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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Matthew Kurland,
Judiciary

CSC Docket No. 2016-3099
OAL Docket No. CSV 4006-16

ISSUED: FEB 24 2017 (WR)

The appeal of Matthew Kurland, a Judiciary Clerk 3 with the Judiciary, Somerset/Hunterdon/Warren Vicinage, of his removal, effective February 22, 2016, on charges, was heard by Administrative Law Judge Kimberly Moss (ALJ), who rendered her initial decision on December 12, 2016, modifying the removal to a four-month suspension. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on February 8, 2017, accepted and adopted the findings of fact but did not adopt the ALJ's recommendation to modify the removal to a four-month suspension. Rather, the Commission upheld the removal.

DISCUSSION

The appointing authority issued the appellant a Final Notice of Disciplinary Action (FNDA) removing him, effective February 22, 2016, on charges of conduct unbecoming a public employee, neglect of duty and violation of Judiciary policies and directives regarding jury service. Specifically, the appointing authority alleged that on August 3, 2015, the appellant reported for jury duty from 11:00 a.m. until 11:30 a.m. and failed to follow its procedures regarding jury duty by not contacting his supervisor after he was released with instructions on what to do. It further asserted that he was untruthful about his whereabouts after he was released and did not report back to work. Upon the appellant's appeal, the matter was

transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

In the initial decision, the ALJ set forth the testimony of the witnesses, including, in part, Christine Murzdeck, the Jury Manager for Hunterdon County; Bonnie Russo, an Administrative Supervisor for the Judiciary in Somerset County; and Carolyn Shefsky, the Finance Division Manager of the Vicinage. Murzdeck testified that when a Judiciary employee is summoned for jury duty, he must inform the supervisor that he was excused and ask for instructions on whether he should return to work. Russo, the appellant's immediate supervisor, testified that the appellant was entrusted with public monies received from payments such as child support fees and that integrity was important to the appellant's job because if mistakes are made and not acknowledged, a person's civil rights could be violated. She stated that the appellant acknowledged receipt of the Judiciary's jury duty policy annually in 2012, 2013 and 2014 and it requires an employee to notify his supervisor of the time he was required to be present and when he was released from jury duty. She stated that employees ordinarily return to work after being excused from jury duty before 3:30 p.m. Russo testified that she received a voicemail from the appellant at 8:06 a.m. on August 3, 2015, informing her that he had reported for jury duty and would call later. However, he did not contact her the rest of the day. The following day she asked the appellant about his jury service. He initially told her that he was there all day, but later said that his jury service lasted from 11:00 a.m. to 12:30 p.m., failing to tell her that he was actually released at 11:30 a.m. Russo further testified that the appellant told her that he did not return because he did not have a tie and by the time he got one, it was 1:30 p.m. However, the dress code does not mandate that the appellant wear a tie. Further, the appellant told her that he tried to call her, but there was no answer and no voicemail. She stated that when she is unable to answer a call, the call is forwarded to another person, and if that call is unanswered, it goes to her voicemail. Russo testified that the only voicemail she received from the appellant that day was the message that he left in the morning. Shefsky testified that Judiciary employees, such as the appellant, must possess honesty and integrity as they are responsible for processing money. She also testified that at a meeting with the appellant on September 15, 2015, he stated that he was released from jury duty at 12:30 p.m., but then had car trouble so he went home but he did not contact his supervisor.

The appellant testified that he reported for jury duty on August 3, 2015 from 11:00 a.m. to 11:30 a.m. and tried to contact his supervisor after he was released, but the call bounced and nobody answered and the voicemail did not pick up. He stated that after he was released, he had car trouble and went home and did not inform his supervisor that he did not have to report until 11:00 a.m. The appellant did not remember meeting with Shefsky on September 15, 2015 and telling her he went home after he was released because he had car trouble. Finally, he testified that he did not review the jury service policy prior to reporting for jury duty, but did

acknowledge he received it. The ALJ found the testimony of Murzdeck, Russo and Shefsky credible and the appellant's testimony not credible. Based on the foregoing, the ALJ determined that the appointing authority's jury policy requires an employee to contact his supervisor after being released from jury duty. The ALJ found that the appellant was aware of the jury duty policy, but failed to contact his supervisor after being released and instead went home. Finally, the ALJ found that the appellant's duties included collecting payment for child support, fines, filing fees, bail and restitution and that Somerset collected five million dollars in such payments in 2015. As a result, the ALJ upheld all of the charges against the appellant. Observing that the appellant's prior discipline consisted of a written reprimand in 2014, and a four and six working day suspensions in 2015, the ALJ recommended modifying the removal to a four-month suspension.

In its exceptions, the appointing authority argues that the concept of progressive discipline is not appropriate in this matter as the appellant's conduct was sufficiently egregious to justify his removal. In this regard, the appointing authority asserts that the appellant's breach of trust warrants his removal and the four-month suspension imposed by the ALJ fails to account for the grave effect that the appellant's dishonesty has on the Judiciary. It contends that the appellant's position requires absolute honesty and integrity. In reply, the appellant argues that the ALJ correctly imposed a four-month suspension because, while his conduct was improper, his removal was not warranted given his lack of a significant disciplinary record.

Upon its *de novo* review of the record, the Commission agrees with the ALJ's finding of facts as contained in the initial decision and her upholding of the charges against the appellant. In this regard, there is no dispute that the appellant was required to contact his supervisor after he was released from jury duty, failed to do so and was untruthful about the reasons why he did not return to work.

With regard to the penalty, the Commission's review is *de novo*. Although the Commission applies the concept of progressive discipline in determining the level and propriety of penalties, an individual's prior disciplinary history may be outweighed if the infraction at issue is of a serious nature. *Henry v. Rahway*, 81 N.J. 571, 580 (1980). It is settled that the principle of progressive discipline is not "a fixed and immutable rule to be followed without question." *See Carter v. Bordentown*, 191 N.J. 474 (2007). In the instant matter, the appellant's removal from employment is appropriate regardless of his prior disciplinary history. Nevertheless, the Commission notes its concern with the appellant's prior disciplinary history due to its relative proximity in time to the events underlying the present matter. The record reflects that the appellant was issued a Preliminary Notice of Disciplinary Action (PNDA) on October 10, 2015 for the events underlying this matter and received the FNDA on February 22, 2016. Regarding his six working day suspension for an incident that occurred on February 26, 2015, he

received a PNDA on June 6, 2015, and a FNDA on July 10, 2015.¹ The fact that the appellant's conduct on August 3, 2015 occurred only a few weeks after receiving his six working day suspension demonstrates his inability to control his behavior and a blatant disregard for the appointing authority's procedures.

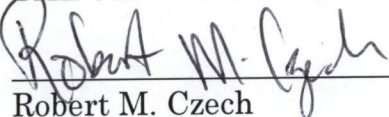
Moreover, the record is clear that the appellant lied to his employer multiple times. He lied to his supervisor that he was at jury duty all day, but later told her that he served only from 11:00 a.m. to 12:30 p.m. However, the record demonstrates that he was released from jury duty at 11:30 a.m. The appellant further lied when he told Russo that he did not return to work because he was not wearing a tie, but told Shefsky at the September 15, 2015 meeting that he did not return to work because he was having car trouble. Finally, the appellant did not call his supervisor after he was released from jury duty and lied when he told his employer that he had called in after being released. The appellant's dishonesty, coupled with the fact that he did not report for work when it appears that he otherwise should have, is by itself troubling. More importantly, the appellant's position is one of trust, as it includes receiving payment monies where even an honest mistake could result in serious consequences. The appellant's dishonesty breached this trust and renders him unfit for his position. Accordingly, the foregoing circumstances provide a sufficient basis to uphold the removal.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission, therefore, affirms that action and dismisses the appeal of Matthew Kurland.

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 8th DAY OF FEBRUARY, 2017



Robert M. Czech

Chairperson

Civil Service Commission

¹ For his four working day suspension for an incident that occurred on February 10, 2015, he received a Minor Disciplinary Action on April 9, 2015 and a Final Notice of Minor Disciplinary Action on May 20, 2015.

Inquiries
and
Correspondence

Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
P.O. Box 312
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT.NO. CSV 04006-16

AGENCY DKT. NO. 2016-4051
3099

IN THE MATTER OF MATTHEW KURLAND,
SUPERIOR COURT OF NEW JERSEY
SOMERSET/ HUNTERDON/ WARREN
VICINAGE,

Francine Ehert, Union Representative appearing pursuant to N.J.A.C. 1:1-5.4(b)(2) on behalf of appellant

Susanna J. Morris, Esq., for Respondent, (New Jersey Courts)

BEFORE **KIMBERLY A. MOSS**, ALJ:

Record Closed: November 21, 2016

Decided: December 12, 2016

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Matthew Kurland (Kurland or appellant), appeals his removal by respondent, Superior Court of New Jersey Somerset/Hunterdon/Warren Vicinage (Somerset or respondent), on charges of conduct unbecoming an employee, neglect of duty, and other sufficient cause, violation of judiciary policies and directives of jury service by the New Jersey Judiciary. At issue is whether Kurland engaged in the

alleged conduct, and, if so, whether it constitutes conduct unbecoming an employee, neglect of duty, and other sufficient cause violation of judiciary policies and directives of jury service by the New Jersey Judiciary that warrants removal.

On October 20, 2016, Somerset served Kurland with a Preliminary Notice of Disciplinary Action. A departmental hearing was held on January 7, 2016. A Final Notice of Disciplinary Action dated February 22, 2016, sustaining charges of conduct unbecoming an employee, neglect of duty, and other sufficient cause violation of judiciary policies and directives of jury service by the New Jersey Judiciary.

Following Kurland's appeal to the Civil Service Commission the matter was transmitted to Office of Administrative Law (OAL). The appeal was filed with the OAL on March 14, 2016. A hearing was held on October 25, 2016. Respondent's closing brief was received on November 18, 2016. Appellant's closing brief was received on November 21, 2016, at which time the record closed.

FACTUAL DISCUSSION

I **FIND** the following stipulated **FACTS**:

1. Matthew Kurland was hired on July 16, 2012, by the State of New Jersey Judiciary, Somerset, Hunterdon, Warren Vicinage, as a Judiciary Clerk 3, and was assigned to the Finance Division.
2. As of August 3, 2015, Bonnie Russo, an Administrative Supervisor 1 was Mr. Kurland's direct Supervisor.
3. The Hunterdon Vicinage issued a Juror Summons to Mr. Kurland for August 3, 2015.
4. At 8:06 a.m., on August 3, 2015, Mr. Kurland telephoned Mr. Russo, and left a voice message advising that he had been selected for jury duty.
5. The Hunterdon Vicinage Jury Management instructed Mr. Kurland to report for jury duty at 11:00 a.m. on August 3, 2015.
6. The Hunterdon Vicinage Jury Management released Mr. Kurland and the other jurors, who had been summoned, at 11:30 a.m. on August 3, 2015.

7. Mr. Kurland's prior disciplinary record is as follows:

- a. Written Reprimand, dated December 11, 2014, for violation of N.J.A.C. 4A:2-2.3(a) 1. Inefficiency and failure to perform; and 7. Neglect of duty.
- b. Four-day suspension, dated May 30, 2015, for violation of N.J.A.C. 4A:2-2.3 (a) 1. Inefficiency and failure to perform; 7. Neglect of duty; and 11. Other sufficient cause – violation of the Code of Conduct for Judiciary Employees, Canon 1B – Performance of Duties.
- c. Six-day suspension, dated July 10, 2015, for violation of N.J.A.C. 4A:2-2.3(a); 6. Conduct unbecoming a public employee; and 11. Other sufficient cause – violation of the Code of Conduct for Judiciary Employees, Canon 1B, and Violation of the Judiciary's Workplace Violence Policy

TESTIMONY

Christine Murzdeck

Christine Murzdeck is employed by the New Jersey State Judiciary as the Jury manager for Hunterdon County. Her job includes creating jury pools, summoned jurors qualifying jurors among other duties. A jury summons was sent to Kurland notifying him to report for jury duty on August 3, 2015. The notice states to call prior to the date of appearance. Kurland was instructed to report for jury duty on August 3, 2015 at 11:00 a.m. Kurland reported for jury duty at 10:44 a.m. The jurors were dismissed at 11:30 a.m. on August 3, 2015. When the jurors are released the time system automatically list the time released as 4:00 p.m.

When a judiciary employee is excused from jury duty, they must contact their supervisor to inform the supervisor that they were excused and ask for instructions whether they should come back to work.

Bonnie Russo

Bonnie Russo (Russo) works for the New Jersey State Judiciary in Somerset in the finance central fee office as the Administrative Supervisor. She supervised six employees. They are entrusted with public monies received from payments such as child support and fees. The payments are reconciled and processed and the money is deposited. Her supervisor is Cathy Tauriello (Tauriello). The vicinage division manager is Caroline Shefsky (Shefsky). Somerset County is in vicinage thirteen along with Hunterdon and Warren Counties. Judiciary Clerk 3's are the majority of the employees she supervises. The work hours are 8:30 a.m. to 4:30 p.m.

Kurland was one of the people Russo supervised. She began supervising Kurland in August 2014 at that time she was the Acting Administrative Supervisor. She prepared Kurland's annual performance advisory in 2015. The expectations for his performance were: responsibility, time management, customer service, communication, initiative, job knowledge, integrity and organization. Integrity was important because if mistakes are made and not acknowledged a person's civil right could be violated. For example, a bail payment not being acknowledged could lead to someone staying in jail. If a mistake is made it must be brought to Russo's attention as soon as possible. Russo went over the performance advisory with Kurland and he was given a copy. Kurland did not ask any questions regarding the performance advisory.

The Judiciary has a jury duty policy (R-8). The jury policy is acknowledged by employees annually. Kurland acknowledged receipt of the jury policy in 2012, 2013 and 2014. The jury policy is not discussed at orientation. The policy requires the employee to bring the summons to his supervisor upon receipt and notify the supervisor if they have to report to jury duty. The employee has to notify the supervisor of the time they are required to be present and when they are released. Ordinarily employees return to work after being excused from jury duty before 3:30 p.m.

In June 2015 Kurland informed Russo that he had jury duty in August 2015. Russo made the time keeper, Barbara Bolick (Bolick) aware of Kurland's jury duty. She

did not discuss the jury duty policy with Kurland at that time. On July 30, 2015, Kurland stated that he would hang out at the Hunterdon County central office until he was selected for a trial. Russo told Kurland that employees were not allowed to work while on jury duty. She did not review the other jury duty requirements with Kurland at that time because she believed that he knew the jury duty requirements and he stated that he would call her the morning of August 3, 2015.

On August 3, 2015, Russo received a voicemail from Kurland stating that he had to go in for jury duty and he would call later. The message was left at 8:06 a.m. Russo contacted Bolick to inform her that Kurland was called in for jury duty. Kurland did not contact Russo for the rest of that day. On August 4, 2015, Kurland provided her with a jury service letter. Russo forwarded the letter to Bolick, who requested the exact time of Kurland's jury service. Russo asked Kurland about his jury service. Initially he said he was there all day. Then he said his jury service began at 11:00 a.m. He later stated that his jury service was from 11:00 a.m. to 12:30 p.m. He stated that he did not return to work because he was not dressed appropriately because he did not have a tie, although the dress code is business casual. There would not have been any problem with Kurland coming into work without a tie after his jury duty concluded. He stated that by the time he went to get the tie it was 1:30 p.m. Kurland did not tell Russo that he was released from jury duty at 11:30 a.m. Kurland stated that he tried to call Russo but there was no answer or voicemail. When Russo is away from her desk her calls go to another person in her department. If that person does not answer, the calls go to Russo's voicemail. Russo did not receive any messages that Kurland called her on August 3, 2015 other than the message that was left at 8:06 a.m. stating that he had to go in for jury duty and he would call later. After this conversation Russo became concerned that Kurland's was not being honest and forthright. She contacted Cathy Toriello regarding her concerns with Kurland's honesty.

Rachel Morejon

Rachel Morejon is employed by the New Jersey State Judiciary as the Human Resources (HR) division manager for vicinage thirteen. When a Judiciary employee

has jury duty, a person in the HR division does the timekeeping in the ECATS system for the employee.

After an employee serves jury duty, he notifies HR. HR then asks how many hours of jury duty did the employee serve. HR would have to unlock ECATS to allow an employee to put in his jury service hours as opposed to HR putting in his jury service hours.

Carolyn Shefsky

Shefsky is the Finance Division Manager of the thirteenth Vicinage of New Jersey Superior Court. The financial division is responsible for all of the finances in the vicinage. In the Somerset office there were 31,000 transactions in 2015 covering payments for child support, bail, fines, filing fees and restitution. Somerset collected five million dollars in 2015. The Judiciary Clerk 3's (JC3) collect the monies at the payment window. The JC3's must have honesty integrity and accuracy. If the JC3 makes a mistake, he must advise the supervisor.

Shefsky was advised on August 4, 2015 that Kurland had called in on August 3, 2015 to advise Russo that he had to serve jury duty that day. He called in the morning. He did not call again on August 3, 2015. He came to work on August 4, 2015. She learned that Kurland initially tried to give the impression that he had jury duty all day. Kurland did not follow the jury duty policy. Shefsky was concerned that Kurland tried to deceive Russo and he did not follow the Judiciary jury duty policy. Kurland was told that the matter was being investigated on September 15, 2015 in a meeting with Taurillo, Shefsky, Kurland and Kurland's union representative. At that meeting Kurland stated that he called his supervisor to tell her that he had jury duty. He reported for jury duty at 11:00 a.m. and was released at 12:30 p.m. He stated that he had car trouble and went home. He stated that he was not aware of the jury duty policy. He did not call his supervisor after he was released from jury duty.

After the meeting Shesky believed that Kurland was not truthful. She recommended immediate discipline. A notice of immediate suspension was personally given to Kurland on October 16, 2015. Kurland's immediate suspension was upheld by the trial court administrator.

Matthew Kurland

Kurland is a JC3 in vicinage thirteen. He has collected funds for Somerset County vicinage for the past three years. He received a notice to report for jury duty which he gave to Russo, who had been his supervisor for fourteen months. Russo did not review the Judiciary jury duty policy with him at that time. He called Hunterdon County jury control to find out if he had to report for jury duty on August 3, 2015. He was informed that he had to report for jury duty. Kurland left a voice mail for Russo stating that he had to report for Judiciary jury duty. However, he did not tell her that he had to report at 11:00 a.m. At no point did he tell Russo that he might visit a colleague in Hunterdon County. He did not review the jury policy prior to reporting for jury duty, although he had acknowledged receiving the Judiciary jury duty policy.

Kurland reported for jury duty in Hunterdon County on August 3, 2015 at 11:00 a.m. He was released at 11:30 a.m. He tried to call Russo but the phone call bounced, no one answered and voice mail did not pick up the call. He had car trouble and went home.

On August 4, 2015, Kurland reported for work. He gave Russo the jury service paperwork. Two hours later Russo asked him about the actual hours he served of jury duty. He stated that he was there from 11:00 a.m. to 12:30 p.m., this included travel time. He told Russo that he did not have a tie with him and that is why he did not go back to work. On his previous jobs he did not have to report back to work after being released from jury duty. Kurland does not remember the September 15, 2015 meeting with Shesky, Taurilleo, himself and his union representative. He does not remember telling Shesky that he had car trouble and that is why he did not return to work.

Kurland had received the Judiciary jury duty policy in 2012, 2013 and 2014. He received the Notice for jury duty in June 2015. He never reviewed the Judiciary jury duty policy prior to serving jury duty on August 3, 2015 although it was available on his computer.

FINDINGS OF FACT

In light of the contradictory testimony presented by respondent's witnesses and appellant, the resolution of the charges against Kurland requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. 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 experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's 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 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-522 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I **FIND** Murzdeck, Russo, Morejon and Shefsky to be credible. Murzdeck and Morejon concisely testified as to jury duty procedure for Judicial employees. Russo credibility testified that Kurland gave her different accounts of his jury service and did not call her after he was released from jury service. Shefsky was clear regarding the meeting that took place between her Taurillo, Kurland and his representative on September 15, 2015.

I do not find Kurland to be credible. His testimony regarding calling Russo after he was released from jury duty is contradicted by Russo's testimony. In addition he stated that he had car trouble but he does not remember telling this to Shefsky. He does not remember meeting with Shefsky, Taurillo and his union representative. He never reviewed the Judiciary jury duty policy although he acknowledged receiving it on three occasions and it was available on his computer.

Having reviewed the testimony and evidence and credibility of the witnesses, I make the following additional **FINDINGS of FACTS**.

Kurland received the Judiciary jury duty policy in 2012, 2013 and 2014. Kurland did not inform Somerset that he was scheduled to appear for jury duty at 11:00 a.m. on August 3, 2015. He left a message stating that he had to report for jury duty. Once he was released from jury duty at 11:30 a.m. on August 3, 2015, he did not contact Russo or anyone at Somerset. Instead, he went home. The Judiciary jury duty policy for Judiciary employees states that when an employee is excused from jury duty they must contact their supervisor and ask for instructions as to whether they should come back to work.

On August 4, 2015, Kurland provided Russo with a jury service letter which Russo forwarded to Bolick. Bolick requested that Russo determine the exact time of Russo's jury service. Russo asked Kurland later that day what was the exact time of his jury service. He initially told her all day. He then told her he reported at 11:00 a.m. He finally told her that he had jury service from 11:00 a.m. to 12:30 p.m. He told her that he did not return to work because he was not wearing a tie. Kurland would have been allowed to work without having a tie. Russo became concerned that Kurland was not being truthful and contacted Taurillo.

On September 15, 2015, a meeting was held with Taurillo, Shefsky, Kurland and Kurland's union representative. At that meeting Kurland stated that he called his supervisor to tell her that he had jury duty. He reported for jury duty at 11:00 a.m. and

was released at 12:30 p.m. He stated that he had car trouble and went home. He stated that he was not aware of the Judiciary jury duty policy. Kurland did not call his supervisor after he was released from jury duty.

The job duties of a JC3 in Somerset included collecting money at the payment window. The payments are for child support, bail, fines filing fees and restitution. Somerset collected five million dollars in 2015.

LEGAL ANALYSIS AND CONCLUSION

Based on the foregoing facts and the applicable law, I **CONCLUDE** that the charges of conduct unbecoming a public employee, neglect of duty, and other sufficient cause violation of judiciary policies and directives of jury service by the New Jersey Judiciary are **SUSTAINED**.

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

“Unbecoming conduct” is broadly defined as any conduct which adversely affects the morale or efficiency of the governmental unit or which has a tendency to destroy public respect and confidences in the delivery of governmental services. The conduct need not be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior, which devolves upon one who stands in the public eye. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term “neglect” connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). “Duty” signifies conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term “neglect of duty” is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep’t of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep’t of Law and Safety, 92 N.J.A.R.2d (CSV) 214.

In this matter the charges against Kurland are merged. He acknowledged receipt of the Judiciary jury duty policy on three different occasions in 2012, 2013 and 2014. He failed to inform Russo that he was required to report to jury duty at 11:00 a.m. He initially told Russo on August 4, 2014 that his jury duty service was all day. When pressed he stated that he reported at 11:00 a.m. When further pressed he stated that his jury duty service ended at 12:30 p.m. when it actually ended at 11:30 a.m. He did not contact Russo when his jury service ended, and did not return to work that day. The Judiciary jury duty service policy states that once an employee is released from jury duty service, they are to contact their supervisor to determine whether they should report back to work. Kurland did not follow the policy.

When determining the appropriate penalty to be imposed, the appointing authority must consider an employee's past record, including reasonably recent commendations and prior disciplinary actions. Bock, supra, 38 N.J. 500. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522–24. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197–98 (1993) (upholding dismissal of police officer who refused drug screening as “fairly proportionate” to offense); see also In re Herrmann, 192 N.J. 19, 33 (2007) (DYFS worker who snapped lighter in front of five-year-old):

... judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

In this case Kurland's conduct was conduct unbecoming a public employee, neglect of duty, and other sufficient cause violation of the jury duty policy and he initially attempted to cover up the violation. During his conversation with Russo on August 4, 2015, he eventually told her close to the accurate hours of his jury service.

Kurland's prior disciplines include a written reprimand, in December 2014, for inefficiency and failure to perform and neglect of duty. A four-day suspension in May 2015, for inefficiency, failure to perform, neglect of duty; and other sufficient cause – violation of the Code of Conduct for Judiciary Employees, Canon 1B – Performance of Duties. A six-day suspension in July 2015, for conduct unbecoming a public employee and other sufficient cause – violation of the Code of Conduct for Judiciary Employees, Canon 1B, and Violation of the Judiciary's Workplace Violence Policy.

Removal is not an appropriate discipline in this matter. Although Kurland's prior disciplines show a pattern of actions requiring discipline from December 2014 to July 2015 the longest suspension he received is a six day suspension. In this instance, the appropriate discipline for Kurland is a four month suspension.

Under the circumstances, major discipline is appropriate; I **CONCLUDE** that the penalty of removal is not appropriate and modify the penalty to a four month suspension.

ORDER

Based on the foregoing findings of fact and applicable law, it is hereby **ORDERED** that the determination of respondent to remove appellant, Matthew Kurland from employment is **REVERSED**. It is further **ORDERED** that Kurland be suspended for four months and be reinstated to his position as a JC3 and awarded back pay. The amount of back pay shall be mitigated in accordance with guidelines set forth in N.J.A.C. 4A:2-2.10(d)(3).

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

December 12, 2014

DATE



KIMBERLY A. MOSS, ALJ

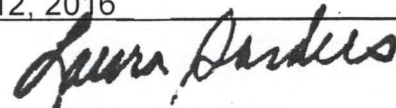
Date Received at Agency:

December 12, 2016

Date Mailed to Parties:

DEC 14 2016

ljb



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

WITNESSES

For Appellant

Matthew Kurland

For Respondent

Christine Murzdeck

Bonnie Russo

Rachel Morejon

Carolyn Shefsky

EXHIBITS

For Appellant

None

For Respondent

- R-1 Juror Summons of Matthew Kurland
- R-2 Email Dated August 3, 2015 from Michael Brougham to Christine Murzdeck
- R-3 Jury Pool Attendance Sheet Dated August 3, 2015
- R-4 Jury Service Letter Dated August 3, 2016
- R-5 Not in Evidence
- R-6 2015 Annual Performance Advisory for Matthew Kurland
- R-7 Not in Evidence
- R-8 Judiciary Juror Service Policy Dated September 12, 2003
- R-9 Judiciary Learning Management System Learning Transcript for Matthew Kurland
- R-10 Vicinage 13 Financial Division Organizational Chart

- R-11 Email from Bonnie Russo to Cathy Tauriello and Cathy Shefsky Dated August 3, 2015
- R-12 Not in Evidence
- R-13 Immediate Notice of Suspension without Pay Dated October 16, 2015
- R-14 Not in Evidence
- R-15 Preliminary Notice of Disciplinary Action Dated October 20, 2015
- R-16 Final Notice Of Disciplinary Action Dated February 22, 2016
- R-17 Not in Evidence
- R-18 Not in Evidence
- R-19 Not in Evidence
- R-20 Not in Evidence
- R-21 Not in Evidence
- R-22 Notice of Meeting held on September 15, 2015 with Matthew Kurland, Cathy Tauriello and Carolyn Shefsky
- R-23 Not in Evidence