



## STATE OF NEW JERSEY

 DECISION OF THE  
CIVIL SERVICE COMMISSION

 In the Matter of Michael Kopie,  
Department of Transportation

 CSC Docket No. 2024-2529  
OAL Docket No. CSV 09075-24

ISSUED: JULY 23, 2025

The appeal of Michael Kopie, Electrical Mechanic, Department of Transportation, 35 working day suspension, on charges, was heard by Administrative Law Judge Kimberley M. Wilson (ALJ), who rendered her initial decision on May 30, 2025. Exceptions were filed on behalf of the appointing authority and a reply was filed by the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply filed by the parties, the Civil Service Commission (Commission), at its meeting on July 2, 2025, adopted the ALJ's Findings of Fact and Conclusions and her recommendation to reverse the 35 working day suspension.

As mentioned above, the Commission has thoroughly reviewed the exceptions filed in this matter and finds them unpersuasive. The Commission makes the following comments. The Commission finds nothing in the record or exceptions to establish that the ALJ's finding that the appellant followed the policy in question, such as it was, was improper, and most noteworthy, had reasonable bases for his failure to work the assigned overtime. Accordingly, such, the Commission agrees with the ALJ's assessment, that based on the evidence in the record, the appointing authority did not present sufficient credible evidence to sustain its burden of proof regarding the proffered charges.

The Commission further notes that the ALJ's determinations were based on her assessment of the credibility of the witnesses' testimony. 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). The Commission finds no persuasive evidence in the record or the appointing authority’s exceptions to demonstrate that the ALJ’s findings and conclusions based on those determinations were arbitrary, capricious or unreasonable. In this regard, while the ALJ found all of the witnesses generally credible, she specifically indicated her rationale based on the testimony and evidence in the record for finding in each of the three alleged instances that the appellant refused to work overtime, as to why the credible evidence in the record demonstrated otherwise.

Since the suspension has been reversed, the appellant is entitled to 35 working days of mitigated back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, per the Appellate Division’s decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission’s decision will not become final until any outstanding issues concerning back pay are finally resolved.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Michael Kopie. The Commission further orders that the appellant be granted 35 working days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced and mitigated as provided for in N.J.A.C. 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to N.J.A.C. 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 23<sup>RD</sup> DAY OF JULY, 2025

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Nicholas F. Angiulo  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 09075-24

AGENCY DKT. NO. 2024-2529

**IN THE MATTER OF MICHAEL KOPIE,  
NEW JERSEY DEPARTMENT OF  
TRANSPORTATION.**

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**Michael Kopie**, appellant, pro se

**Dennis J. Mikolay II and Nonee Lee Wagner**, Deputy Attorneys General, for  
respondent, New Jersey Department of Transportation (Matthew J. Platkin,  
Attorney General of New Jersey, attorney)

Record Closed: April 14, 2025

Decided: May 30, 2025

BEFORE **KIMBERLEY M. WILSON**, ALJ:

**STATEMENT OF THE CASE**

Appellant Michael Kopie (Kopie), an electrical mechanic working for respondent New Jersey Department of Transportation (NJDOT), appeals disciplinary action imposing a thirty-five day suspension without pay for a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, defined as NJDOT Guidelines for Employee Conduct and Discipline, Section 1, C, Failure to Be Available for and/or Refusal to Work Overtime, from July 1,

2022, to December 31, 2022.<sup>1</sup> Kopie denies that he refused to work electrical overtime during that period, asserting that he had a reasonable excuse for declining electrical overtime twice and that he failed to receive a call for electrical overtime once.

### **PROCEDURAL HISTORY**

On or around May 9, 2024, the NJDOT issued a Final Notice of Disciplinary Action #2023-18 (FNDA) against Kopie, suspending him without pay for thirty-five non-consecutive working days.<sup>2</sup> (J-13.) On May 21, 2024, Kopie appealed, and the matter was transmitted to the Office of Administrative Law, where it was filed on June 28, 2024, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

After a settlement conference and a series of status conferences, the hearing was held on April 7, 2025. The record remained open to allow the parties to submit supplemental documentation, and after those supplemental documents were received, the record closed on April 14, 2025.

### **DISCUSSION AND FINDINGS OF FACT**

Prior to the hearing, the parties stipulated to certain facts. For the following **FACTS** that were not contested by evidence presented at the hearing,<sup>3</sup> I so **FIND**:

1. Kopie is employed by the NJDOT as an electrical mechanic.

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<sup>1</sup> There were 184 days in this six-month period in 2022.

<sup>2</sup> Kopie was suspended without pay on the following dates: (i) July 11, 2024; (ii) July 12, 2024; (iii) July 16, 2024; (iv) July 17, 2024; (v) July 18, 2024; (vi) July 23, 2024; (vii) July 24, 2024; (viii) July 25, 2024; (ix) July 30, 2024; (x) July 31, 2024; (xi) August 1, 2024; (xii) August 6, 2024; (xiii) August 7, 2024; (xiv) August 8, 2024; (xv) August 9, 2024; (xvi) August 13, 2024; (xvii) August 14, 2024; (xviii) August 15, 2024; (xix) August 20, 2024; (xx) August 21, 2024; (xxi) August 22, 2024; (xxii) August 27, 2024; (xxiii) August 28, 2024; (xxiv) August 29, 2024; (xxv) September 3, 2024; (xxvi) September 4, 2024; (xxvii) September 5, 2024; (xxviii) September 10, 2024; (xxix) September 11, 2024; (xxx) September 12, 2024; (xxxi) September 17, 2024; (xxxii) September 18, 2024; (xxxiii) September 19, 2024; (xxxiv) September 24, 2024; and (xxxv) September 25, 2024.

<sup>3</sup> “[G]enerally litigants should be held to their stipulations and the consequences thereof.” Negrotti v. Negrotti, 98 N.J. 428, 432 (1985). There are rare instances that justify the rejection of stipulations, which may be permitted as long as the party losing the benefit of the stipulation still receives his or her day in court. Ibid. Here, some of the parties’ stipulations are rejected because the stipulated facts were actually disputed by the evidence the NJDOT produced during the hearing, specifically, stipulations 5, 5(f), 5(i), 5(j), 5(k), and 5(l).

2. The electrical mechanic position is job specification number 43643. (J-1.)
3. The electrical mechanic position is subject to NJDOT Policy & Procedure No. 508. (J-2.)
4. The electrical mechanic position is subject to Article 12 of the IFPTE's Collective Bargaining Agreement (CBA). (J-3.)
5. On July 6, 2022, Kenneth Campbell (Campbell) called Kopie for emergency overtime,<sup>4</sup> but Kopie used benefit time and was not required to work. (J-4 at 1.)
6. On July 17, 2022, Campbell called Kopie for emergency overtime, but Kopie used Family and Medical Leave Act<sup>5</sup> (FMLA) time and was not required to work. (Ibid.)
7. On August 8, 2022, supervisor Russell Kershaw (Kershaw) called Kopie for emergency overtime, but Kopie used FMLA time and was not required to work. (J-4 at 2.)
8. On August 20, 2022, Kershaw called Kopie for emergency overtime, but Kopie used FMLA time and was not required to work. (Ibid.)
9. On August 21, 2022, Kershaw called Kopie for emergency overtime but received no answer. (J-4 at 3.)
10. On August 29, 2022, Campbell called Kopie for contiguous overtime, which Kopie declined. (J-4 at 4.)

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<sup>4</sup> As will be explained in the Initial Decision, the NJDOT scheduled two types of electrical overtime, which was emergency electrical overtime and contiguous electrical overtime. "Emergency electrical overtime" may be referred to as "emergency overtime" in this Initial Decision, and "contiguous electrical overtime" may be referred to as "contiguous overtime."

<sup>5</sup> 29 U.S.C. §§ 2601 to 2654.

11. On September 13, 2022, Kershaw called Kopie for emergency overtime, which Kopie declined. (Ibid.)
12. On November 15, 2022, Kershaw called Kopie for emergency overtime, but Kopie used FMLA time and was not required to work. (J-4 at 8.)
13. On December 3, 2022, Campbell called Kopie for emergency overtime, but Kopie used FMLA time and was not required to work. (Ibid.)
14. On December 18, 2022, Campbell called Kopie for emergency overtime, but Kopie used FMLA time and was not required to work. (J-4 at 9.)
15. On February 24, 2023, Preliminary Notice of Disciplinary Action #2023-18 (PNDA) was issued to Kopie alleging violations of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, defined as NJDOT Guidelines for Employee Conduct and Discipline, Section 1, C, Failure to be Available for and/or Refusal to Work Overtime, with a proposed suspension of thirty-five days. The disciplinary time period covered July 1, 2022, to December 31, 2022. (J-12.)
16. On May 9, 2024, the FNDA was issued to Kopie with a proposed suspension of thirty-five days. (J-6; J-13.)
17. Kopie's disciplinary history includes the following: (i) an official reprimand dated August 19, 2016, for a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for a failure to be available for and/or refusal to work overtime pursuant to NJDOT Guidelines for Employee Conduct and Discipline, Section 1, C (J-7); (ii) a three-day suspension served from October 29, 2019, to October 31, 2019, for a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, for a failure to be available for and/or refusal to work overtime pursuant to NJDOT Guidelines for Employee Conduct and Discipline, Section 1, C (J-8); (iii) an eight-day suspension served from February 28, 2022, to March 9, 2022, for a violation of N.J.A.C.

4A:2-2.3(a)(12), other sufficient cause, for a failure to be available for and/or refusal to work overtime pursuant to NJDOT Guidelines for Employee Conduct and Discipline, Section 1, C and 3, H, conduct unbecoming a public employee (J-9); and (iv) a twenty-day suspension beginning on May 29, 2024, which Kopie did not appeal (J-11).

From the documents the parties provided for the hearing, I **FIND** the following **FACTS**:

1. Electrical mechanics install, troubleshoot, and repair traffic-signal equipment or systems, as well as highway lighting systems and wiring systems; monitor the use of materials, equipment, parts, or supplies; and answer routine questions. (J-1.)
2. Article 12, Section C, of the CBA states that employees are expected to be available for a reasonable amount of overtime work. (J-5 at 28.) It further states, "[a]n employee who refuses an overtime assignment because of a reasonable excuse shall be considered to have worked for the purposes of determining equal distribution of overtime and will not be subjected to disciplinary action, except where there is evidence of neglect. An employee's use of the same excuse multiple times will be considered when determining the 'reasonableness' of his/her refusal of overtime assignments so that an excuse, which may have been reasonable on one or more occasions, may be unreasonable if used repeatedly, unless supported by medical documentation." (*ibid.*, emphasis added.)
3. From July 1, 2022, to December 31, 2022, Kopie was called to perform emergency or contiguous overtime seventeen times. (J-4.) The nature of the call (emergency or contiguous overtime), Kopie's response, and a management determination, if applicable, for those calls discussed in the



joint stipulation, which are uncontroverted based on hearing testimony, are noted as follows:

Date of call	Nature of overtime call	Kopie's response	Management determination
August 24, 2022	Emergency	N/A	Not Petersburg
September 25, 2022	Emergency	N/A	Not Petersburg
October 8, 2022	Emergency	N/A	Not Petersburg
October 9, 2022	Emergency	N/A	Not Petersburg
October 10, 2022	Emergency	N/A	Kopie WPS VA 10-7 went away for long weekend
October 15, 2022	Emergency	N/A	Not Petersburg
November 6, 2022	Emergency	N/A	Not Petersburg FMLA

(Ibid.)

4. Kopie's prior discipline, including the periods of time for the discipline, the times he was notified of electrical overtime work, and the number of times he actually worked, is set forth as follows:

Dates	Times Kopie was called for electrical overtime work	Times Kopie actually worked	Discipline issued	Citation(s) in record
January 1, 2016, to June 30, 2016	36	4	Official reprimand	J-7
January 1, 2021, to June 30, 2021	16	0	8-day suspension	R-5; J-9
January 1, 2022, to June 30, 2022	20	1	20-day suspension	J-10; J-11

5. In the PNDA, the incident giving rise to the charges against Kopie is described as follows: "You are required, as a condition of employment, to respond if called and/or notified, when overtime conditions are present. It is understood that you are expected to be available for a reasonable amount of overtime. However, between July 1, 2022, and December 31, 2022, you were called and/or notified of overtime conditions and your requirement to

work overtime on or about three (3) occasions. You did not work any of those occasions. This does not represent a reasonable amount of emergency overtime work.” (J-12, emphasis added.) Kopie refused to sign the PNDA. (Ibid.)

### **Testimony**

The following discussion is not a summary of all testimony, but an encapsulation of the testimony relevant to the disciplinary charge against Kopie.

#### **For respondent**

**Janice Nelson** (Nelson) is currently deputy director for human resources for the NJDOT and has worked for the NJDOT since 2008. Her past job duties included handling employee discipline.

The NJDOT's overtime policy includes non-scheduled (unplanned) overtime and planned overtime. (J-2.) Emergency overtime is required to protect motorists. Employees are not on call for emergency overtime, but they are expected to respond to telephone calls from NJDOT supervisors when emergency overtime work needs to be performed. NJDOT supervisors will call the employees on their cell phones or on a landline.

The NJDOT disciplined Kopie because his response to electrical overtime was lacking. According to Nelson, Kopie was not being disciplined for his failure to work overtime when he had a reasonable excuse to be exempt from electrical overtime. For her, a reasonable excuse not to work electrical overtime included when an employee is out of town and not able to report to work or when an employee is on medical leave. Employees who are on medical leave should not be called to work electrical overtime and would not be penalized for not working.

Nelson later testified that an NJDOT employee who is using vacation, administrative, or compensatory time can be called to work electrical overtime.

Employees who are using vacation time and refuse to work emergency overtime may not have that refusal used against them.

Based on an overtime report for Kopie from July 1, 2022, to December 31, 2022 (overtime report), Kopie was not penalized for failing to work the electrical overtime calls when he was called and the response was marked "benefit time," "FMLA," or "not Petersburg." (J-4 at 1–3, 5–9.) NJDOT employees are expected to work overtime in their service area, but they are not penalized when they do not perform electrical overtime work outside of their service area. Kopie worked in the Petersburg service area.

On August 21, 2022, the overtime report indicates that Kopie did not answer when called for emergency overtime, and Kopie is eligible for discipline for failing to respond to this overtime call. (Id. at 3.)

On August 29, 2022, Kopie was called for contiguous overtime, overtime that occurs next to his regular work hours, and he declined that work. (Id. at 4.) Kopie's failure to work this overtime opportunity was part of the discipline issued against him. An employee's failure to respond to a call is taken against the employee.

On September 13, 2022, Kopie was called for emergency overtime, and Kopie declined the work. (Ibid.) His failure to work overtime on September 13, 2022, is the basis for discipline.

On October 10, 2022, Kopie was called for emergency overtime, and Kopie was on vacation, away for a long weekend. (Id. at 6.) This reason was accepted as a reasonable excuse for Kopie not to work the emergency overtime, and he is not being disciplined for failing to work emergency overtime on October 10, 2022.

Kopie was disciplined for failing to work electrical overtime on three occasions from July 1, 2022, to December 31, 2022. Nelson defined working a reasonable amount of electrical overtime as working more electrical overtime than electrical overtime declined. Kopie did not work any electrical overtime, and the NJDOT determined the amount of his discipline based on progressive discipline.

When an employee fails to answer a telephone call for electrical overtime, NJDOT management interprets that failure to be a decline, even if no one speaks to the employee about the need for electrical overtime. NJDOT management requested that Kopie be disciplined, and the NJDOT's human resources, along with management, determined what discipline was appropriate.

**Christian Lafata** (Lafata), currently a microelectronics system technician for the NJDOT and in October 2022, provisional supervision crew, testified that electricians had to fulfill a reasonable amount of electrical overtime work. The responses that employees could give when he called them for electrical overtime work included no response, decline, will work, or benefit time. If an employee indicated that they were using benefit time, then the failure to work electrical overtime would be deemed a reasonable excuse as long as it was not abused.

Other reasonable excuses not to work overtime included certain situations when the employee could not work. Lafata testified that what constituted a reasonable excuse depended on the situation.

Lafata was not Kopie's direct supervisor.

**Campbell**, assistant regional supervisor for the NJDOT, has supervised Kopie for over six years. Campbell's job duties included calling employees for electrical overtime.

Electrical mechanics are required to work mandatory overtime, but Campbell said that the amount of mandatory overtime they must work changes at every hearing he attends. The union says that there is not an amount of mandatory overtime that employees must work.

Campbell recalled that there was a need for contiguous overtime on August 29, 2022, because a truck hit a traffic-signal fixture. Kopie declined this work. Campbell believed that Kopie may have been on vacation the following days. Campbell did not recall making this specific call to Kopie for contiguous overtime; he said that he makes hundreds of calls each month regarding overtime.

When reviewing Kopie's overtime report, Campbell testified that those times that Kopie was called for overtime work when he was on FMLA leave or benefit leave counted as time worked under the CBA because Kopie had a reasonable excuse.

Kopie has worked planned overtime for the NJDOT where Kopie received compensatory time. Campbell testified that the NJDOT's definition of electrical emergency overtime has changed many times in the past, which could have affected Kopie's standing with discipline.

**Brian Gazzara** (Gazzara), an electrical mechanic with the NJDOT, testified that an employee's failure to handle their fair share of electrical overtime calls is a basis for discipline. The union does not provide employees with a percentage of electrical overtime work that should be done. The NJDOT has not provided employees with the percentage of electrical overtime work that should be done, saying that it ranges from 35 percent to 50 percent; the NJDOT will not put that requirement in writing.

Gazzara personally did not believe that an employee who did no electrical overtime work was doing his or her fair share. He believed that it was unacceptable for an employee who was eligible to work electrical overtime, meaning that they did not have a reasonable excuse not to work overtime, to never respond to an overtime call. When asked whether FMLA, vacation, or other leave time constituted a reasonable excuse to not work overtime, Gazzara testified that he was not sure, as the NJDOT's overtime policy was not clear. He testified that he has heard conflicting information about the policy.

**Kershaw**, a current assistant regional supervisor for the NJDOT and crew and electrical supervisor in 2022, was responsible for calling employees for electrical overtime. When he called employees to work emergency overtime, if they refused to work the overtime, he would indicate that the employee declined the overtime. If the employee did not respond to his call, he would indicate that the employee provided no answer. He did not know whether a "no response" was considered as the employee working and said that it depended on the situation.

Kershaw called Kopie for emergency overtime on August 21, 2022, for a traffic-

signal knock-down on Route 9 and Jimmie Leeds Road. (J-4 at 3.) Kershaw indicated that he never spoke with Kopie and that the telephone call went straight to Kopie's voicemail.

On September 13, 2022, Kershaw called Kopie for emergency overtime for a traffic-signal knock-down at Route 147 and Ocean Drive. The fact that the emergency overtime began at 16:00, or 4 p.m., made the overtime contiguous overtime rather than emergency overtime. He did not recall making this call to Kopie. Kopie declined this request for emergency overtime.

Kershaw did not believe that an employee who did not wish to work overtime needed to provide a reason for not working that overtime. He said that all of the emergency calls that require overtime are received, responded to, and resolved.

For appellant

**Kopie** testified that he was out of work for 121 days within the six-month period from July 1, 2022, to December 31, 2022, which included time that he was out of the office because of a serious medical condition and related post-surgical treatment. He has obligations after work that prevent him from working electrical overtime.

For the August 21, 2022, call for emergency overtime, Kopie did not recall receiving that call. On August 29, 2022, Kopie's supervisor asked Kopie if Kopie could stay at work for contiguous overtime at the end of his regular workday. Kopie said that he could not work because he had a doctor's appointment. For the September 13, 2022, call, Kopie said that he had a veterinarian coming to his farm to care for a calf in the midst of a breech birth<sup>6</sup> and was not able to work.

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<sup>6</sup> "A breech birth in cattle occurs when the calf is positioned in the womb in a way that is not ideal for standard delivery. This can include positions where the hind legs or buttocks are set to come out first, instead of the head. . . . As soon as you suspect a breech birth, you need to contact a veterinarian. Breech births in cattle can quickly become complicated, and the expertise of a vet is invaluable in such situations. Your vet can assess the situation, determine the best course of action, and provide the necessary equipment and assistance to ensure the best odds of successful calving." See <https://lethbridgeanimalclinic.com/blog/safely-deliver-a-breech-calf/> (last visited on May 28, 2025).

Kopie seeks to have the thirty-five-day suspension stricken from his record and receive reimbursement for the thirty-five days of lost wages. He stated that he goes to work to live and does not live to work.

### **Additional Findings**

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. "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).

I accept the testimony of Nelson, Lafata, Gazzara, Campbell, and Kershaw as generally credible, understanding that at times their testimony conflicted with the exhibits in this matter and conflicted with each other, as will be discussed herein. I also accept Kopie's testimony as credible.

The basis of the NJDOT's discipline imposed on Kopie are three calls<sup>7</sup> for electrical overtime work that either Campbell or Kershaw made to him in August and September 2022. As for the first call on August 21, 2022, Kershaw testified that when he called Kopie, the call went straight to voicemail, and he never actually spoke to Kopie. Similarly, Kopie did not recall receiving a call that day. The overtime report, however, states that Kopie's telephone number was not in service, and the failure to respond was marked as a "no answer." It does not logically follow that a telephone call would go straight to Kopie's

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<sup>7</sup> During the hearing, the NJDOT mentioned that Kopie was called sixteen times for emergency overtime from July 1, 2022, to December 31, 2022. The overtime report, however, indicates that Kopie was actually called seventeen times.

voicemail if the telephone number was not in service; if the phone number was not in service, the call would have not been connected so that the caller could access Kopie's voicemail. As a result of the inconsistencies in the facts the NJDOT presented, I **FIND** as a **FACT** that Kopie was not called to work emergency overtime on August 21, 2022. As a result, there are only two days for which Kopie failed to work electrical overtime from July 1, 2022, to December 31, 2022, rather than three.

The second call was Campbell's call to Kopie on August 29, 2022, for contiguous overtime. According to the overtime report, Kopie declined this work, but Campbell testified that Kopie may have been on vacation the following days. Campbell did not recall making this specific call to Kopie. Kopie, however, testified he had a doctor's appointment after work and could not work the overtime. I accept Kopie's reason for not working the electrical overtime as more credible, in light of the fact that Campbell testified that he did not recall calling Kopie. I **FIND** as a **FACT** that on August 29, 2022, Kopie did not work contiguous overtime because he had a doctor's appointment after his regular workday.

The third call was Kershaw's call to Kopie on September 13, 2022, for emergency overtime. According to the overtime report, Kopie declined this work. Kershaw did not recall making this call to Kopie; Kopie testified that he could not work the emergency overtime because he had a veterinarian coming to his farm to care for a calf in the midst of a breech birth. I **FIND** as a **FACT** that on September 13, 2022, Kopie did not work emergency overtime because he needed to meet a veterinarian to care for his calf in the midst of a breech birth.

I **FIND** the following additional **FACTS**:

1. NJDOT's overtime policy includes non-scheduled overtime and planned overtime. Emergency overtime is required to protect motorists.
2. NJDOT employees are not on call for emergency overtime, but they are expected to respond to telephone calls from NJDOT supervisors when electrical overtime work needs to be performed. NJDOT supervisors will



call the employees on their cell phones or on a landline.

3. A reasonable excuse not to work electrical overtime included when an employee is out of town and not able to report to work or when an employee is on medical leave. An employee who is using vacation, administrative, or compensatory time can be called to work overtime. Employees who are using vacation time and refuse to work emergency overtime may not have that refusal used against them.
4. Working a reasonable amount of electrical overtime meant that the employee worked more electrical overtime than they declined.
5. NJDOT employees who are on medical leave should not be called to work overtime and would not be penalized for not working overtime.
6. From July 1, 2022, to December 31, 2022, Kopie was not penalized for failing to work for the overtime calls when he was called and the response was marked "benefit time," "FMLA," or "not Petersburg." NJDOT employees are expected to work electrical overtime in their service area, but they are not penalized when they do not perform electrical overtime work outside of their service area. Kopie worked in the Petersburg service area.
7. When an employee fails to answer a telephone call for electrical overtime, NJDOT management interprets that failure to be a decline, even if no one speaks to the employee about the need for electrical overtime.
8. If an employee indicated that they were using benefit time, then the failure to work electrical overtime would be deemed a reasonable excuse as long as it was not abused. Reasonable excuses not to work overtime included certain situations when the employee could not work, and what constituted a reasonable excuse depended on the situation.
9. The amount of mandatory overtime that NJDOT employees must work changes at every hearing that Campbell attends. The union says that there is not an amount of mandatory overtime that employees must work. The

NJDOT's definition of electrical overtime has changed many times in the past.

10. The union does not provide the employees with a percentage of electrical overtime work that should be done. The NJDOT has not provided employees with the percentage of electrical overtime work that should be done, saying that it ranges from 35 percent to 50 percent; the NJDOT will not put that requirement in writing.
11. When asked whether FMLA, vacation, or other leave time constituted a reasonable excuse to not work overtime, Gazzara was not sure, as the NJDOT's overtime policy was not clear. He has heard conflicting information about the policy.
12. Kershaw did not believe that an employee who did not wish to work overtime needed to provide a reason for not working that overtime.
13. Kopie was out of work for 121 days within the six-month period from July 1, 2022, to December 31, 2022, which included time that he was out of the office because of a serious medical condition and related post-surgical treatment.
14. Kopie did not work any electrical overtime from July 1, 2022, to December 31, 2022.

### **LEGAL ANALYSIS AND CONCLUSIONS**

A civil service employee's rights and duties are governed by the Civil Service Act (Act) and regulations promulgated pursuant thereto. See N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. The purpose of the Act is to "ensure efficient public service for state, county, and municipal government." In re Johnson, 215 N.J. 366, 375 (2013) (citing Commc'ns Workers of Am. v. N.J. Dep't. of Personnel, 154 N.J. 121, 126 (1988)). The Act should be construed liberally toward attainment of merit appointments and broad tenure protections. See Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J.

138, 147 (1965). However, “[t]here is no constitutional or statutory right to a government job.” State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div.), certif. denied 156 N.J. 381 (1998).

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which could range from a reprimand to a suspension or removal from employment. See N.J.S.A. 11A:1-2(c); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2(a); N.J.A.C. 4A:2-2.9. Consistent with public policy and the Act, public entities should not be burdened with an employee who fails to perform their duties satisfactorily or engages in misconduct related to their duties. See N.J.S.A. 11A:1-2(c). Thus, a public entity may impose major discipline upon a civil service employee, including removal from their position. See N.J.S.A. 11A:1-2(c); N.J.A.C. 4A:2-2.2(a).

For appeals concerning major disciplinary action, the appointing authority bears the burden to prove the charges by a preponderance of the competent, credible evidence. See 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). Evidence is said to preponderate “if it establishes the reasonable probability of the fact.” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must “be such as to lead a reasonably cautious mind to the given conclusion.” Bornstein v. Metro. Bottling Co., Inc., 26 N.J. 263, 275 (1958).

The NJDOT's disciplinary charge in the FNDA against Kopie is a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Other sufficient cause is defined as other conduct not specifically delineated in the regulation which would violate “the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” In re Boyd, Cumberland Cnty. Dep't of Corrs., 2019 N.J. CSC LEXIS 621, \*121 (July 3, 2019), adopted Comm'r, id. at \*\*1–2 (Aug. 14, 2019). N.J.A.C. 4A:2-2.3(a)(12) is essentially a catchall provision for why an employee may be subject to discipline. “An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority.” In re Mumford, 2014 N.J. CSC LEXIS 478, \*33 (April 17, 2014), adopted Comm'r, id. at \*\*1–13 (June 5, 2014).

In the FNDA, the specific law, rule, or regulation that Kopie violated is listed as NJDOT Guidelines for Employee Conduct and Discipline, Section 1, C, Failure to Be Available for and/or Refusal to Work Overtime. I note that the record does not contain a document specifically titled "NJDOT Guidelines for Employee Conduct and Discipline."<sup>8</sup> Kopie's obligation to work overtime is discussed in the CBA, which was discussed at length during the hearing without objection from either party. The underlying question is whether the NJDOT has proven that Kopie failed to be available for and/or refused to work emergency overtime, sufficient cause for discipline. For the following reasons, I find that the NJDOT has failed to prove by a preponderance of the competent, credible evidence that Kopie violated its laws, rules, and regulations, and as a result, Kopie should not have been disciplined.

As previously determined, Kopie failed to work electrical overtime twice, on August 29, 2022, and September 13, 2022, in a six-month period. The evidence presented at hearing calls into question whether Kopie violated NJDOT's laws, rules, and regulations. Section C of the CBA, the governing document that the NJDOT presented, states not only that an employee will be available for a reasonable amount of overtime work but also that an employee, such as Kopie, who refuses an overtime assignment because of a reasonable excuse, shall be deemed to have worked and will not be subject to disciplinary action, except where there is evidence of neglect.

A key inquiry here is the definition of "reasonable" in those two portions of Section C of the CBA. Was Kopie available for a reasonable amount of electrical overtime work? Were Kopie's reasons for refusing electrical overtime reasonable?

The portion of the CBA that is the basis for Kopie's disciplinary charge does not include a definition of "reasonable." On the first question, whether Kopie was available for a reasonable amount of electrical overtime work, the NJDOT's witnesses testified to different definitions of "reasonable." Nelson testified that employees had to perform more electrical overtime work than they declined. On the other hand, Campbell testified that

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<sup>8</sup> One of the joint exhibits is an NJDOT Policy/Procedure on Overtime effective March 13, 2017. (J-2.) This document does not establish the requirement to work overtime; its purpose is to state the types of overtime. (*Ibid.*)

the amount of “reasonable” electrical overtime work changed at every hearing that he attended and that the union advised that there was not an amount of mandatory electrical overtime that employees had to work. The NJDOT’s definition of electrical overtime has changed many times. Gazzara testified that the union does not provide the employees with a percentage of electrical overtime work that should be done. The NJDOT has not provided employees with the percentage of electrical overtime work that should be done, saying that it ranges from 35 percent to 50 percent; the NJDOT will not put that requirement in writing.

As to the second question, whether Kopie’s reasons for refusing electrical overtime were reasonable, Nelson’s testimony was contradictory. At one point, she testified that a reasonable excuse not to work electrical overtime included when an employee is out of town and not able to report to work or when an employee is on medical leave. Nelson later testified that an employee who is using vacation, administrative, or compensatory time can be called to work electrical overtime. Employees who are using vacation time and refuse to work emergency overtime may not have that refusal used against them.

Lafata, however, testified that if an employee indicated that they were using benefit time, then the failure to work electrical overtime would be deemed a reasonable excuse as long as it was not abused. He also testified that a reasonable excuse included certain situations when the employee could not work, and what constituted a reasonable excuse depended on the situation. Similarly, Gazzara was not sure what was a reasonable excuse, stating that the NJDOT’s overtime policy was not clear and that he heard conflicting information about the policy.

The answer as to what is “reasonable” in both relevant portions of the CBA, as NJDOT has presented it, is inconsistent at best.

Looking outside of the CBA, “reasonable” has been defined as “being in accordance with reason,” “not extreme or excessive,” and “moderate, fair.” See <https://www.merriam-webster.com/dictionary/reasonably> (last visited on May 28, 2025). The definition of “reasonable” in Black’s Law Dictionary is “1. Fair, proper or moderate under the circumstances. . . 2. According to reason.” Black’s Law Dictionary, Deluxe

Eighth Edition (2004).

For the first question, Kopie's availability for a reasonable amount of electrical overtime work, Kopie was not available, as he worked no emergency overtime from July 1, 2022, to December 31, 2022. Kopie does not contest this fact. For the second question, however, whether Kopie had a reasonable excuse to decline electrical overtime on those days, Kopie's reasons to decline the work were reasonable when considered under the circumstances.

From July 1, 2022, to December 31, 2022, Kopie worked fifty-nine days. He did not work the full six-month period for which he is being disciplined, as for periods of time, he was taking FMLA leave for a serious medical condition and post-surgery recovery. He declined the contiguous overtime work on August 29, 2022, because he had a doctor's appointment after his regular workday. From this record, it appears that Kopie had been using FMLA time from at least July 6, 2022, to August 20, 2022. The idea that Kopie may need to visit a doctor, an appointment scheduled at a time after his regular workday, does not strain credulity, and under the circumstances, it could be expected.

For the second declination of electrical overtime on September 13, 2022, Kopie needed to meet a veterinarian to care for one of his calves in the midst of a breech birth. The expectation that Kopie would allow an animal that he cares for to not receive medical treatment because he has emergency overtime is completely untenable. The plain language of the CBA allows employees to provide a reasonable excuse, namely one that is within reason, fair, and moderate, to be deemed having worked without being subject to disciplinary action, as long as there is no evidence of neglect.

The fundamental problem here, highlighted by the various NJDOT witnesses' testimony, is that the NJDOT has not defined what is reasonable in terms of the amount of electrical overtime work its electrical mechanics are expected to perform and what constitutes a reasonable excuse for not performing that work. Four different NJDOT witnesses gave three different definitions and expectations of the definition of reasonable as it appeared twice in the CBA, and this, on its face, is the paragon of arbitrariness. If the NJDOT cannot tell its employees and supervisors what is expected of them, then how

can it ensure that it is disciplining its employees in an appropriate and consistent way? It cannot.

In addition, the NJDOT has failed to consider all of the circumstances when determining whether disciplining Kopie was appropriate. In his past discipline, there were six-month periods in which the NJDOT contended that it contacted Kopie between thirteen to thirty-six times for failing to work electrical overtime, and Kopie actually worked anywhere between no electrical overtime to four times. In those circumstances, discipline appears to be more reasonable, as it is clear in those instances that Kopie was contacted numerous times for electrical overtime and failed to work. See In re Janusz Ksieski, 2017 N.J. AGEN LEXIS 123 (2017), aff'd., Dep. Dir. (June 6, 2017) (granting summary decision in favor of the NJDOT and against the NJDOT employee, who was disciplined for ten days and forty-five days for failing to work electrical overtime when the employee did not contest the basis for his failure to work.)

Here, Kopie was out of the office on FMLA leave. He only had two opportunities to work electrical overtime, and both times, he provided a reasonable excuse that did not constitute neglect.

Meanwhile, despite the fact that Kopie was not working and was out of the office on FMLA leave, the overtime report clearly shows that NJDOT supervisors contacted Kopie seven times during that period to work electrical overtime. The purpose of the FMLA, among others, is to allow employees to take leave time for medical reasons. 29 U.S.C. § 2601(b)(2). Implicit in that purpose is the ability for an employee to focus on their personal health and recovery without worrying about their job status. 29 U.S.C. § 2601(a)(4). While I do not believe that Kopie's supervisors intentionally disturbed Kopie while he was out of the office on FMLA leave when they called him to work electrical overtime, the supervisors did not appear to know that Kopie was on FMLA leave before calling him to work. The fact that the NJDOT makes note of the total number of calls its supervisors made to Kopie to work electrical overtime during this period, despite the fact that the vast majority of those calls could not be considered in discipline and were not the basis of the disciplinary charges against him, underscores the lack of consistency in the NJDOT's evidence against Kopie.

From the totality of these circumstances, Kopie followed the plain language of the CBA and did not violate NJDOT's laws, policies, or procedures. Therefore, I **CONCLUDE** that the NJDOT has failed to provide by a preponderance of the credible evidence that Kopie violated N.J.A.C. 4A:2-2.3(a)(12). Because Kopie has already served the thirty-five day suspension, the NJDOT shall restore to Kopie any lost pay, seniority, and other applicable benefits, including the ability to perform other overtime work for the NJDOT, as is related to the FNDA.



**ORDER**

I **ORDER** that the NJDOT's disciplinary charge that Kopie violated N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, be and is hereby **DISMISSED**. Understanding that Kopie has already served the thirty-five day suspension pursuant to the FNDA, I further **ORDER** the NJDOT restore any lost pay, seniority, and other applicable benefits, including the ability to perform other overtime work for the NJDOT, to Kopie attendant to the FNDA.

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.

May 30, 2025

DATE

  
\_\_\_\_\_  
**KIMBERLEY M. WILSON, ALJ**

Date Received at Agency:

May 30, 2025

Date Mailed to Parties:

\_\_\_\_\_

KMW/ml

**APPENDIX**

**Witnesses**

**For appellant:**

Michael Kopie

**For respondent:**

Janice Nelson

Christian Lafata

Brian Gazzara

Kenneth Campbell

Russell Kershaw

**Exhibits**

**Joint exhibits:**

- J-1 Job Description 43643 Electrical Mechanic
- J-2 DOT Policy/Procedure 508 regarding overtime
- J-3 Portion of the IFPTE Collective Bargaining Agreement
- J-4 Employee Overtime Report by Date for July 6, 2022, August 8, 2022, August 21, 2022, August 29, 2022, September 25, 2022, October 9, 2022, October 15, 2022, November 15, 2022 and December 18, 2022
- J-5 PNDA #2023-18 dated February 24, 2023
- J-6 FNDA #2023-18 dated May 9, 2024
- J-7 Official Reprimand dated August 19, 2016
- J-8 Letter from Michele Shapiro, Director, Division of Human Resources, to Kopie dated October 22, 2019
- J-9 FNDA dated February 10, 2022
- J-10 PNDA dated December 6, 2022
- J-11 FNDA #2022-190 dated May 9, 2024
- J-12 PNDA #2023-18 dated February 24, 2023

J-13 FNDA #2023-18 dated May 9, 2024

For appellant:

- A-1 Paystubs from January 15, 2021; February 12, 2021; March 12, 2021
- A-2 John MacKenzie's Disciplinary Appeal Findings
- A-3 Email from John Bystrycki to Kopie dated June 27, 2022
- A-4 N.J.A.C. 12:56-5.6
- A-5 Email from Michelle Thomas (not apparent) to Kopie dated April 19, 2024
- A-6 Kopie's ECATs activity from June 18, 2022, to December 30, 2022
- A-7 DOT Policy/Procedure 508
- A-8 IFPTE Collective Bargaining Agreement, Article 12
- A-9 Employee Overtime Report by Date dated June 26, 2022; July 17, 2022; August 20, 2022; August 24, 2022; September 13, 2022; October 8, 2022; October 10, 2022; November 6, 2022; December 3, 2022
- A-10 NJOIT Open Data Center

For respondent:

- R-1 N.J.A.C. 4A:2-2.3
- R-2 Failure to be available and/or refusal to work overtime
- R-3 Overtime report from August 2022 to September 2022
- R-4 Not entered into evidence
- R-5 PNDA #2021-182
- R-6 Not entered into evidence
- R-7 Appeal of Minor Disciplinary Action dated August 24, 2016
- R-8 Kopie's Discipline History
- R-9 PAR Committee Model Civil Service Commission for Kopie dated April 11, 2022
- R-10 Appeal of Minor Disciplinary Action dated March 9, 2023