



STATE OF NEW JERSEY

In the Matter of Dysheeka Atkins
Irvington Township Police
Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2019-717, 2019-718,
2019-719 & 2019-720
OAL DKT. NOS. CSV 14319-18,
14320-18, 14321-18 & 14322-18
(Consolidated)

CORRECTED

ISSUED: JANUARY 2, 2020 BW

The appeals of Dysheeka Atkins, Parking Enforcement Officer, Irvington Township Police Department, four removals effective September 6, 2018, on charges, were heard by Administrative Law Judge Thomas R. Betancourt, who rendered his initial decision on November 26, 2019. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of December 18, 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 removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeals of Dysheeka Atkins.

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 18TH DAY OF DECEMBER, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

CONSOLIDATED

**DYSHEEKA ATKINS,
IRVINGTON TOWNSHIP POLICE DEPARTMENT.**

OAL DKT. NO. CSV 14319-18
AGENCY DKT. NO. 2019-717

**DYSHEEKA ATKINS,
IRVINGTON TOWNSHIP POLICE DEPARTMENT.**

OAL DKT. NO. CSV 14320-18
AGENCY DKT. NO. 2019-718

**DYSHEEKA ATKINS,
IRVINGTON TOWNSHIP POLICE DEPARTMENT.**

OAL DKT. NO. CSV 14321-18
AGENCY DKT. NO. 2019-719

**DYSHEEKA ATKINS,
IRVINGTON TOWNSHIP POLICE DEPARTMENT.**

OAL DKT. NO. CSV 14322-18
AGENCY DKT. NO. 2019-720

Raymond G. Heineman, Esq., for Appellant (Kroll, Heineman, Carton,
attorneys)

Justin K. Bellamy, Esq., for Respondent (Florio, Petrucci, Steinhardt & Cappelli,
attorneys)

Record Closed: October 7, 2019

Decided: November 26, 2019

BEFORE THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Dysheeka Atkins, appeals a Final Notice of Disciplinary Action (FNDA), dated September 6, 2018, imposing a penalty of removal on four sustained charges as follows: Charge #1) N.J.A.C. 4A:4-6.1(a)(6) Examination and Selection Disqualification; Charge #2) S.O.P. #2017-09 VI(A) 3.4.7 False Statements; Charge #3) S.O.P #2017-09 VI(B) 3.4.7-1 Pre-employment Statements; and, Charge #4) I.P.D.M. 3.1.11 Obedience to Laws and Regulations.

The Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, to the Office of Administrative Law (OAL), where it was filed on October 1, 2018.

Appellant filed four separate appeals, one each for the four sustained charges in the FNDA. An Order of Consolidation was entered by the undersigned on November 5, 2018.

A prehearing conference was conducted on November 2, 2018, and a prehearing order, dated November 5, 2018, was entered by the undersigned.

A hearing was held on July 17, 2019. The record was kept open for counsel to submit written summations, and to provide additional documents requested by the undersigned. Respondent submitted its written summation on August 28, 2019. Appellant requested an extension of time to submit a written summation, which was granted. Appellant submitted a written summation on September 27, 2019. Respondent was afforded an opportunity to reply to the same and submitted its response on October 7, 2019. The record was closed on October 7, 2019.

At the conclusion of the hearing the undersigned requested the criminal history of Appellant and the municipal court records and/or transcripts for the 2009 and 2014 municipal court proceedings regarding same. On July 17, 2019, the criminal history

was provided and marked into evidence as R-29. The municipal court records and/or transcripts were provided on September 25, 2019, and were marked into evidence as P-4.

ISSUES

Whether there is sufficient credible evidence to sustain the charges set forth in the Final Notice of Disciplinary Action; and, if sustained, whether a penalty of a removal is warranted.

SUMMARY OF RELEVANT TESTIMONY

Respondent's Case

Lorraine Beecher testified as follows:

She is a detective with the Irvington Police Department. She has held this position for three years. Prior to being a detective she spent two years in Internal Affairs. Detective Beecher was assigned to perform a background check of Appellant. Appellant had applied to become a police officer with the Irvington Police Department.

As part of the background check Detective Beecher reviewed 2018 application to be a police officer. She noted some discrepancies and missing facts in the application. As a result Detective Beecher reviewed Appellant's 2017 application to be a community service officer (CSO). The same discrepancies were noted.

Ms. Atkins, on both the CSO (R-5) and law enforcement candidate applications, omitted that she had been charged in Irvington with harassment and simple assault in 2009. She further omitted that she had been arrested on an outstanding warrant for the 2009 charges in 2014. She answered the question "no."

As to the question on both applications regarding any juvenile criminal history, Ms. Atkins listed a charge of trespassing Newark in February 2001 for the CSO application. Detective Beecher's review of Ms. Atkins's fingerprint records revealed the actual charge was for burglary.

Ms. Atkins also omitted a July 2000 charge for harassment communication charge in Newark. Ms. Atkins also omitted June 2002 charge of simple assault. These were when Ms. Atkins was a juvenile.

Detective Beecher then reviewed Ms. Atkins's resume, which was submitted with her CSO application. Detective Beecher noted that Ms. Atkins did not list all her previous employers on the CSO application. The application required that all previous employers be listed.

Detective Beecher then noted that the CSO application states that a false statement or omission, misrepresentation or concealment of material facts may result in the rejection from the position; and, discovery of the same after appointment may result in termination.

Ms. Atkins noted on her law enforcement candidate application that she worked for Roman Securities. She stated the reason for leaving as "harassment resign." Detective Beecher contacted Roman Securities and spoke with a person named Maria, who advised that Ms. Atkins was terminated.

Detective Beecher reviewed a document from the National Labor Relations Board (NLRB) noting that Ms. Atkins had filed a complaint with the NLRB against Roman Securities for "retaliation for their protected concerted activity." Detective Beecher did not investigate the NLRB matter. Detective Beecher took the word of the employer that Ms. Atkins was discharged from Roman Securities.

The 2008 charge against Ms. Atkins, filed by Gladys Dunston, was dismissed in 2009. Ms. Atkins was arrested on an outstanding warrant for this charge in 2014.

Currently the charge is dismissed. The warrant originally issued on August 14, 2009, was recalled on August 17, 2009. The warrant was then reissued in 2014. Detective Beecher could not explain why this occurred.

Detective Beecher stated that the juvenile complaints were dismissed. She was unsure if Ms. Atkins had been arrested for the 2000 harassment offense. She stated Ms. Atkins was arrested for the 2001 burglary charge. She was unsure if Ms. Atkins was arrested for the 2002 simple assault charge.

Sebastiano Sciino testified as follows:

He is the owner of Roman Securities. He confirmed that Ms. Atkins was employed by Roman Securities. She worked from February 3, 2017, to April 21, 2017, when she was terminated. A letter of termination dated April 21, 2017, was given to Ms. Atkins by the office manager Maria Lena Rico. He authorized the termination. Ms. Atkins was terminated for sleeping in her car while on duty and using a personal vehicle to tour while on duty.

Mr. Sciino did not observe Ms. Atkins sleeping on the job. Her supervisor did. He also did not see Ms. Atkins use her own vehicle.

Ms. Atkins never complained to him regarding her treatment while at Roman Securities. He did have a staff meeting where Ms. Atkins expressed her concerns about her supervisors. Ms. Atkins had complained about Mr. Morgan, a supervisor.

Mr. Sciino was not aware that Ms. Atkins had filed a complaint with the NLRB.

Appellant's Case

Dysheeka Atkins, Appellant, testified as follows:

She was employed as a CSO in Irvington. She was terminated.

Ms. Atkins was aware of the February 2001 juvenile charge. She was pregnant at the time. She went to the home of Jose Rivera, the father. He was with another girl. She broke his window. She had property at his house and had refused to give it to him. That is why she broke the window. She was arrested and the charges were dropped.

She did not recall the 2001 harassment complaint from Newark. She was not arrested for this, nor did she go to court. She first became aware of this charge when she applied to be a police officer in Irvington.

She was also not aware of the May 6, 2002, harassment charge in Irvington. She was not arrested and she did not go to court. She again became aware of this when she applied to be a police officer.

Gladys Dunston was her neighbor. On April 28, 2009, she and Ms. Dunston were involved in a physical altercation. There was a second altercation one week later where Ms. Dunston pulled out a knife. Her mother advised her to file a complaint with the police. When she went to the police station, she was arrested for outstanding parking tickets. She was not aware that Ms. Dunston had filed a complaint against her.

Shortly thereafter her mother told her she had to appear in court. She went to court. Ms. Dunston was also there. The judge asked them to settle the matter and it was dismissed. She was not aware at this time that Ms. Dunston had filed a complaint against her.

On March 9, 2014, she went to Northern State Prison with her son to visit his father, an inmate at the prison. She was arrested at the prison for an outstanding warrant. She bailed herself out using the money for her son's birthday party. She went to Irvington municipal court and the matter was dismissed.

She stated she listed the 2001 juvenile burglary charge as "trespassing" because "it wasn't my --- my house".

Ms. Atkins did not list the other two juvenile complaints as she was not aware of them.

Ms. Atkins did not list the complaint filed by Ms. Dunston on either application as she was not aware of the same. She thought she had made a complaint against Ms. Dunston.

Roman Securities was not listed on her CSO application as she started at Roman after she had submitted the application.

When at Roman she had an issue with Mr. Morgan, a supervisor. He was disrespectful. She told Mr. Sciino of her concerns. There was a staff meeting at Roman on March 15, 2017. She voiced her concerns at the staff meeting.

She was assigned to work with Mr. Morgan. She did not feel safe with Mr. Morgan and went to the office to tell them. She left on April 21, 2017. She was not told she was fired. She received a telephone call three hours later and was told she was fired. She stated she had already resigned.

Ms. Atkins then filed a complaint with the NLRB. She had previously filed a complaint with the NLRB regarding a previous employer, New Community. She stated she had won that complaint against New Community. She then reviewed P-1, which was an informal settlement of the New Community complaint at the NLRB. The complaint with the NLRB regarding Roman was dismissed.

She did not knowingly falsify anything on either application.

She did not list the 2014 arrest at Northern State Prison because the municipal court judge told her she was arrested for no reason and that the charge was dismissed in 2009. She forgot about the arrest because the judge told her she did not have anything to worry about. She thought the arrest would be taken off her record.

She did not review her criminal history before completing an application. She did not know she had to.

The complaint filed with the NLRB states she left the employment of Roman as she was terminated.

She did not submit a resignation letter to Roman. She told them she was leaving.

She and Ms. Dunston were both arrested on the same day and sent to the County Jail.

She never received an arrest warrant.

CREDIBILITY

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511

(App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

Detective Beecher was credible. She testified in a professional, direct, and straightforward manner as to how she conducted her investigation, and to the conclusions she reached. She did not hesitate when providing an answer.

Sebastiano Sciino also testified in a direct and straightforward manner. He too did not hesitate when answering questions. I find him credible.

I do not find Appellant credible. Ms. Atkins's response to why she failed to include a previous arrest from 2014 on her application was simply not believable. Ms. Atkins was arrested at Northern State Prison where she took her son to visit his father, an inmate at the facility. She was arrested after presenting her identification when an outstanding warrant on disorderly persons charges was discovered. This was the day before her son's birthday. She used her son's birthday money to bail herself out. The response that she put the arrest out of her mind as to why this arrest did not appear anywhere on her application defies credulity, more so when it occurred only three years prior to her completing her CSO application. Further, she was arrested and taken to the County Jail in 2009 regarding the incident with Ms. Dunston. This too she failed to list on either application. Her rationale for omitting this stretches the bounds of believability.

FINDINGS OF FACT

I FIND the following FACTS:

1. Appellant was hired by the Irvington Police Department as a CSO. (R-3.)
2. Prior to that hire Appellant completed an application for the CSO position. (R-6.)
3. R-6 required that Appellant disclose criminal and juvenile offenses.
4. While a CSO in Irvington Appellant completed a Law Enforcement Candidate application to become a police officer in Irvington. (R-7.)
5. R-7 required that Appellant disclose criminal and juvenile offenses.

6. Detective Lorraine Beecher conducted a background investigation of Appellant after Appellant completed R-7, and submitted a report as to her findings. (R-4.)
7. Detective Beecher discovered certain omissions regarding Appellant's criminal history and employment history. (R-7.)
8. Appellant failed to disclose two prior juvenile offenses, as follows: 2002 complaint for harassment in Newark; and, 2002 complaint for simple assault in Irvington. Both charges were dismissed. (R-8, R-9, R-10, R-11, R-12, and R-29.)
9. On at least one occasion in her juvenile history Appellant did not appear. Her mother appeared on April 4, 2001, and a warrant issued for Appellant. (R-29.)
10. Appellant was arrested for burglary in 2002 as a juvenile. (R-11 and R-29.)
11. Appellant listed this arrest on her CSO application as "trespassing." (R-6.)
12. Appellant was arrested, along with Gladys Dunston, for an incident which occurred in May 2009 and sent to the County Jail. (Tr@126:16-17.)
13. Ms. Atkins was charged with harassment on Complaint Summons S-2009-001859 on May 12, 2009. (P-4; R-13 and R-29.)
14. Appellant failed to disclose the above on either application submitted to the Irvington Police Department. (R-6 and R-7.)
15. Appellant was charged with simple assault on Summons S-2009-001527 in 2009. (R-13 and R-29.)
16. Appellant appeared in the Irvington Municipal Court for the May 12, 2009, Complaint Summons and the same was dismissed. (P-4.)
17. A warrant was issued on the above dismissed Complaint Summons. The warrant was executed at Northern State Prison while Appellant was there with her son to visit his father, an inmate at the prison. This occurred on March 9, 2014, the day before her son's birthday. She used the money for her son's birthday party for bail. (Tr@86:2-25, Tr@87:1-3) (R-18 and R-19.)

18. Appellant again went to Irvington Municipal Court and the matter was again dismissed. (P-4 and R-29.)
19. Appellant failed to disclose this arrest on either application with the Irvington Police Department. (R-6 and R-7.)
20. Appellant was employed with Roman Securities from February 3, 2017, through April 21, 2017. (R-23.)
21. Appellant's employment with Roman was terminated on April 21, 2017. (R-22 and R-24.)
22. Appellant stated in her law enforcement candidate application that she resigned. (R-7.)
23. Appellant filed a NLRB complaint against Roman on May 1, 2017. That complaint was dismissed on June 30, 2017. (R-24 and P-3.)

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a civil service employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). In order to carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the

competent, relevant and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); Polk, 90 N.J. 550. 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 (1958). Therefore, the judge must “decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth.” Jackson v. Del., Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). This burden of proof falls on the agency in enforcement proceedings to prove violations of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

In the instant matter The PNDA against Appellant contained eight charges. After a departmental hearing four of those charges were sustained, as set forth in the Final Notice of Disciplinary Action:

Charge #1) N.J.A.C. 4A:4-6.1(a)(6) Examination and selection disqualification, which states: Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process;

Charge #2) Standard Operating Procedure (SOP) 2017-09 VI(A) 3.4.7 False statement, which states: members who deliberately depart from the truth by omitting, misrepresenting, or distorting any fact on any form, questionnaire, or report shall be charged with having made a false statement;

Charge #3) SOP 2017-09 VI(B) 3.4.7-1 Preemployment Statements, which states: Members shall be held to have violated this Rule, retroactively, who had made false statements in applying for and during the investigation of their candidacy for the Department of Public Safety, or the Division of Police shall be subject to Termination;

Charge #4) Irvington Police Department Manual (I.P.D.M.) 3.3.11 Obedience to Laws and Regulations, which states: Members and employees shall observe and obey all laws of the United States and State of New Jersey, ordinances, all rules, regulations,

procedures, orders and instructions of the police department as well as the New Jersey Attorney General and Essex County Prosecutor.

This forum has the duty to decide in favor of the party on whose side the weight of the evidence preponderates, in accordance with a reasonable probability of truth. Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein, 26 N.J. at 275. The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The respondent must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson, 37N.J. 143. The evidence needed to satisfy the standard must be decided on a case-by-case basis.

Here it is clear that the evidence preponderates in favor of Respondent that Appellant is guilty of the four sustained charges in the FNDA.

As to Charge One, Appellant failed to disclose the charges against her from 2009. She failed to disclose that she was arrested and sent to the County Jail in 2009. She failed to disclose she was arrested at Northern State Prison in 2014. Not one explanation she offered as to these omissions is credible. I would note that I do not find it an omission for failing to list all prior employment in the applications as Appellant submitted her resume with the applications and the employment history was contained therein.

Appellant is likewise guilty as to Charges Two, Three, and Four for the same facts as set forth above. Appellant knew she had prior arrests and criminal charges. She failed to disclose them. Her argument that the underlying charges were all

dismissed is of no moment. The questions posed in the applications require that the answers be complete.

What now must be determined is whether termination is the appropriate penalty.

An appeal to the Merit System Board¹ requires the Office of Administrative Law to conduct a de novo hearing and to determine appellant's guilt or innocence as well as the appropriate penalty. In the Matter of Morrison, 216 N.J. Super. 143 (App. Div. 1987). In determining the reasonableness of a sanction, the employee's past record and any mitigating circumstances should be reviewed for guidance. W. New York v. Bock, 38 N.J. 500 (1962). Although the concept of progressive discipline is often cited by appellants as a mandate for lesser penalties for first time offences,

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

[In re Herrmann, 192 N.J. 19, 33-34 (2007) (citing Henry, 81 N.J. 571).]

Although the focus is generally on the seriousness of the current charge as well as the prior disciplinary history of the appellant, consideration must also be given to the purpose of the civil service laws. Civil service laws "are designed to promote efficient public service, not to benefit errant employees . . . The welfare of the people as a whole, and not exclusively the welfare of the civil servant, is the basic policy underlining the statutory scheme." State-Operated Sch. Dist. v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). "The overriding concern in assessing the propriety of the penalty is the public good. Of the various considerations which bear upon that issue, several factors may be considered, including the nature of the 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, 465.

In Bock, 38 N.J.at 522, which was decided more than fifty years ago, our Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." Herrmann, 192 N.J. at 29 (citing Bock, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past record" includes "an employee's reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, 38 N.J. 523-24.

The concept of progressive discipline has been used to reduce the penalty of removal in other cases involving a law-enforcement officer who used racist language in public but who otherwise had a largely unblemished employment record. In In re Roberts, CSR 4388-13, Initial Decision (December 10, 2013) adopted, Commission (February 12, 2014), <<http://njlaw.rutgers.edu/collections/oal/>>, for example, an on-duty police officer who, while arresting an uncooperative black suspect, shouted to his K-9 police dog, "Zero, bite that nigger," had his penalty modified from removal to a six-month suspension. The ALJ had found that his misconduct was "plainly aberrational," as his past record only included an oral reprimand for a motor vehicle accident over the course of seven years of service and several of his minority co-workers credibly testified that he had otherwise treated citizens in an impartial and respectful manner. While the ALJ found that, due to mitigating circumstances, "termination is too severe a penalty," he nonetheless concluded that, despite a past record that included only an oral reprimand, the "fitting" penalty "is the longest suspension which the law allows: six months."

While the concept of progressive discipline in determining the level and propriety of penalties imposed requires a review of an individual's prior disciplinary history a "clean" record may be out-weighted if the infraction had issued was serious in nature.

¹ Now the Civil Service Commission, N.J.S.A. 11A:11-1.

Henry v. Rahway State Prison, 81 N.J. 571 (1980); Carter v. Bordentown, 191 N.J. 474 (2007). Further some disciplinary infractions are so serious that removal is appropriate. Destruction of public property is such an infraction. Kindervatter v. Dep't of Env'tl Protection, CSV 3380-98, Initial Decision (June 7, 1999), <http://lawlibrary.rutgers.edu/collections/oal/>.

In the instant matter, Appellant has no prior disciplinary record. However, charges set forth in the FNDA are serious. Appellant was a CSO with the Irvington Police Department and a probationary Police Officer Candidate. She omitted pertinent, relevant and vital information regarding a previous arrest on disorderly persons offenses. In fact, she answered "no" to the question if she had ever been arrested. That answer was false. She had been arrested only a few years prior at Northern State Prison. Her explanation as to this omission during testimony made little, if any, sense, and could not be believed. Further, she failed to state she was arrested in 2009 and taken to the County Jail for the incident with Ms. Dunston. Ms. Atkins maintained she resigned from Roman Securities. The credible evidence preponderates that she was terminated from Roman Securities. The only penalty that should be imposed is termination.

Based upon the above, I **CONCLUDE** that Respondent has demonstrated by a preponderance of the credible evidence that Appellant is guilty of the four sustained charges in the FNDA, and that removal is warranted.

ORDER

It is hereby **ORDERED** that Appellant's appeal is **DENIED**; and,

It is further **ORDERED** that the Final Notice of Disciplinary Action, dated September 6, 2018, providing for a penalty of removal, effective the same date, is **AFFIRMED**.

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

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

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

Nov. 26, 2019
DATE



THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

November 26, 2019

Date Mailed to Parties:

November 26, 2019

db

APPENDIX

List of Witnesses

For Appellant:

Dysheeka Atkins, Appellant

For Respondent:

Lorraine Beecher, Detective, Irvington Police Department

Sebastiano Sciino, Owner, Roman Security

List of Exhibits

For Appellant:

P-1 NLRB case search New Community Corp.

P-2 Confidential Witness Affidavit of Appellant submitted to NLRB regarding Roman Security

P-3 NLRB letter dated June 30, 2017, regarding dismissal of complaint against Roman Security

P-4 Municipal Court records

For Respondent:

R-1 Preliminary Notice of Disciplinary Action with attached specifications dated July 5, 2018

R-2 Final Notice of Disciplinary Action dated September 6, 2018

R-3 Dysheeka Atkins Employment Information

R-4 Det. Lorraine Beecher Internal Affairs Report dated June 22, 2018

R-5 Dysheeka Atkins Resume

R-6 Dysheeka Atkins CSO Application dated January 11, 2017

R-7 Dysheeka Atkins Police Officer Application dated May 14, 2018

R-8 Dysheeka Atkins Juvenile Case Listing

- R-9 Dysheeka Atkins Automated Case Tracking System Case Summary Detail – July 1, 2001, harassment
- R-10 Dysheeka Atkins NJ Automated Case Tracking System Juvenile Warrant History
- R-11 Dysheeka Atkins Automated Case Tracking System Case Summary Detail – February 5, 2001, Burglary
- R-12 Dysheeka Atkins Automated Case Tracking System Case Summary Detail – May 6, 2002, Simple Assault
- R-13 Dysheeka Atkins NJ Automated Complaint System Adult Warrant History
- R-14 Dysheeka Atkins NJ State Police Finger Print ID System Automated Applicant Record
- R-15 Dysheeka Atkins NJ Automated Complaint System Complaint Summary – May 12, 2008, Harassment Charge
- R-16 Dysheeka Atkins NJ Automated Complaint System Complaint Narrative Inquiry May 12, 2009, Harassment Charge
- R-17 Dysheeka Atkins Copy of Warrant issued August 17, 2009 – May 12, 2009, harassment
- R-18 Not in Evidence
- R-19 Dysheeka Atkins March 8, 2014, arrest report
- R-20 Dysheeka Atkins NJ Automated Complaint System – May 5, 2009, Simple Assault
- R-21 Dysheeka Atkins NJ Automated Complaint System Complain Narrative Inquiry
- R-22 Dysheeka Atkins Roman Security Termination Letter
- R-23 Dysheeka Atkins Roman Security Invoice Statement
- R-24 Dysheeka Atkins NLRB Charge against Roman Security for Termination in Retaliation for Protected Activity
- R-25 Standard Operating Procedure 2017-09
- R-26 Not in Evidence
- R-27 I.P.D.M. 3.1.11 Obedience to Laws and Regulations
- R-28 Standard Operating Procedure 2017-01
- R-29 Appellant's criminal history