

**STATE OF NEW JERSEY**

In the Matter of Robert Figliuolo
Borough of Ringwood, Department of
Public Works

CSC DKT. NO. 2017-3657
OAL DKT. NO. CSV 07672-17

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

ISSUED: MAY 25, 2018 BW

The appeal of Robert Figliuolo, Laborer 1, Borough of Ringwood, Department of Public Works, 30 working day suspension and demotion on charges, was heard by Administrative Law Judge Jude-Anthony Tiscornia, who rendered his initial decision on April 10, 2018. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on May 23, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

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

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 23RD DAY OF MAY, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 07672-17

AGENCY DKT. NO. 2017-3657

**IN THE MATTER OF ROBERT FIGLIUOLO,
BOROUGH OF RINGWOOD, DEPARTMENT
OF PUBLIC WORKS.**

Matthew P. Rocco, Esq., for appellant (Rothman Rocco La Ruffa, attorneys)

Justin D. Santagata, Esq., for respondent (Kaufman Semeraro & Leibman,
attorneys)

Record Closed: March 26, 2018

Decided: April 10, 2018

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Robert Figliuolo (Figliuolo/appellant) appeals demotion to step-one building maintenance worker and thirty-day suspension due to his careless operation of a municipal vehicle.

ISSUE

May the Borough of Ringwood (respondent) demote and suspend appellant based

on his careless use of municipal vehicles while at work?

PROCEDURAL HISTORY

On April 25, 2017, appellant was served with a Final Notice of Disciplinary Action (FNDA) indicating a thirty-day suspension effective March 3, 2017, and a demotion to step-one building maintenance worker effective May 1, 2017. (R-1.) Appellant was found to have violated the following New Jersey Administrative Code:

N.J.A.C. 4A:2-2.3(a): Neglect of duty, incompetency, failure to perform duties, other sufficient cause, conduct unbecoming.

Appellant appealed and The Civil Service Commission, Division of Appeals and Regulatory Affairs, transmitted the instant appeal to the Office of Administrative Law on May 31, 2017. A hearing was conducted on December 19, 2017. Final Submissions were received on March 26, 2018, at which time the record was closed.

FINDINGS OF FACT

The following facts are undisputed and I therefore **FIND** them to be the facts of the case.

Appellant has been employed with the Borough of Ringwood, Department of Public Works since February 26, 2001. Appellant was originally employed as a truck driver, which required a CDL license and daily operation of heavy trucks. Appellant was subsequently demoted to the position of laborer-1 for disciplinary reasons. Borough Director of Public Works Scott Heck testified that the specific incident that gave rise to his demotion to laborer-1 involved appellant improperly operating a heavy truck and sideswiping a building, causing the steps on the side of the truck to tear off. Mr. Heck testified that appellant had a history of improper operation of municipal vehicles. The laborer-1 position does not require a CDL license but does require appellant to routinely operate municipal vehicles that do not require the driver to hold a CDL.

On March 3, 2017, appellant was operating a municipal dump truck during the course of his normal work activity. The truck had a mechanical salt spreader attached to the bed of the truck at the time. The bed of this particular truck had a hydraulic lift which allowed for the bed of the truck to be raised. Upon returning to the municipal garage, appellant proceeded to hose out the back of the truck. To facilitate this maintenance activity, appellant raised the bed of the truck slightly so that the water could flow out.

Appellant then drove the truck from the municipal garage to a local deli, a distance of less than one mile. Appellant had inadvertently left the bed of the truck partially raised while driving, which is against protocol and potentially dangerous. Appellant's co-workers attempted to contact him over the radio to inform him of this error but could not reach him. Appellant testified that his radio was off at the time. Appellant was ultimately contacted via cellphone and instructed to lower the bed of the truck, which he did. Upon returning to the municipal garage appellant was reprimanded. No damage was caused to person or property.

Appellant was served a notice of removal (PNDA) dated March 3, 2017. A departmental hearing was conducted at the municipal level and the removal was subsequently converted to a thirty-day suspension and demotion from laborer-1 to maintenance worker, a position that does not require appellant to operate any vehicle at all.

Appellant testified that he makes less money as a maintenance worker than he did as a laborer. Mr. Heck testified that appellant complained to him regarding the reduced compensation and Heck increased appellant's hours as a courtesy. Heck also testified that the municipality considers appellant's operation of municipal vehicles to be a liability.

LEGAL ANALYSIS AND CONCLUSION

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act

related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority shoulders the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate “if it establishes the reasonable probability of the fact.” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must “be such as to lead a reasonably cautious mind to a given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant does not dispute that he improperly operated a municipal dump truck by driving the truck with the bed partially raised. Rather, appellant argues that this inadvertent mistake caused no harm to person or property and the penalty imposed is disproportionate to the offense and must be overturned.

1. Inadvertent mistake resulting from lapse of judgement is grounds for termination

Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline). In the case at bar appellant's employment required operating a municipal vehicle on the public roadways in the normal course of his work. An integral aspect of this charge of duty is the responsibility to operate the vehicle safely at all times. The mere fact that good fortune did not allow for death, destruction, or injury to person or property to occur should not negate the inherent careless nature of the misconduct and corresponding need for discipline.

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).¹ "In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change." Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a county treasurer who couldn't balance the books, after the auditors tried three times to show him how). In the case at bar the appellant has exerted incompetent behavior on more than one occasion and the municipality contemplated terminating appellant for his misconduct but ultimately resolved to suspend and demote appellant instead. I **FIND** that there were grounds for termination under the circumstances set forth herein and I further **FIND** that the penalty sought by respondent is less severe and should therefore be upheld.

2. Appellant had been progressively disciplined

The concept of progressive discipline is often used as a guiding principle when determining the degree of severity and overall fairness of an agency's disciplinary action against its own employee. Progressive discipline allows for an employee's past disciplinary record to be used as "guidance in determining the appropriate penalty for the current specific offense. See W. New York v. Bock, 38 N.J. 500 (1962).

In the case at bar, the appellant started out at a relatively high paying "truck driver" position and was subsequently demoted to a lower paying "laborer-1" position because of disciplinary infractions, many of which stem from his improper operation of municipal vehicles. While employed in the position of laborer-1 appellant continued to operate some municipal vehicles, including the dump truck at the center of the forgoing matter. The respondent ultimately found appellant to be a liability on the road and demoted him to a position which would not involve the operation of any municipal vehicles whatsoever. Respondent could have sought to uphold a removal as indicated in the PNDA but instead chose to apply progressive discipline and move towards a less severe course of action.

¹ Gaines had a substantial prior disciplinary history, but the case is frequently quoted as a threshold statement of civil-service law.

I **FIND** that the discipline being appealed herein is logically connected to appellant's misuse of municipal vehicles and is the result of progressive discipline and I **CONCLUDE** appellant's demotion and the corresponding suspension is warranted and is therefore upheld.

ORDER

Based upon the foregoing, it is **ORDERED** that the forgoing appeal is **DISMISSED**.

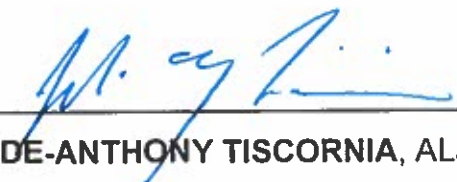
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, 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.

April 10, 2018

DATE




JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

Date Mailed to Parties:

APR 11 2018

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DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

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APPENDIX

LIST OF WITNESSES

For Appellant:

Leroy Melmstone

Robert Figliuolo

For Respondent:

Scott Heck

Vincent Super

LIST OF EXHIBITS REFERED TO IN EVIDENCE

For Appellant:

None

For Respondent:

R-1 Final Notice of Disciplinary Action dated April 25, 2017