



STATE OF NEW JERSEY

In the Matter of Joseph Blount
 Willingboro Township, Department of
 Public Safety

FINAL ADMINISTRATIVE ACTION
 OF THE
 CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-1162
 OAL DKT. NO. CSV 16051-17

ISSUED: JANUARY 18, 2019 BW

The appeal of Joseph Blount, Police Officer, Willingboro Township, Department of Public Safety, 30 working day suspension, on charges, was heard by Administrative Law Judge Judith Lieberman, who rendered her initial decision on December 3, 2018. Exceptions were filed on behalf of the appellant.

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 January 16, 2019, 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 the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Joseph Blount.

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 16th DAY OF JANUARY, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Christopher S. Myers
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 16051-17

AGENCY DKT. NO. 2018-1162

**IN THE MATTER OF JOSEPH BLOUNT,
WILLINGBORO TOWNSHIP DEPARTMENT
OF PUBLIC SAFETY.**

Timothy J. P. Quinlan, Esq., for appellant, Joseph Blount (Quinlan and Nigro, LLC, attorneys)

Taylor E. Lester III, Esq., for respondent, Willingboro Township Department of Public Safety (Florio, Perrucci, Steinhardt and Cappelli, LLC, attorneys)

Record Closed: October 18, 2018

Decided: December 3, 2018

BEFORE JUDITH LIEBERMAN, ALJ:

STATEMENT OF THE CASE

The appellant, Joseph Blount, appeals the determination by the respondent, Township of Willingboro (Appointing Authority or respondent), that he violated policies governing Willingboro Township Police Department officers, for which he received a thirty-working-day suspension.

PROCEDURAL HISTORY

On November 11, 2016, the Appointing Authority issued a Preliminary Notice of Disciplinary Action (PDNA) setting forth the charges and specifications made against the appellant. After a departmental hearing, which was held on May 22, 2017, the Appointing Authority issued a Final Notice of Disciplinary Action (FNDA) on October 10, 2017, sustaining the charges in the PDNA and suspending the appellant from employment for thirty working days, effective November 1, 2017, and ending December 28, 2017. The appellant filed a timely appeal and the matter was transmitted to the Office of Administrative Law on October 27, 2017, for hearing as a contested case. The case was heard on September 20, 2018. The record remained open for the receipt of written summations by the parties. On October 18, 2018, all summations were received, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed and I, therefore, **FIND** the following as **FACT**:

1. On November 11, 2016, the Appointing Authority issued a Preliminary Notice of Disciplinary Action (PNDA) against the appellant, charging eight violations of Willingboro Township Police Department policies. It proposed a suspension of thirty working days. (R-1.)
2. The charges were sustained after a departmental hearing on May 22, 2017. The appellant was advised of this by way of an October 10, 2017, Final Notice of Disciplinary Action, which imposed a thirty-working-day suspension, commencing November 1, 2017, and ending December 28, 2017. (R-2.)

Testimony

For the Appointing Authority:

Captain Aaron Hawkins was the Patrol Division Commander, responsible for all patrol operations, during the time at issue. He has been employed by the Willingboro Police Department since August 1995. During the evening August 11, 2016, the appellant was dispatched in response to complaints about people “joy riding” on dirt bikes. Hawkins was advised by Sergeant Reynolds that the appellant became engaged in a pursuit involving a dirt bike, which resulted in a minor collision between the appellant’s police vehicle and the dirt bike. Reynolds believed the appellant had violated multiple Department policies. Reynolds directed the appellant to complete required reports and write a separate explanation concerning the incident.

It appeared to Hawkins the appellant violated Departmental policy concerning pursuits. Pursuits are prohibited except when an officer reasonably believes the violator has committed a first or second-degree crime or another crime or offense specifically enumerated in the policy. (R-11.) Reynolds told Hawkins that the appellant engaged in a pursuit because he believed motor vehicle offenses had been committed. A pursuit is not warranted in response to a motor vehicle offense unless the “violator’s vehicle is being operated so as to pose an immediate threat to the safety of any other person.” Id. at 4.

On August 12, 2016, the appellant prepared an “Initial Report.”¹ (R-8.) He wrote that, while parked in a parking lot on Charleston Road, he:

heard the sound of an excessively loud exhaust of a dirt bike traveling in the area of JFK and Way towards Charleston Rd. I pulled onto JFK Way towards Charleston and heard the same sound of a dirt bike traveling westbound on Charleston Rd. towards Levitt Parkway. I made a left onto Charleston Rd. I did not see the dirt bike; however, I activated my overhead lights. I also activated my sirens briefly as a deterrent; my mindset was if the operator of the dirt bike did hear my sirens from afar he would yield to my lights and sirens. Since I did

¹ Initial reports are routinely prepared after any incident.

not see the dirt bike and heard that he was far away, I deactivated my patrol vehicle camera. I failed to turn off my overhead lights.

I continued to travel towards Levitt Parkway. I no longer heard the sound of the dirt bike's exhaust again. Moments later, I observed a subject on the dirt bike in the area of Charleston Rd. and Birchwood Lane. When near the subject, I observed that he almost lost control of the dirt bike and he was on the wrong side of the road on Birchwood Lane. He regains control and proceeds to keep traveling on Birchwood Lane toward Bayberry Lane. Moments later it appears he loses control of the bike again and the dirt bike abruptly falls to the ground as he gets off the bike. The subject is now off his bike. The subject looks in my direction and then turns his body blading himself from me. I observed he appeared to proceed to run as he went towards the grass area to the right of Foster's Military Lodge. I observed him on the grass area. I slammed on my brakes while keeping visual on him and inadvertently stuck the dirt bike as I was putting the patrol vehicle into park. I hurried and exited my patrol vehicle and yelled to him to get onto the ground. I placed him into handcuffs and advised him he was being detained. It is not until after the incident that I observed damage to the front bumper near the front passenger side.

As I walked back to my patrol vehicle, I realized my patrol vehicle camera was not activated prior to exiting my vehicle, as I not see the red light indicating the light was on. Once inside of the patrol vehicle, I activated my patrol vehicle camera.

Ibid.

Reynolds asked the appellant to prepare supplemental reports explaining how the collision occurred, why he pursued the dirt bike for only a motor vehicle violation and concerning his use of cameras. On August 12, 2016, the appellant produced a memorandum concerning "Early deactivation of patrol camera vehicle" and a second memorandum concerning "Damage to Vehicle #24." (R-9, 10.) Neither report addressed the earlier discrepancies or answered Hawkins' questions, as they largely restated the exact text contained in the Initial Report. Because the appellant was asked to provide supplemental reports, he should have understood that he was to have provided supplemental information to better explain the incident and his actions. He did not comply with this request, as he merely repeated the information in his Initial Report.

Hawkins reviewed the appellant's reports and video recordings from the appellant's in-car camera and body-worn camera. Police vehicles are equipped with dash-mounted cameras that record automatically when a vehicle's light bar and siren are activated.² A vehicle's overhead light must to be activated when an officer is in pursuit, there is an escalated risk of danger, or when an officer is responding to an emergency. Body worn cameras must be activated by officers as soon as they respond to an incident or call.³ They must remain on until the police activity is complete.

It was "very obvious" to Hawkins that the appellant used both devices incorrectly. He deactivated the in-car camera while he was following the dirt bike and while his lights and siren were still on. The vehicle was traveling at seventy-seven miles per hour⁴ and the dirt bike was in view when the camera was turned off. Although the camera can be turned off manually, officers are not permitted to do so under these circumstances.

The body-worn camera was not activated until the appellant's vehicle had traveled a distance. The camera is equipped with a buffering system that captures thirty seconds of video, without audio, prior to activation of the camera. Hawkins viewed the preliminary thirty seconds recorded with the appellant's body worn camera. He observed that audio did not begin until the appellant had stopped driving and his vehicle had collided with the dirt bike. Thus, the appellant did not turn on his body camera when he initiated his activity in this matter.

² Department policy provides, "The In-Car DVR will be used to record the following events: . . . 3. Any police response which involves the use of emergency warning lights and or siren[.] a. The In-Car DVR will automatically begin recording when the emergency lights are activated. b. The stop button will not be pushed until the officer arrives at their desired location and completes their activity on location." (R-12 at 2.)

³ Department policy requires that body-worn cameras be used for "officer-initiated vehicle and/or pedestrian stops" (R-14 at 2.) Officers must activate their cameras "[u]pon commencing response to a call for service; or [when] [o]bserving a violation or incident for which the officer intends to take action, the officer will immediately activate" the camera. (R-14 at 6.)(emphasis in original). Body worn cameras must also be used during "[a]ny police response which involves the use of emergency warning lights and/or siren." (R-14 at 3.) The camera must be activated before lights and sirens are activated and shall not be "deactivated until the officer completes his assignment at the location." Ibid.

⁴ The video from the in-car camera provided a digital readout of the vehicle's speed.

Portions of the appellant's Initial Report caused Hawkins concern. First, the appellant wrote that he used his siren as a deterrent. Department policy does not authorize use of sirens as a deterrent, Hawkins decided additional review was required to understand the appellant's actions.

Second, the appellant wrote that he deactivated his patrol vehicle camera when he was still responding to the dirt bike, which he could still hear. Department policy requires that the vehicle camera must remain on until a response is complete. The appellant appeared to violate Department policy when he deactivated his vehicle camera.

Third, the appellant's written description of the incident did not correspond with the video captured by his body worn camera. The appellant wrote in the Incident Report that his vehicle struck the dirt bike after its driver got off the bike and proceeded toward the military lodge. The video from the appellant's body-worn camera showed the police vehicle struck the dirt bike while its driver was still on it.

Fourth, Hawkins was concerned about the appellant's representation that he did not see the dirt bike until late in his response. Hawkins was familiar with the road; it was straight, with no obstructions, and the appellant's vehicle travelled at seventy-seven miles per hour. It seemed odd to Hawkins that the appellant did not see the dirt bike. Further, Hawkins reviewed the video recording made by the vehicle's camera and viewed the dirt bike. Hawkins thought the appellant's account "did not add up" and believed further review was required.

Fifth, Hawkins believed there was an apparent violation of the policy governing pursuits. The appellant did not indicate in his report that the dirt bike presented a threat of safety. Thus, because the only offense allegedly committed by the dirt bike was a motor vehicle violation, the appellant did not have authority to pursue the dirt bike. Department policy requires officers "maintain a safe distance" while in pursuit, to avoid collisions. (R-11 at 6.) They must also notify the dispatcher once the pursuit has begun. Ibid. Also, if the officer loses the pursued vehicle, the "primary pursuit unit shall cause the pursuit to be terminated and shall . . . [provide] all available information by radio

communication that would assist in locating the target vehicle.” (R-11 at 7.) The appellant violated this policy because he did not call for assistance.

Further, Department policy dictated that, had the appellant merely been attempting to “close the gap” between himself and the dirt bike, he should not have activated his “audio and visual emergency equipment.” (R-11 at 2.) Thus, Hawkins determined that the appellant committed a violation even if he had not engaged in a pursuit.

Hawkins determined that, given the discrepancies and issues raised by the appellant’s accounts and his failure to provide supplemental information, an Internal Affairs investigation was warranted.

Hawkins interviewed Reynolds on August 25, 2016. Reynolds explained that his officers, including the appellant, had been dispatched in response to a report of dirt bikes riding in the area of Ballard Lane. The appellant did not communicate with Reynolds until he advised that he had detained a dirt bike operator. Approximately ten to fifteen minutes later, the appellant advised Reynolds that the dirt bike was unregistered, and he requested permission to impound it. Approximately thirty minutes later, the appellant contacted Reynolds again, and asked him to come to the scene. When Reynolds arrived there, the appellant told him he believed he had struck the dirt bike with his vehicle. (R-4.)

On September 7, 2016, Hawkins interviewed Officer Abigail Pillot. On the evening at issue, she and the appellant were in the parking lot; she was outside her vehicle while the appellant was inside his vehicle. She heard what sounded like a four-wheeler traveling on JFK Way towards Charleston Road. The appellant said he was going to “check it out.” (R-4 at 2.) After the appellant turned onto Charleston Road, he began to accelerate “in an apparent attempt to apprehend the dirt bike.” (R-4 at 3.) She followed in her vehicle but did not accelerate or activate her vehicle’s overhead lights. She lost sight of the appellant because of his speed but caught up to him when he appeared to be directly behind the dirt bike at the curve between Buckingham Way and Birchwood Lane. He was close enough that the dirt bike driver “would have known there was a police officer

attempting to stop him." Ibid. The dirt bike driver and appellant then turned a corner. When Pillot arrived after them, she "observed the dirt bike was on the ground and observed the driver of the dirt bike lying himself on the ground in submission near Foster's Military Lodge." Ibid. She did not observe the collision. Ibid.

Hawkins interviewed the appellant on September 8, 2016. He noted the appellant made contradictory statements during the interview. In particular, he told Hawkins that he knew his vehicle struck the dirt bike at the time it happened but did not realize there was damage to the vehicle until later. (R-4.) Hawkins noted in the Internal Affairs Investigation Report⁵ that the video from the appellant's body worn camera showed that the vehicle collided with the dirt bike "as the operator is stopping/dismounting the dirt bike." Ibid.

The appellant told Hawkins "he did not initiate radio communication . . . to report that he was attempting to stop or was pursuing the dirt bike because he wanted to get closer to the subject, close the gap and know that the subject saw him." Ibid. Hawkins noted the appellant previously wrote that he had not seen the dirt bike. Hawkins also noted that appellant should have notified Reynolds of the collision with the dirt bike immediately, not after its driver had been released.

On November 8, 2016, the Department issued a Preliminary Notice of Disciplinary Action (PDNA) in which the appellant was charged with eight violations of Department policy⁶ based on the following findings:

⁵ Hawkins prepared an Administrative Review report, as part of his routine reporting process. In it, he identified those actions of the appellant that constituted violations of the Department's policies governing In-Car Digital Video Recording System, Pursuit and Forcible Stopping Guidelines, Response Guidelines, and Body Worn Cameras. (R-7.)

⁶

1. Pursuit and Forcible Stopping, Authorization to Pursue
2. Response Guidelines, Safety of Persons
3. Traffic Enforcement, Collisions
4. Body-Worn Camera, Recording
5. In-Car Video, Recording
6. Rules and Regulations, Reporting
7. Rules and Regulations, Responsibilities
8. Rules and Regulations, Obedience to Laws

While on tour, Ofc. Blount improperly engaged in the pursuit of a motor vehicle. While engaged in the pursuit Ofc. Blount deactivated his In-Car video and did not record the incident with his Body Worn Camera. Ofc. Blount drove his patrol vehicle at speeds in excess of 77 mph, thus failing to exercise due regard for the safety of other drivers. As a result of the pursuit, the driver of the pursued motor vehicle crashed. Ofc. Blount collided with the vehicle and did not report the crash to his supervisor until the other vehicle was removed from the scene by a tow company. Finally, Ofc. Blount failed to comply with an order from his supervisor to provide documentation to him of the series of events that led to the crash.

[R-1.]

The PDNA recommended a thirty-working-day suspension. Ibid. Hawkins noted the appellant had already been disciplined twice before and he was only in his third year of service with the Department. Also, the appellant received specialized training concerning the use of body-worn cameras the month preceding the incident. The prior training was occasioned by the appellant's prior misuse of his body-worn camera.⁷ Notwithstanding the special training, Hawkins found the appellant's improper use of the body-worn camera was a "blatant infraction." Further, the appellant's failure to supplement his Initial Report, in response to Reynold's direction, could have been interpreted as insubordination and the inaccuracies in the appellant's reports could have been considered a failure of "truthfulness." Hawkins was particularly concerned when an officer does not take responsibility for a mistake. He summarized that the appellant's actions amounted to "massive violations of policies in a short period of time" and a harsher penalty could have been recommended. He could have recommended additional charges and a longer suspension, given the number of violations of policies that are intended to protect officers and citizens, and the appellant's disciplinary history over just three years of service. His intention, however, was to cause the appellant to better understand and take seriously the Department's rules and deter future violations.

On cross-examination, Hawkins acknowledged that he did not know how long the appellant traveled at seventy-seven miles per hour. Based upon the vehicle's video, he estimated it lasted twenty seconds. He also acknowledged that it was unlikely that there

⁷ On October 18, 2015, the appellant did not immediately activate his body worn camera until after his response to an incident had been initiated and was in progress. (R-16.)

were pedestrians on Charleston Road at the time of the incident, as it was close to midnight, and the road has one lane in each direction and no median. He also noted streetlights lined the road and it was a residential area.

Hawkins acknowledged that, although the appellant had twice been officer of the month, he did not consider this when reviewing the incident. He also did not consider that the appellant had been placed in a proactive unit. Consideration of these facts is not appropriate when recommending discipline. Hawkins recommended discipline; he did not have the authority to impose discipline.

When questioned about the appellant's assertion that he did not see the dirt bike, Hawkins replied that he drove along the same road every night and could see vehicles ahead of him, notwithstanding oncoming headlines. Although the dirt bike was not immediately apparent on the video, Hawkins would have been able to see the dirt bike, under the conditions present during the evening at issue. He, therefore, believed the appellant was engaged in a pursuit. Had he merely been attempting to close the gap, the appellant would have not activated the lights or siren. If either lights or a siren is on, an officer is not closing the gap but is instead in pursuit.

On redirect examination, Hawkins noted that, based upon Pilot's report to him, the appellant attempted to apprehend the dirt bike driver. This indicated that the appellant did not attempt to merely close the gap. Also, the appellant did not radio to the Department that he was engaged in activity for which he activated his overhead lights, contrary to policy. Also, Pilot said that the appellant was directly behind the dirt bike at the curve between Buckingham Way and Birchwood Lane. Hawkins relied upon this in concluding that the appellant did see the dirt bike.

For the appellant:

Joseph Blount, the appellant, testified that on the evening of the incident, he was seated in an unmarked vehicle in a parking lot. Officer Pilot was also in the parking lot, outside her vehicle. The appellant heard an exhaust sound from a passing vehicle and Pilot saw something pass by quickly. He did not know if it was a dirt bike or motorcycle.

Although he knew he was to not chase dirt bikes, and that he was not required to “check it out”, he opted to attempt to locate the vehicle he heard. He did not know if an offense had been committed.

The appellant turned on his vehicle’s overhead lights because he was in an unmarked car and intended to travel along the road to see what was “going on.” He briefly activated the vehicle’s siren, to warn people who might be in the area to get out of the way. He analogized this to people yielding in response to a fire truck or ambulance siren. He turned off the siren because he did not see the dirt bike or anything else. His speed increased to seventy-seven miles per hour. He did not realize he was travelling at that speed until he viewed the video recorded by the vehicle’s camera. He recalled that he “just accelerated.” He did not know how long he travelled at that speed but did not believe that this speed caused a risk of danger as he was comfortable with his driving skills and he did not believe any pedestrians were present. He noted that he did not expect pedestrians because there were no sidewalks in the area.

The appellant eventually saw the dirt bike as it appeared to be preparing to turn right from Charleston Road onto Birchwood Drive. It appeared that the driver of the dirt bike lost control as he made the turn. The driver travelled approximately twelve feet on Birchwood Drive and then abruptly stopped, got off the bike, and dropped it to the ground. The appellant thought the driver was about to run away and ordered him to stop and sit on the ground. The driver complied. When the driver dropped his bike, the appellant called the Department and activated his body camera. Pillot arrived approximately ten to fifteen seconds later. Other officers arrived at the scene after Pillot.

The appellant ran a check for warrants for the driver and issued him eight summonses. He released the driver and then turned off his body camera.

The appellant was not aware that his vehicle collided with the dirt bike until after he wrote the summonses and released the driver. Officers were standing near the front of his vehicle and Officer Anderson directed his attention to a problem with the vehicle. The appellant could not see what he was referring to, as it was dark outside. Officer DiGrazia told the appellant to call Reynolds and alert him to the accident, as the

supervisor must be alerted immediately. The appellant acknowledged that he should have checked his vehicle before his shift. He could not recall if the damage was present before he encountered the dirt bike, and accepted responsibility for this. He presumed the damage was caused by the dirt bike.

Reynolds directed the appellant to come to the station and prepare separate special reports concerning the damage to the vehicle and the early deactivation of his vehicle camera during the encounter. He first prepared a report concerning his use of the camera. He wrote he was "dispatched to the area of Ballard Land for a report of subjects operating dirt bikes aggressively." (R-9.) While parked on Charleston Road, he listened for dirt bikes being operated in the area. He heard "the sound of an excessively loud exhaust of a dirt bike traveling in the area of JFK and Way towards Charleston and heard the same sound of a dirt bike traveling westbound of Charleston Road[.]" Ibid. He turned left onto Charleston Road and did not see the dirt bike. He activated his overhead light as well as his sirens "briefly as a deterrent; my mindset was if the operator of the dirt bike did hear my sirens from afar he would yield to my lights and sirens. Since I did not see the dirt bike and heard that he was far away, I deactivated my patrol vehicle camera. I failed to turn off my overhead lights." Ibid. The appellant wrote, after the driver had been detained and issued summonses, he walked back to his vehicle and "realized my patrol vehicle camera was not activated prior to exiting my vehicle, as I did not see the red light indicating the light was on. Once inside of the patrol vehicle, I activated my patrol vehicle camera." Ibid.

The appellant "cut and pasted" the substance of this report to create the other special report and his initial report. (R-8, 10.) The three reports contained the same information because he did not believe Reynolds wanted a different report. He gave the special reports to Reynolds that night, as he wanted them immediately. Reynolds did not ask him for more information. He believed he had complied with Reynolds' order.

When questioned about his statements concerning the collision with the dirt bike, the appellant acknowledged having previously made statements that were inconsistent with his testimony. During the internal affairs investigation, he told Hawkins he knew he inadvertently stuck the dirt bike but did not realize there was damage until alerted to it by

an officer. (R-4.) He also wrote in his Initial Report that he inadvertently struck the dirt bike. (R-9.)

The appellant acknowledged that Department policy provides that officers not pursue people riding dirt bikes. Pursuits present significant risks of harm, as most riders do not have helmets or seatbelts. Reynolds counseled all officers, including the appellant, about this policy at each shift. However, he did not believe he was engaged in a pursuit of the dirt bike when he accelerated on to Charleston road because he did not see the bike then. He would have had to have seen the bike to pursue it.

On cross-examination, he acknowledged that he did not recall whether Pillot opined that the sound they heard came from a dirt bike. He did not know what she thought she heard, although they both thought they heard the sound of loud exhaust. It could have come from a car, motorcycle or dirt bike. However, in his Initial Report he wrote he "heard the sound of an excessively loud exhaust of a dirt bike[.]" (R-8.) He acknowledged that, although he should have been aware of his speed, he had control of his vehicle.

When asked why he activated his lights while following the dirt bike, the appellant replied that he hoped the bike would have pulled over in response to the lights and siren, as a good Samaritan would in response to emergency indicators. He noted that most dirt bikes were illegal, and he would have addressed any violations had the bike stopped. When asked why he did not radio the Department to alert it to his actions, he said he was not required to call.

The appellant testified that the dirt bike driver did not fall off his bike. Rather, he dropped the bike to the ground, as one might a bicycle, and headed toward the military lodge. He was asked about his written statement, "it appears he loses control of the bike again and the dirt bike abruptly falls to the ground as he gets off the bike." (R-8.) He believed his statements were consistent.

The appellant also testified the driver did not run toward the lodge. He was asked about his written statement that the driver "appeared to proceed to run as he went towards

the grass areas to the right of Foster's Military Lodge." (R-8.) The appellant replied that, although it looked to him that the driver was preparing to run, he did not.

Additional Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the petitioner during the hearing. Captain Hawkins testified clearly, consistently and with authority about the Department policies at issue. He thoroughly explained why each policy was applicable here and how the petitioner did or did not comply with each. He comported himself in a calm and thoughtful manner and explained his reasoning well. He also demonstrated a measured temperament as well as an interest in being reasonable and fair to the appellant. I find his testimony to be credible.

The appellant acknowledged violations of Department policy. However, it seemed that he did not appreciate the importance of the violations. To the extent he attempted to explain the violations or other actions, he demonstrated a lack of attention to detail and his answers to questions were often unclear and sometimes contradictory. He did not always fully answer questions, although it appeared that he attempted to do so. I find his testimony was not credible.

Hearsay evidence is admissible in the trial of contested cases and shall be accorded whatever weight the judge deems appropriate considering the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a). However, while hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, when there is a residuum of legal and competent evidence in the record. Weston v. State, 60 N.J. 36, 51 (1971).

Hawkins testified concerning his independent review of the videos recorded by the appellant's vehicle and body-worn cameras, as well as his interviews with the appellant and Pillot, and his discussions with Reynolds. He recorded his observations and findings in multiple reports, including his Internal Affairs Report. The reports are admissible pursuant to N.J.R.E. 803(c)(6), which provides:

A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

(emphasis added)

Hawkins' reports were prepared as part of his routine duties, at or near the time he obtained the information included in the reports. The reports referenced statements provided to Hawkins by individuals with first-hand knowledge of that information, including the appellant. Accordingly, the report and its contents constitute competent, admissible evidence of the petitioner's, Reynolds' and Pillot's actions and statements.

After having the opportunity to review the evidence and consider the testimony, and the credibility of the witnesses, I **FIND** the following additional **FACTS**:

1. The appellant attempted to follow and stop a vehicle that he believed was a dirt bike.
2. The appellant assumed the dirt bike committed one or more motor vehicle offenses.
3. The appellant did not believe the dirt bike presented a threat of safety.
4. The appellant did not have authority to pursue the dirt bike.
5. If the appellant did not pursue the dirt bike and, instead, had attempted to "close the gap" between himself and the dirt bike, he was not authorized to activate his patrol vehicle's lights and siren.
6. The appellant activated his vehicle lights and siren.
7. The appellant did not alert the Department when he initially followed the dirt bike.
8. The appellant did not activate his body-worn camera when he initiated his police activity.
9. The appellant turned off his vehicle camera before the activity associated with the incident was complete.
10. The appellant's vehicle reached seventy-seven miles an hour for at least twenty seconds.
11. The appellant's vehicle collided with the dirt bike.

12. The appellant did not report the collision until after the dirt bike had been removed from the scene.

13. The appellant submitted three reports, the substance of which was identical.

CONCLUSIONS OF LAW

The appellant's rights and duties are governed by laws including the Civil Service Act and the regulations promulgated there under. A civil service employee who commits a wrongful act related to his or her employment, or provides other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6, -20; N.J.A.C. 4A2-2.2, -2.3. Major discipline includes removal, or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, failure or inability to perform duties, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would be applied. W. New York v. Bock, 38 N.J. 500 (1962).

The Appointing Authority has 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). 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).

As a law enforcement officer, appellant is held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). The Appellate Division addressed this in Moorestown Twp. v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966):

It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents 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.

Accordingly, 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). Conduct by a police officer that indicates "an attitude of mind and approach to the obligation of his office fundamentally at variance with his sworn duty" is a violation of the required standard of behavior inherent in the position. City of Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429-30. Adherence to this high standard of conduct is an obligation that a law enforcement officer voluntarily assumes when he enters public service. In re Emmons, 63 N.J. Super. 136, 142 (App. Div. 1960).

Here, there is ample evidence supporting the following charges against the appellant.

Pursuit and Forcible Stopping, Authorization to Pursue It is uncontested that the appellant did not believe he was responding to an offense of the first or second degree or an offense enumerated in the policy, or that the violator posed an immediate threat of safety to the public or police officers. The appellant testified that he believed the dirt bike driver committed only a motor vehicle infraction. He did not believe the driver presented a threat to any person's safety. The Department's policy prohibits pursuits in such circumstances. Further, officers must notify the dispatcher once the pursuit has begun. The appellant did not contact the dispatcher.

The appellant violated department policy even if the appellant were not engaged in a pursuit. If he intended to merely close the gap between himself and the dirt bike, he

was prohibited from activating his vehicle lights and siren. The petitioner intentionally activated both in conjunction with his attempt to approach, locate, and stop the dirt bike driver. This was a violation of Department policy.

Response Guidelines, Safety of Persons Department policy required officers to “evaluate the urgency requiring a response to any given situation and to respond accordingly in an effective, efficient, and expeditious manner. As a general rule, no matter how urgent the response, personnel are required to operate department vehicles in a safe and controlled manner at all times[.]” (R-15.) Here, the appellant attempted to track down an unknown vehicle. Although he testified that he did not know if it was a dirt bike, he assumed it was and he further assumed its driver would be subject to motor vehicle summonses. He sped through a residential area, at seventy-seven miles per hour, but was unaware of his speed or how long he travelled at that distance. He did this notwithstanding his supervisors’ directive to not chase dirt bikes. As he chased the dirt bike, he incorrectly utilized his vehicle lights and siren. He ultimately collided with the dirt bike. Given these actions, the appellant violated this policy.

Traffic Enforcement, Collisions Department policy required an officer to alert his supervisor of a collision before the vehicle is moved from the scene. The petitioner violated this policy because he did not alert his supervisor, Reynolds, until after the dirt bike had been removed from the scene.

Body-Worn Camera, Recording The appellant did not activate his body worn-camera when he initiated his response to the dirt bike, contrary to the clear mandate of the policy.

In-Car Video, Recording The appellant turned off the camera in his vehicle before the police activity was complete, contrary to the clear mandate of the policy.

Rules and Regulations, Reporting; Responsibilities Department policy required officers to “promptly and accurately prepare and submit such reports as are required by the performance of their duties or by competent authority.” (R-13.) Hawkins credibly testified that the appellant should have known that he needed to provide more

information. Although the appellant claimed that he did not understand Reynold's directive to mean that he needed supplemental information, it is unreasonable to conclude that these distinct reports should be identical in all substantive areas.

Similarly, officers are required to respond to lawful orders of their superior officers. The appellant did not comply with Reynolds' order when he admittedly "cut and paste" the same information into three reports, rather than completing distinct reports that corresponded to the headings of and purpose of the documents.

Rules and Regulations, Obedience to Laws Officers are required to obey all laws, ordinances, rules, regulations, policies and procedures, general orders, written directives and verbal orders. As discussed above, the petitioner violated the policies governing pursuits, use of vehicle lights and sirens, use of in-car and body-worn camera, and reporting pursuits and accidents. He also did not comply with Reynolds' directive concerning his reports.

Accordingly, I **CONCLUDE** that the respondent has demonstrated, by a preponderance of credible evidence, that the appellant's conduct constituted a violation of the charges enumerated in the FNDA and that such charges must be **SUSTAINED**.

PENALTY

A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). This requires a de novo review of appellant's disciplinary action. 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). The question to be resolved is whether the discipline imposed in this case is appropriate.

The Appointing Authority seeks to suspend the appellant thirty working days for his actions. In his three years as an officer for the Appointing Authority, the appellant has been disciplined twice before, including for similar policy violations. October 27, 2015, he was cited for improperly using his body-worn camera. He activated it after having initiated his police activity. (R-16.) He received a counseling notice for the violation. Ibid. Also, on July 18, 2016, approximately one month prior to the incident at issue, the appellant received training concerning the use of body-worn cameras in response to another incident. (R-5.) On June 22, 2016, the appellant was suspended one day for having used his cell phone while operating his patrol vehicle. (R-17.)

After having considered the proofs offered in this matter and the impact of the appellant's behavior upon the Department, and potential impact upon the public, and after having given due deference to the principal of progressive discipline, I **CONCLUDE** that appellant's violations are significant enough to warrant a penalty, which, in part, is meant to impress upon him the seriousness of his failure to comply with several important policies. The petitioner did not comply with the policies and did not evidence a meaningful intention to comply. As this is a second violation related to use of his body-worn camera, and multiple other violations are present here, I **CONCLUDE** that the action of the appointing authority in suspending the appellant for thirty-working-days is reasonable and consistent with progressive discipline and should be affirmed.

ORDER

I hereby order that the charges are sustained. Accordingly, I order that the action of the Appointing Authority is **AFFIRMED**, and the appellant shall be suspended for thirty-working days.

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.


December 3, 2018

DATE

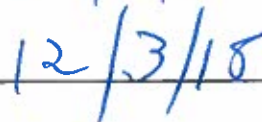


JUDITH LIEBERMAN, ALJ

Date Received at Agency:



Date Mailed to Parties:



/vj

APPENDIX

LIST OF WITNESSES

For appellant:

Joseph Blount, appellant

For respondent:

Captain Aaron Hawkins

LIST OF EXHIBITS

For appellant:

A-1 MVR recording of initial exit of emergency services building parking lot

For respondent:

R-1 PNDA, November 16, 2016

R-2 FNDA, October 12, 2017

R-3 None

R-4 Reportable Incident Report, August 16, 2016

R-5 Inter-office memo concerning training, July 18, 2016

R-6 Administrative Advisement Form, September 8, 2016

- R-7 Administrative Review, Vehicle Pursuit/Employee Involved Crash, August 15, 2016
- R-8 Initial Report, August 12, 2016
- R-9 Early Deactivation of Patrol Vehicle Camera Report, August 12, 2016
- R-10 Report regarding damage to vehicle #24, August 12, 2016
- R-11 SOP, Forcible Stopping Guidelines, effective January 5, 2012
- R-12 SOP, In-Car Digital Video Recording System, effective September 9, 2013
- R-13 SOP, Rules and Regulations, effective July 3, 2012
- R-14 SOP, Body Worn Cameras, effective February 2, 2015
- R-15 SOP, Response Guidelines, effective October 20, 2011
- R-16 Performance Notice, October 27, 2015
- R-17 Notice of Minor Disciplinary Action, June 22, 2016