STATE OF NEW JERSEY

In the Matter of Stephen Hedberg, Perth Amboy CSC Docket No. 2020-2082 OAL Docket No. CSV 02568-20	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

ISSUED: JULY 23, 2025

The appeal of Stephen Hedberg, Police Officer, Perth Amboy, Police Department, 20 working day suspension, on charges, was before by Administrative Law Judge William T. Cooper, III (ALJ), who rendered his initial decision on June 13, 2025. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on July 23, 2025, adopted the ALJ's findings of facts but did not adopt his recommendation to modify the 20 working day suspension to a 10 working day suspension. Rather, the Commission upheld the 20 working day suspension.

The only real issue in this matter is the penalty to be imposed. In his initial decision, the ALJ found:

> An analysis of the mitigating and aggravating factors must be undertaken before the appropriate discipline can be determined. The mitigating factors are as follows: First, on May 20, 2019, the appellant and his fellow officers were confronted with what can be properly characterized as a fluid and stressful situation, and as such, the appellant was not afforded an opportunity to fully think through his decisions. Second, the appellant exhibited good instincts when he first used the [conducted energy device] CED to perform an arc display in order to establish constructive authority over the unruly crowd and by not dropping the CED to the ground as he attempted to assist Bengochea. Third, the appellant exhibited concern not only for the safety of his fellow officers but for the crowd that had gathered as well.
>
> The aggravating factors include the serious bodily injury the appellant caused I.S. by striking him twice in the head with the CED.

In addition, the appellant's prior disciplinary matters include the following:

- October 17, 2018, Violation of Excessive Force Policy (3:1.17)—four-day working-day suspension;
- September 5, 2013, Failure to Care for Assigned Vehicle (8:1.41)—one-day working-day suspension.

Weighing the mitigating and the aggravating factors, I conclude that the mitigating factors outweigh the aggravating factors. Here, the respondent sought a penalty of a twenty-day working-day suspension, Anger Management, and execution of a Last Chance Agreement. Under the circumstances presented here, such a penalty is disproportionate to the facts surrounding the sustained charges and ignores the mitigating factors that support a less stringent penalty.

I therefore **CONCLUDE** that the imposition of a ten-day working-day suspension is appropriate under the circumstances presented here. I further **CONCLUDE** that the circumstances do not support the execution of a Last Chance Agreement or the necessity of Anger Management.[1]

Regarding the penalty, similar to its assessment of the 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." 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).

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[1] The ALJ's ruling that the appointing authority could not impose a Last Chance Agreement and additional training was inappropriate. As those matters are not considered formal discipline under Civil Service law and rules, the ALJ should not have made any findings in that regard as the Commission has no jurisdiction over non-disciplinary discretionary actions taken by an appointing authority toward its employees. Regardless, such findings are moot. In this regard, if the appellant has not already undergone the training, as he is no longer employed he cannot now do so. *See In the Matter of Stephen Hedberg* (CSC, decided July 2, 2025) (Commission dismissed appeal of removal as moot pursuant to ordinary disability retirement, effective July 1, 2021). Similarly, since the ultimate disposition of the appellant's separation in *In the Matter of Stephen Hedberg* (CSC, decided July 2, 2025) was not predicated on the Last Chance Agreement, any such agreement is of no moment.

Moreover, the Commission emphasizes that a Police 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).

While the Commission acknowledges the mitigating factors listed by the ALJ, those factors do not outweigh the aggravating factors sufficient to warrant a reduction in penalty. Initially, the ALJ seems to minimize the appellant's misconduct. While the situation was serious and in flux, and the appellant's actions were initially appropriate, he thereafter improperly discharged his CED. Compounding that error, and even more concerning, was the fact that the appellant struck the civilian twice while still holding his CED. While he appropriately did not previously drop the CED, regardless of whether he truly forgot he was still holding it when he struck the civilian, it was wholly inappropriate to do so and, as per the charges, was a use of excessive force. Moreover, given that the appellant already had a recent previous four day suspension for violating the excessive force policy, the imposition of the original 20 working day suspension cannot be considered disproportionate.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant for 20 working days was justified. The Commission therefore affirms that action and dismisses the appeal of Stephen Hedberg.

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 23RD DAY OF JULY, 2025

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 02568-20
AGENCY DKT. NO. 2020-2082

IN THE MATTER OF
STEPHEN HEDBERG,
CITY OF PERTH AMBOY POLICE DEPARTMENT.

Leonard Schiro, Esq., for appellant, Stephen Hedberg (Mets, Schiro & McGovern, LLP, attorneys)

Peter J. King, Esq., for respondent, City of Perth Amboy Police Dept. (King, Moench & Collins, LLP, attorneys)

Record Closed: April 28, 2025 Decided: June 13, 2025

BEFORE **WILLIAM T. COOPER, III**, ALJ:

STATEMENT OF THE CASE

Appellant, Stephen Hedberg (Hedberg or appellant), an employee of respondent, City of Perth Amboy Police Department (City or respondent), appeals disciplinary action seeking a twenty-day working-day suspension, execution of a Last Chance Agreement, and Anger Management for the alleged violations of 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; Perth Amboy Department Rules, Regulations and Policy section 3:1.17, Use of Force.

PROCEDURAL HISTORY

On August 27, 2019, the City filed a Preliminary Notice of Disciplinary Action (PNDA) against appellant, charging that on May 20, 2019, the following violations were committed: 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; Perth Amboy Department Rules, Regulations and Policy section 3:1.17, Use of Force. The PNDA alleged two violations of section 3:1.17 as follows:

1. Appellant indicated that he intentionally deployed his Conducted Energy Device (CED) towards the individual identified as I.S. (I.S.), at a time when I.S. was fleeing from the appellant. At that particular moment, I.S. was passively resisting (by flight) and no longer posed an imminent threat to the appellant, the other officers who were present, or the public. Additionally, the appellant also stated that at no time did he see a weapon on I.S.; and,

2. In appellant's statement concerning the events of May 20, 2019, he indicates that he observed Officer Bengochea catch I.S. and utilize what the appellant described as a hip toss maneuver to take down I.S. As the appellant approached both parties, he observed that I.S. was lying face down on the ground with Officer Bengochea on top of him. However, I.S. was twisting and turning, while actively attempting to escape Officer Bengochea's grasp. As the appellant arrived at their location, he immediately struck I.S. twice in his face but had forgotten that the CED was still in his hand. The appellant's body camera reveals that within seconds of his arrival, Officer Bengochea had taken down I.S. and was laying on top of him with his arm around I.S.'s neck area. I.S. was lying face down, yelling "esperate" ("Wait" in Spanish). It appears as if the appellant kneels down or lowers his body towards I.S., then strikes him twice with the CED. Appellant then shouts, "What you think you piece of shit," then proceeds to push down on I.S.'s head. Officer Bengochea begins to yell "give me your hands" to I.S., who at the time is covering his head in the area where he

> was struck, while saying "one moment." Although I.S. was not listening to the officers' commands, he was passive. With regard to the appellant's strikes, although it was a fluid and high stress situation, after the first strike, appellant should have realized that he still had the CED in his hands and restrained himself from striking I.S. a second time.

Based upon the alleged violations, the City sought a twenty-day working-day suspension, execution of a Last Chance Agreement, and Anger Management. The appellant requested a departmental hearing on the PNDA violations, which was held, resulting in a Final Notice of Disciplinary Action (FNDA) being issued to appellant on February 19, 2020, sustaining the charges as set forth above and suspending him without pay for a total of twenty working days.

Appellant timely appealed, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case on February 21, 2020. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A settlement conference was conducted by Bernard Goldberg, ALJ (ret.) on January 11, 2022, but the matter did not settle. The matter was assigned to me on March 22, 2022.

A plenary hearing was conducted on August 7, 2024. The record remained open for the parties to submit closing statements. Post-hearing submissions were received on behalf of appellant and respondent, and on April 28, 2025, the record closed.

FACTUAL DISCUSSION

Testimony

For respondent

Mohamed Mohamed (Mohamed) testified that he is currently working with the Middlesex County Prosecutor's Office (MCPO) but that on May 20, 2019, he was a

Sergeant with the Perth Amboy Police Department assigned at the Internal Affairs Office. Mohamed testified that on May 20, 2019, he was notified by the Chief of Police to investigate the facts surrounding an early morning arrest wherein the suspect suffered bodily injury. Mohamed advised that the MCPO was advised of the incident, and after the MCPO reviewed the incident, criminal prosecution was declined, and the matter was returned for an internal affairs investigation. Mohamed testified that he started his inquiry by reviewing the bodycam footage (BWC) of all the officers involved, reviewing computer-aided dispatch (CAD) reports, reviewing reports of the officers involved, interviewing various people, reviewing departmental policy, and then making attempts to obtain additional documentation and evidence that would support a full and complete investigation of the incident.

Mohamed acknowledged he was not at the scene and that his testimony concerning the events of May 20, 2019, was based entirely upon his review of the various materials, including the police reports and BWC footage. He testified that the incident involved a number of officers who had responded to the scene of a noise violation, which was a non-criminal, city ordinance violation. The investigation centered around the actions of Officer Bengochea (Bengochea), Officer Alicea (Alicea), and the appellant. These officers arrived at a private residence and could hear loud music and yelling, which they believed were coming from the backyard. When they investigated further, it was discovered that the loud noise was actually coming from a different nearby residence. The officers responded to the backyard of the nearby residence, which was located near a highway, and observed a large group of about twenty people. The individual who lived at the residence at this location was readily identified because the officers had responded to that location for noise violations on prior occasions. This individual was advised he would be receiving a city summons for loud music and maintaining a nuisance. The other individuals in the backyard were advised to leave the area. A majority of the group complied and left the backyard; however, this group continued to be loud and was hanging around in the roadway in front of the residence. According to Mohamed, at this point the officers were just attempting to disperse the crowd from the area.

Mohamed testified that one individual, a juvenile who was later identified as E.R., became loud and disorderly and refused to leave the area. At first, Bengochea simply

attempted to identify this individual; however, E.R. began to walk away. Bengochea was able to stop E.R. and request his identification. E.R. was uncooperative and became loud and aggressive toward Bengochea. It was at this point that E.R. was placed under arrest for disorderly conduct. While bringing E.R. to his patrol vehicle, a large group began to form around the officers and were in the roadway blocking traffic. An adult individual identified as I.S. was observed to be walking around Alicea and heading toward Bengochea. As I.S. approached the police officers, he was advised to back away from the police car. I.S. refused to follow that command. According to Mohamed, I.S. never physically touched anyone, nor did he make any menacing comments. It appeared to Mohamed that I.S. was advising the officers that the person who was in custody was a juvenile. Mohamed explained that I.S. was saying "leave him alone", and "he's a minor, let him go." Mohamed also testified that as I.S. tried to walk past Alicea, Alicea grabbed his arm and spun I.S. away from the patrol car. Mohamed testified that once I.S. was spun away, Officer Bengochea, who was not a supervisor, shouted to the appellant "take him."

Mohamed stressed that at no point in time did he observe I.S. either attempt to hit, fight, or intimidate through verbal threats any of the officers. Additionally, I.S. did not brandish any type of weapon and/or utter any fighting words. Mohamed then observed I.S. run down the street, away from the police officers, the crowd, and the scene. The appellant, who had his CED deployed, fired it at I.S., but missed. Bengochea was observed to run after I.S. and was able to catch up with I.S. and tackle him. While Officer Bengochea was on top of I.S., the appellant approached them. When the appellant arrived, he bent down and was observed to have struck I.S. twice on the side of the face with the CED. Mohamed testified that when the appellant got to I.S., he was on the ground being restrained by Officer Bengochea. I.S. was not resisting based on what Mohamed saw from the bodycam footage. According to Mohamed, once the appellant arrived, he said to I.S., "What do you think? You piece of shit," and then struck I.S. twice. As a result of being struck by the appellant, I.S. sustained a fractured nose and a fractured orbital bone.

According to Mohamed, his investigation revealed that the appellant had violated the use of force policy, as well as the Attorney General Guidelines (AG guidelines)

regarding the use of a CED device. Specifically, the appellant fired the CED at I.S. as he was running from the scene; however, the appellant admitted that he never saw I.S. with a weapon or thought that he had a weapon or was a danger to any other person. He was simply a passive resister. Mohamed concluded that the appellant had violated the AG guidelines by discharging the CED at I.S., who was running away from the area, which only constituted passive resistance. Mohamed also advised that the City's use of force policy mirrors the AG guidelines, regarding the use of a CED and when an officer should not use it. Based upon his investigation, Mohamed concluded that the appellant violated the City's CED policy.

In addition, Mohamed concluded that there was a violation of the City's use of force policy when Officer Hedberg struck I.S. twice in the face with the CED in his hand. Mohamed explained that pursuant to the Perth Amboy Police Department Policies and Procedures, physical force involves contact with a subject beyond that which is generally utilized to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the officer's authority, or to protect persons or property. The Perth Amboy Police Department Policies and Procedures define passive resistance as a person who does not obey a command to submit to an arrest, such as I.S. when he fled. Further, the Perth Amboy Police Department Policies and Procedures only authorize an officer to use physical force or mechanical force in the performance of their duty when they reasonably believe it is immediately necessary at the time to overcome resistance directed at the officers or others, or to protect the officer or third party from unlawful force. Mohamed stated that at no point in time during the interaction between I.S. and the appellant did I.S. attempt to exert any resistance against the appellant, nor did I.S. threaten the appellant or anyone else with force. Mohamed opined that the use of physical force or mechanical force in this incident was not warranted.

Mohamed further explained that the Perth Amboy Police Department Policies and Procedures limit when a CED may be fired and/or discharged to when an officer believes such force is reasonably necessary to prevent the person against whom the device is targeted from causing bodily injury to him/herself, a law enforcement officer, or any other person; or when the officer believes such force is reasonably necessary to prevent the

immediate flight of an individual whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause bodily injury; or when the person against whom the device is targeted resists lawful arrest by using or threatening to use physical force or violence against the officer or another in a manner and to a degree that the officer reasonably believes creates a substantial risk of causing bodily injury to the officer, a victim, or a bystander; or when an individual will not voluntarily submit to custody after having been given a reasonable opportunity to do so considering the exigency of the situation and the immediacy of the need to employ force. Based upon the facts of this case, Mohamed opined that the appellant's use of his CED was unauthorized.

Lastly, Mohamed testified that the Perth Amboy Police Department Policies and Procedures prohibit a CED from being used, or threatened to be used, to retaliate for any past conduct or to impose punishment. A CED shall not be fired or discharged against a person who is exhibiting only passive resistance to an officer's command to move from or to a place, to get onto the ground, or to exit a vehicle. A CED shall not be fired or discharged against a person, for example, who is attempting instinctively to reduce the leverage of a wristlock, hammerlock, or other pain-compliance hold applied by any officer, or who is bracing or pulling against an officer's attempt to pull/move him or her. Based upon the above and based upon the definition of passive resistance, I.S. was passively resisting the officer's command, and, as such, the use of the CED was not permitted.

As a result of the investigation and the findings, the appellant was charged with conduct unbecoming a public employee for violation of Perth Amboy Police Department's Rules, Regulations, and Policies, specifically section 3:1-17, the use of force policy, when he struck the individual, I.S., twice in the head.

For appellant

Stephen Hedberg (appellant) testified that he was a police officer for the City of Perth Amboy from 2011 until he ceased employment in 2022. The appellant testified that he was provided with use of force training and was familiar with the AG guidelines and the Perth Amboy Police Department Policies and Procedures for the use of force. During

his time as a patrol officer for the City of Perth Amboy, the appellant was one of the few officers that were actually trained and certified to use a CED. The appellant testified that he was awarded by the Middlesex County 200 Club for saving a man's life by using his CED on a person who was threatening another individual with a large butcher's knife. The appellant also admitted that May 20, 2019, was the second time he had deployed the CED.

On that date, the appellant responded to a call for a loud music complaint while working the midnight shift. The complaint derived from a loud party that was taking place at 5:00 a.m. on a Sunday morning. According to the appellant, he was familiar with this residence because he had responded to this house in the past for various reasons, including recent contact involving a noise complaint wherein the appellant issued a summons for a noise violation. The appellant and Bengochea were the first to arrive, and Alicea joined them later. Upon arrival, the officers were able to silence the music, and the individuals in the backyard of the residence began to leave. However, a crowd of around twenty to thirty civilians began to gather on the street in front of the house. The officers repeatedly advised the crowd to disperse, but the crowd refused to comply.

One individual in the crowd who was acting in a disorderly manner was arrested by Officer Bengochea. This individual was a juvenile, who was later identified as E.R. According to the appellant, E.R. refused to comply with the officers' instructions to get off the sidewalk and disperse. E.R. was defiant and refused to provide identification when asked, so the officers made the decision to place him under arrest. E.R. resisted being handcuffed by Bengochea, so the appellant assisted Bengochea by using physical force to ensure compliance. E.R.'s arrest made the crowd more hostile towards the officers. The crowd began to surround and close in on the officers. The appellant described the crowd as large and unruly. Further, the crowd began to surround Bengochea and himself while yelling at the top of their lungs, cursing at them and causing an officer safety issue. At this point, the appellant unholstered his CED and did an arc display to establish constructive authority over the crowd so that Bengochea could complete the arrest of E.R. The appellant testified that he felt the need to establish constructive authority because the crowd's presence on the highway was creating an immediate safety risk. The

appellant also expressed concern for his and the other officer's safety because the large crowd was threatening.

According to the appellant, the use of constructive authority had a positive effect on the crowd because several members of the crowd began to back up, but some members did not comply. I.S. emerged from the crowd, yelling at Bengochea as he moved towards him. The appellant believed, based upon his training and experience, that I.S. was attempting to obstruct the arrest of E.R. The appellant observed I.S. push past Alicea as Alicea put up his hands to stop him from getting closer to Bengochea and E.R. The appellant described I.S.'s demeanor as aggressive. At some point the appellant heard Bengochea say, "take him," which meant to arrest I.S. After hearing Bengochea's request, the appellant ran after I.S. with his CED unholstered in his right hand. During the pursuit, the appellant discharged the CED towards I.S., missing the suspect.

The appellant offered that his use of the CED at this point followed the AG guidelines because he reasonably believed that I.S. was willing to cause bodily harm to other officers because he saw I.S. make direct bodily contact with Alicea and try to obstruct the arrest of E.R.

After the appellant missed I.S., Bengochea ran ahead and tackled I.S. down to the ground. The appellant testified that he had trouble maneuvering after the CED wires were loose, but he did not want to drop the CED to the ground because of the crowd. When the appellant was able to catch up to where Bengochea had tackled I.S., he observed them wrestling on the ground. The appellant admitted that in the heat of the moment, he forgot that he was still holding the CED as he struck I.S. twice in the head. According to the appellant, after being struck, I.S. became less aggressive, and the officers were eventually able to handcuff him. The appellant also testified that he was injured during this incident, which left his right hand extremely swollen. This injury required the appellant to go through hand surgery and physical therapy for medical treatment. The appellant has been unable to return to duty as a result of this injury.

FINDINGS

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 witnesses' story in 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). Also, "the 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.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

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).

The testimony from Mohamed was straightforward, detailed, and generally consistent with the testimony of the appellant. I accept him as a credible witness. However, it is recognized that Mohamed was not present at the scene on May 20, 2019, and as such, his opinions are limited.

The testimony from the appellant was clear and concise. Moreover, the appellant admitted to discharging his CED at I.S. as he fled from the area and striking I.S. twice in the head while holding the CED, causing serious bodily injury to both I.S. and himself.

Although the testimony of both witnesses was consistent, there were differences in perception. Mohamed viewed the reports and BWC after the events occurred, and, as such, he, unlike the appellant, was not physically present while the events of May 20, 2019, occurred. The credible testimony, reports, and BWC footage revealed a simple noise violation complaint escalated due to individuals who refused the officers' commands

to disperse from the area in front of the private residence. The three officers who initially responded to the scene were outnumbered, and the credible testimony revealed that the crowd was loud, disorderly, and threatening. The appellant admitted to being familiar with both the AG guidelines and City policy regarding the use of a CED. The appellant first intentionally used his CED to perform an arc display in order to establish constructive authority over the unruly crowd. Mohamed testified that this use was appropriate under those circumstances, and I so **FIND**. The appellant next intentionally used the CED in an attempt to stop I.S. from fleeing the scene. Finally, the CED was unintentionally used while in the appellant's hand as he struck I.S. twice in the head. The use of the CED to prevent I.S. from fleeing the scene and the CED being in the appellant's hand when he struck I.S. are the basis of the disciplinary charges.

The appellant first argues that he was justified in using the CED on I.S. while he was fleeing from the area because his training and experience led him to conclude that I.S. was attempting to obstruct the arrest of E.R. Further, the appellant testified that he observed I.S. push past Alicea as Alicea put up his to stop him from getting closer to Bengochea and E.R. However, the credible testimony established that the appellant attempted to control the crowd and was not paying attention to I.S. and did not have probable cause on his own to know or see what I.S. did or did not do as I.S. was out of his view. The appellant testified "Well, Officer Bengochea obviously had a better viewpoint of him trying to obstruct him, trying to get the juvenile into the patrol car, so when I was trying to do crowd control, he was like, 'Get him, get him.' And then I, like, was trying to figure out, originally, who, but then I saw I.S. started running and I pursued." (T71:11-16.) This testimony makes the appellant's argument unconvincing, because the appellant did not have the ability to see the actions he testified to where I.S. allegedly pushed a police officer. The credible evidence establishes that I.S. was only passively resisting and not actively resisting when the appellant observed him. Further, I.S. did not threaten or possess a weapon or pose a threat to anyone nearby, and, accordingly, I **FIND** that on May 20, 2019, I.S. was a passive resister when the appellant discharged his CED at him.

The appellant next argues that in the heat of the moment, he forgot that he was still holding the CED when he struck I.S. twice in the head. This testimony makes some

sense given the circumstances of the situation. The appellant admitted that after he discharged the CED, he had difficulty maneuvering because the CED wires were loose. The appellant smartly realized he could not drop the CED because of the chance that someone in the crowd could recover it, so he had no other option but to carry the CED with him as he attempted to assist Bengochea. When the appellant arrived at the location where Bengochea had tackled I.S., he admitted to striking I.S. twice in the head. I agree with the respondent that although the situation was stressful, the appellant should have realized after the first strike that he was holding the CED and restrained himself from striking I.S. a second time. Further, the appellant shouting, "What you think you piece of shit," then proceeding to push down on I.S.'s head, supports the argument that the appellant was not striking I.S. just to gain compliance. Accordingly, I **FIND** that the appellant struck I.S. twice in the head with the CED, causing I.S. bodily injury.

LEGAL ANALYSIS AND CONCLUSION

Two issues must be addressed in this matter; the first is whether respondent has proven the charges by a preponderance of the evidence, and the second issue is whether the twenty-day working-day suspension, execution of a Last Chance Agreement, and Anger Management were reasonable.

The Civil Service Act, N.J.S.A. 11A:1-1 et seq., governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties. N.J.S.A. 11A:1-2(a). Such an employee may be subject to major discipline. N.J.S.A. 11A:1-2(b), N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3(a).

An appeal to the Civil Service Commission requires the OAL to conduct a de novo hearing to determine the appellant's guilt or innocence, as well as the appropriate penalty

if the charges are sustained. In re Morrison, 216 N.J. Super. 143, (App. Div.1987). The respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that the appellant was guilty of the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 561 (1982). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

Appellant's status as a police officer subjects him to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576–77 (1990). Law-enforcement employees, such as a correctional officer, 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, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. 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).

This matter involves major disciplinary action, brought by the City against appellant, seeking a twenty-day working-day suspension, execution of a Last Chance Agreement, and Anger Management. The FNDA charged the appellant with 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; Perth Amboy Department Rules, Regulations and Policy section 3:1.17, Use of Force.

As to conduct unbecoming a public employee, this term has been described as an "elastic" phrase that includes "'conduct which adversely affects the morale or efficiency'" of the public entity or "'which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services.'" In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (citation omitted); see Karins v. City of Atl. City, 152 N.J. 532 (1998). Unbecoming conduct by a police officer need not be predicated upon a

violation of the employer's rules or policies. See City of Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955). Rather, it "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." In re Tuch, 159 N.J. Super. 219, 224 (App. Div. 1978).

The courts have frequently recognized the sensitive position held by law enforcement officers. It is firmly established that "[t]he obligation to act in a responsible manner is especially compelling in a case involving a law enforcement official." In re Phillips, 117 N.J. 567, 576 (1990). In the words of the Appellate Division:

> It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public . . .
>
> [Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966).]

In other words, "[s]ociety reposes in police officers responsibilities that are simultaneously weighty, sensitive, and fraught with dangerous consequences to themselves, other police officers, and the public." In re Vey, 135 N.J. 306, 308 (1994). They are authorized to carry firearms and to use deadly force in justifiable circumstances, they can engage in high-speed chases, and they are sometimes required to intervene in domestic disputes. Ibid. Conduct by a police officer that indicates "an attitude of mind and approach to the obligations of his office fundamentally at variance with his sworn duty" is a violation of the required standard of behavior inherent in the position. Asbury Park, 17 N.J. at 429–30. Adherence to this high standard of conduct is an obligation that a law enforcement officer voluntarily assumes when he or she enters public service. Emmons, 63 N.J. Super. at 142.

The Perth Amboy Department Rules, Regulations and Policy section 3:1.17, Use of Force, states in relevant part as follows:

- The following uses are prohibited: 2. A CED shall not be fired or discharged against a person who is exhibiting only passive resistance to an officer's command to move from or to a place, to get onto the ground, or to exit a vehicle. A CED shall not be fired or discharged against a person, for example, who is attempting instinctively to reduce the leverage of a wrist lock, hammerlock, or other pain-compliance hold applied by an officer, or who is bracing, or pulling against an officer's attempt to pull/move him or her.

Here, the credible evidence establishes that the appellant deployed his CED towards I.S. at a time when I.S. was only exhibiting passive resistance by fleeing from the appellant. Further, the appellant admitted to striking I.S. in the head twice while he held the CED in his hand, causing I.S. bodily injury. Applying the laws to the facts, I **CONCLUDE** that the respondent demonstrated, by a preponderance of credible evidence, that the appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee, and that such charges must be **SUSTAINED**. I further **CONCLUDE** that the respondent demonstrated, by a preponderance of credible evidence, that the appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause; Perth Amboy Department Rules, Regulations and Policy section 3:1.17, Use of Force, and that such charges must be **SUSTAINED**.

PENALTY

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline requires consideration. In re Stallworth, 208 N.J. 182,195–96 (2011); West New York v. Bock, 38 N.J. 500, 523. When deciding what disciplinary action is an appropriate penalty, the fact finder shall consider the nature of the sustained charges and the appellant's past record. Bock, 38 N.J. at 523–24. The employee's past record is said to encompass their

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 as to the timing of the most recently adjudicated disciplinary history should also be given. Ibid.

However, the theory of progressive discipline is not a fixed rule to be followed without question.

An analysis of the mitigating and aggravating factors must be undertaken before the appropriate discipline can be determined. The mitigating factors are as follows: First, on May 20, 2019, the appellant and his fellow officers were confronted with what can be properly characterized as a fluid and stressful situation, and as such, the appellant was not afforded an opportunity to fully think through his decisions. Second, the appellant exhibited good instincts when he first used the CED to perform an arc display in order to establish constructive authority over the unruly crowd and by not dropping the CED to the ground as he attempted to assist Bengochea. Third, the appellant exhibited concern not only for the safety of his fellow officers but for the crowd that had gathered as well.

The aggravating factors include the serious bodily injury the appellant caused I.S. by striking him twice in the head with the CED. In addition, the appellant's prior disciplinary matters include the following:

- October 17, 2018, Violation of Excessive Force Policy (3:1.17)—four-day working-day suspension;
- September 5, 2013, Failure to Care for Assigned Vehicle (8:1.41)—one-day working-day suspension.

Weighing the mitigating and the aggravating factors, I conclude that the mitigating factors outweigh the aggravating factors. Here, the respondent sought a penalty of a twenty-day working-day suspension, Anger Management, and execution of a Last Chance Agreement. Under the circumstances presented here, such a penalty is

disproportionate to the facts surrounding the sustained charges and ignores the mitigating factors that support a less stringent penalty.

I therefore **CONCLUDE** that the imposition of a ten-day working-day suspension is appropriate under the circumstances presented here. I further **CONCLUDE** that the circumstances do not support the execution of a Last Chance Agreement or the necessity of Anger Management.

ORDER

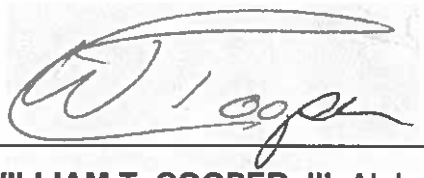
I **ORDER** that the charges of violating N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; and N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause, to wit, Perth Amboy Department Rules, Regulations and Policy section 3:1.17, Use of Force, must be **SUSTAINED**.

It is further **ORDERED** that the twenty-day working-day suspension, Anger Management, and a Last Chance Agreement against appellant be amended to only a ten-day working-day suspension.

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.



June 13, 2025
DATE

WILLIAM T. COOPER, III, ALJ

Date Received at Agency: _____

Date E-Mailed to Parties: _____

WTC/am

APPENDIX

Witnesses

For appellant:

Stephen Hedberg

For respondent:

Mohamed Mohamed

Exhibits

For Court:

J-1 Thumb Drive, Body Worn Camera videos;

J-2 Written Summation—respondent dated 1/31/25

J-3 Written Summation—appellant dated 3/21/25

For appellant:

A-1 Perth Amboy Policy regarding CED

For respondent:

R-1 Preliminary Notice of Disciplinary Action

R-2 Final Notice of Disciplinary Action

R-3 Internal Affairs Investigation report of M. Mohamed

R-4 Notice of Minor Disciplinary Action dated 10/22/18

R-5 Disciplinary Action dated 9/05/2013 (seven pages)