STATE OF NEW JERSEY

In the Matter of Eugene Vick, Northern State Prison, Department of Corrections	:	**DECISION OF THE CIVIL SERVICE COMMISSION**
CSC Docket Nos. 2025-66 and 2025-2137 OAL Docket Nos. CSR 09422-24 and CSR 06932-25 (Consolidated)	:	

ISSUED: September 30, 2026

The appeals of Eugene Vick, Senior Correctional Police Officer, Northern State Prison, Department of Corrections, two removals, effective June 20, 2024, and March 31, 2025, respectively, on charges, were heard by Administrative Law Judge Leslie Z. Celentano (ALJ), who rendered her initial decision on August 10, 2026. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on September 23, 2026, accepted and adopted the ALJ's Findings of Fact and Conclusions and her recommendations to reverse one removal and modify one removal to a six-month suspension. The Commission also recommended that the appointing authority send the appellant to an appropriate anger management program.

Removal 1

The first removal involved charges of conduct unbecoming a public employee and other sufficient cause. In this regard, it was alleged that the appellant was charged with simple assault based on an altercation with his girlfriend.

In her initial decision, the ALJ concluded that the underlying charges had been sustained, but that, based substantially on the appellant's previously unblemished disciplinary history, that the removal should be modified to a six-month suspension.

In its exceptions, the appointing authority argues that the ALJ erred in finding the appellant's and his girlfriend's testimony credible. It contends that his testimony was contradictory with his interviews, and her contemporaneous account of the events was more consistent with the video evidence than her testimony presented before the ALJ. It also argues that as a law enforcement officer, the appellant's sustained misconduct was egregious and worthy of removal.

Regarding credibility, the Commission agrees with the ALJ's assessment. 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). In its *de novo* review, the Commission finds that the ALJ provided reasonable and supportable bases to credit the appellant's and his girlfriend's testimony at the hearing and sufficiently reconciled any inconsistencies. Her conclusions that that the appellant was initially on the defense during the altercation and that his girlfriend was "less than candid" in her report to the police are not persuasively undermined by the other credible evidence in the record or the appointing authority's exceptions. Accordingly, the Commission finds that the ALJ's findings and conclusions based on those determinations were not arbitrary, capricious or unreasonable.

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). Moreover, the Commission emphasizes

that a Senior Correctional Police Officer, like a municipal 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).

In this matter, given the evidence in the record and the context of the events, the Commission finds the appellant's conduct, while clearly inappropriate, especially for a law enforcement officer, was not so egregious to warrant removal from employment absent an application of progressive discipline. In this matter, as indicated by the ALJ, the appellant had a long career without any disciplinary history. As such, the Commission cannot find that, given his long tenure and lack of a disciplinary history, removal is warranted. However, the Commission emphasizes that its modification of the penalty is in no way condoning the appellant's misconduct. In this regard, the Commission's concerns extend to the appellant's violent response during the altercation. Accordingly, along with the six-month suspension, the Commission recommends that the appointing authority, upon his reinstatement, enroll the appellant in an appropriate anger management course. Finally, the Commission notes that the six-month suspension imposed, the most severe suspension permitted short of removal, should serve to impress upon the appellant the gravity of his actions as well as serve as a clear warning that any further inappropriate conduct may lead to removal from employment.

Removal 2

The second removal involved charges based on allegations that the appellant was untruthful during the internal affairs investigations. In this matter, the ALJ found that the underlying departmental charges should be dismissed as untimely under *N.J.S.A.* 30:4-3.11a (known as the "45-day Rule). Upon its *de novo* review, the Commission finds nothing in the record to demonstrate that the ALJ's findings and determinations in that regard were arbitrary, capricious, unreasonable or otherwise not based on the credible evidence in the record. Accordingly, the Commission affirms the reversal of the removal predicated on the charges relating to the alleged untruthfulness.

Remedies

Since Removal 1 has been modified and Removal 2 has been reversed, the appellant is entitled to be reinstated to his position with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from six months after the first date of disciplinary separation without pay until the date he is reinstated.

However, the appellant is not entitled to counsel fees for Removal 1. *N.J.A.C.* 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in a disciplinary appeal is the merits of the

charges. See *Johnny Walcott v. City of Plainfield,* 282 *N.J. Super.* 121,128 (App. Div. 1995): In *the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). Thus, where, as here, a penalty is modified but charges are sustained and major discipline is imposed, counsel fees must be denied since the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12.

Further, since Removal 2 has been reversed, pursuant to *N.J.A.C.* 2-2.12, the appellant's attorney is entitled to reasonable counsel fees only for such fees accrued pursuant to his defense of Removal 2.

This decision resolves the merits of the dispute between the parties concerning Removal 1 and the penalty imposed therein and the merits of the dispute between the parties concerning Removal 2. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. February 26, 2003), the Commission's decision on Removal 1 will not become final until any outstanding issues concerning back pay are finally resolved and on Removal 2 will not become final until any outstanding issues concerning counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

ORDER

Removal 1

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Civil Service Commission therefore modifies Removal 1 to a six-month suspension. The Commission also recommends that, upon his reinstatement, the appointing authority enroll the appellant in an appropriate anger management course.

Additionally, the Commission orders that the appellant be granted back pay, benefits, and seniority from six months after the first date of disciplinary separation without pay to the date he is reinstated. 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. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

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.

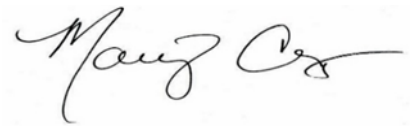
Removal 2

The Civil Service Commission finds that the appointing authority's action in removing the appellant was not justified. Therefore, the Commission reverses that action and upholds the appeal of Eugene Vick. The Commission further awards reasonable counsel fees as provided for in *N.J.A.C.* 4A:2-2.12. However, as indicated above, this award is solely for counsel fees expended in defense of this action.

An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. The Commission directs that the parties shall make a good faith effort to resolve any dispute as to the amount of counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to counsel fees 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 should be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF SEPTEMBER, 2026



Mary Cruz
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
(CONSOLIDATED)
OAL DKT. NOS. CSR 09422-24 &
CSR 06932-25

IN THE MATTER OF EUGENE VICK, NORTHERN STATE PRISON, DEPARTMENT OF CORRECTIONS.

Robert R. Cannan, Esq., for appellant Eugene Vick (Markman & Cannan, attorneys)

Kevin K.O. Sangster, Deputy Attorney General, for respondent Northern State Prison (Jennifer Davenport, Attorney General of New Jersey, attorney)

Record Closed: June 26, 2026 Decided: August 10, 2026

BEFORE **LESLIE Z. CELENTANO**, ALJ (Ret., on recall):

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Eugene Vick (Vick), appeals the determination of respondent, Northern State Prison (NSP), Department of Corrections (Department or DOC), removing him from his position as a senior correction officer.

Procedural History Before Prior ALJ

On October 11, 2023, appellant was arrested by the Montclair police and charged with simple assault. Based on the arrest, on November 22, 2023, respondent served appellant with a Preliminary Notice of Disciplinary Action (PNDA). In its notice, respondent charged appellant with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6) and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). Respondent also charged appellant with violating respondent's Rules and Regulations, specifically the rule regarding conduct unbecoming an employee (HRB 84-17(c)(11)) and the rule regarding violating a rule, regulation, policy, procedure, order, or administrative decision (HRB 84-17(e)(11)). The PNDA advised that respondent sought a thirty-day suspension.

In the PNDA specifications, respondent stated that on October 11, 2023, appellant was arrested and criminally charged with simple assault. Respondent further specified that as a sworn law enforcement officer, appellant had a responsibility to prevent violence when possible.

On May 16, 2024, the initial PNDA was withdrawn and a new PNDA was filed setting forth the same charges. However, this PNDA advised that respondent sought appellant's removal.

Subsequently, respondent issued a Final Notice of Preliminary Disciplinary Action (FNDA) dated May 20, 2024, sustaining all the charges and removing appellant from his employment effective June 20, 2024.

On July 2, 2024, appellant filed an appeal with the Office of Administrative Law (OAL) under the Administrative Procedure Act, for determination as a contested case. The appeal was perfected on July 10, 2024.[1]

[1] This procedural history before Administrative Law Judge Brown is based upon his Order Denying Summary Decision dated January 21, 2025.

On July 22, 2024, the case was assigned to administrative law judge (ALJ) Daniel Brown. On July 30, 2024, Judge Brown held a prehearing telephone conference and issued a prehearing order scheduling the hearing for October 8 and October 9, 2024.

On September 10, 2024, Judge Brown received respondent's motion for summary decision. He then held another telephone conference on September 12, 2024, and the October hearing dates were adjourned. On September 27, 2024, appellant filed opposition to the motion. Respondent's reply was received on October 7, 2024, and oral argument on the motion was held on October 29, 2024. On January 21, 2025, Judge Brown issued an Order denying summary decision. Because of the passage of time and the 180-day rule, N.J.S.A.40A:14-201(a), an Order was also entered on that date granting appellant his base salary, retroactive to January 2, 2025. Multiple additional orders were entered by Judge Brown, including an Order for additional discovery dated March 26, 2025, and an Order Granting Payment of Base Salary Pending Final Determination dated June 2, 2025.[2] Following several additional telephone conferences, the hearing commenced with Judge Brown on March 19, 2025 and continued on March 26, 2025. A telephone conference was held on April 8, 2025.

On February 3, 2025, respondent issued a second PNDA which charged Vick with violating N.J.A.C. 4A:2-2.3(a)(6) and (12) for conducting unbecoming a public employee and other sufficient cause and for violating HRB 84-17 (C8), (C11), and (E1) for falsification, intentional misstatement of material fact in connection with work employment application, attendance, or in any record, report, investigation, or other proceeding; conduct unbecoming a public employee; and violation of a rule, regulation, policy, procedure, order, or administrative decision, and again sought appellant's removal. In the PNDA's specifications, respondent alleged that Vick "failed to be truthful" during two SID interviews.

Subsequently, respondent issued a Final Notice of Preliminary Disciplinary Action (FNDA) dated March 31, 2025, sustaining all the charges and removing appellant from his employment effective March 31, 2025.

[2] It is unclear why there are two such orders.

Appellant filed an appeal, and the matter was transmitted to the OAL on May 28, 2025 and assigned to Judge Brown. On May 28, 2025 Judge Brown entered an Order consolidating the two matters and the hearing continued on that date.

Procedural History Before the Undersigned

The case was reassigned to the undersigned following Judge Brown's elevation to the Superior Court and the telephone conference he had scheduled for June 19, 2025, was adjourned. Due to the reassignment, the hearing date scheduled for June 23, 2025, was converted to a telephone conference to discuss whether the parties wished to restart the hearing entirely following Judge Brown's departure, or whether they wished to continue from where they left off.[3] The parties indicated a desire to move forward with the remaining witnesses.[4]

The hearing continued on July 31, 2025, August 1, 2025 and September 8, 2025.

Following an unsuccessful settlement conference, the parties submitted transcripts and briefs in support of their respective positions. The final brief was received on May 8, 2026. The record closed following the resolution of multiple issues related to exhibits.[5]

FACTUAL DISCUSSION

At the hearing appellant testified on his own behalf and offered the testimony of Mireyella Hernandez (Hernandez) and Michael Tirado (Tirado), the first vice president for the New Jersey PBA Local 105. Officer Raymon Barrett (Barrett), administrator Marc Sim

[3] Under N.J.A.C. 1:1-14.13(b), if the judge who heard a matter can no longer preside over the case or issue an initial decision, another judge shall be assigned to complete the hearing or issue the initial decision as if he or she had presided over the hearing from its commencement, provided: 1. The judge is able to familiarize himself or herself with the proceedings and all testimony taken by reviewing the transcript, exhibits marked in evidence and any other materials which are contained in the record; and 2. The judge determines that the hearing can be completed with or without recalling witnesses without prejudice to the parties.

[4] This was later confirmed on the record.

[5] The parties changed the Exhibit numbers after the hearing concluded, and so the numbers reflected in the Appendix, as provided by the parties, are different from those referenced in the transcripts.

(Sim), Major James Forbes (Forbes), and investigators Gary Rivera (Rivera), Michael Dalrymple (Dalrymple), and Brian Seeback (Seeback) testified for respondent. Based upon a review of the testimony and documentary evidence presented at the hearing, as well as having had the opportunity to observe Vick, Hernandez, Forbes, Seeback, Sim and Tirado, and assess the credibility of all witnesses, I **FIND** the following **FACTS** and accept as **FACT** the testimony set forth below.

Vick, an NSP correctional officer with a thirteen-year unblemished record, appeals two pending Final Notices of Disciplinary Action issued by NSP. The two FNDAs charged Vick with two counts of the Title 4A violations N.J.A.C 4A:2-2.3(a)(6) and (12) for conduct unbecoming of a public employee and other sufficient cause. Both FNDAs stem from an incident on October 11, 2023, which resulted in Vick being arrested and charged with simple assault for an alleged domestic-violence dispute with Mireyella Hernandez (Hernandez), with whom Vick lived at the time and with whom he shares a child. Vick described that in October 2023 the relationship was "okay," but that there were "issues" that Hernandez did not want to discuss. He has never had a domestic violence complaint against him and police have never been called.

On October 11, 2023, Hernandez became aware that Vick was with another woman in Verona Park. She knew this because she had placed a tracking device, an Apple AirTag, on Vick's vehicle. Hernandez drove from Newark to Verona Park and confronted Vick after finding him in his vehicle with a woman in the passenger seat. Vick saw Hernandez as he was leaving the park. Hernandez had turned into the park and tried to hit him with her car and he swerved out of the way to avoid a crash. Hernandez testified she was "very angry." As Vick exited the parking lot, Hernandez followed him in what she described as an "angry chase," trying to cut him off as he drove with the other woman east on Bloomfield Avenue. At one of the traffic lights, Hernandez jumped out of her car and was pulling on the driver's side door handle of Vick's vehicle in an attempt to get into his car. When the light changed, she lost her balance and fell into the road by the Jeep dealership, where Bloomfield Avenue (Essex County Route 506/Spur 506, a major east-west county road), intersects with Pompton Avenue (New Jersey State Route

23) and Prospect Avenue (County Route 577).[6] After getting up from the road, Hernandez got back in her car and kept following Vick, pulling up next to him, trying to cut him off, telling him to pull over, and doing "anything [she] could to get his attention."

As Hernandez continued to escalate the situation, Vick decided that the best thing to do was to drive down Bloomfield Avenue to the Montclair police station. He felt the need to retreat and try to de-escalate by getting to a safe place. The best way to control the situation he felt, would be to go to a police station. He pulled into the Montclair police station lot and Hernandez pulled in right behind him. The passenger that had been in Vick's car exited the vehicle and walked towards the entrance to the station. Hernandez pulled on Vick's car-door handle, and when she couldn't open the door she got into his back seat and began to punch, hit and scratch him. Hernandez described that she was "angry, upset, hurt and lost my cool." She started pummeling him from the back of the vehicle, "hitting, hitting, hitting" non-stop for two minutes, slapping and hitting him every which way she could. This is corroborated by the video of the police station lot. Vick was trying to block her punches and his car started to roll. At that point, Hernandez grabbed Vick's wallet, which was on the center console and which she "knew included all of his credentials, his badge, his ID, everything." Hernandez also grabbed his keys, which were in the cup holder, including his house key. Hernandez stated she was "still very upset and acting crazy."

After taking Vick's wallet, credentials, badge, ID and keys, Hernandez went back to her car, and Vick followed her to get his wallet, credentials and keys back. Hernandez's car door was open. Vick asked for the wallet back and Hernandez started kicking him in the groin and pushing him away while he tried to reach in to get the wallet. She was hitting and kicking and he moved in closer to try and reach over her because the wallet was in her hand, and then she threw it on the floor on the passenger side. He was trying to deflect her rapid kicks with his hands, which were moving quickly to deflect her kicks and punches. He agreed that he "hit her legs down," but said that he did not punch her even once. He was defending himself from contact initiated entirely by Hernandez. When he couldn't reach his wallet, he pulled Hernandez out of her car and she fell to the ground.

[6] This intersection is five or six lanes in every direction.

He retrieved his wallet, credentials, and keys and he returned to his vehicle, and the encounter ended. Hernandez testified, "I was doing everything, kicking, hitting, kicking him in the groin, in the legs, anyway I could, trying to keep his wallet away from him." Her car is large and she had a lot of room to maneuver and throw kicks at him. Hernandez described the physical contact as "from me to him. I was doing everything." She was punching, kicking, and hitting him. This is all corroborated by the video. Hernandez agreed she threw Vick's wallet to the other side of the car, on the floor of the front passenger seat, explaining that, "I wanted to hurt him back." As depicted in the video, it was at that point that Vick pulled Hernandez out of the car because he could not reach the other side of the car. Once Hernandez was out of the car he retrieved his wallet, badge, ID, credentials, and keys and walked away.

He told the police all of this and that he had been defending himself and blocking her and pushing her hands away. He would have been disciplined if he lost the badge and ID.

Vick agreed that pushing Hernandez away was "physical contact," but he asserted that he was trying to defend himself and deflect her punches and kicks. He did "hit her legs down" as she was kicking him because he was trying to deflect those nonstop kicks and explained he was defending himself. He was trying to move her out of the way. Vick testified that he thought she would leave him alone and back off if he went to a police station, and so that is what he did.

Hernandez was driving erratically and trying to hit Vick's car and run him off the road, risking serious bodily injury to Vick and to other drivers. He felt that an enraged person would leave him alone if he pulled into a police station instead of to the side of the road. It was better to go to a police station so that she would control herself, but he did not realize that she would keep attacking him. He said he "didn't touch her initially. I'm only touching her because she's touching me, attacking me. . . . I'm not initiating contact, she's initiating contract [sic]." (Tr. of August 1, 2025, 98:3–7.) He felt that he did the right thing.

While speaking very vaguely in the video of her conversations at the police department, Hernandez testified emphatically that she told the Montclair sergeant that Vick had not hit her but did pull her out of the car. The police did not ask her any questions and she agreed that she had never disclosed that she had fallen on Bloomfield Avenue while trying to get into his car at a traffic light. The police asked Hernandez five times whether she wanted a temporary restraining order (TRO), and she indicated each time that she did not. She also reported multiple times to the police that Vick is not a violent man.

Vick was arrested at the Montclair police station (Montclair PD), for domestic violence and was never told that he had been arrested for simple assault. He had no weapon on him at the time, no TRO was ever issued, and he was not suspended then even though Montclair notified the Department right away.

Hernandez learned later that a simple assault charge had been filed. She spoke to the prosecutor and the judge via Zoom and said she agreed that the charges should be dismissed. She also spoke with the investigator on the phone and advised that she had no problem with Vick having his weapon back and had no issues or concerns. Hernandez thereafter had no other contact from the State or Department regarding the incident. Hernandez has no fear of Vick today, or ever, and thinks it would be amazing if he could be back at work. She testified that so many other people go to him for advice and look up to him.

Hernandez testified that she does not recall giving any statements to the Montclair police and only spoke to the sergeant. Asked whether she had sustained any injuries, she stated that she does not recall what she said to the police officer, but, “if I did [sustain injuries], I fell on Bloomfield Avenue.” She agreed that she showed the officer injuries and says they were self-inflicted “when I fell on Bloomfield Avenue trying to get into his car, I literally fell on Bloomfield Avenue.”

After the body-camera video was played, she agreed that she vaguely referred to a cut on her lip and sore ribs but testified that she was angry. She again stated that she was injured on Bloomfield Avenue when her emotions got the best of her and she was

distraught. She fell on Bloomfield Avenue while trying to grab Vick's door handle. She admitted that she originally said that Vick had punched her but explained, "I wanted to hurt him the way he had hurt me," and "I wasn't under oath then."

Vick did not see any videos until over seven months after the incident, in May 2024. He received the first PNDA on October 22, 2023 and appealed it. He never had a hearing and continued to work from October 11, 2023 until May 15, 2024. After the second PNDA was issued on May 16, 2024 he was suspended without pay. Vick's employment was terminated effective May 20, 2024. Judge Brown, who was previously hearing this case, ordered Vick returned to pay status on January 2, 2025. Vick testified that he is still owed twenty-two weeks of salary.

Sim is the administrator at NSP. In this role he is responsible for, among other duties, the discipline process. Sim assigns investigations to be completed and reports are then turned over to him to review and determine if disciplinary action is warranted.

The Montclair police report led to the filing of multiple PNDAs. NSP filed the first PNDA, dated October 22, 2023, on November 24, 2023, following consultation with the Office of Employee Relations (OER). Any time major discipline is warranted, the appointing authority discusses the matter with the OER to determine what discipline should be assessed. The PNDA sought a thirty-day suspension for the regulatory violations of N.J.A.C. 4A:2-2.3(a)(6) and (12) and for departmental violations of Human Resources Bulletin (HRB) 84.17 (C11) and (E1). Sim received a copy of the police report from the Montclair PD and listed the administrative charges. At that point, Sim sought to obtain the video from the Montclair PD and was informed by internal affairs that that video did not exist and could not be obtained, and so without the video and no criminal charges pending they determined that the charges should be withdrawn. Hernandez was also contacted by the DOC's Special Investigations Division (SID) and indicated that she would not come to a departmental hearing and would not testify against appellant. Hernandez also made a point of saying that she had no issue with Vick possessing his weapon. The criminal charges were dismissed on February 7, 2024. The initial PNDA was withdrawn in March 2024, after Hernandez refused to press charges or testify; the

prosecutor dropped the municipal charges; and the administrator whose responsibility it is to file disciplinary charges believed the video surveillance was "unavailable."

At the time of issuing the thirty-day discipline, the reporting officer for Montclair had provided in his report, a play-by-play of what the video depicted, even though they did not have the video at the time. Based upon the officer's report, Sim agreed with the original recommendation for a thirty day suspension..

On May 9, 2024, senior investigator Brian Seeback interviewed Vick about the October 2023 incident and authored a report. Vick stated in his interview that he did not "punch" or even "slap" Hernandez, instead, he can be seen on the video "slapping her hand down." The SID officer noted in his report that "during a review of the video surveillance footage, it appears that SCPO Vick made two motions, which were similar to striking motions, however, it is unclear if [Vick] actually struck Hernandez's person." On May 17, 2024, special investigators Charles Onwudinjo and Thomas Scott conducted a follow-up interview of Vick. During this follow-up, Vick admitted that "he did strike Ms. Hernandez two or three times in the leg area to defend himself." The SID determined that these were misleading statements in Vick's May 9th and 17th interviews. NSP then issued a third PNDA dated February 3, 2025, for removal.

The narrative explaining the incident that gave rise to the charges stated:

> "On October 11, 2023 you were arrested as a result of your involvement in a domestic violence incident in Montclair Township, NJ. The results of an internal investigation conducted by NJDOC SID revealed that you failed to be truthful regarding the incident on multiple occasions. Your conduct is unbecoming a Law Enforcement Officer."

Testimony

In addition to the evidence that forms the foundation of the above findings of fact, a summary of other pertinent testimony follows:

Officer Barrett (Barrett) of the Montclair PD authored the police report of the October 11, 2023, incident. The report described the complicated circumstances of the incident and referenced the availability of video surveillance. Barrett arrested Vick for simple assault, pursuant to N.J.S.A. 2C:12-1(a) and the "Domestic Violence Laws." Barrett described that after speaking with both parties it appeared that the woman had markings on her from a physical dispute, and Vick was arrested. Barrett was wearing a body camera that captured his conversations with the parties.

There is also a surveillance camera in the parking lot that captured the incident. Barrett prepared a report which he described as the arrest report, which includes a brief description of what the person was arrested for. A second report is the actual incident report containing the full synopsis of the incident. He testified that Hernandez stated that Vick beat her up and pulled her out of the vehicle, and that based upon that information and the fact that she had a rip in her shirt and a small cut inside her lip and small scratches on her hands he arrested Vick. He stated that the signs of injury on Hernandez would make Vick the aggressor, and therefore he would be the one to get arrested for a domestic violence incident.

The video depicts Hernandez in the rear of Vick's vehicle and a "physical dispute happening within the vehicle." Then Hernandez is seen entering her own vehicle with Vick following her and eventually pulling her out of the car. Vick is then observed walking back to his car.

The next video observed was Barrett's body-worn camera. Hernandez is observed sitting in her car and Sergeant Meloya is nearby. She was explaining the incident and confirmed that she suffered an injury but did not want to file any charges.

Barrett indicated that he believes a female passenger to Vick's car came inside and provided information that something was going on in the parking lot. He went out to the lot and recalled hearing something about the altercation starting in Verona and ending up at Montclair police headquarters. Observing the video, Barrett stated that Hernandez attempted to open the driver's door of Vick's car and was unable to and then jumped into the rear seat. A battle ensued in the car with the back door still open, and physical

movement can be observed, with Hernandez doing the hitting. This goes on for over two minutes. Then Hernandez exited the vehicle, and he later learned that she could have been holding a cell phone that she grabbed. It was in preparing for the hearing at which he would be a witness that Barrett reviewed his report and the video again and spoke with others who were present at the time of the incident. He learned from those other officers after the second meeting with the Deputy Attorney General that the parties may have been arguing over a cell phone and agreed that he did not know that Hernandez had taken anything from Vick's car and did not learn that until after that meeting. He was not aware as of his testimony of the possibility that Vick's billfold with his law-enforcement ID and badge were taken from his car at that time, until just being asked that question. He testified, "other officers that were on the scene with me or investigated it and they might have gave [sic] me some more insight to possible [sic] what happened there." (Tr. of March 19, 2025, 58:19-22.) This information is not in his report because he only learned of it from either the sergeant or the detective shortly before the hearing. He was also not aware at the time of testifying that Vick's badge and ID had been taken by Hernandez.

Barrett testified:

> Q. Okay. Did you ever learn or hear that the billfold with the law-enforcement ID and the badge were taken from Vick's car?
> A. I'm not aware of that, no.
> Q. The first you're ever hearing that is right today from me asking you that question?
> A. Yes.

Barrett agreed that the view into the vehicle was not clear and that it is difficult to tell from the video what is happening, other than that a battle is going on in the vehicle. Barrett agreed that he wrote that Vick was observed "throwing" a punch into the vehicle; it was a single punch, which he agreed he may have missed originally when he first watched the video, just like he missed the passenger getting out of the vehicle.[7] He

[7] Barrett testified that he watched the video again "during the preparation of this."

agreed that there was no way to know which altercation resulted in Hernandez's claimed injuries. She did not reveal that she fell into the road at a major intersection on Bloomfield Avenue while trying to get into Vick's car at a traffic light.

Hernandez reported that "things got a little out of hand," and that "it was no big deal" and she did not wish to file charges, adding, "he is not a violent man." Those comments are heard on the video.

Barrett never learned whether the injuries Hernandez claimed, which cannot be clearly ascertained from the pictures submitted into evidence, occurred that day or someday prior. He did not ask her whether any scratches Hernandez claimed to have were from her causing injury to someone else and didn't see any scratches on her legs. He said there is an assumption that if the facts give rise to a domestic-violence incident and someone has an injury, an arrest is being made. He was a part of the discussion where Vick pointed to his nose and indicated that he had an injury on his nose.

Barrett agreed that he did not prepare a supplemental report to reflect that Vick's badge and wallet may have been taken by Hernandez, and that since the case was disposed of he wasn't sure if there was a need to prepare a supplemental report. If he had known Hernandez had taken things, especially Vick's badge and his gun, that could have changed his view in terms of charging Vick with simple assault and may have led to Hernandez's arrest instead. He noted that with domestic violence disputes an officer has little discretion in how to proceed.

Sim described that discipline was withdrawn on March 11, 2024, after he learned from an SID email that the video surveillance was not available. On April 4 he learned that the video he had asked for multiple times in emails and meetings was available after all. He was aware that the body-worn-camera video was available, but it was never provided to him and he never reviewed it. He made his decision to withdraw the initial discipline based upon the unavailability of fixed surveillance video and the other factors, including that the criminal charge was dismissed and that the victim was not willing to testify against Vick and had no issue if he were to possess his weapon.

Sim testified that the video described in Barrett's report "surfaced" in early April 2024. After the video was reviewed a new PNDA was issued. Sim believed that although appellant was off duty, there were actions on the video that constituted conduct unbecoming a correctional officer and that violated law-enforcement rules and regulations, as well as the Attorney General Guidelines for force. He felt that appellant was unable to control his behavior and lacked critical decision-making in the instant of the offense. As a correctional officer he needs to have proper self-control and use de-escalation techniques. His training includes how to keep his demeanor calm. He had concerns that the person in the video remained employed under his supervision, and felt he exhibited poor critical decision-making, poor judgment, and excessive force.

Once the video emerged, Sim asked SID if they planned to issue a supplemental report, and they did. It was not just the lack of video; it was that combined with the court dismissal of the charges and the victim not being willing to testify; and so it was all three things and the fact that Hernandez did not have an issue with Vick having a weapon. At this point the PNDA was moot to him.

The supplemental SID report submitted references the available video, and when Sim reviewed it and conferred with the OER it was determined that removal was warranted. The supplemental report is dated April 4, 2024, and was prepared by SID investigator Dalrymple. A second PNDA was written for Vick. He felt that Vick's actions violated numerous Attorney General Guidelines, as well as departmental policies and procedures. The thirty-day discipline that was originally written was done at the recommendation of the OER managing attorney and was not Sim's determination. Sim supported the removal and the OER agreed.

Sim agreed that when he chose not to suspend Vick and chose to fill out a PNDA for thirty days' suspension he was dealing with the facts he knew at the time, which were that Vick had been arrested and charged with simple assault under domestic violence. At the time of issuing the thirty-day discipline, the reporting officer for Montclair had provided in his report, a play-by-play of what the video depicted, even though they didn't have the video at the time. Based on the officer's report he agreed with the original recommendation for thirty days' suspension. He also agreed that consistency is one of

the goals of the administration. He noted that whether a TRO had been requested or issued would have been taken into consideration, and that none was requested or issued in this case. There was also no hold on Vick's firearm. His record would already have been reviewed to see if there was any departmental discipline history or any domestic-violence history and the like, and a thirty-day suspension being issued would indicate the likelihood of no prior discipline. The fact that Vick had worked about thirteen years without discipline would be considered as significant.

In Sim's opinion, the charge of conduct unbecoming is established with the fixed video. The body-worn camera was never made available to him, and he did not follow up to request it. The SID report of February 12, 2024, reflects the February 7 dismissal of the criminal charges, and forty-five days later is much sooner than May 16, 2024. The only additional evidence received was the video that surfaced.

Sim testified:

Q. We're not talking -- is there any piece of evidence, video, body worn, still video, police reports, charging documents, affidavits of probable causes, is there any information that was prevented from you from having, at any time, prior to the time you dismissed the initial preliminary notice, as you've said?
A. Nothing was restricted for me, but there was still one pivotal piece of information that I did not acquire and that was the video of the incident which is why I requested it on March 7th.
Q. Now, you're -- your review -- by the way, just in these emails --
A. Yes.
Q. On April 4th, is that when you were made aware that the video, that the still videos were received?
A. Yes.
Q. Were you made aware that the body worn cameras were received prior to that?
A. Yes.
Q. Okay. On March 11th, "We're able to obtain body worn camera footage from the incident station -- from the incident. Station house surveillance video was

not made available." So, that information was not provided to you on March 11th?

A. That body worn camera footage was available but Station house surveillance video was not available.

Q. Okay. "PI Rivera has the thumb drive and will make it available to you tomorrow." Did you obtain that thumb drive by PI Rivera?

A. No, I did not.

Q. Did you go looking for it?

A. I did not.

Q. Okay. The body worn camera shows -- have you seen the body worn camera videos in this case?

A. No, I haven't.

Q. Have they been provided to you?

A. No.

Q. So, you don't know what -- did you review any reports of what the body worn camera videos showed?

A. No.

Q. Now, by the way, the March 11th video, "Good afternoon, Mr. Sim. Following up. We were able to obtain body worn camera footage from the incident." He doesn't say, senior investigator Del -- Dalrymple (phonetic) Dalrymple doesn't say when the body worn camera video was received, does he?

A. No, it doesn't.

Q. And you never -- and you never reviewed it, right?

A. I, 100%, did not review any body worn camera footage from this incident.

Q. Okay, so, you don't know if it showed any kind of injury to Mr. Vick or the witness?

A. Correct. I clearly don't know cause I did not see the video.

Q. Okay, but the police report, prepared by Officer Barrett from Montclair, said everything that occurred, right?

A. Yes, it did.

(Tr. of March 19, 2025, 153:6–155:17.)

Sim did make known to the supervisor of SID, the assistant commissioner of the Department, that he was dissatisfied with how this case was handled. They didn't talk to the officer, or get him the video, or the body-worn camera, and "things just weren't automatic where they should be in an investigation," and described the "poor performance" of the SID investigation as characterized by "lack of due diligence, organization, timeliness."

Sim testified:

Q. So, when you went to your director of operations and said, "we got a real problem with SID, I don't know what the hell they're doing." In fact, in the Vick case, one of the things you were critical of is they gave you a report to close it out where they didn't even talk to the investi -- the officer themselves.
A. That's correct. And they didn't get me video that they knew of from the minute we got the police report on October 1, 2023, that said it existed.
A. That's correct.
Q. And, in fact, the body-worn camera which even every one of the custody staff, at Northern State Prison under your command, has to wear body-worn cameras, right?
A. Yes.
Q. And have for many years now, including at or about October 11, 2023. Is that correct?
A. Yes.
Q. So, you're fully familiar with body-worn cameras and the downloading and their availability, correct?
A. Very much so, yes.
Q. Did you communicate to the director of operations, how does SID not know to ask for these things and how to obtain them? Was that part of your critique?
A. Part of my critique was, as you can see in that email thread that you brought forth as an exhibit, I had to ask SID for this information for these things. I had to ask them, are you furnishing a supplemental? So, it's a lot of nuances during their investigation where things just weren't automatic where they should be in an investigation.

Q. Understand. And part of your -- I take it, you were frustrated with SID's handling of this matter?

A. I was frustrated with their handling of this matter and a few others, yes.

Q. Specific to this matter, is it because, in part, you were concerned that the 45-day rule was violated and these charges necessarily all had to be dismissed?

A. No. I don't think we violated a 45-day rule.

Q. Your decision to withdraw the charges --

A. Yes.

Q. -- whenever that occurred, which is sometime after -- you know, it had to have been after your March 7th email because you said in that, that you had an open discipline.

A. Correct.

Q. And it must have been sometime after March 11th because of some other information contained in that email chain, right?

A. Correct.

Q. But the 45-day rule wasn't violated?

A. On the initial PNDA that was issued, no. And on the removal PNDA, it was written within 45 days of receiving the supplemental report from SID where they state video surveillance is available, we have it, and it confirms what was in the initial police report.

Q. So, their delays of bureaucratic indifference to conducting an investigation and moving it forward, is that Vick's fault or is that DOC's problem?

A. I don't know the reason for their delays or their ineptitude, I don't know, but I will say that a non-well-functioning SID can -- can hurt everyone in the department. It can harm everyone. Make everyone's job harder, more difficult.

Q. I believe, the attorney general's IAPP uses the terms, "bureaucratic indifference," or "bureaucratic delay," --

A. Okay.

Q. -- do you think that that was -- is a proper term with regards to SID's investigation in providing you the facts in this case?

A. I can't say bureaucratic -- what is it, bureaucratic indifference?

Q. Bureaucratic indifference or bureaucratic delay.

A. I could say poor performance.

Q. So, take out bureaucratic, cause they're career civil service sworn law enforcement officers not maybe whatever is the Legislature's idea of bureaucratic. But, as sworn law enforcement officers, they felt or quorumed the duties in which they were required to (out of microphone range) the handling of Vick's Internal Affairs matter. Is that correct?
A. They performed them. They didn't -- I think, if I were doing the job, I'd perform them a heck of a lot better, in my opinion.
Q. Fair enough. Want to switch jobs with them? I don't know.
A. This job currently pays more.

(Tr. of March 19, 2025, 168:17–172:10.)

Sim agreed that the May 16, 2024, FNDA was well beyond forty-five days from the notification that charges were dismissed. (Tr. of March 19, 2025, 165:15–25.)

He does not believe the body-worn camera is relevant because he believes the video fixed surveillance from the parking lot was sufficient in terms of their decision to remove Vick and he doesn't believe anything in the body-worn camera would have changed his opinion or the Department's opinion that removal was warranted.

Rivera is the principal investigator in charge of the training and recruiting unit. The SID handles administrative cases and criminal cases and serves as a liaison to outside agencies for any incidents or requests from other police departments, whether State, local, or federal. They also investigate matters referred to them, including domestic-violence (DV) cases.

When they get a DV allegation, they contact the police department involved and gather information, then notify the compliance unit, which is the liaison to the Attorney General's office, then assign an investigator, who gathers all the information and does a report. They don't interview the suspect in the DV matter, as that is handled by the police department.

The incident information was received and the case was assigned to Dalrymple, who does the investigation and sends it to Rivera for approval. Rivera also noted that the Montclair PD report was "pretty detailed."

Dalrymple reached out to Montclair the day after receiving the assignment to get the information needed to prepare a report. After Rivera reviews the report it gets sent back to the investigator for final signature. Rivera found Dalrymple's report to be correct, as he had looked at the police report, and this report summarized what happened per the police report, including what steps were taken, if any charges were filed, and the disposition of those charges. The narrative here matched the police report. Nothing in the SID report differs from or contradicts the police report. Rivera stated, "Once the information is received from the third party outside agency, what they do is pretty much document what was transpired from the police report and the steps that took place." (Tr. of March 26, 2025, 17:24–25, 18:1–2.) The only other thing they might do is interview the victim, which they did.

After verifying the information regarding charges, if any, the matter goes to administration and for a psychological exam to determine future carry of weapon.

Rivera testified that "administration asked for the video in March 2024." He stated that as soon as the administrator asked for the video it was requested. He indicated that not getting the video at the time he reviewed the Montclair PD report was an "oversight," but he also testified that he did not see the need to request the video because the Montclair police report was very descriptive. By letter dated March 11, 2024, Dalrymple requested for the first time the "[body-worn-camera (BWC)] surveillance footage and other digital media related to the October 11, 2023 incident" involving Vick from Montclair PD. The SID notified Sim that the BWC videos were available that same day. Despite stating that he needed video surveillance, Sim never reviewed the BWC footage. On April 4, 2024, the SID received the video surveillance of the parking lot from the Montclair PD. Sim viewed this video, which he agreed was incorporated in and accurately summarized by Montclair PD in its October 2023 report. Rivera noted, "We didn't get the video at that time. That was an oversight on our part for the video." (Tr. of March 26, 2025, 27:21–23.) He agreed that they relied on Montclair's report. A supplemental report was

generated after they got the video. A second PNDA dated May 16, 2024 was issued against Vick for the exact same charges as the prior PNDA.

Dalrymple is employed by the DOC as a SID investigator and is assigned to NSP. If there is a domestic violence incident involving a DOC officer, they obtain any information from the other agency that an officer may have interacted with and learn whether there are criminal charges filed, whether there was a restraining order sought or issued, and any other factors, including if there were misconduct allegations. An initial summary is prepared which goes to the administration, and also departmental authorities.

There is a policy to follow when investigating DV incidents called a "checklist." Item 4 on the checklist indicates that the investigator should obtain a copy of all police reports. There is no specific reference to requesting videos. Item 12 indicates that the victim should be interviewed, or at least contact should be made, and in this case the victim was interviewed.

Asked about his own disciplinary history, Dalrymple indicated that he was "disciplined for being untruthful in a 2020 investigation and that was overturned on appeal." (Tr. of May 28, 2025, 60:24–25.) He has not had any other discipline. He has not had a supervisor or anyone at the DOC or administration express to him any concerns about the quality of his investigations or that he did not follow procedures. Typically, after they receive a criminal complaint they will wait until that is disposed of or handled in the court system, then they will proceed to investigate, including running a criminal-history report on the individual. They request the disciplinary history from HR and information regarding whether the individual has personal firearms and whether or not they were confiscated, although they have no authority to confiscate weapons. Once all that is done and the criminal matter is resolved one way or the other, they will schedule the officer for a psychological exam or ask HR to do so to determine whether the officer is "suitable to have his weapons privileges reinstated."

As part of his investigation, Dalrymple emailed Montclair PD requesting records. On March 11, 2024, he requested the body-worn-camera footage, surveillance footage, and other digital media related to the October 2023 incident. He has not had any part of

this investigation since early to mid-2024, April or May. He had interviewed Hernandez by telephone and asked whether she felt Vick's weapons privileges should be restored, and her opinion was that they should be. On the last page of his report he noted that a supplemental report would be forthcoming after the required psychological evaluation. In this matter, surveillance footage was obtained that may have been relevant, and so a supplemental report was authored after the video footage was received on April 4, 2024, from the central office, not from Montclair directly. He had requested this on March 11, but only received the body-worn-camera video on that date. He did not receive the surveillance video from the parking lot that had been requested until April 4.

He had been asked by Sim to obtain the footage after reading in the police report that there was surveillance footage referenced and noting that he had not received it. The supplemental report references that the video appears "to be consistent and corroborate the Montclair police officer" who issued the report. The supplemental report does not reflect his opinion or perspective but merely states that the video is consistent with what was previously reported. Dalrymple stated that the SID investigation he conducted mirrored the Montclair PD investigation.

Dalrymple's supplemental report dated May 10, 2024, includes a short summary of the findings of the psychologist, and in the second paragraph of his report he quotes from the psychologist's report to include the opinion that Vick should have access to his on-duty weapons privileges. The psychologist found that there were no psychological contraindications and he had no objection to allowing a return of duty weapons to Vick.

Forbes is with the Division of Operations out of central office headquarters. He testified regarding the DOC's policies regarding correction officers. Forbes noted that the policies also cover the off-duty conduct of officers and described that law enforcement officers are considered to be in that role 24/7, 365 days a year.

The DOC's rules and regulations are used by the DOC in its regular course of business for conduct and actions of the employees, and address the type of behavior that Mr. Vick was accused of. Forbes indicated that Vick violated those rules, specifically, HRB 84-17 as amended, C11 (conduct unbecoming); E1 (violation of a rule, regulation,

policy, procedure, order or administrative decision). Forbes testified that officers must maintain a high degree of self-control at all times, and that Vick violated this section by assaulting his significant other, and therefore does not have a high degree of self-control. He also stated that Vick violated the section prohibiting engaging in threatening or assaultive conduct, whether "using language or behavior in a disrespectful manner while in the performance of their duty."

Tirado is the first vice president of PBA Local 105, which is the collective bargaining agent for corrections and others. He has been part of the negotiating team for the last two contracts and testified that most contract provisions remain consistent unless specifically modified, and usually they are only negotiating health benefits, salary, and uniform allowances. Tirado testified regarding the forty-five-day rule, explaining that under the collective bargaining agreement, administration has forty-five days within which to file disciplinary charges once an investigation is complete and handed over by the SID. He noted that Vick was arrested on October 11, 2023, and the following day the reports from Montclair were sent to the SID. On February 7, 2024, the criminal charges were dismissed. On March 14, 2024, the DOC withdrew all departmental charges. Vick was not suspended initially, and he believed the matter was concluded following the dismissal and withdrawal, respectively, of the charges. Vick was back to work.

Tirado was shocked to learn that a new PNDA was thereafter issued on May 16, 2024, which included the identical charges. Tirado filed a grievance. It was all the same evidence. He was told that there was "new evidence," the video, but the video was not new evidence, as the Montclair report refers to and describes the video.

The Internal Affairs & Policy Procedures (IAPP) (Attorney General Guidelines) have the force of law in New Jersey. If an agency fails to comply, the entire department or agency could be taken over by the State, and Tirado could not understand how an administrator in 2025 could say that the IAPP is not applicable here. All the Montclair reports were filed on October 12, 2023, and they reference the video and contain a narrative of it. On November 21, 2023, they filed the PNDA seeking thirty days' suspension, so clearly they were able to issue the first PNDA within forty-five days. As of November 21, 2023, they had concluded the investigation, decided what charges to

bring, and filed the PNDA. There is no reason for any member of an agency to have an "extensive bureaucratic delay" and no need for any delay in this case. There was no new evidence, and the videotape was dictated in the Montclair report of October 11, 2023. The forty-five-day limit starts the day after the disposition of the criminal charges, which was February 7, 2024.

The May 16, 2024, PNDA charged Vick with violating N.J.A.C 4A:2-2.3(a)(6) and (12) for conduct unbecoming a public employee and other sufficient cause, and for violating HRB 84-17 (C)(11) and (E1) for conduct unbecoming an employee and for violation of a rule, regulation, policy, procedure, order, or administrative decision. The same October 11, 2023, incident gave rise to the charges. The SID indicated that the video surveillance "corroborate[d] the initial report from Montclair PD."

Credibility

In judging the strength of the evidence and evaluating the credibility of the witnesses, I found appellant's testimony to be earnest and credible, and the strength and credibility of this testimony was not, in my view, undermined by counsel's thorough cross-examination. Vick had not seen any of the videos prior to his interviews and so relied on his recollection from seven months earlier. His testimony was consistent throughout that he had used his hands try and deflect Hernandez's kicks and strikes from hitting him. Clearly Hernandez was less than candid at the Montclair police station, indeed her statements there were intended to mislead and they did do just that. Her testimony at the hearing, two years later, was straightforward and credible, likely due to the significant passage of time. For their part, the respondent's witnesses, other than expressing personal views for which I place little weight, were credible in their recitation of the facts.

LEGAL DISCUSSION AND CONCLUSIONS

An officer may be disciplined for violations of law enforcement rules and regulations provided that the appointing authority complies with procedural safeguards. The forty-five-day rule is one such safeguard; ensuring that corrections officers are afforded timely notice of their alleged violations of law enforcement rules and regulations

that may warrant a suspension, removal, fine, or reduction in rank. See McElwee v. Borough of Fieldsboro, 400 N.J. Super. 388 (App. Div. 2008). The forty-five-day rule is also intended to ensure that alleged violations of such departmental rules and regulations are addressed while evidence is still recent. See Roberts v. State, Div. of State Police, 191 N.J. 516, 523 (2007). To this end, a complaint charging a corrections officer with a violation of rules and regulations must be filed no later than forty-five days after the complaining party obtains sufficient information to file the complaint. N.J.S.A. 30:4-3.11a; Roberts, 191 N.J. at 524. Failure to comply with the forty-five-day rule "shall require a dismissal of the complaint." N.J.S.A. 30:4-3.11a. In other words, a corrections officer cannot be removed from their position for violating the DOC's internal rules and regulations "unless a complaint charging a violation of those rules and regulations is filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based."

Under the Attorney General's "Internal Affairs & Policy Procedures" guidelines:

> [I]t is important that there is no unreasonable delay between the conclusion of the investigation by the assigned investigator and the decision to file charges by the person who has that responsibility. Although the 45-day clock begins at the time the person who has the responsibility to file charges has sufficient information, an agency would have a difficult time justifying an extensive bureaucratic delay once any member of that agency has established sufficient information.
>
> [See nj.gov/oag/iapp/docs/IAPP_November-2022.pdf.]

Based on this guidance, the Commission has remarked in prior cases that the forty-five-day rule "does not allow an appointing authority to unnecessarily delay the bringing of charges by not promptly attempting to obtain sufficient information to bring charges and promptly forwarding such information to the person responsible for filing the complaint" and that "[u]nder such circumstances, it would be appropriate to dismiss charges against a police officer based on the '45-day rule.'" In re Clarke, 2009 N.J. CSC LEXIS 1662 at *8–9 (Oct. 8, 2009); see also In re Cheeks, 2009 N.J. CSC LEXIS 409 (Sept. 17, 2009).

Pursuant to the civil service disciplinary rules, N.J.A.C. 4A:2-1.1 to -6.3, a public employee may be subject to discipline for several reasons, including conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a). Major discipline for such a charge may include removal, disciplinary demotion, or suspension or fine for more than five working days at any one time. N.J.A.C. 4A:2-2.2(a).

If a public employee appeals a major disciplinary action, the burden of proof at a hearing shall rest with the appointing authority. N.J.A.C. 4A:2-1.1; N.J.A.C. 4A:2-1.4(a); N.J.A.C. 4A:2-2.9. When an appointing authority proves a charge against an employee, the question becomes the penalty to be imposed. This inquiry often involves the concept of progressive discipline, which provides that "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing W. New York v. Bock, 38 N.J. 500, 522 (1962)). However, progressive discipline may be bypassed "when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest." Id. at 33.

The Civil Service Act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. See N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined are whether the employee is guilty of the charges brought against the employee and, if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); Bock, 38 N.J. 500. Among the causes for major discipline are conduct unbecoming a public employee and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(6); N.J.A.C. 4A:2-2.3(a)(12).

"Conduct unbecoming" a public employee is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136,

140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (Pa. 1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

The appointing authority bears the burden of establishing the truth of the allegations by a preponderance of the credible evidence. 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). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

During the pendency of this case, the DOC continued to investigate the incident and, in a July 1, 2024, report, DOC investigators concluded that Vick provided inconsistent statements about the incident during his interviews and a psychological evaluation. However, it was not until January 30, 2025—during the pendency of Vick's appeal of his removal under the first FNDA—that DOC administrators learned of the July 1, 2024, investigative report. And based on that report, on February 3, 2025, the DOC issued a new Preliminary Notice of Disciplinary Action seeking his removal on an additional charge of falsification, in violation of a DOC internal rule against providing intentional misstatements during an internal investigation. On March 31, 2025, the DOC issued a second FNDA removing Vick on the falsification charge and, like in the first FNDA, on charges of unbecoming conduct under the civil service and the DOC rules. Vick appealed the second FNDA and on May 28, 2025, Vick's two appeals were consolidated by Judge Brown under N.J.A.C. 1:1-17.

The DOC violated N.J.S.A. 30:4-3.11a by charging Vick with a violation of the DOC's falsification rule several months after the DOC investigators concluded in their July

1, 2024, report that Vick provided inconsistent statements about the domestic-violence incident; as such, I **CONCLUDE** that this charge must be dismissed.

In this case, the Montclair PD provided a detailed police report in a timely manner that not only stated that there was parking-lot video surveillance and BWC footage of the incident, but also accurately summarized what could be viewed on the videos. The oversights and complications with requesting, retrieving, and reviewing videos and reporting on the October 11, 2023, incident were the fault of SID and the reporting chain. The testimony at hearing supports a finding that the Montclair Police Report accurately described what was on the video surveillance and clearly indicated that there was surveillance video. As the underlying incident occurred on October 11, 2023, the Montclair Police Report, which provided sufficient information to bring the complaint, was completed on October 11, 2023. Administrator Sim, the party that could file the charges, knew of the video by November 21, 2023, at the very latest. When communication of the municipal prosecutor dropping the simple assault charges was sent to Sim on or about February 11, 2024, the forty-five-day clock began. The PNDA was served on May 16, 2024, well beyond forty-five days from the administrator learning of criminal charges being dropped.

The delays in the investigation and reporting were numerous. Despite the testimony of multiple SID investigators, it was never explained at hearing why the delays or “oversights” occurred. Sim’s testimony that he requested the video, but when he received the BWC camera footage on or about March 11, 2024, and chose not to watch it, is puzzling. The fact that all the investigators testified that the videos were accurately summarized in the Montclair PD report and then available for viewing before the investigation time tolled belies any arguments that Sim did not have sufficient information to form the basis of his complaints before May 16, 2024, and February 3, 2025.

Here, there was a seven-month bureaucratic delay between July 1, 2024, when the DOC investigators issued a report concluding that Vick provided false accounts of the domestic-violence incident, and February 3, 2025, when a DOC administrator filed the PNDA against Vick on a falsification charge. I **CONCLUDE** that this failure to forward the report to a DOC administrator until seven months after the DOC completed its falsification

investigation constitutes an unjustifiable bureaucratic delay that violates the 45-day rule and warrants the dismissal of the falsification charge under N.J.S.A. 30:4-3.11a. Accordingly, the department charges of violation of HRB 84.17 (C8) for falsification; intentional misstatement of material fact in connection with work employment application, attendance, or in any record, report, investigation, or other proceeding; (C11) conduct unbecoming a public employee, and (E1) violation of a rule, regulation, policy, procedure, order, or administrative decision are **DISMISSED** pursuant to the forty-five-day rule.

The forty-five-day rule however, applies only to alleged violations of an appointing authority's internal rules and regulations. McElwee, 400 N.J. Super. 388. Here, the DOC also charged Vick with conduct unbecoming and other sufficient cause under N.J.A.C. 4A:2-2.3. Those charges remain and the question becomes whether the DOC has proved that Vick engaged in conduct unbecoming during the incident and, if so, what penalty is appropriate.

There is no doubt that a corrections officer is held to a higher standard according to public policy. The standard of behavior for corrections officers is set higher than for other civil service employees; infractions may lead to major discipline for officers that otherwise would not warrant severe discipline for other positions. Chopek v. Bayside State Prison, CSV 00658-01, Initial Decision (May 10, 2002) (citing Moorestown Township v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965)), adopted, Merit System Bd. (June 26, 2002), https://njlaw.rutgers.edu/OAL/index.php.

Holland v. Rowan University, CSV 10953-98, Initial Decision (April 29, 2005), adopted, Merit System Bd. (July 27, 2005), https://njlaw.rutgers.edu/OAL/index.php, provided the following explanation of unbecoming conduct:

> Unbecoming conduct may include excessive, violent or other intemperate behavior, behavior which is not in accord with propriety, modesty, good taste or good manners, or behavior which is otherwise unsuitable, indecorous or improper under the circumstances; it may be less serious than a violation of the law, but which is inappropriate on the part of a public employee because it is disruptive of governmental operations.

Vick was also charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. There is no definition in the New Jersey Administrative Code for other sufficient cause. It is generally defined in the charges against the officer. The charge of other sufficient cause has been dismissed when the "respondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), https://njlaw.rutgers.edu/OAL/index.php, adopted, Comm'r (April 26, 2006).

Here, Vick was the victim from the start of the incident in Verona Park. Hernandez was the aggressor. By the time all of the ensuing events unfolded at the Montclair PD, Vick chose not to seek police intervention and instead chose to engage with Hernandez, at the very last moment, went from victim to aggressor. Vick became the aggressor when he followed Hernandez to her car and pulled her out and only at that point, Vick engaged in conduct unbecoming a law enforcement officer.

In the instant case, the municipal charge for simple assault was dropped by the municipal prosecutor and a TRO was never requested or issued against Vick. Despite Vick being arrested, about which Barrett stated there was little discretion, Hernandez and Vick both testified that his off-duty conduct was defensive as opposed to offensive. Barrett testified that the incident was reported as a domestic-violence matter with Hernandez as the victim because of the scratches that Hernandez said were from the incident, and her statement that Vick hit her. However, Hernandez testified at the hearing that her injuries came from her jumping on Vick's car at a major intersection, when they were driving down Bloomfield Avenue, prior to Vick entering the Montclair PD for assistance. Hernandez was emphatic that Vick had not hit her but did pull her out of the car.

The final issue to be decided is the appropriate penalty to be imposed based on the circumstances. A public employee that commits a wrongful act related to their duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). Determining the appropriate level of discipline requires a de novo review of the disciplinary action to determine if the punishment is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." In re Polk, 90 N.J. 550, 578 (1982) (citation omitted).

New Jersey has an established system of progressive discipline to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is related to an employee's past record, and looks at the nature, number, and proximity of prior disciplinary infractions to determine the reasonableness of the penalty imposed. See In re Phillips, 117 N.J. 567, 581 (1990). An employee's past record may not be used to prove the present charges, but it is to be considered when determining the appropriate penalty for the current offense. Ibid.

Here, the record established that Vick did not have any past disciplinary history before the October 11, 2023, incident. Therefore, the nature of Vick's actions must be analyzed to determine if they are so egregious as to justify removal or something less. Vick's charges stem from one incident, put in motion entirely by Hernandez. The charges for simple assault were dropped by prosecutors. Vick's unbecoming conduct was short in duration in that Vick was not the aggressor until the very last moment when Vick pulled Hernandez out of her car. There is no doubt that a corrections officer is held to a higher standard of conduct and his actions in pulling Hernandez out of her car clearly warrants some type of penalty. However, removal is an excessive penalty in light of the totality of events that led up to that moment. There is no "second-guessing" here of the importance of maintaining control in the corrections setting, but that important objective has little to do with the particular facts of this case. What is missing is a significant nexus, indeed any nexus, between appellant's misconduct and his workplace. This entire scenario was set in motion by Hernandez and appellant was a victim until the very end.

Based on a review of the totality of the evidence, I further **CONCLUDE** that the Department has met its burden of proving, by a preponderance of the credible evidence, that Vick engaged in conduct unbecoming a public employee. I further **CONCLUDE** that the Department has failed to meet its burden of proving by a preponderance of the credible evidence, other sufficient cause that provides grounds for disciplinary action against appellant, and that charge is **DISMISSED**. Finally, I **CONCLUDE** that termination is an excessive penalty response to appellant's significant lapse of judgment and is not supported by a fair application of the statutory criteria. I **FURTHER CONCLUDE** that a six-month suspension is the appropriate penalty based upon the entirety of the circumstances in this case.

ORDER

Based on the foregoing, it is hereby **ORDERED** that as to the FNDA dated June 20, 2024, the DOC has proven the unbecoming-conduct charge under N.J.A.C. 4A:2-2.3, and it is hereby **ORDERED** that Vick be suspended for six months. As to the FNDA dated March 31, 2025, the DOC has not proven the falsification charge against Vick and has violated the 45-day rule, and that charge is **DISMISSED** under N.J.S.A. 30:4-3.11a. It is further **ORDERED** that Vick be reinstated to the position of correction officer with back pay and with all other rights and privileges of his position retroactive to the date of his termination.

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

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

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

August 10, 2026 

DATE **LESLIE Z. CELENTANO,** ALJ (Ret., on recall)

Date Received at Agency: August 10, 2026

Date Mailed to Parties: August 10, 2026

dr

APPENDIX

Witnesses

For Appellant:

Eugene Vick

Mireyella Hernandez

Michael Tirado

For Respondent:

Raymon Barrett

Marc Sim

James Forbes

Gary Rivera

Michael Dalrymple

Brian Seeback

Exhibits

Joint:

J-1	November 21, 2023, Preliminary Notice of Disciplinary Action
J-2	May 16, 2024, Preliminary Notice of Disciplinary Action
J-3	June 20, 2024, Final Notice of Disciplinary Action
J-4	Montclair Police Department Police Report
J-5	Certification of Case Disposition
J-6(a–d)	Montclair PD video footage
J-7	Collective Bargaining Agreement, 2019–2023
J-8	DOC Rules and Regulations
J-9	HRB 84-17

For Appellant:

P-1	E-mail communication between Sim and Dalrymple
P-2	Kelly Daniel’s memo, June 21, 2023

P-3	Kelly Daniel's memo, August 3, 2023
P-4	Internal Affairs Policy & Procedures

For Respondent:

R-1	November 21, 2023, Preliminary Notice of Disciplinary Action
R-2	May 16, 2024, Preliminary Notice of Disciplinary Action
R-3	DV Checklist
R-4	Dalrymple's e-mail communication with Montclair PD
R-5	Dalrymple's letter to Montclair PD requesting videos, May 11, 2024
R-6	SID Supplemental Report—Psychological Evaluation, May 1, 2024
R-7	February 3, 2025, Preliminary Notice of Disciplinary Action
R-8	March 31, 2025, Final Notice of Disciplinary Action
R-9	Dr. Richard Cevasco's Psychological Evaluation Report, dated April 25, 2024
R-10	SID Report dated July 1, 2024
R-11	Vick's May 15, 2024, SID Interview
R-12	Vick's May 17, 2024, SID Interview
R-13	Vick's affidavit used in motion practice
R-14	Montclair PD images (admitted over appellant's objection)