A-8

STATE OF NEW JERSEY

In the Matter of Robert Randolph, Juvenile Justice Commission

CSC Docket Nos. 2013-72, 2013-73, 2013-75 and 2013-76

OAL Docket Nos. CSV 09843-12, 09844-12, 09847-12 and 09849-12

DECISION OF THE CIVIL SERVICE COMMISSION

ISSUED: MAY 21 2015 (CSM)

The appeals of Robert Randolph, an Assistant District Parole Supervisor with the Juvenile Justice Commission, of his 60 working day suspension and demotion to Senior Parole Officer, on charges, was heard by Administrative Law Judge Barry E. Moscowitz (ALJ), who rendered his initial decision on March 30, 2015. Exceptions were filed on behalf of the appointing authority and cross exceptions were filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on May 6, 2015, adopted the ALJ's recommendation to reverse the 60 working day suspension regarding the filing of false vehicle mileage reports. However, the Commission did not adopt the ALJ's recommendation to reverse the demotions based on possession of sexually explicit or otherwise inappropriate photographs on the appellant's State e-mail account and violation of the State Policy Prohibiting Discrimination in the Workplace (State Policy) or misrepresenting the recording of his overtime. Rather, the Commission upheld the demotions regarding the e-mails and the State Policy and remanded the matter of his demotion regarding the recording of his overtime to the Office of Administrative Law (OAL).

DISCUSSION

The appellant received four separate disciplinary actions that resulted in him being suspended for 60 working days and receiving three separate demotions to

Senior Parole Officer on charges of conduct unbecoming a public employee, misuse of State property including motor vehicles, violation of the State Policy, and other sufficient cause. With respect to the 60 working day suspension, the appointing authority asserted that the appellant submitted false daily vehicle mileage reports on three separate occasions when he drove his State vehicle for the purpose of engaging in outside employment. Regarding the first demotion, the appointing authority asserted that the appellant participated in the Paterson Safe Neighborhood Initiative from April 2008 to April 2009 and misrepresented the recording of his overtime. Regarding the second demotion, the appointing authority asserted that the appellant violated its policy when he received and transmitted suggestive e-mails at work. In reference to the appellant's third demotion, the appointing authority asserted that the appellant e-mailed sexually suggestive photos to co-workers in violation of the State Policy. Upon the appellant's appeals, these matters were transmitted to the OAL for hearings as contested cases.

1. **False Daily Vehicle Mileage Reports - 60 Working Day Suspension**

In this matter, William Sonnentag, Special Investigator, Law and Public Safety, testified that the appellant was approved by his supervisor to teach two classes at Kean University (Kean) in Union in 2008 and 2009, that he used his State-assigned vehicle to go to Kean, but he did not record the mileage to and from Kean for the days he taught and he failed to record the time he taught on several occasions. Sonnentag indicated that the appellant did not start work on the days he taught the classes until class was over and that Kean is on the way from his home to work. However, the Daily Vehicle Log did list that he was in Union on the dates in question. Further, the appellant's Bi-Weekly Time Sheet only listed one date. Sonnentag never showed the appellant any of this documentation during the course of his investigation and never asked him if he had permission to drive his State-assigned vehicle to Kean while on his way to work. He also did not ask the appellant if he was ever told he had to drive to Kean in Union, only to return home to New Brunswick to retrieve his State-assigned vehicle so he could drive to work. Based on these deficiencies, the ALJ concluded that the appointing authority had not sustained its burden of proof in this matter and recommended reversing the suspension.

2. **Misrepresentation of Overtime – 1st Demotion to Senior Parole Officer**

The appellant, as well as Anthony Petrucci, Senior Parole Officer, were assigned to the Paterson Safe Neighborhood Initiative in 2007 by Robert Mercado, Regional Program Supervisor. As part of this initiative, the appellant was required to submit a report to Mercado every six months indicating the number of contacts made with juveniles and the number of juveniles who re-offended. Sonnentag indicated that the appellant and Petrucci would sometimes make home

visits by themselves, but sometimes the appellant would stay in the office and monitor Petrucci from there. However, no roster was kept for members of the initiative to sign when they met for home visits and no record was kept of the days that the appellant worked in the office. Sonnentag also testified that his review of the bi-weekly time sheets from January 2008 to May 2009 indicated that there were 15 days for which the appellant submitted overtime slips, but his name did not appear in any of the Field Operators Reports for those days. The appellant advised Sonnentag that his name did not appear on the report for those days because he stayed in the office.

In Sonnentag's report, he indicated that the appellant did in fact include monitoring in his description of his participation in the initiative when he requested overtime, but Mercado stated that he would not have approved the overtime for the dates the appellant stayed in the office and did not go in the field. Sonnentag's subsequent report listed 13 dates for which the appellant submitted overtime slips for the initiative but did not go into the field. However, neither Sonnentag nor the appointing authority submitted any of the documentation reviewed to reach this conclusion. The ALJ also noted that Sonnentag testified that he relied on statements of others that the appellant was rarely in the field, but none of these individuals testified at the hearing. Additionally, the ALJ indicated that Mercado did not provide any testimony that he would not have approved the overtime slips on the days the appellant stayed in the office and did not go in the field. Given the failure of Sonnentag to produce any documents he relied on in his reports and the absence of testimony from any individuals listed in the report, in conjunction with the absence of documentation indicating that the appellant could not stay in the office, the ALJ concluded that the appointing authority had not sustained its burden of proof in this matter and recommended reversing the demotion.

3. **Possession of Sexually Inappropriate Documents and Texts containing Sexually Inappropriate Photographs on Computer – 2nd Demotion to Senior Parole Officer and Possession of Sexually Inappropriate Material on Computer in violation of the State Policy – 3rd Demotion to Senior Parole Officer**

Kenneth Amann investigated the allegation that the appellant possessed sexually inappropriate slideshow photos that were attached to e-mails residing on his work computer. The ALJ noted none of the photos contained nudity but some of the photos were of scantily clad women in sexually suggestive poses. Additionally, Amann determined that the appellant received each of the five e-mail threads in question containing the photo slideshows and forwarded one of them to a subordinate at work and another to six people, including two colleagues. There was no evidence that the appellant forwarded the other three e-mails. Amann also reviewed 17 e-mail threads residing on the appellant's computer that did not have

photo slideshows attached to them and testified that even though they were not work-related, they did not violate policy because it constituted incidental use, which is permissible.

The ALJ noted that in order to violate the appointing authority's policy, one would have to engage in an affirmative act beyond passive receipt of an offending e-mail. Similarly, the ALJ determined that the appellant cannot be considered to have violated the State Policy by his mere distribution of sexually suggestive photos to co-workers if a co-worker was not actually discriminated against, demeaned, or harassed. Therefore, since Amann could not produce copies of the pertinent policies to determine if the appellant had violated them, his lack of training on these policies, and his determination that the appellant violated those policies based on his own personal standards of propriety, the ALJ concluded that the appointing authority had not sustained its burden of proof regarding these charges and recommended reversing the demotions.

In its exceptions to the ALJ's decision, the appointing authority asserts that the ALJ erred in finding that the appellant was permitted to use his State vehicle to commute from home to his secondary job at Kean. In this regard, it states that its policy specifically states that use of State-provided vehicles is strictly prohibited with the exception of obtaining meals and/or essential items while on an authorized break period during normal business hours. Further, the appointing authority argues that the ALJ erred in dismissing the falsification charges as the appellant did not record that he was taking his State vehicle to Kean. With respect to the misrepresentation of overtime, the appointing authority states that the appellant could not specify dates where he was in the field as opposed to being in the office and that the ALJ erred by excluding the admission of the Initiative Agenda which would confirm that the appellant was not on the agenda on the dates in question. Therefore, the appointing authority maintains that this particular charge should be remanded to the OAL in order to obtain a complete record. Regarding the e-mails, the appointing authority states that Amann testified that the e-mails and photographs were not appropriate use of a State computer and the inappropriate photographs resulted in the matter being referred to the Equal Employment Opportunity/Affirmative Action Office (EEO/AA) for investigation. The resulting EEO/AA investigation substantiated that the appellant violated the State Policy as the policy prohibits e-mails containing sexually suggestive or obscene comments, jokes or propositions. Further, since the EEO/AA substantiated that the appellant violated the State Policy, it recommended that the appointing authority take appropriate disciplinary action.

Upon an independent review of the record, the Commission concludes that the appointing authority has not met its burden of proof regarding the charges regarding the filing of false vehicle mileage reports. With respect to the charges concerning the misrepresentation of overtime, for the reasons set forth below, the

Commission finds the appointing authority's exceptions persuasive in that the evidence excluded by the ALJ that the appellant was not part of the Initiative's Agenda on the dates in question should be admitted and considered. Additionally, the Commission disagrees with the ALJ's determination that the appellant did not misuse public property or violate the State Policy by possessing sexually inappropriate material on his computer and forwarding some of the photos. Therefore, the Commission reverses the 60 working day suspension, affirms the demotions based on the misuse of public property and violation of the State Policy, and remands the matter of the demotion concerning misrepresentation of overtime.

1. **False Daily Vehicle Mileage Reports - 60 Working Day Suspension**

The Commission agrees with the ALJ's determination that the appointing authority did not sustain its burden of proof regarding the filing of false vehicle mileage reports and time sheets. Although the appointing authority maintains that the ALJ erred in that its policy does not permit use of State-assigned vehicles for anything other than authorized meal breaks, there is no evidence that the appellant did not have permission to drive his State-assigned vehicle to Kean and Sonnentag never showed the appellant any documentation that he relied on during his investigation. Further, Sonnentag did not know if the classes the appellant taught ended early and the appellant, who was a senior officer, could modify his hours. Therefore, a preponderance of evidence does not exist to support the charges in this matter.

2. **Possession of Sexually Inappropriate Documents and Texts containing Sexually Inappropriate Photographs on Computer – 2nd Demotion to Senior Parole Officer and Possession of Sexually Inappropriate Material on Computer in violation of the State Policy – 3rd Demotion to Senior Parole Officer**

The Commission disagrees with the ALJ's determination regarding the demotions with respect to the e-mails residing on the appellant's computer and violation of the State Policy. While it is true that mere receipt of sexually suggestive photos or e-mails does not constitute misuse of the public property of computers, forwarding such material to others would be considered misuse. In this case, the appellant forwarded an e-mail message with a slideshow of scantily clad women in sexually suggestive poses to a subordinate at work. Not only is this misuse of public property, it is clearly conduct unbecoming a public employee. Although the term is not precisely defined, conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. *See In re Emmons,* 63 *N.J. Super.* 136 (App. Div. 1960). Moreover, unbecoming conduct may include behavior which is improper under the circumstances, may be less serious than a violation of the law, but which is

inappropriate on the part of a public employee because it is disruptive of governmental operations. The Commission finds that an individual in a supervisory position forwarding slideshows of scantily clad women in sexually suggestive poses to a subordinate at work would tend to destroy public respect for governmental employees and confidence in the operation of public services.

Additionally, the Commission finds that the forwarding of the e-mail containing the slideshows of the scantily clad women in sexually suggestive poses to a subordinate violates the State Policy. In this regard, *N.J.A.C.* 4A:7-3.1(b) provides:

> It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, or ethnic background or any other protected category [covered by the State Policy] which have the effect of harassing an employee or creating a hostile work environment. *A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.* (Emphasis added)

N.J.A.C. 4A:7-3.1(b)1vii states that an example of behaviors that may constitute a violation of this policy include:

> Displaying or distributing material (including electronic communications) in the workplace that contains derogatory or demeaning language or images pertaining to any of the protected categories.

Moreover, at the time the appellant forwarded the e-mails, he was an Assistant District Parole Supervisor. In this regard, supervisors are held to a higher standard under the State Policy. *See N.J.A.C.* 4A:7-3.1(e). Accordingly, the appointing authority has sustained these charges.

3. **Misrepresentation of Overtime – 1st Demotion to Senior Parole Officer**

Regarding this matter, the Commission is unable to render a final decision based on the current record. Initially, the appointing authority has indicated in its exceptions that it was not permitted to admit copies of the Paterson Initiative's agenda records which it asserts confirms that the appellant was not part of the Initiative Agenda on the dates he claimed to have been working overtime. Further, while Sonnentag indicated in his reports that Mercado told him he would not have approved the overtime if the appellant had stayed in the office, the ALJ only indicated that when Mercado appeared at the hearing, he provided no such testimony. Additionally, Sonnentag testified that he relied on the statements of

others that the appellant was rarely in the office, but none of those individuals appeared or testified at the hearing. Therefore, the Commission orders that this particular case be remanded to the OAL for the admittance of this evidence as well as to allow the appointing authority to call these witnesses. The appellant should also be allowed an opportunity to present rebuttal witnesses to any testimony presented by the appointing authority. In this regard, the Commission emphasizes that it prefers to have a full record before it in considering whether an employee has committed the disciplinary infraction alleged.

In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown,* 191 *N.J.* 474 (2007).

In the cases regarding the e-mails and violation of the State Policy, it is not appropriate to utilize public property to disseminate sexually suggestive photographs of scantily clad women to subordinate staff. The fact that a supervisory officer is guilty of such conduct compounds the seriousness of the offense. In this regard, the Commission notes that law enforcement officers, such as Parole Officers, are held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied,* 47 *N.J.* 80 (1966). *See also, In re Phillips*, 117 *N.J.* 567 (1990). The Commission is particularly mindful of this standard when disciplinary action is taken against a high ranking law enforcement officer. Therefore, the Commission finds that seriousness of these incidents warrants the appellant's demotion to Senior Parole Officer.

Since the 60 working day suspension has been reversed, the appellant is entitled to mitigated back pay, benefits and seniority pursuant to *N.J.A.C.* 4A:2-2.10. The appellant is also entitled to counsel fees for that matter. However, the appellant is not entitled to counsel fees for the demotions that have been upheld. *N.J.A.C.* 4A:2-2.12(a) provides for the award of reasonable counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an

appeal of a major disciplinary action. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. *See Johnny Walcott v. City of Plainfield,* 282 *N.J. Super.* 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel,* Docket No. A-1489-02T2 (App. Div., March 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, the appellant has not prevailed on all or substantially all of the primary issues in those matters since the demotions were sustained. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12(a), counsel fees must be denied. Finally, the issue of counsel fees for the final demotion cannot be determined until the Commission makes a final determination after the matter is returned to it from the OAL.

ORDER WITH REGARD TO 60 WORKING DAY SUSPENSION

The Civil Service Commission finds that the action of the appointing authority in imposing a 60 working day suspension was not justified. The Commission further orders that the appellant be granted back pay, benefits and seniority for the period of the 60 working day suspension. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10.

Counsel fees are granted pursuant to *N.J.A.C.* 4A:2-2.12. Proof of income earned and an affidavit of services from the appellant's attorney shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10 and *N.J.A.C.* 4A:2-2.12, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees.

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

ORDER WITH REGARD TO MISUSE OF PUBLIC PROPERTY AND VIOLATION OF THE STATE POLICY

The Civil Service Commission finds that the action of the appointing authority in imposing a demotion to Senior Parole Office was justified and affirms that action.

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

ORDER WITH REGARD TO MISREPRESENTATION OF OVERTIME

The Commission orders that this matter be remanded to the OAL for further proceedings as set forth above.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 6TH DAY OF MAY, 2015

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
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Trenton, New Jersey 08625-0312

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. CSV 09843-12;
CSV 09844-12; CSV 09847-12
and CSV 09849-12
AGENCY DKT. NOS. 2013-73;
2013-75; 2013-76 and 2013-72

IN THE MATTER OF ROBERT RANDOLPH,
JUVENILE JUSTICE COMMISSION,
DEPARTMENT OF LAW AND PUBLIC SAFETY.

Charles J. Sciarra, Esq., for petitioner (Sciarra & Catrambone, attorneys)

Peter H. Jenkins, Deputy Attorney General, for respondent (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Record Closed: February 20, 2015 Decided: March 30, 2015

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

CSV 09849-12

Randolph drove his State-assigned vehicle to Kean University, where he had permission to teach, on his way to work. A preponderance of the evidence does not

exist that Randolph misused his vehicle or falsified his vehicle logs and time sheets when he taught at Kean. Did Randolph violate JJC policy 07FSS:I-1.1 and 07FSS:1-2.1? No. To violate such policies, one must have misused his vehicle or falsified his vehicle logs and time sheets.

CSV 09844-12

From April 2008 to April 2009, Randolph participated in the Paterson Safe Neighborhood Initiative and recorded his overtime for his participation in the program. A preponderance of the evidence does not exist that Randolph misrepresented his overtime on any day during this period of time. Did Randolph violate N.J.A.C. 4A:2-2.3(a)(6)? No. To violate that regulation, one must have engaged in conduct unbecoming a public employee.

CSV 09847-12

Randolph received emails at work with photos attached. None contained profanity, vulgarity, sexual content, or character slurs, and none made inappropriate reference to race, age, gender, sexual orientation, religious or political belief, national origin, health, or disability. Did Randolph violate JJC policy 081ITUPOL-1, 081ITUPOL-2, or 081ITUPOL-3? No. To violate such policies, such emails must contain one of the categories above or make inappropriate reference to one of the categories above.

CSV 09843-12

Randolph emailed some sexually suggestive photos to co-workers. But a preponderance of the evidence does not exist that Randolph discriminated, demeaned, or harassed any of his co-workers. Did Randolph violate JJC policy 07H-18.5? No. To violate such a policy, one must have discriminated, demeaned, or harassed a co-worker based a protected category.

PROCEDURAL HISTORY

I.

The Four Cases Presented

CSV 09849-12

On June 11, 2009, the Juvenile Justice Commission (JJC) served Randolph with a Preliminary Notice of Disciplinary Action dated June 11, 2009, charging Randolph with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); misuse of State property, including motor vehicles, in violation of N.J.A.C. 4A:2-2.3(a)(8); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(11), for violation of JCC Policy 07FSS:I-1.1, General Vehicle Usage, Falsification of Daily Vehicle Mileage Log, and Falsification of Time Sheets; and JJC Policy 07FSS:I-2.1, Misuse of Vehicles.

In its notice, the JJC specified that on January 26, March 30, and April 6, 2009, Randolph submitted false Daily Vehicle Mileage Reports when he failed to record that he drove his assigned State vehicle to Kean University in Union, New Jersey, for the purpose of outside employment. In addition, the JJC specified that on January 26, 2009, Randolph falsified his time sheet by indicating that he arrived at the Parole Office in Newark, New Jersey, at 11:00 a.m., when he was teaching at Kean University until 12:15 p.m. Similarly, the JJC specified that on April 6, 2009, Randolph falsified his time sheet by indicating that he arrived at the Parole Office in Newark at 10:30 a.m., when he was teaching at Kean until 10:45 a.m.

As a result, the JJC sought his suspension for sixty days.

Randolph requested a hearing.

On July 3, 2012, the JJC served Randolph with a Final Notice of Disciplinary Action dated June 21, 2012, sustaining the charges and imposing the suspension.

On July 9, 2012, Randolph appealed the determination.

On July 23, 2012, Merit Systems Practices and Labor Relations transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

CSV 09844-12

On June 25, 2009, the JJC served Randolph with a Preliminary Notice of Disciplinary Action dated June 24, 2009, charging Randolph with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6).

In its notice, the JJC specified that Randolph misrepresented overtime and received payment thirteen separate times from April 2008 to April 2009 for work he did not perform for the Paterson Safe Neighborhood Initiative.

As a result, the JJC sought his demotion from Assistant District Parole Supervisor to Senior Parole Officer, JJ, effective July 14, 2012.

Randolph requested a hearing.

On July 3, 2012, the JJC served Randolph with a Final Notice of Disciplinary Action dated June 21, 2012, sustaining the charge and imposing the demotion.

On July 9, 2012, Randolph appealed the determination.

On July 23, 2012, Merit Systems Practices and Labor Relations transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

CSV 09847-12

On August 20, 2009, the JJC served Randolph with a Preliminary Notice of Disciplinary Action dated August 11, 2009, charging Randolph with conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); misuse of State property in violation of N.J.A.C. 4A:2-2.3(a)(8); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(11), for violation of JJC Policy 081ITUPOL-1, Network and Internet/Intranet Usage; JJC Policy 081ITUPOL-2, Acceptable Use Policy; and JJC Policy 081ITUPOL-3, Email, which are JJC policies governing computers.

In its notice, the JJC specified that Randolph possessed documents and texts containing sexually explicit or otherwise inappropriate photographs in his State email account.

As a result, the JJC sought his demotion from Assistant District Parole Supervisor to Senior Parole Officer, JJ, effective July 14, 2012.

Randolph requested a hearing.

On July 3, 2012, the JJC served Randolph with a Final Notice of Disciplinary Action dated June 21, 2012, sustaining the charge and imposing the demotion.

On July 9, 2012, Randolph appealed the determination.

On July 23, 2012, Merit Systems Practices and Labor Relations transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

CSV 09843-12

On September 23, 2009, the JJC served Randolph with a Preliminary Notice of Disciplinary Action dated September 16, 2009, charging Randolph with other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(11), for violation of 07H-18.5, the State Policy Prohibiting Discrimination in the Workplace.

In its notice, the JJC specified that Randolph possessed sexually inappropriate material on his computer.

As a result, the JJC sought his demotion from Assistant District Parole Supervisor to Senior Parole Officer, JJ, effective July 14, 2012.

Randolph requested a hearing.

On July 3, 2012, the JJC served Randolph with a Final Notice of Disciplinary Action dated June 21, 2012, sustaining the charge and imposing the demotion.

On July 9, 2012, Randolph appealed the determination.

On July 23, 2012, Merit Systems Practices and Labor Relations transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

II.

The Four Cases Consolidated

On August 23, 2012, the four cases were consolidated for purposes of hearing. Each of the four cases, however, is to be considered separately. For example, if

Randolph should prevail on one case but not another, he may still be awarded attorney fees and costs for the case on which he prevailed.

III.

The Four Cases Heard

On October 30, 2014, November 3, 2014, and November 5, 2014, I held the hearing.

On February 13, 2015, the parties submitted their closing briefs, and I closed the record upon their receipt.

On February 20, 2015, I reopened the record to accept additional copies of the transcript and closed the record once more.

FINDINGS OF FACT

I.

William Sonnentag

Background

Sonnentag is the investigator with the Commission who investigated the specification that Randolph submitted false Daily Vehicle Mileage Reports when he failed to record that he drove his assigned State vehicle to Kean University in Union, New Jersey, for the purpose of outside employment.

In addition, Sonnentag is the investigator who investigated the specification that Randolph falsified his time sheet by indicating that he arrived at the Parole Office in Newark, New Jersey, at 11:00 a.m., when he was teaching at Kean University until

12:15 p.m., and that Randolph falsified his time sheet by indicating that he arrived at the Parole Office in Newark at 10:30 a.m., when he was teaching at Kean until 10:45 a.m.

Finally, Sonnentag is the investigator with the Commission who investigated the specification that Randolph misrepresented overtime and received payment thirteen separate times from April 2008 to April 2009 for work he did not perform for the Paterson Safe Neighborhood Initiative.

These specifications are contained in the Final Notice of Disciplinary Action assigned OAL Docket No. CSV 09849-12, and the Final Notice of Disciplinary Action assigned OAL Docket No. CSV 09844-12.

Each case will be addressed separately below.

Investigation

Sonnentag has been an investigator with the JJC for the past fifteen years. Sonnentag testified that he interviewed Randolph three times during his investigation and wrote numerous reports containing his findings. At the hearing, Sonnentag testified from his reports.

A.

CSV 09849-12

May 18, 2009

The first time Sonnentag interviewed Randolph was May 18, 2009. In his report of that date, Sonnentag wrote that Randolph was an adjunct professor at Kean University, and taught two classes, "Community Based Alternatives" and "Police Role in the Community," both of which were approved by his supervisor. Sonnentag explained that Randolph taught Community Based Alternatives in the spring semesters of 2008 and 2009 and Police Role in the Community in the spring semester of 2009. Sonnentag

further explained that Community Based Alternatives was a lecture class but that Police Role in the Community was not. Sonnentag detailed that Police Role in the Community met on Mondays and Thursdays from 9:30 a.m. to 10:45 a.m., beginning on January 22, 2009, and ending on May 11, 2009, while Police Role in the Community was scheduled to meet on Mondays and Thursdays from 11:00 a.m. to 12:15 p.m., beginning on January 22, 2009, and ending on May 11, 2009, but that it only met on the first day. All other instruction was by email.

Sonnentag wrote that Randolph used his State-assigned vehicle to go to Kean but did not record the mileage to and from Kean for the days that he taught. Sonnentag, however, noted that Randolph did not start work on those days until class was over and that Kean was on his way to work. Indeed, Sonnentag specified that Randolph lived in New Brunswick, that Kean is in Union, and that Randolph worked in Newark.

May 21, 2009

In his report dated May 21, 2009, Sonnentag repeated that Randolph used his State-assigned vehicle to go to Kean but did not record the mileage to and from Kean for the days he taught.

Sonnentag also wrote that Randolph failed to record the time he taught Community Based Alternatives with the exception of January 26, 2009.

May 26, 2009

The second time Sonnentag interviewed Randolph was May 26, 2009. In his report of that date, Sonnentag wrote that Randolph only taught Community Based Alternatives on January 26, 2009, March 9, 2009, March 30, 2009, and April 6, 2009. Sonnentag also wrote that Randolph only taught Police Role in the Community on January 26, 2009, February 12, 2009, and March 9, 2009.

May 28, 2009

In his report dated May 28, 2009, Sonnentag specified that Randolph taught Community Based Alternatives on January 26, 2009, March 9, 2009, March 30, 2009, and April 6, 2009, but failed to record the mileage for January 26, 2009, March 30, 2009, and April 6, 2009.

In addition, Sonnentag wrote that Randolph failed to record the time he taught for March 30, 2009.

Similarly, Sonnentag wrote that Randolph taught Police Role in the Community on January 26, 2009, February 12, 2009, and March 9, 2009, but failed to record the time he taught on January 26, 2009.

Daily Vehicle Log and Bi-Weekly Time Sheets

More pointedly, Sonnentag testified from the Daily Vehicle Log that the Union is not listed on the document for January 29, 2009, February 12, 2009, March 9, 2009, March 30, 2009, and April 6, 2009.

Likewise, Sonnentag testified from the Bi-Weekly Time Sheets that class is only listed on the document for January 26, 2009.

Cross-Examination

Sonnentag testified that he never showed Randolph any documentation during his investigation—including the course listings from Kean and the Daily Vehicle Log and Bi-Weekly Time Sheets from the JJC.

In addition, Sonnentag acknowledged that Randolph had permission to teach the two courses and that he never asked Randolph if he had permission to drive his State-assigned vehicle to Kean on his way to work.

More significantly, Sonnentag stated that he never asked anyone whether Randolph had to drive to Kean in Union only to return home to New Brunswick to retrieve his State-assigned vehicle so he could then drive to work in Newark.

Finally, Sonnentag testified that he did not know if any of the classes Randolph taught ended early and acknowledged that Randolph was a senior officer who could modify his hours.

Finding

Given the failure of Sonnentag to show Randolph any documentation during his investigation, the acknowledgement that Randolph had permission to drive his State-assigned vehicle to Kean on his way to work, the failure of Sonnentag to ask anyone whether Randolph had to drive to Kean in Union only to return home to New Brunswick to retrieve his State-assigned vehicle so he could then drive to Newark, and the acknowledgment that Sonnentag did not know if any of the classes Randolph taught ended early and that Randolph was a senior officer who could modify his hours, I **FIND** that a preponderance of the evidence does not exist to prove any of the specifications contained in the Final Notice of Disciplinary Action assigned OAL Docket No. CSV 09849-12.

B.

CSV 09844-12

June 17, 2009

The third time Sonnentag interviewed Randolph was June 17, 2009. In his report of that date, Sonnentag wrote that Randolph had been assigned to the Paterson Safe Neighborhood Initiative in 2007 by his supervisor, Robert Mercado, who was the Regional Program Supervisor. Sonnentag explained that Randolph had initially been assigned as a parole officer but that he then assigned Senior Parole Officer Anthony

Petrucci to the initiative. Sonnentag noted that Petrucci worked approximately two days a month but would determine which days he would work.

Sonnentag wrote that the initiative consisted of members from the Passaic County Probation Department and the Paterson City Police Department who would meet in the parking lot at 18 Clark Street in Paterson and then proceed as a group in a police department SUV and drive to the homes of numerous probationers and parolees in Paterson. Sonnentag continued that the initiative operated between the hours of 5:00 p.m. and 10:00 p.m. but that there were some occasions when the initiative operated between 6:00 p.m. and 11:00 p.m. Sonnentag stated that the Paterson City Police Department prepared the reports indicating the names and addresses of the juveniles they visited, the time of day they visited the juveniles, and the names of the probation and police officers who participated each night. (Later reports would amplify that the juveniles they would visit were offenders who had been convicted of violent crimes, weapons possession, and drug offenses, and that the initiative visited them at their homes to make sure they were home by curfew.) Finally, Sonnentag noted that Randolph was to submit a report to Mercado every six months indicating the number of contacts they made and the number of juveniles who re-offended.

Sonnentag wrote that Randolph and Petrucci would sometimes make the home visits by themselves when no one else from the initiative would show up and that Randolph would sometimes stay in the parole office and monitor Petrucci from there in case he needed information about a particular probationer or parolee.

Significantly, Sonnentag wrote that no roster was kept for members of the initiative to sign when they met for the home visits and that no record was kept of the days Randolph worked in the office.

As a corollary, Sonnentag wrote that his review of the bi-weekly time sheets from January 2008 to May 2009 indicated that there were fifteen dates for which Randolph submitted overtime slips but that his name did not appear in any of the Field Operation Report for those days but that Randolph explained his name did not appear in the Field Operation Report for those days because he stayed in the parole office on those days

and did not go into the field and that he sometimes did work not related to the initiative when he was in the office.

June 17, 2009

In a second report dated June 17, 2009, Sonnentag wrote that Randolph did in fact include monitoring in his description of his participation in the initiative ("Monitored/participated in PSN field activity with Paterson PD and Probation Division") when he requested overtime.

Sonnentag, however, also wrote that he interviewed Mercado who told him that he would not have approved the overtime for the dates Randolph stayed in the parole office and did not go into the field.

Significantly, when Mercado appeared at the hearing, he provided no such testimony.

June 24, 2009

In his final report dated June 24, 2009, Sonnentag wrote that the following dates are the thirteen (not fifteen) dates for which Randolph submitted overtime slips for the initiative but did not go into the field in 2008 and 2009. For 2008, Sonnentag wrote that Randolph did not go into the field on March 26, April 9, May 7, May 28, June 10, June 15, and July 29. For 2009, Sonnentag wrote that Randolph did not go into the field on January 7, January 13, January 27, February 19, February 26, and April 7.

Neither Sonnentag nor the JJC, however, submitted any of the documentation Sonnentag reviewed to reach this conclusion.

In fact, Sonnentag testified that he relied on the statements of others that Randolph was rarely in the field yet none of those individuals appeared or testified at the hearing.

Finally, Sonnentag repeated that he interviewed Mercado who told him that he would not have approved the overtime for the dates Randolph stayed in the parole office and did not go in the field.

Again, when Mercado appeared at the hearing, he provided no such testimony.

Nevertheless, Sonnentag concluded in his report that Randolph did not work on the initiative on the thirteen dates for which Randolph submitted overtime slips and that his overtime slips and bi-weekly time sheets for those dates were inaccurate and false.

Cross-Examination

In his final report dated June 24, 2009, Sonnentag identified all of the documents he reviewed and all of the individuals he interviewed. Half a dozen categories of documents and more than a dozen names of individuals are listed. But Sonnentag produced none of the documents and could not even explain what documents constituted the second category. In fact, Sonnentag never saw a document that stated Randolph had to be in the field and could not stay in the parole office, never asked Randolph what he meant when he wrote that he monitored Petrucci from the parole office, and never discovered any failings or failures of the initiative. Indeed, Mercado reported none.

Parenthetically, only one document, P-34, the Field Operations Agenda from the initiative, was submitted as proof that Randolph was not in the field on March 2, 2008. But this document does not take into account the supposition that Randolph stayed in the parole office that day to monitor Petrucci. Moreover, no competent evidence was ever produced to negate this supposition.

Finally, Sonnentag acknowledged that Randolph told him that he never submitted an overtime slip for a date or time he did not work, yet Sonnentag did not conclude that Randolph lied to him, and the JJC never charged Randolph with lying.

Finding

Given the failure of Sonnentag to produce any of the documents in his report, the absence of testimony from any of the individuals listed in his report, the acknowledgment by Sonnentag that he never saw a document stating Randolph had to be in the field and could not stay in the parole office, the failure of Sonnentag to ask Randolph what he meant when he wrote that he monitored Petrucci from the parole office, and the acknowledgement by Sonnentag that he never discovered any failings or failures of the initiative, I **FIND** that a preponderance of the evidence does not exist to prove any of the specifications contained in the Final Notice of Disciplinary Action assigned OAL Docket No. CSV 09844-12.

II.

Kenneth Amann

Background

Amann is the investigator with the JJC who investigated the specification that Randolph possessed documents and texts containing sexually explicit or otherwise inappropriate photographs in his State email account.

In addition, Amann is the investigator who investigated the specification that Randolph possessed sexually inappropriate material on his computer.

These specifications are contained in the Final Notice of Disciplinary Action assigned OAL Docket No. CSV 09847-12, and the Final Notice of Disciplinary Action assigned OAL Docket No. CSV 09843-12.

Both cases will be addressed together below.

Investigation

Amman has been an investigator with the JJC for the past thirteen years. Amann testified that he looked at Randolph's email account in support of Sonnentag's investigation and discovered personal email messages and sexually explicit photos. According to Amann, these messages and photos violated policy and procedure.

The email messages, which are the subject of this case, are contained in R-83 and are bate-stamped with the prefix "JJC." The explicit photos, which are the subject of this case, are contained in R-82 and are also bate-stamped with the prefix "JJC." Each message and each photo were addressed on both direct and cross-examination.

A.

Email with Attachments

JCC 262

This email message begins at JJC 362 and contains the attachment "Serena." It is a slideshow of the tennis champion Serena Williams. More descriptively, the slideshow primarily contains pictures of Williams playing tennis. But there are pictures of her off the court as well. Some are fashion shots and some are candid shots, including one in which she is holding hands with her sister at the beach. No photo contains nudity and none is intentionally sexually suggestive.

Randolph received the email and attachment but never forwarded them to anyone.

Amann testified that only one photo out of the entire slideshow (JJC 350) was inappropriate (a photo was from a magazine, which caught Williams with her skirt up as she stepped out of a car) but believes that the existence of that one photo renders the entire slideshow inappropriate. Amann testified that the mere receipt of an inappropriate photo or slideshow places the recipient in violation of JJC policy and

procedure. Still Amann testified that no evidence exists that Randolph ever read the email or viewed the attachment.

JJC 363

This email message begins at JJC 363 contains the attachment "Thickness." It is a slideshow of scantily clad women in sexually suggestive poses. No photo contains frontal nudity.

Randolph received the email and attachment it and forwarded them to a subordinate at work.

JJC 367

This email message begins at JJC 367 and contains the attachment "Eva the Diva." It is a slideshow of an artist or performer on stage in various poses. No photo contains nudity and none is intentionally sexually suggestive.

Randolph received the email and attachment and forwarded it to six other people including two colleagues at work.

JJC 369

This email message begins at JJC 369 and contains the attachment "Free." It is a photo spread in King Magazine of the entertainer Marie Free in sexually suggestive poses. No photo contains nudity.

Randolph received the email and attachment but never forwarded them to anyone.

JJC 371

This email message begins at JJC 371 and contains the attachment "Look Who Dun Flipped the Script." It is a slideshow of a model in sexually suggestive poses. No photo contains nudity.

Randolph received the email and attachment but never forwarded them to anyone.

B.

Email without Attachments

JJC 372

This email thread begins at JJC 372. It is an exchange between Randolph and "Jonnine Deloatch." Amann testified on direct examination that it was work related but later testified on cross-examination that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 375

This email thread begins at JJC 375. It is an exchange between Randolph and "Cosita Cosita." Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 376

This email thread begins at JJC 365. It is an exchange between Randolph and Cosita Cosita. Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 377

This email thread begins at JJC 377. It is an exchange between Randolph and Cosita Cosita. Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 378

This email thread begins at JJC 378. It is an exchange between Randolph and Cosita Cosita. Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 380

This email thread begins at JJC 380. It is an exchange between Randolph and Cosita Cosita. Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use which is permissible.

JJC 382

This email thread begins at JJC 382. It is an exchange between Randolph and Cosita Cosita. Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 384

This email thread begins at JJC 384. It is an exchange between Randolph and Cosita Cosita. Amman testified on cross-examination that it was not work related but

that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 386

This email thread begins at JJC 386. It is an exchange between Randolph and Cosita Cosita. Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 389

This email message begins at JJC 389. It is an exchange between Randolph and "Dorothy Howell." Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 390

This email message begins at JJC 390. It is an exchange between Randolph and Dorothy Howell. Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 391

This email message begins at JJC 391. It is an exchange between Randolph and "Just Me." Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 397

This email message begins at JJC 397. It is an exchange between Randolph and "Kelli Bravo." Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 399

This email message begins at JJC 399. It is an exchange between Randolph and "Stephanie Hawkins." Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 400

This email message begins at JJC 400. It is an exchange between Randolph and Stephanie Hawkins. Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 401

This email message begins at JJC 401. It is an exchange between Randolph and Stephanie Hawkins. Amman testified on cross-examination that it was not work related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

JJC 403

This email message begins at JJC 403. It is an exchange between Randolph and Stephanie Hawkins. Amman testified on cross-examination that it was not work

related but that it did not violate JJC policy because it constituted incidental use, which is permissible.

C.

Cross-Examination

Amann testified that he had unfettered access to Randolph's computer and reviewed all of the files in Randolph's computer for the previous five to six years. Those files totaled approximately 5,400. Yet Amann only took issue with the files identified above—files which constitute less than 0.01 percent of all files.

In addition, Amann could not produce copies of the policies at issue as they existed at the time he determined Randolph had violated them.

To make matters worse, Amann acknowledged that he received no training on these policies and acceded that he had determined Randolph had violated these polices based on his own opinion and personal standards of propriety.

Finally, Amann retracted all of the emails without attachments as having violated JJC policy because each constituted a permissible incidental use, and he had no knowledge whether any of the emails interfered with work duties, consumed significant State resources, or interfered with the activities of others.

D.

Finding

Given that Amann could not produce copies of the policies as they existed at the time he determined Randolph had violated them, his acknowledgment that he received no training on these policies, his accession that he had determined Randolph had violated these polices based on his own opinion and personal standards of propriety, and his retraction of all of the emails without attachments as having violated JJC policy

because each constituted a permissible incidental use, I **FIND** that a preponderance of the evidence does not exist to prove any of the specifications contained in the Final Notice of Disciplinary Action assigned OAL Docket No. CSV 09847-12, or any of the specifications contained in the Final Notice of Disciplinary Action assigned OAL Docket No. CSV 09843-12.

III.

Prior Discipline

Randolph was hired by the JJC on September 21, 1987. He is currently in his twenty-eighth year. Other than the disciplinary charges filed against him in this consolidated case, Randolph has received no prior discipline.

CONCLUSIONS OF LAW

I.

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). On such appeals, the Civil Service Commission may increase or decrease the penalty, N.J.S.A. 11A:2-19, and the concept of progressive discipline guides that determination, In re Carter, 191 N.J. 474, 483-86 (2007).

Since I found that JJC failed to prove by a preponderance of the evidence any of the specifications contained in its Final Notices of Disciplinary Action, I **CONCLUDE** that the JJC has failed to prove by a preponderance of the evidence any of the charges in its Final Notices of Disciplinary Action, and that all of the charges in these four cases against Randolph should be dismissed.

To be clear, Randolph cannot be considered to have violated JJC policy concerning computers, the Internet/Intranet, and email by his mere receipt of sexually suggestive photos because to do so would mean that every JJC employee is at the whim and mercy of anyone who decides to email such sexually suggestive photos. Whether a malicious hacker or a disgruntled employee, he or she could target a JJC employee and then place that employee in violation of JJC policy, and subject him or her to discipline, with the mere push of a button. Indeed, all one would have to do is obtain the email address of the target and then email a photo with profanity, vulgarity, sexual content, or character slurs, or make an appropriate reference to age, gender, sexual orientation, religious belief or political belief, national origin, health, or disability.

To violate such JJC policies, one would have to engage in an affirmative act beyond the passive receipt of an offending email. Yet in this case, the JJC argues that one would not even have to open the email to be in violation of JJC policy. Taken to its logical conclusion, one would be in violation of JJC policy while on vacation and the offending photo is on the JJC server, residing in his or her inbox. As such, the JJC is turning its policies on their head by making the victim the perpetrator. If no JJC employee would be in violation of JJC policy from the receipt of incendiary photos by regular mail, then no JJC employee should be in violation of JJC policy from the receipt of incendiary photos by email.

Likewise, Randolph cannot be considered to have violated JJC policy prohibiting discrimination at the workplace by his mere distribution of some sexually suggestive photos to co-workers if a co-worker was not actually discriminated, demeaned, or harassed. Although one can be in violation of JJC policy against discrimination in the workplace even if one does not intend to discriminate, demean, or harass another, one must still have discriminated, demeaned, or harassed another to be in violation of the policy. Yet in this case, the JJC argues that Randolph is in violation of JJC policy prohibiting discrimination at the workplace because the mere possibility exists that a worker was discriminated, demeaned, or harassed by the receipt of the photos at issue. And this does not even take into consideration the fact that the one photo the JJC identified as having violated JJC policy was never forwarded to anyone.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that all of the charges against Randolph in all four cases against him be **DISMISSED**, that his demotion to Senior Parole Officer be **REVERESED**, that Randolph be **REINSTATED** to his position of Assistant District Parole Officer, and that he be **AWARDED** all requisite back pay and benefits, as well as all attorney fees and costs, for each of the four cases against him.

Should this recommended decision be modified in any way, and my decision on any one of these four cases be reversed, Randolph shall still be entitled to attorney fees and costs for the case or cases in which he still prevails.

I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for its 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, P.O. 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.

March 30, 2015

3/30/15
DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency: March 30, 2015

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties: APR - 2 2015

APPENDIX

Witnesses

For Petitioner:

William Sonnentag

Kenneth Amann

Robert Mercado

For Respondent:

None

Documents

For Petitioner:

None

For Respondent:

R-1 Final Notice of Disciplinary Action dated June 21, 2012

R-2 Preliminary Notice of Disciplinary Action dated June 11, 2009

R-3 Not in evidence

R-4 Investigation Report by Sonnentag dated May 18, 2009

R-5 Investigation Report by Sonnentag dated May 21, 2009

R-6 Investigation Report by Sonnentag dated May 21, 2009

R-7 Investigation Report by Sonnentag dated May 28, 2009

R-8 Investigation Report by Sonnentag dated May 26, 2009

R-9 Not in evidence

R-10 Daily Vehicle Logs from March 2008 to April 2009

R-11 Not in evidence

R-12 Not in evidence

R-13 Not in evidence

R-14 Not in evidence

R-15 Not in evidence

R-16 Not in evidence

R-17 Bi-Weekly Time Sheet from January 17 to January 30, 2009

R-18 Bi-Weekly Time Sheet from March 28 to April 10, 2009

R-19 Not in evidence

R-20 Not in evidence

R-21 Class Schedule at Kean University from spring 2009

R-22 JJC Policy 07FSS:I-2.1, Misuse of Vehicle and Gas-Boy Cards, Accidents, and Violations, effective February 1, 2007

R-23 JJC Policy 07FSS:I-1.1, General Vehicle Usage Guide, effective February 1, 2007

R-24 Not in evidence

R-25 Not in evidence

R-26 Final Notice of Disciplinary Action dated June 21, 2012

R-27 Preliminary Notice of Disciplinary Action dated June 24, 2009

R-28 Investigation Report of Sonnentag dated June 17, 2009

R-29 Investigation Report of Sonnentag dated June 17, 2009

R-30 Investigation Report of Sonnentag dated June 24, 2009

R-31 Bi-Weekly Time Sheet from March 15 to March 28, 2008

R-32 Request for Overtime dated March 27, 2008

R-33 Time and Leave Reporting System Monthly Calendar Inquiry for March 2008

R-34 Paterson Project Safe Neighborhood Contact List Field Operations Agenda dated March 26, 2008

R-35 Bi-Weekly Time Sheet from March 29 to April 11, 2008

R-36 Request for Overtime dated April 10, 2008

R-37 Not in evidence

R-38 Not in evidence

R-39 Bi-Weekly Time Sheet from April 26 to May 9, 2008

R-40 Request for overtime dated May 8, 2008

R-41 Bi-Weekly Time Sheet from May 24 to June 6, 2008

R-42 Request for Overtime dated May 29, 2008

R-43 Not in evidence

R-44 Not in evidence

R-45 Not in evidence

R-46 Bi-Weekly Time Sheet from June 7 to June 20, 2008

R-47 Request for Overtime dated June 11, 2008

R-48 Not in evidence

R-49 Not in evidence

R-50 Bi-Weekly Time Sheet from July 5 to July 18, 2008

R-51 Request for Overtime dated July 16, 2008

R-52 Bi-Weekly Time Sheet from July 19 to August 1, 2008

R-53 Request for Overtime dated July 30, 2008

R-54 Not in evidence

R-55 Not in evidence

R-56 Not in evidence

R-57 Bi-Weekly Time Sheet from January 3 to January 16, 2009

R-58(a) Request for Overtime dated January 8, 2009

R-58(b) Request for Overtime dated January 14, 2009

R-59 Bi-Weekly Time Sheet from January 17 to January 30, 2009

R-60 Request for Overtime dated January 28, 2009

R-61 Not in evidence

R-62 Not in evidence

R-63 Not in evidence

R-64 Not in evidence

R-65 Bi-Weekly Time Sheet from February 14 to February 27, 2009

R-66(a) Request for Overtime dated February 20, 2009

R-66(b) Request for Overtime dated February 27, 2009

R-67 Not in evidence

R-68 Not in evidence

R-69 Not in evidence

R-70 Bi-Weekly time Sheet from March 28 to April 10, 2009

R-71 Request for Overtime dated April 8, 2009

R-72 Not in evidence

R-73 Not in evidence

R-74 Final Notice of Disciplinary Action dated June 21, 2012

R-75 Preliminary Notice of Disciplinary Action dated August 11, 2009

R-76 Investigation Report by Amann dated July 21, 2009

R-77 Memo from Louis Blauer to Wimson Crespo dated July 21, 2009

R-78 JJC Microcomputer Policy & Procedure User Manual

R-79 JJC Policy 08ITUPOL-1, Network and Internet/Intranet Usage, revised January 1, 2008

R-80 JJC Policy 08ITUPOL-2, Acceptable Use Policy, revised July 1, 2008

R-81 JJC Policy 08ITUPOL-3, Email, revised July 1, 2008

R-82 Photos

R-83 Emails

R-84 Final Notice of Disciplinary Action dated June 21, 2012

R-85 Preliminary Notice of Disciplinary Action dated September 1, 2009

R-86 JJC Policy 07H-18.5, State Policy Prohibiting Discrimination in the Workplace and Procedure for Internal Complaints Alleging Discrimination in the Workplace, effective October 15, 2007

R-87 Memo from Craig Sashihara to Frank Croce dated September 2, 2009