



STATE OF NEW JERSEY

In the Matter of Brian Hoagland
Gloucester County, Department of
Emergency Response

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC DKT. NO. 2020-810
OAL DKT. NO. CSV 14150-19

ISSUED: SEPTEMBER 1, 2021 BW

The appeal of Brian Hoagland, Emergency Medical Technician, Gloucester County, Department of Emergency Response, 72 working hour suspension, on charges, was heard by Administrative Law Judge Kathleen M. Calemno, who rendered her initial decision on July 16, 2021. No exceptions were filed.

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 September 1, 2021, 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 the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Brian Hoagland.

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 1ST DAY OF SEPTEMBER, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allilson Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AMENDED

INITIAL DECISION

OAL DKT. NO. CSV 14150-19

AGENCY DKT. NO. 2020-810

**IN THE MATTER OF BRIAN HOAGLAND,
GLOUCESTER COUNTY, DEPARTMENT
OF EMERGENCY RESPONSE.**

George Jackson, National Staff Representative, Communications Workers of America, for appellant, Brian Hoagland, appearing pursuant to N.J.A.C. 1:1-5.6(a)6

Christopher M. Kurek, Esq. for respondent, Gloucester County, Department of Emergency Response, (Brown & Connery LLP, attorney)

Record Closed: June 16, 2021

Decided: July 16, 2021

BEFORE KATHLEEN M. CALEMMO, ALJ:

STATEMENT OF THE CASE

Appellant Brian Hoagland (Hoagland) appeals the action of respondent Gloucester County Department of Emergency Response (Gloucester) suspending him from his Emergency Medical Technician (EMT) position for six shifts or seventy-two working hours. The charges arose from an incident that occurred on March 19, 2019.

PROCEDURAL HISTORY

On September 4, 2019, Gloucester issued a Final Notice of Disciplinary Action (FNDA) suspending appellant for "6 shifts". (J-1.) On September 12, 2019, Hoagland appealed that action to the Civil Service Commission (Commission). The matter was transmitted to the Office of Administrative Law (OAL) on October 7, 2019, for a 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 hearing date, originally scheduled for April 1, 2020, had to be adjourned due to the Covid-19 pandemic and closures. On April 30, 2020, Acting Director of the OAL and Chief Administrative Law Judge, Ellen S. Bass, issued Omnibus Covid-19 Order for Conduct of Remote Hearings. In the Order, Judge Bass provided that the OAL would be conducting remote plenary hearings "in cases in which all parties have consented to its usage." She further provided that "requests for extensions or adjournments, or other relief (e.g., in the event one party will not consent) may be submitted by letter in lieu of a formal motion to, or through an approved telephonic conference with the assigned Administrative Law Judge."

Initially, I monitored the case by telephone conferences because both parties objected to proceeding by remote hearing. However, at the October 21, 2020, telephone conference, appellant withdrew his objection and expressed his desire for this matter to proceed to a hearing in January 2021. Consistent with the above Order, I allowed the parties to submit their positions on proceeding remotely in writing. By Letter Order, dated November 5, 2020, I granted appellant's request for a January 2021, hearing date to be conducted via Zoom platform. The hearing occurred on January 21, 2021, with rebuttal testimony on January 22, 2021. Closing submissions were filed on June 16, 2021, and the record closed that day.

FACTUAL DISCUSSION

Based upon the stipulations and the joint exhibits, I **FIND** the following as **FACT**:

Hoagland has been employed by Gloucester as an EMT for approximately eight years. In December 2013, Hoagland received his first performance review which was positive in all aspects. (J-1.) He received an equally glowing review in December 2014. (J-2.) In his review for 2015, his superiors gave him a goal to “[l]ook into the whole picture” but he still received top scores in all categories. (J-3.) In 2016, Hoagland received top scores in all categories, but his superiors identified his strengths and areas for development as follows (J-4):

Overall, Brian is a motivated employee, arriving for scheduled shifts early, and staying late/working extra shifts when needed. He would benefit from learning to be a little more tolerant of coworkers who do not have the same level of service motivation he has and to try not to let it ‘get under his skin.’

In his annual rating for 2017, Hoagland received lower ratings for all criteria, but his marks were still satisfactory and met all expectations. (J-5.) In his summary of strengths and areas for development, Hoagland’s supervisor wrote that “Brian would benefit from learning to think about what he’d like to say for a moment rather than making quick, sometimes inflammatory statements.” Id.

In his annual rating for 2018, Hoagland received his first not satisfactory ratings for “Accepts Responsibility” and “Initiative.” (J-6.) His summary of strengths and areas for development were identified as follows:

Brian has very good patient interactions and understands the primary reason we are here - to take care of patients, and treats his patients with care and respect. He has a very good knowledge of his primary response areas which allows him to respond to calls he is closer to when the need arises. It would serve Brian to be more proactive with relocations.

Brian would still benefit from learning to control his emotions and to take responsibility without attempting to shift blame.

On March 19, 2021, Hoagland and his partner, Lisa Oelenschlager (Oelenschlager), were dispatched to a call at the start of their 6:00 p.m. shift. When they arrived, crew member, Jennifer Lundfelt (Lundfelt), and shift supervisor, Justin Henley (Henley), were present. In the Preliminary Notice of Discipline (PNDA), (J-7), Gloucester described Hoagland's actions on that call as being dismissive of directions and policy, argumentative, and aggressive towards a patient.

In the FNDA, Gloucester charged Hoagland with violating N.J.A.C. 4A:2-2.3(a) subsections: (2) insubordination; (6) conduct unbecoming a public employee; and (7) and neglect of duty. (J-8.)

Testimony

Lundfelt is an EMT employed by Gloucester with approximately fourteen years' experience. Her regular shift is from 6:00 a.m. until 6:00 p.m. Gloucester uses ambulances and Quick Response Vehicles (QRVs) to respond to emergencies. On March 19, 2019, Lundfelt was operating the QRV.

Lundfelt did not recall any direct interaction with Hoagland on March 19, 2019, but confirmed that she was on duty. To refresh her recollection, Lundfelt reviewed a statement, and she identified her signature at the bottom of the page. (R-4.) However, even reviewing the statement did not refresh her recollection. Lundfelt only recalled being asked to write a statement and complying the same night. She had no independent recollection of the incident but acknowledged the statement as her own.

On cross-examination, Lundfelt recalled that it was the Assistant to the Chief, Wendy Collins, who asked her to write a statement. She did not recall whether Collins asked her to include anything in her statement.

Lundfelt typed her statement but did not sign it, until she was requested to sign it by Chief Lovell. Lundfelt did not know who printed her statement, but she recalled Chief

Lovell handing her a copy and asking her to sign it. Lundfelt did not recall having any notes or documents when she typed her statement.

Henley worked for Emergency Medical Services for over ten years. In March 2019, Henley was a relief supervisor whose shift was 7:00 a.m. to 7:00 p.m. He did not have any independent recollection of an interaction with Hoagland on March 19, 2019. After being shown an email statement dated March 20, 2019, he authenticated his signature and stated that the document looked like something he was asked to write. (R-2.) The document was from his email address but even after reading the statement, he admitted to having no independent recollection of the events. The first paragraph discussed his familiarity with the patient and the residence. Reading the statement did not refresh his recollection.

Henley was asked to review a shift report. (R-3.) As a relief supervisor, Henley was required to prepare a report detailing what occurred during the shift. In his shift report for March 19, 2019, Henley wrote the following:

Brian Hoagland, has affect issues with patients and families on calls. Told to stop berating the patient and family in regards to hospital choice, on his first call of the night over patient asking to go to Vineland. Argued taking the pt to Elmer when they didn't want that hospital. Hoagland wanted to take the pt to Elmer so he can eat his dinner faster. Spoke with Wendy Collins via phone at 1900 hours. Id.

On cross-examination, Henley stated that the shift report represents his observations of what occurred during his shift. Henley works the day shift, so he rarely works with Hoagland. Occasionally, their shifts may overlap. In his shift report, Henley wrote that Hoagland had "affect issues with patients and families." (R-3.) He was describing how Hoagland interacted that day. Henley stated it was not his practice to put past calls or issues in his shift report. The use of the plural was a mistake because this incident involved one patient and her family.

Henley confirmed that he only wrote the statement because Collins asked him to write it. (R-2.) He would not have written it without being asked.

Henley's practice was to write his shift report periodically throughout his shift. As a relief supervisor, Henley wrote down only what occurred during the shift. Henley understood that everything he wrote on the shift report would be reviewed by his superiors.

Andy Lovell (Lovell) has been the Chief of Emergency Medical Services for Gloucester for the past thirteen years. His job is to oversee the operation of the department and make sure that all emergency calls are handled appropriately. As the Chief, Lovell is responsible for disciplinary issues involving his EMTs. He reviews all disciplinary actions before such actions are sent to the Human Resources Department.

Shift supervisors issue a daily report that are sent to Lovell for review. Lovell learned of the incident involving Hoagland, by reviewing Henley's shift report from March 19, 2019. He immediately reached out to Collins to investigate because she was responsible for administrative and personnel functions.

Before deciding to impose discipline, Lovell reviewed the statements from the two EMTs who were on the scene, Lundfelt and Henley, (R-4 and R-2), and considered his discussion with Collins. On April 2, 2019, Lovell drafted the language he wanted included in Hoagland's disciplinary notice and emailed it to Collins and Reid Matt, another member of his department. (R-7.) Based on Lovell's recommendations, Collins drafted Hoagland's preliminary disciplinary memorandum. (R-6.)

Lovell's two areas of concern with Hoagland's actions on March 19, 2019, included: his failure to immediately take the stretcher off the ambulance and proceed to the exterior of the residence with it; and his condescending manner and interference with the family's request for transport to a specific hospital. This is a service profession. Hoagland's actions did not reflect well on Gloucester. Lovell was especially troubled

when he heard that the patient expressed regret for calling 911. Lovell did not want the actions of his EMTs to prevent someone from seeking medical help.

Gloucester's EMTs are governed by a set of written policies and procedures. (R-8.) Policy number thirteen is entitled Vehicle Crew Readiness and Response. As Chief, Lovell is responsible for implementing, preparing, and distributing these policies to all employees. The policies are readily available and maintained on the website. Policy number three required:

Both EMTs should remove the cot and bag from the ambulance immediately upon arrival at the scene as the call dictates. The cot should be lowered, and the bag should be removed and accompany the crew prior to entering the patient's residence.

This procedure ensures that EMTs always have the equipment ready, if needed to make an immediate intervention. Any delay, even returning to the ambulance to retrieve equipment, could have consequences for the patient.

All new EMTs go through an orientation process that summarizes the policies and procedures. (R-9.) EMTs are also required to attend periodic training and review for all policies. An electronic record is maintained showing policy updates along with information directing EMTs of where to go in the library database to find and review any updates or existing policies. The members are required to electronically acknowledge their receipt and review. (R-10 & 11.)

Whenever possible, EMTs are required to transport a patient to the facility of their choice. This is not possible when special levels of care are required, such as the need for a burn or trauma center. In this situation, the patient expressed that she did not want to be transported to Inspira Medical Center at Elmer because of a prior negative experience. EMTs are trained and should know that they are required to honor a patient's choice unless it involves specific care concerns.

On cross-examination, Lovell stated that he relied upon two statements from long standing employees, even though four EMTs responded on March 19, 2019. Lovell received a statement from Hoagland's partner, Oelenschlager, but he questioned its validity and disregarded it. Lovell claimed he was not disparaging Oelenschlager, but he did not take her statement into account because the email header was Hoagland's email address. It was a violation of policy to use another member's email account. Lovell never personally questioned Oelenschlager about her statement or the incident.

Although Lovell never interviewed Hoagland, he assigned that task to Collins. Lovell recalled having an in-person conversation with Collins about her discussion with Hoagland. Lovell did not recall getting any documents from Collins regarding her discussion with Hoagland. Lovell makes recommendations for major disciplinary actions; minor discipline recommendations are made by Collins.

On redirect examination, Lovell understood that Collins had spoken to Lundfelt and Henley and asked them to write statements. Collins told him that she spoke to Oelenschlager and Hoagland on the night of the incident.

Hoagland is an EMT with eight years of experience with Gloucester County. He testified on his own behalf. In March 2019, Hoagland worked the 6:00 p.m. to 6:00 a.m. shift. Hoagland did not exactly recall the time of the dispatch on March 19, 2019, but stated he usually arrived for work at 5:30 p.m. and recalled this was an early call.

The call was generally described as a medical emergency. Hoagland responded with his partner, Oelenschlager. They were not the first to arrive on the scene. Lundfelt in a QRV and Henley, the relief supervisor, were already present. The two teams were about a minute apart from each other in arriving. Having only the information from dispatch when they arrived, Lundfelt approached their ambulance and told them of her familiarity with the patient and that she would need the stair chair. She explained that the patient was a hoarder and there was not enough room in the house for the four EMTs. Hoagland grabbed the stair chair while his partner retrieved the stretcher.

Hoagland was told to grab the stair chair because that was the only thing that would fit in the patient's house. After bringing the stair chair to the door, Hoagland went and helped his partner with the cot. Hoagland estimated that Lundfelt and Henley were inside with the patient for about five minutes.

As they were bringing the patient out her door on the stair chair, Hoagland could hear her yelling that she wanted to go to Jefferson. Henley was trying to explain to her that Jefferson was very busy so it would be better to go somewhere else. He was trying to redirect her attention from Jefferson to Vineland or Elmer. Hoagland questioned Henley and he was told that Jefferson was on divert because it was busy. Hoagland suggested Elmer to the patient because it was closer to her house. Although the patient expressed she did not want to go there, Hoagland was not aware of the patient's history with Elmer. Apparently, while inside the house, the patient agreed to go to Vineland, but she kept reiterating that she wanted to go to Jefferson.

Hoagland maintained he never argued with the patient. He suggested Elmer but backed off the suggestions when the patient said no. Hoagland did not recall any family members being present. The patient's son was still in the house. After the patient was moved to the stretcher, Hoagland put the stair chair back in the ambulance. Lundfelt and Henley transferred the patient to the stretcher and Oelenschlager held the stretcher. The patient was very agitated, but stable. Hoagland and his partner transferred the patient to Vineland and left her in the care of her treating nurse. On the way back to the station, they were dispatched to another call. Before arriving at the call, their services were rescinded, and they returned to the station.

When they arrived back at the station, Hoagland and his partner stayed outside and had a friendly conversation with Lundfelt, Collins, and Warren Stewart, the nighttime supervisor. Hoagland recalled inviting Lundfelt to join him and his partner for dinner. Hoagland recalled that he was having a cold salad and shrimp cocktail for dinner that evening.

When they went inside the building, Collins followed Hoagland and his partner into their office and her demeanor went from friendly to hostile. She grabbed the patient's face sheet from the last call and threw it in Hoagland's face demanding an explanation. Without even an explanation for her hostility, Collins threatened to take Hoagland's job and told him he had a target on his back. During that exchange, Hoagland and his partner got dispatched to another call and had to leave. Collins never gave Hoagland an explanation for her anger but only mentioned that the people on the last call were political. Hoagland retorted that he did not give-a-damn who they were because he treats all patients the same.

Collins never questioned Hoagland or his partner. She never requested any statements from them. He was never asked by anyone in management for his side of the story.

That night after returning from the call, Hoagland and his partner discussed Collin's reaction from earlier and decided they should write their own statements. Hoagland and his partner each had their own computers. Oelenschlager wrote her statement (P-1) but could not get it to print. For some reason, Oelenschlager's computer was not connected to the printer. Oelenschlager emailed her statement to Hoagland, so he could print it from his computer which was hooked up to the printer. Hoagland recalled that it was approximately 3:40 a.m. on March 20, 2019, when they got the chance to write their statements.

On cross-examination, Hoagland stated he wrote his own statement, separate from his partner. Hoagland claimed that he never provided his statement to anyone but his Union. Hoagland clarified that the statement was never addressed to the Union. It was just a written statement in case there was discipline against him. He could not remember if he gave his statement to anyone.

In the statement purportedly written by Oelenschlager she wrote that Lundfelt took the stair chair from the ambulance. Hoagland testified that he got the chair for Lundfelt and she carried it up the stairs to the residence. Oelenschlager's statement

also suggested that Lundfelt directed them to get the stretcher which was consistent with the accounts from Lundfelt's and Henley's statements.

Regarding the encounter with Collins in the station, Oelenschlager wrote in her statement that Collins picked up the face sheet, shook it, and asked Hoagland what happened on the call. Hoagland testified that Collins refused to offer any details about the incident which left him in the dark about why she was angry. This is at odds with the statement provided by Oelenschlager, wherein she wrote that Collins informed them that Lundfelt and Henley stated there was an issue on the call. Specifically, that Hoagland aggressively loaded the patient into the ambulance and argued with the patient and family about hospital choice. Oelenschlager also wrote that Collins had stated the patient's son and daughter sent an email with their complaints. Hoagland denied the statements in his partner's account and maintained that Collins never said anything to him about the problems on the call.

When asked about his performance evaluations, Hoagland stated that he does not always have time to review them and there is little to no discussion about them before signing.

Hoagland did not recall any other incident when Henley, acting as a relief supervisor, had any concerns about him. Hoagland could not attribute any motive to Henley to elaborate or fabricate his statement. Likewise, with Lundfelt, there has been no negative interactions and Hoagland attributed no reason for her to fabricate or elaborate the incident.

Wendy Collins (Collins) was called as a rebuttal witness for respondent. She is the Assistant to the Chief. Although March 19, 2019, was two years ago, Collins recalled receiving a telephone call from an aggravated and frustrated Henley, the on-duty supervisor, about what at just transpired on a dispatch to a patient's residence. Collins met Henley at the station and interviewed him about his concerns. While Collins was standing outside with another supervisor, Warren Stewart, Hoagland and his

partner arrived at the station. She recalled they were talking about having seafood for dinner. Collins told Hoagland to go in and eat and she would talk to him later.

When Collins next saw Hoagland, he was in the crew room with this partner, so she got the run sheet and showed him the run sheet so he would know what call they were discussing. She told him that she interviewed Henley and Lundfelt who expressed concerns about his behavior. They expressed an issue with Hoagland's attitude about just bringing the stretcher and not going into the house. Both Lundfelt and Henley told Collins they were frustrated by Hoagland's responses to their directions. They were also frustrated that he involved himself in the patient's hospital choice after they had resolved the issue. Collins recalled telling Hoagland that Lundfelt and Henley felt he was very rough in loading the patient into the ambulance. Collins also relayed her information from Henley that the patient's son had complained about his mother's treatment and her concern that calling 911 had been a mistake. Hoagland immediately became defensive. Collins recalled telling Hoagland that he cannot have any disputes in front of patients.

Collins has no authority to fire Hoagland. However, she warned him that his actions and his frustration could jeopardize his license. Hoagland's partner Oelenschlager was present during their conversation.

The patient's family never lodged a complaint. After they advised Henley of their concerns, Henley advised them of their right to file a complaint, but they never did. Whether a complaint was filed was not Collins' main concern. What concerned her was that a supervisor and another EMT both expressed frustration about the lack of professionalism exhibited by Hoagland during the incident.

Discussion

A fact finder is obligated to weigh the credibility of witnesses. The fact finder must choose to accept or reject whether a witnesses' testimony is credible. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). Credibility is the value given to a witness' testimony. It 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 observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950), (citations omitted).

A credibility determination requires an overall assessment of the witness' story "in light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The fact finder should also consider the witness' interest in the outcome, or any motive or bias. The fact finder may reject testimony because it is inherently incredible, improbable, inconsistent with common experience, contradicted by other testimony, or it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Lundfelt and Henley, witnesses for Gloucester, exhibited no evidence of bias or prejudice towards Hoagland. As noted, Lundfelt and Henley had no independent recollection of the specifics of the March 19, 2010, incident. It is not surprising that after two years, these witnesses would have forgotten the specifics of this one call. Because memories prove faulty over time, contemporaneous statements are used to record and memorialize an event. Lundfelt and Henley wrote contemporaneous statements of the incident at the time when it was fresh in their minds. (R-2 and R-4.) Although reviewing the statements did not refresh their recollections of the incident, the contemporaneous statements were sufficiently trustworthy and met the three requirements for the recorded recollection exception to hearsay under N.J.R.E. 803(5). The statements were made when the incident was fresh in the memory of the witnesses. Lundfelt and Henley were directed by their superior, Collins, to write the statements and the statements were used in the regular course of business by Chief Lovell in his decision to impose discipline. Lundfelt and Henley had direct knowledge of the incident by being on the scene with Hoagland and witnessing his behavior.

Moreover, Henley's shift report (R-3) kept in the ordinary course of business presented a window into how Hoagland's behavior was negatively viewed by his on-duty supervisor.

Chief Lovell testified in a professional and business-like manner for Gloucester. He did not present any personal animosity or bias against Hoagland. He presented sound reasoning for his decision to impose discipline based on the ultimate responsibility of EMTs to serve the public and keep the public trust. I deemed him to be a credible witness.

Hoagland's recollection of the incident was at odds with the statements from Lundfelt (R-4) and Henley (R-3.) His testimony was self-serving and implausible. According to his testimony, he followed directions on the scene, did not argue with the patient about her hospital choice, and never expressed anger or resentment. His testimony simply did not hold up against Henley's shift report and the behaviors described in the contemporaneous statements of Lundfelt and Henley. Even Hoagland admitted that Lundfelt and Henley had no known animosity towards him. Hoagland's description of his treatment by Collins was rebutted by Collins' credible testimony. Hoagland described Collins as erratic, angry, and out to get him. On rebuttable, Collins testified that when she tried to speak to Hoagland about his behavior on the call she was met with resistance and defiance.

In his defense, Hoagland only produced the statement from his partner. (P-1.) Even that statement did not support his version of what occurred on the scene or his characterization of Collins. The statement was unable to be authenticated and I gave it no weight.

Based upon a review of the documentary evidence, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following as additional **FACTS** in this matter:

At the patient's residence on the evening of March 19, 2019, Hoagland failed to immediately retrieve the stretcher from the ambulance as directed. His tone was argumentative to the QRV operator, Lundfelt, and the shift supervisor, Henley, who had preceded him to the location. Despite being told by Lundfelt and Henley that they had prior experience with the patient, he failed to follow their lead. When the patient was brought out of the house, he interjected himself into a discussion about hospital choice and became belligerent. His anger was obvious enough for the shift officer to instruct him to walk away and calm down. When instructed to load the patient into the ambulance his actions were forceful. His behavior on the scene was discourteous and not in keeping with his training and position.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See, Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1971); Mastrobattista v. Essex County Park Commission, 46 N.J. Super. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provision of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses connected to his or her employments. The general causes for such discipline are enumerated in N.J.A.C. 4A:2-2.3.

In an appeal concerning major disciplinary action, the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11:2-21; N.J.A.C. 4A:2-14 (a). This applies to both permanent career service employees and those in their working test period relative to such issues as removal, suspension, or fine and disciplinary demotion. N.J.S.A. 11A:2-14; N.J.S.A. 11A:2-6. The State has the burden to establish by a preponderance of the competent, relevant, and credible evidence that the employee is guilty

as charged. Atkinson v. Parsekian, 37 N.J. Super. 143 (1962); In re Polk License Revocation, 90 N.J. Super. 550 (1980).

The first issue in this proceeding is whether a preponderance of the credible evidence establishes that the appellant's actions on March 19, 2019, constitute a violation of the charges set forth in the September 4, 2019, FNDA. (J-8.) If so, the second issue is whether the violation warrants the six shifts suspension from employment or a lesser penalty, if any.

Hoagland is charged with violating the provisions of N.J.A.C. 4A:2-2.3 relating to insubordination, conduct unbecoming a public employee, and neglect of duty.

"Insubordination" is not defined in N.J.A.C. 4A:2-2.3. Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Therefore, the term "insubordination" incorporates not only acts of disobedience, but also acts of non-compliance and non-cooperation, and it can occur even where no specific order or direction has been given to the allegedly insubordinate person.

Here, when Hoagland was told to retrieve the stretcher from the ambulance, he was initially non-compliant. In addition, such conduct violated the policy requiring both EMTs to remove the cot and bags from the ambulance immediately upon arrival. (R-9.) Hoagland also failed to cooperate and comply with the directions of Henley to stay calm and not show his agitation to the patient or her family. Rather than obeying Henley, Hoagland engaged with the patient to the discredit of his supervisor and Gloucester. Hoagland was clearly not "submissive to authority" in how he conducted himself with Henley, his supervisor on this dispatch. Accordingly, I **CONCLUDE** that respondent has demonstrated, by a preponderance of the credible evidence, that Hoagland's conduct on March 19, 2019, constituted insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2), and that such charge must be **SUSTAINED**.

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.”

Here, Hoagland’s behavior frustrated and angered Henley, his supervisor, and caused Lundfelt to question his treatment of this patient. Hoagland’s behavior caused the patient to question her decision to call 911 for help. On March 19, 2019, Hoagland’s conduct was such that it could adversely affect morale or efficiency, destroy public respect for governmental employees and confidence in the operation of public services. I **CONCLUDE**, therefore, that respondent has demonstrated, by a preponderance of the credible evidence, that Hoagland’s conduct on March 19, 2019, constituted 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**.

“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, Civil Service Commission (March 27, 2009), 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.

In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), that 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."

As an EMT, Hoagland performs a vital service in the community and his behavior and professionalism is subject to public scrutiny. Displaying anger, aggression, and hostility are the opposite traits of what Gloucester expected from Hoagland on a professional service call. Hoagland owed a duty to the patient not to argue with her hospital request under the circumstances presented. Hoagland also owed a duty to the patient to keep her as comfortable as possible when he was loading the stretcher into the ambulance. His duty required that his actions not cause a patient further distress. Therefore, I **CONCLUDE**, that respondent has demonstrated, by a preponderance of the credible evidence, that Hoagland's conduct on March 19, 2019, constituted neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7), and that such charge must be **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 Hoagland'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). The question to be resolved is whether the discipline imposed in this case is appropriate.

The Department seeks to uphold its suspension of six working days constituting twelve-hour shifts. This is Hoagland's first major discipline. His history of similar offenses include: a reprimand on January 17, 2018, for neglect of duty and insubordination; a three-shift suspension on October 12, 2017, for neglect of duty; and a reprimand on May 2, 2016, for insubordination and neglect of duty. Significantly, Hoagland's performance evaluations for the three years prior to the incident warned Hoagland to think before speaking, to accept responsibility, and to be mindful when interacting with others.

After having considered the proofs offered in this matter and the impact of Hoagland's behavior upon Gloucester, and after having given due deference to the principal of progressive discipline, I **CONCLUDE** that Hoagland's violations are significant enough to warrant a penalty, which, in part, is meant to impress upon him the seriousness of his failure to comport himself in accordance with Gloucester's policies and procedures. I **CONCLUDE** that Gloucester's action in suspending Hoagland for six shifts is reasonable and consistent with progressive discipline and should be affirmed.

ORDER

I hereby **ORDER** that the charges of insubordination, conduct unbecoming a public employee, and neglect of duty are sustained. I **FURTHER ORDER** that the

action of the respondent Gloucester County Department of Emergency Response imposing a six shifts suspension is **AFFIRMED**. Appellant's appeal is **DISMISSED**.

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.

Kathleen M. Calemmod

July 16, 2021
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

July 22, 2021 (email)

Date Mailed to Parties:

July 22, 2021 (email)

APPENDIX

WITNESSES

For appellant:

Brian Hoagland

For respondent:

Jennifer Lundfelt

Justin Henley

Andrew Lovell

Wendy Collins, rebuttal

EXHIBITS

Joint

- J-1 Employee Performance Evaluation: January 1, 2013 to December 31, 2013
- J-2 Employee Performance Evaluation: January 1, 2014 to December 31, 2014
- J-3 Employee Performance Evaluation: January 1, 2015 to December 31, 2015
- J-4 Employee Performance Evaluation: January 1, 2016 to December 31, 2016
- J-5 Employee Performance Evaluation: January 1, 2017 to December 31, 2017
- J-6 Employee Performance Evaluation: January 1, 2018 to December 31, 2018
- J-7 PNDA
- J-8 FNDA

For appellant:

- P-1 Email that contains the typed name of Oelenschlager, dated March 19, 2019, and a signature purportedly of Oelenschlager, dated August 8, 2019.

For respondent:

- R-1 (submitted as J-8)
- R-2 Henley's March 20, 2019, statement to Collins
- R-3 Henley's shift report
- R-4 Lundfelt's statement
- R-5 Disciplinary History – not in evidence
- R-6 Disciplinary Memorandum
- R-7 Lovell's email for disciplinary charges for March 19, 2019, incident
- R-8 Gloucester County Emergency Medical Service Policy and Procedure Manual
- R-9 Policies and Procedures Operations
- R-10 Gloucester County Emergency Medical Service Policy and Procedure Manual – showing review date of April 9, 2015
- R-11 Gloucester County Emergency Medical Service Policy and Procedure Manual – showing review date of July 10, 2015