



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Eric Handelman,
Department of Transportation

CSC Docket No. 2016-718

Request for Reconsideration

ISSUED: NOV 30 2018 (CSM)

Eric Handelman requests reconsideration of the attached decision rendered on June 17, 2015 concerning his five working day suspension.

By way of background, the record reflects that the appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) proposing a 10 working day suspension for neglect of duty and insubordination. Specifically, the appointing authority asserted that on October 9, 2013, after the appellant had transferred to another Bureau, it was discovered that he had left a significant amount of work incomplete that he had not brought to the attention of his supervisor. Additionally, it asserted that the appellant was insubordinate when he failed to provide ethics training to new hires, and failed to complete the processing of Employee's Certification of Outside Employment or Activities forms he received prior to his transfer. A departmental hearing was conducted and the hearing officer upheld the charge of neglect of duty but did not find sufficient cause for a finding of insubordination. Consequently, the hearing officer determined that a five working day suspension was the appropriate penalty. The appellant appealed this matter to the Civil Service Commission (Commission) arguing that the appointing authority failed to follow its own disciplinary policy, willfully delayed responding to his discovery request, raised new allegations against him not contained in the PNDA, and that a witnesses' testimony was incomplete. The Commission found that the appellant had not established that the appointing authority abused its discretion and no further review was warranted.

On reconsideration, the appellant states his minor discipline should be reversed as the appointing authority did not afford him the required procedural due

process in its prosecution of the disciplinary matter. Specifically, he asserts that he was not apprised of his alleged breach of discipline prior the issuance of the PNDA in violation of *N.J.A.C. 4A:2-2.5(b)*. In this regard, he contends that based on in *In the Matter of Pamela Sitek* (MSB, decided July 14, 2004), his five day suspension must be reversed because the appointing authority failed to advise him of the general evidence in support of the charges and provide him an opportunity to review the charges in order to respond. He also reiterates that the appointing authority willfully denied providing him evidence during the discovery process and the hearing officer agreed that a discovery violation occurred. Additionally, the appellant argues that the appointing authority introduced a new theory of prosecution at the time of the hearing since the testimony in support of the neglect of duty charges was not based on ethics training not being conducted, but rather, that he should have realized employee orientations were being conducted during a select period of time. Further, the appellant maintains that the appointing authority's decision to suspend him was not supported by substantial evidence.

In response, the appointing authority states that the appellant has not provided any new evidence in support of his case and essentially summarizes the same arguments he presented in the prior matter. Additionally, it states that there is no evidence of a clear material error that was not already addressed in the departmental proceeding or in the prior appeal to the Commission. Thus, for the third time, he is presenting the same alleged procedural violations in this matter.

In reply, the appellant reiterates his assertion that the Commission failed to address the numerous procedural due process violations by the appointing authority.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In the instant matter, the appellant has not met the standard for reconsideration. The appellant argues that the appointing authority failed to advise him of the general evidence in support of the charges and to provide him the opportunity to review the allegations in order to respond to them prior to the issuance of the PNDA in accordance with *N.J.A.C. 4A:2-2.5(b)*. The Commission disagrees. *N.J.A.C. 4A:2-2.5(a)1* and 2, in pertinent part, state:

1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any

person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See *N.J.A.C. 4A:2-2.7*.

N.J.A.C. 4A:2-2.5(b), upon which the appellant relies, states:

Where suspension is immediate under (a)1 and 2 above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

In this case, the appellant was *not* immediately suspended from his position. Rather, in compliance with *N.J.A.C. 4A:2-2.5(a)*, he was served with a PNDA and was afforded a hearing prior to the imposition of discipline. Indeed, in *Sitek, supra*, upon which the appellant relies, Sitek was immediately suspended. Therefore, since the appellant was not immediately suspended, *N.J.A.C. 4A:2-2.5(b)* did not apply to his situation.

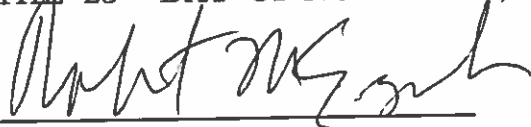
Regarding the appellant's contention that the appointing authority should have provided him the necessary forms during discovery, as indicated in the prior determination, the hearing officer found that the forms did exist and found the testimony of Jones credible that they were not completely processed as required. Hearing officer decisions are not complete and comprehensive transcripts of departmental hearings. In reviewing these matters, this agency must rely on the experience and judgment of hearing officers to adequately summarize testimony and make reasonable and rational conclusions. Generally, this agency will not disturb a hearing officer's judgment in minor discipline proceedings unless there is substantial credible evidence that such judgments and conclusions were motivated by invidious discrimination or were in conflict with Civil Service rules. In this case, there is not one scintilla of evidence that the hearing officer's determination that Jones' testimony was credible or that the arguments presented by the appointing authority at the hearing were motivated by invidious discrimination or were in conflict with Civil Service rules.

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF NOVEMBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Eric Handelman
Dianne Barretts
Records Center

#2014-8

Preliminary Notice of Disciplinary Action (31-A)
Civil Service Commission - State of New Jersey

2ND AMENDMENT

Instructions for employer: This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated (a) suspension or fine for more than five working days at any one time, (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more, (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year, (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment, (e) removal, or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

FROM	Employing Agency Name Transportation	Address/ Phone Number 1035 Parkway Ave. PO Box 602, Trenton, NJ 08625 (609) 530-2953	Date June 24, 2014
	Attorney representing your agency should this matter be appealed		Address/Phone number/Email address
TO	Employee Name Eric Handelman	Permanent Civil Service Title Executive Assistant 1	Employee Identification Number 000311227
	Address/ Phone Number 59 Ivy Road, Freehold, NJ 07728		Pension Number 1203290

You are hereby notified that the following charge(s) have been made against you: (If necessary, use additional sheets and attach)

Charges:

NJAC 4A 2-2 3(a) 7, and NJDOT Guidelines for Employee Conduct and Discipline, Section II, B, Neglect of Duty

NJAC 4A 2-2 3(a) 2, and NJDOT Guidelines for Employee Conduct and Discipline, Section III, B, 1, Insubordination

incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:

It was discovered on October 9, 2013, after you transferred to another Bureau, that you had neglected your duties, leaving a significant amount of incomplete work that you did not bring to the attention of your supervisor. You not only neglected your duties by leaving incomplete work, but you were insubordinate when you failed to provide ethics training, and failed to complete the processing of Employee's Certification of Outside Employment or Activities (PR-102) forms received prior to your transfer. Either act alone demonstrates insubordination.

If checked, charges are continued on attached page

If checked, incidents are continued on attached page

You are hereby suspended effective _____

(Check box to indicate if employee is suspended pending final disposition of the matter)

If you desire a departmental hearing before the appointing authority on the above charge(s), notify it within _____

14 _____ days of receipt of this form. If you request a hearing it will be held on _____ at (time) _____ at (place of hearing) _____

*Must be a minimum of five days

The following disciplinary action may be taken against you:

- Suspension for 10 working days, beginning _____ and ending to be determined
- Indefinite suspension pending criminal charges effective (date) _____
- Removal, effective (date) _____
- Demotion to position of _____ effective (date) _____
- Resignation not in good standing, effective (date) _____ Other Disciplinary Action
- Fine _____ amount which is equal to _____ number (number of working days)

Appointing authority or authorized agent's signature and title

Signature Michele Shapiro Title Michele Shapiro, Director, Division of Human Resources

This form must be personally served on the employee or sent by certified or registered mail.

- Certified or Registered Mail Receipt Number _____
- Signature of Server _____ Date of personal service _____

5

#2014-8

Preliminary Notice of Disciplinary Action (31-A) Civil Service Commission - State of New Jersey 3rd AMENDMENT

Instructions for employer: This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated (a) suspension or fine for more than five working days at any one time (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment (e) removal, or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

Employing Agency Name: Transportation; Address: 1035 Parkway Ave, PO Box 602, Trenton, NJ 08625; Date: November 26, 2014; Employee Name: Eric Handelman; Permanent Civil Service Title: Executive Assistant 1; Employee Identification Number: 000311227; Pension Number: 1203290

You are hereby notified that the following charge(s) have been made against you: (if necessary, use additional sheets and attach)

Charges: NJAC 4A:2-2.3(a) 7, and NJDOT Guidelines for Employee Conduct and Discipline, Section II, C, Neglect of Duty; Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred: It was discovered on October 9, 2013, after you transferred to another Bureau, that you had neglected your duties; leaving a significant amount of incomplete work that you did not bring to the attention of your supervisor.

If checked, charges are continued on attached page; If checked, incidents are continued on attached page; You are hereby suspended effective 5 days of receipt of this form. If you request a hearing it will be held on at (time) at (place of hearing) *Must be a minimum of five days

The following disciplinary action may be taken against you: [X] Suspension for 10 working days, beginning and ending to be determined; [] Indefinite suspension pending criminal charges effective (date); [] Removal effective (date); [] Demotion to position of effective (date); [] Resignation not in good standing effective (date); [] Other Disciplinary Action; [] Fine amount which is equal to number (number of working days)

Appointing authority or authorized agent's signature and title: Signature Michele Shapiro, Director, Division of Human Resources

This form must be personally served on the employee or sent by certified or registered mail. [] Certified or Registered Mail [] Receipt Number [X] Signature of Server [X] Date of personal service

X300-04 PRESS ENTER TO RETURN OR PF8 TO VIEW COMMENTS
SCRN.ID:34 NEW JERSEY DEPARTMENT OF PERSONNEL
REQ NO: TPA01504307 NOTICE OF DISCIPLINARY ACTION

OPER: CSRMYER
01/14/16 10:30

SSN: 072602090

NAME: HANDELMAN, ERIC J

- 1. DISCIPLINARY ACTION CODE: _ 003 DESC: SUSPENSION
- 2. SUSPENSION FOR _ 5 WORKING DAYS
- 3. FINE AMOUNT : _
- 4. EFFECTIVE DATE: _ 31915 5. DATE SERVED CS31B: _ 31315

 ACCEPT REJECT REJECT WITH COMMENTS UNDER REVIEW
PF8=REVIEW COMMENTS PF10=PREV MENU PF11=MAIN MENU PF12=EXIT PMIS
OR NEXT TRAN SSN/POS _____

8/4
EG

August 1, 2015

Mr. Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
44 S. Clinton Street
PO Box 312
Trenton, NJ 08625-0312

REQUEST FOR RECONSIDERATION OF CSC Docket NO. 2015-2620, In the Matter of Eric Handelman, Department of Transportation

Dear Mr. Maurer:

Please find this timely request for reconsideration under N.J.A.C. 4A:2-1.6 of the June 23, 2015 CSC final administrative action. (Exh. 1., June 23, 2015 issued Final Administrative Action, CSC Docket #2015-2620).

Reconsideration under N.J.A.C. 4A:2-1.6 is required because the June 23, 2015 decision was a clear material error, as the decision failed to address specific agency violations of law and policy that occurred during the discipline process.

The CSC failed to recognize and address the Department of Transportation's violations of law (procedural due process) and its own internal policy and procedure (P & P 532) in its prosecution of minor discipline. These numerous violations tainted the prosecution and process itself, and mandate a reversal of the discipline imposed.

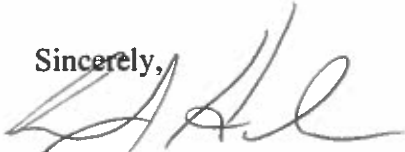
The CSC also failed to acknowledge the lack of substantial credible documentary evidence at hearing, thereby making it impermissible for the CSC to defer to the hearing officer's credibility evaluation of Department witness testimony. Such a credibility decision required as a foundation certain necessary documentary evidence that the Department refused to produce and was lacking at hearing.

I respectfully request that the CSC must, on reconsideration of its June 23, 2015 written decision:

- 1) make a full recognition, accounting, and comment on the record of ALL previously submitted appellant arguments of law and policy, with supporting exhibits, which is lacking in the June 23, 2015 written decision;
- 2) find that Department of Transportation violations of law, policy, and rules of evidence, mandate a reversal of the imposition of a five day suspension for Neglect of Duty, and direct the Department of Transportation provide back pay/benefits/seniority for the five days docked.

Please find attached another copy, received prior by the CSC, of the March 20, 2015 complete and satisfactory appellant submission of arguments of law and policy, and supporting exhibits to the CSC, in support of the initial appeal of the agency discipline (known here as Exh. 2)

Sincerely,



Eric J. Handelman

CC: Edel McQuaid, Manager, Employee Relations, NJDOT

I. REVERSAL OF THE NJDOT DISCIPLINE IS MANDATED ON RECONSIDERATION AS THE DEPARTMENT DID NOT AFFORD PROCEDURAL DUE PROCESS IN ITS PROSECUTION OF DISCIPLINE

The Appellate Division has held that an administrative agency's determinations or findings may be disturbed where there is a clear showing that the agency did not follow the law. In re Bellamy, 2014 WL 2780453 (N.J. Super. App. Div. 2014) The following three individual breaches of law all independently require the reversal of the five day suspension, and back pay awarded.

a) Failure to Investigate Prior to Imposition of Preliminary Discipline

It is crystal clear that the New Jersey Department of Transportation violated procedural due process and its own internal policy when it denied me an investigation of alleged breach of discipline, notice of the allegations, and a right to be heard as to those allegations within such an investigation, prior to giving me notice of preliminary discipline. The CSC must acknowledge on reconsideration the letter and spirit of its own administrative code provision at N.J.A.C. 4A:2-2.25(b), and admit that an agency may not arbitrarily deny an employee of procedural due process, let alone ignore its own internal Policy and Procedure 532 in the imposition of discipline. (See Exh. 2, March 23, 2015 Letter Brief Argument I. pgs. 2-4, and referenced exhibits.)

An agency cannot arbitrarily choose to ignore its own Policy and Procedure enacted for the protection of all its employees. It cannot deny an employee procedural due process, be it under law or under an internally established policy and procedure, and then arbitrarily impose a monetary and career discipline against that same employee. The prosecution of this discipline is tainted and must be of no effect.

The CSC found this to be so in its decision, In the Matter of Pamela Sitek, DOP Docket No. 2004-4040. On reconsideration, the CSC must address its own precedent and conclude that the five day suspension at issue here must be reversed, and back pay awarded for the monetary loss sustained. Prior to serving the PNDA, the Department of Transportation failed to advise me of general evidence in support of charges/allegations, or provide me an opportunity to review such allegations and evidence in order to respond to the charges/allegations.

These due process safeguards are plainly due, specifically given that the Department of Transportation mandates under its own internal policy 532 that an investigation must be commenced before discipline is imposed, and within that investigation the employee subject to potential discipline must be afforded an opportunity to explain his/her actions. The NJDOT duty is clear. None of this was done in this matter!

Such a breach of due process is so egregious and so evident, it makes the discipline process tainted, and even under CSC precedent requires reversal of the

discipline and penalty. It was clear material error for the CSC to ignore the applicable law in its June 23 order denying the appeal.

In its precedent decision of In the Matter of Pamela Sitek, the CSC squarely recognized that a denial of an investigation of charges and a denial of a right to be heard prior to discipline imposed required a reversal of such discipline and an award of back pay.

b) Failure to Provide Necessary Discovery to Employee

The Department of Transportation additionally wilfully denied, repeatedly, to provide forms, either to me or at hearing, which were alleged to be incomplete, thereby making up the crux of the Department's discipline for Neglect of Duty. The arbitrary discovery denials by the Department deprived me of the ability to defend against the specific allegation. (See Exh. 2, Letter Brief and referenced exhibits, pgs. 5-6) A court would never let the case go forward based upon such a wonton disregard for procedural due process.

The CSC in its June 23, 2015 final administrative action, on pg. 3, noted that "the hearing officer was in agreement with the appellant that the forms should have been provided in discovery." Therefore, the hearing officer agreed a discovery violation occurred!!

As stated in my earlier submission to the CSC, a State is obliged under due process principles to disclose exculpatory evidence. Brady v. Maryland, 373 U.S. 83 (1963) The Department alleged that some outrageous number of forms were left incomplete (over 1200 forms) It had every business to provide me with those forms to allow me to challenge this allegation and prepare my best defense to this allegation. I have sustained hurtful economic sanctions as the result of this tainted discipline process. All procedural due process protections due me have been flouted and disregarded. The CSC must reverse this Department discipline and award me back pay for five days on this record.

c) Failure to Provide Adequate Notice of Theory of Prosecution

The Department of Transportation also flouted fundamental fairness, justice and fair play, and the NJ rules of Evidence, when it introduced a new theory of prosecution only at the time of hearing. That is, the Department testified at hearing that a Neglect of Duty occurred, not based on the theory that ethics training had not been conducted at the time of my transfer to another department (contained within the PDNA and all Department proofs submitted to me in discovery) but rather because I should have realized that the Department's Human Resources section was conducting employee orientations during a select period of time, despite their failing to notify me of the orientations.

An employee must reasonably rely upon a PDNA and Department proofs in order to prepare a best defense. The Department must be barred from introducing a new theory of recovery at hearing that had not been contained within the PDNA or in Department witness narratives produced in discovery. (See Exh. 2, Letter Brief, pg. 7-9 with referenced exhibits) An employee must have adequate notice of a theory of prosecution and a reasonable opportunity to prepare a defense within any administrative proceeding. Department of Law and Public Safety v. Miller, 115 N.J. Super. 122, 126 (App. Div. 1971). “There can be no adequate preparation where the notice does not reasonably apprise the party of the charges, or where the issues litigated at the hearing differ substantially from those outlined in the notice.” Miller, 115 N.J. Super. 122, 126. emphasis added

II. REVERSAL OF THE NJDOT DISCIPLINE IS MANDATED ON RECONSIDERATION AS THE DEPARTMENT DECISION AT HEARING WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The Appellate Division has also stated that an administrative agency's determinations or findings may be disturbed where a decision is not supported by substantial evidence. In re Bellamy, 2014 WL 2780453 (N.J. Super. App. Div. 2014)

The CSC, in its June 23, 2015 decision, mistakenly relies on deference to a hearing officer on making credibility decisions without addressing the underlying legally sufficient evidence that would be necessary to give credence to any credibility decision.

N.J.A.C. 1:1-15.5(b) requires a residuum of legally competent evidence to support any testimony offered by a witness. (See Exh. 2, Letter Brief, pg. 10) The hearing officer believed the testimony of a biased witness that incomplete forms existed, yet did not address the fact that the Department failed to produce any of these incomplete forms to me for my inspection during any period; forms which were necessary to review in order to challenge the testimony of the biased witness!!! There was no standard of reliability here. The biased witness failed to preserve or produce the alleged incomplete forms. The Department failed to force her to turn the forms over. The hearing officer did not demand the forms be produced, yet believed the witness's testimony that the forms were incomplete, and as such a discipline violation occurred.

It is no different than a hearing officer believing a witness that the sky is green, and not permitting me to leave an underground cellar to either confirm or challenge such a statement.

The Department may not be permitted to enforce discipline based upon such a record, based upon flagrant violations of due process to me as the accused, and to which this denial of necessary evidence tainted the entire prosecution of this matter and resulted in fundamental unfairness at hearing.

The CSC, on page 3 of its final administrative action stated the following: "Further, the hearing officer was in agreement with the appellant that the forms should have been provided in discovery." This is a confirmation of the Department's violation of procedural due process, and is sufficient enough to merit reversal of the discipline imposed with back pay awarded. Additionally, it reinforces the fact that the hearing officer could not simply conclude that incomplete forms existed based on testimony alone.



State of New Jersey

DEPARTMENT OF TRANSPORTATION
P.O. Box 600
Trenton, New Jersey 08625-0600

CHRIS CHRISTIE
Governor

JAMIE FOX
Commissioner

KIM GUADAGNO
Lt. Governor

September 14, 2015

Ernie Guia
State of New Jersey
Civil Service Commission
Division of Appeals and
Regulatory Affairs
Written Record Appeal Unit
P.O. Box 312
Trenton, NJ 08625-0312

**RE: Request for Reconsideration CSC Docket No. 2016-718
In the matter of Eric J. Handelman (CSC, decided June 23, 2015)**

Dear Mr. Guia:

The New Jersey Department of Transportation ("NJDOT") is in receipt of your August 19, 2015 notice that a reconsideration petition was received concerning the above-referenced minor disciplinary case. The NJDOT received your correspondence on August 28, 2015, and now responds to same within the 20 day limit expressed in the August 19th letter.

The standard of review for a reconsideration by the Civil Service Commission is set forth under N.J.A.C. 4A:2-1.6. Mr. Handelman's submission dated August 1, 2015 fails to meet these standards. N.J.A.C. 4A:2-1.6(b)(1) states, in part, that reconsideration could be granted if new evidence or additional evidence is shown that would change the outcome of the original hearing. N.J.A.C. 4A:2-1.6(b)(2) allows for a petitioner also to demonstrate that clear material error occurred. Mr. Handelman's submission fails under both these standards.

Initially, there is no new evidence presented. The August 1, 2015 letter is essentially a summary of concepts and baseless allegations of wrongdoing expressed in the written appeal and recorded in the June 23, 2015 Final Agency Decision. Couched within the August 1, 2015 submission is the plea to overturn the June decision because the CSC agreed in the June decision that the hearing officer agreed the incomplete forms should have been provided in discovery. The June decision found that there was no abuse of discretion by the appointing authority because the hearing officer determined to

"IMPROVING LIVES BY IMPROVING TRANSPORTATION"

New Jersey Is An Equal Opportunity Employer • Printed on Recycled and Recyclable Paper

rely on the testimony of Johanna Jones that the records did exist and that they were incomplete. Thus, no new evidence, only discontent about the June decision was presented.

Similarly, there is no evidence of clear material error that was not already addressed in the departmental proceedings or the civil service appeal. In fact, Handelman's alleged procedural due process argument is being made for the third time. He has each time failed to correlate the effect of the process violations on a material change in outcome. The hearing officer found Ms. Jones' testimony credible and support in the record to uphold the NJDOT's preliminary notice. There is no correlation explained by Handelman for his other theories on failure to provide adequate discovery and failure to provide a notice of prosecution.

Finally, discontent with a decision does not rise to the level of proof needed for reconsideration under N.J.A.C. 4A:2-1.6(b)(1)(2). The hearing officer's decision was not motivated by invidious discrimination or in violation of Civil Service rules. (See, e.g. In the matter of Oveston Cox, (CSC, decided February 24, 2010). For these reasons, reconsideration should be denied.

Sincerely,



Dianne Barretts
Manager
Bureau of Employee Relations

cc: Eric Handelman

September 21, 2015

Mr. Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
44 S. Clinton Street
PO Box 312
Trenton, NJ 08625-0312

REQUEST FOR RECONSIDERATION OF CSC Docket NO. 2015-2620, In the Matter of Eric Handelman, Department of Transportation

Dear Mr. Maurer:

This replies to the September 14, 2015 opposition letter of the NJDOT.

Newly discovered evidence was not the basis for my request for reconsideration. The Department's opposition on this ground is irrelevant and must be ignored.

Clear material error was the basis for my request for reconsideration. The CSC failed to address the numerous procedural due process violations by the NJDOT in its imposition of discipline (financial penalty – 5 days suspension with pay) I have urged the CSC that it must do so on reconsideration.

A state employee does not bear any evidentiary burden to correlate the effect of the agency's due process violations on any material change in outcome. By its argument, the NJDOT admits that procedural due process violations occurred.

The NJDOT may not arbitrarily apply its own policy and procedure or laws of the State in regard to its imposition of employee discipline.

The NJDOT's numerous and ongoing procedural due process violations in connection with this particular discipline, as exhaustively described in two prior submissions to the CSC, on their own taint the entire NJDOT discipline process, and are enough to require reversal of the discipline imposed under New Jersey law and CSC precedent.

Sincerely,



Eric J. Handelman

CC: Dianne Barretts, Mgr., Employee Relations, NJDOT (Regular Mail)

EXH. 1

EXH. 2

March 20, 2015

Mr. Henry Maurer
Civil Service Commission
Division of Appeals and Regulatory Affairs
44 S. Clinton Street
PO Box 312
Trenton, NJ 08625-0312

APPEAL OF MINOR DISCIPLINE – Disc. Log #2014-8 – Eric Handelman vs. NJDOT

Dear Mr. Maurer:

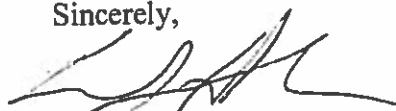
Please find this timely appeal. (Exh. A., March 3, 2015 executed Appeal of Minor Discipline; March 13, 2015 Amended Appeal of Minor Discipline). Please also find the New Jersey Department of Transportation (NJDOT) Departmental Disciplinary Decision, and recommendation to confirm the imposition of a five day suspension for Neglect of Duty. (Exh. B., January 31, 2015 Departmental Disciplinary Decision (Hearing Officer Opinion))

In this matter, the Department of Transportation issued a Notice of Preliminary Discipline that was served on Eric Handelman (Handelman) dated March 6, 2014. The notice alleged that Handelman's former supervisor, Johanna Jones (Jones) discovered incomplete work on October 9, 2013, two days after his physical transfer to another section of the Department, and that this incomplete work, for purposes of this Appeal, merited the imposition of a five day suspension without pay for Neglect of Duty. (Exh. C, Notice of Preliminary Discipline, dated March 6, 2014; Amended Notice of Preliminary Discipline, dated June 12, 2014; 2nd Amendment Notice of Preliminary Discipline, dated June 24, 2014; 3rd Amendment Notice of Preliminary Discipline, dated November 26, 2014)

Please also note the Department of Transportation's discovery that was provided Handelman in support of its burden to prove by a preponderance of the evidence. The attached discovery was relied upon by the hearing officer in his findings of fact and recommendation (Exh. D, Department proofs, submitted May 27, 2014- Jones statement; A photograph of an unknown 15 inch stack of paper; Lists of employees who allegedly submitted forms that Jones characterized as "incomplete" (but not the forms themselves))

I respectfully request that the CSC, after review of appellant arguments and exhibits, reverse the imposition of a five day suspension for Neglect of Duty, and direct the Department of Transportation provide back pay/benefits/seniority for the five days docked. The following defenses/arguments, with exhibits, are pled in the alternative.

Sincerely,



Eric J. Handelman

I. AN ADMINISTRATIVE AGENCY MUST COMPLY WITH UNIFORM PROCEDURES OF DUE PROCESS, FUNDAMENTAL FAIRNESS, AND ITS OWN POLICIES AND PROCEDURES WHEN IMPOSING DISCIPLINE TO AN EMPLOYEE'S DETRIMENT; A PROSECUTION WHERE THE EMPLOYEE DID NOT RECEIVE NOTICE OF THE ALLEGATION, OR AN OPPORTUNITY TO BE HEARD, MAKES THE DISCIPLINE AND PENALTY VOID AB INITIO

A state agency must accord civil service employees specific procedural rights before discipline is effected; thus, minimal due process mandates that the employee be given notice of the proposed action, the reasons therefor, a copy of the charges and materials on which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline. Caviness v. State Personnel Bd., 113 Cal. App. 3d 617, 170 Cal. Rptr. 54 (2d Dist. 1980); Skelly v. State Personnel Bd. 15 Cal.3d 194, 124 Cal.Rptr. 14, 539 P.2d 774 (1975). The due process doctrine of fundamental fairness effectuates imperatives that government minimize arbitrary action. State v. Miller, 216 N.J. 40 (2013)

N.J.A.C. 4A:2-2.5(b), in referring specifically to employees subject to an immediate suspension without pay, requires that an agency make that employee aware why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of that agency.

The Department of Transportation, apparently mindful of the due process protections afforded employees subject to immediate suspension, realized that these due process protections apply to all agency employees regardless of discipline sought, and so uniformly declared in its own policy and procedure that every employee subject to discipline first must be heard per a commenced investigation of management's allegation. (Exh. E, NJDOT Policy and Procedure 532 "Employee Discipline")

P & P 532, pg. 2, III POLICY, B. Nature of Disciplinary Action, 1. Uniform Action of Policy

b. "Every alleged breach of discipline shall be investigated, including for an opportunity for the accused to explain his/her actions." emphasis added

P & P 532, pg.3., 3. Timely

"An investigation should be undertaken immediately upon the allegation that a breach of discipline has occurred. emphasis added

P & P 532, pg. 3., 4. Consistent

"To ensure that employees are treated equitably, disciplinary action shall be administered in a consistent manner."

No investigation of this matter occurred as described under NJDOT Policy and Procedure.

The Department of Transportation/management failed to provide Handelman any notice of the allegations, or the right to be heard about these allegations, prior to imposing preliminary discipline in violation of its own Policy and Procedure and in violation of due process and fundamental fairness. The allegations arise from an alleged discovery by Jones on October 8, 2013 – a mere two days after Handelman’s physical transfer to another section of the Department. Jones chose not to contact Handelman, nor did the Department commence a necessary investigation of the allegations. Handelman was never made aware of the allegations and was not allowed an opportunity to answer to them prior to discipline imposed.

It strains credulity that a manager such as Jones would simply refuse to contact Handelman, her direct report, on such an alleged discovery if it were so disturbing as to rise to the level of discipline. Instead, during the next five months she devoted herself to an effort to photograph a 15 inch undisclosed pile of paper, and direct her subordinates to prepare lists of names of employees. (See **Exh. D**) Yet she or the department never contacted Handelman to permit him to answer to her allegations, and most importantly to review the evidence that formed the basis for her allegations.

At hearing, Jones testified as to “39 orders” and so felt there was no reason to speak to Handelman after discovering alleged incomplete work to give a 40th order. However, the hearing officer found that there were no such orders given. As such, there was no basis for Jones not to bring the alleged incomplete work to Handelman’s attention immediately. To refuse to contact Handelman about an alleged disturbing discovery two days after Handelman’s transfer regarding alleged incomplete work is so puzzling, given that the two had an agreement that Handelman’s assignments for Jones were portable such that Handelman’s duties to Jones could survive his physical transfer, and that Handelman should only give full attention to his new boss on days during a transition period set for training. (**Exh. F.**, 10/2/13 E-mail Jones to Handelman) Further, Jones had prepared a transition calendar in which such an arrangement was put in writing, and of which was endorsed by Handelman’s new boss. (**Exh. G**, Transition Calendar dated Sept. 22, 2013)

Jones never contacted Handelman about any alleged incomplete work discovered two days after his physical transfer to another section of the Department (in the same office complex).

Further, she and/or the Department failed in the responsibility to request a prompt Department investigation be performed so as to, at least at that stage, provide Handelman with notice of the allegations, and permit him to be heard, to offer testimony or evidence in response to those allegations.

The Department decided to flout, ignore, - disregard its own policy and procedure to be followed as to all agency employees.

The Department arbitrarily decided in this matter to listen to only Jones' allegations, and impose discipline against Handelman based upon her allegations and assertions.

As a consequence, Handelman stayed in the dark about allegations of incomplete work discovered by Jones on October 9, 2013 until March 14, 2014, more than five months later, when he was served presumptively, a fait accompli, with a Notice of Preliminary Discipline. At any time during those five months any competent evidence should have been preserved for Handelman's review, and an investigation should have been commenced to give notice of the allegations and an opportunity to be heard prior to the Department's imposition of discipline.

In an instance of immediate suspension, it was found that the appropriate remedy for violation of such basic due process protections is an award of back pay for the period of such a breach. Specifically, the Civil Service tribunal found that there was no evidence that the public employee was advised of the general evidence in support of the charges against her or that she was provided an opportunity to review the charges and evidence in order to respond to the charges prior to the commencement of her immediate suspension as framed within the PNDA served upon her. In the Matter of Pamela Sitek, DOP Docket No. 2004-4040.

The Department of Transportation failed to cure any violation of due process protections afforded Handelman prior to the issuance of the Notice of Preliminary Discipline, as served upon him five months after an alleged discovery of incomplete work. The Department never cured its breach. No notice of the allegations against Handelman was provided, and no investigation of those allegations of which Handelman was entitled to a right to be heard, occurred. These one-sided allegations were subsequently adopted by the NJDOT in its Notice of Preliminary Discipline, literally with no questions asked.

Therefore, the penalty of Neglect of Duty must be reversed, and an award of back pay/benefits/seniority for the five days suspended must be instituted.

II. THE DEPARTMENT OF TRANSPORTATION'S WILLFUL DELAY IN RESPONDING TO NECESSARY DISCOVERY REQUESTS AND SUBSEQUENT UNJUSTIFIED DISCOVERY DENIAL VIOLATES DUE PROCESS AND FUNDAMENTAL FAIRNESS MAKING PROSECUTION OF THIS DISCIPLINE VOID AB INITIO

Departmental disciplinary proceedings are civil in nature; requirements of due process are satisfied so long as proceedings are conducted with *fundamental fairness, including adequate procedural safeguards*. Sabia v. City of Elizabeth, 132 N.J. Super. 6 (App. Div. 1974) (*emphasis added*) Again, the due process doctrine of fundamental fairness effectuates imperatives that government minimize arbitrary action. State v. Miller, 216 N.J. 40 (2013) *emphasis added*

A plaintiff must have a reasonable opportunity to obtain facts not available to it other than through formal discovery. Wilson v. Amerada Hess Corp., 168 N.J. 236 (2001) Procedures for discovery and pretrial are designed to eliminate element of surprise at trial by requiring litigant to disclose facts upon which cause of action or defense is based; search for truth in aid of justice is paramount, and concealment and surprise will not be tolerated. Saia v. Bellizio, 103 N.J. Super. 465 (App. Div. 1968)

The Department of Transportation waited five months to impose a Notice of Preliminary Discipline (March 6, 2014) after an alleged discovery by former manager Jones of incomplete work on October 9, 2013 - two days after Handelman's physical transfer from Jones to another section of the Department, --- with no notice to Handelman of the allegations, and no proper investigation commenced as required under Department policy and procedure. Almost three months after it issued its Notice, the Department, on May 27, 2014, finally provided Handelman all its proofs in support of the imposed discipline.

In response to those proofs, on June 29, 2014, Handelman made a significant and necessary discovery request, notably to receive a copy of the 1267 forms alleged to be incomplete. Repeated inquiries by Handelman beginning in October, 2014 were not responded to by the Department. (**Exh. H**, Emails from Handelman to McQuaid – October, 3, 2014 through November 25, 2014)

The Department failed to respond to this necessary discovery request for **another five months**; they finally responded with a discovery denial two and one half weeks before the hearing of December 17, 2014, after repeated inquiries from Handelman that a hearing date was forthcoming. (**Exh. I**, 11/25/14 McQuaid Response Letter to 6/29/14

Handelman discovery request; 6/29/14 Handelman detailed discovery requests of Department)

Notably, the Department steadfastly refused to produce the alleged 1267 forms that it had placed in issue, and of which the hearing officer ultimately relied upon because of its sheer claimed number, in part, in his imposition of Neglect of Duty. A Department suggestion of a sampling of five forms per form category was absolutely inadequate. (See **Exh. J**, Handelman response letter to 11/25/14 Denials)

At hearing, management had the audacity to claim that it had no obligation to produce the 1267 forms because there was nothing in the forms that Handelman could use to mount a defense. (See **Exh. B**, Disciplinary Opinion, Final Page, 1st paragraph –

“Management claims the forms would not provide any information that would help a defense so their absence is not relevant”)

This is willful and arbitrary State action to intentionally deprive an employee of necessary discovery of documents placed into issue by the Department. This was an employee desiring to prepare his best defense possible to avoid hurtful economic sanctions, (suspension without pay/benefits -a property interest.)

The State is obliged under due process principles to disclose exculpatory evidence. Brady v. Maryland, 373 U.S. 83 (1963) The Department’s intentional delays/failures to respond, and then “11th hour denial”, two and one half weeks before hearing, to produce all the 1267 forms it placed at issue in its case, deprived Handelman of an opportunity to address substantive issues, properly prepare and present a defense, and otherwise present a meaningful evidentiary case at hearing. While it is asserted that the Department intentionally delayed and improperly denied necessary discovery, sanctions for failure to provide discovery are not dependent on intent, if discovery rules are to be effective. In re Timofai Sanitation Co., Inc., 252 N.J. Super 495 (App. Div. 1991).

Therefore, the penalty of Neglect of Duty must be reversed, and an award of back pay/benefits/seniority for the five days suspended must be instituted.

III. A NEW ALLEGATION ASSERTED AT HEARING THAT AN EARLIER PERIOD OF TIME IN WHICH NEW EMPLOYEES WERE NOT TRAINED IN ETHICS MANDATED DISCIPLINE FOR NEGLECT OF DUTY WAS NEITHER CONTAINED IN ALL ORIGINAL OR AMENDED NOTICES OF PRELIMINARY DISCIPLINE, OR DEPARTMENT PROOFS PROVIDED HANDELMAN BEFORE HEARING; DUE PROCESS AND FUNDAMENTAL FAIRNESS REQUIRE THAT THE HEARING OFFICER COULD NOT ADMIT OR RELY UPON THIS NEW ALLEGATION AT HEARING TO CONCLUDE ACTIONABLE NEGLECT OF DUTY

It is elementary that an employee cannot legally be tried or found guilty on charges of which he has not been given plain notice by the appointing authority. West New York v. Bock, 38 N.J. 500, 522 (1962). Adequate notice and an opportunity to prepare remains the key to proper administrative proceedings.” Department of Law and Public Safety v. Miller, 115 N.J.Super. 122, 126 (App. Div. 1971). There can be no adequate preparation where the notice does not reasonably apprise the party of the charges, or where the issues litigated at the hearing differ substantially from those outlined in the notice.” Miller, 115 N.J.Super. 122, 126.

The hearing officer concluded neglect of duty in part, based solely upon a specific allegation, raised for the first time at hearing and neither contained within the allegations of all served Notice of Preliminary Discipline forms (one original and three amended), nor contained within the discovery response provided to Handelman by the Department on May 27, 2014, that there existed a period of time from October, 2012 through July, 2013 in which new employees failed to receive ethics training within a compliance period.

The Department amended its original Notice of Preliminary Discipline three times, but yet did not allege that an earlier period of time in which employees did not receive ethics training represented Neglect of Duty. Further, the Department submitted all proofs it intended to rely upon under cover of May 27, 2014 correspondence, and this particular allegation was not contained within these proofs.

Rather, Jones alleged Neglect of Duty upon solely what she allegedly discovered on October 9, 2013, (consistent with every Notice of Preliminary Discipline served upon Handelman). Specific to this theory, Jones alleged that ethics training had not been completed for employees on the date of Handelman’s physical departure to another work section (October 7, 2013)

“As of Eric’s departure from OIG, he had also failed to implement the instructions given to remediate his failure to train new employees. Particularly, he did not schedule an appropriate number of large ethics training events; he did not actually train the 119 omitted employees on their obligations, and he did not apprise me or my secretary of his ongoing failure to train these employees.” (See Exh. D, Jones statement, final page, final paragraph)

Apart from the factually inaccurate content of Jones' statement, it is clear that management did not assert, in its Notices of Preliminary Discipline or Jones' statement, the earlier period of time from October, 2012 until July 2013 when information was conveyed by Human Resources to Jones in late July, 2013 that certain new employees failed to receive Ethics training, was proof of Neglect of Duty. All allegations of Jones relate to an alleged discovery on October, 9, 2013. There is no mention anywhere of a July, 2013 discovery alleged to have constituted Neglect of Duty.

Rather, the Department consistently alleged, which logically determined Handelman's defenses, that Neglect of Duty was supported only because of a discovery on October 9, 2013 that certain employees had yet to receive training upon Handelman's physical departure to another section of the Department. In response, Handelman subsequently defended on the ground that he and Jones had an agreement that his assignments for her were portable and he expected to be called back to complete any undertaken assignment at her desire despite his physical transfer away to another section of the department. (See Exh. F and G)

The gap in time for when employees allegedly failed to receive ethics training, concluding in July, 2013, was never alleged to be proof of Neglect of Duty until hearing. Jones, upon her knowledge of the period of time, did not recommend discipline, or subject Handelman to any action plan, or issue a specific order with a date to accomplish the task. Rather, she simply remarked "Eric will make it happen." (Exh. K, 8/15/13 E-mail Jones to Webber and Handelman; 10/7/13 Handelman Close out Performance Appraisal prior to transfer- no action plan regarding Ethics training or any other issue)

The Department is not permitted to put forth any allegation that was not contained within the Notice of Preliminary Discipline. It amended its Notice of Preliminary Discipline no less than three times and not once did the Department aver that any neglect of duty was discovered at any time prior to October 9, 2014. Nor was this earlier discovery considered Neglect of Duty, let alone even mentioned, in the Jones narrative submitted as part of Department proofs in May, 2014.

As such, this was an untimely allegation that procedurally could not be raised or relied upon at hearing.

Therefore, the penalty of Neglect of Duty must be reversed, and an award of back pay/benefits/seniority for the five day suspended must be instituted.

Assuming arguendo such an untimely asserted allegation could survive procedural scrutiny, it was NJDOT's Human Resources, which organized these new employee orientations and historically would notice Ethics of upcoming orientations, that breached its duty by failing to notice Ethics of subsequent orientation dates between October, 2012 and July, 2013.

Jones, the manager, was informed of an October, 2012 new employee orientation in which Ethics training was conducted, prior to the gap commencing, and so was on notice such orientations were scheduled. (Exh. L, 10/4/12 E-mail Handelman to Jones, Mention of lecture given at new employee orientation that morning; 10/4/12 new employee orientation agenda)

Jones, as manager and attorney and backup Ethics Liaison Officer, failed to take any proactive step to inquire of Handelman during that entire period as to the status on Ethics training of new hires. Jones met with Handelman each week to discuss the progress of all assignments and never once did she raise the issue of Ethics training of new employees. Certainly, she was capable of doing precisely this when investigators that she had personally hired, began work in her shop allegedly during this gap in time.

Jones was on notice of the training performed prior to the gap commencing, and she too failed to observe a lack of further notice provided by Human Resources. Therefore, this clearly shows that the absence of notice from Human Resources was not considered a dramatic event, certainly not one that could be considered a basis for a finding upholding discipline based on a charge of neglect of duty.

The fact that Jones failed to “connect the dots” demonstrates that the dots were not easy to connect and cannot form the basis for upholding discipline based on a charge of neglect of duty.

To reiterate, Jones, the manager, attorney and Ethics Liaison Officer backup, did not consider this period of time to constitute Neglect of Duty, as she did not initiate discipline as soon as she discovered the gap in late July, nor did she place Handelman on an action plan. Her only comment was that Handelman would “make it happen” to schedule a lecture of those new employees who had not received Ethics training.

“Make it happen” does not meet an action plan by Department standards. No dates to perform were established. No corrective consequences were set. No contingencies were established.

This gap in time was the result of a systemic failure of the Department, as noticing Ethics to appear at new employee orientations inexplicably fell off the grid in HR. The Department points no finger at HR for inexplicably ceasing to notice Ethics of subsequent new employee orientations during this period. To my knowledge management has not taken any disciplinary action against any employee in HR for this glaring omission.

Adherence to uniform process is paramount. The Department cannot selectively ignore process based on any ad hoc determination of the importance of an employee’s duties; fairness is essential.

Therefore, the penalty of Neglect of Duty must be reversed, and an award of back pay/benefits/seniority for the five days suspended must be instituted.

IV. JONES TESTIMONY OF THE EXISTENCE OF INCOMPLETE FORMS WAS NOT BASED ON LEGALLY SUFFICIENT EVIDENCE AND COULD NOT BE RELIED UPON TO CONCLUDE NEGLIGENCE OF DUTY

Some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b) There was no residuum of legally competent evidence to support the allegation that forms were incomplete thereby supporting the charge of Neglect of Duty and the imposition of discipline for same.

The hearing officer concluded that incomplete forms existed based upon Jones' testimony to that effect. However, the Department consistently denied Handelman review of these alleged 1267 incomplete forms which they placed at issue, and failed to introduce anyone of these 1267 alleged incomplete forms into evidence at hearing. Rather, the Department simply introduced lists of employee names, lists prepared by Jones or approved by Jones, and a prejudicial photograph of an unknown stack of paper with a ruler draped over it to demonstrate a 15 inch length. (See Exh. D)

There is something fundamentally unfair for the hearing officer to accept Jones' testimony about the contents of a 15 inch photographed unidentifiable pile of paper, while the Department steadfastly denied Handelman the opportunity to see what was contained in that pile, and then the hearing officer asserting that the testimony is true because Handelman did not challenge Jones' testimony. Handelman could not challenge the credibility of Jones' testimony precisely because her statement had no competent evidentiary foundation. There was absolutely no evidentiary support for her testimony that forms were incomplete to be admitted or believed. Therefore, the hearing officer's conclusions that the incomplete forms existed, and such forms supported a finding of Neglect of Duty, were erroneous.

Jones testified as to "39 orders" and so felt there was no reason to speak to Handelman after discovering alleged incomplete work to give a 40th order. However, the hearing officer found that there were no such orders given. As such, there was no legitimate basis for her not to bring the alleged incomplete work to Handelman's attention immediately. There was no legitimate basis for the Department not to commission a required investigation which would have permitted Handelman an opportunity to look at the alleged incomplete forms. Lastly, there was no legitimate basis for the Department to deny Handelman's discovery request to produce those 1267 forms.

Therefore, the penalty of Neglect of Duty must be reversed, and an award of back pay/benefits/seniority for the five days suspended must be instituted.

EXH. A

APPEAL OF MINOR DISCIPLINARY ACTION

NEW JERSEY CIVIL SERVICE COMMISSION - STATE SERVICE

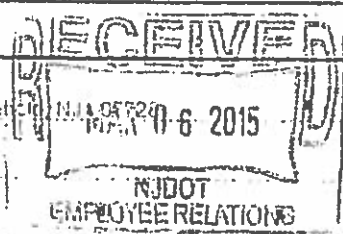
INSTRUCTIONS:

Employer: Provide this form to all permanent employees or employees serving in a working test period with the issuance of any notice of suspension or fine of five days or less or an official written reprimand.

Employee: To appeal this charge, complete Part I and submit this form to your appointing authority designated within five calendar days of receipt of this form or within such time frame as provided in your union contract.

PART 1 - Employee Appeal to Management:

<p>NAME OF EMPLOYEE Eric Handelman</p> <p>SOCIAL SECURITY NUMBER 772-60-2090</p>	<p>MAILING ADDRESS 59 Ivy Rd. Freehold, NJ 08720</p>	
<p>DEPARTMENT NJDOT</p>	<p>DIVISION/INSTITUTION/OF AGENCY</p>	<p>TITLE OF YOUR POSITION Executive Assistant 1</p>
<p>Charges Appealed: Neglect of Duty Insubordination</p>	<p>REPRESENTATION (Check One) <input type="checkbox"/> I will represent myself <input type="checkbox"/> My representative will be: Name: _____ Title: _____</p>	
<p>Penalty Recommended: 10 day suspension</p> <p style="text-align: center;"><i>EA 3/3/15</i></p>	<p>Employee Signature: _____ Date: _____</p>	



EMPLOYEE DO NOT WRITE IN PART II - For Management Decision

Part II - Management Decision on Employee's Appeal:

Eric Handelman
#2014-8

Based on the attached hearing officer's decision, the charge of Insubordination has been dismissed and the charge of Neglect of Duty is upheld. However, the ten (10) day suspension has been reduced to a five (5) day suspension. The five (5) suspension days have been scheduled for March 16 2015 to March 20, 2015.

Appointing Authority: _____

Designee Signature: _____

Date: _____

MANAGEMENT
 I will represent myself
 My representative will be:

Section Below to be Completed by Employee After Management Decision

Part III - Further Appeal: If the charges have been upheld by Management in Part II, you have a further right to appeal. Please check the applicable A, B, or C below to indicate your decision with respect to further appeal and return this form to the appointing authority designated. The form to be used by a permanent employee is the Law Enforcement Unit and has not yet been adopted. Submit this form to your union representative.

- A I will not appeal the management decision.
- B I wish to appeal the minor discipline under the provisions of my union contract. This option is available only to permanent employees covered by a union contract who receive a fine or suspension of five days or less. One union contract for two periods for the appeal.
- C I request a review of my appeal by the New Jersey Civil Service Commission. This option is available to all permanent employees or employees serving in a working test period who receive a fine or suspension of five days or less or an official written reprimand. This appeal must be filed within 90 calendar days of receipt of this form and present an issue of general applicability involving a law, regulation, or policy.

Employee Signature: _____

Date: _____



State of New Jersey

DEPARTMENT OF TRANSPORTATION
P.O. Box 600
Trenton, New Jersey 08625-0600

CHRIS CHRISTIE
Governor

JAMIE FOX
Commissioner

KIM GUADAGNO
Lt. Governor

March 13, 2015

Henry Maurer
Civil Service Commission
44 S. Clinton Avenue
PO Box 312
Trenton, NJ 08625-0312

Re: Eric Handelman
Disc. Log # 2014-8

Dear Mr. Maurer:

Enclosed please find an appeal to the Civil Service Commission, submitted to my office by Eric Handelman, dated March 3, 2015. On December 27, 2014, a department disciplinary hearing was held and based on our hearing officer's recommendation, Mr. Handelman was issued a Final Notice/Management Decision (DPF-335) upholding a five (5) day suspension for Neglect of Duty. This notice was served March 3, 2015. His appeal for a review by the Civil Service Commission was received in this office on March 6, 2015. The original appeal is enclosed for your action.

Mr. Handelman advised my office today that he will be forwarding in his appeal, written argument and exhibits, as well as the \$20 fee, under separate cover directly to your office.

If you require any additional information from my office, please contact me at 609-530-2953.

Sincerely,

A handwritten signature in cursive script that reads "Edeltraud McQuaid".

Edeltraud McQuaid
Manager
Bureau of Employee Relations

Enclosure

c: E. Handelman
J. Jones
T. Manna
V. Akpu
S. Harrison

APPEAL OF MINOR DISCIPLINARY ACTION

NEW JERSEY CIVIL SERVICE COMMISSION - STATE SERVICE

INSTRUCTIONS:

Employer: Provide this form to all permanent employees or employees serving in a working test period with the issuance of any notice of suspension or fine of five days or less or an official written reprimand.

Employee: To appeal this charge, complete Part 1 and submit this form to your appointing authority/designee within five calendar days of receipt of this form or within such time frame as provided in your union contract.

PART 1 - Employee Appeal to Management:

NAME OF EMPLOYEE: Eric Handelman		MAILING ADDRESS: 59 Ivy Rd. Freehold, NJ 07728	
SOCIAL SECURITY NUMBER: 072-60-2090			
DEPARTMENT: NJDOT	DIVISION, INSTITUTION, OR AGENCY:	TITLE OF YOUR POSITION: Executive Assistant 1	
Charges Appealed: Neglect of Duty Insubordination		REPRESENTATION (Check One) <input type="checkbox"/> I will represent myself <input type="checkbox"/> My representative will be: Name: _____ Title/Union: _____	
Penalty Recommended: 10 day suspension		Employee Signature: Date: _____	

EMPLOYEE DO NOT WRITE IN PART II - For Management Decision

Part II - Management Decision on Employee's Appeal:

Eric Handelman
#2014-8 (AMENDED)

Based on the attached hearing officer's decision, the charge of Insubordination has been dismissed and the charge of Neglect of Duty is upheld. However, the ten (10) day suspension has been reduced to a five (5) day suspension. The five (5) suspension days have been scheduled for March 19, 2015 to March 25, 2015.

Appointing Authority/
Designee Signature:

Edehtraud McQuaid

Date:

3/13/15

MANAGEMENT

Check here if decision is attached.

Section Below to be Completed by Employee After Management Decision

Part III - Further Appeal: If the charges have been upheld by Management in Part II, you have a further right to appeal. Please check block A, B, or C below to indicate your decision with respect to further appeal and return this form to the appointing authority/designee. Please note, if you are a permanent employee in a Law Enforcement Unit and have selected option B, submit this form to your union president.

A. I will not appeal the management decision.

B. I wish to appeal this minor discipline under the provisions of my union contract. This option is available only to permanent employees covered by a union contract who receive a fine or suspension of five days or less. Check union contract for time period to file appeal.

C. I request a review of my appeal by the New Jersey Civil Service Commission. This option is available to permanent employees or employees serving in a working test period who receive a fine or suspension of five days or less or an official written reprimand. This appeal must be filed within 20 calendar days of receipt of this form and present an issue of general applicability concerning a law, rule, regulation or policy.

Employee Signature: _____

Date: _____

EXH. B

**Department of Transportation
Departmental Disciplinary Decision**

Eric Handelman
Executive Assistant 1
2014 – 8

Date of Hearing: December 17, 2014

Hearing Officer: Steven Tallard, NJ State Parole Board

Attendance: The following persons were present during all or part of the hearing:

Management

Diane Glass, Management Representative
Johanna Jones, Witness, Inspector General Department of Transportation

For Appellant

Eric Handelman, Appellant, Executive Assistant 1 Department of Transportation

Charge:

NJAC 4A:2-2.3(a) 7, and NJDOT Guidelines for Employee Conduct and Discipline, Section II, C Neglect of Duty.

NJAC 4A:2-2.3(a) 7, and NJDOT Guidelines for Employee Conduct and Discipline, Section III, B, Insubordination.

Specification:

It was discovered on October 9, 2013, after you transferred to another Bureau, that you had neglected your duties; leaving a significant amount of incomplete work that you did not bring to the attention of your supervisor. You not only neglected your duties by leaving incomplete work, but you were insubordinate when you failed to provide ethics training to new hires, and failed to complete the processing of Employee's Certification of Outside Employment or Activities (PR-102) forms received prior to your transfer. Either act alone demonstrates insubordination.

Sanction:

The proposed sanction is suspension for 10 working days.

Exhibits

Entered by Management:

- M-1 Preliminary Notice of Discipline
- M-2 NJDOT Policy 532, Section II, C, Neglect of Duty and Section III, B, Insubordination
- M-3 Factual Summary of Inspector General Jones
- M-4 NJ State Ethics Commission – New ELO Orientation – Agenda
- M-5 NJ State Ethics Commission handout entitled “State Ethics Liaison Officers’ Responsibilities
- M-6 NJDOT Employee’s Certification of Outside Employment or Activities, PR 102, sample form
- M-7 NJDOT Request for Attendance at Outside Event, AD 270, sample form
- M-8 NJDOT Supervisory Conflicts of Interest Certification, PR 99, sample form
- M-9 NJDOT Acknowledgment for Plain Language Guide to New Jersey Executive Branch
- M-10 NJDOT Pre-Hire Ethics Questionnaire (abolished 2013), sample form
- M-11 Ethics Commission Compliance Audit, March 2, 2012
- M-12 Manager Evaluation Program Form 7/1/12 – 6/30/13 (modified to 4/30/13)
- M-13 Performance Assessment Report from 5/1/13 – 9/30/13
- M-14 Photo of total amount of unprocessed work
- M-15 List of 425 PR 102 forms
- M-16 Log of PR 102 forms
- M-17 List of 88 PR 99 forms
- M-18 List of 502 forms of Acknowledgment for Plain Language Guide to New Jersey Executive Branch Ethics Standards and Uniform Ethics Code
- M-19 List of 245 forms of Pre-Hire Ethics Questionnaire
- M-20 New Hires October 2012 – August 2013 with cover email
- M-21 “Eric’s Transition” dated September 16, 2013
- M-22 “Eric’s Transition Calendar” dated September 16, 2013

Entered by Appellant:

- A-1 Department of Transportation Policy/Procedure; Employee Discipline
- A-2 Email from Eric Handelman December 15, 2014, Email from Eric Handelman November 26, 2014, letter from Eric Handelman to Eldetraud McQuaid

November 30, 2014, and letter from Eldetraud McQuaid to Eric Handelman November 25, 2013.

- A-3 Declaration of Robert R. Salman As To Character of Eric Handelman, Declaration of Robert J. Long As To Character of Eric Handelman, Declaration of Ralph Shiflett As To Character of Eric Handelman, Declaration of Brian J. Smith As To Character of Eric Handelman, Declaration of Charles Smentkowski As To Character of Eric Handelman, Declaration of William Carter As To Character of Eric Handelman
- A-4 Email exchange between Eric Handelman to Johanna Jones, October 2, 2013
- A-5 Preliminary Notice of Disciplinary Action, dated March 6, 2014.
- A-6 Appellant submission to Jeanne Victor on June 29, 2014

Management Opening Statement

On July 18, 2011 Eric Handelman became the ethics officer within the Office of the Inspector General NJDOT.

On July 16, 2012 Johanna Jones became the new Inspector General. She was new to the Department so there was a period of time needed to become familiar with the Department.

In January of 2012 there was an audit of the NJDOT conducted by the State Ethics Commission. The audit found the Department to be in substantial compliance with limited deficiencies. Prior to the audit Appellant held the joint responsibility of Ethics Officer and the Department's Custodian of Records. Subsequent to the audit the responsibility of records custodian was removed from Appellant.

The Inspector General is required to provide the Commissioner, NJDOT, with quarterly reports on the activities of the Inspector General's Office. Included in this report is a notification activities of the Inspector General's Office to include compliance with ethics training for new hires and other requirements of the Ethics Office.

Appellant's working hours were from 8:00 to 3:30. In August of 2013 his hours were changed to 9:00 to 5:00. At that time Appellant began to seek another position with the NJDOT. He found this position within the office of Right of Way. On September 9, 2013 a transition plan was agreed on whereby Appellant would handle all matters that arrived in the Ethics Office prior to October 4, 2013 and anything received afterwards would be handled by his successor.

On October 7, 2013 Appellant reported to Right of Way.

On October 9, 2013 Inspector General Office staff were assigned to clean out Appellant's office. During this process they found documents left in the office that required some work to be

completed. The total of the documents amounted to a pile 15 inches high and included 7 AD 270 forms, 88 PR 99 forms, 502 Acknowledgment of Ethics forms, and 245 pre-hire ethics questionnaires. Prior to his departure to Right of Way Appellant did not make Inspector General Jones aware of any incomplete work product.

The presence of this incomplete work product exposed employees and the agency to potential ethics violations. The incomplete work was a failure on the part of Appellant to abide by his transition agreement that was made on September 9, 2013, and a failure to abide by repeated instructions from Inspector General Jones. This amounts to neglect of duty and insubordination on the part of Appellant.

Appellant Opening Statement

Appellant reserved his opening statement for the beginning of the appellant's defense.

Management Case

Testimony of Johanna Jones

Factual Statement of Inspector General Jones (M-3) introduced. The testimony of Inspector General Jones followed the summary contained therein.

Inspector General Jones is the Inspector General for the NJDOT. The Inspector General's Office oversees Ethics, administration of the Open Public Records Act, disciplinary investigations, and internal audit. The unit is comprised of 20 people. When Inspector General Jones took over she met with each individual in the unit to become familiar with their functions. At the time Appellant was in charge of the Ethics and OPRA functions.

Inspector General Jones testified that the NJDOT was subject to an audit from the State Ethics Commission in January of 2012. The results of that audit were contained in a letter from Jeffrey Stoolman, State Ethics Commission, to James S. Simpson, Commissioner NJDOT (M-11). Included in the audit report was a finding that DOT employees has last received Commission approved ethics training in 2007. Approved training is required every three years. Included was a mandate that the DOT consult with the Ethics Commission representative to establish approved re-training for DOT employees. Inspector General Jones stated that at the time of the audit report that Appellant had been serving as the Ethics Liaison Officer (ELO) for about 8 months.

Inspector General Jones testified that Appellant had received some training on ELO matters prior to her arrival in July of 2012. She testified this consisted of mandatory new ELO training and possible unspecified other training. Additionally, since Inspector General Jones assumed

her role as Inspector General she is aware that Appellant attended 5 mandatory quarterly meetings for agency ELO's (9/12/12, 12/6/12, 2/28/13, 6/5/13, and 9/12/13). Inspector General Jones herself attended a new ELO training just so she could become more familiar with the job requirements of the ELO. This session was held on September 20, 2012. During that sessions Inspector General Jones received a copy of a document entitled "New jersey State Ethics Commission: New ELO Orientation" (M-4 Agenda, M-5 ELO Responsibilities). Delineated in Section I paragraph F is the requirement that all new employees are provided ethics training within 60 days of hire. Inspector General Jones testified that at the DOT this training is to be completed on the new employees first day on the job so that it can be completed before employees become scattered throughout the State. On September 21, 2012 Inspector General Jones shared a copy of M-5 with Appellant just in case there were any updates in the responsibilities of which he was not aware.

Beginning in October of 2012 Inspector General Jones began to have weekly meetings with Appellant. The purpose of these meetings was to ensure that the Ethics Office priorities and activities were in line with those of the Office of the Inspector General. At the same time the NJDOT custodian of records responsibility was removed from Appellant.

On October 1, 2012 Appellant and Inspector General Jones signed the new Manager Evaluation Program (MEP) form (M-12). Significant in the Major Goals of the Unit/Work Group are the requirements to:

- Achieve and Maintain Department wide compliance with all applicable ethics laws and policies.
- Maintain appropriate ethics documentation and records.

Inspector General Jones highlighted that in the enumerated job responsibilities contained in M-5 were:

- #4 Serve as the ELO for the NJDOT where the criteria included responsibility for the analysis of this forms and applications to include "Requests for Attendance at Events" and "Employee's Certification of Outside Employment or Activities."
- #5 To lead lectures and seminars of ethics where the criteria included to substantively convey information and accessibility to NJDOT staff.

Inspector General Jones indicated that this last criteria was inserted as a result of complaints that Appellant would simply play an ethics DVD and that this would constitute training.

In mid-October 2012 Appellant provided Inspector General Jones with statistics for the 3rd quarter report from the Office of the Inspector General. These statistics included 52 Outside Activity Questionnaires (PR-102) forms and 108 Request for Attendance at Events (AD-270) forms that were "received and analyzed." Inspector General Jones stated that she never suspected that there was "daylight between forms received and forms analyzed.

On December 4, 2012 Inspector General Jones began to focus the weekly meetings to monitor and update the status of Appellant's work. Inspector General Jones developed a form that she and Appellant would utilize to assist in monitoring this process. Included on this form was a constant status of rolling review for PR-102 and AD-270 forms. This requirement was constant, regardless of other work duties and projects assigned. Appellant was to keep an updated version of this document and provide the same at the weekly meetings. There were 32 of these meetings from December 19, 2012 through September 24, 2013. At these meetings the status indicated for the PR-102 and AD-270 forms would continue to be "rolling." Inspector General Jones did indicate, during her day 2 appearance at the hearing, that the PR-102 and AD-270 form topics would not specifically be discussed at the meetings but they would appear on the form with the rolling status indicated.

On January 3, 2013 Inspector General Jones and Appellant met to review the interim MEP. Inspector General Jones states that the interim MEP meeting serves as a reminder of job duties required of an employee. Specifically stated in the interim MEP is that the PR-102 and AD-270 forms would not impact on Appellant's volume of work. Inspector General Jones testified that Eric was never one to work beyond his scheduled time even though this would be expected of him given his pay grade. She further testified that the processing of these forms was something she envisioned he could do at home in the evenings so they would not impact his ability to complete other assigned tasks.

On January 4, 2013 Appellant provided Inspector General Jones with statistics for the 4th quarter report from the Office of the Inspector General. These statistics included 434 Outside Activity Questionnaires (PR-102) forms and 181 Request for Attendance at Events (AD-270) forms that were "received and analyzed." No indication was given that there was any difference in the number of forms received and the number that were analyzed.

On April 5, 2013 Appellant provided Inspector General Jones with statistics for the 1st quarter report from the Office of the Inspector General. These statistics included 148 Outside Activity Questionnaires (PR-102) forms and 235 Request for Attendance at Events (AD-270) forms that were "received and analyzed." No indication was given that there was any difference in the number of forms received and the number that were analyzed.

In May of 2013 the MEP forms were converted to Performance Assessment Review (PAR) forms throughout the NJDOT. Appellant had his MEP converted to a PAR at this time. There were no substantive changes in the goals or job functions as a result of the conversion. This served as reinforcement of his job expectations to include:

- Achieve and maintain Department-wide compliance with all applicable ethics laws and policies.
- Advise employees on ethical consequences of prospective actions, employment, or activities.
- Maintain appropriate ethics documentation and records.

On July 17, 2013 Inspector General Jones met with Director of Human Resources Jeanne Victor and Manager 1 Human Resources Lisa Webber. At this meeting it was revealed to Inspector General Jones that Appellant had not conducted ethics training for new employees since October of 2012. Inspector General Jones states that Appellant had never notified her that he had not been conducting training sessions, never told her that he had not been notified by Human Resources of the need to present training, or that the NJDOT was out of compliance with the requirement to train new employees within 60 days. The next week Inspector General Jones met with Appellant to address the issue of non-compliance. Appellant was given instructions to identify all employees who were not trained and to track and ensure completion of all new employee training. The total number of new employees that did not receive new employee training was 119.

Appellant began seeking a different position within the NJDOT during the month of August. He was successful in finding a position in the Right of Way office. On September 16, 2013 Inspector General Jones met with Appellant where a transition plan was developed to ensure an orderly departure from the Office of the Inspector General. Eric's Transition (M-21) and Eric's Transition Calendar (M-22) were introduced. Appellant agreed with the plan. Numbers 11 and 12 on M-21 indicate that Appellant will be responsible for all PR-102's and AD-270's received before October 4.

On October 9, 2012 Appellant began his new assignment at Right of Way. That same day Inspector General Jones instructed staff to begin to get Appellant's old office ready for his successor. During that process it was discovered that there was a substantial amount of incomplete work that was left behind. When accumulated in one pile the paperwork totaled 14 – 15 inches high as shown on the submitted photo (M-14). Inspector General Jones had the staff audit the papers to determine the scope. That produced the following:

• Outside Activity Questionnaire	PR-102	425
• Attendance at Events	AD-270	7
• Supervisory Conflict of Interest	PR-99	88
• Ethics Plain Language / Ethics Code		502
• Pre-Hire Ethics Questionnaire		245
• Total		1267

The first 2 forms on the above list require ELO analysis, signature and forwarding to Human Resources for filing. The third form requires consideration by the ELO and forwarding to Human Resources for filing. The final 2 forms only require forwarding to Human Resources for filing. Inspector General Jones testified that given the time/date stamp on the discovered documents it was clear that Appellant had ceased to work on the processing of these documents despite the legal requirement for their process, their continued weekly presence on the Status of Active Project list, the MEP and PAER requirements, and the acceptance by Appellant of the transition report.

I asked Inspector General Jones if she spoke to Appellant regarding the paperwork and she indicated that she had not. Inspector General Jones stated she had given him 39 orders to complete this work and had no desire to give a 40th order. Inspector General Jones testifies she had reached a level of "futility and a breach of trust." She stated that the left behind work was "either willful or neglectful" so she had no desire to discuss the matter with Appellant.

Inspector General Jones testified that the PR-102 and AD 270 forms have a high degree of importance because the employee needs to be able to fulfill their work duties and the State and the Employee are properly protected.

Appellant did not have any cross examination.

Inspector General Jones returned on December 18, 2014 for some additional testimony. I asked Inspector General Jones about why it took so long for Human Resources to contact her about the lack of new employee ethics training. She stated that Lisa Webber of HR had only recently returned from leave and had discovered the oversight. Inspector General Jones was aware that HR had not contacted Appellant at all regarding the ELO providing ethics training for new employees since October of 2012, so Appellant had not ignored any known new employee orientations. Inspector General Jones contended that Appellant should have known that new employee training was need as the NJDOT hires a significant amount of new employees and the training was a regular occurrence. Appellant should have realized that orientations were being held and the ethics training was missing from these orientations. Inspector General Jones contends that Appellant's defense that he can only be aware of new employees if he is notified by HR does not have merit as the small unit that is the Office of the Inspector General received 5 new employees during this time frame. Inspector General Jones states that as a manager, not just an employee that Appellant had to know that his basic responsibilities were not being met.

Inspector General Jones had previously stated that she had not contacted Appellant regarding the incomplete work after the discovery. I further inquired if Appellant had any knowledge that there was an investigation conducted and discipline considered prior to his actually being served with the initial Preliminary Notice of Disciplinary Action on March 14, 2014. Through discussion with this hearing officer, Inspector General Jones, Appellant, and Management Representative Glass, it was established that this hearing would be the first time that anyone questioned Appellant about this matter. I inquired as to the fairness of the process that now holds Appellant accountable for answering about incomplete forms from September of 2013, never providing Appellant with copies of any of the incomplete forms for comment, never asking him for an explanation, and now, 15 months later expect him to be able to provide his best defense to the charges. Inspector General Jones testified that she had no thought of asking Appellant for and answer as she had previously testified that she had provided 39 orders requiring the work be completed. Once she wrote her report and presented it to HR it was out of her hands and up to HR to conduct the investigation as they saw fit. Inspector General Jones

stated that she provided lists (M-15, M-16, M-17, M-18, and M-19) of all incomplete work and that once the work was filed it was too burdensome to remove from individual files to then provide to Appellant. Inspector General Jones stated that "you'll either have to find my testimony that it was incomplete to be credible or you won't."

I inquired as to the content of the weekly meetings held between Inspector General Jones and Appellant where they reviewed the Status of Active Projects form. The processing of required ethics forms is a constant on those forms and as previously testimony indicated they were shown as having a "rolling" status. Specifically I asked if these forms were actually brought into the discussion each week or was it something that was just skipped over as it was seen as a routine matter. Inspector General Jones stated that they would not actually discuss the on-going processing of the forms.

In cross examination Appellant presented an email (A-5) where Inspector General Jones writes that "your assignments are portable." Appellant contends that he took this to mean that the processing of some of this work could come with him after he goes to Right of Way and be completed at that time. Inspector General Jones stated that portable refers to the fact that he could complete assignments at his desk in the Office of the Inspector General or at his desk at Right of Way during the transition period. Portable was not referring to any time after the transition period. Appellant would still need to comply with the transition tasks and calendar.

Appellant Opening

Appellant stated that this prosecution is more about Inspector General Jones and her credibility. He will present a defense that attacks procedural violations and shows him to be of a character where he could not have taken the actions that Inspector General Jones alleges. Appellant states that these charges have no merit.

Appellant's Case

Appellant provided some background information. Appellant Graduated from Rutgers Camden Law School and was admitted to the NJ Bar in 1993. Prior to coming to the NJDOT he worked investigating insurance fraud and billing. In 2000 he was recruited to come to the NJDOT by then Inspector General Bob Salman. He served as counsel to Mr. Salman for 8 years. In this role he had significant contact with the Commissioner of the NJDOT. He headed the internal investigation unit and the audit unit. In 2002 he was also given the role as custodian of records after the passage of the Open Public Records Act. In 2010 Mr. Salman left the agency and Robert Long became the new Inspector General. Appellant continued in the same role. Luis Valentin became the new Inspector General in January of 2011 and he subsequently named Appellant as the ELO. His task was to bring ethics "up to snuff." They achieved mostly success with the audit. Appellant states he was a great employee Before Inspector General Jones was at the DOT and that he has been a great employee since she arrived.

Appellant submitted the Department of Transportation Policy/Procedure on Employee Discipline (A-1). He is citing a procedural violation in that page 2 on A-1, Section III B 1 b states that "every alleged breach of discipline shall be investigated, including an opportunity for the accused to explain his/her actions." Appellant also cites A-1 page 3 #3 which states "An investigation should be undertaken immediately upon the allegation that a breach of discipline has occurred." Upon questioning from this Hearing Officer Appellant stated that he has never been asked by anyone about the status of allegedly incomplete work. Appellant requested a dismissal based on these violations. I indicated that we would continue with the hearing.

Appellant stated that the Preliminary Notice of Discipline has undergone 3 amendments in addition to the late notice with the first amendment. He stated that since there was no real investigation beyond the initial report from Inspector General Jones that there was no reason for any delay. Appellant contended that the delay reflects poorly on the professionalism of the disciplinary process and greatly hinders his ability to present a complete defense.

Appellant also requested a consideration to dismiss based on the denial by the DOT to provide him proper discovery. Submitted into evidence at this time was a series of correspondence (A-2) as indicated herein; Email from Eric Handelman December 15, 2014, Email from Eric Handelman November 26, 2014, letter from Eric Handelman to Eldetraud McQuaid November 30, 2014, and letter from Eldetraud McQuaid to Eric Handelman November 25, 2013. With this submission Appellant testifies that in June of 2014 he made a request for the discovery of the materials he is said to have not completed. Subsequent emails show that Appellant made some subsequent requests for the material without receiving a reply. On November 25, 2014 Appellant did receive an email reply from Edel McQuaide that contained an attached letter. These requests were denied on the basis they were irrelevant and unduly burdensome to produce. Management Representative Glass indicated that the burdensome quality was a result of the need to redact and that all the forms have since been filed in individual employee files. Appellant was offered a sampling of 5 of each type of forms in discovery. During discussion at this time Management Representative Glass questioned "what could the forms possibly have on them that would serve as a possible defense." Appellant's position on this question was that he did not know, he would actually have to be able to see and review the forms to be able to comment on them. A management selected sample of 5 forms means nothing in terms of the overall status of so many forms. Without seeing the actual forms Appellant contends he does not even know they exist. Providing a list of forms is not the same as providing forms.

Appellant submitted character declarations as identified in A-3 above. MR Glass objected to this submission as irrelevant to the charges at hand. I indicated I would accept them for now and decide their relevance during my post hearing analysis of the testimony and DOT policy and procedures. I note during my post hearing review that the NJDOT disciplinary policy states that "Similar penalties shall be imposed for similar breaches of discipline when the employees' disciplinary history, length of service, and other mitigating factors are similar" (page 3 # 4).

While these submissions have no direct bearing on the work in question being performed they certainly are relevant in the presentation of mitigating factors for any recommended penalty and therefore the submissions are accepted.

Appellant presented a number of points about his interaction with Inspector General Jones.

- Appellant submitted an email exchange between him and Inspector General Jones (A-4). Contained in this exchange Inspector General Jones writes "You are NL and your assignments are portable. Please give Victor your full business days as negotiated and do not deviate from my commitments without my permission." Appellant states that he believed this to be portable as in when he begins full time in ROW that he can still complete this work. He did not believe this meant portable in the sense that he could perform ELO matters while at ROW during the transition period. He got that impression from the line in the email stating "give Victor your full business days as negotiated." Appellant states this statement says he cannot do ELO work while at ROW on these transition days so that cannot be the context Inspector General Jones meant when she said portable.
- Appellant stated that Inspector General Jones looked to him to train her in ELO matters.
- Appellant states that Inspector General Jones observed his training sessions to learn how to conduct these trainings.
- Inspector General Jones never counseled Appellant or put any type of remedial action plan in place.

I asked Appellant about the forms, where they were left, were they copies of filed forms, and what his intention with those forms was. Appellant stated that he is not admitting that the forms even existed. He has never seen the forms, all he has ever seen is list of names. Had he been asked at the time and shown the forms he would have had a response but at this time he has nothing tangible to discuss.

Regarding the lack of training for new employees Appellant stated that Ethics "fell off the grid from HR" and that the gap is due to their errors. He stated he was one person with no staff. Inspector General Jones had removed all administrative help from him and he was overwhelmed with work. As a result he did not notice that there was a lengthy period of time building up where new employees had not been trained. Appellant stated that once he found out about the untrained employees he acted quickly to identify and remedy the situation. He stated that he was returned to the email notification list for new hire training and that he had never missed a session when properly notified.

Appellant submitted into evidence his June 29, 2014 submission to Jeanne Victor as a review covering all matters presented. Management objected. I took the submission and advised that I would decide after review. As the submission is approximately 300 pages I would make no review at this time.

Appellant Closing

Appellant stated that he was denied the ability to properly defend himself in the matter.

- He was never contacted by Inspector General Jones after he left the Office of the Inspector General.
- He was never contacted during whatever investigation took place.
- His first knowledge of any issue or action being taken came when he was first served with the Preliminary Notice of Discipline.
- He requested document discovery in May of 2014 and was only provided with lists of names.
- He immediately requested the actual documents and after 5 months, and only 2 ½ weeks before the hearing he was denied this request.

Appellant states that the NJDOT is in violation of their own disciplinary policy. No investigation was performed and that the matter was not done in a timely manner.

The denial of discovery based on it being unduly burdensome to provide is not justified. Appellant claims a right to examine each and every form that the NJDOT places at issue. Appellant adds that there was certainly no administrative reason for waiting 5 months before denying him access, for waiting until right before the hearing before this denial was delivered.

Appellant states that he does not possess the lack of the character required to be neglectful or insubordinate in the manner that management is alleging. Appellant cites that submissions of the character declarations as evidence.

Appellant states that the understanding was that the ELO assignments could extend to beyond the transition period as evidenced by:

- Email from Inspector General Jones indicating assignments are portable.
- The same email from Inspector General Jones indication on ROW transition days he is devote his full attention to ROW.
- Inspector General Jones asking Appellant to show her where his new desk will be so she can find him when needed.
- Inspector General Jones advising Appellant's new supervisor that she may need to call him back to work on his ELO assignments and his actual transfer.

Appellant states the NJDOT cannot rely on mere lists to support charges, that they must provide the actual forms.

Appellant states that in May of 2013 he lost his administrative assistant. The increased workload was difficult to manage. He met weekly with Inspector General Jones to prioritize assignments and nothing was ever said about any backlog or incomplete paperwork. Any failure to supply ethics training for new employees was a result of failure on the part of HR to make the proper notification.

Appellant claims ESTOPPEL applies. He claims that Inspector General Jones changed the work conditions and requirements after he left the position and then subsequently filed charges for the same. Prior to his leaving there was portability attached to his assignments and after he left all of a sudden this was no longer the case.

Appellant claims LACHES applies. The filing of charges does not meet required timelines and goes further in that severely impacts on the ability of Appellant to present his defense.

Management Closing

Management asserts that they have produced the preponderance of evidence required to have the disciplinary charges and penalty affirmed. Management states that ESTOPPEL AND LACHES do not apply.

Management states that the lack of productions of the documents in question are not an issue. The physical presence of the forms does not change what was or wasn't completed. Nor are there any timeliness issues in the filing of charges and timing of the hearing. This has all been according to policy.

Testimony about PAR scores and character reference are not relevant as just a single act of not doing the required work on an ethics form merits discipline.

Management states that the job of conducting ethics training for new hires is a matter of substantive responsibility for the ELO. During the period where there was a gap in this training the Inspector General's Office received 5 new employees. Accordingly Appellant is not able to say he was not aware of any new employees being hired.

Appellant was instructed on the steps he needed to take catch up on the backlog of training in ethics for new hires. This was not sufficiently achieved.

The PR-102 forms require an analysis by the ELO. Improper processing exposes the employee, the NJDOT, and State of NJ to potential liability. Neglect in processing also leads to the supply of erroneous information to the Commissioner, NJDOT.

Management asserts that completed forms that are in piles in the ELO's office are not processed forms. They need to be in employee files in the event of discipline or other issues concerning that employee.

Management states that all employees want additional help but the Appellant never sought extra resources or indicated he was overwhelmed.

Management states the preponderance of the evidence shows neglect and insubordination. Management is not aware of any previous discipline involving Appellant and that 10 days suspension is consistent with practice.

Findings of Fact

Having heard the testimony of the parties and witnesses, and having considered all of the other evidence presented, I find the facts of the matter to be as follows:

1. 425 PR-102 forms not fully processed were discovered in Appellant's office after he transferred to ROW.
2. 7 AD-270 Attendance at Events forms not fully processed were discovered in Appellant's office after he transferred to ROW.
3. 88 PR-99 Supervisory Conflict of Interest forms not fully processed were discovered in Appellant's office after he transferred to ROW.
4. 502 Ethics Plain Language / Ethics Code forms not fully processed were discovered in Appellant's office after he transferred to ROW.
5. 245 Pre-Hire Ethics Questionnaire forms not fully processed were discovered in Appellant's office after he transferred to ROW.
6. There had been no new hire ethics training from October of 2012 to July of 2013 leaving 119 new hires out of compliance with ethics training requirements.

Decision/Recommendation

On the basis of the evidence submitted at the hearing I recommend partial affirmance of the charges brought against Appellant. I find that the charge of Neglect of Duty should be sustained and I disagree with there being sufficient cause for a finding of insubordination.

NJDOT policy defines insubordination as a refusal or failure to carry out a specific order. Policy further breaks insubordination down into two categories; refusal to carry out an order (1-15 day penalty range) and unreasonable delay in carrying out a specific order (O.R. - 1 day). This second category presents as a less serious offense than neglect (O.R. - 5 day penalty) when penalty ranges are compared. The constant element in the breakdown of insubordination is that there be a specific order by a supervisor. Once the element of a specific order appears the second element is that there either be a refusal (category 1) or delay (category 2) in carrying out that order. Given the 10 day penalty sought by management it is clear that management is alleging a refusal to carry out the order as that is the category that allows for a 10 day penalty.

Inspector General Jones testified that she provided 39 orders to Appellant to complete the required forms. These order were in the form of Appellant's MEP and PAR as well as weekly Status of Active Projects form that she would go over weekly with Appellant. However Inspector General Jones testified that despite their appearance on the forms as a rolling task, that generally there would be no discussion of the forms during the weekly meetings. These orders present more as job responsibilities of the Appellant rather than as a specific order. A delineation of duties on performance assessments and list of all job assignments are not what I would consider to be a specific order. There was no testimony of a specific order beyond the performance reviews and the weekly status report. Lacking the necessary element of a specific order insubordination with regard to the forms cannot be sustained.

There is testimony of a specific order with regard to correcting the problem of ethics training for new hires. Inspector General Jones met with Appellant on July 25, 2013 and provided 6 specific instructions to Appellant. With regard to the gap in training that led to the 119 employees not being trained there is no presence of a specific order, only the presence of these duties in job specifications.

The second element required to substantiate insubordination is refusal to perform the ordered task. With regard to the processing of forms, even if I had a finding of a specific order, there was no evidence presented of a refusal to carry out the order. The mere presence of forms does not mean that Appellant refused to do the work required. Appellant was never asked why these forms were not fully processed. In addition I took a sample of names on the forms discovered and compared these names to emails submitted by Appellant (A-6) that show that he had emailed the employee to advise them that the form was approved. Clearly Appellant had done some work on these matters. Inspector General Jones also testified that the failure to complete the required work was "either willful or neglectful." There was no testimony to point to willful.

With regard to the second element of willful refusal to conduct the training for new hires I did see a specific order that was given AFTER the discovery of the gap in training. Prior to the discovery of the gap there was specific order shown, only the delineation on job responsibilities. Accordingly the failure to train could only fall under neglect for not fulfilling job duties. Management does allege that after the discovery of the gap, and after the specific order of July 25, 2013, that not enough was done by Appellant to complete the 6 specific instructions he was given. However Appellant had done some of the work required per the order, no time frame to complete the order was presented in testimony, and this issue was not contained in Appellant's transition tasks. Appellant was never asked as to why he did not do more to catch up on the backlog and Appellant never refused to do this work. No evidence was presented of willful disregard and in fact the work that was done suggests he was not refusing to carry out the order.

I do find there to be credible evidence of neglect of duty in both the new employees not receiving ethics training and the failure to fully process the required forms.

The process in place for the training of new hires in ethics was for HR to notify Appellant that there were new hires in need of training and Appellant would then make himself available as needed. Appellant testified that he was not aware of a gap developing and absent the notification email he would have no way of knowing that training was needed. I find some sympathy to that argument however the longer the gap grows the greater the responsibility on the ethics officer to recognize that a critical need was not being met. This should have been especially apparent because of the 5 new employees that came work at the Inspector General's office during this period. The ELO of any state agency bears a tremendous amount of responsibility to safeguard the needs of the employee, the department, and the state. Ethics

training is critical in this endeavor and the ELO needs to be proactive to ensure compliance. The lack of any proactive effort placed the employee, the department, and the state at risk.

I also sympathize with Appellant's issues regarding the lack of discovery materials being provided. It was claimed that the need to redact contributed to an undue burden. However all the materials in question were materials that passed through Appellant's hands when he was the ELO. His mandate for confidentiality as the ELO is portable and all materials he was exposed to remains protected. The need to go through individual files to pull out the forms in question is a burden of managements own making. They had the forms together when a picture was taken to show their height. Management was quickly aware that a report would be written with a recommendation for discipline. Discovery is a normal part of discipline. The opportunity to make discovery easy was there. I further sympathize with the late notice that discovery would not be fully provided despite attempts to obtain the same. Management claims the forms would not provide any information that would help a defense so their absence is not relevant. I am of the view that I do not know what the forms would show without the ability to actually examine the forms.

That said I do believe the forms existed and that they represented incomplete processing of ethics forms. Inspector General Jones testified as to their existence, the lack of anything mitigating found on the forms, and that they were not completely processed as required. Appellant did not testify to the contrary of anything that Inspector General Jones claimed. Appellant testimony on the matter was that he doesn't know if they exist as he was not provided with copies or asked about them at the time. There is no reason to doubt the testimony of Inspector General Jones and no contradictory testimony. The forms were substantial in number. A handful of forms not completely processed may not constitute neglect of duty. I do not know what the magic number is for unprocessed forms to cross over to being neglect but it does come before 1267, the number of forms found in the office. Not to be overlooked in the consideration of this matter is the importance of ethics compliance. State agencies answer to 3 branches of government as well as to the citizens of the state. Ethical lapses are one of the most significant risk areas for all agencies. Therefore the lack of fully processing forms has more risk than writing it off as a simple filing error.

The recommended penalty in the notice was 10 days. My recommendation consists of a finding of neglect. The maximum penalty is 5 days for a first offense with this finding. Given the importance of the role of the ELO and matters considered here, I do recommend the maximum of 5 days.



Steven Tallard
NJ State Parole Board
Hearing Officer

January 31, 2015

Date

EXH. C

#2014-8

Preliminary Notice of Disciplinary Action (31-A)
Civil Service Commission - State of New Jersey

EMPLOYEE'S COPY

Instructions for employer: This notice must be served on a permanent employee or an employee serving a workable test period in the career service against whom one of the following types of disciplinary action is contemplated (a) suspension or fine for more than 15 working days at any one time, (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more, (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year, (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment, (e) removal, or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

FROM	Employing Agency Name Transportation	Address/ Phone Number 1035 Parkway Ave., PO Box 602, Trenton, NJ 08625 (609) 530-2953	Date March 6, 2014
	Attorney representing your agency should this matter be appealed		Address/Phone number/Email address
TO	Employee Name Eric Handelman	Permanent Civil Service Title Executive Assistant 1	Employee Identification Number 000311227
	Address/ Phone Number 59 Ivy Road, Freehold, NJ 07728		Pension Number 1203290

You are hereby notified that the following charge(s) have been made against you: (If necessary, use additional sheets and attach)

Charges:

NJAC 4A:2-2.3(a) 7, and NJDOT Guidelines for Employee Conduct and Discipline, Section II, B, Neglect of Duty

NJAC 4A:2-2.3(a) 2, and NJDOT Guidelines for Employee Conduct and Discipline, Section III, B, 1, Insubordination

Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:

It was discovered on October 9, 2013, after you transferred to another Bureau, that you had neglected your duties, from May 2013 to October 2013. This blatant disregard of your basic job responsibilities resulted in the DOT's non-compliance with Ethics law and policy. As the Department's Ethics Liaison Officer, your duties are expressed in law, regulation, policy, and your job performance evaluations. You not only neglected your duties, you were insubordinate when you failed to implement the instruction given to you to remediate the deficiencies.

If checked, charges are continued on attached page.

If checked, incidents are continued on attached page.

You are hereby suspended effective _____ (Check box to indicate if employee is suspended pending final disposition of the matter)

If you desire a departmental hearing before the appointing authority on the above charge(s), notify it within 5 *days of receipt of this form. If you request a hearing it will be held on _____ at (time) _____ at (place of hearing) _____ *Must be a minimum of five days

The following disciplinary action may be taken against you:

- Suspension for 10 working days, beginning *_____ and ending *to be determined
Charge One: 5 day susp. Charge Two: 5 day susp.
- Indefinite suspension pending criminal charges effective (date) _____
- Removal, effective (date) _____
- Demotion to position of _____ effective (date) _____
- Resignation not in good standing, effective (date) _____ Other Disciplinary Action
- Fine amount _____ which is equal to number _____ (number of working days)

Appointing authority or authorized agent's signature and title

Signature Michele Shapiro Title Michele Shapiro, Director, Division of Human Resources

This form must be personally served on the employee or sent by certified or registered mail.

- Certified or Registered Mail Receipt Number _____
- Signature of Server _____ Date of personal service _____

#2014-8

Preliminary Notice of Disciplinary Action (31-A)
Civil Service Commission - State of New Jersey

AMENDED

Instructions for employer: This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated. (a) suspension or fine for more than five working days at any one time; (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more; (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year; (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (e) removal; or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

FROM	Employing Agency Name Transportation	Address/ Phone Number 1035 Parkway Ave., PO Box 602, Trenton, NJ 08625 (609) 530-2953	Date June 12, 2014
	Attorney representing your agency should this matter be appealed		Address/Phone number/Email address
TO	Employee Name Eric Handelman	Permanent Civil Service Title Executive Assistant 1	Employee Identification Number 000311227
	Address/ Phone Number 59 Ivy Road, Freehold, NJ 07728		Pension Number 1203290

You are hereby notified that the following charge(s) have been made against you: (If necessary, use additional sheets and attach)

Charges:

NJAC 4A:2-2.3(a) 7, and NJDOT Guidelines for Employee Conduct and Discipline, Section II, B, Neglect of Duty

NJAC 4A:2-2.3(a) 2, and NJDOT Guidelines for Employee Conduct and Discipline, Section III, B, 1, Insubordination

Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:

It was discovered on October 9, 2013, after you transferred to another Bureau, that you had neglected your duties; leaving a significant amount of incomplete work that you did not bring to the attention of your supervisor. You not only neglected your duties by leaving incomplete work, but you were insubordinate when you failed to provide ethics training, and failed to complete the processing of Employee's Certification of Outside Employment or Activities (PR-109) forms received prior to your transfer. Either act alone demonstrates insubordination.

If checked, charges are continued on attached page.

If checked, incidents are continued on attached page.

You are hereby suspended effective _____

(Check box to indicate if employee is suspended pending final disposition of the matter)

If you desire a departmental hearing before the appointing authority on the above charge(s), notify it within _____

_____ 14 _____ *days of receipt of this form. If you request a hearing it will be held on _____

at (time) _____ at (place of hearing) _____

*Must be a minimum of five days

The following disciplinary action may be taken against you:

Suspension for 10 working days, beginning _____ and ending *to be determined

Indefinite suspension pending criminal charges effective (date) _____

Removal, effective (date) _____

Demotion to position of _____ effective (date) _____

Resignation not in good standing, effective (date) _____ Other Disciplinary Action

Fine _____ amount which is equal to _____ number (number of working days)

Appointing authority or authorized agent's signature and title.

Signature Michele Shapiro Title Michele Shapiro, Director, Division of Human Resources

This form must be personally served on the employee or sent by certified or registered mail.

Certified or Registered Mail Receipt Number _____

Signature of Server _____ Date of personal service _____

#2014-8

Preliminary Notice of Disciplinary Action (31-A)
Civil Service Commission - State of New Jersey

2ND AMENDMENT

Instructions for employer: This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated. (a) suspension or fine for more than five working days at any one time; (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more; (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year; (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment; (e) removal; or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

Form with fields: Employing Agency Name (Transportation), Address/Phone Number (1035 Parkway Ave., PO Box 602, Trenton, NJ 08625), Date (June 24, 2014), Employee Name (Eric Handelman), Permanent Civil Service Title (Executive Assistant 1), Employee Identification Number (000311227), Address/Phone Number (59 Ivy Road, Freehold, NJ 07728), Pension Number (1203290).

You are hereby notified that the following charge(s) have been made against you: (If necessary, use additional sheets and attach)

Charges:

NJAC 4A:2-2.3(a) 7, and NJDOT Guidelines for Employee Conduct and Discipline, Section II, B, Neglect of Duty

NJAC 4A:2-2.3(a) 2, and NJDOT Guidelines for Employee Conduct and Discipline, Section III, B, 1, Insubordination

Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred:

It was discovered on October 9, 2013, after you transferred to another Bureau, that you had neglected your duties; leaving a significant amount of incomplete work that you did not bring to the attention of your supervisor. You not only neglected your duties by leaving incomplete work, but you were insubordinate when you failed to provide ethics training, and failed to complete the processing of Employee's Certification of Outside Employment or Activities (PR-102) forms received prior to your transfer. Either act alone demonstrates insubordination.

If checked, charges are continued on attached page

If checked, incidents are continued on attached page.

You are hereby suspended effective

(Check box to indicate if employee is suspended pending final disposition of the matter)

If you desire a departmental hearing before the appointing authority on the above charge(s), notify it within 14 days of receipt of this form. If you request a hearing it will be held on at (time) at (place of hearing)

*Must be a minimum of five days

The following disciplinary action may be taken against you:

- Suspension for 10 working days, beginning and ending to be determined
Indefinite suspension pending criminal charges effective (date)
Removal, effective (date)
Demotion to position of effective (date)
Resignation not in good standing, effective (date) Other Disciplinary Action
Fine amount which is equal to number (number of working days)

Appointing authority or authorized agent's signature and title.

Signature Michele Shapiro Title Michele Shapiro, Director, Division of Human Resources

This form must be personally served on the employee or sent by certified or registered mail.

- Certified or Registered Mail Receipt Number
Signature of Server Date of personal service

#2014-8

Preliminary Notice of Disciplinary Action (31-A)

Civil Service Commission - State of New Jersey

3rd AMENDMENT

Instructions for employer: This notice must be served on a permanent employee or an employee serving a working test period in the career service against whom one of the following types of disciplinary action is contemplated. (a) suspension or fine for more than five working days at any one time, (b) suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more, (c) the last suspension or fine where an employee receives more than three suspensions or fines of five working days or less in a calendar year, (d) disciplinary demotion from a title in which the employee has permanent status or received a regular appointment, (e) removal, or (f) resignation not in good standing. A copy of this notice must be sent to the Civil Service Commission. Subsequent to the hearing by the appointing authority, the employee and the Civil Service Commission must be served with the Final Notice of Disciplinary Action.

Form with fields for Employing Agency Name, Address, Date, Employee Name, Title, and Identification Number. Includes 'FROM' and 'TO' labels on the left side.

You are hereby notified that the following charge(s) have been made against you: if necessary, use additional sheets and attach

Charges section with two columns: 'Charges' and 'Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred'. Includes checkboxes for 'If checked, charges are continued on attached page' and 'If checked, incidents are continued on attached page'.

Suspension and hearing section. Includes checkboxes for 'You are hereby suspended effective' and 'If you desire a departmental hearing before the appointing authority on the above charge(s), notify it within 5 days of receipt of this form.'.

Disciplinary action section. Includes checkboxes for 'Suspension for 10 working days', 'Indefinite suspension pending criminal charges', 'Removal', 'Demotion', 'Resignation not in good standing', and 'Fine'.

Signature section. Includes fields for 'Appointing authority or authorized agent's signature and title' and 'Signature'.

Delivery section. Includes checkboxes for 'Certified or Registered Mail', 'Receipt Number', 'Signature of Server', and 'Date of personal service'.

EXH. D

>>> Diane Glass 5/27/2014 4:11 PM >>>

Dear Mr. Handelman:

Attached please find a cover letter plus documents to be used at the hearing and potential witnesses. Please provide me with any documents and potential witnesses you intend to present on or before July 1. Please also note that a revised Preliminary Notice of Discipline will be coming.

Thank you for your courtesies.

Diane Glass
Management Case Presenter
NJ Department of Transportation
Bureau of Employee Relations
Main Office Building
1035 Parkway Ave.
Trenton, NJ 08625
Diane.Glass@dot.state.nj.us
609-530-2835 Office
609-530-3471 Fax

FACTUAL SUMMARY of Inspector General Jones: re Handelman Discipline 2014-08

The New Jersey Department of Transportation (the Department or NJDOT) is required by law to have an Ethics Liaison Officer (ELO). Executive Order 24 (Christie 2010) §V, ¶3; Executive Order #1 (Corzine 2006) §IV, ¶3. The ELO explicitly bears the responsibility to meet quarterly with the New Jersey State Ethics Commission (NJSEC) with the goal of ensuring “that the requirements of the Conflict of Interest Law and this Executive Order are being understood and followed.” As summarized by the NJSEC:

The ELO plays an essential role in ensuring that his/her agency’s employees are aware of, and comply with, State ethics laws, regulations and executive orders. The ELO is also the vital link between his/her agency and the State Ethics Commission. The ELO is responsible for administering an agency-based ethics compliance program. The ELO ensures that employees receive required documents, complete necessary filings, complete mandatory training, and prevent violations of ethics laws and regulations. If such violations occur, the ELO may also be involved in initiating the appropriate disciplinary action, conducting an investigation or assisting the Commission with an investigation.

[New Jersey State Ethics Commission, “State Ethics Liaison Officers’ Responsibilities” (September 14, 2012)].

Mr. Handelman holds the Civil Service title Executive Assistant 1 and held that title at the time of the events described in this memorandum. This title is “No Limit” for the purpose of hours and is a range V32 (\$77,514.66 - \$110,786.85).

As part of those responsibilities, Inspector General Luis A. Valentin appointed Mr. Handelman the Department’s ELO effective *July 18, 2011*. Memorandum, Inspector General Luis A. Valentin to All Department Managers, “Organizational Changes” (July 21, 2011).

During FY2012, NJDOT was subject to an ethics audit performed by the NJSEC. During that period, as ELO, Eric bore primary responsibility for the Department’s responses to the NJSEC. This detailed audit highlighted the Department’s responsibilities under the Uniform State Ethics Code. Of relevance to this disciplinary recommendation is the *March 2, 2012* letter to Commissioner James S. Simpson from NJSEC Executive Director Peter Tober, which states in relevant part:

2. The audit determined that DOT employees last received Commission approved ethics training in 2007. Since it has been more than three years since the Department’s employees have had full ethics training, the agency will need to consult with the Commission’s Training Officer, Margaret Cotoia, in the next sixty days to establish the nature and schedule for such retraining, which could include online training for most employees, and in-person training for senior high level staff.

When I was appointed NJDOT Inspector General on July 16, 2012, Eric had been serving as the Department's ELO for a full year.

Beyond mandatory NJSEC new ELO training and any training that Eric may have received from his predecessors prior to my appointment, I have personal knowledge of the following communications which delineated the law (statutes, regulations, guidelines, and policies of NJSEC) to Mr. Handelman:

- *Attendance at quarterly ELO Meetings.* OIG records reflect that Eric attended five mandatory quarterly ELO meetings held by the NJSEC during my tenure. The dates of those meetings are: September 12, 2012; December 6, 2012; February 28, 2013; June 5, 2013; and September 12, 2013.
- *September 21, 2012: Three Additional NJSEC Documents Provided to Mr. Handelman by Inspector General Johanna Barba Jones.* On September 20, 2012, I personally attended a new ELO orientation at the NJSEC headquarters to enable me to better understand the statewide expectations for ELOs. One of the documents I received is entitled, "New Jersey State Ethics Commission: New ELO Orientation." Section I of that document is entitled "New Hires – State Employees" and provides in paragraph F:

New employees must be trained within 60 days of hire. If new employees are subject to a group orientation, the ELO can provide ethics training by showing the SEC training disk. Otherwise, HR should instruct new employees to take the SEC on-line ethics training program for State employees as soon as possible and to forward copies of training receipts to whomever is responsible for maintaining agency training records * * * If employees are hired intermittently, work with personnel to ensure that employees are instructed to complete ethics training.

I further organized, bound, and provided a copy of that and related documents to Eric on September 21, 2012.

- *Periodic substantive discussions between IG and ELO.* Eric and I met weekly beginning in October 2012 in an attempt to ensure his communication of project status and alignment of those activities with OIG priorities. During those conversations, substantive ethics law was periodically addressed.

I have personal knowledge of and participated in the following events which expressed OIG's expectations for Eric as he managed the NJDOT Ethics Program:

October 1, 2012 Manager Evaluation Program standards signed. On October 1, 2012, Eric and I signed a Management Evaluation Program document (MEP) designating management's major goals for Eric during the relevant evaluation period, as well as the performance factors on which his evaluation would be based. The major goals of the Office of the Inspector General (OIG) explicitly included instructions that Eric:

- Achieve and maintain Department-wide compliance with all applicable ethics laws and policies.
- Advise employees on ethical consequences of prospective actions, employment, or activities.
- Liaise with New Jersey State Ethics Commission and other agencies and departments on ethical matters.
- Investigate complaints of ethics violations by agency employees.
- Maintain appropriate ethics documentation and records.

Id. at p.1. The Major Goals of the “ratee” explicitly included:

- Serve as Ethics Liaison Officer and primary ethics analyst for NJDOT, with program responsibility for the Ethics Unit
- Serve as primary Departmental liaison to New Jersey State Ethics Commission.

Ibid. Among Eric’s five explicitly enumerated “job responsibilities” were:

4. Responsibility:

Serve as Ethics Liaison Officer and primary ethics analyst for NJDOT, with program responsibility for the Ethics Unit.

Criteria:

Interpret federal and state ethics laws, regulations, and policies for the benefit of NJDOT employees and the Department as a whole. Target the goal of 100% compliance with ethics requirements.

Exercise primary responsibility for analysis of ethics forms and applications affecting the Department, including but not limited to “Request for Attendance at Event” and “Employee’s Certification of Outside Employment or Activities” forms, joint venture applications, and casino waiver applications.

Effectively liaise with the New Jersey State Ethics Commission.

Effectively manage Ethics/Special Projects Unit staff.

5. Responsibility:

Lead lectures and seminars on ethics and other subjects when so requested.

Criteria:

Effectively convey both substantive information and accessibility of the

Ethics/Special Projects Unit to NJDOT staff, encouraging consultation with Ethics Liaison Officer.

Id. at 4. Criterion five, concerning effective leadership of lectures and seminars, had been expanded in response to NJSEC's comments to me criticizing Eric's past practice of playing a DVD or PowerPoint without personal engagement, or delegating that mandatory task to secretary Janine Livingston. As expanded, the MEP criterion required a higher level of personal engagement. Eric did not indicate any problems performing those tasks on October 1, 2012.

On or about *October 12, 2012*, Eric provided me with materials including statistics for the 3rd Quarter 2012 OIG Quarterly Report indicating that he had "Received and Analyzed" 52 Outside Activity Questionnaires (PR-102s) and 108 Request for Attendance at Event forms (AD-270s). He did not indicate that there was any disparity between the number of forms received and the number of forms analyzed in either category.

Beginning on *December 4, 2012*, I initiated weekly status meetings to monitor Eric's work. To facilitate that monitoring, I proposed a weekly assignment record form and provided Eric with the path and file name of that document on the shared drive. I instructed him to update the form with new projects added. Featured on that form was Eric's "[r]olling review of PR-102 and Travel Requests (as received)" as noted in Eric's handwriting on the originally designed form. That notation exhibits our shared expectation that the forms would be addressed on a "rolling" basis and would be a constant obligation separate and apart from Eric's larger projects.

I instructed Eric to update the status document weekly and to bring updated copies to our meetings. Those weekly meetings occurred on the following dates: *December 19, 2012; January 3, 2013; January 10, 2013; January 17, 2013; January 24, 2013; January 31, 2013; February 7, 2013; February 14, 2013; February 28, 2013; March 14, 2013; March 21, 2013; March 26, 2013; April 11, 2013; April 18, 2013; April 25, 2013; May 2, 2013; May 9, 2013; May 16, 2013; May 23, 2013; May 30, 2013; June 6, 2013; June 13, 2013; June 20, 2013; June 26, 2013; July 18, 2013; July 25, 2013; August 1, 2013; August 9, 2013; August 15, 2013; August 29, 2013; September 13, 2013 and September 24, 2013*. Eric continued to describe his obligation to review PR-102s and AD-270s as "rolling" on those weekly status updates.

On *January 3, 2013*, Eric and I signed his interim MEP rating, in which I commented that, "[o]ver the next six months, Eric should cease to rely on non-professional staff in the execution of analytical tasks for which he has primary responsibility. * * * AD-270s and PR-102s should not ordinarily impact Eric's volume of work." Id. at p.10-12. In addition to communicating Eric's interim rating, this document serves as both reinforcement and re-acknowledgment of the October 1, 2012 standard on which he was being rated.

On or about *January 4, 2013*, Eric provided me with materials including statistics for the 4th Quarter 2012 OIG Quarterly Report indicating that he had "Received and Analyzed" 434 Outside Activity Questionnaires (PR-102s) and 181 Request for Attendance at Event forms (AD-270s). These numbers were included in a table entitled "Analyses Performed by NJDOT Ethics

Unit: 4Q CY 2012.” Eric did not indicate that there was any disparity between the number of forms received and the number of forms analyzed in either category.

On or about *April 5, 2013*, Eric provided me with materials including statistics for the 1st Quarter 2013 OIG Quarterly Report indicating that he had “Received and Analyzed” 148 Outside Activity Questionnaires (PR-102s) and 235 Request for Attendance at Event forms (AD-270s). These numbers were included in a table entitled “Analyses Performed by NJDOT Ethics Unit: Quarterly Comparison.” Eric did not indicate that there was any disparity between the number of forms received and the number of forms analyzed in either category.

On *April 11, 2013*, after the IG’s office received a complaint about the manner of transmittal of travel paperwork to the Commissioner’s office, I met with Eric to lay out explicit expectations for in-person delivery of completed AD-270s to the Commissioner’s office. Eric did not raise any issue concerning an ethics form backlog in the course of that discussion.

On *May 30, 2013*, Eric and I signed the final evaluation page of the October 12, 2012 MEP when we were advised that doing so was a requirement due to the Department’s transition from a MEP to a very similar Performance Assessment Review (PAR) system. While no substantive comments were added, this served as a further acknowledgment of the October 1, 2012 standard.

Consistent with instructions received from the Division of Human Resources, OIG created new PARs, replacing the MEPs, for all of the OIG staff directly reporting to the Inspector General. Eric’s PAR was signed by both myself and Eric on *May 9, 2013*. Consistent with the prior standards expressed in the MEP, Eric acknowledged the following “Job Expectations” as “Major Goals of the Unit/Work Group:”

Achieve and maintain Department-wide compliance with all applicable ethics laws and policies.

Advise employees on ethical consequences of prospective actions, employment, or activities.

Act as liaison to the New Jersey State Ethics Commission and other agencies and departments on ethical matters.

Investigate complaints of ethics violations by agency employees.

Maintain appropriate ethics documentation and records.

PAR Model: Department of Transportation: Employee, “Eric Handelman” (Rating Period 5/1/2012-9/30/2013) at 1. The May 9, 2013 acknowledgment also contained the following Major Goals for Eric as “Ratee:”

- Serve as Ethics Liaison Officer and primary ethics analyst for NJDOT, with program responsibility for the Ethics Unit.

- Serve as primary Departmental liaison to New Jersey State Ethics Commission.
- Assist the Inspector General in managing the resources of the Office of the Inspector General (OIG) efficiently and effectively and in setting overall OIG policy.

* * *

- Maintain historical and current statistics measuring the quantity and quality of work produced by ratee's program area of responsibility.

Id. at 2. Consistent with the prior MEP, this new PAR had a more explicit enumeration of job responsibilities with regard to the ELO function. The four "Job Responsibilities" relevant to this discipline are included in their entirety below.

Job Responsibility [#1]:

Serve as Ethics Liaison Officer and primary ethics analyst for NJDOT, with program responsibility for the Ethics Unit. Interpret federal and state ethics laws, regulations, Executive Orders, and policies for the benefit of NJDOT employees and the Department as a whole. Achieve 100% Departmental compliance with ethics requirements. Exercise primary responsibility for analysis of ethics forms and applications affecting the Department, including but not limited to "Request for Attendance at Event" and "Employee's Certification of Outside Employment Activities" forms, joint venture applications, and casino waiver applications.

Essential Criteria:

Provide accurate and complete interpretations of ethics laws, including but not limited to the Uniform State Ethics Code, the New Jersey Conflicts of Interest law, the Pay-to-Play law, and the Hatch Act. Timely analyze all employee ethics forms submitted, promptly addressing problems as they arise. Prepare complete and thoughtful memoranda advancing Department position on joint ventures, casino waiver applications, and other issues. Bear responsibility for ensuring that Outside Employment Activities Forms are collected during new employee procedures (a.k.a. employee "onboarding"). Track receipt of Financial Disclosure Statements (FDSs) for both Special State Officers and State Employees, alerting the IG to any non-compliant individuals.

Job Responsibility [#2]:

Effectively and diplomatically liaise with the New Jersey State Ethics Commission, including but not limited to complete investigation of referrals, submission of attendance forms to NJSEC, transmission of casino waiver forms to NJSEC, and referral of N.J.S.A. 52:13D-23(d) cases to NJSEC for investigation when appropriate. Track substantive referred matters through final disposition, alerting IG to outcome of each referral.

Essential Criteria:

Ensure Inspector General's awareness of developments between OIG and NJSEC in real time, including but not limited to:
 NJSEC responses or reactions to NJDOT referrals of any nature;
 NJSEC requested revisions to OIG work product;
 NJSEC comments upon OIG work product, whether favorable or unfavorable;
 and
 NJSEC notifications of any deficiency.

Job Responsibility [#3]:

Maintains historical and current statistics on volume and characteristics of ethics work and special projects handled, briefing Inspector General as requested.

Essential Criteria:

Maintains monthly and annual statistics for digestion by Inspector General and inclusion in Quarterly Report. Such statistics currently include the following categories, which are subject to future revision:
 Number of Outside Activity Questionnaire (PR-102) forms received and analyzed;
 Number of Request for Attendance at Event (AD-270) forms received and analyzed;
 Number of Ethics Complaints and violations of any type reported to OIG;
 Number of Free form requests for ethics advice received and analyzed;
 Number of Employee walk-ins;
 Number of requests for Ethics Advice from Senior Management including IG;
 Number of E-mailed Inquiries;
 Number of Telephone Inquiries;
 Number of NJSEC Referrals & results;
 Number of PR-99 forms received and analyzed;
 Number of Joint Venture analyses;
 Number of reports of gifts received; and number of casino waiver requests received.

Job Responsibility [#4]:

Personally lead Lectures and seminars on ethics and other subjects when so requested. Effectively convey both substantive information and accessibility of the Ethics/Special Projects Unit to NJDOT staff, encouraging consultation with Ethics Liaison Officer. Effectively use handouts to convey the most up-to-date developments in ethics law and interpretation.

Essential Criteria:

Recommend to Inspector General whether individual ethics training events should be led by NJSEC, ELO, or IG.

Lead verbal ethics training discussions with NJDOT staff, relying on any PowerPoint presentation as a supplemental tool/hand out rather than a playable DVD.

Coordinate scheduling of any and all lectures led by NJSEC training coordinator for the benefit of NJDOT personnel.

Id. at 3-4.

On or about *July 11, 2013*, Eric provided me with materials including statistics for the 2nd Quarter 2013 OIG Quarterly Report indicating that he had "Received and Analyzed" 69 Outside Activity Questionnaires (PR-102s) and 284 Request for Attendance at Event forms (AD-270s). Eric did not at the time of the initial delivery indicate that there was any disparity between the number of forms received and the number of forms analyzed in either category.

Director of Human Resources Jeanne Victor and Manager 1 Human Resources, Lisa Webber solicited a meeting with me which was set down for *July 17, 2013*. There, Lisa brought to my attention that Eric had not been leading ethics training for new employees since October 2012. Eric never notified me of any of the following between October 2012 and July 17, 2013: (1) that he had ceased to lecture; (2) that he had ceased to be invited to lecture; (3) that he had deviated from my prior written instructions in his evaluation and other documents to "lead verbal training discussions with NJDOT staff;" or (4) the Department had gone out of compliance with our obligation to provide new employee ethics training within 60 days of hire.

On *July 25, 2013*, I verbally instructed Eric to remediate his omission of new employee training in six steps: (1) Eric was required to identify employees who were not trained; (2) Eric was directed to arrange to receive notice of the identification of all new hires so that he can track and ensure completion of new hire ethics training; (3) Eric was directed to develop a written plan for how to tailor the NJSEC training to NJDOT's unique needs; (4) Eric was directed to collaborate with HR to establish an appropriate number of large ethics training events; (5) Eric will train all new employees on their obligations; and (6) Eric was directed to apprise the Inspector General's secretary of all training events so that I could attend until further notice. On *August 7, 2013*, Lisa Webber provided a spreadsheet compiled by Becky Rouze identifying 119 employees who did not receive ethics training during the period October 2012 through July 2013.

On *September 16, 2013*, I met with Eric concerning his voluntary transfer from the Office of the Inspector General to Right of Way, within NJDOT Capital Program Management. In the course of that meeting, I provided him with a calendar and a list of responsibilities which explicitly laid out expectations for his orderly departure from the Office of the Inspector General. Eric accepted those documents and indicated that he would adhere to the responsibilities laid out in that plan. The document entitled "Eric's Transition" explicitly states that Eric will "bear responsibility for any PR-102s received before October 4" and "bear responsibility for any AD-270s received before October 4." That was in contrast to OIG's duty to bear the duty of performing the ELO function with regard to those documents after October 4, 2013.

On *September 27, 2013*, I asked Eric to explain the substantial disparity between the AD-270 log and the 2nd Quarter statistics he had provided.

On *October 7, 2013*, Eric submitted three documents in support of his submission for OIG's 2013 3rd Quarter Report. Particularly, Eric provided me with a narrative detail of his work over the quarter and a statistical detail of his work over the quarter. He also provided a response to my September 27, 2013 request that he explain a disparity between his 2nd Quarter 2013 statistical report and the number of travel forms logged in by secretarial staff. He did not indicate that any PR-102, AD-270, or other ethics form received before October 4, 2012 was incomplete.

During that same meeting, Eric was provided with his "closeout" PAR for signature. He declined to sign that part "without providing a point by point response," and further indicated an intention to send comments on the PAR to Human Resources with a copy to the Office of the Inspector General. *Id.* at 18. Notwithstanding that refusal to sign, Eric never disputed any Major Goals of the Unit/Work Group; Major Goals of the Ratee; Job Responsibilities; or Essential Criteria of the underlying PAR which had previously been acknowledged on the dates provided above.

October 8, 2013 was Eric's last day in OIG prior to a transfer to Division of Right of Way.

On *October 9, 2013*, Executive Secretary Teresa Manna began at my direction to prepare Eric's office, Room 2014S, for an unidentified successor ELO. When Teresa was in Room 2014S, Secretarial Assistant I Janine Livingston approached Teresa and indicated that there was something that "you [Teresa]-should see." Janine showed Teresa a pile of paperwork on the floor behind Eric's desk. Upon closer inspection, those documents were shown to be unanalyzed ethics forms submitted by Department employees. Other documents were located by those staff on a credenza in 2014S.

The following is a count of original forms located in 2014S on October 9, 2013 and counted by OIG staff over the period *October 9 through 10, 2013*:

Attachment:

UNDISCLOSED & INCOMPLETE WORK ITEMS		
Form Name/Description	NJDOT Form #	Number of Work Items
<i>Forms Requiring ELO Analysis & Signature</i>		
Outside Activity Questionnaire	PR-102	425
Request for Attendance at Event(time of the essence, so completed, but no list maintained)	AD-270	7
<i>Forms Requiring ELO Consideration & Forwarding to Division of Human Resources</i>		

<i>for Placement in individual Personnel Files</i>		
Supervisory Conflicts of Interest	PR-99	88
<i>Forms Requiring Transmission to Division of Human Resources for Placement in Personnel File</i>		
Acknowledgment for Plain Language Guide to New Jersey Executive Branch Ethics Standards and Uniform Ethics Code	<i>n/a</i>	502
Pre-Hire Ethics Questionnaire (<i>discontinued about July, 2013</i>)	<i>n/a</i>	245
TOTAL WORK ITEMS UNDISCLOSED & INCOMPLETE		1,267

A complete list of each document type appears in multiple exhibits to this memorandum.

Upon general inspection, date stamps on the abandoned documents support my conclusion that beginning in May 2013, Eric had slowed or stopped work on certain categories of activity, most notably the PR-102 Outside Activity Questionnaires. Those documents are required by law, regulation, NJDOT policy, and my requirements of Eric expressed in his MEP, PARs, and our weekly interactions. Eric never advised me that he had decided to cease work on these items, and deliberately created the false impression that he had continued to work by: (1) continuing to file weekly status reports that acknowledged his "rolling" obligation to address AD-270s and PR-102s as they came in to OIG; (2) continuing without objection to acknowledge these obligations in his PARs; and (3) accepting the September 16, 2013 document entitled "Eric's Transition," which gave him the responsibility to complete all AD-270s and PR-102s received in OIG prior to October 4, 2013.

As of Eric's departure from OIG, he had also failed to implement the instructions given to remediate his failure to train new employees. Particularly, he did not schedule an appropriate number of large ethics training events; he did not actually train the 119 omitted employees on their obligations; and he did not apprise me or my secretary of his ongoing failure to train those employees.

