A-11

STATE OF NEW JERSEY

In the Matter of Basem Zaghloul
City of Newark
Police Department

CSC DKT. NO. 2012-2210
OAL DKT. NO. CSV 01899-12

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

ISSUED: October 1, 2014PM

The appeal of Basem Zaghloul, a Police Officer with the City of Newark, Police Department, 10 working day suspension, on charges, was heard by Administrative Law Judge Mumtz Bari-Brown, who rendered her initial decision on August 21, 2014. Exceptions and cross exceptions were filed on behalf of the parties.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on October 1, 2014 accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Basem Zaghloul.

Re: Basem Zaghloul

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
OCTOBER 1, 2014

Robert M. Czech

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
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attachment

State of New Jersey

OFFICCE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 01899-12

AGENCY DKT. NO. 2012-2210

IN THE MATTER OF BASEM ZAGHLOUL,
CITY OF NEWARK POLICE DEPARTMENT.

Anthony J. Fusco Jr., Esq., for appellant (Fusco & Macaluso, LLC, attorneys)

Meredith A. Accoo, Assistant County Counsel, for respondent (Anna P. Pereira, Corporation Counsel)

Record Closed: February 19, 2914 Decided: August 21, 2014

BEFORE **MUMTAZ BARI-BROWN,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Basem Zaghloul appeals a 10-day suspension imposed by respondent City of Newark Police Department (Department or Appointing Authority).

On February 13, 2012, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing was held on October 22, 2012. The record remained open for receipt of documents and closed on February 19, 2014. Based on the administrative law judge's voluminous caseload extensions of time to complete the initial decision were granted. N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8.

THE CHARGES

CHARGES AND SPECIFICATIONS:

SPECIFICATIONS: On October 12, 2011, at 22 Franklin Street, Advocate Bureau, then Detective Basem Zaghloul, while off-duty – on vacation, did commit an act of insubordination to Sergeant Beatrice Golden, a superior officer, to wit: after given a direct order by Sergeant Golden to leave the building after engaging in a verbal dispute with Detective Pickett, Detective Zaghloul stated to Sergeant Golden "Fuck that! Fuck that work! I don't give a fuck!" Detective Zaghloul then kicked the door, then a chair and walked into Deputy Chief Israel Caraballo's Office.

CHARGE III: Violation of Newark Police Department Rules and regulations Chapter 5:4.1 – OBEDIENCE TO ORDERS – Police Officers or Civilian employees shall promptly and fully obey any lawful order directed to them by a superior officer.

SPECIFICATION: On October 12, 2011, at 22 Franklin Street, Advocate Bureau, then Detective Basem Zaghloul, while off duty – on vacation, did receive a lawful verbal order from Sergeant Beatrice Golden, a superior officer, directing Detective Zaghloul to leave the building, he did disobey this order when he failed to comply as directed.

CHARGE IV: Violation of Newark Police Department Rules and Regulations, Chapter 5:1.2 – LANGUAGE – Police Officer shall refrain from the use of indecent, profane, uncivil or threatening language, regardless of provocation.

SPECIFICATION: On October 12, 2011, at 22 Franklin Street, Advocate Bureau, then Detective Basem Zaghloul, while off duty – on vacation, did use indecent, profane and uncivil language, directed to Detective Stacey Pickett, when he stated, "I don't give a fuck about you, Fuck you!".

CHARGE V: Violation of Newark Police Department Rules and Regulations, Chapter 3:1.2-4 – DEMONSTRATION OF RESPECT – Police Officers and civilian employees shall demonstrate respect toward superior officers, toward subordinate and associates. When on duty, superior officers shall be addressed by rank.

SPECIFICATIONS: On October 12, 2011, at 22 Franklin Street, Advocate Bureau, then Detective Basem Zaghloul, while off duty – on vacation, did demonstrate a lack of respect toward the Detective Stacey Pickett, when he referred to her as "baby" and "sunshine". When corrected by Detective Picket, Detective Zaghloul further demonstrated a lack of respect of yelling and using profanity towards Detective Pickett.

CHARGE I: Violation of Newark Police Department Rules and Regulations, Chapter 3:1.1 – CONDUCT IN PUBLIC AND PRIVATE – Police officers in both private and public lives shall conduct themselves so as to avoid impugning the reputation of the Department. They shall maintain the dignity and integrity of their office through the exemplary obedience to all Rules and Regulations; the maintenance of respect for the welfare and rights of all citizens; the courteous and objective enforcement of laws without favor or prejudice, and the recognition that police service is public trust requiring dedication to ideals and ethics of the highest degree.

CHARGE IB: Violation of Civil Service Rules 4A:2-2.3(a)6.
An Employee may be subject to discipline for:
6. Conduct unbecoming a public employee;

SPECIFICATION: On October 12, 2011, at 22 Franklin Street, Advocate Bureau, then Detective Basem Zaghloul, while off-duty – on vacation, did conduct himself in such a manner as to impugn the reputation of the Department and shame the integrity of their Office, in that he because irate, lacked self control, use profanity, and engaged in a verbal confrontation with Detective Stacey Pickett. To wit: Detective Basem Zaghloul disrespected Detective Stacey Pickett by referring to her as "baby" and "sunshine". Upon correcting Detective Zaghloul as to properly addressing her as either "Stacey" or "Pickett" as well as work related errors. Detective Zaghloul became irate and used profanity towards Detective Pickett. In an attempt to deescalate the situation Sergeant Beatrice Golden advised Detective Basem Zaghloul to leave the building. Detective Zaghloul again used profanity and inflamed the situation by kicking a glass door and a chair as he exited the office. Detective Zaghloul disregarded Sergeant Golden's order by failing to leave the building, instead, entered the office of Deputy Chief Israel Caraballo.

CHARGE II: Violation of Newark Police Department Rules and Regulations, Chapter 18:8 – ACTS OF INSUBRODINATION – Department members shall not commit acts of insubordination or disrespect to any superior officer.

CHARGE B: Violation of Civil Service Rule 4A:2-2.3(a)2.
An employee maybe subject to discipline for:
2. Insubordination.

SUMMARY OF EVIDENCE

The Department presented Julio Benavente, Sergeant of the Newark Police Department Office of Professional Standards, who conducted an investigation of the incident regarding appellant's conduct on October 12, 2011. Benavente reviewed the reports submitted by Detective Stacy Pickett, Detective Antonia Rosa, Sergeant Beatrice Golden and Detective Zaghloul (appellant). (R-2, R-3, R-4, R-5, R-7.) Benavente also interviewed Deputy Chief Israel Caraballo and reviewed appellant's disciplinary record. (R-8, R-9.) Benavente's investigation revealed that on October 12, 2011, Zaghloul and Det. Pickett engaged in a dispute. Another officer, Sgt. Golden stepped in between the officers as she observed Zaghloul yelling profanities and waving his arms at Picket. Stg. Golden ordered Zaghloul to leave the area and reminded him that he was on vacation. Zaghloul ignored Golden's Order and instead responded by yelling profanities and kicking furniture. Sgt. Golden followed Zaghloul, repeated the order to leave the building. Zaghloul left the building after speaking with Deputy Chief Caraballo. Based on the polices regarding the employee conduct Benavente charged Zaghloul with violating the Departments Rules and Regulations of Conduct Unbecoming a Public Employee, Conduct in Public and Private, Acts of Insubordination, Obedience to Orders, Language, and Demonstration of Respect. (R-1.) Benavente's testimony was credible and unrefuted.

The Department presented Det. Stacy Pickett, who has been employed by the Department for eighteen (18) years and is currently assigned to the Advocate Office, which includes processing charges of complaints against of personnel. Pickett testified that on October 12, 2011, while performing her duties Det. Zaghloul, who was on vacation, entered her office. Det. Pickett, Det. Rosa and Det. Zaghloul began to discuss

Zaghloul reports, highlighting errors in the documents. Pickett acknowledged making several of comments concerning the errors in the reports. Zaghloul respondent irate and angry over Pickett's comments about his work and began yelling profanities at her while waving his arms in an angry manner. Sgt. Golden, Supervisor of the Advocate Bureau, entered the room and observed the incident between Pickett and Zaghloul. Sgt. Golden ordered Zaghloul to leave the building. Instead he kicked the door and chair and walked into Deputy Chief's Caraballo's office. Stg. Golden again ordered Zaghloul to leave the building. Pickett's testimony was credible.

Respondent presented Det. Rosa who works in the Advocate Office. She testified that Det. Zaghloul came into the Advocate Office to deliver money raised for the "Making Strides Against Breast Cancer Walk", sponsored by the Department. Rosa also acknowledged that Det. Zaghloul's report of October 7, 2011 contain mistakes, which lead to the dispute between Det. Pickett and Det. Zaghloul. Det. Rosa observed Zaghloul raise his voice, use profanity, kick furniture and disobey Sgt. Golden's order to leave the building.

DISCUSSION

The Civil Service Commission has jurisdiction to hear major disciplinary disputes under N.J.S.A. 34:13A-5.3. Major discipline includes removal or fine or suspension of more than five working days. N.J.A.C. 4A:2-1.4. Employees may be disciplined for insubordination, neglect of duty, failure to perform duties, and conduct unbecoming a public employee, among other things. N.J.A.C. 4:2-2.2. Appeals before the Commission are conducted as hearings de novo. N.J.A.C. 4:2-2.3. East Patterson v. Dep't of Civil Serv., 47 N.J. Super. 55 (App. Div. 1957); Newark v. Civil Serv. Comm'n, 114 N.J.L. 406, 413 (1935). The appointing authority has the burden of proof in major disciplinary actions. N.J.S.A. 11A:1-1 to 12-6.

I have considered the evidence presented by the parties. Essentially, each witness testified that on October 12, 2011, in the presence of co-workers, Basem Zaghloul engaged in a dispute with Det. Pickett, yelled profanities at her, waived his arms in an angry manner, kick furniture and refused an order from a supervising officer.

The appointing authority has the burden of proof by a preponderance of the credible evidence. This tribunal must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of the truth." Jackson v D.L. & W.R.R., 111 N.J.L. 487, 490 (E. & A. 1933). Preponderance is the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). The evidence must be such as to lead a reasonable cautious mind to a given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958). Where the standard is reasonable probability, that is, preponderance of the evidence, the evidence must be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div 1959).

I have considered Appellant's post hearing arguments. Appellant acknowledged receiving prior discipline of demotions and salary decreases, but presented no credible evidence of the circumstances that warrant mitigating factors to the described behavior on October 12, 2011. Further, I reject Appellant's argument that he "didn't get a chance to put in a defense" or "testify" simply because Deputy Chief Caraballo and Sgt. Golden failed to appear under subpoena served by respondent. While, I denied appellant's motions to dismiss the charges and to reopen the record, appellant chose to not file interlocutory appeals to the ALJ's rulings or to serve subpoenas on any Department officers, and if necessary seek enforcement of the subpoena(s) in the appropriate forum. See N.J.A.C. 1:1-11.5. (A party who has requested issuance of a subpoena may seek enforcement of the subpoena by bringing an action in the Superior Court pursuant to the New Jersey Court Rules.). Having the opportunity to observe the witnesses' demeanor, I am more persuaded by the evidence presented by the Department than that presented by Appellant. Therefore, I **CONCLUDE** that the Department has proven the charge against Appellant by a preponderance of the credible evidence.

PENALTY

In determining the reasonableness of a sanction, the employee's past record and any mitigating circumstances should be reviewed for guidance. West New York v. Bock, 38 N.J. 500 (1962). However, the courts should not adhere to rigid disciplinary guidelines in assessing penalties. To determine whether sufficient cause exists to justify the sanction, the conduct must be examined in light of certain factors. Moreover, evaluating appellant's conduct must be made in context with its relationship to the nature of the job and the circumstances, which may impact specific conduct. On appeal, the Board may modify a penalty originally imposed. N.J.S.A. 11A-2-9. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Indeed, the Board is empowered to substitute its judgment on the appropriate penalty, even if the local appointing authority has not clearly abused its discretion. Henry at 579. However, the penalty imposed may not be so disproportionate to the offense and the mitigating factors that the administrative decision is arbitrary and unreasonable. Feldman v. Town of Irvington Fire Department, 162 N.J. Super. 177, 182 (App. Div. 1978).

"Unbecoming conduct" is broadly defined to include any conduct "which has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services." Karins v. Atlantic City, 152 N.J. 532, 554 (1998), quoting In re Emmons, 63 N.J. Super. 136, 140 (1960). I have also considered whether mitigating factors exist to reduce the penalty. I **CONCLUDE** there exists no mitigating factors in this matter.

CONCLUSIONS

Based on the whole of the evidence I **CONCLUDE** that the Department has proven the charges against Appellant by a preponderance of the credible evidence. Therefore, I **CONCLUDE** that Basem Zaghloul violated Department Rules and Regulations through his display of conduct constituting Conduct Unbecoming a Public Employee, Conduct in Public and Private, Insubordination, Obedience to Orders, Language, and Demonstration of Respect. I further **CONCLUDE** that the discipline imposed, a ten day suspension, is reasonable, generous and appropriate.

ORDER

It is hereby **ORDERED** that the determination of City of Newark Police Department to impose the discipline of a ten day suspension on Basem Zaghloul be **AFFIRMED**.

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.

August 21, 2014
DATE

MUMTAZ BARI-BROWN, ALJ

Date Received at Agency: 8-21-14

Date Mailed to Parties: AUG 22 2014

dr

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

Witnesses

Presented by Appellant:

None

Presented by Respondent:

Julio Benavente

Det. Stacy Pickett

Det. Antonia Rosa

Exhibits

For Appellant:

None

For Respondent:

R-1 Newark Police Department Professional Standards Investigation Disposition Summary, Newark Police Department Professional Standards Index Summary Report and Newark Police Department Administrative Submission (Newark Police Department Form DPI 1001) of Sergeant Julio Benavente, Jr., CAP 2011-188, IOP 2011-717, November 22, 2011

R-2 Newark Police Department Investigation of Personnel Report, Submitted by Sergeant Beatrice Golden, IOP 2011-717, October 14, 2011

R-3 Newark Police Department Personnel Charging Form, submitted by Sergeant July Benavente, Jr., CAP 2011-188, IOP 2011-717, October 24, 2011

R-4 Newark Police Department Administrative Submission (Newark Police Department Form DPI 1001) of Detective Stacey Pickett, October 12, 2011

R-5 Newark Police Department Administrative Submission (Newark Police Department Form DPI 1001) of Sergeant Beatrice R. Golden, October 14, 2011

R-6 Newark Police Department Administrative Submission (Newark Police Department Form DPI 101) of Detective Antonia Rosa, October 14, 2011

R-7 Newark Police Department Office of Internal Affairs Pre-Interview Advisement Form and Newark Police Department Administrative Submission (Newark Police Department Form DPI 1001) of Detective Basem Zaghloul, October 24, 2011

R-8 Concise Officer History (Disciplinary Record) for Detective Basem Zaghloul, November 21, 2011

R-9 Newark Police Department Vacation Account Form of Detective Basem Zaghloul, November 2011

R-10 Sate of New Jersey Civil Service Commission Preliminary Notice of Disciplinary Action with Charges attached thereto, for Detective Basem Zaghloul, CAP 2011-188, IOP 2011-177, October 24, 2011