



STATE OF NEW JERSEY

In the Matter of Dariusz Szczesny,
Middlesex County Sheriff's Office

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2023-1025
OAL Docket No. CSV 10415-22

ISSUED: JUNE 11, 2025

The appeal of Dariusz Szczesny, Sheriff's Officer Sergeant, Middlesex County, Sheriff's Department, demotion to Sheriff's Officer, effective November 3, 2022, on charges, was heard by Administrative Law Judge Joan M. Burke (ALJ), who rendered her initial decision on April 30, 2025. Exceptions were filed on behalf of the appellant and a reply was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent, *de novo* evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on June 11, 2025, adopted the Findings of Fact and Conclusions and the ALJ's recommendation to uphold the demotion to Sheriff's Officer.

In his exceptions, the appellant makes several arguments all maintaining that the appointing authority did not sustain its burden of proof. The Commission disagrees. In this regard, the ALJ's findings were based on her credibility determinations of the testimony of the witnesses as well as her assessment of the video of the incident in question. 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 u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). Regarding the appellant's credibility, the ALJ stated:

[T]he appellant testified that he did not take lunch but was consuming food, and it can be consumed anywhere. However, when Szczesny was asked by Captain Einhorn about being with Girgis, he reported that he had lunch and was sitting across from Girgis. As a result of being across from Girgis for some time during lunch, he had contracted COVID. Accordingly, I do not find the appellant to be a credible witness.

Upon its *de novo* review, 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. As such, the Commission affirms the ALJ's findings regarding the charges in this matter.

The Commission further finds that the penalty imposed is appropriate. Similar to its review of the underlying charges, the Commission's review of the penalty 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." Moreover, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). See also, *In re Phillips*, 117 *N.J.* 567 (1990). Regarding the penalty, the ALJ stated:

Appellant's lengthy tenure with the County and his unblemished record mitigate in his favor. But his continued insistence that he did not take lunch; that his post is the entire building; and that taking lunch means consumption of food, and that can be done anywhere, is unacceptable. Up to and including the plenary hearing in this case, appellant has remained openly defiant. At no time did he give any indication that he was prepared to admit that he did have lunch. In fact,

his very statement, that if they were to have come to him and said something, he would have taken back the overtime he put in for lunch, reeks of his disdain for MCSO's rules and regulations. As a law enforcement officer, he is held to a higher standard, and should diligently follow the rules and regulations. The appellant's abject refusal to accept that premise demonstrates his unfitness to continue in a supervisory capacity. Accordingly, I have no choice but to **SUSTAIN** his demotion.

The Commission wholly agrees with the ALJ's assessment of the penalty. A law enforcement officer, especially one in a supervisory position, must be held to a higher standard. The appellant's actions in this matter fell well short of what would be expected of a law enforcement officer and are worthy of significant sanction. Moreover, while the appellant was a longstanding employee with no significant disciplinary history, his actions and disregard and apparent defiance regarding rules and regulations makes his continued status as a supervisor untenable. Finally, the Commission finds that the demotion imposed should impress upon the appellant the severity of his misconduct and serve as a reminder that any future misconduct may result in more severe disciplinary action, up to removal from employment.

ORDER

The Civil Service Commission finds that the action of the appointing authority in demoting the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Dariusz Szczesny.

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 11TH DAY OF JUNE, 2025



Allison Chris Myers
Chairperson
Civil Service Commission

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AMENDED INITIAL DECISION

OAL DKT. NO. CSV 10415-22

AGENCY DKT. NO. 2023-1025

**IN THE MATTER OF DARIUSZ SZCZESNY,
MIDDLESEX COUNTY SHERIFF'S OFFICE.**

Catherine M. Elston, Esq., for Dariusz Szczesny, appellant (C. Elston & Associates, LLC)

Robert J. Merryman, Esq., for Middlesex County Sheriff's Office, respondent
(Apruzzese, McDermott, Mastro & Murphy, attorneys)

Record Closed: March 17, 2025

Decided: April 30, 2025

BEFORE JOAN M. BURKE, ALJ:

STATEMENT OF THE CASE

Dariusz Szczesny (Szczesny or appellant) appealed the Middlesex County Sheriff's Office's (MCSO or respondent) action in demoting him from the position of sergeant to the position of sheriff's officer for conduct related to an incident on December 7, 2021. Appellant is charged with violating: N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause, specifically, MCSO Regulations Sections: 3:1.1 standard of conduct; 3:1.6 neglect of duty; 3:4.3 reports; and 3:13.5 truthfulness.

PROCEDURAL HISTORY

The appellant requested a fair hearing, and the matter was filed at the Office of Administrative Law on November 21, 2022, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. After several phone conferences, on November 15, 2023, the appellant, Dariusz Szczesny, filed a motion to compel the respondent to respond to discovery requests to which it has objected. The appellant sought discovery in conjunction with the appeal of his demotion in November 2022. This tribunal issued an order on April 3, 2024, in which appellant's Motion to Compel Discovery was **DENIED** in part and **GRANTED** in part. (See Order attached as C-1.)

On April 23, 2024, the appellant filed a Motion for Reconsideration. A Consent Order was entered on April 29, 2024. The Consent Order set forth that the "Motion for Reconsideration filed by Appellant with the Court on April 23, 2024, shall be held in abeyance" pursuant to certain timeframes stated in the Consent Order. (See Consent Order attached as C-2.) On May 10, 2024, the appellant filed a supplemental brief in support of its motion for reconsideration as the parties were not able to reach a compromise as to Demand No. 9. (Appellant's May 10, 2024, Supplemental Letter Brief at 1.) On May 31, 2024, the respondent filed its Motion in Opposition to Reconsideration. The appellant filed a reply on June 10, 2024. An Order was issued denying the reconsideration on July 30, 2024. (See Order attached as C-3.) A hearing was held on December 11, 2024, and December 16, 2024. Parties requested time to obtain transcripts and submit closing summations. The record closed on March 17, 2025.

FACTUAL DISCUSSION AND FINDINGS

Testimony

For Respondent

Bruce Palomba (hereafter Palomba) testified for the MCSO. He is currently retired; however, he previously worked for the MCSO for approximately twenty-three

years. Prior to working for the MCSO, he worked for the Middlesex County Police Department. He began his career at the MCSO as a sheriff's officer and then became a detective, after which he was promoted to sergeant. He was then promoted to chief warrant officer and held that position until his retirement in June 2022. (1T 19:1–6.)

Palomba has handled internal affairs (IA) matters for over seven years. He has had several trainings that have prepared him for this position. He has done the attorney general classes in interviews and interrogation. He has handled over 100 IA investigations. (1T 20:1–6) Palomba conducted the investigation into this matter. He was assigned the case by Undersheriff Kevin Harris.

He prepared two reports after he conducted his investigation. (See J-2.) One of the reports is titled "IA investigation Report". This is the report he writes while he is conducting the investigation. The second report is titled, "AIA Investigation Allegations & Conclusions." The second report is a summary of the case and the findings on each charge against the appellant. (1T 21:10–14.)

All IA investigations are addressed to the sheriff because she is the one that makes the final disposition and discipline. Palomba testified that, at the time, the appellant's title was "acting lieutenant." This means that there was no "active Civil Service list for the promotion of lieutenant. Lieutenants were needed. So the sheriff has discretion to provisionally promote sergeants to the acting position of lieutenant to handle those positions." (1T 22:13–18.)

In conducting his investigation, he received the following from Undersheriff Harris: the investigation notification letter with the alleged violations, appellant's overtime report and workers' compensation report, the DVD copy of the lunch and break room video footage, the appellant's commander's report, a transportation schedule, a copy of the COVID-19 requirements from the County, and the department's rules and regulations alleged to be violated. (1T 23:12–25.)

He started his investigation by watching the DVD of the video of the lunchroom that was taken on December 7, 2021. There was no audio to the video. Palomba stated

that the concern from the undersheriff was that the appellant had put in for lunch overtime, when he was seen on video eating lunch and exposing himself to someone who had COVID. (1T 24:13–18.) Palomba conducted several interviews. He interviewed Captain DeProssimo, Sheriff's Officer Matthew Salonis and Edmond Girgis, then-Lieutenant Randy Einhorn, and the appellant. On December 7, 2021, the appellant completed an overtime report requesting one hour in overtime for lunch and a.m. and p.m. breaks. (See J-6.) Palomba testified that by contract, a supervisor gets two fifteen-minute breaks and a thirty-minute lunch that are unpaid. During the shift that the appellant worked, it was common for the supervisor to not take the allotted breaks or lunch time, as they are usually working at their desk or working in 'communications'; instead, they receive overtime. (1T 27:16–24.)

A "Workers Compensation-First Report of Injury or Illness" (form) was completed by the appellant on December 16, 2021. (R-5.) The appellant reported that "he caught Covid from another officer while on duty." (Ibid.) The form was submitted as a claim for workers' compensation injury. In this case, it was for COVID, and the date he contracted it was reported as December 7, 2021. (R-5; 1T 29:3–13.) The appellant reported that he had contracted COVID from Sheriff's Officer Edmond Girgis. Palomba confirmed that Girgis had worked with the appellant on the shift where he contracted COVID. This form was accompanied with a "Supervisor's Report of Injury." (R-5.) Captain DeProssimo completed this report, and in part, it stated that the injury occurred because the appellant was: "exposed to COVID 19 by being within close contact unmasked with COVID 19 positive individual while eating a meal at same table." (R-5.)

Sheriff's Officer Matthew Salonis completed a "County of Middlesex Witness Form." (See R-6.) On this witness form, Salonis' description of how the injury occurred was: "Lt. Szczesny, S/O Girgis and myself were eating lunch in close proximity to each other in the break room at headquarters." (1T 32:6–9.) On December 15, 2021, the appellant sent an email to Palomba stating that he was "informed today @1300 that I have Covid." (R-8.)

Palomba reviewed the lunch room surveillance video he was given for this investigation. He testified that at 10:12 p.m. or 22:12, appellant, Officer Salonis, and

Officer Girgis were in the lunch room. According to Palomba, Officers Girgis and Salonis picked up food from a wing place in New Brunswick. They brought the food back. (1T 38:5–23) The video reflects the appellant sitting down with Officer Girgis and eating in the break room. (J-3.) The video surveillance was approximately twenty-three minutes from when the appellant entered the break room. (J-3.) Palomba was not sure if the appellant admitted to having lunch, because he characterized it as “consuming food.” (1T 41:18–24.)

Palomba testified to a telephone conversation that was recorded between then-Lieutenant Einhorn and the appellant on December 8, 2021. (R-15.) In that conversation, the appellant admitted that he had lunch with Girgis. The appellant stated that “he went and picked up food, and we sat there and we ate in the cafeteria.” (1T 45:16–20.) However, on the overtime report submitted by the appellant, he stated that he “Worked as the shift commander on 1500-2300 shift on 12-7-21. No lunch or breaks.” (R-4.) Palomba testified that when he reviewed the video surveillance tape of December 7, 2021, he did not observe the appellant handling any phone calls or paperwork. Palomba testified that the appellant disputes that he had lunch on December 7, 2021. According to Palomba, the appellant said he collected paperwork, handed out orders to officers, collected a hospital pack, and was briefed by the officers. While there was no audio to the video, Palomba testified that the appellant did not hand out a hospital pack, and he appeared to collect a couple sheets of paper, but did not appear to review or sign them. (1T 49:1–10.)

Palomba, in his report, wrote some quotes that he attributed to the appellant that he thought were relevant to his investigation. He wrote, “Somebody could have just said, ‘I saw you eating wings. I understand your shift was busy, but you’re not entitled to a lunch.’ I would have said, ‘You’re absolutely right, and I will take that back.’” (1T 49:23–25; 50:1) Palomba thought these quotes were important. In his perspective, the appellant was admitting he was wrong, and if someone had “just came to him and said hey, listen man, you ate lunch for 23 minutes, you ate wings for 23 minutes, you’re not entitled to the lunch . . . I would have taken it back”; however, because it is now an IA matter, he has to defend himself. (1T 50:3–13.)

Palomba concluded that the appellant attempted to receive a thirty-minute paid lunch as overtime that he was not entitled to. He based his conclusion on the video surveillance in which the appellant was seen eating for twenty-three minutes in the cafeteria with another officer. Palomba testified that no work was done during that twenty-three minutes of the video that he observed. Palomba testified that the charge of "neglect of duty" was sustained because the appellant had left his post, as seen on the surveillance video tape. Palomba testified that in the appellant's log report, he wrote that at 23:30, he was updating paperwork; however, the appellant at that time "was in the lunch room eating wings and not updating paperwork." (1T 52:1–4.)

On cross-examination, Palomba admitted that he did not know if the appellant had picked up a hospital pack; however, none was seen being picked up while in the lunch room. When asked what duties the appellant was not doing, Palomba's response was, "Well he was eating lunch. So he wasn't doing any duties." (1T 87:21–25; 88:1.) Palomba admitted that one could be eating at their desk without performing work. According to Palomba, being away from the desk and eating in the cafeteria is not the same. Palomba stated that "[t]here is a difference, because you are downstairs. You're away from your desk. If something comes in, you're not there to handle it." (1T 88:1–14.) Palomba testified that supervisors, lieutenants, and or sergeants on the 3–11 shift usually take small breaks outside the building while they still put in for one hour of overtime. (1T 105:5–14.)

On re-direct, Palomba testified that if an officer is accessible by the phone or radio and they take lunch, it does count as a lunch and that person would not be entitled to overtime. (1T 106:3–6.) Furthermore, Palomba stated, "[t]here is no officers that I had ever known that when they take their lunch turn off the radio or turn off their phone." (Id. at 10–12.) Similarly, the shift commanders can leave their office, walk around the building, and go to the rest room, but they are not allowed to put in overtime for doing so. (Id. at 21–24.) Palomba testified that he was not aware of any other instance where a superior officer told their supervisor they took lunch while putting in for overtime for not taking lunch, or where a supervisor was exposed to COVID while having lunch and put in for overtime for having lunch. (1T 107:7–14.)

Edmond B. Girgis (Officer Girgis) has been employed by the Middlesex County Sheriff's Office for approximately eight years as a sheriff's officer. He currently works the 8:30 a.m. to 4:30 p.m. shift. However, in 2021, he worked the 3 p.m. to 11 p.m. shift. Officer Girgis recalled in December 2021 being diagnosed and or testing positive for COVID. He recalled identifying the appellant as someone who he was in contact with. He worked on the same shift as the appellant. On the date of the incident, he recalled spending time with the appellant. Officer Girgis testified that they shared a meal. (1T 110:1–25.) They had the meal in the cafeteria break area at headquarters. According to Officer Girgis, there was one other person there, Officer Salonis. He testified that he and Salonis picked the food up. He reached out to the appellant to see if he wanted any food, to which he said yes. He brought food for the appellant, and they ate it in the cafeteria. (1T 111:7–21.)

According to Girgis, he tries to fit his lunch and breaks into his schedule. However, when he is on hospital detail, he cannot leave until he is relieved by another officer. (1T 112:13–23.) On December 7, 2021, he had some downtime, and that was when he ate. He did not put in overtime for it. He recalled sitting at the table eating with the appellant. He did not recall if the appellant was doing any work. He recalled that they were eating chicken wings. (1T 114:8–23.)

On cross-examination, Officer Girgis said that he did not put in for overtime that night because he had attended a PBA meeting. He admitted that when he is on hospital detail, he cannot leave. If he eats while at the hospital, he will put in for overtime. (1T 115:3–10.)

Randy Einhorn (Captain Einhorn) has worked for the County for nineteen years. He started as a sheriff's officer; he was then promoted to sergeant in 2012, to lieutenant in 2016, and to captain in 2023. He was assigned to every division in the department. At the time of the incident in this matter, he was assigned to the Transportation Division (Transportation) as the shift commander. The Transportation shift commander is in charge of all officers that transport prisoners to and from the court and from the jails, take the prisoners to medical appointments, and pick up warrants.

Because of changes in COVID policy, a sergeant was brought in to work with the lieutenant on the 3 p.m. to 11 p.m. shift. However in September 2021, the sergeant on Captain Einhorn's shift returned to his previous shift. Captain Einhorn was therefore alone on his shift with more responsibilities. His job involved scheduling all the transportation for every shift. (1T 123:5–25.) If a sergeant or lieutenant worked with him, one would work at the desk, taking calls or using the radio, and the other would work on scheduling. If he was the only shift commander on the 3 p.m. to 11 p.m. shift, he would typically be at the shift commander's console.

On the 3 p.m. to 11 p.m. shift, there are four dispatchers located in communications, where there is a total of five desks. One of the desks is dedicated to the shift commander. The shift commander supervises the dispatchers. (1T 125:1–25.) Captain Einhorn has worked with the appellant, whose title at the time was "Provisional Lieutenant." On the day of the incident, he was off, and the appellant was covering his shift. The appellant has worked the shift before. (1T 127:14–25.) Captain Einhorn's routine was to pick up food and take it in with him and eat at his desk. Captain Einhorn testified that if you are unable to take a break or lunch, you get paid for that break and lunch.

On December 8, 2021, he sent an email to the sheriff, undersheriff, and the captain regarding a call he had received from Officer Girgis, who tested positive for COVID. (R-9.) Once he received the call, he reached out to the appellant, who he knew had worked the day before. It was time sensitive, as he had to go back forty-eight to seventy-two hours to see who Girgis had come in contact with. His main focus was on who Girgis had contact with so they could get tested at a certain time. (1T 121:18–25.) At the time, he wrote that "Lt. Szczesny (Not Vaccinated but recently had Covid), had lunch together in room across from each other for about 30 minutes" (R-9.) Captain Einhorn was not sure from where he got the thirty minutes that he wrote. When he worked the 3 p.m. to 11 p.m. shift, and he was the only supervisor, he would typically put in a sheet to be paid for his breaks. Most of the work is usually done at the shift commander's desk. Captain Einhorn would only step away if he had to pull a warrant, go downstairs if he is unable to get the officers on the radio, if there is someone at the front door, and in the rare occasion, when someone was trying to break into cars at the department. (1T 134:6–25.)

According to Captain Einhorn, most of the paperwork is done at the desk. If he is leaving his desk, he will let the dispatchers know where he will be. For example, "going to let the cleaning people in." (1T 143:11–21.) Captain Einhorn testified that if he was to have gone outside of the commander's station for twenty-three minutes to have a meal, he would not put in for overtime. (1T 147:22–23.)

On cross-examination, Captain Einhorn admitted that there are many duties of a shift commander, including some for which he must leave the commander's room, such as getting the cleaning crew. In order to let the cleaning crew in, he will go downstairs and walk to the front door to let them in. He also did cell checks and inspected the property. He noted that the cells are located one floor below the shift commander's room. He checks the building by walking around to see if there are any leaks, as leaking sometime occurs. (1T 156:1–25.) On the 3 p.m. to 11 p.m. shift, the commander does not leave the building to go to the hospital. This happens on the 11 p.m. to 7 a.m. shift. There is nothing written anywhere that states that the 3 p.m. to 11 p.m. shift commander cannot eat in the cafeteria. According to Captain Einhorn, it would take thirty seconds to walk from the commander's desk on the second floor to the cafeteria on the first floor. It would take up to forty seconds to get from the commander's office to the front door to let the cleaning crew in. (1T 168:13–15.) There are two holding cells right below the shift commander's office that are inspected on his shift. There is a break room in the communications area with a couple of refrigerators. Captain Einhorn has been a shift commander for five and a half years.

Mildred Scott (Sheriff Scott) is the Sheriff of Middlesex County. She has held that position for fourteen years. She has worked for the MCSO for approximately twenty-seven years. Over that time frame, she has been an officer, sergeant, lieutenant, chief warrant officer, and chief sheriff. Her current duties include overseeing all the sheriff's officers and all clerical staff. As the sheriff, she has the final decision on discipline of officers and superior officers. (2T 6:16–20.)

According to Sheriff Scott, the undersheriff usually prepares the charges in a preliminary notice, and she signs it. In this matter, she signed the 31-B (J-1), final

charges. (2T 7:3–23.) Sheriff Scott had a discussion with the undersheriff regarding the charges and the discipline that would be imposed. (2T 8:7–13.) Sheriff Scott recommended demotion from sergeant to sheriff's officer. Her reason for the demotion was based on the sergeant's untruthfulness. Sheriff Scott testified that the appellant put in for overtime that he was not entitled to because he had taken lunch in addition to also leaving his post. (2T 8:21–25.)

Sheriff Scott stated that on the appellant's shift, there was a longstanding policy to put in for overtime when they could not take their lunch. They are only permitted to leave their post if they were doing something work related, such as pulling a warrant or checking on a hospital detail. (2T 9:19–22.)

On cross-examination, Sheriff Scott admitted that there is no regulation or written rule that a shift commander cannot leave the communication desk. (2T 10:1–4.) The Sheriff identified that the appellant's post is communications. The appellant can leave his post for work-related things. For example, part of his job function is to check all the doors on the ground floor, which is work related. (2T 11:6–24.) The Sheriff insisted that the shift commander on the 3 p.m. to 11 p.m. shift always eats at their desk. The commanders usually do not put in their work log where they ate lunch. (2T 16:7–9.) The superior officer or the person who had the shift would train the new person how to fill out the overtime report or daily log. (2T 17:4–5.) The Sheriff sometimes reviews the log sheets, but not always, and she never reviews the overtime sheets.

Sheriff Scott testified that "anyone that has worked those shifts, they know they cannot take their lunch and breaks away from their desk because they are the only supervisor there. Because of this, they're entitled to put in for overtime for lunch and breaks." (2T 23:15–20.) There are exceptions for officers leaving their desk to attend a PBA meeting. In this instance, they would get overtime for lunch, but only with approval. (2T 31:6–13.) The Sheriff chose the appellant to be acting lieutenant for the period of fourteen months, and she knew that he was in contention to be promoted to lieutenant. The Sheriff was asked about Officer Salonis' taped interview and why all of it was not included in the investigator's summary. (J-7.) Sheriff Scott insisted that the appellant was demoted for putting in for lunch, when he had lunch and admitted not taking a lunch.

(2T 61:16–18.) In imposing discipline, the Sheriff reviews the IA report and the individual's prior discipline record. The Sheriff had not demoted anyone in the role of sheriff before.

On redirect, Sheriff Scott testified that when a superior officer takes a lunch break where they are relieved by another supervisor, they have their radio on them; they are subject to calls and would also be subject to be recalled from lunch if someone needs them. That would still be considered an unpaid half-hour lunch. (2T 77:22–15; 78:1–8.)

Matthew Salonis (Officer Salonis) is a sheriff's officer with the County. He has held that position for over ten years. On December 16, 2021, he signed a "Witness Form." (R-6.) This form is completed when the person is sick or injured on the job. (2T 85:10–14.) He filled it out as a witness at the request of his supervisor. The appellant was Officer Salonis' supervisor. Officer Salonis' written account of the incident on this form was stated as: "Lt. Szczesny, S/O E. Girgis and myself were eating lunch in the break room in close proximity to each other." (R-6.) He worked the 3:00 p.m. to 11:00 p.m. shift. He testified that he and Officer Girgis got food and took it back to headquarters to eat. (2T 88:8–9.) It was common practice to reach out to the shift commander to see if he needed something to eat. He was with Officer Girgis on December 7, 2021, when the appellant was called to see if he wanted something to eat. The three of them were in the lunch room. Officer Salonis testified that he was there briefly because he likes to eat by himself. However, he did leave Girgis and the appellant eating. (2T 90:4–12.)

On cross-examination, Officer Salonis testified that he attended the PBA meeting that day for the first time. He did not put in for overtime for not having lunch that day. (2T 91:17–25.) Officer Salonis testified that he does not put in overtime for lunches or breaks when he takes them. (2T 92:1–3.) He did not recall his conversations with internal affairs. He did not recall having hospital duty the date of the incident. However, his normal procedure when a prisoner is discharged, during COVID, was that when he returned to headquarters, he handed off the hospital pack to the supervisor or left it somewhere in the building for him. (2T 98:2–9.) He did not recall directly handing it to the appellant. He attended the PBA meeting with approval from his supervisor.

For Appellant

Dariusz Szczesny (appellant, Szczesny) has worked for the County since 2003. He was hired as an officer and went to the academy. Szczesny was a platoon leader and the class vice president. He was then assigned to the courthouse and the community awareness team, and he was lent to other divisions. His main assignment was the courthouse. He was then assigned to the canine division for approximately six years. While there, Szczesny took the sergeant's exam and did better than he expected. (2T 102:2–18.) Before becoming sergeant, he was assigned to every division except IA.

The appellant testified that he has worked in the community, going to a variety of different senior citizens' identity theft programs. He spearheaded the "TRIAD" program, which is a tri-county program for senior citizens. He started the anti-bullying program for Middlesex County. He has done demonstrations for career day and "bring your child to work day." (2T 104:8–25.) He was part of the canine unit for six years, where he received special training, and was ultimately certified with the canine unit. (2T 106:10–15.) Szczesny took the first lieutenant's promotional exam in 2017. Approximately three years later, in 2020, he took the second exam. On December 8, 2021, he was notified that the results were out, and he had passed the exam. He testified that he verified that he scored in the top three. This result meant that because he was a provisional¹ lieutenant, he should have transitioned into permanent status. (2T 107:1–25.)

As an employee with the County, Szczesny receives an annual performance evaluation. All his performance evaluations over the years were always satisfactory. According to the appellant, he "received more outstandings than anybody else's. I received more outstandings than any other supervisor did and more than officers typically do. Every single one of my supervisors—my immediate supervisors, had nothing but praises to say about me." (2T 109:1–5.) According to Szczesny, he had "no real discipline" in his twenty-two years of working for the County. He received a "discrepancy,"

¹ The provisional title is for six months but not more than twelve months. He was held in the same status as lieutenant and paid as a lieutenant, and if he scored in the top three, he would be made a permanent lieutenant. (2T 108:1–12.)

which is counseling. (2T 109:19–21.) In 2024, he received the 2024 employee recognition award. He has received several letters of commendation.

The appellant testified that he has worked as a shift commander on the 3–11 shift numerous times as a sergeant and a provisional lieutenant. When there are two supervisors on a shift, they relieve each other for meal breaks. A relief officer is for purposes of relieving someone who is taking a meal break. If you are a supervisor, you can only be relieved by someone in your rank or higher. If you are a sergeant and you relieved a lieutenant for lunch, you are paid as a lieutenant for that break. (2T 118:12–25.)

The appellant testified that he has never put in for overtime when he received an official lunch break or a break. (2T 119:20–21.) Szczesny testified that “[t]here is no rule, there is no policy anywhere in our policies, our guidelines, or standards of practice that says that any kind of meal or consumption of food is a meal break.” (2T 120:5–9.) He became a shift commander on the 3:00 p.m. to 11:00 pm shift. Between 2013 and 2021, he worked as a shift commander, but he has never heard or was told that he had to eat his meal at the commander’s desk. (2T 121:18–25.)

Szczesny testified that he has never had a relief officer. The work is 24/7. A supervisor is always on duty at all times. He is not permitted to take a lunch break and separate himself from his responsibilities unless he is properly relieved by another supervisor. (2T 124:9–11.) The rule is that if you do not have a relief supervisor or relief officer, you put in for overtime for lunch and a break. He has seen supervisors take smoke breaks. Some of his duties as an acting lieutenant on the 3:00 p.m. to 11:00 p.m. shift include conducting roll call, where he gives out assignments; letting the cleaning crew in; performing cell inspections; receiving deliveries or responding to anyone at the front door requesting information; pulling warrants; and assisting dispatchers with any issues they have. (2T 126:13–25; 127:1–10.)

The communications room is on the second floor. It takes a few minutes to check the entire building. He could walk from the communications room to the cafeteria in fifteen seconds. He is accustomed to seeing people eating in the cafeteria all the time. On the

date of this incident, he recalled telling the dispatcher that he was going downstairs. He testified that when he gave his assignment out, he gave Officer Girgis two pieces of paper: a warrant for the pickup of an inmate, and an inmate transport worksheet. Officer Girgis forgot both. When Officer Girgis got to the jail, he received a call from him requesting both papers. The appellant had to find both papers and fax them to Officer Girgis. According to the appellant, one of the reasons for going down to the cafeteria that evening was to discuss the assignment with Officer Girgis. The appellant stated that it was a "mini counseling." (2T 131:3-17.)

According to the appellant, the sheriff was very worried about COVID and did not want anyone on the second floor except for essential workers. He therefore had to go to the first floor to get paperwork or to collect the hospital pack.² However, he was not sure if he had picked up a hospital pack. (2T 135:1-4.) He testified that the only time he logged that he took lunch was when he was relieved by somebody. If he was not relieved by anyone or he was not officially taking a lunch break, he would not put it in his log sheet.

The shift began with an arrest of a female who had open sores on her arms from drug use. He had her transported to the hospital. He may have had conversations with the sergeant in investigation, and the undersheriff to see if they had information for him. From there, he did roll call. (2T 138:12-25.) He would contact the shift commander on the 7 a.m. to 3 p.m. shift; if unable to do so, he would review the shift's commander's report. If the shift commander reported that there were four people on duty, the appellant would then be responsible for those four people. He was not aware that Girgis and Salonis were coming in with chicken wings. He testified that he is a "pretty thorough supervisor. I like to be kept abreast of everything going on, so, if those two officers were coming back with food, then they would have likely notified me." (2T 139:13-23.) He was never told that he could not put his food in the downstairs cafeteria. He was never informed that he could not eat in the downstairs cafeteria. According to the appellant, he was not aware of any reviews done by internal affairs or other sheriff's officials as to whether all the shift commanders were eating at their desk. He is the only one this has

² A hospital pack "is, basically, a duffle bag with paperwork and gear, radio charger, belly chains, whatever might be in there . . . little checklist . . . overtime documents, log reports, everything . . . documented by the officers of what transpires at the hospital." (2T 133:2-10.)

been done to. (2T 141:5–15.) He admitted to eating away from his desk when he was properly relieved. If he was not properly relieved, and he had food in the downstairs refrigerator, he would eat there. If there is candy in the processing area or the BCI room, or any other room where there was something accessible for all to take, such as cookies, candy, or banana bread, he would take it and eat downstairs, but it was while he was on duty. (2T 14:9–17.)

If you are the lone supervisor on the shift, whether the 3 p.m.–11 p.m., 11 p.m.–7 a.m., or 7 a.m.–3 p.m. shift, you put in for overtime for lunch and breaks. According to the appellant, this has always been the rule. (2T 143:1–8.) On December 7, 2021, when he went down to the cafeteria, he had his radio on him, as well as his work cell phone and his personal cell phone, which were both on. (2T 144:14–19.) There was no call, but he was on duty. The appellant testified that there are at least 100 reasons for him to leave the communications room, which were all job related. If a call came in to the communications room and the dispatchers needed him, they would call him by landline if he was in the cafeteria, or on the radio, his work cell phone, or his personal cell phone. (2T 146:4–7.)

On the day of the incident, he went down to the cafeteria to speak with the two officers, Girgis and Salonis. He testified that he cleared Salonis for his next shift (11 p.m. to 7 a.m. shift). Thus, Salonis left earlier from the cafeteria. Girgis, however, was different; his paperwork was inadequate, and the appellant wanted to know how the transports went and if there were any issues with Girgis getting into the jail because he had forgotten the paperwork. While he was there in the cafeteria with Girgis, according to the appellant, he was doing work: “following my duties and responsibilities as their supervisor. And some officers need that face to face contact with the supervisor.” He had all his equipment on. (2T 148: 1-100.) On the video, he was seen taking papers from Salonis and Girgis, which he believes were their hospital log forms. (2T 149:5–6.)

The appellant expressed what he meant when he was quoted as saying: “Somebody could have just said, I saw you eating wings. I understand your shift was busy, but you’re not entitled to a lunch. I would have said, You’re absolutely right, and I will take that back.” He explained:

It's not worth the hassle for me to go through all this. I don't particularly care to get a 30-minute paid lunch, It's just the standard. . . . [E]verybody that I've been trained by everybody that I've seen work, everybody's put in for those lunch or breaks because you're not afforded a relief officer. If you are not afforded a relief officer, you're entitled to put in for your lunch breaks, regardless of consumption of food. . . . [I]f they treated me like an adult and just said "We don't think we're entitled to pay for this." I would have taken it back.

[2T 156:7–22.]

On cross-examination, Szczesny said that he looked on the civil service website, which indicates that provisional appointments are supposed to be six months but not to exceed twelve months. He testified that he knew his evaluations were better than others based on what he was told by supervisors that conducted the evaluations. (2T 168:8–9.) Szczesny testified that all the sergeants that have done his evaluations for the last few years have told him that he has too many "outstandings," so the department and agency have kicked them back. (Id. at 14–19.)

The appellant admitted that he did not put in his report that he had received the hospital pack back. He stated that if it is "mundane information" then he typically would not put it in his report. (2T 182:9–10.) However, he further admitted that he cut and pasted or wrote that the "hospital pack was in the EER run." (2T 183:13–14.) According to the appellant, there is no shift commander's desk. They typically use the public safety telecommunicators (PST) desk. The post for the PST is the building, so they eat wherever they want. "The post has never been a desk." (2T 192:3–8.) The appellant admitted that he had a conversation with then-Lieutenant Einhorn on December 8, 2021, wherein he informed him that he had lunch with Officer Girgis. According to the appellant, "lunch was not a reference to a lunch break or taking an official break. Lunch is a generic term, I use typically, for consumption of food." (2T 200:10–13.)

CREDIBILITY ANALYSIS AND ADDITIONAL FINDINGS OF FACTS

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.) (citation omitted), certif. denied, 10 N.J. 316 (1952).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or 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).

After having the opportunity to review the evidence and observe the witnesses, I found that Bruce Palomba, Officers Girgis and Salonis, Captain Einhorn, and Sheriff Scott provided professional, clear, consistent, and believable testimony. In fact, I found Officer Girgis' testimony convincing when he said he had lunch with the appellant and did not put in for overtime. It is interesting to note that he viewed sitting in the cafeteria with the appellant, eating chicken wings for some time, as a lunch break. Captain Einhorn testified that Officer Girgis called him to say that he tested positive for COVID. Because he knew the appellant worked with Officer Girgis the day before, he called him to see who had contact with Officer Girgis to have them tested for COVID. The appellant told him that he had lunch with Girgis. Officer Salonis testified that he was in the cafeteria briefly because he likes to eat by himself. However, he did leave Girgis and the appellant eating. Officer Salonis stated that he does not put in for overtime when he takes lunch. Sheriff Scott testified that the post for the shift commander is in the communications room. The shift commander on the 3–11 shift usually eats at their desk because there is no one to relieve

them. Because the appellant was sitting in the cafeteria eating, he was at lunch. According to Sheriff Scott, the appellant admitted that he had taken lunch and still put in for overtime. Accordingly, I found these witnesses to be credible.

Conversely, the appellant testified that he did not take lunch but was consuming food, and it can be consumed anywhere. However, when Szczesny was asked by Captain Einhorn about being with Girgis, he reported that he had lunch and was sitting across from Girgis. As a result of being across from Girgis for some time during lunch, he had contracted COVID. Accordingly, I do not find the appellant to be a credible witness.

It is the appellant's position that his demotion was unwarranted as it was predicated upon sixteen minutes of eating food while admittedly performing his duties at the same time. He further argues that "[T]here was no legal basis to charge Appellant in the first place, and in doing so, the Sheriff imposed an arbitrary, capricious and unreasonable penalty in direct contravention of the Court's directives in Stallworth." (Appellant's Post-Hearing Brief at 25.) The respondent argues that the conduct of the appellant, "in submitting a request for overtime to which he was not entitled constitutes conduct unbecoming a law enforcement officer and other sufficient cause." (Respondent's Post-Hearing Brief at 29.)

Accordingly, based upon due consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACT**:

1. The appellant has been employed by the MCSO since September 29, 2003. (2T 101:20–22.) He was hired as a sheriff's officer and was promoted to sergeant in 2013. (2T 102:23–25.) He was also assigned as a provisional lieutenant in November 2020. (2T 107:23–25.)
2. As a provisional lieutenant, he was occasionally assigned as the shift commander for the 3 p.m. to 11 p.m. shift. (Appellant's Brief at 3.)

3. Appellant's post is in the central command center or communications center located on the second floor. At this location, there are desks for the communications operators (dispatchers) assigned on each shift, and a desk for the shift commander. The shift commander supervises the dispatchers.
4. On December 7, 2021, the appellant was the shift supervisor on the 3 p.m. to 11 p.m. shift. As the lone supervisor, he is allowed to leave his post only for work-related activities.
5. Typically, the shift commander is the only supervisor on the 3 p.m. to 11 p.m. shift. As such, he is not able to take the half-hour lunch that is provided for in their union contract, but they are allowed to put in for overtime if it is not taken.
6. On December 7, 2021, the appellant went down to the cafeteria³ and was seen on video surveillance talking with two sheriff's officers (Girgis and Salonis). He then sat down with one of the officers and ate chicken wings. The time from when he arrived in the cafeteria until he left spanned twenty-three minutes. (J-3.)
7. On December 8, 2021, Officer Girgis tested positive for COVID. He notified then-Lieutenant Einhorn. This was during the COVID-19 pandemic, and the protocol was for the Lieutenant to find out who Officer Girgis had come in contact with. Upon speaking with the appellant, the Lieutenant found out that he had lunch with Officer Girgis on December 7, 2021.
8. On December 7, 2021, Szczesny put in an Overtime Report, stating that he had no lunch and sought overtime payment for half an hour to which he was not entitled. (J-6.)
9. The appellant falsely reported that he had not taken lunch.

³ Sometimes referred to as the break room.

LEGAL DISCUSSION

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses. N.J.S.A. 11A:2-6. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant, and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

Appellant's status as a sheriff's officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The appellant has been charged with violations of N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming a public employee; (a)(12) other sufficient cause, MCSO Rules and Regulations Sections: 3:1.1 Standard of conduct; 3:1.6 Neglect of Duty; 3:4.2 Reports; and 3:13.5 Truthfulness.

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

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

In the present matter, the appellant put in for overtime for a lunch break when he had taken a lunch break. This is supported by a surveillance video tape showing the appellant sitting down and eating with Officer Girgis. The appellant, when told that Girgis had tested positive for COVID-19, told then-Lieutenant Einhorn that he had lunch with Girgis the day before, and he was sitting across from Girgis. The appellant subsequently tested positive for COVID. Girgis testified that he had lunch with the appellant. He did not recall if they discussed any business; however, Girgis did not take overtime for the lunch period. Officer Salonis testified that he left the appellant and Officer Girgis eating in the break room. Then-Lieutenant Einhorn testified that if he took twenty-three minutes away from his desk, he would not put in for overtime. It would be considered lunch. It must be pointed out that the appellant was covering then-Lieutenant Einhorn's shift, as he was off on that day. The appellant insists that he was consuming food and "lunch was not a reference to a lunch break or taking an official break. Lunch is a generic term, I use typically, for consumption of food." Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6). I thus **CONCLUDE** that this charge is **SUSTAINED** and warrants the imposition of discipline upon appellant.

Appellant was charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause, MCSO Rules and Regulations Section 3:1.6 Neglect of duty. Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). 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 Mil. and Veterans' Affs., 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. In the present matter, the appellant testified that his post includes the first floor where the cafeteria is located. Sheriff Scott testified that the shift commander's post is the communication center located on the second floor. Captain Einhorn at the time was the shift commander on the 3 p.m. to 11 p.m. shift, and he testified that the shift commander's post is in the communication's center. I am convinced that the shift commander's post is located in the communication's center. Respondent argues that "Petitioner was absent from his assigned post for over twenty-three (23) minutes, when he did not have a replacement. Such conduct constitutes neglect of duty." (Respondent Post Hearing Brief at 31.) I agree. Accordingly, I **CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of neglect of duty in violation of MCSO Regulations Section 3:1.6. I thus **CONCLUDE** that this charge is **SUSTAINED** and warrants the imposition of discipline.

The respondent has proven that there is other sufficient cause for disciplining the appellant, including his violation of the MCSO Regulations Section 3:13.5 Truthfulness, which states, "Employees are required to be truthful at all times whether under oath or not" (J-9); Section 3:1.1 Standard of Conduct, which states, "Employees shall conduct their private and professional lives in such a manner as to avoid bringing the agency into disrepute" (J-9); and Section 3:4.3 Reports, which states, "No employee shall knowingly falsify any official report or enter or cause to be entered an inaccurate, false, or improper information on records of the agency." Ibid.

A police officer's primary duty is to enforce and uphold the law. A police officer represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. In re Carter, 191 N.J. 474 (2007). Here the appellant falsely completed his overtime report for lunch, stating that he had not taken lunch. He also completed his daily log at 22.30 hours, stating that he was "updating all paperwork," when he was in fact in the cafeteria eating lunch with Officer Girgis. If the appellant cannot be truthful and honest about a lunch break, what then can he accept responsibility for? I therefore **CONCLUDE** that the charges that appellant has violated MCSO Regulations Sections 3:13.5, 3:1.1, and 3:4.3 are **SUSTAINED**.

PENALTY

There remains the question of penalty Progressive discipline is the law in New Jersey. See, West New York v. Bock, 38 N.J. 500, 522 (1962). A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is considered to be an appropriate analysis for determining the reasonableness of the penalty. See Id. at 523–24. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of the concept of progressive discipline is the nature, number, and proximity of prior disciplinary infractions, which should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential. In addition to considering an employee's prior disciplinary history when imposing a penalty under the Civil Service Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522–24. Major discipline may include removal, disciplinary demotion, a fine, or a suspension no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

Nevertheless, law enforcement officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. at 576–77. They represent “law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Armstrong, 89 N.J. Super. at 566. Citizens must be able to depend on the veracity and honesty of the law enforcement officers in their community.

Appellant’s lengthy tenure with the County and his unblemished record mitigate in his favor. But his continued insistence that he did not take lunch; that his post is the entire building; and that taking lunch means consumption of food, and that can be done anywhere, is unacceptable. Up to and including the plenary hearing in this case, appellant has remained openly defiant. At no time did he give any indication that he was prepared to admit that he did have lunch. In fact, his very statement, that if they were to have come to him and said something, he would have taken back the overtime he put in for lunch, reeks of his disdain for MCSO’s rules and regulations. As a law enforcement officer, he is held to a higher standard, and should diligently follow the rules and regulations. The appellant’s abject refusal to accept that premise demonstrates his unfitness to continue in a supervisory capacity. Accordingly, I have no choice but to **SUSTAIN** his demotion.

ORDER

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)(6) conduct unbecoming a public employee, and other sufficient cause, MCSO Regulations Sections: 3:1.1 standard of conduct; 3:1.6 neglect of duty; 3:4.3 reports; and 3:13.5 truthfulness. Accordingly, I **ORDER** that these charges be and are hereby **SUSTAINED**.

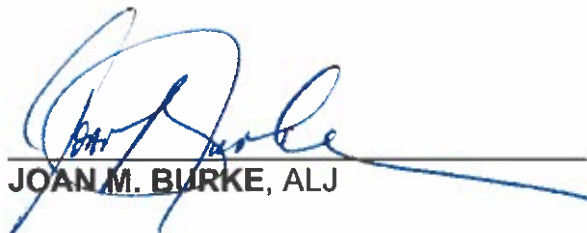
Therefore, it is hereby **ORDERED** that the appeal of Dariusz Szczesny is **DENIED**. It is further **ORDERED** that his demotion is **UPHELD**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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

April 30, 2025
DATE



JOAN M. BURKE, ALJ

Date Received at Agency:

April 30, 2025

Date Mailed to Parties:

April 30, 2025

JMB/sw/jm

APPENDIX

Witnesses

For Appellant:

Dariusz Szczesny

For Respondent:

Bruce J. Palomba

Captain Randy Einhorn

Sheriff's Officer Edmond Girgis

Sheriff Mildred Scott

Sheriff's Officer Matthew Salonis

Exhibits

Court Exhibits:

C-1 Court Order, April 3, 2024

C-2 Consent Order, April 29, 2024

C-3 Court Order, August 1, 2024

Joint Exhibits:

J-1 Final Notice of Disciplinary Action, January

J-2 Collective Negotiations Agreement- Middlesex County

And PBA Local 165, January 1, 2017- December 31, 2020

J-3 DVD Lunch Room Surveillance Video, December 7, 2021- From 22:12 to
22:35 hours

J-4 CD- Video of Zoom Interview of Dariusz Szczesny

J-5 Daily Log Report- Dariusz Szczesny

J-6 Overtime Report- Dariusz Szczesny

J-7 Internal Affairs Investigation Report- IA-21-019

J-8 Middlesex County Sheriff's Office Transportation Division Schedule
(December 5, 2021 – December 11, 2021)

J-9 Middlesex County Sheriff's Office Rules and Regulations

For Appellant:

- A-1 Internal Affairs Investigation Report (MCSO 004-007)
- A-2 Internal Affairs Investigation Allegations and Conclusions (MCSO 008-009)
- A-3 Daily Log Report (MCSO 010-012)
- A-4 MCSO, Overtime Report for Lt. Dariusz Szczesny, Date of Report: 12-7-21 (MCSO 013)
- A-5 PMA Workers' Compensation Form (MCSO 015)
- A-6 IA Case Checklist and related documents (MCSO 025-051)
035: General Rules and Regulations 039: Supervisor schedule for 12-7-21
043: Training Records
049: Attendance Summary
- A-7 Awards and Training Certificates (MCSO 052-108)
- A-8 Middlesex County Sheriff's Office Rules and Regulations 3.2.9, "Suspending Patrol for Lunch or Coffee Breaks"
- A-9 Entered as Joint Exhibit 9
- A-10 Not entered into Evidence
- A-11 Departmental Transcript, testimony of Undersheriff Kevin Harris
- A-12 Overtime Reports of various supervisors (various: MCSO 735-1288)
- A-13 Daily Log Reports (various: MCSO 022-379)
- A-14 Entered as Joint Exhibit 4
- A-15 Certification of Counsel
- A-16 Hospital Detail Daily Officer Log Sheets (5 pages)
- A-17 Not entered into Evidence

For Respondent:

- R-1 Entered as Joint Exhibit 1
- R-2 Entered as Joint Exhibit 7
- R-3 Entered as Joint Exhibit 5
- R-4 Entered as Joint Exhibit 6
- R-5 Workers' Compensation- Packet A through F
- R-6 Witness Form, December 16, 2021
- R-7 Not entered into Evidence
- R-8 Email from Dariusz Szczesny, December 15, 2021
- R-9 Email from Randy Einhorn regarding Sheriff's Officer Girgis' Positive COVID Result
- R-10 Case Checklist and Summary Sheet
- R-11 Entered as Joint Exhibit 9
- R-12 Entered as Joint Exhibit 8
- R-13 Entered as Joint Exhibit 2
- R-14 Entered as Joint Exhibit
- R-15 CD: Telephone Conversation Between Lt. Szczesny and Lt. Einhorn on December 8, 2021
- R-16 Entered as Joint Exhibit 4