



## ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Jarrod Morris. The Commission further orders that appellant be granted back pay, benefits, and seniority from November 20, 2018 to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 25<sup>TH</sup> DAY OF SEPTEMBER, 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  
Trenton, New Jersey 08625-0312

attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 04504-19

AGENCY DKT NO. CSC 2019-2534

**IN THE MATTER OF JARROD MORRIS,  
CITY OF NEWARK, DEPARTMENT OF  
PUBLIC WORKS,**

---

**Seth B. Kennedy, Esq.,** for appellant, Jarrod Morris (Kroll Heineman Carton., attorneys)<sup>1</sup>

**Hugh Thompson,** Assistant Corporation Counsel, for respondent City of Newark, Department of Public Safety (Corporation Counsel, City of Newark, attorneys)

Record Closed: August 19, 2019

Decided: August 27, 2019

**BEFORE JULIO C. MOREJON, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Appellant, Jarrod Morris, (Morris) appealed the respondent, City of Newark, Department of Public Works' (City of Newark) action removing him from employment as a boiler operator effective November 20, 2018, for substantiated charges for violating

---

<sup>1</sup> Appellant was initially represented by Michael D. Lewis, business representative of IUOE Local 68, pursuant to N.J.A.C. 1:1-5.4(b). Mr. Kennedy appeared at the hearing and with the consent of respondent and appellant, entered his appearance as attorney for appellant. A Notice of Appearance was thereafter submitted to the OAL on August 1, 2019.

N.J.A.C. 4A:2—2.3(a), 6, conduct unbecoming a public employee, and 12, other sufficient cause, for allegedly posting on Face Book on November 15, 2018, under the alias "Mikey Amsterdam" comments deemed derogatory of Mayor Raz J. Baraka (Mayor).

Morris requested a fair hearing and the matter was filed at the Office of Administrative Law (OAL) on April 1, 2019, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 14F-1 to 13. A telephonic prehearing conference was held on May 2, 2019 and June 28, 2019. A hearing was held on July 24, 2019, at the OAL. At the conclusion of the hearing, the City of Newark requested to submit written summation concerning Morris' affirmative defense that the City of Newark did not comply with his "Weingarten Rights". Limited written summations were submitted by both parties on August 14, 2019, at which time the record closed.

### **ISSUES**

The issues to be determined in this matter are the following:

1. Whether Morris is guilty of the alleged conduct, resulting in the City of Newark removing him from employment, and
2. Whether the disciplinary action against Morris should have been a reprimand or suspension on principles of progressive discipline.

### **FACTUAL DISCUSSION AND FINDINGS**

#### **Summary of Testimony**

##### **Rachem Farrell, Director:**

Rachem Farrell, (Farrell) is a Director in the City of Newark, Department of Public Works (DPW). Farrell testified that he first was employed by the City of Newark in March 2000, as a laborer and was appointed Director in 2017. He stated that as Director of

DPW he was responsible for overseeing the operations of the entire DPW department for the City of Newark.

Farrell testified that Morris holds the title of Boiler Operator and would report to his supervisor, Mr. Gordon, who in turn would report to Farrell. Farrell testified that on November 15, 2018, Morris would report to him, as Mr. Gordon was out on extended medical leave. Farrell testified that he occasionally checked social media to see what DPW employees were posting, and that this practice was routine.

Farrell testified that he was working on November 15, 2018, the day of the snow storm that beset the metropolitan area. Farrell testified that after work at approximately 9:30 p.m. he checked Face Book as he wanted to know if Newark residents were posting information necessary concerning the snow storm, for the DPW to address. Farrell stated that he wanted to know if there were any areas in the City of Newark that needed assistance and he chose social media to inquire of the same.

Farrell stated that he checked his Face Book account to see the postings and not the City of Newark's Face Book page, as many residents knew his personal Face Book account and communicated with him directly regarding matters needing DPW attention instead of posting on the City of Newark Face Book page.

On direct examination, Farrell stated that he and Morris had known each other since they were young children and that he knew that the Face Book page of "Mikey Amsterdam" belonged to Morris. Farrell denied that he and Morris were Face Book friends, and he did not provide any instances when he had communicated with Morris through Mikey Amsterdam, but he was "sure" the account belonged to Morris. Farrell testified that he "knows" Morris uses the Mikey Amsterdam alias because they have mutual Face Book friends, opinions posted by Mikey Amsterdam, and "other stuff" on the Face Book page.

Farrell testified that the comments posted by Mikey Amsterdam were not requesting assistance because of the snow storm but were a "defamation of character" by Morris. As a result, of the Mikey Amsterdam Face Book posting, Farrell testified that

he called Morris into his office the following day for a “conversation” regarding the Mikey Amsterdam Face Book post. Farrell stated that he asked Morris why he posted the comments on Face Book, and that Farrell looked “puzzled”. Farrell stated that Morris admitted to posting on Face Book as Mikey Amsterdam, and that he did post the comments on November 15, 2018.

Farrell testified that Morris was not represented by a union representative during the meeting, and that he did not respond to Farrell's questioning concerning the Face Book comments.

Farrell stated that following the meeting, he recommended a suspension of Morris for the comments made on Face Book, as he was “sure” Morris had made the same under the alias of Mikey Amsterdam. Farrell could not recall how many days of suspension he had recommended. Farrell confirmed that the City of Newark Director, Khalif Thomas, had decided to terminate Morris instead of suspending him.

### FINDINGS OF FACT

Most of the facts in this case are undisputed and have been stipulated to by the parties. Below are the **FACTS** not in dispute, and facts derived from the testimony of the witness submitted and my assessment of its credibility, together with the documents that the parties submitted and my assessment of their sufficiency.

On February 8, 2019, the City of Newark issued a Final Notice of Disciplinary Action (FNDA) finding that Morris violated the following listed charges: N.J.A.C. 4A:2-2.3 (a) (8): Conduct unbecoming a public employee, and (12) other sufficient causes (J1). The City of Newark determined that Morris should be removed from his position as boiler operator effective November 20, 2018 (Id.)

After meeting with Morris, Farrell issued a Preliminary Notice of Disciplinary Action (FNDA) dated November 20, 2018, charging Morris with the same charges as contained in the FNDA but recommended an “immediate suspension pursuant to N.J.A.C. 2.25(a)1- to maintain order, and effective direction of public service.” (J2).

The incident giving rise to the FNDA sustained charges are that on November 15, 2018, Morris using the alias of "Mikey Amsterdam", posted comments on Face Book directed at Mayor Baraka that the City of Newark deemed offensive. (Id.). Specifically, the comments on Face Book stated:

"yoo Ras! Why the fuck this whole walk from the Ironbound to City Hall to Seymour! I only seen 2 fucking salt trucks!? Bitch you knew what was up! This is the second time you did this & what's up with our water with the 3 month delay of announcing it! Oh yeah you can't get re-elected so you said 'Fuck it!' Yeah I'm fucking verbal!" (J1)

Morris had previously been disciplined on February 19, 2016, for violating N.J.A.C. 4A:2-2.3, for being out of uniform and resulting in a written notice (J3); October 12, 2016, for violating N.J.A.C. 4A:2.2-3, for sleeping in the power plant, resulting in a written notice(J4); May 23, 2015, for violating N.J.A.C. 4A:2-2.3(a)(2) for insubordination, (6) conduct unbecoming a public employee and (7) neglect of duty, due to his inappropriate conduct with his supervisor, including text messages, (J5), resulting in a thirty-six day suspension effective June 17, 2015 (J6). No Last Chance Agreement for Morris' disciplinary history was ever executed between the parties. <sup>2</sup>

Morris asserted an affirmative defense in the hearing that the City of Newark violated his "Weingarten rights" <sup>3</sup> when he met with Farrell to discuss if Morris had made the Face Book comments, without a union representative present.

### Credibility

Prior to conducting a legal analysis and making a conclusion as to the testimony provided herein, it is necessary to address the credibility of the testimony of Farrell. "The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the . .

---

<sup>2</sup> Morris presented a copy of a "Last Chance Agreement" between Morris and the City of Newark dated June 17, 2015 (P-1), which Morris claimed had not been executed and thus was not binding. By letter dated August 14, 2019, counsel for the City of Newark informed the undersigned that the City of Newark could not produce an executed copy of the Last Chance Agreement.

<sup>3</sup> NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975)

trier of fact, whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952). The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521–22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

I **FIND** the testimony of Farrell not credible concerning his knowledge that the Face Book account of Mikey Amsterdam was an alias for Morris. Farrell did not provide any detail regarding his methodology or what specific acts he undertook to determine how he knew that Morris was Mikey Amsterdam. I **FIND** Farrell's testimony that he was "sure" the account Face Book account belonged to Morris does not rise to the level of proof necessary to establish by a preponderance of the credible evidence that Morris and Mikey Amsterdam were the same person. I **FIND** that Farrell provided conclusionary testimony at best and therefore did not provide any detail to confirm that Morris, as Mikey Amsterdam, posted the comments on Face Book on November 15, 2018, which caused the City of Newark to terminate him.

I **FIND** Farrell's testimony that Morris "admitted" to posting as Mikey Amsterdam contradictory to his testimony that Morris "did not respond" to Farrell's inquiry concerning the Face Book post and that Morris looked "puzzled" in response to Farrell's questioning.



## LEGAL ANALYSIS AND CONCLUSION

In appeals concerning major disciplinary action, the appointing authority bears the burden of proof. N.J.A.C. 4A:2-1.4(a). The burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980). On such appeals, the Civil Service Commission may increase or decrease the penalty, N.J.S.A. 11A:2-19, and the concept of progressive discipline guides that determination, In re Carter, 191 N.J. 474, 483–86 (2007).

Thus, an employee's prior disciplinary record is inherently relevant to determining an appropriate penalty for a subsequent offense, Id. at 483, and the question upon appellate review is whether such punishment is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness," Id. at 484 (quoting In re Polk, 90 N.J. 550, 578 (1982) (internal quotes omitted)). Indeed, progressive discipline may only be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest, such as when the position involves public safety and the misconduct causes risk of harm to persons or property. In re Herrmann, 192 N.J. at 33.

Morris has been charged with violating N.J.A.C. 4A:2-2.3(a)(6), "conduct unbecoming a public employee". An employee may be subject to discipline for conduct unbecoming a public employee. Conduct unbecoming a public employee constitutes grounds for major discipline under N.J.A.C. 4A:2-2.3(6). Although the term is undefined under the Administrative Code, the charge has been interpreted to include any conduct that adversely affects the morale or efficiency of the bureau or "which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Emmons, 63 N.J. Super. 136 (App. Div. 1960). The employee need not violate the criminal code or a written rule or policy of the employer.

Morris is also charged with violating N.J.A.C. 4A:2-2.3(a)(12), "other sufficient cause". Other sufficient cause is generally defined in the charges against appellant as all

other offenses caused and derived as a result of all other charges against him. Other sufficient cause is an offense for conduct that violates the implicit standards of good behavior which devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct.

The basis for the City of Newark charging Morris with violating N.J.A.C. 4A:2-2.3(a)(6) and (12), result from the City of Newark's belief that Mikey Amsterdam and Morris are the same person; and that the Facebook comments made by Mikey Amsterdam on November 15, 2018, were in fact made by Morris, and thus rise to the level of a violation of N.J.A.C. 4A:2-2.3(a)(6) and (12), which resulted in the City of Newark terminating Morris. As presented in the hearing, said belief resulted from Farrell's opinion that Morris was Mikey Amsterdam, and posted the comments on Face Book which were deemed offensive.

While the language contained in the Facebook comments of Mikey Amsterdam are offensive, I **CONCLUDE** that the City of Newark has failed through Farrell's testimony to establish that Morris as Mikey Amsterdam posted the said comments on November 15, 2018.

Moreover, even if the City of Newark had established that Mikey Amsterdam's comments were made by Morris, I **CONCLUDE** that the said comments do not rise to the level of a suspension or termination of Morris under N.J.A.C. 4A:2-2.3 (a)(6) and (12), inasmuch as the said comments have not been shown to adversely affect the morale or efficiency of the bureau or that it has destroyed public trust in the operation of the DPW, as required in In re Emmons, 63 N.J. Super. 163, as "Mikey Amsterdam" is not an employee of the City of Newark, and therefore no connection could have been made. Simply put, a reading of Mikey Amsterdam's Face Book comments on November 15, 2018, buy the public or an employee of the City of Newark, could not be attributed to an employee of the City of Newark as it is "an alias", which the City of Newark failed to prove is Morris.

I **CONCLUDE** that the City of Newark has failed to prove by a preponderance of the credible evidence under N.J.A.C. 4A:2-1.4(a), that Morris made the comments on

Facebook on November 15, 2018, and therefore the City of Newark's decision to remove Morris from employment effective November 20, 2018, is **REVERSED**.

Having concluded that the City of Newark has failed to establish that Morris' conduct was in violation of N.J.A.C. 4A:2-2.3(a)(6), and 4A:2-2.3(a)(12), I **CONCLUDE** that I do not have to determine if the penalty assessed by the City of Newark is consistent with the concept of progressive discipline inherent in the Civil Service Commission ability to increase or decrease the penalty, under N.J.S.A. 11A:2-19; In re Carter, 191 N.J. 474, 483-86 (2007).

In addition, as I have **CONCLUDED** that the City of Newark has failed to establish that Morris' conduct was in violation of the civil service regulations, it is not necessary for me to determine if the City of Newark violated the decision in NLRB v. J. Weingarten, Inc., 420 U.S. 251, 262 (1975), that "§ 7 of the National Labor Relations Act (NLRA) guarantees an employee's right to the presence of a union representative at an investigatory interview in which the risk of discipline reasonably inheres is within the protective ambit of the section[.]" (Ibid.)

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that the City of Newark's decision terminating Morris on November 20, 2018, as a result of his conduct on November 15, 2018 in posting on Face Book in violation of the civil services regulations is **REVERSED** and the City of Newark is **ORDERED** to reinstate Morris with pay, including his benefits retroactive to November 20, 2018.

Based on the foregoing findings of fact and applicable law, it is hereby **ORDERED** that the determination of the City of Newark, Department of Public Works that Jarrod Morris be **REMOVED** from employment is **REVERSED**.

It is further **ORDERED** that Jarrod Morris is entitled to back pay from November 20, 2018.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

August 27, 2019  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
JULIO C. MOREJON, ALJ

Date Received at Agency:

August 27, 2019  
\_\_\_\_\_

Date Mailed to Parties:

August 29, 2019  
\_\_\_\_\_

lr

## APPENDIX

### Witnesses

#### For Appellant:

No witness

#### For Respondent:

Rachem Farrell

### Exhibits

#### Joint:

- J1. Final Notice of Disciplinary Action: FNDA (2/06/2019- 1 Page)
- J2. Preliminary Notice of Disciplinary Action PNDA (11/20/2018- 2 Pages)
- J3. Notice of Minor Disciplinary Action (2/19/2016-1 Page)
- J4. Notice of Minor Disciplinary Action (10/12/2016-3 Pages)
- J5. Preliminary Notice of Disciplinary Action (6/23/2015-5 Pages)
- J6. Final Notice of Disciplinary Action: FNDA (8/4/2015-5 Pages)

#### Petitioner

P-1 Last Chance Agreement dated June 17, 2015



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

**ORDER**

**SALARY PAYMENT**

OAL DKT. NO.: CSR 00159-19

**IN THE MATTER OF JARROD MORRIS,  
CITY OF NEWARK DEPARTMENT OF  
PUBLIC WORKS.**

---

**BEFORE: JULIO C. MOREJON, ALJ:**

On this date, I issued an initial decision in this matter which recommended that the disciplinary charges against appellant not be sustained. Therefore, pursuant to N.J.S.A. 40A:14-203(b), I **ORDER** the appointing authority to begin paying appellant his base salary and back pay immediately pending issuance of the final decision by the Civil Service Commission.

This Order is effective immediately and shall continue in effect until issuance of the Final Decision in this matter by the Civil Service Commission.

August 27, 2019

Date

lr

  
\_\_\_\_\_  
JULIO C. MOREJON, ALJ