STATE OF NEW JERSEY

In the Matter of Randy Lindaberry
Mountainview Youth Correctional
Facility, Department of Corrections

CSC DKT. NO. 2019-2798
OAL DKT. NO. CSV 05645-19

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: OCTOBER 27, 2021 BW

The appeal of Randy Lindaberry, Correctional Police Major, Mountainview Youth Correctional Facility, Department of Corrections, 120 working day suspension and demotion to Correctional Police Lieutenant, effective March 30, 2019, on charges, was heard by Administrative Law Judge Judith Lieberman, who rendered her initial decision on September 14, 2021. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

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, at its meeting on October 27, 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 suspending and demoting the appellant was justified. The Commission therefore affirms those actions and dismisses the appeal of Randy Lindaberry

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 27TH DAY OF OCTOBER, 2021

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 05645-19
AGENCY DKT. NO. 2019-2798

IN THE MATTER OF RANDY LINDABERRY, MOUNTAINVIEW YOUTH CORRECTIONAL FACILITY, DEPARTMENT OF CORRECTIONS.

Eric W. Feinberg, Esq., for appellant Randy Lindaberry (The Anthony Pope Law Firm, P.C., attorneys)

Karen Campbell, Legal Specialist, for respondent Mountainview Youth Correctional Facility, pursuant to N.J.A.C. 1:1-5.4(a)2

Record Closed: August 5, 2021 Decided: September 14, 2021

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Appellant Randy Lindaberry ("appellant") appeals his suspension and demotion by respondent, Mountainview Youth Correctional Facility ("MYCF", "respondent" or "appointing authority"), from his position of Correctional Police Major due to a determination that he falsified information during an internal investigation and failed to make a report as required by the Department of Corrections ("DOC") policy prohibiting

discrimination, harassment or hostile environments in the workplace, in violation of N.J.A.C. 4A:2-2.3(a)(1), conduct unbecoming a public employee, and other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12).

PROCEDURAL HISTORY

On January 10, 2019, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications made against the appellant. Appellant requested a departmental hearing, which was conducted on February 22, 2019. On March 25, 2019, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges in the PNDA and suspending appellant for 120 days and demoting him from Correctional Police Major to Correctional Police Lieutenant effective March 30, 2019. Appellant filed a timely appeal and the Office of Administrative Law received it on April 29, 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. The matter was assigned to the undersigned on June 24, 2019, and status conferences were conducted on July 24, 2019, September 19, 2019, October 30, 2019, and January 22, 2020. The hearing was scheduled to be conducted on July 22, 2020, and July 23, 2020. At that time, hearings were being conducted by way of Zoom video technology due to the COVID-19 pandemic. During a July 8, 2020, prehearing conference, the parties advised that they wished to proceed by way of an in-person hearing. The hearing was adjourned in response to the parties' request and a status conference was scheduled for September 28, 2020. The status conference was adjourned to October 8, 2020, in response to appellant's request. During the status conference, the hearing was scheduled for March 17, 2021, March 18, 2021, and March 19, 2021. The parties agreed to proceed by way of Zoom video technology, due to the ongoing pandemic. The hearing was ultimately conducted and concluded on March 19, 2021. The record remained open to permit the parties to submit post-hearing briefs. All briefs were received by August 5, 2021, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed. I, therefore, **FIND** the following as **FACT**:

1. Appellant was a Correctional Police Lieutenant assigned to MYCF at the times relevant to this matter. He was subsequently promoted to Correctional Police Major.
2. Appellant was named as a witness in an internal complaint filed by Senior Correctional Police Officer Lynette Nelson in which she alleged race and gender-based discrimination, sexual harassment and retaliation against Correctional Police Major Michael Chrone. R-1, R-2.[1]
3. On January 14, 2015, Department of Corrections ("DOC") Equal Employment Division ("EED") Investigator Kristina Gonzalez interviewed appellant in conjunction with Nelson's complaint.
4. Nelson subsequently filed a complaint in the New Jersey Superior Court in which she alleged race and gender-based discrimination. R-7.
5. On or about November 14, 2018, Deputy Attorney General Leonard Spinelli interviewed appellant in conjunction with Nelson's Superior Court complaint. He was accompanied by Deputy Attorney General Beonica McClanahan and DOC Legal Specialist Darlene Hicks, Esq. R-7.
6. On January 10, 2019, appellant was served with a PNDA that charged him with:
    - Conduct Unbecoming a Public Employee, in violation of N.J.A.C. 4A:2-2.3(a)6 and Human Resources Bulletin 84-17, C11.
    - Other Sufficient Cause, in violation of N.J.A.C. 4A:2-2.3(a)12, Human Resources Bulletin 84-17, C31, DOC policy prohibiting discrimination, harassment or hostile environments in the workplace, and Human Resources Bulletin 84-17, C8, Falsification: intentional misstatement of material fact in connection with work, employment application,

[1] Exhibit R-2, a January 26, 2015, Final Investigative Report, is confidential subject to a Confidentiality Order issued September 14, 2021.

attendance, or any record, report, investigation or other proceedings. R-1.

7. A hearing concerning the charges was conducted on February 22, 2019.
8. On March 27, 2019, appellant was served with a March 25, 2019, FNDA that advised that the charges of violations of N.J.A.C. 4A:2-2.3(a)(6) and N.J.A.C. 4A:2-2.3(a)(12) were sustained. Effective March 30, 2019, he was required to serve a 120-day suspension and was demoted to Correctional Police Lieutenant. R-1.

For respondent:

Kristina Gonzalez has been employed by the DOC for approximately twenty years. She was assigned to the EED, as a Senior Investigator, during the times relevant to this matter. In this capacity, she was responsible for interviewing individuals and witnesses named in complaints and presenting written reports of her interviews to the EED Director. She was assigned to investigate the allegations in Nelson's complaint, which identified appellant as a witness, and prepared a January 26, 2015, Final Investigative Report. R-2. In her report, she enumerated Nelson's allegations, which included that "'an officer' told her that Maj. Chrone stated, 'If the monkeys at Northern could do it, so could we.'" R-2 at 10. Nelson identified appellant as the officer who reported the statement. Ibid.

Gonalez interviewed appellant on January 14, 2015. She asked him specific questions that related to Nelson's allegations. In response to most of the questions he replied "No" or did not have a recollection. She reported her questions as follows:

> [Appellant] was asked if he had any recollection of ever stating to SCO Nelson that "he [appellant] never knew how racist these people truly were until he heard them speak about me (Nelson)." [Appellant] replied, "not specifically about Nelson, no. I've heard dumb jokes." [Appellant] was asked if he recalled who made the "dumb jokes" and he replied, "to be honest with you I don't." [R-2 at 11.]

> [Appellant] was asked if he had any recollection of ever hearing Maj. Chrone state, "If the monkeys at Northern could do it, so could we." [Appellant] replied, "No." [Appellant] was asked if he had told SCO Nelson that Maj. Chrone stated, "if the monkeys at Northern could do it, so could we." [Appellant] replied, "No."
>
> [Ibid.]

Gonzalez recorded the questions she asked appellant and his answers in a statement. Appellant reviewed the statement and signed it, indicating that it was "complete, accurate and factual[.]". Id. at 12.

On cross-examination, Gonzalez acknowledged that she did not ask Nelson when appellant told her about Chrone's statement. When she interviewed appellant, she did not ask him if Chrone made a racist statement. Rather, she asked him if he heard the statement that Nelson alleged Chrone had made. She explained that, rather than ask appellant's opinion about statements he may have heard, she asked him specific questions concerning Nelson's allegations. With respect to appellant's statement to Gonzalez that he heard "dumb jokes," she did not know to what he was referring. She understood that he said he had not heard "dumb jokes" about Nelson.

With respect to the "monkey" comment, Gonzalez did not know when or where it was allegedly made. Chrone denied having made the statement and Nelson had not heard it directly. Although Nelson asserted that appellant told her about the statement, Gonzalez did not ask appellant additional questions about the remark. This is because appellant "was very specific in answering 'No'" when asked whether he heard the statement. T[2] 63:2-3.

[2] "T" refers to the transcript of the March 19, 2021, hearing. It is followed by the referenced page and line numbers.

Leonard Spinelli, Esq. was a Deputy Attorney General during the times relevant to this matter. He interviewed appellant in conjunction with Nelson's Superior Court complaint. He did not represent appellant. Although appellant was entitled to retain his own counsel, there was no indication that he required representation for the matter. Spinelli prepared a report concerning appellant's interview. In it, he explained that he asked appellant about allegations made by Nelson in her complaint against the DOC in which she alleged race and gender-based discrimination by DOC personnel, including Chrone.

In his report, Spinelli detailed the history of Nelson's complaint and appellant's involvement. Gonzalez's investigative report recorded that appellant was asked if he recalled telling Nelson that he heard others make racist comments about her. He replied that, while he had heard "dumb jokes," he had not heard comments about Nelson. R-7 at 2. He added that he did not recall who made the "dumb jokes." Ibid. Spinelli asked appellant why he answered only with respect to Nelson. He also asked whether appellant heard racist comments or dumb jokes about others. Appellant replied that his answer was limited to comments concerning only Nelson. He told Spinelli about an interaction between himself and Chrone. Appellant was attempting to learn new computer software with which Chrone was familiar because he utilized it when he worked at Northern State Prison. Appellant recalled that Chrone said, "If I can teach 500 monkeys at Northern how to (use the computer software) I am sure you can figure it out." R-7 at 2. Spinelli asked appellant if the "500 monkeys" remark "was the dumb jokes that he was referring to[,]" during his interview with Gonzalez. Spinelli wrote that appellant "confirmed" that this was what he referred to during his interview with Gonzalez. R-7 at 2. Based upon this, Spinelli concluded that "it appears that [appellant's] response to Investigator Gonzalez that he 'did not recall who made the dumb jokes' was not truthful." Ibid.

Spinelli also addressed Gonzalez's report entry concerning appellant having denied hearing Chrone make the "monkey" remark. Ibid. In response, appellant "confirmed that during his EEO interview he was not forthcoming with Investigator Gonzalez, and that he was aware that comments similar to those asked of him by

Investigator Gonzalez were made but he did not disclose this information to her during his interview." Ibid. Spinelli concluded that appellant had not been forthcoming and had been deliberatively evasive. He wrote in his report that appellant "was aware that comments similar to those asked of him by Investigator Gonzalez were made but he did not disclose this information to her during his interview." R-7 at 2.

On cross-examination, Spinelli acknowledged that he did not inquire about the relationship between appellant and Chrone. Spinelli was aware that the men knew each other since high school; however, appellant had not disclosed that the men hated each other since then. When asked if Chrone's statement was intended to insult appellant, Spinelli replied that he could not determine Chrone's meaning. However, during the interview, he asked whether appellant believed the statement was intended to be racist. Appellant replied that he knew what Chrone meant. When asked whether the statement was based upon the history and personal relationship between the men, Spinelli explained that it was clear that the purpose of the interview of appellant was to address racist statements and that appellant understood this context. Appellant affirmed this and did not indicate that Chrone's statement had a different meaning. Spinelli noted that Nelson was aware of the statement and referenced it in her EED report. Her reference was consistent with appellant's account of the statement.

Spinelli clarified that he directly asked appellant if he believed Chrone was being racist when he made the "monkey" comment and that appellant replied that he "knew" what he meant. T 37:37:15 to 38:1. He added that he recalled that appellant volunteered that Chrone was a racist. Appellant was fearful of Chrone and expressed concern that, had he shared that substance of Chrone's statement with EED, Chrone would have retaliated against him. Spinelli recalled that Chrone made the statement to appellant while they were alone in Chrone's office. He did not note this in his report because it was not material. Rather, appellant's statements were the essential material facts.

El-Rhonda Williams Alston is the Director of the DOC EED. The DOC issues a Policy Statement Prohibiting Discrimination in the Workplace that applies to all DOC

employees. R-9. Appellant received a copy of the Policy and signed a form acknowledging that he had "been advised of and/or read the provisions of Confidentiality and Prohibition Against Retaliation." R-3.

Pursuant to the Policy, Nelson falls within a protected class because she is African-American. Section IV of the Policy requires supervisors, which includes majors and lieutenants, to "maintain a work environment that is free from any form of discrimination/harassment." R-9 at 4. It further provides, "Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the [DOC EED] Affirmative Action Officer . . . or other individual designated by the NJDOC to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment." R-9 at 4-5.

Section VIII of the Policy, "False Accusations and Information," addresses the provision of false accusations and information by DOC employees:

> An employee who knowingly makes a false accusation of prohibited discrimination/harassment, or who knowingly provides false information in the course of an investigation of a complaint, may be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, will not be considered a false accusation.
>
> [R-9 at 6.]

An officer who lies during an investigation will have violated Section VIII. Similarly, if an officer were to lie during an investigation in an effort to get another officer or supervisor in trouble, he or she will have violated the policy. Williams Alston underscored that "a lie is a lie." T 79:20.

Hector Smith is a Correctional Police Major in the DOC, where he has been employed for over twenty-three years. He explained that DOC employees sign forms

acknowledging their receipt of DOC policy statements. Appellant signed forms acknowledging his receipt of the following policies:

- NJDOC Policy and Procedures – Discrimination Complaints Re-Issued December 2001, which included a Statement of Policy Regarding Racial and Sexual Discrimination, Including Harassment and Retaliation and EED Advisory to Staff Regarding Retaliation. Appellant signed the form on January 5, 2002. R-4 at 1.
- Reissuance of DOC Policy and Procedure Discrimination Complaints, which addressed the same provisions as the above Policy and was issued on December 6, 2002. Appellant signed the form, acknowledging receipt, on December 6, 2002. R-4 at 2.
- Policy Receipt Form, signed February 26, 2005, acknowledging receipt of the DOC Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace. R-4 at 3.
- Acknowledgement of Receipt Forms concerning DOC's Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace and Procedures for Internal Complaints Alleging Discrimination in the Workplace, signed by appellant on November 25, 2008, April 13, 2012, and December 2, 2013. R-4 at 4-6.

Referring to DOC Law Enforcement Personnel Rules and Regulations, Smith identified the provisions that appellant violated:

- Article I, Section 2: No officer shall knowingly act in any way that might reasonably be expected to create an impression of suspicion among the public that an officer may be engaged in conduct violative of the public trust as an officer. R-10 at 3.
- Article I, Section 3: Officers shall be held responsible for the proper performance of duty and for strict adherence to these rules of conduct. Ibid.

- Article II, Section 7: No officer shall make, or cause to be made, any false or misleading statements. No officer shall intentionally omit or misrepresent facts or information known to the officer. Id. at 6.
- Article II, Section 8: No officer shall make false or misleading reports. No officer shall alter or tamper with official reports. No officer shall enter, on any official book or record, any false or misleading statements. An officer shall fully and completely perform reporting duties and failing to exercise due diligence in any report writing shall constitute neglect of duty. Id. at 6-7.
- Article III, Section 3: No officer shall act or behave, either in an official or private capacity, to the officer's discredit, or to the discredit of the Department. Officers are public servants twenty-four hours a day and will be held to the law enforcement higher standard both on and off-duty. Id. at 8.

Smith discussed DOC Human Resources Bulletin 84-17, which is the Department's Disciplinary Action Policy. The bulletin enumerates offenses and penalties. R-11. For the offense of "Falsification: intentional misstatement of material fact in connection with work, employment application, attendance, or in any record, report, investigation or other proceeding," the penalties range from an official written reprimand (OWR) to removal for a first infraction. Id. at 8. For the offense of conduct unbecoming an employee, the penalties range from suspension to removal for a first infraction. Id. at 9.

For appellant:

Appellant **Randy Lindaberry** was employed by the DOC from December 1995, through February 2021. He held the positions of officer, sergeant, lieutenant and major. He became a major in 2017 or 2018 while working in the DOC central office. He served as a major at MYCF for three months, until he was demoted to lieutenant. He remained at MYCF after the demotion.

Appellant understood that Gonzalez was investigating allegations Nelson made about Chrone. He did not know the nature of the allegations prior to his interview. Gonzalez asked him if Chrone "made a racial statement about monkeys at Northern[.]" T 108:21-22. He did not recall exactly how Gonzalez described the statement; however, he did recall that she used the word "racial." T 109:2. He recalled that her statement was not "close" to what Chrone had said. He also recalled that Chrone's statement was not "racial." T 108:24-25. He replied to her question by answering "No" because "the statement she made was no and it wasn't racial, it was no, so no matter how I looked at it, the answer was no." T 109:7-9.

Gonzalez did not ask him if he ever stated to Nelson that he "never knew how racist these people truly were until he heard them speaking about her." T 123:11-13. He testified that he heard "dumb jokes" but they were not "really racial." T 123:19-20. He described the joke as the addition of unnecessary information concerning the racial breakdown of inmates when this information was not necessary. This was an example of a "prank on a rookie." T 125:13-14. Another prank might involve telling a rookie to carry heavy fire extinguishers to a central location when not required. When he mentioned "dumb jokes" to Gonzalez, it was these types of pranks to which he was referring. He told Gonzalez that he did not know who made the dumb jokes because he did not know which officer unnecessarily reported the racial makeup of the inmates.

Chrone made the "monkey" statement in July 2014. Appellant recalled this because Chrone had recently returned to MYCF from Northern State Prison, where he had become a major. He brought a computer to MYCF, where it was to be used for electronic supervisor tour reports. Appellant had reported to the facility where the computer was located to learn how to use it. Appellant recalled that he reported to the facility at noon and that Chrone looked at him in a way that caused appellant to believe he questioned his arrival time. Because appellant was concerned that it would take him time to learn the new computer system, he said to Chrone, "listen, it's going to take me a minute to figure out your electronic tour report thing." T 114:13-14. Chrone replied, "If 300 people at Northern can figure it out, a monkey can figure it out." T 114:16-17.

Appellant understood that Chrone was analogizing him to a monkey and "calling [him] an idiot." T 114:24. When asked whether he believed Chrone was a racist, appellant replied, "Not at all, he just couldn't stand me." T 120:11. Appellant explained that he was outdoors and at least forty yards away from Chrone when Chrone made the statement. Correctional Police Sergeant Steve Russo was standing next to Chrone when he made the statement.

Appellant and Chrone had not gotten along well since they attended rival high schools. They had a history of interacting at parties and appellant disapproved of Chrone's lifestyle, opining that he was a drug addict. Despite the passage of twenty years, Chrone "kept bringing up the past and, unfortunately for [appellant, he] was always one rank underneath him." T 116:11-13. Referencing his belief that Chrone was a drug addict, appellant said, "I got no respect for it, and then to have you take orders, it bothered me even more." T 116:23-24. Although appellant was cordial toward Chrone, Chrone would not answer appellant's phone calls during work hours. Appellant attempted to avoid Chrone "every chance [he] got." T 121:7. He explained, by way of example, "if I was sitting down eating lunch and he walked in, I'm taking my whole tray and throwing it in the garbage, I'm out of here, I . . . didn't want to hear his voice." T121: 9-12.

Appellant did not tell Nelson that he heard Chrone make the "monkey" statement. He had no reason to relay it to her, as it was not about her. Appellant trained Nelson while they were working at a different facility. At MYCF, she knew other officers but appellant perceived that she "clung on to [him] for information because she didn't trust anybody else." T 117:13-14.

During the November 14, 2018, interview by Spinelli, appellant started to answer a question concerning Chrone's statement. However, Spinelli "cut [him] off[.]" T 122:21. Spinelli looked at another person who was in the room, which appellant "thought was odd," and then advised appellant about lawyer client confidentiality issues. T 122:22. Appellant "had no idea what was going on" and started to get mad. T 122:24-25. He was not able to fully explain what Chrone said because he was "cut off" and he came to believe

the interviewers did not care. He became angry because Chrone was mentioned. When asked if he was ever able to say what he heard Chrone say, he replied, "no, I don't believe so—maybe . . . I don't think I did." T 127:1-2. He was never asked where, why or when the statement was made. He was also not asked if anyone else was in the area when the statement was made.

Appellant did not tell Spinelli that Chrone's statement about monkeys was directed at him. Had he done so, however, he would have included the number 300 rather than 500, because Chrone used the former number in his statement.

Appellant asserted that, had he claimed that the statement was racially motivated, he would have been "brought up on charges." T 127:17. He explained that "Russo stood right there and everybody knew exactly what he meant, there was no doubt in anybody's mind . . . I knew exactly what he meant, he was calling me an idiot like he did every day." T 127:19-23. Had he claimed the statement was racially based, he would have been subject to a charge of falsifying information.

On cross-examination, appellant was asked if Spinelli's report contained falsehoods. He replied, "I will say this, I never was glassy eyed, teared up or anything like that, not that that was in the report, but one report says that I had mentioned 500, and other reports says that I mentioned 400, I never mentioned any of those numbers, I never mentioned anything about what Chrone said[.] I was going to, I was in the midst of it, and he shut me down." T 136: 20 to 137:1. Also, Spinelli wrote in his report that he began the interview by referencing attorney client issues when in fact he did not do so until later in the interview. He also reiterated that Gonzalez failed to ask specific questions during her interview of him.

Appellant was asked why he signed Gonzalez's investigation report. He acknowledged that as part of his correction officer training he was taught how to read and write reports. He explained:

> [W]hen you go to ShopRite and you by 100 items are you going to go through the receipt for every hundred items before you pay the lady? I took for granted that she was face value, which he asked me was written on this paper. So, all I'm looking for is my answers, don't know, no, no, yes, don't know, don't know, whatever, that's what I look for and I initialed next to my answers, not what she wrote. What she wrote, she wrote, I didn't write that report, I initialed my answers. [T 142:8-17.]

Although he stated that he should not have signed the report, he noted that his signature applied only to his answers, not to what Gonzalez wrote. He reiterated that, when he signed the form under language asserting that he reviewed it and that it was a fair, accurate and complete recitation of the interview, he intended only to indicate that his "answers were exactly what [he] wanted it to be." T 147:6-7. This meant that he "wasn't being coerced to sign this, these are my answers." T 147:10-11. He explained that he was taught to answer only the question that was asked. If more information is required, the questioner will ask for it.

Additional Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "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). In addition to considering each witness' interest in the outcome of the matter, I observed their demeanor, tone, and physical actions. I also considered the accuracy of their recollection;

their ability to know and recall relevant facts and information; the reasonableness of their testimony; their demeanor, willingness, or reluctance to testify; their candor or evasiveness; any inconsistent or contradictory statements; and the inherent believability of their testimony.

Investigators Gonzalez and Spinelli both testified clearly, directly and professionally. Their testimony was consistent with their investigation reports. They acknowledged when they did not inquire about particular matters during their investigations. I accept their testimony as credible.

Appellant testified openly and earnestly. He conveyed his upset concerning the circumstances presented here and was candid about his relationship with Chrone. However, portions of his testimony raised concerns. First, during his interview with Gonzalez, he denied having heard racist statements about Nelson but said he had heard "dumb jokes." During his testimony, he explained that the "dumb jokes" were not "racial" and offered examples of jokes that he believed were not motivated by bias. It strains credulity that, during an interview that was plainly about allegations of race and gender-based discrimination, appellant, a supervisory officer, would respond to an investigator's questioning by offering information that essentially was an irrelevant non-sequitur. His statements must be evaluated in light of the plainly understood context of the interview. Second, Gonzalez specifically asked about a statement made by Chrone that involved the word "monkey." Appellant testified that he told Gonzalez that Chrone did not make the statement because Gonzalez described the statement as "racial" and he believed the statement was not "racial." However, he later acknowledged the statement was one of the "dumb jokes" that he previously referenced. Third, when Spinelli asked him about Chrone's statement, he did not explain that the statement was directed at him. However, he asserted this in his testimony. Finally, although appellant signed Gonzalez's report, to acknowledge that he read it and agreed with its representations of the facts, he testified that he did not actually read it. Rather, he merely confirmed that his answers were correctly recorded. This explanation strains credulity, for a question can only be accurate if it properly relates to its corresponding question. A review of question and answer must

be undertaken in order to acknowledge the correctness of an interview report.[3] For all of these reasons, I cannot consider appellant's testimony to be credible.

Having considered the testimony and documentary evidence and the credibility of the witnesses, I **FIND** the following as **FACT:** Appellant had firsthand knowledge of Chrone's remark in which he referred to people at Northern State Prison as monkeys. Gonzalez interviewed appellant in conjunction with an investigation into allegations of race and gender-based discrimination. Appellant was aware of the context of the investigation. Gonzalez asked appellant if he had any recollection of hearing Chrone say, "If the monkeys at Northern could do it, so could we." Appellant denied knowledge of Chrone's remark. Gonzalez asked appellant if he told Nelson that he heard people say racist things about her. Appellant denied hearing racist statements about Nelson but stated that he had heard "dumb jokes." He stated that he did not recall the specific officers who made the jokes. Spinelli interviewed appellant in conjunction with a Superior Court complaint that alleged race and gender-based discrimination. Appellant was aware of the context of the investigation. During the interview, appellant acknowledged having heard Chrone's "monkey" remark. Spinelli asked if Chrone's remark was an example of the "dumb jokes" that appellant discussed with Gonzalez. Appellant replied that it was an example of the "dumb jokes" he mentioned to Gonzalez.

I therefore **FIND** as **FACT** that appellant was aware of Chrone's remark at the time of Gonzalez's interview; he did not admit to his knowledge of it during the interview; and he denied knowledge of the individual(s) who made the "dumb jokes" that he referenced during the interview. I further **FIND** as **FACT** that, given appellant's understanding of the purpose of the interview, his statements must be understood in that context. Thus, by

[3] Appellant argues in his post-hearing brief that statements prepared by others present during Spinelli's interview support his assertions and contradict those of respondent. In particular, he refers to a written statement prepared by DAG McClanahan and an internal memorandum prepared by Hicks. Neither individual testified and their writings were not admitted into evidence. None of the testifying witnesses was questioned concerning McClanahan and Hicks' written statements. I therefore cannot afford weight to the assertions attributed to McClanahan and Hicks in appellant's post-hearing brief. Similarly, respondent appended a certification by McClanahan to its post-hearing brief. This was submitted after the record was closed and, therefore, shall not be considered as part of the record.

voluntarily referring to "dumb jokes," appellant referenced comments or other behaviors that were discriminatory in nature. I also **FIND** as **FACT** that, after Gonzalez's interview, appellant acknowledged that Chrone's "monkey" statement was an example of the "dumb jokes" to which he referred during Gonzalez's interview. I, thus, **FIND** as **FACT** that appellant understood Chrone's statement to be discriminatory. He did not report the statement at the time it was made to the appropriate DOC personnel in compliance with DOC policy.

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 correctional police lieutenant, appellant is held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990). 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). 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).

A failure of honesty, candor and directness is significant in the context of a correctional institution. "The falsification of a report can disrupt and destroy order and discipline in a prison." Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980). In that case

> Senior Corrections Officer Henry was charged with submitting a falsified report of his discovery of marijuana. In his report, Henry stated that he found the marijuana in the weight-lifting shack at Rahway State Prison and that he did not know to whom it belonged. In fact, he had found the marijuana on an inmate's bed in the dormitory. The charges against him recited that he had deliberately falsified his report by misstating the place and manner of his discovery and by omitting the name of the inmate.
>
> [Id. at 574.]

In evaluating the seriousness of Henry's actions, the Supreme Court wrote, "Even if motivated by good intentions, Henry subverted the discipline at Rahway State Prison by the deliberate falsification of his report." Id. at 580. See also In re Warren 117 N.J. 1989 ("In the clearer context of a corrections officer's trial for intentional falsification of a report, there can be no doubt that the Board must consider this as an offense striking at the heart of discipline within the corrections system. Failure to accord due consideration to that

factor in the prison setting would violate implied legislative policies regarding prison security").

Conduct unbecoming a public employee

Appellant is charged with having engaged in conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6). The regulation provides that "conduct unbecoming a public employee" 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)).

DOC's policy Prohibiting Discrimination in the Workplace directs that employees shall not knowingly provide false information in the course of an investigation of a complaint. R-3 at Sec. VIII. Article I, Section 3 of the DOC Law Enforcement Personnel Rules and Regulations provides that officers "shall be held responsible for the proper performance of duty and for strict adherence to these rules of conduct." R-10 at 3. Article II, Section 7 provides that officers shall not "make, or cause to be made, any false or misleading statements. No officer shall intentionally omit or misrepresent facts or information known to the officer." Id. at 6. Article II, Section 8 provides that officers shall not "make false or misleading reports."

The issue here is whether appellant honestly and directly answered questions asked of him by a DOC investigator. Appellant's obligation was to tell the truth and allow the investigator to do her job, which was to investigate allegations of serious wrongdoing that, if true, harmed a fellow officer, the correctional institution and DOC. Appellant asserts that he "sat down for two interviews and answered the questions that were asked of him. It is not his fault that the investigator asked the wrong questions." Pet. Brf. at 8. He argues that Gonzalez's question was imprecise enough to require him to simply state that he did not hear the comment she inquired about. Rather than fully participate in an official investigation, he opted to parse words and characterize the statements at issue in a way that, in his mind, permitted him to withhold information. This was misleading at best. Moreover, even if appellant denied that he knew about the "monkey" remark because he believed it was not "racial," he failed in his obligation to thoroughly respond to Gonzalez's questions. A fulsome response to her question would have required him to explain what he heard rather than provide knowingly incomplete responses. As noted above, failures of this nature are unacceptable in correction facilities where all officers are held to the highest standard of conduct. Any workplace, and especially correction facilities, require honesty and professionalism from their employees. An internal investigation into extremely serious allegations such as race and gender-based discrimination must not be thwarted by witnesses who conduct themselves in a manipulative and misleading manner. I therefore **CONCLUDE** the appointing authority has demonstrated by a preponderance of the competent, relevant and credible evidence that appellant engaged in conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and the charge must be and is hereby **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 violation of the DOC policy prohibiting discrimination, harassment or hostile environments in the workplace and falsification: intentional misrepresentation of material fact in connection with work or any record, investigation or other proceedings. Section VIII of the policy prohibits the knowing

provision of false information in the course of an investigation or complaint. For the reasons stated above, I **CONCLUDE** that the appointing authority has demonstrated by a preponderance of the competent, relevant, and credible evidence that appellant violated this policy. 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**.

Appellant was also charged with violating Section IV of the Policy Prohibiting Discrimination in the Workplace, which requires supervisors to make every effort to maintain a work environment that is free from any form or discrimination or harassment and to refer allegations of prohibited discrimination or harassment to designated DOC officers. Because there is sufficient evidence in the record concerning the context and intention of the statement at issue, I **CONCLUDE** that the appointing authority has demonstrated by a preponderance of the competent, relevant, and credible evidence that appellant had knowledge of a discriminatory or harassing circumstance. I also **CONCLUDE** that appellant, a supervisory officer, did not report the statement to the appropriate officials pursuant to DOC policy. Accordingly, I **CONCLUDE** that the charge of a violation of N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause) based upon violation of Section IV of the Policy Prohibiting Discrimination in the Workplace 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, 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)].

Prior cases make clear that removal has been found to be an appropriate sanction for a falsification offense. See In re Warren, 117 N.J. 295 (1989); Henry v. New Jersey Department of Corrections, 81 N.J. 571 (1980) (sustaining removal of corrections officer who falsified a report regarding discovery of marijuana in an inmate's cell); In re Hotz, 2020 N.J. Super. Unpub. LEXIS 320 (App. Div. February 13, 2020)(falsification of material facts during an internal investigation warranted removal); In the Matter of Angel Reillo, Camden County Police Department 2016 N.J. Super. Unpub. LEXIS 1834 (App. Div. August 4, 2016)(affirming dismissal of police officer for lying to employer about personal relationship with individual facing drug charges, notwithstanding unblemished prior disciplinary history); In the Matter of Trooper II Joseph Farina #5586, POL-08482-07, Initial Decision (March 10, 2010)(upholding termination of State Trooper for "lack of truthfulness and candor" in internal affairs investigation); In re Eisenhauer, CSV 5665-98/5809-09 and 9976-00, Initial Decision, (May 5, 2009), adopted, Comm'n (June 26, 2009)(upholding removal of police sergeant for failure to disclose outside employment as

private detective and giving false testimony in departmental hearing regarding his outside employment).[4]

The appointing authority seeks to suspend appellant 120 working days and demote him from correctional police major to correctional police lieutenant. The penalties for a first offense of falsification range from an official written reprimand to removal. For a first offense of conduct unbecoming an officer, the penalties range from suspension to removal. Appellant was disciplined only one time prior to the discipline at issue, for reporting to work thirty-five minutes late in 1998. He received several commendations for perfect attendance.

Both of the charges against appellant, N.J.A.C. 4A:2-2.3(a)6 and (a)12, are based upon his failure to honestly respond to the DOC investigator's questions. Although appellant has no record of prior disciplinary infractions and penalties other than one charge for lateness, the appointing authority has demonstrated, by a preponderance of the competent, relevant, and credible evidence that appellant opted to not answer questions directly and, thus, withheld information sought by an investigator. Parsing the investigator's questions, he answered in a misleading fashion and failed to meet his obligation as a supervisory officer to comply with DOC policy and report the offending comment. His behavior undermined the integrity of an internal investigation, potentially causing harm to the Department, institution and his fellow officers. The public and DOC personnel must be able to expect that a corrections lieutenant will act in a manner that is mindful of his commitment to 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 DOC 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 inappropriate or dangerous outcomes. It would also undermine the confidence the public places in the correctional system. With

[4]The foregoing unpublished cases are not precedential. However, they are referenced here to the extent they provide relevant guidance.

respect to both failures, appellant demonstrated an incapacity or an unwillingness to accept full responsibility.

I, therefore, **CONCLUDE** that appellant's violations are significant enough to warrant a penalty that reflects the seriousness of his failure to be fully truthful and to satisfy his supervisory reporting obligations. I, thus, **CONCLUDE** that the action of the appointing authority in suspending the appellant for 120 working days and demoting him from major to lieutenant is reasonable and consistent with progressive discipline and should be affirmed.

ORDER

I **ORDER** that the charges of conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12), be **SUSTAINED**. I **FURTHER ORDER** the appointing authority to suspend appellant for 120 days and demote him to the title of Correctional Police Lieutenant.

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

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, 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.

September 14, 2021
DATE

JUDITH LIEBERMAN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

mph

APPENDIX

LIST OF WITNESSES

For appellant:

Randy Lindaberry

For respondent:

Kristina Gonzalez
Leonard Spinelli, Esq.
Director El-Rhonda Williams Alston
Major Hector Smith

LIST OF EXHIBITS

For appellant:

P-1 MYCF Google map

For respondent:

R-1 January 10, 2019, PNDA
March 25, 2019, FNDA
R-2 January 26, 2015, Investigative Report
R-3 New Jersey Policy Prohibiting Discrimination in the Workplace receipt
R-4 Appellant's policy receipt forms
R-7 January 8, 2019, Spinelli memorandum
R-9 Policy Prohibiting Discrimination in the Workplace
R-10 Law Enforcement Rules and Regulations
R-11 Human Resources Bulletin 84-17
R-12 Appellant work history