



STATE OF NEW JERSEY

In the Matter of Dominick Messina  
Department of the Treasury

CSC DKT. NO. 2015-1761  
OAL DKT. NO. CSV 00503-15

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

ISSUED: FEBRUARY 13, 2020 BW

The appeal of Dominick Messina, Automotive Mechanic, Department of the Treasury, 20 working day suspension, on charges, was heard by Administrative Law Judge Sarah G. Crowley, who rendered her initial decision on January 8, 2016. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on February 12, 2020, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

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

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 12<sup>TH</sup> DAY OF FEBRUARY, 2020



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 00503-15  
AGENCY DKT. NO. 2015-1761

**IN THE MATTER OF DOMINICK P.  
MESSINA, DEPARTMENT OF TREASURY,  
ADMINISTRATION AND TRANSPORTATION  
SERVICES.**

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**Mario A. Iavicoli, Esq.**, for appellant Dominick P. Messina

**William F. Hanna**, Deputy Attorney General, for respondent, (John J. Hoffman,  
Acting Attorney General of New Jersey, attorney), Department of  
Treasury, Division of Administration and Transportation Services

Record Closed: January 4, 2016

Decided: January 8, 2016

BEFORE SARAH G. CROWLEY, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Appellant Dominick Messina appeals from a Final Notice of Disciplinary Action, dated December 4, 2014, imposing a twenty-day suspension from his position as an Automotive Mechanic with the respondent, the Department of Treasury, Division of Administration and Transportation Services (Division). Mr. Messina was served with a Preliminary Notice of Disciplinary Action on June 23, 2014, charging him with the

following: N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; N.J.A.C. 4A:2-2.3(e)(12), creating a danger to persons or property; and impeding the effective delivery of services. The specification on the notice alleges that petitioner failed to properly repair a vehicle thereby causing serious danger to those driving the vehicle.

On December 4, 2014, the Division issued a Final Notice of Disciplinary Action sustaining the above charges. The petitioner appealed and the matter was transmitted to the Office of Administrative Law, where it was filed on January 5, 2015, to be heard as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on November 10, 2014, and November 13, 2015. The record was held open for simultaneous written summations, which were filed on January 4, 2016, and the record closed on that date.

### **FACTUAL DISCUSSION**

The following facts are not in dispute. On March 5, 2014, a 2008 Chevy Uplander, Plate #SG28127 was brought into the Bayside Facility for maintenance. The work order indicated there was a problem with the breaks, and noted that there was "excessive pedal play." The order also indicated that the "tires are worn," and that "wiper fluid and oil change were needed." It is undisputed that the vehicle was assigned to the appellant for repair. The completed work order indicates that the vehicle was road tested and no problems noted. There is also an indication on the work order that the front brakes and the back brakes were checked and were fine. Thereafter, on March 18, 2015, the vehicle was returned to the Hammonton facility, this time noting that the vehicle was making a loud grinding noise, and there was excessive pedal play in the breaks. The operator of the vehicle also noted difficulty stopping. The brake pads on the front passenger side had no metal left on them, and only 50 percent remaining on the outer pad. The allegation is that respondent failed to properly check the breaks when the vehicle came in on March 5, 2014, which resulted in an unsafe

vehicle on the road, neglect of duty, incompetence, and conduct unbecoming a public employee.

### TESTIMONY

#### For respondent:

**William Sinnerard**, works in the Bayside facility for the Division. He is responsible for maintenance on state vehicles assigned to the southern region. He is an experienced mechanic and is an assistant crew supervisor at the Bayside facility. He testified that he received a phone call about a 2008 Chevy Uplander on March 18, 2014. He spoke with Tim Romanik who indicated that the breaks on the vehicle were failing at high speeds, there was heavy pedal play, and a grinding noise. Mr. Sinnerard testified that the normal procedure for checking the brakes on a vehicle is to remove all four tires and check the brake pads on each. He testified that all four tires must be removed, whether you noticed anything on test drive or not. He further testified that if the brakes were fine on March 4, 2014, they would not have worn down to the metal in 600 miles. He testified that it was not clear what, if anything appellant did, since he did not leave any notes on the work order.

**Anthony Alessandro** is also employed by the Division as a mechanic. He has been a mechanic for thirty years. He is a shop supervisor at the Hammonton Motor Pool, but oversees the Bayside Facility as well. He is in charge of assigning jobs to assistant crew supervisors at the Hammonton site. He is familiar with the repairs done on a 2008 Chevy Uplander at issue in this case in March of 2014. He testified that he received a call from Tim Romanik advising that the vehicle had been at the Bayside Facility in early March for repairs. He advised him that the vehicle was brought back into the Hammonton on March 19, 2015, as they were still having trouble with the breaks. He testified that the brakes needed to be replaced, and then the vehicle went back out on the road on March 24, 2014.

Mr. Alessandro testified that he assigned the repair to Leo Sorrentino when it was brought back in on March 18, 2014. Mr. Alessandro testified that in order to properly check for problems with the brakes, all four tires needed to be removed and the brake pads on each one checked. He testified that Mr. Messina must not have done that since they were worn down and that could not occur in just 600 miles. He testified that they took photographs because they knew there was a problem with the initial repair by Mr. Messina. He testified that he and Robert DeMatte discussed the matter with Mr. Messina and he stated that he only took off the wheels on the driver's side of the vehicle and did not look at all four. He testified that Mr. DeMatte wrote down his statement. Mr. Alessandro testified that Mr. Messina told him that he was very busy that day and he only pulled two tires.

**Leo Sorrentino** is a mechanic for the State of New Jersey. He has worked for the Division for thirty-eight years, and he is an assistant crew supervisor. He supervises six or seven mechanics and he reports to Anthony Alessandro. He testified that on March 18, 2014, a 2008 Chevy Uplander came into the Hammonton Motor Pool and Mr. Alessandro asked him to check the brakes. He identified the work order for vehicle SG #28127, which is dated March 19, 014. He testified that the outer right pad was metal on metal, and the others were at 50 percent. He testified that he replaced the brakes and the vehicle was returned to the road on March 24, 2014. He stated that there was also a repair that was done to the caliper. Mr. Sorrentino testified that there are no circumstances when you are checking breaks that you would not take all four tires off. There is no written policy about how to do repairs, but you would always take all four off and look at them all. He testified that every pad on the vehicle was at least 50 percent, except the passenger side front which was totally gone and was metal on metal.

**Robert DeMatte** is employed by the Division and has been a mechanic for approximately fifty years. He has held the position of crew supervisor and assistant crew supervisor. Thomas Mantel is his supervisor. Anthony Alessandro and Leo Sorrentino report to him. He is familiar with the 2008 Chevy Uplander vehicle that came in for a problem with the brakes in March 2014. He testified that Anthony Alessandro

came to speak to him about the vehicle but he did not personally inspect it. He testified that you would always pull all four wheels off to determine the amount of material left on each one of them. He testified that he spoke to Mr. Messina about this incident and Mr. Alessandro was present. He asked Mr. Messina to provide a statement about his repair of the vehicle. He told Mr. DeMatte what happened and asked him to write it up. Mr. Messina told him that he was busy and did not take off all of the tires. Mr. DeMatte wrote it down and then typed it up and gave it to Mr. Messina. Mr. DeMatte testified that Mr. Messina read the statement and signed it.

**Thomas Mantel** has been employed as a supervisor and a mechanic at the State Motor Pool for thirty-seven years. He is responsible to overseeing the repair facilities for the State. He testified that he was contacted via email about the situation with the 2008 Chevy Uplander that was not properly repaired by Mr. Messina on March 4, 2014. He testified that he reached out to Anthony Alessandro and Bob DeMatte to get a little more clarification. He testified that the proper procedure for inspecting the vehicle brakes is to take all the wheels off and visually see if all the material was on or off the brakes. He never interviewed Mr. Messina and has no firsthand knowledge of what happened.

**For appellant:**

**Dominick Messina** testified on his own behalf. He testified that he worked for the Division at the Bayside Facility for three years and before that he was at the Hammonton Motor Pool for four years. He testified that he has been working on vehicles since he was nine years old. He has never received any discipline before. He testified that he recalls the 2008 Chevy Uplander that came into the shop on March 5, 2014. He identified the work order which indicated that there was excessive pedal play and he was supposed to check the brakes. He testified that he does not recall if he took all four wheels off the vehicle. He recalls taking off only two, but cannot remember if he took the other two off. He said it was a busy day and he does not remember. He recalls talking to DeMatte and Alessandro in the break room about it. He said DeMatte wrote up a statement and typed it and he signed it. He said he did not think he had a

choice. He said he let him write it because he does not write much. He testified that he drove the vehicle and he did not think there was anything wrong with the brakes. He recalled taking two tires off but does not remember if he took four off. He had no response to why he would sign the statement if it is not what his recollection was. He did not replace the brakes or tires.

There was no other testimony on behalf of appellant.

### **FINDINGS OF FACT**

The resolution of the charges against Dominick Messina requires that I make a credibility determination regarding the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experiences and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. Super. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F. 2d 718,749 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions that alone or in connection with other circumstances in evidence, excite suspicion as to its truth. In re Perrone, 5 N.J. Super. 514, 521-22 (1950). See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

The issue to be resolved in this case is whether Dominick Messina failed to properly repair a vehicle that came into the shop for repair on March 4, 2014. Mr. Messina claims that he does not recall if he checked all four brakes when it came in. There is a statement that he signed that says he only took off two tires and did not



check all four. When he was questioned about this issue, he claimed he did not recall if he took all four tires off. It is undisputed and I **FIND** that in order to properly check the brakes on a vehicle, all four tires should be removed. There is no exception to this and Mr. Messina himself did not dispute this. I find that Mr. Messina's testimony that he does not now recall if he took all four tires off was not credible. It is simply not credible that you would put the tires back on a vehicle after checking the brakes and not notice that only two were removed. The petitioner also signed a statement which indicated that he only removed two tires. I also find the testimony from Mr. Alessandro that Mr. Messina advised him that he was busy and only took two tires off was credible and consistent with the statement that Mr. Messina signed. Finally, I **FIND** the condition of a tube or caliper or the grinding of the brakes is irrelevant to the finding that appellant failed to check all four tires on a vehicle that came in for a brake repair. Similarly, the argument that brakes may have deteriorated from March 4, 2014 to March 18, 2014, is not significant in light of the petitioner's admission and my **FINDING** that he did not check all four breaks, which in and of itself, constitutes neglect of duty, incompetence, conduct unbecoming and creation of a danger to others.

Based on the testimony and evidence in the record, I **FIND** that the petitioner failed to take all four tires off the 2008 Chevy Uplander Vehicle #SG-28127 on March 4, 2014. I further **FIND** that the failure to examine all four brakes on the vehicle did in fact create a danger to persons driving the vehicle which constituted inefficiency, neglect of duty and conduct unbecoming a public employee.

### **CONCLUSIONS OF LAW**

A civil service employee's rights and duties are governed by the Civil Service Act and the regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 12-6; N.J.A.C. 4A:1-1.1 to 4A:10-3.2. A civil service employee who engages in misconduct related to his or her duties or who gives another just cause may be subject to major discipline. N.J.A.C. 4A:2-2.2 -2.3(a). In appeals concerning major disciplinary actions brought against classified employees, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is a

preponderance of the credible evidence. In re Polk License Revocation, 90 N.J. Super. 550 (1982); Atkinson v. Parsekian, 37 N.J. Super. 143 (1962).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant seeking a twenty-day suspension. The appellant is charged with incompetency, inefficiency or failure to perform duties, conduct unbecoming a public employee, neglect of duty; and creating a danger to persons or property and impeding the effective delivery of services. The charges all relate to the appellant's failure to properly repair the brakes on a vehicle that came in for a brake repair on March 4, 2014. Based on the testimony and findings, I **CONCLUDE** that the respondent has satisfied its burden of proving the charges, and the charges are **SUSTAINED**.

#### **PENALTY**

Once a determination is made that an employee has violated a statute, rule, regulation, etc., concerning his/her employment, the concept of progressive discipline must be considered. West New York v. Bock, 38 N.J. Super. 500 (1962). While this case did not specifically use the phrase "progressive discipline," its facts strongly suggest that a record of progressive discipline should precede the ultimate penalty, which is removal. The concept of progressive discipline involves consideration of the number of prior disciplinary infractions, the nature of those infractions and the imposition of progressively increasing penalties. It is well settled that correction officers, like police officers are held to a higher standard of conduct than other public employees because of the sensitive nature of the position they occupy. Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. Super. 80 (1966). It has also been noted in corrections cases, that failure to adhere to security precautions could have potentially serious consequences, which may give rise to a more serious penalty regardless of the lack of any past disciplinary consequences. I/M/O Martha Hicks and Antonio Price, OAL Dkt. Nos. CSV 11373 and CSV 11494-13; 2014 N.J. Agen. Lexis 469 (2014).

The appellant received a twenty-day suspension for his failure to properly repair a vehicle. He failed to perform his responsibilities of properly repairing the vehicle which resulted in an unsafe vehicle being on the road which in turn, created a significant danger to those driving the vehicle. The penalty is appropriate under the circumstances and is sustained. I therefore **CONCLUDE** that a twenty-day suspension without pay is appropriate under these circumstances.

**ORDER**

I hereby **ORDER** that the charges be **AFFIRMED**, and the suspension of twenty days **SUSTAINED**.

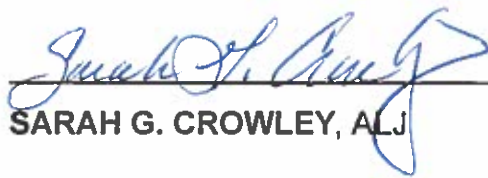
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

January 8, 2016

DATE

  
\_\_\_\_\_  
SARAH G. CROWLEY, ALJ

Date Received at Agency:

1/8/16

Date Mailed to Parties:

1/8/16

SGC/vj

**APPENDIX**

**WITNESSES**

**For appellant:**

Dominick Messina

**For respondent:**

William Sinnerard

Anthony Alessandro

Robert DeMatte

Leo Sorrentino

Thomas Mantel

**EXHIBITS**

**For appellant:**

None

**For respondent:**

R-1 Vehicle Condition Report, dated March 4, 2014

R-2 South Woods State Prison Special Report, dated April 2, 2014

R-3 Central Motor Pool Maintenance/Repair work order 447962, dated June 20, 2014

R-4 Email from William Sinnerard to Thomas Mantel regarding Brake Service, dated May 7, 2014

R-5 Central Motor Pool Maintenance/Repair work order 434475, dated September 23, 2014

- R-6 Central Motor Pool Maintenance/Repair work order 449445, dated June 20, 2014
- R-7 Photo of State Government Vehicle with license plate SG28127, dated March 19, 2014
- R-8 Photo, dated March 19, 2014
- R-9 Photo, dated March 19, 2014
- R-10 Photo, dated March 19, 2014
- R-11 Photo, dated March 19, 2014
- R-12 Photo, dated March 19, 2014
- R-13 Photo, dated March 19, 2014
- R-14 Photo, Dated March 19, 2014
- R-15 Photo, dated March 19, 2014
- R-16 Photo, dated March 19, 2014
- R-17 Photo, dated March 19, 2014
- R-18 Photo, dated March 19, 2014
- R-19 Email from Anthony Alessandro to George Krumenacker and Thomas Mantel regarding Brake Issue for 2008 Uplander, dated March 24, 2014
- R-20 Email from Anthony Alessandro to Thomas Mantel regarding Brake Service, dated May 7, 2014
- R-21 Email from Thomas Mantel to Kimberly Wilkins regarding Messina Information, dated April 8, 2014
- R-22 Email from Thomas Mantel to Kimberly Wilkins regarding Messina, dated April 8, 2014
- R-23 Email from Robert DeMatte to Thomas Mantel regarding Brake Service, dated May 7, 2014

- R-24 Unsigned Hand-Written Note regarding Vehicle Inspection on SG28127
- R-25 Signed, Typed Statement from Dominick P. Messina, dated April 22, 2014
- R-26 Signed, Typed Statement from Robert DeMatte, dated May 14, 2014
- R-27 Memorandum from Thomas Mantel to George Krumenacker regarding  
Administrative Action, dated May 20, 2014
- R-28 Memorandum from Thomas Mantel to Kim Wilkins regarding  
Administrative Action, dated May 20, 2014
- R-29 Letter from Daniel Hornickel to Dominick Messina, dated June 23, 2014
- R-30 Preliminary Notice of Disciplinary Action, dated June 23, 2014
- R-31 Final Notice of Disciplinary Action, dated December 4, 2014