



## STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE ACTION  
 OF THE  
 CIVIL SERVICE COMMISSION

 In the Matter of Sean Tonner, Edna  
 Mahan Correctional Facility,  
 Department of Corrections

 CSC Docket No. 2017-646  
 OAL Docket No. CSV 12882-16

ISSUED: SEPTEMBER 21, 2018 (ABR)

The appeal of Sean Tonner, a former Senior Investigator, Parole and Secured Facilities,<sup>1</sup> with the Edna Mahan Correctional Facility, Department of Corrections (DOC), of his 10 working day suspension, on charges, was heard by Administrative Law Judge Carl V. Buck, III (ALJ), who rendered his initial decision on August 2, 2018. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on September 5, 2018, did not adopt the ALJ's recommendation to uphold the 10 working day suspension. Rather, the Commission modified the penalty to a five working day suspension.

## DISCUSSION

The appointing authority suspended the appellant for 10 working days on charges of neglect of duty and other sufficient cause. Specifically, it asserted that on July 2, 2016, the appellant, while assigned to be "on-call," failed to respond to emails and telephone calls from his supervisor which were made to his State-issued and personal cellular telephones during a two-hour period. The appellant was

<sup>1</sup> The appellant was demoted to the title of Correctional Police Sergeant, effective May 27, 2017, due to a subsequent disciplinary action. An appeal of that disciplinary action is currently pending before the Commission as a separate matter.

located after his supervisor contacted the Palmer Township,<sup>2</sup> Pennsylvania Police Department (PTPD) and had it check on the well-being of the appellant. PTPD officers located the appellant at his residence and directed the appellant to contact his supervisor. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

In his initial decision, the ALJ found that at the end of his shift on July 1, 2016, the appellant's supervisor informed him that due to scheduling changes, he was to be placed "on call" effective immediately. Prior to being placed "on call," the appellant planned to attend a party with M.M., his girlfriend, but after he was placed "on call" he stayed home and M.M. attended without him. Around midnight on July 2, 2016, the appellant was awakened when M.M. returned home, entered their bedroom and physically assaulted him with her fists and a metal beverage container. The appellant called the PTPD and reported the incident. However, M.M. left the premises before the PTPD arrived on scene. Later that night, M.M. returned to the home and the appellant placed a second call to the PTPD. The PTPD returned to the residence and arrested M.M. on a domestic violence charge. After M.M.'s arrest, the appellant drove M.M.'s daughter to the home of M.M.'s mother in Phillipsburg, New Jersey. When the appellant went back to sleep at approximately 4:30 AM on July 2, 2016, he had his State-issued cellular phone near him,<sup>3</sup> but not his personal cellular phone. Representatives of the PTPD notified the appellant's supervisor of the domestic violence incident. As a result, between 7:33 AM and 9:31 AM on July 2, 2016, the appellant's supervisor made seven attempts to contact the appellant; *i.e.*, three emails, two calls to his State-issued cellular phone and two calls to his personal cellular phone. After the appellant failed to respond, the appellant's supervisor requested that the PTPD check on the appellant's well-being. The PTPD reported to the appellant's home and told him to contact his supervisor, which he did at approximately 9:41 AM on July 2, 2016. The ALJ found that the appellant was aware of the appointing authority's directives requiring investigative personnel in possession of a State-issued communication device to carry it on their person and be able to respond to calls and emails within a "reasonable" or "immediate" timeframe. Based upon the foregoing, the ALJ found that the neglect of duty charge was supported by the appellant's failure to respond to his supervisor while "on call" due to his failure to turn his State-issued cellular phone to "on" or "ring" after a training session the previous day. Additionally, the ALJ sustained the charge of other sufficient cause, finding that the appellant failed to discharge his duties in accordance with DOC policy, as he did not respond to his supervisor within a "reasonable" or "immediate" timeframe while "on call."

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<sup>2</sup> The ALJ's mistakenly refers to the Palmer Township Police Department as the Northampton Township Police Department.

<sup>3</sup> The ALJ found that the appellant had put is ringer on his State-issued phone on vibrate during a training session he attended on July 1, 2016 and had not turned the ringer back on.

In weighing the appropriate penalty, the ALJ considered the appellant's employment record, which included three commendations and three disciplinary actions since he began his employment with the appointing authority in 1995. The ALJ noted that the appellant received an official written reprimand for reporting for duty late in December 1998, an official written reprimand for an "emergency comp day" request in December 2003 and a three working day suspension for charges related to his failure to properly complete a work assignment in September 2015.<sup>4</sup> The ALJ stated that although the nature of the domestic violence incident was a mitigating factor, neither it nor the commendations in his employment record warranted a reduction of the penalty. Therefore, the ALJ affirmed the 10 working day suspension.

In his exceptions, the appellant argues that his failure to respond to his supervisor's phone calls and emails do not support the disciplinary charges because he was the victim of a domestic violence attack and the calls from his supervisor had nothing to do with the appellant's work obligations or his "on call" status. The appellant argues that the neglect of duty charges were not warranted because the ALJ ignored several key facts, including that the appellant had two phones on him that night, but "temporarily" lost one during the domestic violence attack; that the applicable DOC directives did not prohibit "on call" employees from placing their phones on vibrate; and that the appointing authority had not previously disciplined other employees who failed to call back immediately while "on call." Additionally, the appellant argues that the ALJ failed to accord proper weight to the effect that the trauma of the domestic violence attack had on the appellant. Specifically, he contends that he did not violate the applicable DOC policies because his supervisor's calls on July 2, 2016 were made in the capacity of a friend wishing to check on his well-being, rather than involving a work incident. Furthermore, he argues that the timing of his response to his supervisor's calls was reasonable given the chain of events that stemmed from the domestic violence incident, which occurred shortly after midnight. He argues that his supervisor testified that other investigators had failed to respond to communications within 15 minutes while "on call," but were not subjected to disciplinary action and he notes that the appointing authority's Disciplinary Action Policy prescribes an official written reprimand as the appropriate sanction for a first neglect of duty violation. Finally, the appellant submits that the penalty was also unwarranted given the three commendations in his employment record and the lack of any disciplinary charges related to neglect of duty in his more than 20 years of service prior to this incident.

In reply, the appointing authority argues that the ALJ properly considered the impact of the subject domestic violence assault, having identified it as a mitigating factor in his initial decision. It argues that the appellant's actions following the assault show that he should have been able to, at minimum, respond

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<sup>4</sup> The ALJ's initial decision states that the appellant's three working day suspension occurred in September 2005. However, a review of the record indicates that this suspension occurred in 2015.

to his supervisor's emails on the morning of July 2, 2016. The appointing authority also contends that the DOC's rules and regulations make clear that an investigator assigned to be "on call" must respond in a "reasonable" or "immediate" timeframe, 24 hours per day, seven days per week, even if the call does not concern an incident at a facility. It argues that the appellant's response to his supervisor, more than two hours after he was initially contacted while "on call," was not "reasonable" or "immediate" as required. Further, it maintains that the appellant's failure to respond to his supervisor's calls under these circumstances is not a mistake that is justified by the assault. Accordingly, it maintains that the ALJ properly sustained the charges and the 10 working day suspension.

Upon its *de novo* review of the record, the Commission agrees with the ALJ regarding the charges but does not adopt the ALJ's recommendation to uphold the 10 working day suspension. In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. Moreover, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). Further, the Commission notes that a law enforcement officer is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). The Commission is particularly mindful of this standard when disciplinary action is taken against a supervisory law enforcement officer. Upon an independent review of the record and in consideration of the underlying incident, the Commission concludes that a 10 working day suspension is too severe of a penalty. In the instant matter, while the appellant failed to promptly respond to the appointing authority's attempts to contact him while he was "on call," the Commission is sympathetic to the fact that the appellant was the victim of the domestic violence incident which caused the attempts to contact him. As the officer "on call," it was the appellant's responsibility to ensure that he could be contacted by the appointing authority and that he respond within a reasonable amount of time, or that he request the appointing authority to have someone else be contacted for "on call" matters. However, while the facts of the underlying incident do not excuse the appellant's failure to promptly respond to his supervisor while "on call,"

they do offer mitigating circumstances. The Commission notes that after the appellant was assaulted around midnight on July 2, 2016, he had to address his injuries, call the PTPD to have it respond to his residence twice and ensure that his attacker's young daughter was placed into the proper care of a relative. The record indicates that he did not resolve these issues until approximately 4:30 AM. Moreover, the appellant was a long-term employee whose disciplinary history only included minor discipline. Given these circumstances, a more fitting penalty is a five working day suspension, which gives the appellant sufficient notice that similar conduct in the future could result in major discipline. Accordingly, the foregoing circumstances provide a sufficient basis to modify the 10 working day suspension imposed by the appointing authority to a five working day suspension. See *N.J.S.A. 11A:2-19* and *N.J.A.C. 4A:2-2.9(d)*.

Since the penalty has been modified, the appellant is entitled to five days of back pay, benefits and seniority pursuant to *N.J.A.C. 4A:2-2.10*. However, the appellant is not entitled to counsel fees. Pursuant to *N.J.A.C. 4A:2-2.12(a)*, an award of counsel fees is appropriate only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in any disciplinary appeal is the merits of the charges, not whether the penalty imposed was appropriate. See *Johnny Walcott v. City of Plainfield*, 282 *N.J. Super.* 121, 128 (App. Div. 1995); *James L. Smith v. Department of Personnel*, Docket No. A-1489-02T2 (App. Div. Mar. 18, 2004); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In this case, the Commission agreed with the ALJ's determination sustaining all of the charges and only modified the penalty. Thus, the appellant has not prevailed on all or substantially all of the primary issues of the appeal. Consequently, as the appellant has failed to meet the standard set forth at *N.J.A.C. 4A:2-2.12(a)*, counsel fees must be denied.

### ORDER

The Commission finds that the appointing authority's action in imposing a 10 working day suspension was not justified. Therefore, the Commission modifies the 10 working day suspension to a five working day suspension. The Commission further orders that the appellant be granted five days of back pay, benefits and seniority. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned during this period. Proof of income earned shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Counsel fees are denied pursuant to *N.J.A.C. 4A:2-2.12*.

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 5<sup>TH</sup> DAY OF SEPTEMBER, 2018

*Deirdre' L. Webster Cobb*

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 13882-16

AGENCY DKT. NO. 2017-646

**IMO SEAN TONNER, EDNA MAHAN  
CORRECTIONAL FACILITY,  
DEPARTMENT OF CORRECTIONS.**

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**Matthew Areman, Esq.**, for Sean Tonner, appellant (Markowitz & Richman, attorneys)

**Karen Campbell**, Legal Specialist, appearing pursuant to N.J.A.C. 1:1-5.4(a) 2, for Edna Mahan Facility, Department of Corrections, respondent

Record Closed: March 19, 2018

Decided: August 2, 2018

**BEFORE CARL V. BUCK III, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Sean Tonner, a Senior Investigator at the Edna Mahan Facility Correctional Facility for Women of the State of New Jersey, Department of Corrections (respondent, Mahan, or DOC), appeals disciplinary action seeking a suspension for ten (10) working days for 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), specifically violations of Human Resource Bulletin (HRB) 84-17, as amended, "B.1. Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would not result in danger to persons or

property"; HRB 84-17, as amended, "D.7. Violation of administrative procedures and/or regulations involving safety and security"; and HRB 84-17, as amended, "E.1. Violation of a rule, regulation, policy, procedure, order or administrative decision" (R-1).

The appellant denies the allegations. He asserts that he neither neglected his duty nor violated these administrative procedures and or regulations involving safety and security; specifically, in relation to an incident which occurred on July 2, 2016. Tonner seeks back pay, benefits, seniority, interest, attorney's fees, costs and additional relief deemed appropriate.

### PROCEDURAL HISTORY

On June 6, 2016, Mahan issued a Preliminary Notice of Disciplinary Action (PNDA) for the charges and specifications made against Tonner (R-1). This was served on Tonner on July 12, 2016. A disciplinary hearing was held on August 10, 2016 and on August 23, 2016 Mahan issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges in the PNDA.

On August 30, 2016 Tonner requested a hearing, and on September 6, 2016 the Civil Service Commission transmitted the contested case to the Office of Administrative Law (OAL) where it was filed on September 13, 2016. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. In October 2016, this matter was assigned to the Honorable Joseph Ascione, ALJ who entered a pre-hearing order on April 5, 2017 detailing the issues to be addressed. This matter was subsequently reassigned to the undersigned in October 2017. The hearing was conducted on October 26, 2018 and December 18, 2017. The record was left open for the parties to submit post-hearing briefs and responses following their receipt of the transcripts of the proceedings. The transcript was delayed, and briefs were to be submitted by both parties by March 9, 2018. The record closed on March 19, 2018 and extensions were requested by the undersigned and granted for the filing of this Initial Decision.



**FACTUAL DISCUSSION AND FINDINGS**

Tonner has been employed by the DOC in the Edna Mahan Correctional Facility for Women since 1995 (J-1). In 2001, he was promoted to the rank of Corrections Sergeant (J-2). He worked with the Special Operations Group from 2001 to 2005 and in 2005 he joined the Special Investigations Division (SID) and served with SID until the date of the incident (J-2).

On July 12, 2016 Tonner was served with a preliminary notice of disciplinary action (PNDA) recommending a ten (10) working day suspension for failure to respond to answer his telephone on July 2, 2016 (R-1). On July 15, 2016 Tonner filed notice of his desire to appeal the disciplinary action. On August 10, 2016 Tonner's appeal was heard by way of an internal disciplinary appeal proceeding with the employers OER legal specialist, Tamara Rudow, presiding(J-3). August 23, 2016 Rudow issued her decision, upholding the disciplinary decision (J-3). On August 23, 2016 Mahan issued a final notice of disciplinary action (FNDA) against Tonner upholding Tonner's ten (10) working day suspension (R-2). The present appeal was timely filed and challenges the employer's imposition of discipline against Tonner.

The preceding facts were stipulated to by the parties through the introduction of Joint Exhibits J-1 through J-4 and are not disputed and I **FIND** such as **FACT**. I also **FIND** the following "background synopsis" as **FACT**:

On July 2, 2016, Tonner was serving in an "on-call" capacity at Mahan. On that day, during an approximately two-hour period, he failed to respond to telephone calls and emails from his supervisor at Mahan, Principal Investigator Jerome Scott (Scott). These attempts at contact were made by email and by calling his work-issued and personal cellular telephones. Mahan then requested that the Palmer Township police department conduct a "well check" on Tonner, the result of which was that Tonner was notified to contact his supervisor, Scott.

Tonner relayed to Scott that Tonner's work issued cellular telephone was turned "off" the day before while Tonner attended a training class for the department.<sup>1</sup> They also discussed the domestic violence incident of the evening before.

Information on the domestic violence incident was detailed in a report prepared by Officer John Billiard of the Palmer Township Police Department (R-12) and in an arrest report regarding M.M.<sup>2</sup> (R-12). Information on the domestic violence incident was also provided through an email submitted by Tonner to Scott at 10:16 a.m. on July 2, 2016 (R-11).<sup>9</sup>

### TESTIMONY

#### **Jerome Scott**

Principal Investigator Jerome Scott testified on behalf of respondent. He has been employed with the DOC since April 1995. He testified to his employment with the Special Investigations Division (SID) ultimately becoming a supervisor at Mahan in August 2015.

Scott testified to the following:

On July 2, 2016, at approximately 7:30 a.m., he was contacted by Mahan Administrator William Anderson. Anderson notified Scott that the shift commander at Mahan, Lieutenant Ricky Nestor, was contacted by the Northampton County (Pennsylvania) jail. The jail notified Nestor that M.M., a civilian employee at Mahan, had been arrested on a domestic violence charge which involved Tonner. Because of receiving that information, Scott contacted the jail in Northampton County and attempted to contact Tonner.

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<sup>1</sup> The parties refer to the state issued telephone as being "off" and on "vibrate" the result being that the telephone did not issue an aural notice of an incoming message or incoming telephone call.

<sup>2</sup> Initials are used as "M.M." is the subject of a criminal complaint.

Scott was concerned for Tonner's well-being, as the information he had received was regarding a domestic violence incident. He was Tonner's supervisor and considered himself to be a friend to Tonner. Again, he related his concern about Tonner's well-being. He contacted Tonner by email on July 2, 2016 at 7:36 a.m. stating "I need you to call me as soon as possible" (R-4). He sent Tonner another email at 8:26 a.m. stating "Sean, please call me immediately" (R-5). At 9:31 a.m. he sent a third email with the same message as the 8:26 email (R-6). These email messages were sent on July 2, 2016.

Scott attempted to call Tonner, several times, using both Tonner's state issued cellular telephone and personal cellular telephone. During this period, Scott was in communication with Chief Manuel Alfonso (Alfonso), Chief at the time of the incident, and the Assistant Chief (at the time of the incident) Duane Grade and relayed to them the he (Scott) could not reach Tonner. Scott expressed to them that he was concerned, as Scott was unable to reach Tonner by telephone or email. At a certain point Scott contacted the Palmer Township Police Department and spoke with Sergeant Thomas Cardell and requested a "well check" at Tonner's residence.

Thereafter, Scott was advised by Sergeant Cardell that two officers had contacted Tonner at approximately 9:41 a.m. Scott was then contacted by Tonner who informed Scott that his state issued cellular telephone was on silent because Tonner had attended a training class the previous day (turning his work cellular telephone on silent as to avoid a disruption to the class) and forgot to turn the cellular telephone back "on." Scott stated that turning your state issued cellular telephone off for more than nine hours constituted a violation, as investigators need to be accessible and it could further constitute a violation if you are on-call.

During the telephone call, Scott and Tonner discussed the domestic violence incident of the night before.

Scott identified interoffice communications relating to answering telephone calls while "on call". Specifically, relating information contained in an Inter-Office

Communication (communication) from Chief Alfonso, dated November 6, 2014. That communication related what constitutes an "immediate timeframe" for a response (R-10). Scott state that after the issuance of that communication he called a meeting of his staff to discuss the Internal Management Procedure (IMP) Policy IMP-001 (policy). At that meeting Scott advised Tonner, and others, of the employee's responsibility regarding response to a message or contact. These events occurred before the incident which led to the disciplinary charges Tonner is facing here.

At the point Scott was contacted by Tonner, Scott was not concerned about a potential violation of an IMP but was solely concerned about Tonner's well-being. Shortly after speaking with Tonner, Scott wrote an email to Chief Alfonso at 10:31 a.m. detailing the background of the incident and his contact with Tonner (R-2). Scott stated that he was directed by Alfonso to prepare a second email, sent at approximately 12:16 p.m., detailing his conversation with Tonner and the time frame between the ending of the training class (12:00 p.m. July 1, 2016) and his contact with Tonner (9:41 a.m. July 2, 2016). During this time Tonner's state issued cellular telephone was on "vibrate" mode (R-3).

Scott further testified that he wrote two emails, the second of which would be sent to the State Commissioner of Corrections (to whom the SID unit reported directly). He testified that he was specifically told by Alfonso to prepare the second email as this would be sent to the Commissioner. Scott further discussed the IMP policy as issued on November 6, 2014 (R-10) and a follow-up email sent by Scott on November 24, 2015 (R-7) at the direction of Alfonso to guarantee that members of the investigative staff were aware of the policy and that it needed to be adhered to. The meeting of November 24, 2015, occurred several months before the incident date.

Scott stated that the "immediate timeframe" as mentioned in the IMP and the communication previously mentioned, constituted a period of fifteen minutes. The period of fifteen minutes was taken from Scott's interpretation of what constitutes "immediate." He also testified that there is not a policy or memorandum or any other documentation which states that an immediate timeframe period is fifteen minutes.

Scott stated that Tonner had been involved in two prior incidents where Tonner had not responded to a call within a fifteen-minute time frame. On one occasion Tonner was able to be reached on his personal cellular telephone. The second was an incident when Tonner did not report to work. In this those two incidents Tonner was not disciplined for not responding; however, there was a letter of counseling issued to Tonner (although from the testimony it was not clear as to whether the letter was issued for the nonresponse call incident or for another incident relating to an inappropriate language contained in an email).

On cross-examination, Scott changed his statement regarding the number of times he attempted to contact Tonner by telephone. Scott originally testified that he attempted to contact Tonner a total of seven times by telephone but modified his statement that he attempted to contact Tonner a total of seven times; three times by email and four times by telephone. Scott called Tonner's state issued cellular telephone twice and his personal cellular telephone twice.

Chief Investigator Duane Grade (Grade) then testified for the respondent. He testified to his background and experience with the DOC going back to January 1994. He left the DOC in 2008 for a position with an outside company, returning to DOC in 2010. He was promoted to Assistant Chief (now "Deputy Chief") in 2013 and served in that title until June 2017 when he was promoted to Chief Investigator. As Chief Investigator he supervises 110 persons, 83 of which are investigators and reports directly to the Commissioner of the DOC.

Grade testified to the following:

He identified IMP 001 for the SID (R-14) and the content of the document, the timeframe needed for immediate response regarding contact and he addressed the supplement to the internal management procedure. The supplement was a notification put out by former chiefs regarding cellular devices assigned to investigative staff. He related his knowledge and opinion regarding "immediate timeframe" - that being not a minimum timeframe; but stating that a two-hour and eight-minute time frame (the time

frame involved here as the first attempted contact was at 7:36 a.m. and Scott was contacted by Tonner at 9:41 a.m.) is unacceptable. Grade further detailed Tonner's work history. He stated that in reviewing discipline, an evaluation of the incident and determination as to what constitutes appropriate discipline, is to be considered. He was aware that chiefs have consulted with the Office of Employee Relations (OER) for advice and guidance in disciplinary matters and that SID only recommends a sanction. SID does not determine the number of days or whether a person should be removed. They consult with the OER and make a recommendation.

On cross-examination, Grade testified that he was not involved in this disciplinary matter. As Deputy Chief, he was appointed as management's representative for the disciplinary hearing at the departmental level. Also, on cross-examination, he was questioned on the issues of "reasonable timeframe" and "immediate timeframe." He stated that, in his consideration, they were the same thing.

Grade also testified to the testimony of Chief Alfonso at the departmental hearing. Specifically, Chief Alfonso's statement that he reviews cases regarding failure to call on a case-by-case basis, considering the totality of the circumstances. Chief Grade also stated that it was his practice to follow the same type of review and look at the totality of the circumstances in each case involved. He then testified as to prior disciplinary actions of Tonner.

Grade further testified to the practice of maintaining contact through his cellular telephone, specifically his cellular Blackberry, as provided by the DOC.

### **Appellant**

#### **Sean Tonner**

Senior Investigator Sean Tonner testified on his own behalf.

Tonner testified that he had been employed with the DOC for approximately twenty-two years. He currently holds the rank of Sergeant and on July 2, 2016, had the title Senior Investigator. He had that title for approximately twelve and half years. He stated that, on the date in question, he was the senior investigator assigned to be on call.

Tonner testified to the following:

The protocol for being "on call" was that the institution would reach out to you if there was an event or something which required an investigator to be present. During the twelve and half years he had been at Mahan, he said there had not been a meeting or direction regarding the issue of "timeframe." Tonner stated that he did not recall the specifics of the meeting that investigator Scott testified to, which occurred in November 2015. There were a number of meetings, which were frequently conducted around lunch, where a number of matters could be discussed. He did not recall specifically discussing the contents of IMP-001 during one of those meetings.

Prior to the July 2016 event, Tonner had not been charged with failing, refusing or not responding, in a timely fashion, to a telephone call or email while he was "on call."

He then discussed the events which occurred in the evening of July 1, 2016 into July 2, 2016. He was informed that he was on call effective July 1, 2016. The call schedule calendar (put out six months in advance) stated that he was to begin call duty on July 4, 2016. Renée Caldwell, the individual scheduled to be on call on July 1, had told Scott she felt she had too many holidays included in her "on call" time; therefore, Scott changed Tonners "on call" status and Tonner was told this on July 1.

On that date he resided with his girlfriend who was a civilian employee of the DOC, M.M. He also resided with M.M.'s twelve-year-old daughter. Tonner and M.M. had planned to go to a birthday party for a relative of M.M. on Friday night, July 1. However, Tonner informed M.M. that he was on call and felt it would be best for him to

stay home - rather than traveling forty-five minutes to an hour away. M.M. was not happy and went to the party. He contacted her by text several times and ultimately went to bed. After falling asleep he was awakened by the door opening, the lights coming on and being hit by M.M. M.M. struck Tonner with her fists and struck Tonner in the head and face with a stainless-steel object<sup>3</sup>. He identified a photograph of the metal container he was struck with (P-1(1)).

At that point he jumped out of bed and separated himself from M.M. and told her that he was going to call the police department. He did call the police, but by that time the police arrived, M.M. had left. The police arrived, saw the condition of the house, saw the metal container that caused Tonner's injuries and called a first aid squad.

Tonner identified a picture of his head after the event, although he did not recollect who held the camera or took the picture (P-1(2)-(5)). Tonner refused to go to the hospital and told the police that he would contact them if M.M. returned. He felt embarrassed. He then cleaned up the bedroom and at some point, thereafter, M.M. returned to the house. Tonner discovered her asleep and called the police who returned to the house and took M.M. into custody. This was approximately 1:30 a.m. on July 2, 2016.

Tonner then identified the police report from the Palmer Township Police Department (P-2). The document stated that M.M. was turned over to staff at approximately 3:00 a.m. She was charged with simple assault and harassment and released. Charges were pressed by the police department. After the arrest, Tonner felt that M.M.'s twelve-year-old daughter should be in the care of a family member, not him. He contacted M.M.'s mother and informed her what occurred. He then drove M.M.'s daughter to her grandmother's home in Phillipsburg.

He then returned to his house at approximately 4:30 a.m. He went to bed after affixing his CPAP device. He did not have both his telephones with him when he went

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<sup>3</sup> This appears to be a YETI brand stainless-steel thermos or coffee cup.



to bed at 4:30 a.m., but he did have his work issued telephone with him.<sup>4</sup> He was unable to locate his personal cellular telephone (which he found the next day downstairs). He presumed that his personal telephone had been thrown at some point.

He stated the telephone was on vibrate. He fell asleep and stated that the next thing he recalled was pounding at the door and the dog barking. He went downstairs to answer the door and saw two police officers from Palmer Township. They were not same officers who had responded to the incident the night before. They asked his identity and told him that his office was looking for him and that his supervisor wanted Tonner to reach out to him.

He then contacted Scott. Scott asked if Tonner was all right - as Scott had received word that a domestic violence incident had occurred at the house. Tonner explained to Scott what happened, Scott discussed the domestic violence protocol and a number of other issues and Scott stated that the Chief wanted a report on what occurred. Tonner told Scott that as he only had his Blackberry, and it would be difficult to type a report on the Blackberry, that the report could wait until Monday; but Scott stated that the Chief wanted the report "now" to which Tonner replied that he would do his best.

Scott did not mention any violation of the on-call policy and they did not discuss the on-call policy. When Scott asked why Tonner did not answer the telephone, Tonner's response was that he went to training yesterday (July 1) and he was talking on the telephone now (meaning as he was speaking with Scott). When he went to the training he might have put the telephone on vibrate - but he was not certain. He checked the telephone after speaking with Scott and the telephone had battery content and was on vibrate.

On July 12, 2016, Tonner was served with a PNDA. Between July 2, 2016 and July 12, 2016, no one asked him about the on-call issue nor was he interviewed as part

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<sup>4</sup> He stated he had both telephones with him when going to sleep initially before the domestic violence event.

of an investigation. On July 12, 2016, he was scheduled to see a therapist and, as the therapist had an earlier availability, Tonner asked his supervisor (Scott) if he could leave early to go to his therapy session. As Tonner was leaving, Scott took the document (the PNDA) out of the printer signed it and handed it to Tonner. Tonner stated he was flabbergasted when receiving this as his experience in SID was that the "call back" timeframe was not strictly enforced. Tonner has, in the past, taken more than fifteen minutes return a telephone call while he was "on call" and had never been disciplined for such delay. On questioning, he stated that others he worked with, such as Renee Caldwell and Michael Kubik had taken longer than fifteen minutes to return calls and without disciplinary consequences.

On cross-examination it was established the Tonner still resides with M.M.

### **Respondent**

#### **Michael Kubik**

Senior Investigator Michael Kubik (Kubik) testified for the respondent. Kubik testified to his background and experience since joining the DOC in April 1996. Kubik testified to his experience in SID.

Kubik testified to the following:

He was question to his opinion as to an "immediate timeframe". Kubik's position was that "immediate" meant "immediate". A two-hour delay was not reasonable. His interpretation of when an officer is on call a "reasonable timeframe" was the same thing as "immediate". In this context the two were the same. A reasonable delay would be if an individual was cutting the grass and did not hear a telephone or if there was something drastic which occurred - such as a death in the family. The purpose of "on call" was for the facility and the necessity of having an officer available.

After reviewing the evidence presented at the hearing as well as having the opportunity to observe the witnesses and assess their credibility, I **ALSO FIND** the following:

1. Tonner is an employee of the Edna Mahan Correctional Facility under the New Jersey Department of Corrections. He has been employed by the Department of Corrections since 1995 and has held the title of senior investigator with SID for twelve and one-half years.
2. Tonner was scheduled to be "on call" for the period commencing July 4, 2016. Due to scheduling changes he was informed at the end of his shift on July 1, 2016, that he was to be assigned as the "on call" officer effective immediately.
3. During that day he had attended a work training session during which he had placed his state issued cellular device on vibrate or off.
4. He had scheduled with his live-in girlfriend M.M. to attend a birthday party that evening. On the date of the event, Tonner resided with M.M. and M.M.'s twelve-year-old daughter.
5. On the evening of July 1, 2016, M.M. left to attend the birthday party. The parties had some contact via text message during the evening and Tonner went to sleep with both his cellular telephones.
6. Tonner was awakened by M.M. who proceeded to physically assault him with her fists and a metal tube object.
7. Tonner called the Northampton Township Police Department who responded to the scene and ultimately, during a second visit to the house, arrested M.M. on a domestic violence charge.
8. Tonner declined to be transported to a hospital.

9. Tonner decided that M.M.'s twelve-year-old daughter would be better suited by staying with a relative. Tonner contacted M.M.'s mother and drove the twelve-year-old to M.M.'s mother in Phillipsburg.
10. Tonner returned to the house at approximately 4:30 a.m., at which point he affixed his CPAP device and went to bed.
11. Tonner had his work issued cellular telephone with him but did not have his personal cellular telephone.
12. During the evening Scott was notified by representatives of the Northampton Township Police Department of the domestic violence incident which occurred at Tonner and M.M.'s residence. Scott attempted to contact Tonner three times by email and four times by telephone call (twice each to his work cellular telephone and to his personal cellular telephone) between the timeframe 7:33 a.m. and 9:31 a.m. on July 2, 2016.
13. Tonner did not respond to the emails or telephone calls.
14. Scott requested that the Northampton Township police conduct a well check at Tonner's house and the police did conduct a well check and informed Tonner to contact his superior, Scott.
15. Tonner contacted Scott at approximately 9:41 and recounted that the evening's events. The issue as to violation of the on-call policy was not discussed.
16. On September 12, 2016, Tonner was served with a PNDA for the charges detailed therein.
17. On August 10, 2016, a disciplinary hearing was held during which the notices of violation measures issued in the PNDA of September 12, 2016, were upheld.
18. A FNDA was issued to Tonner on August 23, 2016.

## LEGAL ANALYSIS AND CONCLUSIONS

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's status as a correction's officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

**N.J.A.C. 4A:2-2.3(a)(7)**

**Neglect of Duty**

Neglect of duty has been interpreted to mean that “an employee . . . neglected to perform an act required by his or her job title or was negligent in its discharge.” In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009) (citation omitted), adopted, Civil Service Commission (March 27, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>. The term “neglect” means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). “Duty” means conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

In the within matter, the record reflects that appellant did not respond to several attempts to reach him by his supervisor, Scott. Scott sent three emails between 7:41 a.m. and 9:31 a.m. He called appellant’s personal cellular telephone twice and appellant’s work issued cellular telephone twice – all attempts at contact going unanswered. As a senior investigator, appellant was aware of his duties and obligations of being “on call.” When appellant turned his work issued cellular telephone to “off” or “vibrate” during a training class, appellant should have returned the telephone to “ring” or taken steps to be aware if the telephone was being used in an attempt to contact him. This behavior from a supervisor clearly could adversely affect a situation at the facility in the event that appellant was needed.

While much of the testimony at the hearing revolved around the domestic violence incident which occurred overnight of July 1, 2016 to July 2, 2016; however, the nexus to the incident is Tonner’s turning his state issued cellular device to “off” or “vibrate” during the training session on July 1, 2016, and neglecting to return the device

to an "on" or position where it would issue an aural notice of an incoming message or incoming telephone call. This action (or here, inaction) constitutes neglect.

Based upon the foregoing, I **CONCLUDE** that the DOC has proven by a preponderance of the credible evidence that the charge of neglect of duty, N.J.A.C. 4A:2-2.3(a)(7), should be and hereby is sustained.

Appellant has also been charged with violating HRB 84-17, as amended; "B.1. Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would not result in danger to persons or property"; "D.7. Violation of administrative procedures and/ or regulations involving safety and security"; and "E.1. Violation of a rule, regulation, policy, procedure, order or administrative decision."

**Human Resource Bulletin (HRB) 84-17**

HRB 84-17, as amended, provides in pertinent part as follows:

The penalty imposed must be within the range of sanctions set forth in this bulletin for the particular type of offense, unless consideration of mitigating or aggravating factors would cause it to be inappropriate. Mitigating or aggravating factors that may be considered are length of service, total employment record and/ or other legitimate circumstances.

In any disciplinary matter, reference must always be made to the collective bargaining agreement covering the disciplined employee, relevant Department of Personnel Rules, appropriate Department bulletins or memoranda, the Handbook of Information and Rules for Employees of New Jersey Department of Corrections, and/or the Law Enforcement Personnel Rules and Regulations.

**B1 Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would not result in danger to persons or property**

First, pursuant to HRB 84-17, as amended, the appellant was required to follow the IMPs established. IMP #001 Unit Coverage and Hours of Work policy required that "Investigators shall provide twenty-four-hour coverage via on-call status utilizing an air pager or cellular telephone... Therefore, an Investigator at each institution shall be available as needed twenty-four hours per day, seven days per week throughout the entire year. While on-call, Investigators shall report to the institution if necessary within a reasonable time."

Appellant had been made aware of directives from the Chief Investigator of SID regarding the use of Blackberry devices; specifically the Inter-Office Communication from Chief Manuel Alfonso of November 6, 2014, which states, in part, "[a]ll SID Investigative personnel who are in possession of a Blackberry device must carry the communication device on their person and be able to respond to telephonic and email communications within an immediate timeframe."

I **CONCLUDE** that appellant violated HRB 84-17, as amended by failing to discharge his duties in accordance with B.1., "B1. Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would not result in danger to persons or property".

**D.7. Violation of administrative procedures and/ or regulations involving safety and security**

Second, pursuant to HRB 84-17, as amended, the appellant was required to follow the IMPs established. IMP #001 Unit Coverage and Hours of Work policy required that "Investigators shall provide twenty-four-hour coverage via on-call status utilizing an air pager or cellular telephone... Therefore, and Investigator at each institution shall be available as needed twenty-four hours per day, seven days per week



throughout the entire year. While on-call, Investigators shall report to the institution if necessary within a reasonable time.”

I **CONCLUDE** that appellant violated HRB 84-17, as amended by failing to discharge his duties in accordance with D.7., “D.7. Administrative procedures and regulations involving safety and security” and IMP #001 and Inter-Office Communication of November 6, 2014.

**E.1. Violation of a rule, regulation, policy, procedure, order or administrative decision**

Third, appellant failed to return telephone calls and email messages within an “immediate timeframe.” Notwithstanding that testimony was given to show that “immediate timeframe” constitutes a period between “immediately”, “fifteen minutes” and “as soon as possible”, it is irrefutable that a period in excess of two hours is unacceptable. Further the terminus of that period only came at the intervention of police officers conducting a “well check.” Pursuant to HRB 84-17, as amended, the appellant was required to follow the IMPs established. IMP #001 Unit Coverage and Hours of Work policy required that “Investigators shall provide twenty-four-hour coverage via on-call status utilizing an air pager or cellular telephone Therefore, and Investigator at each institution shall be available as needed twenty-four hours per day, seven days per week throughout the entire year. While on-call, Investigators shall report to the institution if necessary within a reasonable time.”

Appellant did not respond to inquiries made to him within a “reasonable” or “immediate” timeframe. Such is unacceptable in a situation where he is “on call.”

I **CONCLUDE** that appellant violated HRB 84-17, as amended by failing to discharge his duties in accordance with E.1., “E.1. Violation of a rule, regulation, policy, procedure, order or administrative decision” and IMP #001 and Inter-Office Communication of November 6, 2014.

**N.J.A.C. 4A:2-2.3(a) (12) Other Sufficient Cause**

Finally, appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a) (12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. As detailed above, appellant's conduct was such that he violated this standard of good behavior. As such, I **CONCLUDE** that the respondent has met its burden of proof on this issue.

That an incident which violated the directives of IMP-001 is not in question. Having concluded that an incident occurred, I must determine the proper penalty or discipline to be assessed. 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. Progressive discipline is considered to be an appropriate analysis for determining the reasonableness of the penalty. See Bock, 38 N.J. at 523-24. 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 the concept of progressive discipline is the nature, number and proximity of prior disciplinary infractions should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of an employee's potential.

**PENALTY**

In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for

removal. See Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978); In re Herrmann, 192 N.J. 19 (2007). The question to be resolved is whether the discipline imposed in this case is appropriate.

For his actions arising out of this incident, appellant has been found to have violated N.J.A.C. 4A:2-2.3(a)(7), neglect of duty, N.J.A.C. 4A:2-2.3(a) (12), other sufficient cause, and NJDOC rules, regulations and policies. Appellant was charged with a ten-working-day suspension. This suspension is consistent with the disciplinary process outlined in NJDOC's table of offenses which shows discipline ranging from an "Official Written Reprimand" to "Removal" for the offences violated here (R-16). Within that range a determination as to appropriate discipline must be made.

In this matter, a mitigating factor was present in that petitioner was the subject of a domestic violence incident the evening before. Although the memorandum submitted by appellant's supervisor Scott to Chief Alfonso states, in part:

SI Tonner stated that he had just woke up when the police department had knocked on his door at approximately 9:35 AM. SI Tonner continued that he did not want to wake my (sic) up in the middle of the night to advise me of the incident and the he was going to contact me upon awakening. SI Tonner stated that he did not hear any of the notifications because he had notification sounds turned off due to him attending the ECDR Training class and had forgotten to turn it back on. It should be noted that ECDR Training concluded at 12:00 PM, July 1, 2016. SI Tonner state he did not turn the notification sounds back on after completing ECDR Training.

Upon being informed of SI Tonner's explanation, I reminded him that he was "On-Call" and that he needed to make all necessary arrangements to make himself available should be needed.

No testimony at the hearing detailed appellant's desire to spare Scott from being woken up in the middle of the night, so that Tonner could advise Scott of the unique circumstances which had befallen Tonner although information to that effect was contained in Scott's report to Chief Alfonso.

In the present case, there are three instances of prior disciplinary action against appellant. On December 7, 1998, appellant received an official reprimand on a "late for duty" charge. On December 29, 2003, appellant received an official reprimand on for an "emergency comp day" request. On September 15, 2005, appellant was suspended for three working days following charges relating to completion of an assignment.

It should also be noted that appellant's work history also details three commendations. Do the three disciplinary actions and three commendations weigh out? I think not. Testimony was given by Chief Grade which stated that cases regarding "on call" violations shall be reviewed on a "case by case" basis and so I have taken that approach in my review and determination.

After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the action (or inaction) by appellant herein, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that appellant's violations are sufficient to warrant a penalty, which, in part, is meant to impress upon him, as well as others, the seriousness of any further infractions by him in that regard.

Here, the respondent is seeking the imposition of a ten-day working suspension. A review of appellant's disciplinary history informs that this would be a fourth infraction to the date of the incident – although not on this specific charge. In consideration of the foregoing, along with appellant's disciplinary records, a ten-day suspension appears to be a reasonable penalty consistent with progressive discipline. Appellant's arguments that he is being penalized when others have not for the committing the same offense, or that leeway should be given considering the domestic violence event, are unpersuasive. Although this incident progressed over a several-hour period, appellant had the presence of mind to clean up his house after the "first" encounter, call the police after the "second" encounter, and then call M.M.'s mother and drive M.M.'s daughter to her grandmother's house. Appellant at any point could have called his supervisor to request relief from his duty due to the events which occurred - but he did not.

A ten-day penalty serves to impress the importance of the seriousness of these infractions and significance of the duties required of the appellant, and others, in the position of Senior Investigator and while "on call" and given the conduct exhibited here and the circumstances surrounding this event, I **CONCLUDE** that the imposition of a ten working day suspension is consistent with the range of penalties specified in NJDOC's table of offenses and is **AFFIRMED**.

**ORDER**

I **ORDER** that the respondent has met its burden of proof as to the charges of violation of N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; N.J.A.C. 4A:2-2.3(a) (12), other sufficient cause; and HRB 84-17, as amended, B.1. Neglect of duty, loafing, idleness or willful failure to devote attention to tasks which would not result in danger to persons or property; HRB 84-17, as amended, D.7. Violation of administrative procedures and/or regulations involving safety and security; HRB 84-17, as amended, E.1. Violation of a rule, regulation, policy, procedure, order or administrative decision and that these charges be and are hereby sustained.

I **ORDER** that the action of the appointing authority in imposing a ten-working day suspension on appellant shall be **AFFIRMED**.

I **FURTHER ORDER** that petitioner's request for payment of interest, attorney's fees, costs and additional relief is **DENIED**.

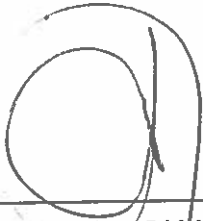
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this

recommended decision shall become a final decision in accordance with N.J.S.A.  
52:14B-10.

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

August 2, 2018  
DATE

  
\_\_\_\_\_  
CARL V. BUCK III, ALJ  
8/2/18  
\_\_\_\_\_  
8/2/18  
\_\_\_\_\_

Date Received at Agency:

Date Mailed to Parties:

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LIST OF EXHIBITS

Joint:

- J-1 Preliminary Notice of Disciplinary Action, dated July 6, 2016
- J-2 Appeal of Major Disciplinary Action
- J-3 Disciplinary Appeal Proceeding decision, dated August 23, 2016
- J-4 Final Notice of Disciplinary Action, dated August 23, 2016

For appellant:

- P-1 Photographs of Sean Tonner
- P-2 Palmer Township Police Incident Report form (No: 16-032669)
- P-3 Palmer Township Police Incident Report form (No: 16-03278)
- P-4 Email communication, dated July 2, 2016, from Sean Tonner to Investigator Jerome Scott

For respondent:

- R-1 Preliminary Notice of Disciplinary Action
- R-2 Email from Jerome Scott to Manuel Alfonso, dated July 2, 2016
- R-3 Email from Jerome Scott to Manuel Alfonso, dated July 2, 2016
- R-4 Email from Jerome Scott to Sean Tonner, dated July 2, 2016
- R-5 Email from Jerome Scott to Sean Tonner, dated July 2, 2016
- R-6 Email from Jerome Scott to Sean Tonner, dated July 2, 2016
- R-7 Email from Jerome Scott for the Weekly Meeting, dated November 24, 2015
- R-8 Emails from Kevin Bolden, dated October 16, 2012, October 31, 2012 and November 8, 2012
- R-9 Inter-Office Memorandum from Kevin Boden, dated November 8, 2012
- R-10 Inter-Office Memorandum from Manuel Alfonso, dated November 6, 2014
- R-11 Email from Sean Tonner to Jerome Scott, dated July 2, 2016
- R-12 Palmer Township Police Report, dated July 2, 2016

R-13 Palmer Township Police Incident Report, Wellness Check, dated July 2, 2016

R-14 Internal Management Procedure #001, Level 1

R-15 Law Enforcement Rules and Regulations

R-16 Human Resources Bulletin 84-17

R-17 Work History

**LIST OF WITNESSES**

For appellant:

Jerome Scott, Principal Investigator

Duane Grade, Chief Investigator

Michael Kubik, Senior Investigator

For appellant:

Sean Tonner, Senior Investigator