



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

In the Matter of Daniela Garcia, City of Paterson

CSC Docket No. 2020-548
OAL Docket No. CSR 12796-19

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ISSUED: March 4, 2020 (HS)

The appeal of Daniela Garcia, a Police Officer with the City of Paterson (Paterson), of her removal effective August 15, 2019, on charges, was heard by Administrative Law Judge Kimberly A. Moss (ALJ), who rendered her initial decision on January 7, 2020. Exceptions and replies to exceptions were filed on behalf of both parties.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on February 26, 2020, did not adopt the ALJ's recommendation to modify the removal to a 120 working day suspension. Rather, the Commission modified the penalty to a five working day suspension.

DISCUSSION

Paterson removed the appellant on charges of conduct unbecoming a public employee and untruthfulness. Specifically, it alleged that the appellant, while out on sick leave, attended promotional test preparation classes without authorization. It also alleged that the appellant was untruthful regarding a doctor's note. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case.

Based on the testimonial and documentary evidence presented, the ALJ set forth in her initial decision that the appellant sustained a concussion in the course of duty on May 27, 2017. On June 5, 2017, she went to Immedicenter, through

Workers' Compensation, and was advised to stay out of work. She returned to full duty on September 15, 2017. On March 29, 2018, the appellant informed Paterson that she was pregnant. She was given a note by Dr. Jorge Antonio Viera stating that she should not return to work until she saw an obstetrician-gynecologist (OB-GYN). On April 19, 2018, the appellant saw Dr. Consetta Cheatam, an OB-GYN. Dr. Cheatam wrote a note stating that the appellant was unable to work. Dr. Cheatam was sent a questionnaire by Internal Affairs to determine what activities the appellant could and could not do. Dr. Cheatam returned the questionnaire stating that the appellant could not do the following: regular-duty assignments; monitoring security cameras; sitting at a desk and performing clerical duties; operating a vehicle in non-emergency situations; operating a computer; handling evidence and property dispatch assignments; and writing teleservice incident reports. The only thing she could do was answer the phone. The appellant was placed on paid sick leave May 8, 2018.

The ALJ stated that Paterson did not have a written policy for pregnant officers. Paterson treated pregnancy-related leave as sick time. The sick-time policy in Paterson was that the officer using sick time cannot leave the house or engage in any activity. The officer, while on sick leave, must call the main desk every day. If the officer has to leave home the officer must call the main desk and report the reason for leaving. If an officer is out injured, rather than sick, they do not have to call in to the main desk when they leave their home. Paterson maintains a sick blotter. When an officer is out sick and the officer calls in to let Paterson know that he or she is leaving the house, the date of the call, the officer's name, and the reason for leaving is entered in the sick blotter. The appellant was out on pregnancy-related sick leave beginning in March 2018. She called the main desk March 31, 2018 and April 1, 2018, while out sick, to say she was leaving her home to go food shopping; April 18, 2018 to say she was leaving her home to do errands; and April 19, 2018 to say that she was going to the doctor. The appellant signed up for ESPOS promotional test preparation classes in January 2018. The classes started in June 2018. The course was four hours per day and cost \$2,500. The instructors taught for one hour and 30 minutes, followed by a break and continued teaching. The ESPOS course was intense and stressful. Officers could walk out of the course. The appellant attended the course on the following days: June 5, 2018, June 6, 2018, June 20, 2018, June 26, 2018, June 27, 2018 and July 10, 2019. The appellant was on sick leave on all of the days that she attended the course. Lillian Sanchez and Phillip Calicchio, Police Officers, saw the appellant at the ESPOS course. Sanchez reported this information to her supervisor, and Calicchio wrote a contemporaneous report in that regard. The appellant did not call the main desk to let Paterson know that she would not be home. She did not request to be allowed to attend the ESPOS course while she was on sick leave, nor did she state that she wanted or needed an accommodation to attend.

The ALJ stated that on June 21, 2018, the appellant was evaluated by Immedicenter. At that time, she stated that she could not look at a computer screen because it triggered migraines and she had to lie down or walk around every 15 minutes. Immedicenter determined that the appellant could perform assignments with restrictions, perform clerical duties seated, and handle property and evidence, but her OB-GYN's opinion should be considered. The appellant went to Dr. Edward Kugler, her new OB-GYN, on June 22, 2018, and he recommended she undergo a neurological consultation. The appellant had a neurological evaluation by Dr. Kenneth Kutner on July 12, 2018. Dr. Kutner determined that the appellant could do all of the duties of a Police Officer except patrol. Paterson required the appellant to have a psychological fitness for duty examination. The appellant saw Dr. Lewis Scholesser for the psychological fitness for duty examination on July 31, 2018. He determined that she did not have any psychological conditions and was fit for duty. The appellant was contacted by Paterson and told to return to work on August 8, 2018, which she did. The appellant met with Christopher Benevento, Police Sergeant. She showed him the restrictions questionnaire of June 21, 2018 from Immedicenter. The appellant was given the option of working in the communication room or the new radio room. The new radio room was under construction. Ceiling tiles were missing, and wires were exposed. She was given a desk and chair in the new radio room. No one else was assigned to the new radio room. The appellant went to work on August 8, 2018 in the new radio room. She experienced sneezing fits and abdominal pain. She asked Benevento if she could leave early, and he agreed. The appellant saw Dr. Kugler on August 9, 2019. She showed him the restrictions from the Immedicenter from the June 21, 2018 questionnaire. She needed a note from him regarding restrictions. Norma Kugler, Dr. Kugler's wife and office manager, gave the appellant a handwritten note regarding the restrictions. The appellant wanted a typed note on letterhead. She provided Norma Kugler with the June 21, 2018 letter from Immedicenter and wrote an additional list of items that she could and could not do.

The ALJ stated that on the appellant's third day back to work, Benevento told her to go into his supervisor's office because Troy Oswald, Police Chief, was going to have a meeting in the new radio room. The appellant had previously been told that no one was allowed in the supervisor's room. She explained to Benevento that she was already in his supervisor's office because she believed that the new radio room was unsanitary. She was told to write a report and that she would be charged with insubordination. Benevento told her to work in the new radio room or leave. The appellant began to experience severe abdominal pains and went to the hospital. The appellant was kept out of work for a few days. When she returned to work, she was assigned to work in the break room.

The ALJ stated that on August 20, 2018, the appellant picked up the doctor's note from Dr. Kugler's office. Norma Kugler typed the note on office letterhead based on what was on the questionnaire and the letter supplied by the appellant

stating that the appellant should avoid stressful and loud situations, that she should stand up and walk every 15 minutes, and that she could do evidence and property-related work and clerical duties. Norma Kugler showed the August 20, 2018 restrictions letter to Dr. Kugler before she signed it with his authorized signature. Dr. Kugler stood by the letter. Anthony DeGiglio, Police Sergeant, called Norma Kugler regarding the restrictions letter. Norma Kugler told him that she had back up for the restrictions. She also stated that she typed the information that the appellant gave her. The appellant was put on sick leave due to imminent birth in October 2018. She returned to work in April 2019. She was served with her Preliminary Notice of Disciplinary Action in May 2019. Paterson stated that the delay in issuing the notice was due to not wanting the appellant to have additional stress when she was giving birth. The appellant responded to phone calls and emails from Paterson during her sick leave.

The ALJ determined that the appellant had engaged in conduct unbecoming a public employee for her attendance at the ESPOS classes without following Paterson's sick-time policy. However, the ALJ determined that the appellant had not engaged in conduct unbecoming a public employee with respect to the letter from Dr. Kugler's office dated August 20, 2018. There was no dispute that the questionnaire filled out by Immedicenter was done at Immedicenter by Ke Yan Tran, a physician's assistant. The document that she presented to the Kuglers was not a fraudulent document. There was no testimony that the appellant demanded that Norma Kugler type the letter word-for-word from the questionnaire, but she did want the letter to be typed and on letterhead. Norma Kugler showed the document to Dr. Kugler before putting his signature on it, and Dr. Kugler stood by the letter. The ALJ thus determined that the appellant did not lie or mislead her doctor. As to the penalty, the ALJ noted that there was no evidence or testimony that the appellant received any prior discipline and found that a 120 working day suspension was appropriate for her violation of the sick-time policy.

In its exceptions, Paterson maintains that a penalty of removal was warranted in this case in that the appellant knew she was obligated to notify Paterson and affirmatively failed to do so, disrupting good order. The appellant was aware of the sick-time policy and flaunted it six times.

In her exceptions and reply to exceptions, the appellant highlights that both Sanchez and Calicchio saw the appellant in attendance at the classes; contacted Paterson about the appellant's attendance; and confirmed that her attendance at the class while on leave for her pregnancy violated the sick-time policy. The appellant maintains that Paterson, as such, was aware of her alleged misconduct at the onset of the supposed violation and decided not to address it, but instead allow the alleged violation to continue. The appellant points out that Oswald testified that if the appellant requested to attend the classes, Paterson would have likely allowed it. The appellant highlights that per Paterson's policies, those on injury

leave were not required to report that they left their home, while those on sick leave were required to report any time they had left their home. The appellant argues that Paterson, considering her pregnancy to be an "illness," failed to accommodate her pregnancy as required by the New Jersey Law Against Discrimination (LAD) and inappropriately decided to carry her on sick leave instead of injury leave. In addition, the appellant maintains that no penalty is warranted for her alleged violation. However, in her view, if the Commission deems some penalty to be warranted, a penalty considerably less than 120 working days would be more appropriate given the circumstances and pursuant to the concept of progressive discipline as she has no prior discipline.

In its reply to exceptions, Paterson agrees that pregnancy is not itself an "illness" requiring sick leave, though the appellant's pregnancy did result in some medical conditions that required her to utilize sick leave as attested to by her doctor. In Paterson's view, this is not an issue where the appellant was working and seeking an accommodation. It notes that according to the appellant and her doctor, she was unable to work and required medical leave. Paterson contends that her argument as to the need to accommodate thus fails because it ignores the fact that the appellant was out on sick leave while she was pregnant; the critical fact is that she was out on sick leave regardless of whether the medical condition requiring the leave was related to pregnancy or something else. Simply put, according to Paterson, it did as it was required to do by law — treat employees on sick leave the same regardless of the medical reason for the underlying leave.

Paterson points out that its sick-time policy defines "Sick" as "[d]isabling physical or psychological conditions, ailments and diseases that do not arise from police duties which incapacitate the officer from performing his/her duties." In this case, the appellant submitted medical documentation that she suffered from medical conditions that prevented her from working and required her to be on sick leave. To the contrary, "Injured off duty" is defined as:

[t]raumatic conditions and physical injuries that have been determined to have occurred while off duty, and not during the course of a police action, which incapacitate the officer from performing his/her duties.

Paterson maintains that the appellant offered no evidence that she met the definition of "Injured," and she in fact sought and received sick leave. There can be no doubt, according to Paterson, that the appellant's medical leave fell within the policy's definition of sick leave and was treated in accordance with its consistent policy relating to sick leave; it was clearly not a traumatic condition or physical injury. Paterson argues that nothing in the record contradicted the testimony of its witnesses that time off due to pregnancy-related medical conditions was treated as sick time, just like any other medical condition that prevents an employee from working. Given the definitions in the policy, that was the only possible way that

time off for medical issues due to pregnancy could be recorded. Paterson notes that its policy distinguishes simply between employees who are sick and those who are injured. It acknowledges that the LAD requires that the employer not treat pregnant employees with medical issues differently than other employees who are out on sick leave due to other conditions and maintains that is exactly how it operated in this case. Paterson emphasizes that all employees who report off sick, regardless of the reason, are required to call in if they are leaving their place of confinement.

Paterson maintains that although the appellant argues that she was somehow denied an "accommodation" by being subject to the call-in requirement, that argument is meritless. Paterson emphasizes that although the LAD under *N.J.S.A. 10:5-12(s)* requires an employer of a woman affected by pregnancy to "make available to the employee reasonable accommodation *in the workplace*," the appellant here did not request accommodations in the workplace. Rather, during the relevant time period, the appellant had submitted medical documentation indicating she was not able to work and sought and received approval for sick leave. This request was granted and the appellant was not "in the workplace" when the actions resulting in the disciplinary charges occurred. The "accommodation" the appellant argues for now, a release from the call-in requirement applied to every employee out on sick leave, has nothing to do with accommodating her disability. Paterson maintains that she was simply required, as any other employee on sick leave would be, to call in and notify it when she was leaving her home while on leave. Paterson notes that she had done so already and had never requested that she be excused from that requirement.

Upon its review, the Commission agrees with the ALJ's determination of the charges. In this particular case, it was appropriate for the appellant to have been subject to the call-in requirements for employees out sick, per Paterson's policy. As Paterson indicates, its policy defines "Sick" and "Injured" differently. The appellant has not persuasively explained how her pregnancy-related medical conditions could have fallen under the definition of "Injured" rather than "Sick," nor has she pointed to any specific prohibition on designating leave for pregnancy-related medical conditions as sick leave. Moreover, the call-in requirement applied to all employees out sick, irrespective of the underlying medical condition at issue. In addition, the Commission does not agree with the appellant's contention that Paterson improperly denied her an accommodation. As persuasively argued by Paterson, the LAD provision pertaining to pregnancy-related accommodations refers to accommodations in the workplace and the appellant was not in the workplace during the relevant timeframe. Rather, she was out of work on leave and subject to a mere call-in requirement unrelated to accommodating her pregnancy at work. Moreover, the appellant had previously called in while out sick and did not advise Paterson that she was unable to do so. While the Commission has determined that the appellant's conduct in this case was in violation of its policy, Paterson may

nevertheless wish to revisit or revise its sick leave policy, especially as it pertains to pregnancy-type leaves.

In determining the proper penalty, the Commission's review is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 N.J. 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. Moreover, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not "a fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007). In this case, the Commission finds that, while the appellant did violate the sick-time policy, the penalty of removal is very disproportionate to the offense. Additionally, a further modification from the ALJ's recommended penalty is warranted since the appellant had no prior discipline and her infraction could have been even further minimized had Paterson acted promptly after being informed by its employees in the classes that the appellant was in attendance. Accordingly, the Commission finds a five working day suspension to be the appropriate penalty here.

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

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by Paterson. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. February 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. In the interim, as the court stated in *Phillips, supra*, if it has not already done so, upon receipt of this decision, Paterson shall immediately reinstate the appellant to her position.

ORDER

The Commission finds that Paterson's action in removing Daniela Garcia was not justified. Therefore, the Commission modifies the penalty to a five working day suspension. The Commission further orders that the appellant be granted back pay, benefits and seniority for the period following her five working day suspension to the date of actual 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 Paterson within 30 days of issuance of this decision.

Pursuant to *N.J.A.C. 4A:2-2.10*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

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

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of the 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 should be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 26TH DAY OF FEBRUARY, 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

**Inquiries
and
Correspondence**

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 12796-19

AGENCY DKT. NO. 8080-548

**IN THE MATTER OF DANIELA GARCIA,
CITY OF PATERSON, POLICE DEPARTMENT.**

**Frank C. Cioffi, Esq., and Christopher A. Gary, Esq., for Appellant (Sciarra &
Catrambone, attorneys)**

Steven S. Glickman, Esq., for Respondent (Steven S. Glickman, attorney)

Record Closed: December 13, 2019

Decided: January 7, 2020

BEFORE **KIMBERLY A. MOSS, ALJ:**

STATEMENT OF THE CASE

Appellant, Daniela Garcia (Garcia), appeals her removal by respondent, City of Paterson (Paterson), on charges of conduct unbecoming a public employee/truthfulness. At issue is whether Garcia engaged in the alleged conduct, and, if so, whether it constitutes conduct unbecoming a public employee/truthfulness warrants removal.

PROCEDURAL HISTORY

On or about May 16, 2019, Paterson served Garcia with a Preliminary Notice of Disciplinary Action (PDNA). Paterson served Garcia with a Final Notice of Disciplinary Action (FNDA) on August 15, 2019, sustaining charges of conduct unbecoming a public employee/truthfulness. Garcia requested a hearing and forwarded simultaneous appeals to the Civil Service Commission and the Office of Administrative Law (OAL). The appeal was filed with the OAL on September 9, 2019. Hearings were held on November 1, 2019, and December 13, 2019, after which the record closed.

FACTUAL DISCUSSION

Testimony

Anthony DeGiglio

Anthony DeGiglio (DeGiglio) is a sergeant with the Paterson Police Department. He has been assigned to Internal Affairs (IA) for the past eighteen months. He was assigned to investigate a complaint that Garcia violated the sick policy.

When an officer is out sick, they cannot leave the house. DeGiglio checked the sick blotter. The sick blotter is a document that is used when officers are out sick, when they call into say they are leaving the house. That information is put in the sick blotter. The sick blotter states why an officer is out sick. Garcia was out sick due to abdominal pain.

On May 27, 2017, Garcia suffered a concussion in the course of her duties. She went to the Immedicenter, the Workers' Compensation facility, on June 5, 2017, and was advised to remain out of work. Garcia was cleared for full duty on September 15, 2017.

On March 29, 2018, Garcia advised Paterson that she was pregnant. On March 30, 2017, Garcia was given a note from St. Barnabas Medical Center stating that she

should not go back to work until she had a follow up with her OBGYN. On April 19, 2018, Dr. Consetta Cheatam wrote a note stating that she was treating Garcia and Garcia was unable to work. Paterson sent Dr. Cheatam a questionnaire to determine the activities that Garcia could and could not do. Dr. Cheatham returned the questionnaire stating that Garcia could not do the following: regular duty assignments, monitor security cameras, sit at a desk and perform clerical duties, operate a vehicle in non-emergency situations, operate a computer, handle evidence, property dispatch assignments, and write teleservice incident reports. The only thing she could do is answer the phone. DeGiglio was not the person who sent the questionnaire to Dr. Cheatam. As a result of Dr. Cheatam's responses, Garcia was out of work from May 8, 2018, to June 21, 2018.

On June 5, 2018, while she was on sick leave Garcia attended the ESPOS promotional prep course for the sergeants' exam. Paterson Detective Lillian Sanchez assigned to IA saw Garcia at the course, DeGiglio told Sanchez to stay and write a report. DeGiglio checked the sick blotter to determine if Garcia called in to let Paterson know that she was leaving her house. Sanchez did not contact Garcia to tell her she should not be at the seminar. The ESPOS prep course is given every three years. She wrote a summary of the IA investigation. It was determined that Garcia violated the sick-time policy by being at the ESPOS prep course while she was out sick.

On June 21, 2018, Garcia was evaluated by at the Immedicenter. Garcia stated that she had anxiety while working in the radio room; her OBGYN told her to avoid stressful situations; she cannot look at a computer screen because it triggers migraines; and she needs to lie down or walk around every fifteen minutes because of back pain. Garcia denied complications with her pregnancy. On June 20, 2018, June 26, 2018, and July 10, 2018, Paterson Detective Phillip Calicchio, assigned to IA, was at an ESPOS prep course and saw Garcia there. Garcia was out sick at that time. DeGiglio checked the sick blotter to determine if Garcia called in to say she was leaving her home.

DeGiglio sent a police questionnaire to Immedicenter to determine what Garcia could and could not do. Immedicenter determined that Garcia could perform

assignments with restrictions, perform clerical duties seated at a desk, and handle evidence and property but to defer to the OBGYN.

On June 21, 2018, it was determined that Garcia could come back to work on modified duty. On June 22, 2018, Garcia's OBGYN Dr. Edward Kugler recommended that she go for a neurological consultation. Dr. Kenneth Kutner performed a neurological evaluation of Garcia on July 12, 2018. Garcia drove to the appointment. He determined that Garcia could do all of duties of a police officer except patrol. He also determined that her migraines were not a result of the concussion she had previously sustained. He did not address if they were due to her pregnancy. Garcia stated again that working in the radio room gave her migraines and she felt that she would be better placed in the evidence room. Dr. Lewis Schlosser performed a psychological assessment of Garcia to determine if she was fit for duty on July 31, 2018. He concluded that Garcia did not have a psychological condition and was fit for duty.

On August 7, 2018, Garcia was contacted by Paterson and told to return to work on August 8, 2018. On August 20, 2018, Garcia went to Dr. Kugler. The letter of Dr. Kugler stated that Garcia was only able to handle evidence and property and sit at a desk and perform clerical activity. DeGiglio contacted Dr Kugler's office and spoke to the wife of Dr. Kugler, who prepared the letter of August 20, 2018. She stated that she typed the information given to her by Garcia, from the June 20, 2018, Immedicenter report, which Garcia gave her. DeGiglio did not ask what was wrong or ask for Garcia's restrictions to be changed. He told Mrs. Kugler that Garcia had seen other doctors but did not discuss their reports with her. Garcia emailed DeGiglio stating that he was violating her HIPPA rights and was trying to change her status.

DeGiglio asked Mrs. Kugler to fill out the temporary-duty questionnaire. She requested the report of Dr. Kutner, which DeGiglio did not release. He subsequently spoke to Garcia and sent the Kutner report to Mrs. Kugler after Garcia gave him the consent to do so.

On August 18, 2018, Garcia was assigned to the radio room. After one day in the radio room, she went to the hospital.

Paterson determined that Garcia violated the sick time policy. When an officer is using sick time, they cannot engage leave the home or in any other activity. When an officer is out sick, they are required to call in every day. If the officer has to leave the home, they must call the main desk and report the reason for leaving. If the sick time policy is not followed, the person would be considered AWOL.

DeGiglio did not notice on the sick blotter that officers called in to state that they were running errands. Garcia called the main desk on March 31, 2018, and April 1, 2018, to state that she was going food shopping. On April 18, 2018, she called the main desk to say that she was leaving home to do errands. DeGiglio is not aware of any officers being terminated for not calling the main desk when they were on sick time and were leaving their house.

Garcia left home, did not call the main desk to say she was leaving and left to attend the ESPOS training six times. If an officer is out on injury leave, they are not required to stay in their home and notify the main desk when they leave. There was a discrepancy as to the restrictions that she had at work and what she did at the training.

There is no written policy for pregnant officers. Paterson's practice is to treat pregnancy related leave as sick time. DeGiglio's final report was dated August 13, 2018. The PNDA was filed in May 2019. He does not know the reason for the delay. He did not prepare the PNDA. Garcia had returned to full duty prior to the PNDA.

Lillian Sanchez

Sanchez is a Paterson Police Detective. She is currently assigned to the radio room. She was previously assigned to IA. Sanchez was at the ESPOS prep course on June 5, 2018. It was held on the second floor of a banquet hall. There were three large screen projectors, as well as tables and chairs. The course ran from 9:30 a.m. to 1:30 p.m. There were three ten-minute breaks. On that day Sanchez saw Garcia attending the ESPOS course. She recognized Garcia. Sanchez called her supervisor because she believed that Garcia was out sick. Her supervisor told her to write a report on what

she viewed. During the course, she could see Garcia. She did the report on June 5, 2018, and typed it up on July 20, 2018. She did not go to Garcia and ask her did she call the main desk to let them know that she was leaving her house. A violation case was opened against Garcia. The sick blotter indicated that Garcia did not call the main desk to inform them that she would be leaving the house. There were officers out sick that called the main desk to state they were leaving the house to do errands.

On June 6, 2018, Sanchez again saw Garcia at the ESPOS prep course. The course was for four months twice a week. Other than the ten-minute breaks, she did not see Garcia leaving her seat. Sanchez again saw Garcia at the ESPOS course on June 27, 2018. She wrote a report regarding this incident.

Sanchez is currently on modified duty. She was injured arresting someone. Modified duty is the radio room. She has been out sick due to a pregnancy. When she was out sick and had to leave her house for medical reasons, she called the main desk in Paterson. There is nothing in the sick or injury policy regarding pregnancy. Garcia should have known that when she was out because of a pregnancy it was sick time. If Garcia called in to say she was leaving her house to go to the ESPOS prep, she would have been following the policy. When an officer is out sick, they have to call in every day.

There were officers at the ESOS prep course that were on the injured list. These officers did not have to call the main desk when they left their house.

Sanchez knew Garcia had previously been reprimanded.

Phillip Calicchio

Calicchio is a Paterson Police Detective. He has been in IA for two years. On June 20, 2018, he attended the ESPOS prep course in Edison. It was held in a banquet hall. The course was four hours long with ten-minute breaks every hour. He saw Garcia at the course on that date. Calicchio knew on June 5, 2018, that Garcia was out sick. He was advised that she was out sick due to abdominal pain. He was five rows

ahead of Garcia in the course. He did not speak to Garcia. He reviewed the sick blotter to see if Garcia called the main desk to inform them that she was leaving her house that day. She had not. Calicchio wrote a report regarding his observations about Garcia on June 20, 2018.

Calicchio was at the ESPOS prep course on July 10, 2018. He saw Garcia there. He sat five to six rows ahead of Garcia. The course was a high-stress course. He documented that Garcia carried heavy materials in the course. He again checked the sick blotter to determine if Garcia called the main desk that day. She had not. Paterson does not have a policy on pregnancy to his knowledge.

Calicchio signed up for the ESPOS course a few months before it began. It cost \$2,500.

Ke Yan Tran

Ke Yan Tran (Tran) works at Immedicenter as a physicians' assistant. She saw Garcia on June 21, 2018. The progress notes of that visit reflect Garcia's medical history, complaints, and the examination. Garcia stated that looking at a computer screen gives her migraines as a result of a prior concussion. Pregnancy can cause headaches, backaches, cramps, and migraines. Garcia stated that picking up phones and looking at computer screens triggers migraines.

Tran completed an IA questionnaire listing activities that Garcia can and cannot do on June 21, 2018. She recommended modified duty with consideration of the obstetrician's opinion. She filled out the IA questionnaire based on information from Garcia.

Troy Oswald

Troy Oswald (Oswald) is the chief of police in Paterson. He has held that position for the past two years. The PNDA is based on Garcia attending ten ESPOS seminars in June and July 2018. DeGiglio's report was completed August 13, 2018.

The PNDA is dated May 18, 2019, nine months after the completion of DeGiglio's report. The reason for the delay is because Garcia was pregnant and Paterson did not want to put her under any stress during her pregnancy. The charges were filed after she had the baby.

Oswald taught the ESPOS course from 2014-2018. It is a course to study for promotional exams.

When an officer is out sick, the officer must remain home or at the doctor. The officer must call the front desk if she has to leave and call again when she returns home. If an officer is out due to pregnancy-related issues, the officer is out sick. Leaving home and not calling the front desk while out sick is a grave action.

When Garcia informed Paterson that she was pregnant, she was assigned to dispatch. Modified duty in Paterson is dispatch and the radio room. The officer on modified duty would answer calls, dispatch officers, and sign reports.

If a pregnant officer's doctor say she needs accommodations to work, Paterson will provide the accommodations. Garcia never asked to be allowed to go to the ESPOS course. She did not call in stating that she would be leaving the house. On two prior occasions she called in to say she was leaving the house. If Garcia asked to be allowed to go to the ESPOS course, he would have probably allowed it. Paterson does not have a pregnancy policy.

An officer who is deemed untruthful is not an asset to the department. The Paterson Police promotional list exam occurs every year for three years. If an officer is out sick in a year when Paterson is giving the promotional exam, she can take the exam the next year. The State has a promotional exam every year and the officers' result would be slotted into the Paterson List.

Oswald requested a psychological fitness for duty exam for Garcia because there was a conflict with what she could and could not do according to medical records. In June 2018 Immedicenter stated that Garcia could not work on a computer monitor or

work on the phones. However, when Garcia was sent an email, she responded and when Paterson called, she returned the phone calls.

Garcia returned to work on August 18, 2018. She was assigned to the new radio room, which had been sanitized and cleaned prior to her arrival. She was given the option to work in the communication room or the new radio room. There was a desk and a chair in the new radio room. Garcia became sick in the new radio room. Garcia was not put in the break room without any work.

The new radio room has been a ten-year project. There is no radio in it. There are twenty-two desks, but the room is unoccupied. There is no asbestos in the building. Every Tuesday there is a meeting with city officials in the new radio room.

Dr. Edward Kuglar

Dr. Edward Kuglar is an OBGYN. Garcia was his patient. He did not prepare the letter from his office dated August 20, 2018, listing activities that Garcia can and cannot do. His authorized signature is on the letter. Norma Oliva Kugler, Dr. Kuglar's wife, is the office manager. She can use his authorized signature. His signature on a letter means that he stands by the content of the letter.

Norma Oliva Kugler

Norma Kugler is the office manager for Dr. Kuglar. Garcia is a patient of Dr. Kuglar. Garcia came to the doctor's office on August 9, 2018. Garcia saw Dr. Kuglar at that time. Norma Kugler gave Garcia a handwritten note that was not on letterhead stating the activities Garcia could and could not do. Garcia stated that she needed it typed on letterhead. Norma Kugler cannot change the restrictions of the doctor. She does not recall Dr. Kugler's office receiving a questionnaire to fill out from Paterson. Norma Kugler prepared the letter dated August 20, 2018, regarding what Garcia can and cannot do. Norma Kugler spoke to DeGiglio regarding the letter. He questioned the restrictions, but she stated that she had back-up for the restrictions. Garcia told Norma Kugler that she needed a type-written letter on Dr. Kuglar's letterhead for

Paterson that specifies what she cannot do. She told Garcia that she needed supporting documentation before she prepared the letter. Garcia provided the questionnaire from Immedicenter dated June 21, 2018, to Norma Kuglar. Garcia told her to write what she could not do. Norma Kuglar copied the information from the June 21, 2018, questionnaire. Norma Kuglar provided Garcia with a letter stating that Garcia should avoid stressful and loud environments, stand up and walk every fifteen minutes, can handle evidence and property, and can perform clerical duties. Norma Kuglar showed the August 20, 2018, letter to Dr. Kuglar before it was signed.

Daniela Garcia

Daniella Garcia, also known as Daniella Duarte, completed the Police Academy in 2015. She was hired by Paterson in 2015. On March 29, 2018, Garcia provided notice to Paterson that she was pregnant. She was advised that she would be working in the radio room. She began experiencing symptoms while she was working in the radio room. On March 30, 2018, she was given a note by Dr. Jorge Antonio Viera that stated that she should not go to work until she saw an OBGYN.

Garcia saw Dr. Cheatham, an OBGYN on April 19, 2018. Dr. Cheatham stated that Garcia was unable to work. Garcia did not know that Paterson sent a questionnaire to Dr. Cheatham to determine what activities she can or cannot do. Garcia was placed on sick leave in April 2018.

Garcia signed up and paid for a civil service promotional course called ESPOS in January 2018. The course began in June 2018. Garcia was on sick leave at the time of the course. She went to the ESPOS course. She saw Detectives Sanchez and Calicchio from IA at the course. She did not speak to those officers. She sat in the back of the room during the seminar because she needed to use the rest room often and move around. There was nothing wrong with her mentally. She was not told that going to the seminar was a problem.

On June 21, 2018, Garcia was required to go for a fitness for duty exam. She went to the exam, gave her medical history and complained of migraines, low back pain,

and anxiety working in the dispatch center. She does not know if the migraines are from a prior concussion or pregnancy. She did not state that she had previously been cleared from the concussion protocol. She was advised that she would be put on light duty and an OBGYN consult was needed.

Officers in the dispatch center monitor cameras, look at calls, prioritize calls, and make sure the information coming in is correct. Officers in the dispatch center cannot take a break.

Garcia began see Dr. Kugler on June 25, 2018. He wanted a neurological consult done for Garcia. On July 12, 2018, Garcia had a neurological evaluation by Dr. Kenneth Kutner. After this evaluation, Garcia was required to go for a psychological fitness for duty exam with Dr Scholesser. After that evaluation her restrictions were lifted and report to the communication room on August 8, 2018. Prior to reporting back to work Garcia was not told that the restrictions were lifted.

When Garcia returned to work, she met with Sergeant Bevenuto. He told her that per DeGiglio her restrictions were lifted. Garcia was given the option to work in the communication division or the new radio room. The new radio room was under construction. No one else was assigned to the room. The room had broken chairs and ceiling tiles were missing. There were ladders leading up to the ceiling and exposed wires. Benevento told her that he cleared a space for her where she could see into the communication room. She was told that she would be responsible for the civilians. The area was filled with debris. After working in the new radio room for one and one half to two days, Garcia began experiencing sneezing fits and abdominal pains, which she had not experienced previously. She did not complain about the room. On the second day she asked could she leave early.

The next day, Benevento called Garcia and told her to leave the new radio room because Oswald was having a meeting there. She told Benevento that she was in the supervisor's office because the new radio room was unsanitary. She told Benevento about the sneezing fit and that she was in pain in the new radio room. Garcia knew that no one was allowed in the supervisor's office. She was told to write a report if the new

radio room was unsanitary. Benevento told Garcia she would be written up for insubordination. He ordered her to work in the new radio room or leave. Shortly thereafter Garcia experience severe cramping and went to the hospital. She was kept out of work for several days.

On August 9, 2018, Garcia saw Dr. Kugler. She showed him the restrictions from Immedicenter of June 21, 2018. He agreed with the restrictions. Garcia told Dr. Kugler that she needed a note from him regarding her restrictions. Norma Kugler gave her a handwritten note regarding the restrictions. Garcia did not think that the note looked professional and stated that she needed a typed note. Garcia wrote a list of what she could and could not do based on her conversation with Dr. Kugler in addition to the June 21, 2018, questionnaire from Immedicenter. Garcia picked up the note on August 20, 2018. She presented the note to Paterson and was put on light duty.

When Garcia returned Benevento was out. There were two people working on the ceiling in the new radio room all day. She told her supervisor that she could not work in the new radio room due to the work that was going on. She was told to work in the break room, which she did for two weeks.

Garcia was put on sick leave due to imminent child birth in October 2018. She returned to work after giving birth in April 2019.

Christopher Benevento

Benevento is a sergeant with Paterson. He met with Garcia in September 2018. He had been given her restrictions and discussed her workspace. He gave her two options, one of which was to work in the new radio room, which had no phones. She would be alone, would sign off on dispatch reports and organize sick-card dates. He cleared off a desk and gave her a chair. The new radio room is waiting for technology to be place there. It has wires in it. Benevento returned to the new radio room several times that day and received no complaints from Garcia. Benevento was out on Garcia's second day in the radio room. She completed the assignment that he had given her and asked could she leave early. He told her she could leave early.

On the third day of Garcia's return, Benevento told her to go into his supervisor's office because the chief was having a meeting in the new radio room. Garcia told him that she was already in the supervisor's office because the new radio room was unsanitary. Garcia had been told not to be in his office, therefore he wrote her up for insubordination. His supervisor's office had computer servers that made noise and a beeping noise. He did not receive a report from Garcia regarding her health concerns. Benevento went out on sick leave in September 2018.

FINDINGS OF FACT

Having reviewed the testimony and evidence and credibility of the witnesses, I **FIND** the following **FACTS**.

Garcia became a police officer in Paterson in 2015. Garcia sustained a concussion in the course of duty on May 27, 2017. On June 5, 2017, she went to Immedicenter, through Workers' Compensation and was advised to stay out of work. She returned to full duty on September 15, 2017. On March 29, 2018, she informed Paterson that she was pregnant. She was given a note by Dr. Viera stating that she should not return to work until she saw an OBGYN. On April 19, 2018, Garcia saw Dr. Cheatham, an OBGYN. Dr. Cheatham wrote a note stating that Garcia was unable to work. Dr. Cheatham was sent a questionnaire by Paterson IA to determine what activities Garcia could and could not do. Cheatham returned the questionnaire stating that Garcia could not do the following: regular-duty assignments, monitor security cameras, sit at a desk and perform clerical duties, operate a vehicle in non-emergency situations, operate a computer, handle evidence and property dispatch assignments, and write teleservice incident reports. The only thing she could do is answer the phone. Garcia was placed on paid sick leave May 8, 2018.

Paterson does not have a written policy for pregnant officers. Paterson treats pregnancy-related leave as sick time. The sick-time policy in Paterson is the officer using sick time cannot leave the house or engage in any activity. The officer while on sick time must call the main desk every day. If the officer has to leave home the officer

must call the main desk and report the reason for leaving. If an officer is out injured, rather than sick they do not have to call in to the main desk when they leave there home.

Paterson maintains a sick blotter. When an officer is out on sick time and the officer calls in to let Paterson know that she is leaving the house, the date of the call, the officers' name, and the reason that she is leaving is entered in the sick blotter. Garcia called Paterson main desk while out sick on March 31, 2018, and April 1, 2018, to say she was leaving her home to go food shopping; April 18, 2018, to say she was leaving her home to do errands; and on April 19, 2018, to say that she was going to the doctor.

Garcia signed up for ESPOS promotional test preparation classes in January 2018. The classes started in June 2018. The course is four hours a day and costs \$2,500. The instructors teach for an hour and thirty minutes, then there is a break, then the teaching continues. The ESPOS course is intense and stressful. Officers can walk out of the course. Garcia attended the ESPO promotional prep course on the following days: June 5, 2018, June 6, 2018, June 20, 2018, June 26, 2018, June 27, 2018, and July 10, 2019. Garcia was on sick time on all of the days that she attended the ESPOS promotional training. Detectives Sanchez and Calicchio saw Garcia at the ESPOS course. Garcia did not call the main desk to let Paterson know that she would not be home. She did not request to be allowed to attend the ESPOS course while she was on sick leave.

On June 21, 2018 Garcia was evaluated by Immedicenter. At that time, she stated that she could not look at a computer screen because it triggered migraines and she had to lie down or walk around every fifteen minutes. Immedicenter determined that Garcia could perform assignments with restrictions, perform clerical duties seated and handle property and evidence, but her OBGNY's opinion should be considered. Garcia went to Dr. Kuglar, her new OBGYN on June 22, 2018, who recommended she undergo a neurological consultation.

Garcia had a neurological evaluation by Dr. Kenneth Kutner on July 12, 2018. Dr. Kutner determined that Garcia could do all of the duties of a police officer except patrol. Paterson required Garcia to have a psychological fitness for duty exam. Garcia saw Dr. Lewis Scholesser for the psychological fitness for duty on July 31, 2018. He determined that she did not have any psychological conditions and was fit for duty.

Garcia was contacted by Paterson and told to return to work on August 8, 2018. Garcia returned to work on August 8, 2018. She met with sergeant Benevento. She showed him the restrictions questionnaire from Immedicenter of June 2018. She was given the option of working in the communication room or the new radio room. The new radio room was under construction. Ceiling tiles were missing, and wires were exposed. She was given a desk and chair in the new radio room. No one else was assigned to the new radio room.

Garcia went to work on August 8, 2018, in the new radio room. She experienced sneezing fits and abdominal pain. She asked Benevento could she leave early, and he said yes.

Garcia saw Dr. Kugler on August 9, 2019. She showed him the restrictions from the Immedicenter from the questionnaire of June 21, 2018. She needed a note from him regarding restrictions. Norma Kugler, Dr Kuglar's wife and office manager, gave Garcia a hand-written note regarding the restrictions. Garcia wanted a typed note on letterhead. She provided Norma Kuglar with the June 21, 2018, letter from Immedicenter and wrote an additional list of items that she could and could not do.

Garcia's third day back to work, Benevento told her to go into his supervisor's office because the chief was going to have a meeting in the new radio room. Garcia had previously been told that no one was allowed in the supervisor's room. She explained to Benevento that she was already in his supervisor's office because she believed that the new radio room was unsanitary. She was told to write a report and that she would be charged with insubordination. Benevento told her to work in the new radio room or leave. Garcia began to experience severe abdominal pains and went to

the hospital. She was kept out of work for a few days. When she returned to work, she was assigned to work in the break room.

On August 20, 2018, Garcia picked up the doctor's note from Dr Kugler's office. Norma Kuglar typed the note on office letterhead based on what was on the questionnaire and the letter supplied by Garcia stating that Garcia should avoid stressful and loud situations, stand up and walk every fifteen minutes, and that she can do evidence and property related work and clerical duties. Norma Kuglar showed the August 20, 2018, restrictions letter to Dr. Kugler before she signed it with his authorized signature. Dr. Kugler stands by the letter. DiGiglio called Norma Kuglar regarding the letter regarding the restrictions. Norma Kugler told him that she had back up for the restrictions. She also stated that she typed the information that Garcia gave her.

Garcia was put on sick leave due to imminent birth in October 2018. She returned to work after giving birth in April 2018. She was served with the PNDA in May 2019. Paterson stated that the delay was due to not wanting Garcia to have additional stress when she was giving birth. Garcia responded to phone calls and emails from Paterson during her sick time.

LEGAL ANALYSIS AND CONCLUSION

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). The appointing authority has the burden of proof in major disciplinary actions. N.J.A.C. 4A:2-1.4. The standard is by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Major discipline includes removal or fine or suspension for more than five working days. N.J.A.C. 4A:2-2.2. Employees may be disciplined for insubordination, neglect of duty, conduct unbecoming a public employee, and other sufficient cause, among other things. N.J.A.C. 4A:2-2.3. An employee may be removed for egregious conduct without regard to progressive discipline. In re Carter, 191 N.J. 474 (2007). Otherwise, progressive discipline would apply. W. New York v. Bock, 38 N.J. 500 (1962).

Hearings at the OAL are de novo. Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352 (App. Div. 1994), certif. denied, 142 N.J. 446 (1995).

"Unbecoming conduct" is broadly defined as any conduct which adversely affects the morale or efficiency of the governmental unit or which has a tendency to destroy public respect and confidences in the delivery of governmental services. The conduct need not 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. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

In this matter Paterson's practice is that pregnancy-related leave is sick time. Paterson's sick time reporting officer's policy states:

Sick Personnel who must leave their place of confinement must telephone the main desk and report their reasons for leaving. Upon their return they must again telephone the main desk and report their return. Any officer who is out sick shall only be permitted to leave his/her place of confinement for a "valid medical reason."

Garcia was out on pregnancy-related sick time beginning in March 2018. Garcia attended the ESOS promotional course six times, while she was on sick leave. Garcia on four previous occasions in March 2018 and April 2018, while out on sick time called the main desk when she was leaving her home. She did not call the main desk to say that she was leaving her home on any of the six times she attended the seminar. She did not request permission to leave her home to attend the seminars. Garcia argues that she was discriminated against because of her pregnancy. In this case, **Garcia she** did not request to attend the seminar while on sick leave. She did not state that she wanted or needed an accommodation to attend the ESPOS seminar. Paterson did not know that she wanted to attend the seminars until Detectives Sanchez and Calicchio saw her at the seminars.

Petitioner submitted the case of Delanoy v. Ocean Township. A-2899-17T4 In the case of Delanoy the petitioner was pregnant. Ocean Township did not have a

maternity leave policy. Ocean Township required officers to use all of their accumulated paid leave time as a condition of being placed on light duty or maternity assignment. The light duty Standard Operation Procedure (SOP) allowed the chief of police to waive the requirement of officers using all of their paid leave as a condition of the changed assignment. The maternity assignment SOP did not have this waiver provision.

The Delanoy decision can be distinguished from the present case. In Paterson officers who are out on sick leave must stay home and when they leave, they must call into Paterson to let Paterson know where they are going. This affects officers who are on sick leaves as a result of pregnancy as well as officers who are on sick leave for other medical conditions.

I CONCLUDE that the charge of conduct unbecoming a public employee is **SUSTAINED**.

The second charge of conduct unbecoming an employee is the allegation of untruthfulness regarding the letter of Dr. Kuglar's office dated August 20, 2018. Garcia saw Dr Kugler on August 9, 2018. Garcia requested a letter listing her restrictions and what she could do and presented Dr. Kugler's June 21, 2018, questionnaire from Immedicenter. She then saw Norma Kuglar, the office manager, for the letter. She also showed the letter from Immedicenter to Norma Kuglar and wrote additional activities that she cannot perform. Norma Kuglar later typed up the restriction letter and showed it to Dr. Kuglar before she signed it with his authorized signature. Dr. Kuglar testified that he stands by the letter and Norma Kuglar testified that she showed the letter to Dr. Kuglar before it was signed.

Garcia provided the note from Immedicenter dated June 21, 2018, to Dr. Kuglar and Norma Kuglar. There is no dispute that the questionnaire filled out by Immedicenter was done at Immedicenter by Tran. The document that she presented to the Kuglars is not a fraudulent document. Garcia requested the letter on August 9, 2018, and received it on August 20, 2018. There was no testimony that Garcia demanded that Norma Kuglar type the letter, word-for-word, from the questionnaire. Garcia did want the letter to be typed and on letterhead. Norma Kuglar showed the

document to Dr. Kuglar before putting his signature on it and Dr. Kuglar stands by the letter.

I **CONCLUDE** that Garcia did not lie or misleading her doctor. The charge of conduct unbecoming a public employee for untruthfulness is **NOT SUSTAINED**.

The next issue is the discipline. W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, 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.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Bock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990).

Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

In this matter, Garcia on six separate occasions attended the ESPOS seminar while she was on sick time. She did not call the main desk as required by the Paterson when an officer is out on sick time and is leaving the home. Since Garcia knew this was the protocol since she had previously called the main desk when she was out on sick time in March 2018 and April 2018 when she left the house. A discipline of 120-day suspension is appropriate in this matter. There was not evidence or testimony that Garcia received any prior disciplines.

ORDER

Based on the foregoing findings of fact and applicable law, it is hereby **ORDERED** that the determination of Paterson to terminate Garcia be **MODIFIED** to suspension for a period of 120 days.

I further **ORDER** that appellant be reinstated to his position as a police officer and that back pay and other benefits if due, be issued to appellant as may be dictated by N.J.A.C. 4A:2-2.10.

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.

1-7-20

DATE



KIMBERLY A. MOSS, ALJ

Date Received at Agency:

Jan 7, 2020

Date Mailed to Parties:

Jan 7, 2020

ljb

WITNESSES

For Appellant:

None

For Respondent:

Anthony DeGiglio

Lillian Sanchez

Phillip Calicchio

Ke Yan Tran

Troy Oswald

Dr. Edward Kuglar

Norma Kuglar

Christopher Benevento

EXHIBITS

For Appellant:

A-1 Not in Evidence

A-2 Not in Evidence

A-3 Report from Garcia (Duarte to Commanding Officer Dated September 8, 2018,
re: Health Concerns

A-4 Not in Evidence

A-5 Not in Evidence

A-6 Not in Evidence

A-7 Not in Evidence

A-8 Not in Evidence

A-9 Not in Evidence

A-10 Not in Evidence

A-11 Not in Evidence

A-12 Not in Evidence

A-13 Not in Evidence

- A-14 Not in Evidence
- A-15 Not in Evidence
- A-16 Not in Evidence
- A-17 Not in Evidence
- A-18 Not in Evidence
- A-19 Not in Evidence
- A-20 Not in Evidence
- A-21 Not in Evidence
- A-22 Not in Evidence
- A-23 Not in Evidence
- A-24 Not in Evidence
- A-25 Not in Evidence
- A-26 Not in Evidence
- A-27 Not in Evidence
- A-28 Not in Evidence
- A-29 Not in Evidence
- A-30 Not in Evidence
- A-31 Not in Evidence
- A-32 Not in Evidence
- A-33 Not in Evidence
- A-34 Photos of the new radio room where Garcia was assigned in August 2018
- A-35 Not in Evidence
- A-36 Not in Evidence
- A-37 Not in Evidence
- A-38 Not in Evidence
- A-39 Not in Evidence
- A-40 Not in Evidence
- A-41 Not in Evidence
- A-42 Not in Evidence
- A-43 Not in Evidence
- A-44 Not in Evidence
- A-45 Excuse Slip of Dr. Edward Kugler dated September 27, 2018
- A-46 Excuse Slip of Dr. Edward Kugler dated August 8, 2018

For Respondent:

- R-1 Final Notice of Disciplinary Action dated August 15, 2019
- R-2 Preliminary Notice of Disciplinary Action dated May 16, 2019
- R-3 Report of Sergeant DeGiglio dated August 13, 2018
- R-4 Immedicenter progress notes dated June 5, 2017
- R-5 Concentra Medical Center Non-Injury Work Status Report dated September 25, 2017
- R-6 Summit Medical Group return-to-work note dated October 17, 2017
- R-7 Report of Garcia (Duarte) dated March 29, 2018
- R-8 Barnabas Health Medical Group Certificate of Professional Care dated March 30, 2018
- R-9 Not in Evidence
- R-10 Correspondence from Dr. Consetta Cheatam dated April 19, 2018
- R-11 Paterson IA Questionnaire dated May 1, 2018
- R-12 Paterson IA Report of Detective Sanchez dated July 20, 2018
- R-13 Paterson IA Report of Detective Sanchez dated July 23, 2018
- R-14 Paterson IA Report of Detective Calicchio dated July 20, 2018
- R-15 Immedicenter progress notes dated June 21, 2018
- R-16 Paterson IA Questionnaire dated June 21, 2018
- R-17 Excuse Slip of Dr. Edward Kuglar dated June 25, 2018
- R-18 Paterson IA Report of Detective Calicchio dated July 20, 2018
- R-19 Paterson IA Report of Detective Sanchez dated July 23, 2018
- R-20 Paterson IA Report of Detective Calicchio dated July 20, 2018
- R-21 Neuropsychological evaluation of Dr. Kenneth C. Kutner dated July 12, 2018
- R-22 Psychological Report of Dr. Lewis Scholesser dated August 8, 2018
- R-23 Note of Dr. Kuglar dated August 20, 2018
- R-24 Emails between Garcia and DeGiglio dated August 17, 2018, and August 24, 2018
- R-25 Paterson Procedure Number 102.1 Sick and Injured Personnel
- R-26 Report of Garcia from December 14, 2015, through August 3, 2019



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

SALARY PAYMENT

OAL DKT. NO. CSR-12797-19

**IN THE MATTER OF DANIELA GARCIA,
CITY OF PATERSON.**

BEFORE KIMBERLY A. MOSS, ALJ:

On this date, I issued an Initial Decision in this matter which recommended that the disciplinary charges against appellant be sustained, but that the penalty be reduced from termination to a 120-day suspension. Therefore, pursuant to N.J.S.A. 40A:14-203(c), I Order the appointing authority to begin paying appellant his/her base salary immediately upon expiration of the recommended period of suspension 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.

1-7-20

Date

A handwritten signature in black ink, appearing to be 'K. Moss', written over a horizontal line.

KIMBERLY A. MOSS, ALJ