



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 6<sup>th</sup> DAY OF MARCH, 2019



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

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and  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 14527-18

AGENCY DKT. NO. N/A

**IN THE MATTER OF LUIS DELEON,  
CAMDEN COUNTY.**

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**Andrew A. Norwood, Jr., Esq.**, for appellant, Luis DeLeon (Law Office of Andre A. Norwood, attorney)

**Catherine Binwoski, Esq.**, Assistant County Counsel for respondent, Camden County (Christopher A. Orlando, County Counsel, attorney)

Record Closed: January 18, 2019

Decided: February 4, 2019

BEFORE TAMA B. HUGHES, ALJ:

**STATEMENT OF THE CASE**

Luis DeLeon (DeLeon or appellant), a Sheriff's Officer with Camden County Sheriff's Department (Department or respondent), appeals the Department's Final Notice of Disciplinary Action (FNDA) and decision to terminate his employment.

**PROCEDURAL HISTORY**

On August 30, 2018, appellant filed an appeal of the Department's FNDA with the Civil Service Commission (CSC). The matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case where it was perfected on October 3, 2018. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing in this

matter was heard on December 13, 2018. Upon receipt of the parties' summation briefs, the record closed on January 18, 2019.

### **FACTUAL DISCUSSION**

The following facts are not in dispute in this matter and as such I **FIND** them as **FACT**:

In October 2014, DeLeon applied for a position with the Department. On his application, he certified that one of his prior employers was Dan McLaughlin, Inc., and that he had been laid off from the job in 2011. In December 2014, DeLeon was hired by the Department as a Sheriff's Officer. (R-13) .

The Department routinely provides courses/training which includes among other things, receipt of the Departmental Manual of Rules and Regulations and policy notifications to its employees. Employees are required to review and, in some cases, take a test on the information. (R-5, R-6, R-7, R-8, R-9 and R-10). Since his employ, DeLeon has taken part in this routine training and/or departmental updates. (R-9).

In November 2015, DeLeon was involved in a domestic dispute with Ashley Erwin (Erwin) wherein Erwin applied for and was granted a Temporary Restraining Order (TRO) against DeLeon and also charged him with Simple Assault. Both the TRO and Simple Assault charges were subsequently dismissed. Erwin and DeLeon have a daughter together.

In December 2015, DeLeon was referred for a Psychological Fitness For Duty Evaluation (FFDE). As part of the assessment, the doctor performing the assessment attempted to speak to Erwin who refused to speak to the doctor, informing the doctor that

she did not want to negatively impact DeLeon's job. At the end of the evaluation process, DeLeon was cleared for duty.<sup>1</sup> (R-11).

On April 28, 2017, Erwin applied for and was granted a Temporary Restraining Order (TRO) against DeLeon. The return date of the TRO was May 4, 2017; however, this date was adjourned until May 11, 2017. (R-2). On the same date of April 28, 2017, an arrest warrant was issued for DeLeon for harassment of Erwin. (R-3 and R-4).

At the time the TRO and arrest warrant were issued, DeLeon was suspended with pay. (R-6, R-7). See also Footnote 1.

DeLeon did not notify the Department of the April 28, 2017 issuance of a TRO or of his arrest as required by departmental policy. (R-7, R-8 and R-10). DeLeon did not notify the Department that he had a secondary job which is also required by departmental policy. (R-6, R-7 and R-10).

On May 11, 2017, the TRO was dismissed for lack of evidence.

On March 29, 2018, Erwin filed for an Order to Show Cause (OTSC) to suspend DeLeon visitation with their daughter. The OTSC was granted and given a return date of April 4, 2018. DeLeon did not notify the Department of the issuance of the OTSC or the return date.<sup>2</sup> (R-10, R-16).

On April 20, 2018, a Preliminary Notice of Disciplinary Action (PNDA) was issued which was subsequently amended on May 2, 2018. The Amended PNDA charged DeLeon with violation of:

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<sup>1</sup> In May 2016, after the December 29, 2015 FFDE, the Department issued a FNDA against DeLeon seeking his removal on the sustained charges of giving false and misleading information during a prior psychological examination in November 2014. DeLeon appealed the Department's determination and the matter was transmitted to the OAL under Docket No. CSR 13106-16 where it was heard before the Honorable Joseph Lavery, ALJ on January 5, 2017. Judge Lavery reversed the Department's determination and ordered the reinstatement of DeLeon. This determination was upheld on April 19, 2017 by the CSC.

<sup>2</sup> Post-hearing, the parties were requested to provide proof of service of the OTSC. Respondent provided the Tribunal with the Superior Court Order, dated March 29, 2018, April 4, 2018 and the audio recording of the March 29, 2018 OTSC. (R-15.)

- 1) N.J.A.C. 4A:2-2.3(a)3 (Inability to Perform Duty);
- 2) N.J.A.C. 4A:2-2.3(a)6 (Conduct Unbecoming a Public Employee);
- 3) N.J.A.C. 4A:2-2.3(a)7 (Neglect of Duty);
- 4) N.J.A.C. 4A:2-2.3(a)12 (Other Sufficient Cause – specifically Departmental Rules and Regulations Rule 3:1.1 (Code of Ethics), Rule 3:2.1(A) (Standards of Conduct), Rule 3:2.6 (General Responsibilities), Rule 3.2.7 (Neglect of Duty), Rule 3:3.1 (Obedience to Laws), Rule 3:4.18 (Reporting Violations of Law, Ordinances, Rules, Orders), Rule 3:4.19 (Untruthfulness), Rule 3:4.20 (Withholding Information), Rule 3:4.21 (False Entries), Rule 3:4.22 (Subversive Conduct), Rule 4:7.1 (Investigations)).

On August 9, 2018, a departmental hearing was held and thereafter, on August 22, 2018, a FNDA was issued with the sustained charges of:

- 1) N.J.A.C. 4A:2-2.3(a)3 (Inability to Perform Duty);
- 2) N.J.A.C. 4A:2-2.3(a)6 (Conduct Unbecoming a Public Employee);
- 3) N.J.A.C. 4A:2-2.3(a)7 (Neglect of Duty);
- 4) N.J.A.C. 4A:2-2.3(a)12 (Other Sufficient Cause – specifically Departmental Rules and Regulations Rule 3:1.1 (Code of Ethics); Rule 3:2.1(A) (Standards of Conduct); Rule 3:2.1(B) (Conduct Unbecoming); (Rule 3:2.6 (General Responsibilities); Rule 3.2.7 (Neglect of Duty); Rule 3:3.1 (Obedience to Laws); Rule 3:4.18 (Reporting Violations of Law, Ordinances, Rules, Orders); Rule 3:4.19 (Untruthfulness); Rule 3:4.20 (Withholding Information); Rule 3:4.21 (False Entries); Rule 3:4.22 (Subversive Conduct); Rule 4:7.10 (Reports); Rule 4:7.1 (Investigations); and Rule 3:3.4 (Failure to Comply with Orders)).

The “Incident(s) giving rise to the charge(s) and the date(s) on which it/they occurred” stated:

You failed to notify this office within the twenty-four (24) hours of your arrest on April 28, 2017. You also failed to notify this office of a Temporary restraining Order and Harassment charge made against you on April 28, 2017. You provided false or misleading information to the Internal Affairs Bureau during your interview on March 1, 2018 regarding verbal threats directed to Mr. Warren by you while at Ms. Erwin’s apartment complex on

April 16, 2017, as well as directing Ms. Erwin not to cooperate with Dr. Kelly during your last fitness for duty Evaluation. You falsified your application to the Office of the Sheriff pertaining to the reason for separation of employment with Dan McLaughlin Restoration Inc. You failed to make the proper request for dual employment. You failed to notify this office within the mandated twenty-four (24) hours that your visitation with your daughter ...was suspended on March 30, 2018, as the result of an Order to Show Cause, which was granted to Ms. Erwin on that date. Additionally, you failed to inform this office within the mandated twenty-four (24) hours of the Return Order to Show Case on April 4, 2018. You were ordered to appear at the Sheriff's Office on April 19, 2018. You failed to appear and did not respond to phone calls made to you by Internal Affairs Bureau.

The disciplinary action sought by the Department in the FNDA was removal.

### TESTIMONY

Erwin testified that she is twenty-nine years old and the mother of two children, ages eight and seven months old. DeLeon is the father of her eight year old. She is currently employed as a Mortgage Trainer. Erwin has known DeLeon since she was fifteen years old. Erwin has primary custody of their child. According to Erwin, they have had a tumultuous relationship over the years and been involved in multiple domestic incidents wherein the police were called in. (R-1).

Prior to being hired by the Department, DeLeon worked for Dan McLaughlin's auto repair shop. According to Erwin, he was fired for being a "no call, no show". When DeLeon was hired by the Department in December 2014, he changed – becoming arrogant and bumptious – acting as though he could do whatever he wanted as though the rules did not apply to him. (R-1).

In November 2015, an incident occurred wherein Erwin filed for and obtained a TRO against DeLeon for threatening her with a gun. Erwin also filed Simple Assault charges against DeLeon at the time. A Final Restraining Order (FRO) was not issued as a result of this incident and Erwin did not pursue the Simple Assault charges.

Subsequent to the incident, DeLeon informed her that as part of his job, he was required to undergo a FFDE to keep his job. DeLeon told her not to answer the phone and not to talk to anyone because anything she said could hurt him in getting his job back. The psychologist did in fact call Erwin; however, she refused to talk to her informing the psychologist that she did not want to say anything that would hurt DeLeon from keeping his job. When DeLeon was informed that she had spoken to the psychologist, he was upset with Erwin for picking up the phone.

On April 28, 2017, she filed a harassment complaint against DeLeon and obtained a TRO. (R-2 and R-3). The basis of the harassment complaint was a combination of a contentious phone call between DeLeon and Erwin and an incident which allegedly occurred the previous week between Erwin's boyfriend, Shawn Warren (Warren) and DeLeon. According to Erwin, DeLeon showed up at her residence and made threatening comments to Warren. DeLeon was arrested on the harassment charges on the same date of April 28, 2017. (R-4).

On the return date of the TRO, the court denied issuance of a FRO. While she went to court a couple of times on the harassment complaint, due to the continuous rescheduling of the hearing and because she did not receive notice of the last hearing date, Erwin did not attend the hearing and the charges were dismissed.

Erwin testified at DeLeon's departmental hearing in August 2018. Prior to the hearing, DeLeon questioned her whether she would be testifying. When informed that she would be, DeLeon told her that there would be ramifications which would include an impact on his relationship with their child.<sup>3</sup>

On cross-examination, Erwin admitted that she was still intimately involved with DeLeon up until early 2017; however, denied filing for a TRO in retaliation for their separation. She started seeing Warren in May 2017. When the incident occurred between Warren and DeLeon, she admitted that she was too far away to hear the

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<sup>3</sup> Erwin testified regarding an incident which occurred in October 2018. Due to the timing of the alleged interaction and lack of probative value as it relates to the underlying charges, this testimony was not taken into consideration in the instant appeal.



conversation. Her testimony in this regard was based upon what Warren had told her. When questioned further about her failure to appear for the hearing date on the harassment charges that she had filed against DeLeon, Erwin stated that she did not receive notice of the hearing date despite having received all prior notices and still residing at the same mailing address. Erwin was defensive in her demeanor and responses throughout cross-examination.

**Robert Taylor (Taylor)**, a Detective in the Internal Affairs Bureau (IAB) in the Department testified that he has been with the Department since 2014 and in IAB since 2016. On May 1, 2017, he was assigned to investigate an incident which occurred on April 27, 2017 involving DeLeon.

According to Taylor, DeLeon was hired as a Sheriff's Officer in 2014. On April 28, 2017, the Department was advised by the Pennsauken Police Department that a TRO and harassment charges had been levied against DeLeon. (R-2, R-3 and R-4). The incident which formed the basis for the TRO and harassment charges had taken place on April 27, 2017. At the time the TRO and arrest warrant were executed, DeLeon was on paid suspension due to a prior domestic incident involving Erwin. Taylor testified that at no time did DeLeon contact the Department to inform them of the TRO or his arrest as required under the Departmental policy. (R-7 and R-8). Nor did DeLeon notify the Department that an OTSC had been issued suspending his visitation with his daughter or the return date of the same. Additionally, DeLeon failed to generate a report on any of these occurrences as required by the Department's rules and regulations. (R-8, R-9 and R-10). When he was interviewed, DeLeon acknowledged that he had been trained and received the policies in question and that he did not notify the Department regarding the TRO or his arrest. (R-7 and R-9).

As part of his investigation, Taylor interviewed Erwin and DeLeon. Both interviews were taped and transcribed. (R-1, R-6, and R-7). He also interviewed Warren telephonically who informed him that the week prior to the issuance of the TRO, DeLeon showed up outside of Erwin's apartment and confronted him. He (Warren) felt that DeLeon was attempting to intimidate him stating, "if you are going to take me as a joke, I

am going to have to put my hands on you." DeLeon admitted to speaking to Warren; however, denied threatening him.

Also reviewed as part of his investigation was the December 29, 2015 FFDE evaluation. One of the things which Erwin relayed to him unsolicited, was the statement that DeLeon had told her not to pick up the phone or speak to the psychologist if she called. The FFDE evaluation stated that Erwin, "was not interested in speaking to me or answering any questions as she did not want to be responsible for negatively impacting Mr. DeLeon's job." (R-1 and R-11). This statement was consistent with what Erwin had relayed to him. Taylor did not speak to the psychologist who authored the report. During DeLeon's interview, denied telling Erwin not to speak to the psychologist.

Erwin also relayed to him that prior to his employment with the Department, he had been fired by his prior employer McLaughlin, for a "no show, no call." Taylor felt that Erwin's statement was credible in that it too was unsolicited and that she was unaware of what DeLeon had written down on his job application. (R-12). Taylor did not reach out to McLaughlin as he felt that McLaughlin would not be candid with him.

During DeLeon's interview, he informed Taylor that he had secondary employment outside of the Department. By departmental regulation, secondary employment is required to be requested in writing and approved. (R-10). DeLeon did not request or obtain the required approval. The secondary employment was verified in the State of New Jersey "Loops" System; however, this verification was not included in his report.

On April 18, 2018, Taylor spoke to DeLeon and made arrangements for him to come into the office for a meeting the following day at 2:00 p.m. DeLeon did not show up to the meeting on April 19, 2018, nor did he call or return Taylor's calls to him. Under the departmental rules and regulations, members are required to comply at all times with orders. (R-10).

Taylor's findings were summarized in his investigative report. (R-5). As part of his findings, he determined Erwin to be honest and truthful. He did not find DeLeon to be

truthful and found a pattern of deception with his short answers and denial of all the allegations. Additionally, he intentionally disregarded his (Taylor's) directive to present himself on April 19, 2018.

On cross-examination, Taylor stated that as of April 28, 2018, DeLeon was a full-time paid employee; however, was not on the schedule. This may have been due to an overlap of the appeal of the prior FNDA and final decision; however, he was reinstated in March 2017. (See Footnote 1 and R-13). Taylor denied that his entire report was based solely on Erwin's allegations, citing to DeLeon's failure to report his arrest, the TRO and failure to show up for their meeting. He acknowledged that the TRO was dismissed for insufficiency and that the harassment charges were dismissed for lack of prosecution. With regard to DeLeon's failure to report the OTSC and the return date for the hearing, Taylor stated that under Section 4:7.10 of the rules and regulations, DeLeon was required to file a report of the incident/hearing.

When questioned why he felt DeLeon was being untruthful with him, Taylor stated that he felt that DeLeon was not truthful when questioned whether he told Erwin not to speak to the psychologist for his FFDE. He also felt that DeLeon was less than truthful regarding his contact with Warren.

Taylor stated that he recommended the disciplinary charges that were levied against DeLeon. In going through each of the charges and the basis for the same Taylor stated inter alia:

Section 3:1.1 (Code of Ethics) – the basis for this charge was DeLeon's conduct, his failure to notify the office of his arrest, overall conduct regarding Erwin and ongoing issues and ongoing court date as well as his failure to request permission to hold secondary employment.

Section 3:1.1A (Standards of Conduct), Section 3:2.1(B) (Conduct Unbecoming) and Section 3:2.6(B) (General Responsibilities – Preserve the Peace) - the basis for these charges were DeLeon's off duty actions which caused his arrest for harassment and his subsequent court dates. DeLeon failed to notify the Department of his arrest. DeLeon's

off duty actions would support this charge regardless of whether he was convicted or whether a FRO was issued. Taylor testified that DeLeon's continuous issues with Erwin – the harassing calls, his arrest and his failure to notify the department of the same was the basis constituted the basis for these charges.

Section 3:2.7 (Neglect of Duty) – the basis for this charge was DeLeon's failure to advise the Department of his arrest within the mandated time period as the well as the issuance of the TRO and the return date of the same.

Section 3:3.1 (Obedience to Laws, Regulations, and Policy) – The basis of this charge was DeLeon's failure to obey the laws and regulations and policies that he swore to uphold as a Sheriff's Officer.

Section 3:4-18 (Reporting Violations of Law, Ordinances, Rules or Orders) – the basis of this charge was DeLeon's failure to report and violations of law or ordinances within twenty-four hours. (R-8.)

Section 3:4.22 (Subversive Conduct) – the basis of this charge was DeLeon's actions surrounding his arrest and failure to report were a violation of policies and procedures and was subversive of the good order and discipline of the Department.

Section 4:7.10 (Reports) – the basis of this charge was DeLeon's failure to submit a report regarding his arrest and subsequent court dates.

Section 3:3.4 (Failure to Comply with Orders) – the basis of this charge was DeLeon's failure to show up on April 19, 2018 for a scheduled meeting nor did he call or pick up the phone when Taylor called. Instead he showed up announced the following day.

**Robert Turner (Turner)**, the Undersheriff testified that he has been with the Department for three years. Prior to that he was a Camden City Police Officer for twenty-six years where he was in IA for approximately ten years. The Department's IAB falls under his command. Turner reviewed Taylor's report and determined that DeLeon's conduct was unacceptable, as law enforcement and sheriff's officers are held to a higher standard. Any negative conduct or behavior impacts upon the agency as a whole. By

DeLeon's failure to report his arrest and the TRO, he violated rules and regulations of the Department. As such, his conduct rises to the level of removal.

On cross-examination, Turner agreed that in an IA investigation, all leads must be followed up and you should not take one person's word over another – all information should be validated. It was his belief that Taylor fully investigated DeLeon's employment history with McLaughlin and Erwin's statement that DeLeon told her not to speak to the psychologist. The recommendation to remove DeLeon was based on multiple factors but he could not say whether any one individual charge would have justified DeLeon's removal. He and the Sheriff went through Taylor's report and decided what charges were to be filed.

### **FINDINGS OF FACT**

When assessing credibility, inferences may be drawn concerning the witness' expression, tone of voice and demeanor. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness' interest in the outcome, motive or bias should be considered. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963).

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).

I **FIND** the testimony of Erwin to be less than credible and at some points disingenuous – particularly on cross-examination when questioned whether her own actions constituted harassment. While some of her statements were supported by independent sources, other parts of her testimony appeared self-serving and calculated.

With the above in mind, having considered the testimonial and documentary evidence offered by the parties, in addition to the findings of fact noted above, I **FIND** as **FACT** that Erwin and DeLeon have had a tumultuous relationship spanning years and that multiple TROs have been entered over the past couple of years. I **FIND** that no FRO have ever been entered against DeLeon. I further **FIND** that Erwin was instructed by DeLeon not to speak to the psychologist for his FFDE which was required for him to return to work after the November 2015 TRO had been issued against him.

I **FIND** that a meeting was set up for DeLeon to meet with Taylor on April 19, 2018. I **FIND** that DeLeon had personal notice of the meeting; however, failed to show up for the meeting or respond to Taylor's phone call. I further **FIND** that while Taylor's testimony was credible, his investigation, in certain respects, was not thorough as he failed to independently verify or corroborate certain statements or allegations made by Erwin – instead taking them at face value.

### **LEGAL ANALYSIS AND CONCLUSION**

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. 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 DOC Park Comm'n, 46 N.J. 138, 147 (1965). Governmental employers also have delineated rights and obligations. The Act sets forth that it is State policy to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b).

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C.

4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against him and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, respondent bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

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, I 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 & W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to “generate belief that the tendered hypothesis is in all human likelihood the fact.” Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959) (citation omitted). 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). Credibility, or, more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself, as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954).

In the case at bar, appellant was determined to have violated:

- 1) N.J.A.C. 4A:2-2.3(a)3 (Inability to Perform Duty);
- 2) N.J.A.C. 4A:2-2.3(a)6 (Conduct Unbecoming a Public Employee);
- 3) N.J.A.C. 4A:2-2.3(a)7 (Neglect of Duty);
- 4) N.J.A.C. 4A:2-2.3(a)12 - Other Sufficient Cause – specifically Departmental Rules and Regulations:
  - Rule 3:1.1 - Code of Ethics
  - Rule 3:2.1(A) - Standards of Conduct – members and employees shall conduct their professional and private lives in such a manner as to avoid bringing the department into disrepute.

- Rule 3:2.1(B) – Standards of Conduct – disorderly, immoral, dishonest, deceitful and other conduct without a legitimate lawful purpose, shall be considered conduct unbecoming an officer and shall subject a member to disciplinary action if the conduct reflects poorly on the reputation of the Office of the Sheriff.
- Rule 3:2.6 - General Responsibilities – Members shall at all times take appropriate action to: A) Protect life and property; B) Preserve the peace; C) Prevent crime; D) Detect and arrest violators of the law; E) Enforce all state and local laws and ordinances coming within jurisdiction of the Office of the Sheriff; F) Safely and expeditiously regulate traffic; and G) Aid citizens in matters within police jurisdiction
- Rule 3.2.7 - Neglect of Duty – Members and employees may be charged with neglect of duty for any act or omission in violation of law, police orders, procedures or rules and regulations.
- Rule 3:3.1 - Obedience to Laws, Regulations, and Policy – Employees shall obey all laws, ordinances, rules and regulations, policies and procedures, and general orders of the Office of the Sheriff as applicable.
- Rule 3:3.4 – Failure to Comply With Orders – Members and employees must at all times comply with the orders, rules directives, regulations, policies and procedures, written and oral, from the sheriff, superior officers and supervisors.
- Rule 3:4.18 - Reporting Violations of Law, Ordinances, Rules, Orders – Members and employees knowing of other members and employees violating laws, ordinances, or rules of the department, or disobeying orders, shall report same in writing to the Sheriff through official channels. If the member or employee believes the information is of such gravity it must be brought to the immediate, personal attention of the Sheriff, official channels may be bypassed.
- Rule 3:4.19 – Untruthfulness – Members and employees are required to be truthful at all times, whether testifying under oath or when not under oath, while reporting and answer questions of superior officers, or internal affairs investigators. A) Untruthfulness refers to false statements, false reports, intentionally incomplete statements or reports, and intentional omissions; B) Untruthfulness to superior officers or during an internal investigation is prohibited; C) Failure to disclose information in criminal or departmental matters is an equal offense.
- Rule 3:4.20 - Withholding Information – members and employees shall not, at any time, withhold any information concerning criminal activity.



- Rule 3:4.21 - False Entries – No member or employee shall knowingly falsify any official report, record or document, or enter or cause to be entered any inaccurate, false or improper information on the records of the Office of the Sheriff.
- Rule 3:4.22 - Subversive Conduct – Conduct subversive of good order and the discipline of the department are prohibited.
- Rule 4:7.1 – Investigations – All employees involved in any official investigation of any matter will fully comply with the policies and procedures of the Office of the Sheriff governing same.
- Rule 4:7.10 – Reports – All members must submit properly written reports when required. All reports shall be completed and submitted according to department policy and procedures.

Inability to Perform Duties. An employee must be able to physically, intellectually, and psychologically perform his or her duties. Where an employer brings a charge under N.J.A.C. 4A:2-2.3(a)(3) it is challenging the employee's ability to perform the duties associated with the position, and is seeking to remove the employee or demote him or her to a different position, but is bringing a charge that is not, strictly speaking, disciplinary in nature. However, from the employee's point of view, the outcome may be just as severe as if it were a disciplinary charge. The outcome of this type of charge will turn on medical or performance based evidence. There was no evidence presented in this case to support this charge.

For the foregoing reason, I **CONCLUDE** that the Department has not met its burden as it relates to the charge of Inability to Perform Duties (N.J.A.C. 4A:2-2.3(a)3).

Conduct Unbecoming a Public Employee. Conduct Unbecoming a Public Employee is an elastic phrase, which encompasses conduct that "adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services." Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins at 555 [quoting In re Zeber, 156 A.2d 821, 825 (1959)]. Such misconduct need not necessarily "be predicated upon the

violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) [quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)]. Suspension or removal may be justified where the misconduct occurred while the employee was off duty. In re Emmons, 63 N.J. Super. 136 at 140.

Here, it is undisputed that the appellant failed to notify the respondent of his arrest for harassment; the TRO; the return date of the TRO; and the filing of, and return date for, an OTSC. It is also undisputed that he failed to go through the proper channels in seeking approval for secondary employment and was a no call, no show on April 19, 2018, for his meeting with Taylor. All of these actions or rather inaction on the appellant's part, were in direct violation of the respondent's rules and regulations. Additionally, while I did not find Erwin's overall testimony to be credible, I did find her testimony credible as it relates to DeLeon telling her not speak to the psychologist performing the FFDE. This statement appeared to be consistent with the psychologist report.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden in demonstrating that the appellant is guilty of Conduct Unbecoming (N.J.A.C. 4A:2-2.3(a)7).

Neglect of Duty. Neglect of Duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). Neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Board of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961).

For the reasons previously cited above, it is clear that the appellant neglected the duties and responsibilities imposed upon him. Therefore, I **CONCLUDE** that the

respondent has met its burden in demonstrating that the appellant is guilty of Neglect of Duty (N.J.A.C. 4A:2-2.3(a)7).

Other Sufficient Cause – specifically violations of:

Rule 3:3.4 and Rule 4:7.1. The basis for these charges was the appellant's failure to appear for the scheduled meeting with Taylor on April 19, 2018. I **CONCLUDE** that the Department has met its burden in demonstrating that appellant violated Rule 3:4.21 and Rule 4:7.1.

Rule 3:4.21. It is apparent that Taylor failed to perform any type of investigation into this allegation - instead, taking Erwin at face value and his assumption that McLaughlin would not be candid had he been questioned. For the foregoing reasons, I **CONCLUDE** that respondent has failed to meet its burden in demonstrating that the appellant violated Rule 3:4.21.

Rule 3:4.18. Given the facts of this case, it is unclear how this charge is applicable in this matter. For the foregoing reasons, I **CONCLUDE** that respondent has failed to meet its burden in demonstrating that appellant violated Rule 3:4.18.

Rule 3:2.6(B). It is undisputed that the harassment charges were dismissed against the appellant as was the TRO for insufficient cause. Despite this fact, according to Taylor, this charge was still applicable as he found Erwin to be entirely credible and DeLeon not. I disagree.

As previously noted, I did not find Erwin's testimony to be entirely credible and it is a significant finding that the appellant was not convicted of the harassment charges and that a court of competent jurisdiction found that there was insufficient basis to enter a FRO. For the foregoing reasons, I **CONCLUDE** that the respondent has failed to meet its burden in demonstrating that the appellant violated Rule 3:2.6.(B)

Rule 3:3.1, Rule 3:4.20, Rule 3:2.7, Rule 3:4.22 and Rule 4:7.10. One of the basis for this sustained charge was the appellant's failure to disclose his arrest, the issuance of the TRO, and the filing of an OTSC. It is undisputed that the appellant failed to provide any type of notification as it relates to all of these events. Such policies are put in place for a myriad of reasons, not the least of which is to establish expectations for professional and ethical conduct, accountability, and to ensure that the law enforcement community complies with the law and industry standards. Failure on the appellant's part to disclose any of these events was in direct violation of the departmental rules and regulations.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden in demonstrating that appellant violated Rule 3:3.1, Rule 3:4.20, Rule 3:2.7, Rule 3:4.22 and Rule 4:7.10.

Rule 3:1.1, Rule 3:2.1(A), and Rule 3:2.1(B). These charges were sustained primarily because of the appellant's off duty actions. Specifically: his arrest; the issuance of a TRO; the "harassing" phone calls to Erwin and continue issues with her; his failure to notify the Department of the upcoming hearing dates; and his failure to obtain approval for secondary employment.

In light of the evidence presented, the only sustainable basis for these charges is the appellant's failure to notify the respondent of his arrest and issuance of a TRO; failure to advise the respondent of the hearing dates on the harassment charge, the TRO, and the OTSC; and his failure to obtain approval for secondary employment. No independent investigation was performed by Taylor to support Erwin's claim of harassing phone calls or any other off duty conduct as alleged by Erwin.

For the foregoing reason, I **CONCLUDE** that the respondent has met its burden in demonstrating that the appellant violated Rule 3:1.1, Rule 3:2.1(A) and Rule 3:2.1(B).

Rule 3:4.19. The basis for the sustained charge of untruthfulness was based upon Taylor's perception DeLeon was deceptive during his interview. Specifically, DeLeon's denial regarding: falsifying his job application regarding his prior employment; the allegations leading to his arrest and content of his conversation with Warren; and, that he told Erwin not to speak to the psychologist.

As previously noted, Taylor performed no follow-up investigation with McLaughlin to determine why the appellant's employment had been terminated. Instead, he took Erwin's statement at face value. With regard to the appellant's denial of the allegations and his conversation with Warren – the criminal charges were dismissed as was the TRO. The fact that an individual denies allegations against him is insufficient to sustain a charge of untruthfulness. Additionally, as previously noted, I did not find Erwin's testimony particularly credible and Warren did not testify. Therefore, any statements attributable to Warren, whom Taylor interviewed telephonically and who was not called as a witness at the hearing, are nothing more than unsupported hearsay. The only basis that sustains this charge is the appellant's denial that he told Erwin not to speak to the psychologist.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden in demonstrating that the appellant violated Rule 3:4.19.

The next question is the appropriate level of that discipline. 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 this concept 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 employee potential.

The law is also clear that a single incident can be egregious enough to warrant removal without reliance on progressive-discipline policies. See In re Herrmann, 192 N.J. 19, 33 (2007) (Division of Youth and Family Services worker snapped lighter in front of five-year-old), in which the Court stated:

[J]udicial 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.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

In addition to considering an employee's prior disciplinary history when imposing a penalty under the Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Bock, 38 N.J. at 522–24. Major discipline may include removal, disciplinary demotion, or a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

Here, respondent argues that the appellant showed a pattern of continued violation of the departmental rules and regulations and his lack of candor during his IA interview.

Appellant argues that he has no prior disciplinary record and that he was not convicted of any criminal activity or the subject of a FRO. The TRO having been dismissed for insufficient evidence. Given the inadequacy of the respondent's investigation and the fact that Erwin was not credible given her vendetta against the appellant, removal is inappropriate and he should be reinstated.

Appellant has no prior disciplinary record. (R-15.) Unfortunately, his actions or lack thereof, as it relates to reporting that he had been arrested for harassment and that a TRO had been levied against him, are in direct violation of the departmental rules and regulations. Additionally, even after he had been interviewed by IA, an OTSC was filed against the appellant which once again, he failed to disclose. Adding into this mix was the appellant's lack of candor in his IA interview as it relates to coaching Erwin not to speak to the psychologist for his FFDE and failure to go through the proper avenue to a secondary job. In totality, it calls into question his integrity and fitness to be a Sheriff's Officer.

Accordingly, I **CONCLUDE** that under the respondent's disciplinary guidelines and the conduct for which appellant has been found guilty of, removal is the appropriate discipline for the violations of: N.J.A.C. 4A:2-2.3(a)6 (Conduct Unbecoming a Public Employee); N.J.A.C. 4A:2-2.3(a)7 (Neglect of Duty); N.J.A.C. 4A:2-2.3(a)12 (Other Specific Cause) – specifically Rule 3:1.1 (Code of Ethics); Rule 3:2.1(A) (Standards of Conduct – Class Two Offense); Rule 3:2.1(B) (Conduct Unbecoming – Class Two Offense); Rule 3:2.7 (Neglect of Duty – Class Two Offense); Rule 3:3.1 (Obedience to Law Regulations and Policy – Class Two Offense); Rule 3:3.4 (Failure to Comply with Orders – Class Two Offense); Rule 3:4.19 (Untruthfulness – Class One Offense); Rule 3:4.20 (Withholding Information – Class One Offense); Rule 3:4.22 (Subversive Conduct – Class Three Offense); Rule 4:7.1 (Investigations – Class Three Offense); and Rule 4:7.10 (Reports – Class Four Offense).<sup>4</sup>

I further **CONCLUDE** that the disciplinary action taken by the respondent as it relates to the aforementioned charges be **AFFIRMED**.

I **CONCLUDE** that the disciplinary action taken by the respondent as it relates to the sustained charges of: N.J.A.C. 4A:2-2.3(a)3 (Inability to Perform Duty); Rule 3:2.6(B)

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<sup>4</sup> Pursuant to Section 5:1.9 of respondent's Manual of Rules and Regulations, the classes of offenses and recommended penalties are outlined. For a Class 1 Offense, the recommended disciplinary action is dismissal. For a Class 2 Offense, the range of discipline for a first offense is reprimand up to dismissal. For a Class 3 Offense, the range of discipline for a first offense is reprimand up to thirty days suspension without pay. For a Class 4 Offense, the range of discipline is reprimand up to twenty days suspension without pay. (R-14).

(General Responsibilities – Preserve the Peace); Rule 3:4.18 (Reporting Violations of Law Ordinances, Rules, Orders); and Rule 3:4.21 (False Entries) should be **DISMISSED**.

**ORDER**

Accordingly, it is **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary Action of the Camden County Sheriff's Department against Luis DeLeon, as it relates to the charges of violation of: N.J.A.C. 4A:2-2.3(a)6, N.J.A.C. 4A:2-2.3(a)7, N.J.A.C. 4A:2-2.3(a)12 - specifically Rule 3:1.1, Rule 3:2.1(A), Rule 3:2.1(B), Rule 3:2.7, Rule 3:3.1, Rule 3:3.4, Rule 3:4.19, Rule 3:4.20, Rule 3:4.22, Rule 4:7.1, and Rule 4:7.10 is hereby **AFFIRMED**.

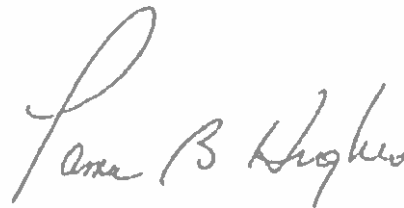
It is further **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary action as it relates to the charges of: N.J.A.C. 4A:2-2.3(a)3, Rule 3:2.6(B), Rule 3:4.18, and Rule 3:4.21 are hereby **DISMISSED**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.



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



February 4, 2019

DATE

\_\_\_\_\_  
TAMA B. HUGHES, ALJ

Date Received at Agency:

\_\_\_\_\_  
2.4.19

Date Mailed to Parties:

\_\_\_\_\_  
2.4.19

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**WITNESSES**

**For Appellant:**

Luis DeLeon

**For Respondent:**

Ashley Erwin  
Robert Taylor  
Robert Turner

**EXHIBITS**

**For Appellant:**

None

**For Respondent:**

- R-1 Ashley Erwin Interview (twenty pages)
- R-2 New Jersey Domestic Violence civil Complaint and Temporary Restraining Order (five pages)
- R-3 Complaint-Warrant (one page)
- R-4 Pennsauken Police Department's Master Incident Report (two pages)
- R-5 Internal Affairs Investigation Report (eight pages)
- R-6 DVD's of Luis DeLeon Interview and Ashley Erwin Interview
- R-7 Luis DeLeon Interview (sixteen pages)
- R-8 Camden County Sheriff's Office General Order (two pages)
- R-9 E-Safety Report for Luis DeLeon (three pages)
- R-10 Camden County Sheriff's Office Manual of Rules and Regulations (fourteen pages)
- R-11 Psychological Fitness for Duty Evaluation Report (six pages)
- R-12 Luis DeLeon's Application for Employment with the Camden County Sheriff's Office (thirty-one pages)
- R-13 Employee Status History (one page)

R-14 Letter, dated December 14, 2018 – Classes of Offenses (3 pages)

R-15 Letter dated January 7, 2018 – Re: Disciplinary Record of Luis DeLeon (one page)

R-16 Letter, dated January 16, 2019 – Re: OTSC (Superior Court Orders dated March 29, 2018 and April 4, 2018 and audio recording of OTSC on March 29, 2018)