STATE OF NEW JERSEY

In the Matter of Eric Ebron, Sr. City of Plainfield, Department of Public Works	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC DKT. NO. 2021-338 OAL DKT. NO. CSV 11263-20	

ISSUED: NOVEMBER 17, 2021 BW

The appeal of Eric Ebron, Sr., Laborer 1, City of Plainfield, Department of Public Works, 65 working day suspension, on charges, was heard by Administrative Law Judge Susana E. Guerrero, who rendered her initial decision on October 18, 2021. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, increasing the 65 working day suspension to a six-month suspension, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on November 17, 2021, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision. The Commission also ordered that the appellant undergo further anger management training. The Commission notes this increase in penalty is warranted based on the appellant's intentionally violent and egregious misconduct. Moreover, absent the statutory provisions found in *N.J.S.A.* 11A:2-19 preventing the Commission from imposing removal for an originally imposed lesser penalty by an appointing authority, it would have supported the appellant's removal based on his misconduct.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was justified and increases the 65 working day suspension to a six-month suspension. The Commission also orders that the appellant undergo further anger management training. The Commission therefore dismisses the appeal of Eric Ebron, Sr.

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 17TH DAY OF NOVEMBER, 2021

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
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Trenton, New Jersey 08625-0312

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 11263-20
AGENCY DKT. NO. 2021-338

IN THE MATTER OF ERIC EBRON, SR., CITY OF PLAINFIELD, DEPARTMENT OF PUBLIC WORKS.

Matthew P. Rocco, Esq., for appellant Eric Ebron, Sr. (Rothman, Rocco, LaRuffa, attorneys)

Denise Errico Esperado, Esq., for respondent City of Plainfield (Ruderman & Roth, attorneys)

Record Closed: October 4, 2021 Decided: October 18, 2021

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Appellant, Eric Ebron, Sr. (Ebron or appellant), appeals a sixty-five-day working-day suspension as a Laborer 1 with the City of Plainfield, Department of Public Works (the City or respondent) for conduct unbecoming and violation of the Employee Handbook when he engaged in physical violence with another City employee.

PROCEDURAL HISTORY

The City served Ebron with a Final Notice of Disciplinary Action (FNDA) dated September 3, 2020, for violations of N.J.A.C. 4A2-2.3(6) for conduct unbecoming, and N.J.A.C. 4A:2-2.3(12) for violation of the City's Employee Policy Manual.

The New Jersey Civil Service Commission (the Commission) transmitted the matter to the Office of Administrative Law (OAL), where it was filed on December 2, 2020, for determination 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 scheduled for May 21, 2021, but the hearing did not proceed because the parties had reached a tentative settlement. Months later, the undersigned was informed that the appellant reconsidered the terms of the settlement agreement and wished to proceed to a hearing. A hearing took place on October 4, 2021, and the record closed at the conclusion of the hearing.[1]

FACTUAL DISCUSSION

Based on the testimony the witnesses provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

Ebron is employed as a Laborer 1 with the City of Plainfield's Department of Public Works. He had been an employee with the City for approximately eight months at the time of the alleged incident on February 7, 2020.

[1] At the hearing, counsel for appellant advised that he was informed on the afternoon of Friday, October 1, 2021 that his client would not be attending the hearing. When I asked counsel why his client would not be attending the hearing, Mr. Rocco informed me that his client did not provide any explanation. The hearing proceeded without the appellant. Following the respondent's witnesses' testimony, Mr. Rocco requested an adjournment of the hearing to allow his client another opportunity to appear. This request was opposed by respondent's counsel. Since no reasonable explanation was provided as to why appellant chose not to attend, even after his counsel reportedly instructed him to be available all day for the hearing, and after having several weeks notice of the hearing, I determined that there was no good cause for an adjournment. The request to adjourn was denied and the hearing proceeded to conclusion on October 4, 2021.

On February 7, 2020, Ebron had a disagreement with a co-worker, George Watkins (Watkins), in the City Yard during working hours. Watkins has been a full-time employee with the City since approximately 2013, and worked as a seasonal employee with the City prior to 2013. The disagreement led to Ebron leading Watkins into the garage and then punching him in the face. The record is unclear as to why Ebron punched Watkins in the face, and Ebron only reported that Watkins was in his personal space, which he described as being within arm's reach. There is no evidence that Watkins instigated the physical assault, threatened Ebron, or attempted to physically harm him. There is no evidence that Ebron was acting in self-defense or that there was any reasonable justification for striking Watkins. Ebron is a large man, measuring about 6'6," while Watkins measures about 5'6."

Ebron has never denied punching Watkins in the face. As a result of the punch, Watkins bled from the mouth, was taken to the hospital, and suffered a broken jaw that required medical attention. The Plainfield Police were called to the site that day and conducted interviews. Ebron admitted to the officer that he punched Watkins when Watkins walked up to him in the garage. Ultimately, charges were not filed against Ebron.

There is no record of any prior disciplinary history involving Ebron. He had only been working with the City for about eight months prior to this incident. However, after the February 7, 2020 incident, the City issued Ebron a written warning in response to two separate incidents of alleged insubordination, and losing his temper. These alleged incidents took place less than a year after the February 7, 2020 incident, and after completing an anger management program.

Charges

The September 3, 2020 FNDA lists the following as the incidents giving rise to the charges:

> On 2/7/20 at approximately 10:40 am in the garage in the City Yard, during work hours, you engaged in physical violence with another employee.
> Attached is the police report.

A police report addressing the physical assault of February 7, 2020 was attached to the FNDA.

Moreover, the FNDA references violations of the Employee Policy Manual (also referred to as the Employee Handbook), Section IX on Discipline and Termination, which states that an employee may be subject to discipline for a number of enumerated reasons, including "fighting on municipal property at any time." (R-3.) The FNDA also refers to a violation of the City's Violence Prevention Policy, also found in the Employee Handbook, which states:

> Violence or the threat of violence has no place in any City of Plainfield work locations and will not be tolerated. It is the shared obligation of all employees, law enforcement agencies and employee organizations to individually and jointly act to prevent or defuse actual or implied violent behavior at work. This includes any violence or threats made on City property, at City events or under other circumstances that may negatively affect the City's ability to conduct business."

The Violence Prevention Policy goes on to list specific types of prohibited behavior, which include: "Battery – Intentional harmful or offensive touching"; and "Physical Attack – Aggression resulting in a physical assault with or without the use of a weapon." The Policy goes on to state that "Violence or the threat of violence, by or against any City employee or other person is unacceptable and will subject the individual to major discipline and possible criminal charges." (R-3.)

Ebron signed a receipt, dated May 16, 2019, acknowledging that he received and read the Employee Handbook.

LEGAL ANALYSIS AND CONCLUSIONS

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 10-3.2. However, public employees may be

disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12).

In disciplinary cases, the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (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).

The first issue in this proceeding is whether a preponderance of the credible evidence establishes that the appellant's actions constitute a violation of the charges set forth in the September 3, 2020 FNDA. If so, the second issue is whether the violation warrants a sixty-five-day suspension.

Ebron is charged with violating the provisions of N.J.A.C. 4A2-2.3(6), conduct unbecoming a public employee. There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), http://njlaw.rutgers.edu/collections/oal/. In Jones v. Essex County, CSV 3552-98, Initial Decision (May 16, 2001), adopted, Merit Sys.Bd. (June 26, 2001), http://njlaw.rutgers.edu/collections/oal/, it was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. In Karins v. City of Atlantic City, 152 N.J. 532 (1998), an off-duty firefighter directed a racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase "unbecoming conduct" is an elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for municipal employees and confidence in the operation of municipal

services." Id. at 554. In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), the court stated that a finding of misconduct need not "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior, which devolves upon one who stands in the public eye as an upholder of that, which is morally and legally correct."

Ebron is also charged with violating N.J.A.C. 4A 2-2.3(12), "other sufficient cause," and the FNDA specifically references sections of the Employee Handbook that address fighting on municipal property and the City's Violence Prevention Policy. The Employee Handbook allows for discipline for fighting on municipal property, and obliges its employees to actively prevent or defuse actual or implied violent behavior at work. It expressly prohibits violence in the workplace, including intentionally harmful or offensive touching, and aggression resulting in a physical assault, and states that this behavior is subject to major discipline.

Here, the incident giving rise to the charges is the appellant punching a co-worker in the face and breaking his jaw, during working hours. Ebron's actions of February 7, 2020 are not in dispute. The appellant has offered no reasonable explanation for his actions, and his aggressive and violent behavior towards his co-worker is unjustifiable. Ebron's physical assault on this individual not only constituted conduct that is clearly unbecoming—it also threatened the sense of safety and security in the workplace. Ebron, who was described as a large man measuring at least a foot taller than his co-worker, acted as an out-of-control, unpredictable, and dangerous bully. There is no evidence that the co-worker posed any threat to Ebron, and Ebron's physical assault on this co-worker constituted a clear violation of the City's rules and policies, including its Violence Prevention Policy, reflected in the Employee Handbook. It is undisputed that Ebron intentionally assaulted his co-worker in the workplace, and caused him significant physical harm.

I **CONCLUDE**, therefore, that respondent has demonstrated, by a preponderance of the credible evidence, that Ebron's conduct on February 7, 2020 constitutes conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6), and that such charge must be **SUSTAINED**.

I also **CONCLUDE** that respondent has met its burden to demonstrate that Ebron's violent actions on February 7, 2020, constitutes a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, in that it violates the City's Employee Handbook and its rules and policies governing violence in the workplace, and that these charges should be **SUSTAINED.**

PENALTY

When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). 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 Bock, concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlo, 192 N.J. Super. 247 (App. Div. 1983). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522–24.

Here, while the FNDA calls for a sixty-five-day suspension, respondent maintains that Ebron's actions constitute a terminable offense and that the sixty-five-day proposed suspension was a very generous one that should be reconsidered and increased in light of Ebron's continued insubordinate behavior during his brief tenure working for the City. While Ebron only received a written warning, and no additional discipline, for two subsequent incidents in which he allegedly acted in an insubordinate manner and lost his temper at work, the fact that Ebron's conduct continued to be an issue, even after allegedly completing an anger management program after February 7, 2020, is noteworthy in that it demonstrates a pattern of concerning and unbecoming behavior. For purposes of determining progressive discipline, however, it is undisputed that Ebron had no history of discipline prior to the February 7, 2020 incident. However, he had only been working for the City for about eight months, and in light of the nature of the physical

assault upon his co-worker, I agree with the City that the proposed sixty-five-day suspension was excessively generous and should be reconsidered. Ebron intentionally assaulted his co-worker and broke his jaw. There is no reasonable explanation for his behavior, and this type of physical assault and aggression should never be tolerated in any work environment. It is surprising that Ebron was not charged by the Plainfield Police Department, and it is shocking that the City only sought a sixty-five-day suspension. Ebron's violent behavior towards a co-worker was sufficiently egregious to warrant a more severe penalty. I **CONCLUDE** that appellant's conduct warrants major discipline, but a sixty-five-day working suspension is insufficient. Given the appellant's intentionally violent and egregious conduct, which resulted in significant injury to a co-worker, coupled with the fact that Ebron had only been working for the City for about eight months when the incident occurred, I **CONCLUDE** that a more appropriate penalty for his conduct on February 7, 2020 is a six-month suspension.

ORDER

It is **ORDERED** that the charges of unbecoming conduct and other sufficient cause are hereby **SUSTAINED**, and that the sixty-five-day working suspension be increased to a six-month suspension.

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.

October 18, 2021
DATE

SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

WITNESSES

For Appellant:

None

For Respondent:

Abby Levenson

John Louise

EXHIBITS

Joint:

J-1 CAD Incident Report

J-2 Incident Report – Narrative by PO Siedenburg

J-3 Incident Report – Narrative by Det. Alcantara

J-4 Incident Report – Narrative by PO Fernandez

For Appellant:

None

For Respondent:

R-1 Body camera footage

R-2 Transcript of body camera footage

R-3 Employee Handbook (Section IX Discipline and Termination; Violence Prevention Policy)

R-4 Receipt for Employee Handbook

R-5 Written Warning failure to follow directions