STATE OF NEW JERSEY

In the Matter of Nicholas Araco Delran Township Police Department	:	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
CSC DKT. NO. 2020-1579 OAL DKT. NO. CSR 17961-19	:	

ISSUED: MAY 22, 2020 BW

The appeal of Nicholas Araco, Police Officer, Delran Township Police Department, removal effective December 3, 2019, on charges, was heard by Administrative Law Judge Judith Lieberman, who rendered her initial decision on April 6, 2020. Exceptions were filed on behalf of the appellant.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of May 20, 2020, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Nicholas Araco.

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 20TH DAY OF MAY, 2020

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
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Civil Service Commission
P. O. Box 312
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSR 17961-19
AGENCY DKT. NO. N/A

IN THE MATTER OF NICHOLAS ARACO,
DELRAN TOWNSHIP.

Katherine D. Hartman, Esq., for appellant, Nicholas Araco (Attorneys Hartman Chartered, attorneys)

Eric J. Riso, Esq., for respondent Delran Township (Platt & Riso, attorneys)

Record Closed: March 16, 2020 Decided: April 6, 2020

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Appellant Nicholas Araco ("appellant") appeals his removal by respondent, Delran Township ("respondent" or "appointing authority"), from his position of police officer due to a determination that he engaged in multiple acts that constituted incompetency, inefficiency, or failure to perform duties, in violation of N.J.A.C. 4A:2-2.3(a)(1), conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), neglect of duty, in violation of N.J.A.C. 4A:2-2.3(a)(7), dereliction of duty by abandoning an impaired person, in violation of N.J.S.A. 30:4-27.6, other sufficient cause, in violation of N.J.A.C. 4A:2-

2.3(a)(12), and standard operating procedures concerning computer systems, transport of arrested persons, equipment use/maintenance, protection of life, and holding-facility security.[1]

PROCEDURAL HISTORY

On September 25, 2019, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications made against the appellant. Appellant did not request a departmental hearing. On December 6, 2019, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges in the PNDA and removing the appellant from employment effective December 3, 2019. The appellant filed a timely appeal and the Office of Administrative Law received it on December 19, 2019, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing was conducted on February 27, 2020. The record remained open to permit the parties to submit post-hearing briefs. The briefs were received on March 16, 2020, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

Appellant stipulated to the facts supporting the charges against him, as enumerated in the FNDA. I, therefore, **FIND** the following as **FACT**:

January 12, 2019

> Complaint involves a motor vehicle accident and transportation of a runaway juvenile female. Delran police were dispatched regarding a juvenile runaway female who had taken refuge at the home of a friend. The juvenile's mother arrived and a dispute ensued and police were called. It was decided that the juvenile should be taken into protective custody and transported to the Delran Police Station so that DYFS could be consulted.

[1] Delran Police Department ("Department") Standard Operating Procedures ("SOPs") 2-7, 6-28, 3-5, 1-24, and 8-4, respectively.

> Body camera and car camera footage was consulted and the following was determined. The juvenile female was transported in the front seat of the vehicle in violation of SOP 6-28.[2] [Appellant] also did not search the subject prior to transport also in violation of SOP 6-28. SOP 6-28 covers transportation of arrested persons and prisoners. After [appellant] brought the juvenile to the station and they exited the vehicle, the vehicle rolled into and crashed into the sally port door. [Appellant] left the vehicle engine running in violation of [sic] direct order constituting insubordination. Furthermore, he did not put the vehicle transmission in park in violation of SOP 3-05.
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> [R-2 at 2.[3]]

March 16, 2019

> Complaint involves failure to remove a vehicle from NCIC. On March 16, 2019, at approximately 6:40 p.m., Delran Police made a felony motor vehicle stop in the area of Huntington Road (Incident 2019-2241) on a vehicle that was reported stolen out of Delran Township on February 17, 2019. After taking the driver out of the vehicle at gunpoint they were told several juveniles were in the vehicle and they did not pull any of the children out at gunpoint. The owner of the vehicle indicated that she reported to [appellant] via a telephone message on February 22, 2019, that she found out the vehicle was repossessed.
>
> [Appellant's] phone messages were checked and a message from February 22, 2019, from the victim, S.F., stated she had found out her vehicle was not stolen and that she wanted to know what her next step would be to not have the car listed as stolen.
>
> On February 18, 2019, [appellant] took a report for a stolen vehicle and that vehicle was entered into NCIC. On February 22, 2019, the victim left a voice mail on [appellant's] departmental voice mail. On March 15, 2019, that vehicle was stopped by Delran Police Department as a stolen vehicle and the occupants were taken out at gunpoint. This vehicle was

[2] The appointing authority stipulated that SOP 6-28 is inapplicable to the January 12, 2019, charge, as the juvenile who was involved in the incident was not a detainee. However, it asserts that the facts, to which appellant stipulated, are a sufficient basis for the other violations that were sustained in the FNDA.

[3] Respondent's exhibits are marked with a "T" prefix. They are referenced herein with an "R" prefix.

never removed from NCIC and [appellant] stated he didn't recall hearing the voicemail from her and he didn't know about the voicemail until after March 15, 2019. This constitutes a violation of SOP 2-07, employees are required to check their voice mail at least once during their shift and is a violation of the N.C.I.C. Security Agreement.

[Ibid.]

March 17, 2019[4]

Complaint involves abandonment of an impaired person. Incident 2019-2290 March 17, 2019 at 0137 hours. Delran Police were dispatched to Ott's Tavern for an intoxicated subject who needed a ride home. [Appellant] responded along with Riverside Police as backup.

[Appellant] transported the intoxicated person from Otts Tavern to an address in Delran that he believed to be his residence. Upon arriving at the Delran residence, he found that the intoxicated subject no longer lived there. [Appellant] then drove him to the Rt. 130 Diner and attempted to drop him off. The subject was highly intoxicated and belligerent and the manager at the diner did not want the subject there and made him leave. [Appellant] then drove the subject to Wawa and dropped him off. A short time later this same subject caused a disturbance at the Wawa and Delran Police responded back and were forced to take the subject into protective custody.

[Appellant] did not radio the mileage of the transport from the diner to the Wawa and he left an intoxicated subject alone in a public place. This violated ATRA law 30:4-27.6, person intoxicated in public place; assistance to facility; determination of intoxication and SOP 6-28 for transportation of arrested persons and prisoners.

[Id. at 2–3.]

April 21, 2019

Complaint involves dereliction of duty when responding to a physical domestic in progress with a possible weapon. On

[4] In the FNDA and PNDA the headings for the summaries of this incident were "January 17, 2019." However, the summaries of the incident referenced March 17, 2019, as the date of the incident. R-1; R-2.

April 21, 2019, at 1255 HRS, [appellant] was the only Delran officer on the road at the time of the call. Two Delran officers responded from the station and arrived within three minutes and [appellant] arrived nine minutes after he answered up on the radio for the call.

[Appellant] was operating vehicle 2310 and a timeline from the GPS and his vehicle and body worn cameras was developed below.

[Appellant] leaves station 230 driving vehicle 2310 at 12:54:37.

DISPATCH: April 21, 2019, 12:56 a.m. 193 T. Drive, Apt. P211 – Physical Domestic Possible Weapon.

[Appellant] answers up for the call on radio at 12:58:06.

Sgt. Marshall and Ptlm. Shepard leave the station at 12:58:06.

[Appellant] is at Hartford and Bridgeboro Rd. at 12:58:07.

[Appellant] is on Dewberry at 12:59:47.

[Appellant] leaves Dewberry at 1:00:27.

Sgt. Marshall and Ptlm. Shepard arrive on scene at 1:00:40.

[Appellant] body cam is activated at 1:04:05 a.m.

[Appellant] MVR is activated at 1:04:54 a.m. by using the record button.

[Appellant] arrives on scene of call at 1:05:17 a.m.

In summary, [appellant] is dispatched to a physical domestic at 12:56 a.m., after answering the call [appellant] drives to his residence on Dewberry Lane. He indicates he went to his residence to retrieve his police bag that he left in his other vehicle. He then travels to the location of the dispatch and arrives after other officers. His actions are in violation of his duty to preserve and protect life and constitute a dereliction of duty.

[Id. at 3.]

August 18, 2019

> On August 18, 2019, at 12:00:39, [appellant] walked into the cell block area and then the processing room while wearing his loaded duty weapon on his duty belt while a prisoner was present. When interviewed, [appellant] admitted his actions and further acknowledges that the door is clearly marked with a sign indicating weapons are prohibited and that there was a place to store his weapon outside of that door. He also indicated that he was trained in the Field Training Officer Program not to bring weapons into the cell block. He also indicates he signed and that he understood the SOP 8-4 "Holding Facility Security." [Appellant] was charged with a violation of SOP 8-4.
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> [Id. at 4.]

Testimony

For appellant:

Appellant is twenty-seven years old. He is married and has a daughter. He served in the Army National Guard for eight years, after which he was honorably discharged. He was hired by the appointing authority in August 2017. He completed training and graduated from the Camden County Police Academy and completed a three-month field-training program with the appointing authority, during which he was paired with different officers and learned about report writing, completion of paperwork and forms, and performing as an officer in the field. During field training, he was provided with SOPs. He read and signed each SOP, to confirm that he had received and reviewed them.

Starting April 1, 2018, appellant worked as an officer on his own. Sergeant Marshall was his first shift sergeant. Appellant would ask questions of other patrol officers before approaching Marshall, because he did not want to "jump" directly to a superior. Sometimes, he reached out to Marshall to discuss whether he did something, such as a stop, correctly. Marshall "mostly" berated him for his mistakes and did not provide positive feedback. Marshall would sometimes respond in a positive manner, but appellant testified that he was "berated" every time he asked Marshall for advice or help.

With respect to the first incident, which involved transport of a juvenile and failure to put his vehicle in park, appellant testified that he thought he had put his vehicle in park. He described it as a "minor mistake." The vehicle slowly approached the building and hit the sally-port door. There was only very minor damage to the vehicle. He allowed the juvenile to sit in the front seat because she was old enough to sit in the front seat, she was in distress, and he wanted to do the best he could for her.

The second incident began when a vehicle was reported as having been stolen. Appellant reported to the complainant's house. The complainant told him that she believed the vehicle had been stolen and had not been repossessed. The vehicle was placed on the NCIC list of stolen vehicles. If it were determined that the vehicle had not been stolen, it would be removed from the list. Appellant thus told the complainant to advise him if she later learned where the car was located. He gave the complainant the police department's non-emergency phone number and his personal cell-phone number that she should use to apprise him of any new information.

The complainant left a voicemail message for appellant, to report that the vehicle had been repossessed. Appellant did not listen to the message. He surmised that he could have inadvertently skipped it when he checked his messages. Appellant acknowledged that the SOP required him to check his voicemail messages once per shift. He contended that the voicemail was intended for employees to leave messages and the complainant was not an employee.

Ultimately, because the vehicle remained on the NCIC stolen-vehicle list, another officer pulled over the vehicle, believing it was stolen. A family was in the vehicle at that time and some individuals were ordered out of the vehicle at gunpoint. When asked if this occurred because of his error, appellant replied that the complainant should have called the police department's non-emergency line, as instructed. When asked if the incident was her fault, appellant replied that she did not report her information properly.

The incident that involved an intoxicated individual began when appellant responded to a call concerning a disorderly person. Appellant was backed up by

Riverside Police Department officers, as Delran officers had responded to another call. At the scene, appellant drove the intoxicated person to his house; however, when they arrived at the house appellant discovered that the man no longer lived there. Appellant was unable to determine where the man lived. He took the man to a diner, hoping he would get sober and find a way home. Appellant asked the diner to serve the man coffee. The diner did not want the man to stay there.

Appellant asked another patrolman what he should do. That officer told appellant to drop the man off at a diner in a neighboring town. Instead, appellant dropped him off at a Wawa located in Delran. A Wawa employee later called to report that the man was causing a disturbance. Appellant and the other patrolman picked up the man at Wawa and brought him to the station. The man was not in custody and they intended to help him when he was sober. When asked why he didn't bring the man to the police station earlier, appellant testified that he was told the police station is not a "drunk tank."

Appellant acknowledged that, during an Internal Affairs investigation of this matter, he did not tell the investigator about his conversation with the other patrolman. He did not want to "throw him under the bus." A lawyer with whom appellant counseled advised him to not disclose this information. Also, appellant believed it would not have been fair to report the other officer. Appellant acknowledged that he was required to be honest and that he knew the patrolman's advice was improper. He, thus, did not take the intoxicated man to a location outside of town and instead took him to Wawa, which was in the town.

With respect to the incident that involved a domestic-violence call, appellant testified that, after he had reported to work the midnight shift, he realized he had left his work bag at home. He left the police station to retrieve his bag. While traveling to his house, he received a call about a domestic-violence incident. He continued to travel to his home because he needed the paperwork that was in his bag. He believed that because he was the "new guy" he would be required to complete all of the paperwork for the call. He testified that he was at his house only one minute. When asked if he would have been the first to arrive to the scene because he was the officer on the road, he replied that it was "debatable" because other officers were nearby at the station. He

clarified that he wanted to be the "best officer he could be" and, thus, needed to have his paperwork. Being prepared was more important than arriving quickly or being the first to arrive. When asked if someone could have been killed in the minutes that elapsed, appellant replied that he did not want to get in trouble again for not being prepared. He acknowledged that he could have retrieved his paperwork after he responded to the call.

With respect to appellant's failure to remove his weapon, he testified it was an "honest mistake." He removed all of his other electronic devices and thought his weapon was in the lockbox. He acknowledged that there was a written notice visible in the area that advised that his weapon must be secured, and that there was a prisoner in the area at that time. He also acknowledged that an SOP, which he received and reviewed, dictated the securing of weapons under these circumstances.

Additional Factual Findings

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

Appellant testified in a professional and courteous manner. He attempted to explain his actions as described in the charges, to which he stipulated. He offered excuses for and diminished the consequences of many of his actions. He blamed a civilian when she followed the instructions he gave to her. He offered an explanation during the hearing that he did not offer during the appointing authority's internal investigation. At best, he accepted responsibility when he testified that he made "honest mistakes," but did not accept responsibility for having committed multiple significant errors

and omissions. I cannot find that his testimony provided credible or adequate explanations for his actions as enumerated in the FNDA charges.

LEGAL ANALYSIS AND CONCLUSION

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

The appointing authority has the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

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

> It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is

> constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.

Accordingly, maintenance of strict discipline is important in military-like settings such as police departments, prisons, and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997). Conduct by a police officer that indicates "an attitude of mind and approach to the obligation of his office fundamentally at variance with his sworn duty" is a violation of the required standard of behavior inherent in the position. City of Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429–30 (1955). Adherence to this high standard of conduct is an obligation that a law-enforcement officer voluntarily assumes when he enters public service. In re Emmons, 63 N.J. Super. 136, 142 (App. Div. 1960). For these reasons, a police officer's ability to utilize good judgment in stressful situations protects his own life, the lives of his fellow officers, and the civilians he is sworn to protect. Keena v. Newark Police Acad., 95 N.J.A.R.2d (PTC) 19, 25.

Incompetency, inefficiency, or failure to perform duties

Appellant is charged with violating N.J.A.C. 4A:2-2.3(a)(1) for incompetency, inefficiency, or failure to perform his duties. In this type of breach, an employee performs his duties in a manner that exhibits insufficient quality of performance, inefficiency in the results produced, or untimeliness of performance, such that his or her performance is substandard. See Clark v. N.J. Dep't of Agric., 1 N.J.A.R. 315 (1980), http://njlegallib.rutgers.edu/njar/. Incompetence means that an individual lacks the ability or the qualifications to perform the duties required of him or her. Rivera v. Hudson Cty. Dep't of Corr., CSR 6456-16, Initial Decision (October 24, 2016), adopted, CSC (November 28, 2016), http://njlaw.rutgers.edu/collections/oal/.

Here, appellant admittedly prioritized his acquisition of paperwork over his obligation to respond to a call concerning reported domestic violence. His rationale for this sounded solely in his self-interest—he did not want to be late in submitting paperwork. He expressed some consternation that, as the newest member of the police department, he would be stuck with that assignment. Whatever concern he had for the individuals involved with the reported domestic-violence call, or for his obligation as a police officer to immediately respond to the call, was overshadowed by his misguided need to retrieve his paperwork. He reiterated his priority even as he acknowledged that the domestic-violence call may have involved the use of a weapon.

Further, appellant did not listen to the voicemail message left by the complainant who attempted to report to him that her vehicle had not been stolen. The vehicle thus remained on the NCIC stolen-vehicle report. This caused another officer, who relied upon the NCIC report, to order innocent individuals out of the vehicle at gunpoint. Appellant argued that the complainant improperly left a message on his work voicemail, because that line is for interdepartmental messages. He referred to SOP 2-7, which provides, "The Delran Township Police Department has a voice mail system in which employees may leave verbal messages for other employees and may retrieve such messages from other employees." R-4 at 7. However, he stipulated that he directed the complainant to call his cell phone. She did this and left a message on that line. Appellant reiterated this during his testimony. Furthermore, he testified that he was required to check his voicemail messages once per shift. The complainant left a message for him in February, and the incident during which another officer stopped the vehicle occurred in March. The appellant, therefore, had multiple opportunities to hear the voicemail message but did not do so over a period of weeks. These errors directly impacted a civilian family and a fellow officer, as well as the proper and efficient operations of the appointing authority.

Appellant also failed to properly secure his weapon, in violation of SOP 8-4. The SOP clearly directs, "No one should enter the holding facility while armed. Officers who are armed must secure their firearms and AED's in a weapons locker prior to entry." R-7 at 3. The SOP was intended to "establish guidelines for the basic security of the department's holding facility to ensure that it is safe and secure for those individuals who may utilize it, and that steps are taken to prevent the escape of persons in custody." Id.

at 1. Appellant violated a mandatory procedure, thus presenting a risk of harm to personnel in the area.

Further, appellant deposited an intoxicated person at a public location and only took him to the police station after the intoxicated person caused a disturbance at a public location. Appellant acknowledged that he did not handle this matter appropriately. He, thus, created a circumstance that presented a risk of harm to the individual and members of the public.[5]

Accordingly, I **CONCLUDE** that respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(1) (incompetency, inefficiency, or failure to perform duties), given

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[5] The appointing authority argues that appellant violated N.J.S.A. 30:4-27.6, which provides:

> A State or local law enforcement officer shall take custody of a person and take the person immediately and directly to a screening service if:
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> a. On the basis of personal observation, the law enforcement officer has reasonable cause to believe that the person is in need of involuntary commitment to treatment;
>
> b. A mental health screener has certified on a form prescribed by the division that based on a screening outreach visit the person is in need of involuntary commitment to treatment and has requested the person be taken to the screening service for a complete assessment;
>
> c. The court orders that a person subject to an order of conditional discharge issued pursuant to subsection c. of section 15 of P.L.1987, c.116 (C.30:4-27.15) who has failed to follow the conditions of the discharge be taken to a screening service for an assessment; or
>
> d. An outpatient treatment provider has certified on a form prescribed by the division that the provider has reasonable cause to believe the person is in need of evaluation for commitment to treatment.
>
> The involvement of the law enforcement authority shall continue at the screening service as long as necessary to protect the safety of the person in custody and the safety of the community from which the person was taken.

The appointing authority has not demonstrated that the intoxicated individual met any of the criteria enumerated in the statute. There is no evidence that appellant or any other official determined that the man required involuntary commitment to treatment or that he had been screened or was subject to a court order or certification by an outpatient treatment provider. It is reasonable to conclude that an officer ought not leave an intoxicated person alone in a public place, and appellant acknowledged that he did not proceed appropriately. However, there is insufficient evidence in the record supporting a violation of this statute.

each of the above failures. He demonstrated an absence of good judgment, and a lack of personal integrity and dependability, and created actual harm and risks of harm to the public and his fellow officers. Thus, the charge must be **SUSTAINED**.

Conduct unbecoming a public employee

"Conduct unbecoming a public employee," pursuant to N.J.A.C. 4A:2-2.3(a)(6), is an "elastic" phrase that encompasses conduct that "adversely affects the morale or efficiency of a governmental unit . . . [or] which has a tendency to destroy public respect in the delivery of governmental services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (citing 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, 152 N.J. at 555 (citation omitted). 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)).

As evidenced by his actions and testimony, appellant demonstrated a general lack of accountability and responsibility. In particular, he intentionally neglected his duty to respond to a call concerning a domestic-violence incident that may have involved a weapon. He elevated his personal need and desire to quickly complete paperwork over his obligation to the public he served and his fellow officers. At best, he demonstrated to the public and his colleagues an incapacity or unwillingness to make appropriate and timely decisions. Worse, his choices created risks of serious harm to members of the public and his fellow officers. It should go without saying that appellant displayed a disregard and failure to understand the fundamental purpose and obligation of police officers. Further, he demonstrated an incapacity or an unwillingness to accept full responsibility for his actions. Similarly, appellant refused to take responsibility for his decisions and actions with respect to the intoxicated individual. Moreover, he lied during an Internal Affairs investigation of the matter.

With respect to appellant's other infractions—failure to check his voicemail, to put his vehicle in park, and to properly secure his weapon—while each may not independently rise to the level of conduct unbecoming a public employee, appellant refused to genuinely accept responsibility for his actions. He seemed to dismiss each failure without recognizing why they are significant.

Accordingly, I **CONCLUDE** that respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee), given each of the above failures, and that such charge must be **SUSTAINED**.

Neglect of duty

Appellant is also charged with neglect of duty, N.J.A.C. 4A:2-2.3(a)(7). "Neglect of duty" has been interpreted to mean that an employee "neglected to perform an act required by his or her job title or was negligent in its discharge." In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, CSC (March 27, 2009), http://njlaw.rutgers.edu/collections/oal/. The term "neglect" means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" means conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job. A failure to perform duties required by one's public position is self-evident as a basis for the imposition of a penalty in the absence of good cause for that failure.

Here, in addition to appellant's failures and omissions that were enumerated above, he failed to properly secure his vehicle, causing it to move out of control; failed to check his voicemail in conjunction with an instruction he gave to a civilian, which caused harm to innocent individuals; and failed to secure his weapon while in a holding facility.

These were fundamental functions that needed to be conducted appropriately in order to ensure the proper and efficient operation of the appointing authority. Failure to complete these duties properly can have significant consequences for the safety of the public and police department personnel. Further, appellant's breach of his duty to comply with police department procedures displayed to the public his disregard for its safety. Accordingly, I **CONCLUDE** that respondent has demonstrated, by a preponderance of the credible evidence, that appellant's conduct constitutes a violation of N.J.A.C. 4A:2-2.3(a)(7) (neglect of duty), and that such charge must be **SUSTAINED**.

Other sufficient cause

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause). Specifically, he is charged with violations of several Delran Police Department SOPs: 1-24 (Values, Goals, and Objectives), 2-7 (Computer Systems), 3-5 (Equipment Use/Maintenance), 6-28 (Transportation of Arrested Persons and Prisoners), and 8-4 (Holding Facility Security). R-1; R-2. Appellant's violations of these SOPs were addressed above with respect to the analysis of the charged violations of N.J.A.C. 4A:2-2.3(a)(1), (6), (7), and (12). For the reasons stated above, I **CONCLUDE** that the appointing authority has demonstrated by a preponderance of the credible evidence that appellant violated the enumerated SOPs.[6] Accordingly, I **CONCLUDE** that the charge of a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause) must be and is hereby **SUSTAINED**.

PENALTY

A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). This requires a de novo review of appellant's disciplinary action. In determining the appropriateness of a penalty, several factors must be considered,

[6] However, as discussed above, SOP 6-28 applies only to the treatment and transportation of arrested persons and prisoners. Neither the juvenile runaway nor the intoxicated individual were arrested persons or prisoners. Consequently, appellant did not violate this policy with respect to his interactions with either person. Those interactions, however, violated other policies and regulations, as discussed above.

including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523–24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlo, 192 N.J. Super. 247 (App. Div. 1983).

Notwithstanding the general principal of progressive discipline, the New Jersey Supreme Court wrote:

> [T]hat is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when . . . 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.
>
> [In re Herrmann, 192 N.J. 19, 33 (2007)].

In so holding, the Court cited favorably to removals of law-enforcement officers when the infraction was "so serious as to go to the heart of his capacity to function appropriately" as an officer. Id. at 34 (citation omitted). It referenced Division of State Police v. Jiras, 305 N.J. Super. 476 (App. Div. 1997), in which the Appellate Division affirmed a State Trooper's dismissal for an unprovoked assault on a prisoner. "The court found no obligation to consider a range of penalties based on the employee's past record, or to insist on an incremental sanction. Rather, considering the State Police's need to maintain order and discipline among its troopers, the court cited its duty not to substitute its judgment for that of the Superintendent." In re Herrmann, 192 N.J. at 34 (citations omitted).

Here, appellant has no record of prior disciplinary infractions and penalties. However, the appointing authority has demonstrated, by a preponderance of the competent, relevant, and credible evidence, a continuum of substantial wrongdoing by appellant. Significantly, appellant chose to act in a manner that put the public and his fellow officers at risk. Those actions also potentially undermined the police department's relationship with the public it served. Most egregious was appellant's decision to retrieve paperwork rather than report immediately to a call of a domestic-violence incident that was in progress. Appellant's testimony underscored his disregard for his obligation to respond to such calls expeditiously, as he insisted that his need to timely complete paperwork trumped his obligation to immediately respond to the call. He thus elevated his personal need over that of the citizens he swore to protect. This alone could be sufficient cause to warrant removal from his position. However, as discussed at length above, he committed other violations that further justify this decision. He was dishonest during an Internal Affairs investigation and attempted to excuse his behavior by referring to his own sense of how to proceed rather than his obligation to be truthful. He blamed a civilian for following the instruction he gave her. He dismissed his other failures as "honest mistakes" without taking responsibility for his actions or indicating that he understood or appreciated his duty as a police officer. He did not suggest that he felt the urgency to reform or improve. Together, these actions undermined his and the Department's relationship with the public it serves. These actions also undermined the Department's ability to maintain order and discipline among its officers.

Considering the totality of the violations, I **CONCLUDE** that the behavior exhibited in the present matter is not aberrational, but rather a continuation of inappropriate acts that harmed the public, put fellow officers at risk, and demonstrated a lack of regard for the important position the appellant holds. The public and Department personnel must be able to expect that a police officer will act in a manner that is mindful of their safety and order above all else. They must not fear that an officer's decisions will be guided by his personal interest or that he will disregard Department rules and policies. It is imperative that all officers respond according to those rules and policies in an honest, forthright, and responsible manner. To expect otherwise is to invite disorder and confusion, possibly leading to more dangerous outcomes. It would also undermine the confidence the public places in the law-enforcement system. Accordingly, given the

nature of appellant's actions, I **CONCLUDE** that the appointing authority's termination of appellant should be affirmed.

ORDER

I **ORDER** that the charges of incompetency, inefficiency, or failure to perform duties, in violation of N.J.A.C. 4A:2-2.3(a)(1), conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), neglect of duty, in violation of N.J.A.C. 4A:2-2.3(a)(7), and other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12), be **SUSTAINED**, and that the charge of dereliction of duty by abandoning an impaired person, in violation of N.J.S.A. 30:4-27.6, be **REVERSED**. I **FURTHER ORDER** the appointing authority to terminate appellant from his employment.

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.

April 6, 2020
DATE

JUDITH LIEBERMAN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

LIST OF WITNESSES

For Appellant:

Nicholas Araco

For Respondent:

None

LIST OF EXHIBITS

For Appellant:

None

For Respondent:

R-1 September 25, 2019, PNDA
R-2 December 6, 2019, FNDA
R-3 SOP 1-24
R-4 SOP 2-7
R-5 SOP 3-5
R-6 SOP 6-28
R-7 SOP 8-4