed to get

done, and they were short-handed. Gandy did not dispute that the correct assignment was putting Butcher in the bucket and having Fleury operate the truck and supervising the job.

Fleury previously received a one-day suspension in 2022 for horseplay/disorderly conduct, conduct unbecoming a public employee, misuse of public property, including motor vehicles, and other sufficient cause for doing "donuts" on City lawnmower causing \$700 worth of damage to the lawnmower, and for setting off firecrackers in a warehouse. (R-8.)

DISCUSSION AND CONCLUSIONS OF LAW

A civil service employee's rights and duties are governed by the Civil Service Act (CSA) and regulations promulgated pursuant to the CSA. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1 et. seq. The purpose behind the civil service regulations is to provide rules establishing a "personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery public services." N.J.A.C. 4A:1-1.1; see N.J.S.A. 11A:1-2. A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be in the form of a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2, 11A:2-20; N.J.A.C. 4A:2-2. Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or engages in misconduct related to their duties. N.J.S.A. 11A:1-2(c). Thus, a public entity may impose major discipline upon a civil service employee. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2. Minor discipline is a reprimand or a suspension or fine of five working days or less. N.J.A.C. 4A:2-3.1(a). A local appointing authority may establish procedures for processing minor discipline and grievances. N.J.A.C. 4A:2-3.1(d). Major discipline is a suspension or fine of five or more working days, a demotion, or the removal/termination of the civil service employee from their position of employment. N.J.A.C. 4A:2-2.

An employee may appeal a major disciplinary action to the Civil Service Commission. N.J.A.C. 4A:2-1.1; N.J.S.A. 11A:2-6, 11A:2-13. In appeals concerning major disciplinary actions, the appointing authority employer has the burden of proof to establish the truth of the disciplinary action brought against a civil service employee. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.A.C. 4A:2-1.4(a); see Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate "if it establishes the reasonable probability of fact." Jaeger v. Elizabethtown Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) citation omitted. The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958).

In the instant matter, the following violations were sustained:

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

Count II – N.J.A.C. 4A:2-2.3(a)(7) – Neglect of Duty; and

Count III – N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause, including but not limited to violations of the City of Millville's Personnel Policies, specifically:

- 46-42(A)(18) – Failure to perform duties, inefficiency or substandard performance;
- 46-42(A)(33) – Neglect of Duty;
- 46-42(A)(15) – Violation of established safety and fire regulations; and
- 46-44(A) – Incompetence, inefficiency of failure to perform duties.

Incompetency, Inefficiency or Failure to Perform Duties - N.J.A.C. 4A:2-2.3(a)(1)

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. *Clark v. New Jersey Dep't of Agric.*, 1 N.J.A.R. 315 (1980). The fundamental concept is that an employee should be able to perform the duties of the position for which he or she was hired. *Briggs v. Department of Civil Service*, 64 N.J. Super. 351, 356 (App. Div. 1960) (employee must be qualified to perform the duties of the job as outlined by the appointing authority).

"Incompetency" has been defined as a "lack of the ability or qualifications necessary to perform the duties required of an individual . . . [and a] consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." *Sotomaver v. Plainfield Police Dep't*, OAL Dkt. No. CSV 09921-98, Initial Decision (December 1999), https://njlaw.rutgers.edu/collections/oal/html/initial/csv9921-98_1.html (internal citations omitted), adopted, Merit Sys. Bd. (January 24, 2000), <https://njlaw.rutgers.edu/collections/oal/final/csv09921-98.pdf>. "Inefficiency" has been defined as the "quality of being incapable or indisposed to do the things required" of an employee in a timely and satisfactory manner. *Glenn v. Twp. of Irvington*, 2005 N.J. AGEN LEXIS 35, *2, Initial Decision (February 25, 2005), adopted, Merit Sys. Bd. (May 23, 2005), <https://njlaw.rutgers.edu/collections/oal/final/csv5051-03.pdf>. "Failure to perform duties" has been defined as "failure to take an action reasonably anticipated from the duties of the position as set forth in the civil service regulations and job description." *In re Fernandez, Camden County Bd. of Soc. Servs.*, 2014 N.J. AGEN LEXIS 229, *34 LEXIS 229, *34, adopted, Comm'r (June 18, 2014), https://njlaw.rutgers.edu/collections/oal/final/csv00652-12_html.2021 N.J. CSC LEXIS 518, *30-31.

On November 13, 2023, the appellant was assigned as the bucket truck operator/driver to assist in the performance of the task of hanging winter decorations on certain streetlights within the City. The appellant argues that this charge cannot be sustained because he demonstrated that he is capable of operating the bucket truck and

had done so successfully on previous dates and for the majority of the task on November 13, 2023. The appellant further argues that this was a case of a single, isolated mistake. However, the responsibilities of the bucket truck driver/operator include making sure that the bucket is in the resting position on the platform before moving the truck, and it is clear that the appellant failed to perform this aspect of his duties, which caused the incident in question to occur. In fact, the appellant specifically testified that he was not aware that the bucket was not completely lowered, and he did not notice that it was not completely lowered before he moved the truck, which can only be characterized as a failure to perform the basic duties of bucket truck driver/operator.

Therefore, based on the foregoing, I **CONCLUDE** that the appellant's actions on November 13, 2023, constitute incompetency, inefficiency or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1) and that the respondent has met its burden of proof on this issue.

Neglect of Duty - N.J.A.C. 4A:2-2.3(a)(7)

"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 (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <http://njlaw.rutgers.edu/collections/oal/>. 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). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military & Veterans' Affairs, 97 N.J.A.R. 2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Pub. Safety, 92 N.J.A.R. 2d (CSV) 214. Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). While neglect of duty

does not require an intentional or willful act, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

On November 13, 2023, the appellant was assigned as the bucket truck operator/driver to assist in the performance of the task of hanging winter decorations on certain streetlights within the City. The appellant argues that this charge cannot be sustained because he demonstrated that he is capable of operating the bucket truck and had done so successfully on previous dates and for the majority of the task on November 13, 2023. The appellant further argues that this was a case of a single, isolated mistake. However, the appellant fails to acknowledge that the neglect of duty charge also includes acting negligently in the discharge of official duties i.e. that in some way he breached a duty owed in the performance of a job. The testimony was unequivocal – it is the bucket truck driver/operator that is responsible for the safety of the individual in the bucket. There was no conflicting testimony on that point. The appellant's actions in driving/operating the bucket truck on November 13, 2023, were certainly negligent if not careless. The appellant breached his duty to ensure the safety of the individual in the bucket (Butcher) by failing to make sure that the bucket was fully lowered onto the truck platform before he took the truck out of gear and moved it forward.

Therefore, based on the foregoing, I **CONCLUDE** that the appellant's actions on November 13, 2023, constitute neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7) and that the respondent has met its burden of proof on this issue.

Other Sufficient Cause - N.J.A.C. 4A:2-2.3(a)(12)

Appellant was also charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause". This catch-all provision of the code means that a finding of misconduct deserving of discipline need not "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that

which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 39-40 (App. Div. 1992) (citing references omitted).

As set forth in the findings of fact and as discussed more thoroughly above, the appellant's actions in operating the bucket truck on November 13, 2023, violate the implicit standard of good behavior of a public employee. The appellant's actions in his operation of the bucket truck were negligent, if not careless, in contravention of the public's view that public employees should act and operate vehicles and machinery with care to prevent injury to others or harm to property.

For the reasons set forth more fully above, and because of the conclusions set forth below sustaining violations of the City's Personnel Policies, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, by a preponderance of credible evidence for his actions on November 13, 2023.

Violations of City of Millville's Personnel Policy

The appellant has also been charged with various violations of the City of Millville's Personnel Policy. Section 46-42(A)(18) of the City's Personnel Policies states, "An employee may be subject to discipline for any one or more of the following general causes . . . (15) Violation of established safety and fire regulations . . . (18) Failure to perform duties, inefficiency or substandard performance . . . (33) Neglect of duty . . .

Section 46-42(A)(15) – Violation of established safety and fire regulations

While the allegations of this appeal center around safety and there was testimony as to past practices regarding the operation of the bucket truck, no specific safety regulations or provisions were enumerated, presented or testified to at the time of the hearing. The testimony of the witnesses was consistent regarding the lack of written policies as to the operation of the bucket truck. As such, I **CONCLUDE** that the

respondent has not met its burden of proof to establish a violation of specific established safety regulations.

Section 46-42(A)(18) – Failure to perform duties, inefficiency or substandard performance

For the same reasons set forth in the discussion above regarding N.J.A.C. 4A:2-2.3(a)(1), I **CONCLUDE** that the appellant's actions on November 13, 2023, constitute failure to perform duties, inefficiency, or substandard performance in violation of Section 46-42(A)(18) and that the respondent has met its burden of proof on this issue.

Section 46-42(A)(33) – Neglect of Duty

For the same reasons set forth in the discussion above regarding N.J.A.C. 4A:2-2.3(a)(7), I **CONCLUDE** that the appellant's actions on November 13, 2023, constitute neglect of duty in violation of Section 46-42(A)(33) and that the respondent has met its burden of proof on this issue.

Section 46-44(A) – Incompetence, inefficiency of failure to perform duties

Lastly, appellant was charged with a violation of Section 46-44(A), which provides that:

An employee may be terminated depending upon the circumstances including but not limited to the following offenses. All discharges will be in accordance with federal and state laws, including the New Jersey Civil Service Act as well as applicable collective bargaining agreements.

A. Incompetence, inefficiency or failure to perform duties

...

For the same reasons set forth in the discussion above regarding N.J.A.C. 4A:2-2.3(a)(1), I **CONCLUDE** that the appellant's actions on November 13, 2023, constitute incompetence, inefficiency of failure to perform duties in violation of Section 46-44(A) and that the respondent has met its burden of proof on this issue.

PENALTY

Once it has been determined that a civil-service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523–24. The Bock Court therein concluded that “consideration of past record is inherently relevant” in a disciplinary proceeding. Id. at 523-24. The past record is said to encompass the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any “formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee.” Id. at 524. Consideration should also be given to the timing of the most recently adjudicated disciplinary history. Ibid.

Although the Civil Service Commission applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's disciplinary history may be outweighed if the infraction at issue is of a serious nature. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The concept of progressive discipline is recognized in this jurisdiction, but:

That is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency

head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position, or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's own position involves public safety, and the misconduct causes risk of harm to persons or property.

[In re Herrmann, 192 N.J. 19, 33-34 (2007), (citing Henry, 81 N.J. at 580).]

A singular incident of absence of judgment alone can be sufficient to warrant termination in certain circumstances. Id. at 32.

Here, the respondent has proven by a preponderance of the credible evidence the following charges against the appellant: 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)(7) – Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause, including but not limited to violations of the City's Personnel Policies, specifically: 46-42(A)(18) – Failure to perform duties, inefficiency or substandard performance; 46-42(A)(33) – Neglect of Duty; and 46-44(A) – Incompetence, inefficiency or failure to perform duties. The penalty sought by the respondent is termination. The appellant has one minor prior discipline in his history; however, it also involved the improper operation of equipment. The appropriate focus must be given to the nature and seriousness of the appellant's actions. The serious nature of appellant's actions certainly warrants the imposition of major discipline.

In this matter, it was undisputed that the appellant, as the bucket truck driver/operator, had the duty to ensure the safety of the crew, and in particular the individual in the bucket, Butcher. While I found previously that the events of November 13, 2023, were accidental in nature rather than intentional, they were still serious. The appellant knew it was his duty and responsibility to make sure that the bucket was completely resting on the platform before he put the truck in motion and failed to do so.

His actions were negligent, if not careless, and resulted in very serious damage to the respondent's only bucket truck, putting it out of service for six months, but more importantly could have resulted in very serious injuries to Butcher. Quite frankly, the appellant was lucky that no one was injured.

After having considered all of the proofs offered in this matter, and in light of the seriousness of the offense and in consideration of the appellant's prior disciplinary record, I **CONCLUDE** that the appellant should be **REINSTATED**; however, the appellant's conduct was egregious enough as to warrant a one-hundred and twenty (120) day suspension without pay, which, in part, is meant to impress upon him, as well as others, the seriousness of the infractions. I **FURTHER CONCLUDE** that the appellant shall undergo complete re-training on the operation of the bucket truck.

ORDER

For the reasons set forth above, it is **ORDERED** that violations of the charges of: 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)(7) – Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient Cause, including but not limited to violations of the City's Personnel Policies, specifically: 46-42(A)(18) – Failure to perform duties, inefficiency or substandard performance; 46-42(A)(33) – Neglect of Duty; and 46-44(A) – Incompetence, inefficiency of failure to perform duties, for the incident taking place on November 13, 2023, are **SUSTAINED**.

For the reasons set forth above, it is **FURTHER ORDERED** that the violation of the charge of City's Personnel Policy 46-42(A)(15) – Violation of established safety and fire regulations is **NOT SUSTAINED** and is **REVERSED**.

For all of the foregoing reasons it is **FURTHER ORDERED** that the appellant shall be **REINSTATED** with the imposition of a one-hundred and twenty (120) day suspension without pay and undergo complete re-training on the operation of the bucket truck.

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 6, 2025

DATE



REBECCA C. LAFFERTY, ALJ

Date Received at Agency:

Date Mailed to Parties:

RCL/tat

APPENDIX

WITNESSES

For appellant

Michael Fleury, Maintenance Worker, City of Millville

For respondent

Tanner Cossaboon, Laborer, City of Millville

David Butcher, Laborer, City of Millville

David Woody, Jr., Laborer, City of Millville

Edward Gandy, Assistant Maintenance Supervisor, City of Millville

Samantha Cruz, City of Millville

Pamela Shapiro, City of Millville

EXHIBITS

Stipulated Exhibits

R-1 Preliminary Notice of Disciplinary Action (31-A), dated November 28, 2023

R-2 Final Notice of Disciplinary Action (31-B), dated January 25, 2024

For appellant

None

For respondent

R-3 Photograph of tree with area of broken branch shown

R-4 Photograph of damage to bucket truck

R-5 Photograph of street and tree

R-6 Purchase Order No. 23-02635 for lease of equipment to replace bucket truck

- R-7 Purchase Order No. 23-02876 for repairs to bucket truck, dated December 1, 2023
- R-8 City of Millville Counseling Action Plan for Michael Fleury, dated July 29, 2022
- R-9 Chapter 46 Personnel Policies, adopted November 3, 2021, by Ordinance No. 29-2021