STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of James Reyes, City of Paterson

CSC Docket No. 2017-2772
OAL Docket No. CSR 03407-17

ISSUED: MAY 25, 2018 (HS)

The appeal of James Reyes, a Fire Captain with the City of Paterson (Paterson), of his removal effective February 23, 2017, on charges, was heard by Administrative Law Judge Barry E. Moscowitz (ALJ), who rendered his initial decision on March 20, 2018. Exceptions were filed on behalf of Paterson and a reply to exceptions was 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 2, 2018, adopted the ALJ's recommendation to reverse the removal but ordered the appellant to undergo a pre-reinstatement fitness for duty examination.

DISCUSSION

Paterson removed the appellant on charges of incompetency, inefficiency or failure to perform duties, inability to perform duties, conduct unbecoming a public employee, neglect of duty and other sufficient cause. Specifically, it asserted that the appellant had been absent from work on Workers' Compensation, receiving full pay, since June 22, 2016 based upon his representation that he was in too much pain to return to work when he was, in fact, able to return to work. Paterson identified 12 separate instances between December 13, 2016 and January 11, 2017, captured by video surveillance, that allegedly demonstrated the appellant's misrepresentation and fraud. In the video surveillance, the appellant was observed shoveling snow and lifting water cases, among other things. Upon the appellant's

appeal, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

Based on the testimonial and documentary evidence presented, the ALJ set forth in his initial decision that the appellant was injured on June 22, 2016. Robert Kayal, M.D., his treating doctor and an orthopedist, excused him from all duty. Kayal operated his own orthopedics practice, Kayal Orthopedic Center. Paterson alleged that the appellant could have returned to work on modified or light duty, that it had informed him that modified or light duty was available to him, and that he intentionally withheld this information from Kayal to perpetuate the fraud that he was in too much pain to return to work. However, the ALJ found that Gabriel Abouyan, the Battalion Chief who served as the sick-injury officer, did not tell the appellant, Kayal or Sulayka Perez, the staff person at Kayal Orthopedic Center responsible for the administration of all Workers' Compensation claims at the orthopedic office, that modified or light duty was available to the appellant or that modified or light duty could be made available to him. Similarly, no one else from Paterson told the appellant, Kayal, Perez or anyone else from Kayal's office that modified or light duty was available to the appellant or how modified or light duty could be made available to him.

The ALJ stated that, in the alternative, Paterson alleged that it never told the appellant that modified or light duty was available to him, but that it was generally known among all firefighters that modified or light duty is always available, and that he intentionally withheld this information from Kayal to perpetuate the fraud that he was in too much pain to return to work. However, the ALJ found that a preponderance of the evidence did not exist that it was generally known among Paterson firefighters that modified or light duty was available or could be made available to Paterson firefighters at any time. Paterson had not, in fact, made modified or light duty available to the appellant and had acted, instead, upon Kayal's medical advice that the appellant was incapable of returning to work on full duty and, as a result, excused the appellant from all duty. Likewise, Paterson never required the appellant to undergo a fitness evaluation. The ALJ found that modified or light duty was not offered to the appellant in December 2016 when the video surveillance of him was obtained, and Kayal had not cleared him for any.

The ALJ found that the appellant was honest about his symptoms and his pain and what he could and could not do; that he had not lied to anyone about his symptoms and his pain and what he could and could not do; and that the video surveillance did not contradict or contraindicate that the appellant was honest about his symptoms and his pain, and had not lied to anyone about what he could and could not do. In this regard, David Weiss, D.O., a board-certified orthopedist and board-certified independent medical examiner, testified that none of the

activities the appellant was seen to perform in the video surveillance contradicted his medical profile.

The ALJ found that the appellant cannot return to work on full or heavy duty but that he can return to work on modified or light duty and that he is willing to return to work on modified or light duty, which Paterson has still not offered or made available to him. In short, the ALJ found that Paterson had not proven any of the specifications alleged by a preponderance of the evidence. As such, the ALJ recommended that the charges be dismissed and that the appellant be reinstated to his position of Fire Captain.

In its exceptions, Paterson argues that even if the initial decision were to be upheld, back pay or benefits are not due pursuant to *N.J.A.C.* 4A:2-2.10(d)9, which provides that "[a] back pay award is subject to reduction for any period of time during which the employee was disabled from working." It maintains that if the appellant was actually disabled as of December 2016 and not able to perform modified or light duty, there is no record evidence that his condition has improved to the point where he could perform modified or light duty; that he has been cleared for modified or light duty; or that he is no longer taking opioids. It states that the only record evidence is that of Weiss, who indicated that the appellant's condition had deteriorated between December 2016 and August 2017.

In his reply to exceptions, the appellant notes his agreement with the initial decision and requests that it be affirmed without modification.

Upon its *de novo* review, the Commission affirms the ALJ's recommendation to dismiss the charges and reverse the removal. However, the Commission disagrees with the ALJ's determination that the appellant is able to return to work on modified or light duty and his recommendation that the appellant be reinstated to modified duty. Rather, it is for Paterson to determine whether it can provide the appellant the reasonable accommodation of such duty. Therefore, the Commission orders that Paterson provide the appellant with a pre-reinstatement fitness for duty examination. If the appellant is found able to perform full or modified duty that *can be accommodated*, he is to be reinstated. If he is found not able to perform full or modified duties or Paterson cannot accommodate temporary or permanent modified duties, Paterson should initiate a *new* disciplinary charge for the appellant's removal due to his inability to perform duties based on his current unfitness, with a current date of removal. Upon receipt of a Final Notice of Disciplinary Action on that charge, the appellant may appeal that matter to the Commission in accordance with *N.J.A.C.* 4A:2-2.8. Upon timely submission of any such appeal, the appellant would be entitled to a hearing regarding the current finding of unfitness only. In either case, pursuant to *N.J.A.C.* 4A:2-2.10, the appellant would be entitled to mitigated back pay, benefits and seniority from February 23, 2017 until the time he is either reinstated or removed. The Commission further orders that, pursuant to

N.J.A.C. 4A:2-2.10(d)9, the appellant is not entitled to back pay for any period of time he was medically unable to work.[1]

Since the charges have been dismissed, the appellant is entitled to reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by Paterson. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections,* Docket No. A-5581-01T2F (App. Div. February 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra,* should the appellant pass the pre-reinstatement fitness for duty examination ordered herein, Paterson shall immediately reinstate the appellant to his permanent position.

ORDER

The Civil Service Commission finds that Paterson's action in imposing a removal was not justified and therefore reverses that action. The Commission also orders that the appellant undergo a pre-reinstatement fitness for duty examination. The outcome of that examination shall determine whether the appellant is entitled to be reinstated or removed, as outlined previously. In either case, the appellant is entitled to back pay, benefits and seniority from February 23, 2017 through the date of his actual reinstatement or removal. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to Paterson within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10(d)9, the appellant is not entitled to back pay for any period of time he was medically unable to work.

The Commission further awards reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to Paterson 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 or counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fees dispute.

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[1] It is noted that *N.J.A.C.* 4A:2-2.10(d)9 presupposes full duty.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and/or counsel fees within 60 days of the 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.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF MAY, 2018

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 03407-17

IN THE MATTER OF JAMES REYES,
CITY OF PATERSON FIRE DEPARTMENT.

Christopher A. Gray, Esq., for appellant (Sciarra & Catrambone, attorneys)

Steven S. Glickman, Esq., for respondent (Lite DePalma Greenberg, attorneys)

Record Closed: February 20, 2018 Decided: March 20, 2018

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

STATEMENT OF THE CASE

On June 22, 2016, James Reyes, a fire captain, was injured, and his treating physician, an orthopedist, excused him from all duty. Although Reyes could work modified or light duty, no such duty was ever offered to Reyes or made known to his treating physician. Should Reyes be terminated for failure to perform duties or conduct unbecoming? No. Such violation requires the ability to perform a duty and the decision to disregard that duty.

PROCEDURAL HISTORY

On January 23, 2017, Paterson served Reyes with a Preliminary Notice of Disciplinary Action. In its notice, Paterson charged Reyes with incompetency, inefficiency, and failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(1); inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(3); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12). Paterson also charged Reyes with violation of Paterson's Injury/Sick-Leave Policy, Reissue of General Order 2004-13, dated September 23, 2014, including Section VIII, entitled, "Sick Leave Policy," and the statutory standard of behavior required of firefighters under N.J.S.A. 40A:14-17, and Karins v. City of Atlantic City, 152 N.J. 532 (1998).

In its specifications, Paterson alleged that that Reyes had been absent from work on workers' compensation, receiving full pay, since June 22, 2016, based upon his representation that he was in too much pain to return to work, when Reyes was, in fact, able to return to work. In support of these specifications and allegations, Paterson identified twelve separate instances between December 13, 2016, and January 11, 2017, captured by surveillance, that allegedly demonstrate Reyes's misrepresentation and fraud. As a result, Paterson suspended Reyes without pay on January 23, 2017.

On February 10, 2017, Paterson sustained the charges and specifications and removed Reyes from its employ effective February 23, 2017. Notice was given in a Final Notice of Preliminary Disciplinary Action of the same date. On March 11, 2017, Reyes filed this appeal and the case was assigned to me for hearing.

Hearing dates were scheduled for June 21, 23, and 26, 2017, but then adjourned on June 15, 2017, at Reyes's request, until October 10, 11, and 20, 2017, which proceeded as scheduled.

At the hearing, Paterson further specified and alleged that Reyes could have returned to work on modified or light duty, that it had informed Reyes that modified or light duty was available to him, and that Reyes intentionally withheld this information from his

treating doctor, Robert Kayal, M.D., to perpetuate the fraud that he was in too much pain to return to work.

In the alternative, Paterson specified and alleged that it never told Reyes that modified or light duty was available to him, but that it was generally known among all firefighters that modified or light duty is always available, and that Reyes intentionally withheld this information from Kayal to perpetuate the fraud that he was in too much pain to return to work.

Since the specifications could be fairly read to include these more specific allegations, the hearing was held, and this decision was written, with these two alternatives in mind.

By February 20, 2018, the parties submitted their closing briefs, and on that day I closed the record.

DISCUSSION AND FINDINGS OF FACT

Reyes

Reyes was born and raised in Paterson. He became a firefighter with the Paterson Fire Department in 1993 and rose to captain seven years later. From 2000 to 2016, Reyes served as captain in different roles. More specifically, Reyes served as the captain or supervisor of the engine company, the ladder company, and the rescue company.

On June 22, 2016, the date Reyes was injured, Reyes was serving as the captain or supervisor of the EMS unit. On that date, Reyes injured himself when he stepped out of his vehicle, landed on uneven pavement, and twisted his torso. On June 23, 2016, the following day, Reyes went to the ImmediCenter in Clifton, New Jersey, for treatment. Reyes testified that this urgent-care facility is where all Paterson firefighters are sent when they are hurt on the job.

On July 11, 2016, Reyes underwent an MRI of the lumbar spine, which revealed a disc bulge at L5-S1, and Reyes was referred to an orthopedist, Robert Kayal, M.D., for treatment.

On August 10, 2016, Reyes saw Kayal for the first time.

Kayal (Part I)

Kayal is a board-certified orthopedist. He operates his own orthopedics practice under the eponymous Kayal Orthopedic Center in no less than three locations. Kayal treated Reyes for his injuries and prided himself on the fact that he seldom treats patients who are out of work on workers' compensation. In fact, Kayal boasted that the treatment of patients out of work on workers' compensation is only 2 percent of his practice.

Kayal testified that Reyes had slipped and fallen coming out of a fire truck, and that he subsequently treated Reyes for pain in his back and hips. His treatment notes state that Reyes slipped when he stepped out of the truck onto uneven pavement. Kayal further testified that Reyes complained of pain in his low back consistent with sciatica, and that an x-ray and an MRI of his low back revealed a degenerative condition. Kayal testified that later subjective complaints of pain in the neck were also confirmed by objective tests revealing a degenerative condition.

Yet Kayal explained that an MRI of the left hip was equivocal for a labral tear. Kayal specified that an MRI of the right hip revealed only a contusion, but that the MRI of the left hip revealed neither a tear nor a detachment. "It was fluid," Kayal said. Nevertheless, Kayal put Reyes out of work for August, September, October, November, and December 2016. The exact nature of the dysfunction did not matter.

Letters

After each visit, Kayal wrote a letter to Reyes, excusing him from all work. Those letters were admitted into evidence as R-9. After Reyes received these letters, he submitted them to Paterson.

August 2016

Kayal's first letter, dated August 10, 2016, states, "Please excuse JAMES REYES from ***all work* through 9/2/16**, due to medical reasons. Please do not hesitate to call my office should you have any questions." Paterson accepted the letter, excused Reyes from all duty, and never called Kayal to question him.

September 2016

Kayal's second letter, dated September 2, 2016, states, "Please excuse JAMES REYES from ***all work*** until he can be re-evaluated on 10/14/16. Please do not hesitate to call my office should you have any questions." Paterson accepted the letter, excused Reyes from all duty, and never called Kayal to question him.

October 2016

Kayal's third letter, dated October 14, 2016, states, "Please excuse JAMES REYES from ***all work*** through **November 16th, 2016**, due to medical reasons. Please do not hesitate to call my office should you have any questions." Paterson accepted the letter, excused Reyes from all duty, and never called Kayal to question him.

November 2016

Kayal's fourth letter, dated November 16, 2016, states, "Please excuse JAMES REYES from ***all work*** until December 7th, due to medical reasons. Please do not hesitate to call my office should you have any questions." Paterson accepted the letter, excused Reyes from all duty, and never called Kayal to question him.

December 2016

Kayal's fifth letter, dated December 9, 2016, states, "Please be aware that James is actively treating with our practice. **Please excuse JAMES REYES from *all work* until**

further notice, due to medical reasons. Please do not hesitate to call my office should you have any questions." Paterson accepted the letter, excused Reyes from all duty, and never called Kayal to question him.

Abouyan

Paterson, however, did question Reyes. Gabriel Abouyan, the battalion chief who serves as the sick-injury officer for Paterson, testified that he called Reyes after he received each of these letters, and that he asked Reyes how he was doing. Abouyan explained that the handwritten notes on the letters admitted into evidence as R-9 are his handwritten notes, which memorialize the conversations he had with Reyes on each of the dates he wrote that he spoke to Reyes.

On Kayal's first letter, dated August 10, 2016, Abouyan wrote, "Spoke to [Reyes] 8/10/16; Capt. stated in serious pain."

On Kayal's second letter, dated September 2, 2016, Abouyan wrote, "Spoke to [Reyes] 9/6/16; no change in injury."

On Kayal's third letter, dated October 14, 2016, Abouyan wrote, "Spoke to [Reyes] 10/26/16; no change."

On Kayal's fourth letter, dated November 16, 2016, Abouyan wrote, "Spoke to [Reyes] 11/18/16."

On Kayal's fifth letter, dated December 9, 2016, Abouyan wrote, "Spoke to [Reyes] 12/7/16; Asked him how injury is doing (no better/worse); Suggested see another doctor; Said he is going to Mamood."

Nowhere in his handwritten notes does Abouyan question whether Reyes was sincere or honest in his response about his pain or injury or whether Reyes could return to work on modified or light duty.

Goow

Samir Goow is the risk manager for Paterson. Goow testified that he was hired by Paterson almost three years ago and is responsible for overseeing all the workers' compensation claims filed with the City. Goow explained that Paterson has a history of abuse and neglect concerning workers' compensation claims, and that he has been very aggressive in closing out those claims against the City and returning its employees to work. Goow was an assertive witness who was insistent on providing his opinions about Reyes, including his medical condition, even though Goow had no medical expertise to do so. Goow did not even have any judicially-recognized expertise in risk management.

First, Goow testified that he had known nothing about Reyes until the third-party administrator for Paterson, the Claims Resolution Corporation (CRC), had called him because the fire chief had wanted Reyes surveilled, and the CRC needed Goow to approve the surveillance. Goow explained that he deals with hundreds of workers' compensation claims at a time and that he relies heavily on his insurance adjusters to apprise him of them. Goow continued that he approved the surveillance, forwarded the video to Kayal for his review, and was shocked by what he saw on the recording.

Next, Goow testified that Reyes had been lying about his medical condition. Goow opined that six months was too long for Reyes to have been out of work, especially when no other firefighter in Paterson had been out of work for that long, and that Reyes should have been returned to work on at least modified or light duty. Notwithstanding the fact that Goow had no medical expertise, or any judicially recognized expertise in risk management, Goow admitted on cross-examination that he never even reviewed the medical record. More expansively, Goow conceded that he never spoke to anyone about whether what he saw on the video was consistent with what Reyes complained of, whether it was consistent with his medical condition, whether Reyes should get a second opinion, whether Reyes should undergo a functional-capacity evaluation, whether Reyes could return to work on modified or light duty, or whether Reyes should not return to duty at all.

Ultimately, Goow conceded that Kayal had, in fact, excused Reyes from all duty in August, September, October, November, and December 2016, and that the parties were, as a result, obligated to follow that medical advice.

Surveillance

Paterson, through the CRC, hired Confidential Security Associates (CSA), a surveillance company, to surveil Reyes. Jeffrey Eisenberg is the employee from CSA who recorded the surveillance. Eisenberg has worked in the surveillance business for the past ten years and at CSA for the past two. His video recording was admitted into evidence as R-6 and his written findings were admitted into evidence as R-4 and R-5. At the hearing, Eisenberg was professional in his presentation and matter-of-fact in his testimony.

Eisenberg testified that he was given no information about Reyes or this case before or during the surveillance and was simply instructed to perform the surveillance. Eisenberg explained that he assumed that the case had something to do with a personal injury, so he parked his car outside Reyes's home and videoed Reyes on a digital recorder when Reyes left his home. Eisenberg further explained that he then dictated what he saw in another recorder and turned in all his recordings to the owner of CSA, who produced the video footage and written reports for the hearing. A review of the written reports reveals that Eisenberg dictated what he saw without embellishment.

Similarly, at the hearing, Eisenberg simply repeated what he saw on the video as we watched the excerpts of the footage, resisting calls for embellishment when asked.

Video

Eisenberg surveilled Reyes on eleven days in December—Friday, December 9, 2016; Saturday, December 10, 2016; Monday, December 12, 2016; Tuesday, December 13, 2016; Wednesday, December 14, 2016; Saturday, December 17, 2016; Monday, December 19, 2016; Tuesday, December 20, 2016; Wednesday, December 21, 2016;

Thursday, December 22, 2016; and Friday, December 23, 2016— for ten to twelve hours each day.

Yet Paterson alleged only thirteen instances of fraud from the 110–132 hours of surveillance. Once again, all the surveillance takes place outside the home and does not capture what Reyes did once he returned inside his home. For easy reference, the allegations are reproduced below:

- On December 10, 2016, James Reyes was observed dragging a garbage can to the curb at his residence.
- On December 13, 2016, James Reyes was observed vigorously sweeping the front of his residence.
- On December 14, 2016, James Reyes was observed dragging and carrying a garbage can onto his property.
- On December 17, 2016, James Reyes was observed lifting the hood of a Toyota, believed to be his vehicle.
- On December 17, 2016, James Reyes was observed brushing snow off the two vehicles, a Toyota and an Audi, believed to be his vehicles.
- On December 17, 2016, James Reyes was observed [connecting] jumper cables to his Toyota. He was then observed getting into the Audi and starting it up, pulling the Audi near the Toyota, and connecting the jumper cables to the Audi. After jump starting the Toyota, James Reyes parked the Audi and closed both vehicles.
- On December 17, 2016, James Reyes was observed bending down to pick up a garbage can lid and then dragging the garbage can onto the side of his property.
- On December 17, 2016, James Reyes was observed shoveling snow on the side and front of his property [and on the] steps and front porch [of his property]. He was observed throwing salt down on the steps and walkway.
- On December 17, 2016, James Reyes was observed using a broom to clean the tops of the Toyota and Audi and his steps.
- On December 21, 2016, James Reyes was observed exiting his residence carrying a garbage bag to the curb. He was then observed bending over to move the garbage bag. James Reyes was then observed walking to the side of his property, dragging a garbage can to the curb, and then lifting the garbage bag and placing it in the garbage can.
- On December 22, 2016, James Reyes was observed at the Costco in Clifton, New Jersey pushing a shopping cart.

He then opened the rear trunk of his vehicle, lifting five (5) cases of water and placing them in his trunk.

- On December 22, 2016, James Reyes was observed back at his residence lifting several cases of water from his trunk and carrying each one up his stairs and into the front door of his residence.
- On January 11, 2017, James Reyes saw Dr. Kayal, stating that he was unable to be active at all at home due to continuing lower back and leg pain. James Reyes informed Dr. Kayal that his wife was required to perform many of his "chores," including shoveling snow because the pain was too severe. James Reyes further indicated that he was unable to return to work.

Kayal (Part II)

Like Goow, Kayal was outraged by what he saw in the video. In a letter to the CRC dated January 11, 2017, Kayal summarized his treatment for Reyes, but wrote that after he reviewed the video, he no longer believed Reyes. As a result, Kayal cancelled all future appointments and all further treatment.

First, Kayal wrote that he saw Reyes six times between August 10, 2016, and December 21, 2016, and that he had prescribed physical therapy for Reyes throughout this period, but that Reyes's pain did not subside. Second, Kayal wrote that on three of those six visits, Reyes received local injections into his low back to alleviate his pain. Third, Kayal wrote that the last visit was for a pre-op history and a physical exam so Reyes could receive fluoroscopically guided injections into his left hip.

At the hearing, Kayal explained that the injections were to provide additional diagnostics as well.

Kayal then wrote that when he saw Reyes for the last time, on January 11, 2017, Reyes continued to complain of low-back pain and bilateral hip pain, that Reyes was still unable to be active at all at home, and that his pain was interfering with his quality of life.

Similarly, Kayal wrote that Reyes told him that his wife still did many of the household chores because his pain was too severe, that he still had numbness and tingling in his left foot, and that his pain was still a 10 out of 10 in severity.

But Kayal did not believe him:

> It is evident after reviewing these videos of my patient Mr. James Reyes, that he can work and that his subjective pain levels that he reports during his office visits with me are not consistent with the activities he's able to perform on the videos I've reviewed. Furthermore, Mr. Reyes was willing to receive medical treatment including multiple local injections, MRI studies and physical therapy, all modalities typically reserved for patients that are severely injured and incapable of performing the activities observed on these videos.
>
> [P-7.]

As a result, Kayal cancelled the physical therapy, the hip injections, and the diagnostic surgery.

At the hearing, Kayal testified that he had kept Reyes out of work because of his subjective complaints of pain, and that the video is what changed his mind about him. Kayal further testified that he had brought Reyes into his office on January 11, 2017, to confront him and confirm what he saw on the video. Specifically, Kayal testified that he asked Reyes if he still could not shovel snow or sweep steps and if he still could not perform other activities of daily living, and that Reyes answered that he still could not do any of these and that his wife still had to do all of them for him.

But Kayal wrote in his office note that Reyes had told him that his wife had to do "many" of the chores, including shoveling snow, not that his wife had to do "all" of the chores.

Kayal was even unwilling to consider the possibility that Reyes had only shoveled the few inches of snow from his front porch and steps (which could be seen in the video), but that his wife had to shovel the entirety of snow from the driveway and sideway (which

could not be seen in the video), or that she had to shovel the seven inches of snow that had fallen on a different date in December and was not captured by video.

Kayal also did not know whether Reyes was on any medication when he performed the activities of daily living that he saw on the video, whether those activities aggravated Reyes's condition, whether Reyes had to take any medication after he performed the activities of daily living that he saw on the video, or whether those activities were consistent with the ones Reyes performed at physical therapy.

To explicate, Kayal testified that he did not care whether the activities of daily living that he saw on the video were consistent with the ones Reyes performed at physical therapy, and that he did not even review the physical-therapy notes, because he is an orthopedist, and he was going to make his own determination whether the activities of daily living that he saw on the video were consistent with Reyes's condition.

As such, it was just Kayal's self-assured belief that if Reyes had truly been in pain, then he would not, and could not, have performed any of the activities of daily living that he saw Reyes perform on the video.

Most damaging to Kayal and his credibility, however, was the fact that Kayal had made up his mind about Reyes before Reyes even returned to his office on January 11, 2017. Kayal had testified on direct examination that he had brought Reyes into his office on January 11, 2017, to confront him about what he had seen on the video and give Reyes a chance to explain himself. As it turns out, Kayal never did confront Reyes about the video or give Reyes a chance to explain himself. In fact, Kayal admitted as much on cross-examination.

Incredibly, Kayal also admitted on cross-examination that he had drafted his letter dated January 11, 2017, which terminated all treatment for Reyes, on January 5, 2017, six days before he was supposed to confront Reyes about the video and give him a chance to explain himself.

Upon review, the only difference between the draft dated January 5, 2017, and the letter dated January 11, 2017, is the paragraph in which Kayal memorialized Reyes's continued complaints of pain as of that date.

Kayal tried to minimize this discovery by cloaking it in medical opinion, but his explanation merely revealed that he was chapped because he thought he had been duped by a patient out of work on workers' compensation, the very kind of patient Kayal tries to avoid for this very reason.

To be clear, Kayal testified that he saw himself as a "traditional orthopedic surgeon," not a "workers' compensation doctor," and he even went so far as to change the percentage of patients he said he treats on workers' compensation from "2 percent of his practice" to "1½ percent of his practice," and later still to "less than 1 percent of his practice."

Finally, Kayal confirmed that he never spoke to anyone at Paterson about whether Reyes could return to work on modified or light duty.

Reyes (Part II)

Reyes testified that Kayal only saw him on his first office visit on August 10, 2016, when Kayal administered the sciatic injections and prescribed the pain medication, and on the last office visit on January 11, 2017, when Kayal asked him who had shoveled the snow during the most recent accumulation. Reyes explained that he saw physician's assistants on all the other office visits in between. Reyes also testified that he was truthful about his symptoms and compliant with his treatment. Reyes explained that he attended physical therapy three times a week until Kayal cut him off, and that he was forthcoming about his physical activity with all of his healthcare providers throughout his treatment with them.

For example, Reyes testified that he told both the physician's assistant and the physical therapist that he had lifted the cases of water out of the shopping cart and placed them into the trunk of his car, one at a time, and that he had lifted them out of the trunk

of his car and carried them into his house, one at a time. Ryes explained that the physical therapist was angry with him—not because he had lifted and carried the cases of water—but because Reyes had thought he was not allowed to do so. In short, Reyes testified that the physical therapist had encouraged him to be physically active. "That's why you come to physical therapy," Reyes recounted the physical therapist telling him; "I expect you to do that!"

Reyes also clarified what he and Kayal discussed during the last office visit on January 11, 2017, when Kayal supposedly confronted Reyes about shoveling snow. Reyes explained that he and Kayal had talked about two different things. Reyes noted that the snow he had shoveled on the video was in December 2016 and was not the most recent snowfall, so when Kayal asked him about who had shoveled the snow, Reyes naturally thought that Kayal was asking about the most recent snowfall in January 2017, so he answered that his wife had shoveled it. In fact, Reyes asserted that he could not have shoveled the snow in January 2017 because he had been doing too much at that time and was in pain.

Reyes continued that when he did shovel the snow on the porch and on the walkway in December 2016, he had been in so much pain afterward that he had to lie down once he returned inside, and put heat packs on his affected areas. Reyes explained that he had shoveled the snow because his wife had been doing so much around the house during that time and he did not want her to keep having to do everything. He said he felt "useless" so he "sucked it up." Reyes noted that the walkway he shoveled is only four feet long, but that that the driveway and walkway his wife shoveled is much longer. Reyes further explained that he can be seen shoveling the walkway because it is in the front of the house, and that his wife cannot be seen shoveling the driveway and sideway because they are to the side and back of the house and out of view.

Reyes then offered that he brushed the snow off the cars on the video because his mother-in-law is elderly and his wife looks after her, so he wanted his wife's car to be ready in case she needed it to help her mother after the snowfall.

Reyes testified that Kayal cut off his physical therapy in December, that he cancelled his injections scheduled for January before he saw him in January, and that he received no further treatment because he had no insurance. Reyes's condition then began to deteriorate. For example, Reyes said that he had to start using a cane his cousin gave him because his legs began to weaken, and that he needed the cane for stability and confidence when he walked.

Reyes admitted that he did speak to Abouyan about returning to work on modified or light duty in December 2016, but that he had been in too much pain at the time to do so, and that Kayal had not cleared him for modified or light duty anyway. Reyes explained that he had worked modified duty during a prior injury, but that he had been cleared for it. Reyes said that he would have worked on modified or light duty if Kayal had cleared him for it, and that he would still be willing to work on modified or light duty if it were offered to him.

Weiss

David Weiss, D.O., is a board-certified orthopedist and a board-certified independent medical examiner. He is also a diplomate of the American Academy of Pain Management. Weiss works for Regional Independent Medical Evaluations and has significant experience performing medical evaluations in workers' compensation claims, writing reports, and testifying in court proceedings like this one. He also has served on the medical expert advisory panel for the State Board of Medical Examiners. As a result, Weiss was offered and accepted as an expert in orthopedic medicine and disability impairment without objection.

History

On August 1, 2017, Weiss performed an independent medical evaluation of Reyes and wrote a report. In his report, Weiss recounts that on June 22, 2016, Reyes was injured at work while stepping out of his vehicle, landing on uneven pavement, twisting his torso, and causing injury to his lumbar spine and bilateral hips. He was first seen at

ImmediCenter, where an MRI was recommended, and on July 11, 2016, an MRI of the lumbar spine revealed a disc bulge at L5-S1.

On August 10, 2016, Reyes was evaluated by Kayal, who recommended injections, and on an unspecified date Reyes received ultrasound-guided bilateral sciatic injections.

On August 29, 2016, Rahul Sood, D.O., a pain-management specialist, recommended physical therapy and additional injections.

On September 6, 2016, Sood performed transforaminal epidural injections with steroids at left L4-L5 and L5-S1 under fluoroscopy, and on September 21, 2016, Sood performed lumbar facet injections with local anesthetic and steroids at left L3-L4, L4-L5, and L5-S1 under fluoroscopy.

On October 19, 2016, an MRI of the cervical spine revealed disc bulge at C3-C4, C4-C5, C5-C6, and C6-C7; an MRI of the right hip revealed a bone contusion versus a stress reaction along the right superior acetabular rim; and an MRI of the left hip revealed a posterior superior labral tear.

Reyes was to receive ultrasound-guided left-hip injections in January 2017, but Kayal canceled the procedure.

To remind, Kayal never consulted with the physical therapist who had been treating Reyes for his dysfunction, and he never consulted with Sood, who had been treating Reyes for his pain.

Complaints

Weiss testified that when he examined Reyes on August 1, 2017—more than six months after Kayal had cancelled all his treatment, including the physical therapy, the pain medication, the hip injections, and the diagnostic surgery—and that Reyes had deteriorated. At the hearing, Weiss referred to his report. In his report, Weiss wrote that

Reyes complained of low-back pain and stiffness, which was daily and constant, and radicular pain, which radiated into the left lower extremity. Weiss also wrote that changes in the weather, and coughing and sneezing, exacerbate or aggravate the pain.

In addition, Weiss wrote that Reyes complained of right-hip pain and stiffness, which was daily, but that it waxed and waned and was also exacerbated by changes in the weather.

Similarly, Weiss wrote that Reyes complained of left-hip pain, stiffness, and weakness, which was daily and constant and exacerbated by changes in the weather.

Regarding activities of daily living, Weiss wrote that Reyes complained that he could no longer work as a firefighter, that he needed his wife's help to complete household tasks, and that he even had difficulty with self-care. Examples included washing the dishes, washing himself, and getting dressed. Weiss continued that Reyes can sit comfortably for only fifteen minutes in an hour and can stand comfortably for only ten minutes at a time. As a result, Reyes can only walk no more than two blocks and now needs a cane to ambulate.

Weiss also wrote that Reyes noted difficulty sleeping, climbing stairs, and moving from a seated to a standing position. Similarly, Weiss wrote that Reyes noted difficulty bending, twisting, and lifting. More specifically, Weiss wrote that Reyes has difficulty lifting weights greater than ten to fifteen pounds; that Reyes has difficulty kneeling and squatting on his left side; and that Reyes has difficulty squatting (but not kneeling) on his right side. As such, Reyes can no longer exercise.

Finally, Weiss wrote that Reyes noted that he can no longer drive or ride in a motor vehicle without difficulty, and that he can no longer have sex without difficulty or dysfunction.

Weiss reported that Reyes stated that his pain was 6–10 on a scale of 1–10 involving the lumbar spine, 1–6 on a scale of 1–10 involving the right hip, 4–10 on a scale of 1–10 involving the left hip, and 3–8 on a scale of 1–10 involving the left lower extremity.

Meanwhile, Patient Reported Outcomes Measurement Information Systems (PROMIS) revealed a moderate pain disability, namely, a chronic low-back disability. Weiss further reported that the PROMIS revealed a 62 percent bilateral lower-extremity disability.

Examination

Physical examination revealed paravertebral muscle spasm and tenderness over the posterior midline, iliolumbar ligamentous tenderness bilaterally, and tenderness over the L4-L5 and L5-S1 facet joint on the left and over the L5-S1 facet joint on the right. Facet-joint compression testing was positive too. Range of motion of the lumbar spine revealed forward flexion of 80/80 degrees, backward extension of 10/30 degrees, left lateral flexion of 10/30 degrees, and right lateral flexion of 20/30 degrees. All ranges of motion were carried though with pain at the extremes.

The sitting root sign was positive on the right at 90 degrees, producing axial low pain, and was positive on the left at 75 degrees, producing pain in the left-hip joint. Straight leg raising was positive on the left at 90 degrees, producing axial low-back pain, and the extensor hallucis longus muscles were graded 5/5. At the hearing, Weiss noted that straight leg raising produced pain in the low back and in the left-hip joint, that the left quadricep had atrophied, and that both the leg rolling and the Patrick's test produced pain in the left inguinal region.

Weiss made other physical findings (which he detailed in his report) and he reviewed the medical record (which he explained at the hearing) to diagnose Reyes with the following:

- Chronic post-traumatic lumbosacral sprain and strain
- Bulging lumbar disc L5-S1
- Post-traumatic lumbar facet joint syndrome
- Aggravation of pre-existing quiescent degenerative disc disease L5-S1
- Post-traumatic interventional pain management with lumbar epidural block and facet joint block
- Post-traumatic left hip strain and sprain

- Post-traumatic acetabular labral tear to the left hip confirmed by MRI on 10/19/16
- Post-traumatic femoral acetabular impingement syndrome to the left hip
- Chronic post-traumatic right hip strain and sprain

Explication

Most important, Weiss explained at the hearing that his physical findings meant that Reyes could bend forward, but not backward, without pain, and that none of the activities he saw Reyes perform on the video, including the shoveling of snow and the lifting of water cases, contradicted his medical profile, because the shoveling of snow and the lifting of water cases involved bending forward, not backward. In addition, Weiss explained that the labral tear in the left hip has nothing to do with forward or backward flexion. Moreover, Weiss explained that he saw nothing in the video demonstrative of the moderate to heavy duty that Reyes would have to perform as a firefighter. Finally, Weiss explained that no evidence existed of any symptom magnification.

Thus, Weiss concluded that there was no fraud:

> There is no evidence of comparative fraud on this claimant's part nor is there any evidence contradicting this claimant's symptomatology in light of the objective orthopaedic findings in both the orthopaedic examination and the neurodiagnostic imaging (MRI lumbar spine, MRI left hip and MRI right hip).
>
> [P-6.]

Weiss testified that based on the video he saw, Reyes could have returned to work in December 2016 on modified or light duty—provided it did not involve anything physical and Reyes was no longer taking class-two opioids, which affect cognitive ability—but none was offered, so none was considered. Toward this end, Weiss noted that Paterson could have had Reyes undergo a functional-capacity evaluation, but never required him to do so. As a final comment, Weiss said that he would not have recommended the epidural blocks and facet-joint blocks Sood performed so soon without more information,

but he would have recommended the diagnostic injection Kayal cancelled to obtain that additional information.

Kayal (Part III)

On rebuttal, Kayal confirmed that modified or light duty was never offered, so it was never considered, but that he disagreed with Weiss that the activities of daily living he saw on the video did not involve backward flexion. Kayal then conceded that he never checked the left quadricep for atrophy, that he only examined Reyes on the first and last visits (and that physician's assistants examined Reyes in between), and that he did not (nor did any of the physician's assistants) test Reyes for symptom magnification. Remarkably, Kayal admitted that even though he was going to cut Reyes off from further treatment because he thought Reyes had been lying to him about his symptoms, Kayal (the doctor) kept this information to himself and did not share it with Reyes (his patient) at the follow-up office visit on January 11, 2017.

Then Kayal lied in the medical record that he was going to continue treatment as planned by writing that he was going to perform the hip injections, that Reyes should schedule another follow-up visit in six weeks, that he was going to refer Reyes to another doctor for facet-joint injections, and that Reyes should schedule an appointment with yet another doctor for his lower back pain:

PLAN

- Other
  Appointment
  F/U 6 Weeks
  Appointment
  Scheduled appointment with pain management for lower back pain
  ROBERT A. KAYAL, MD, FAAOS ordered the following therapy
- Transition in care, clinical summary provided

  Lumbar MRI is significant for acute HNP at L5-S1 Causing B/L foraminal Narrowing L>R
  -He continues to complain about back pain and left leg pain

> -EMG of B/L lower extremities is unremarkable
> -He has had 2 LESI with only minimal relief
> -He received SI joint injections with little relief
> *After his hip joint injections I will consider referral to Dr. Aydin for facet joint injections
>
> Left hip—MRI remarkable for labral tear
> -I will now offer him a hip injection for therapeutic and also diagnostic purposes since his pain is very diffuse in regards to the back/hip.
> -He understands that should he get relief with the hip joint injection then we will schedule an arthroscopy for labral debridement.
>
> C Spine—Mild degeneration with muscle spasm
> -He will continue with PT
> -We have authorization for MF TP trigger point injections but he would like to focus on the back
>
> He will continue with Oral NSAIDS as needed for pain
>
> Due to his persistent pain and inability to perform physical duties he will remain out of work until further notice.
>
> [P-3.]

If the record is not clear by now, I believe that Kayal is not a trustworthy witness and I will not credit his testimony.

<u>Injury/Sick-Leave Policy</u>

Brian McDermott is the deputy fire chief for Paterson Fire Department and serves as its executive officer. McDermott was a straightforward and honest witness. In short, McDermott testified that Reyes is in violation of the Injury/Sick-Leave Policy for lying about his injuries and for failing to report for modified or light duty.

McDermott explained that modified or light duty is offered to anyone who is qualified for it, and that Reyes could have been accommodated for it, but McDermott did not testify that Reyes was qualified for modified or light duty or that any accommodation was made for him. Nor did McDermott testify that Reyes was required to report for any. To be sure, McDermott admitted on rebuttal that Kayal had not cleared Reyes for modified

or light duty, and that Paterson could not have put Reyes on modified or light duty without such clearance.

McDermott's testimony aside, a review of the Injury/Sick-Leave Policy readily reveals that the policy does not support the position Paterson asserts. Nowhere in the Injury/Sick-Leave Policy does it say that modified or light duty is available to any or all firefighters; nowhere in the Injury/Sick-Leave Policy does it say that it is the duty or responsibility of the injured or sick firefighter to request or seek modified or light duty; and nowhere in the Injury/Sick-Leave Policy does it say that it is the duty or the responsibility of the injured or sick firefighter to apprise any or all treating physicians about the possibility of modified or light duty.

To the contrary, the Injury/Sick-Leave Policy states that it is the responsibility of the tour commander/division commander to obtain all information necessary to complete the Reporting Sick/Injured form, to obtain specifics about the sickness or injury, or, if unknown, a description of the symptoms. It is the responsibility of the tour commander/division commander to monitor and enforce the policy and procedure. Indeed, it is the responsibility of the tour commander/division commander to check every sick/injured report for correctness and content. Finally, in evaluating fitness for duty, if practical, it is the responsibility of the chief of the Department to require a member to undergo a fitness evaluation.

These are Command's responsibilities, not Reyes's responsibilities, and no one at Command discharged them.

Duty

Abouyan testified that he suggested to Reyes that he return to work on modified or light duty and that Reyes told him that he was in too much pain to do so. Abouyan, however, did not remember when he had this conversation with Reyes. Reyes later testified that Abouyan had this conversation with him in December 2016, and that he did in fact tell Abouyan that he was in too much pain to return to work on modified or light duty, but that he also told Abouyan that Kayal had not cleared him to do so.

Significantly, Abouyan did not testify that he told Reyes to return to work on modified or light duty or that modified or light duty was even available to Reyes.

Abouyan testified that he also spoke to Kayal about Reyes returning to work on modified or light duty, but a preponderance of the evidence does not exist that this conversation ever occurred. First, on cross-examination, Abouyan changed his testimony and stated that he spoke to Kayal's office, not Kayal, about Reyes returning to work on modified or light duty, and that he informed Kayal's office that modified or light duty was available to Reyes. Abouyan said that he even explained to Kayal's staff what he meant by modified or light duty.

Abouyan then guessed that he called Kayal's office in October 2016, before Reyes's follow-up office visit on October 14, 2016, to talk to Kayal's staff about Reyes returning to work on modified or light duty, but Sulayka Perez, the staffperson at Kayal Orthopedic Center who is responsible for the administration of all workers' compensation claims at the orthopedic office, conceded on cross-examination that Abouyan never spoke to her about Reyes or returning him to work on modified or light duty.

Moreover, Perez admitted on cross-examination that she never spoke to Kayal about modified or light duty being available to anyone at Paterson, let alone to Reyes.

Given this discussion, I **FIND** that Abouyan did not tell Reyes, Kayal, or Perez that modified or light duty was available to Reyes or that modified or light duty could be made available to him.

Similarly, I **FIND** that no one else from Paterson told Reyes, Kayal, Perez, or anyone else from Kayal's office that modified or light duty was available to Reyes or how modified or light duty could be made available to him.

In addition, I **FIND** that a preponderance of the evidence does not exist that it was generally known among Paterson firefighters that modified or light duty was available or could be made available to Paterson firefighters at any time.

Indeed, I **FIND** that Paterson had not, in fact, made modified or light duty available to Reyes and had acted, instead, upon Kayal's medical advice that Reyes was incapable of returning to work on full duty and, as a result, excused Reyes from all duty.

Likewise, I **FIND** that Paterson never required Reyes to undergo a fitness evaluation.

To be clear, I **FIND** that Reyes could have returned to work on modified or light duty in December 2016 when the video surveillance was obtained—provided that the work did not involve any physical activity and that Reyes did not need to take any opioids to do it—but modified or light duty was not offered to Reyes and Kayal had not cleared Reyes for any.

Above all, I **FIND** that Reyes was honest about his symptoms and his pain, and what he could and could not do; that Reyes had not lied to anyone about his symptoms and his pain, and what he could and could not do; and that the video did not contradict or contraindicate that Reyes was honest about his symptoms and his pain, and had not lied to anyone about what he could and could not do.

On this score, I **FIND** that Weiss, not Kayal, was a credible witness, and I credit Weiss and his testimony, not Kayal and his testimony.

Finally, I **FIND** that Reyes cannot return to work on full or heavy duty, but that he can return to work on modified or light duty, and that he is willing to return to work on modified or light duty, which Paterson has still not offered or made available to him.

In short, I **FIND** that Paterson has not proven by a preponderance of the evidence any of the specifications it alleges in its Final Notice of Disciplinary Action, or at the hearing, and that Reyes did not engage in any of the misconduct with which he is charged.

DISCUSSION AND CONCLUSIONS OF LAW

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). Thus, an employee's prior disciplinary record is inherently relevant to determining an appropriate penalty for a subsequent offense, In re Carter, 191 N.J. at 483, and the question upon appellate review is whether such punishment is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness," Id. at 484 (quoting In re Polk, 90 N.J. 550, 578, (1982) (internal quotes omitted)). Indeed, progressive discipline may only be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest—such as when the position involves public safety and the misconduct causes risk of harm to persons or property. In re Herrmann, 192 N.J. 19, 33 (2007).

Since I found that Paterson has not proven by a preponderance of the evidence any of the specifications it alleges in its Final Notice of Disciplinary Action, or any of the additional specifications it alleged at the hearing, and that Reyes did not engage in any of the misconduct with which he is charged, I **CONCLUDE** that Paterson has not proven by a preponderance of the evidence any of charges contained in its Final Notice of Disciplinary Action, that the charges against Reyes should be dismissed, and that Reyes should be reinstated to his position of fire captain.

As a result, I further **CONCLUDE** that Reyes should be awarded all requisite back pay, benefits, attorney fees, and costs associated with this case.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that all the charges against Reyes be **DISMISSED**, that Reyes be **REINSTATED** to his position of captain, and that Reyes be **AWARDED** all requisite back pay, benefits, attorney fees, and costs associated with this case.

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 is authorized by law to make a final decision in this case. 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 under N.J.S.A. 40A:14-204.

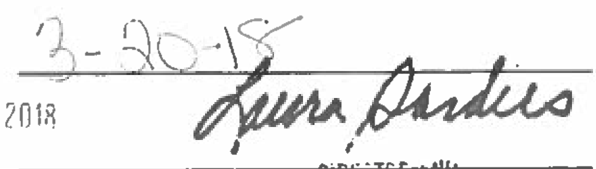
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**,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

3/20/18

DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:



3-20-18

MAR 22 2018

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties:

dr

APPENDIX

Witnesses

For Appellant:

David Weiss
James Reyes

For Respondent:

Robert Kayal
Gabriel Abouyan
Jeff Eisenberg
Samir Goow
Sulayka Perez
Brian McDermott

Documents

Appellant:

P-1 Letter from Kayal to To Whom it May Concern dated December 21, 2016

P-2 Physical Therapy/Occupational Therapy RX's from Kayal dated August 10, 2016, October 14, 2016, and November 16, 2016, together with physical-therapy notes from Totowa Center for Pain Management & Physical Therapy dated August 16, 2016, August 22, 2016, August 30, 2016, September 7, 2016, September 22, 2016, September 28, 2016, and October 5, 2016

P-3 Follow-Up Examination by Kayal dated January 11, 2017

P-4 Letter from Kayal to To Whom it May Concern dated January 5, 2017

P-5 Curriculum Vitae of Weiss revised June 22, 2016

P-6 Independent Medical Evaluation by Weiss dated August 1, 2017

Respondent:

R-1 Final Notice of Disciplinary Action dated February 23, 2017

R-2 Preliminary Notice of Disciplinary Action dated January 23, 2017

R-3 General Order 2014-06, Injury/Sick-Leave Policy, dated September 23, 2014

R-4 Report from Confidential Security Associates dated December 15, 2016

R-5 Report from Confidential Security Associates dated December 24, 2016

R-6 Surveillance video from Confidential Security Associates

R-7 Report from Kayal dated January 11, 2017

R-8 Curriculum Vitae of Kayal

R-9 Letters from Kayal to To Whom it May Concern dated August 10, 2016, September 2, 2016, October 14, 2016, November 16, 2016, and December 9, 2016

R-10 Job description for Fire Captain dated March 7, 2000