



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of David Peterson,
Greystone Park Psychiatric Center,
Department of Health

CSC DKT. NO. 2021-1425
OAL DKT. NO. CSV 04312-21

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ISSUED: AUGUST 3, 2022

The appeal of David Peterson, Senior Repairer, Stockton University, removal, effective July 9, 2020, on charges, was heard by Administrative Law Judge Elaine B. Frick (ALJ), who rendered her initial decision on June 24, 2022. No exceptions were filed.

Having considered the record and the ALJ’s initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of August 3, 2022, accepted and adopted the Findings of Fact as contained in the attached ALJ’s initial decision. However, the Commission did not adopt the recommendation to uphold the removal. Rather, the Commission imposed a six-month suspension.

DISCUSSION

There is no serious dispute as to the facts of this matters, and as indicated above, in its *de novo* review, the Commission adopts the ALJ’s findings in this matter. However, regarding the penalty, the Commission does not agree that removal is appropriate under the circumstances. As with the merits of the appeal, the Commission’s review of the penalty is *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant’s offense, the concept of progressive discipline, and the employee’s prior record. *George v. North Princeton Developmental Center*, 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the

imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 N.J. 474 (2007).

In this matter, the appellant's misconduct was clearly inappropriate and serious, and absent any mitigating factors, worthy of removal from employment. However, while the ALJ noted that the appellant had no previous disciplinary action in his entire career, which spanned over 15 years, she did not find that factor overcame the offense committed. The Commission disagrees. Clearly, the appellant's misconduct was inappropriate and could even be considered bizarre. However, while the Commission is not in any way minimizing the appellant's actions, given the particular facts of the matter, and considering that this conduct was apparently out of character for the appellant based on his lack of any previous discipline over his long career, it was not so egregious to warrant removal from employment. As such, the Commission finds that a six-month suspension, the most serious suspension that can be imposed, is appropriate. This penalty should impress upon the appellant the seriousness of his misconduct and serve as a warning that any future misconduct may result in his removal from employment.

Since the removal has been modified, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to N.J.A.C. 4A:2-2.10 from six months after the first date of separation until the date of actual reinstatement. However, he is not entitled to counsel fees. N.J.A.C. 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield*, 282 N.J. Super. 121,128 (App. Div. 1995); *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and major discipline was imposed. Consequently, as appellant has failed to meet the standard set forth at N.J.A.C. 4A:2-2.12, counsel fees must be denied.

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

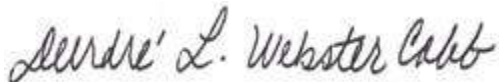
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modifies that action to a six-month suspension. The Commission further orders that the appellant be granted back pay, benefits, and seniority from six months after the first date of separation to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

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

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF AUGUST, 2022



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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

INITIAL DECISION

OAL DKT. NO. CSV 04312-2021

AGENCY DKT. NO. 2021-1425

**IN THE MATTER OF DAVID PETERSON,
STOCKTON UNIVERSITY**

Louis M. Barbone, Esquire, for appellant, David Peterson (Jacobs & Barbone, P.A., attorneys)

Roger M. Castillo, Deputy Attorney General, for respondent, Stockton University (Matthew J. Platkin, Acting Attorney General, State of New Jersey, attorney)

Record closed: June 20, 2022

Decided: June 24, 2022

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

Appellant, David Peterson (Peterson), was employed by respondent, Stockton University (Stockton), as a senior repairer. Stockton removed Peterson from his employment for having violated the charges of major discipline, conduct unbecoming of a public employee, and other sufficient cause, for having taken a student's bicycle and using his work vehicle to remove the bicycle from a housing unit area on campus. Peterson admits he took the bicycle, but contends he believed the bicycle had been abandoned, and thus the discipline of removal was too harsh and he should be returned to his employment.

PROCEDURAL HISTORY

Stockton issued a Final Notice of Disciplinary Action (FNDA) on March 18, 2021, removing appellant from his employment, effective July 9, 2020. Peterson appealed, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on May 12, 2021, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

Prehearing telephonic conferences were conducted with counsel. A discovery schedule was established, and hearing dates set down. The hearing was conducted via Zoom audio/video conferencing on April 6, 2022. The record remained open for the submission of written summations. Written summations were received, and the record closed on June 20, 2022.

STIPULATIONS OF FACT

The parties stipulated to a typed list of material facts, which were set forth in individually numbered paragraphs and admitted into evidence as J-1. Those stipulations are set forth, verbatim, which I adopt and **FIND as FACTS:**

Background

1. Appellant, David M. Peterson, was employed as a Senior Repairer of Stockton University (“Stockton”).
2. Appellant was initially hired by Stock on [sic] on or around November 1, 2004.
3. On June 17, 2020, a purple Schwinn mountain bicycle (“bicycle”) was reported missing by a Stockton student, Ginelle Vargas, to Stockton Office of Campus Public Safety via email.
4. Officer James S. Heitzer, from Stockton Police Department, received Ms. Vargas’ email and began the investigation by calling the [sic] her and reviewing surveillance footage.
5. On June 20, 2020, Officer Heitzer spoke with Ms. Vargas via the telephone.
6. Ms. Vargas indicated that her bike was worth \$300.00 and had been seen last

secured via combination lock to metal pole under the outside stairwell, directly under her apartment.

7. Surveillance footage from June 12, 2020 shows Appellant putting the bicycle, that was located on Stockton property, into a white Stockton work van (“van”).
8. Appellant then enters the driver side of the van and drives off.
9. Although Ms. Vargas claims that the bicycle was secured, the review of the surveillance footage shows Appellant grabbing the bicycle without having to enter a combination code or cutting a lock.
10. Ms. Vargas informed Officer Heitzer that she wanted the Stockton Police Department to issue a Criminal Complaint to Appellant regarding the bicycle.
11. Appellant was contacted by the Stockton Police Department and attempted to contact a Lieutenant Giovanni Maione regarding the matter.
12. Appellant left a voice mail stating he believed the bike was abandoned, that it was killing him inside, and said he would like to apologize to the owner of the bike and would pay restitution.
13. On June 24, 2020, Katherine Hibbert, Associate Director of Plaintiff [sic] Operations at the time, issued a voluntary statement to Officer Heitzer.
14. Ms. Hibbert indicated that on June 18, 2020, Appellant called her and informed her that he “did something bad”, meaning he took a bike off of Stockton property, sold it, and that he could not get it back.
15. On June 24, 2020, Robert Haviland Hibbert [sic] issued a voluntary statement to Officer Heitzer.
16. Mr. Haviland, who was the Associate Director of Plaintiff [sic] Operations at the time, indicated that on June 19, 2020, Appellant informed Mr. Haviland that he “screwed up” by taking a bike from housing because he did not know anybody owned it.
17. Mr. Haviland then reminded Appellant that no change had been made to the rule of “if you did not bring it with you to work, it doesn’t go home with you.”
18. On June 24, 2020, Officer Heitzer spoke with Appellant via telephone. Appellant stated to Officer Heitzer that he had removed a bicycle thinking it was abandoned and gave it to a little girl who was in need. He did not think he was doing wrong, he thought he was doing good. He also stated once again that he would pay full restitution and apologize to the student.

Procedural History

19. On June 30, 2020, Stockton Police Department issued a Criminal Complaint against Appellant, charging him with a violation of N.J.S.A. 2C:20-3A – theft by unlawfully taking certain moveable property.
20. On July 6, 2020, Appellant was issued a Preliminary Notice of Disciplinary Action (“PNDA”) seeking removal.
21. The PNDA indicated that Appellant was charged with N.J.A.C. 4A:2-2.2(a) major discipline, N.J.A.C. 4A:2-2.3(a)(6) conduct unbecoming of a public employee, and N.J.A.C. 4A:2-2.3(a)(12) other sufficient cause.
22. On July 8, 2020, Appellant was issued a second PNDA relating [sic] actions involving criminal matters.
23. A disciplinary hearing was held on February 25, 2021.
24. On March 18, 2021, Appellant was issued a Final Notice of Disciplinary Action (“FNDA”).
25. The FNDA sustained the charges as indicated in the PNDA.
26. Per the FNDA, Appellant’s removal was effective July 9, 2020.
27. On December 18, 2020, an Expungement Order was entered into with regard to the Criminal Complaint filed by Stockton against Appellant.

(J-1.)

FACTUAL DISCUSSION AND FINDINGS

The following undisputed facts were gleaned from the testimony and documentary evidence entered in this matter. I thus **FIND** as additional **FACTS** the following:

The PNDA was issued to Peterson on July 6, 2020. It listed three administrative charges being major discipline, conduct unbecoming a public employee, and other sufficient cause. (J-2.) The incident giving rise to the charges was set forth in the PNDA as:

On June 12, 2020, Mr. Peterson was caught on video camera putting a student's bicycle onto his work vehicle. The student reported the missing bicycle to the Office of Campus Public Safety on June 17, 2020. Mr. Peterson called Katherine Hibbert, Associate Director of Facilities Management on June 18, 2020, to confess to stealing a student's bicycle.

(J-2.)

The FNDA, which issued to Peterson on March 18, 2021, sustained the charges as stated in the PNDA, citing the same incident as set forth verbatim in the PNDA. (J-3, J-2.)

Peterson challenges the discipline imposed of removal, effective July 9, 2020. Stockton seeks to have the discipline of removal affirmed. Peterson contends removal is too harsh and not in line with progressive discipline.

TESTIMONY

James S. Heitzer (Heitzer) testified on behalf of Stockton. He is currently on active duty for the Marine Corps. His civilian employment is with the New Jersey State Police (NJSP). He previously was employed as a patrol officer for the Stockton University Police Department (PD) from November 2017 until November 2020, when he entered the NJSP academy and thereafter became a NJSP trooper.

In June 2020, while Heitzer was working for Stockton PD, a human resources employee from Stockton, Dahlia Spataro, sent an email to him. (R-1.) The email conveyed that a crime had been reported on the campus police site crime tip line by Ginelle Vargas (Vargas). It was reported that on June 15, 2020, Vargas was coming back to her dorm at housing unit 1, building D, when she noticed her "purple mountain bike that was locked up was gone and the lock was gone with it." (R-1.)

Heitzer was provided a voicemail recording which had been left for Lieutenant Maione of the Stockton PD. The voicemail was from Peterson indicating he was calling about the bicycle situation and thought that the bike was abandoned. He did not think he was doing

anything wrong, and that he took the bike for a girl. He wanted to apologize, make restitution, and stated that this was “killing him inside.” (R-14.)

Heitzer conducted an investigation of the reported tip. He completed an investigation report and supplementary reports regarding his investigation and the interviews he conducted. (R-2.)

He reviewed surveillance footage of the Stockton campus housing area in question. The video clip was from approximately 2:00 p.m. on June 12, 2020. (R-13.) On the video, Peterson is seen driving up to the housing unit 1 complex in a white van which Heitzer described as a Stockton utility vehicle. The van backed into the housing complex, stopped, and then Peterson stepped out of the van, walked to the back of the vehicle, and popped open the back trunk gate. (R-13.) Peterson walked under the stairwell to the student apartment units. He picked up a purple mountain bike, put it into the back of the van, closed the van gate, and got back into the van. He drove away. (R-13.)

As of June 2020, there were a limited number of students on campus due to the COVID-19 pandemic. Heitzer could not recall whether housing unit D was occupied by student residents at that time.

Heitzer placed a call to Peterson while he was in the Stockton PD patrol room and recorded it via his Body Worn Camera (BWC). (R-15, Peterson clip.) Peterson answered the phone and told Heitzer he removed the bicycle, thinking it was abandoned. Peterson stated that he had looked around, banged on doors, and saw a custodian who said she just cleaned there, and no one was there. He removed the bike and wanted to make full restitution. Peterson stated that he did not realize he was doing something wrong. (R-15.) Heitzer advised Peterson he would be speaking to the victim and the supervisors at Stockton, and may need Peterson to come in. Peterson stated that he was not a bad person; he did something that was wrong; and that there were bikes laying around and it was such a waste. (R-15.) He said he was an “honest man” and that he would apologize; he would make full restitution; and he would take a suspension. Heitzer responded he was doing the legal investigation for the matter and would get back to him. Peterson concluded that he thought he “was doing good.” (R-15, Peterson clip.)

On June 24, 2022, Heitzer met with Associate Director of Plant Operations, Robert Haviland, in the Stockton PD station. Heitzer interviewed Haviland and recorded it on his BWC. (R-15.) Haviland stated that another Associate Director of Plant Operations, Katherine Hibbert, (Hibbert), told Haviland that Peterson admitted to her that he stole the bike and sold it. (R-15.) Haviland spoke to Peterson who told him that he “took” the bike. (R-15.) Peterson was placed on paid administrative leave. Haviland also hand wrote a statement for Heitzer. (R-3.) Haviland noted in his statement that he had received a call from Hibbert who told Haviland that Peterson called her and admitted that he took a bike from a housing unit and sold it. (R-3.) Haviland noted that Peterson came to his office and told him that he had “screwed up” by taking a bike, which he thought had been left there. Haviland advised Peterson that there was no change in the policy of Stockton “if you did not bring it with you to work, it doesn’t go home with you.” (R-3.) Peterson affirmed to Haviland he knew the policy and Haviland told Peterson to talk to his union representative. (R-3.)

On June 24, 2020, Heitzer met with Hibbert. Heitzer recorded the interview on his BWC. (R-15.) Hibbert stated that she had received a phone call from Peterson at approximately 5:00 p.m. on June 18, 2020. He told her that he “did a bad thing” and that he took a bike from Stockton. She asked him if he put it somewhere by accident and he said “no.” She asked him if he sold the bike and he said “yes.” She asked him if he could retrieve the bike and he said “no.” (R-15.) She told him to come in the next morning to speak to her. The next day, Peterson did come in to speak to her, but she was involved in another matter. Peterson spoke to Haviland instead. Hibbert wrote a statement for Heitzer. (R-4.) Hibbert’s statement reiterated what she said to Heitzer during her interview. (R-4, R-15.)

Katherine Hibbert testified on behalf of Stockton. Since May 2018, she has been an Associate Director of Plant Operations and Facilities Management. She oversees multiple shops and trades in plant operations and does some Human Resources (HR) and administrative work. Peterson is a senior repairer for the department.

She first learned of the bicycle issue when a Stockton police officer came into the shop where she works and told her that someone took a bike and asked if she could identify the person in the photograph. She identified that it was Peterson.

Hibbert called Peterson on June 18, 2020, and he called her back later in the day, at approximately 5:00 p.m. She asked him if he took the bicycle and he said that he did and told her that he could not get it back. She told him to come into the shop the next morning. He did come in, but she did not speak to him. She was involved in another matter that morning and handed the Peterson matter over to another associate director, Robert Haviland.

She confirmed she was later interviewed by Stockton police officer Heitzer and provided a written statement to him. (R-4.) She confirmed that she stated in her statement that she asked Peterson if he sold the bike and that he said yes. (R-4.) She confirmed that her written statement would be a better recollection of the matter, since she wrote it on June 24, 2020. She affirmed that she did not put anything in quotes in her written statement as to what Peterson told her. She affirmed she did not record verbatim what he said, she just summarized it in her written statement. (R-4.)

As of June 2020, Stockton was not operating as it normally would because of the COVID pandemic and public health emergency. Many students were no longer on campus. Some were in apartment units, but she could not recall if they were in housing unit 1, D building.

Prior to March 2020, pre-COVID pandemic, building D had been fully occupied. Most students left after March 2020. A directive came thereafter from the housing department that any items remaining in the student apartments were to be taken out and placed into storage. Hibbert was supervisor of the repairers who were tasked with going into the student apartments and cleaning them out. She was present at times when the workers were going into the units and taking out the items and storing them. The items were boxed, labeled, and then placed into pod storage units in the parking lot area. Prior to the COVID pandemic, if items were found in rooms when the students no longer occupied the unit, the workers would notify Hibbert and she would find out the course to follow whether to remove the items, trash them, or place them in storage.

Hibbert explained that no campus property can be removed. If property is determined

to be left behind, it is to be disposed of as necessary. All property on campus is considered university property. It cannot be taken or used by an employee. She did not give permission to Peterson to remove the bicycle. She did not know of anyone else who gave him any such permission.

Robert Haviland testified for Stockton. He worked for Stockton for twenty-eight years. He is now retired. He was the associate director of facilities management and plant operations at Stockton.

Haviland explained that discipline of an employee in the department was a group effort, involving him, members of HR, and the director of the division. He was directly involved in discipline because he was senior associate director and had been there so long.

Haviland became aware of the Peterson situation when Associate Director Hibbert contacted him on or about June 18, 2020. Peterson came into the office the next day. Haviland spoke to Peterson, who said that he took a bicycle and was upset. Peterson said he screwed up. Haviland spoke to John Fritsch (Fritsch), an assistant vice president of facilities and operations, regarding Peterson. Later in the day, Haviland took Peterson's keys and swipe card from him and placed Peterson on administrative leave.

Haviland received a call from a Stockton police officer, requesting that he give a statement about the situation. On June 24, 2020, he provided a written statement to the police department. (R-3.)

He explained that it is a known fact to employees of Stockton that "if you didn't bring it to work, you don't take it home with you." He knew there was a document with that known policy, and confirmed he was referring to the memorandum from the director of plant & housing maintenance, dated May 12, 2010. (R-8.) The memorandum indicated that any personal items remaining in the housing and residential areas were now property of Stockton, and such items were considered "trash" and would be removed by plant management staff. "No items may be recovered or removed from any residential or trash collection areas for personal use or gain without the advanced knowledge and written consent of the Director of Plant Management." (R-8.) The memorandum further provided that individuals who did not

comply with the directive would face disciplinary action. (Id.)

Haviland explained that if an employee must go into a student's room, there are often items all over, and it is known that you do not touch anything. That is for the safety of the students. If an employee finds lost or presumed abandoned property, it is to be turned in by notifying your supervisor or the police department.

Haviland indicated that the policy about property is discussed numerous times during staff meetings, and the directors are told to take the information to the shop employees and disseminate it. Specifically, during winter break and summer move out time on campus, the policy regarding property is stressed to the directors to pass along to staff. Typically, it is stressed during move out time as a "friendly reminder" to workers that items left behind by students are not the employees' property and that the items are to be thrown out or collected and stored.

He did not give Peterson permission to remove the bicycle. He did not know of anyone else who gave Peterson permission to do so.

John Fritsch testified for Stockton. He has worked at Stockton since 2015. He began as an assistant director, then was an associate director, then the director, and now is the assistant vice president of facilities and operations. He oversees budgeting and personnel issues.

He was familiar with the Peterson incident. He was advised by Associate Director Haviland that Peterson came into Haviland's office and said that he took a bike from the housing unit area and removed it off campus. Haviland reported the issue to HR, so Fritsch had no further interaction regarding the matter.

Fritsch reiterated that property on campus is considered the property of Stockton. If an employee finds lost property, it is supposed to be reported to the police department or just leave the property where it is. The Stockton Code of Conduct includes a provision regarding theft of property and other policies. Employees have access to the policy and procedures by going online. They can also ask for a hard copy of the it at the plant office in building 70 at

Stockton.

He was aware that “years ago”, employees had to sign a form regarding lost property, and that any property on campus remains on campus. Fritsch confirmed he was referring to the interoffice memorandum which Peterson had signed as of May 16, 2010. (R-8.)

Elen Manalang (Manalang) testified on behalf of Stockton. She is the Associate Director of HR at the Galloway campus of Stockton. She has been so employed for approximately three years. She assists with the handling of HR issues of Stockton employees.

She became aware of Peterson’s situation on June 19, 2020, when she got a call from Associate Director Haviland advising her that a bike had been taken by Peterson. She referred the information to her director, who told her to gather the information regarding the matter from the Stockton PD and to direct Haviland to take Peterson’s ID, keys, and swipe badge. Her director advised her to draft a Preliminary Notice of Discipline (PNDA), pursuant to the New Jersey administrative code for major discipline, and a separate PNDA for a violation of a New Jersey statute for a criminal complaint. She coordinated gathering information from the campus police and the county prosecutor’s office. She finalized the PNDA. Manalang acknowledged she did not conduct an investigation into Peterson’s situation and did not participate in any investigation which may have been done by Hibbert, Haviland, or the Stockton PD.

Peterson requested a disciplinary hearing, which was conducted on July 8, 2020. The PNDA was finalized into an FNDA. The charges were sustained against Peterson. (J-3.)

Manalang indicated that Stockton has rules and regulations regarding property left on campus. The facilities management department has regular Tuesday meetings when the policies are discussed. Particularly, when it is near the end of the semester, it is stressed to employees by their supervisors that student items that are left behind remain the property of Stockton and are to be removed according to proper procedure. It is known internal standard operating procedure that whatever you did not bring to campus, you do not bring it home with you.

When crafting the PNDA, Manalang reviewed the Stockton policies regarding the Employee Disciplinary Guidelines, the Code of Conduct, and the Fixed Assets policy. (R-10, R-11, R-12.) Pertinent to Peterson's situation was the Employee Disciplinary Guidelines, contained in the Stockton policy, Section VI-13.2. (R-11 at Stockton 135.) The policy provides that the purpose of any disciplinary action is to be corrective, not punitive. (R-10 at Stockton 135.) Disciplinary action will occur for conduct that violates, or is contrary to, the established policies, rules, and standards for the workplace. (Id.) The policy includes a table of contents listing various policies and rules, and the policy has a corresponding description and suggested discipline to be imposed if the rule or policy is violated.

Manalang indicated that the policies in the disciplinary guidelines which pertained to Peterson's situation were Section II-Performance, at Subsection 4.8, entitled "Unauthorized use of University vehicles, equipment or facilities;" Section III-Personal Conduct, at Subsection 5.1, entitled "Theft or misappropriation;" and Section III-Personal Conduct, at Subsection 5.13, entitled "Immoral, indecent or other conduct unbecoming an employee in the State service." (R-10 at Stockton 137.) Subsection 4.8 had suggested discipline listed when an employee violates the policy of unauthorized use of university vehicles, equipment, and facilities. (R-10 at Stockton 145.) Unauthorized use of a university vehicle applies when an employee uses the vehicle for something other than their job. This Section applied to Peterson because he used a Stockton vehicle when he took the bike and loaded it into the back of the Stockton van and drove away. He used the vehicle for a purpose other than doing his job. She indicated that Peterson's actions would be a violation of Subsection 4.8.

Three scenarios are listed under the policy as possible discipline to be imposed for an offense of unauthorized use of a university vehicle, presumably if it is a first, second, or subsequent offense. For a first offense, the discipline ranges from Oral Reprimand (OR) to five days of suspension. A second offense ranges from one day to fifteen days suspension. A third offense ranges from ten days to removal from employment. (R-10 at Stockton 145.) Manalang emphasized these ranges of discipline are not set in stone. Depending upon the severity of the infraction, or if the alleged behavior was criminal, more severe action could be taken, such as occurred here, with the major discipline of removal of Peterson. She acknowledged that the individual circumstances of the matter must be considered.

The theft or misappropriation (attempted or actual) policy, under Subsection 5.1, described that a breach of this policy “is an extremely serious matter, which warrants major disciplinary action up to and including removal.” (R-10 at Stockton 145.) Manalang explained that if the circumstances are egregious, it warrants discipline of removal. She asserted that Peterson’s actions in removing the bike and selling it for personal gain were egregious, and he should be removed from employment.

Stockton also has Subsection 5.13 contained in Section III-Personal Conduct, which bans any immoral, indecent, or other conduct which is unbecoming to an employee in the State service. (R-10 at Stockton 137, 148.) The policy states that disorderly, lewd, or indecent conduct which is “unbecoming an employee is a serious offense, which normally is cause for removal unless there are substantial mitigating circumstances.” (R-10 at Stockton 148.) That policy provides guidelines for imposition of discipline for “immoral or indecent conduct” ranging from ten days suspension to removal. Discipline for “improper conduct in view of the public” ranges from Written Reprimand (WR) to ten days for a first offense, and five days suspension to removal for a second or subsequent offense. (R-10 at Stockton 148.) Manalang reiterated that the discipline specified in the policy is a guideline to be followed and that discipline is imposed based upon Stockton’s policy and the New Jersey administrative code. Public employees are held to a higher standard since they serve the public, which at Stockton the public includes serving the students. If a Stockton employee, such as Peterson, has taken something that belongs to a student, such as Peterson’s taking of the bicycle, that is conduct unbecoming an employee. Parents entrust their students to the university. Peterson’s taking of the student’s bicycle is action which takes away the trust of the public.

Stockton has a policy, number I-55, entitled “Campus Conduct Code,” which Peterson has violated with his actions. (R-11.) That policy sets for the mission, values, and principles Stockton upholds for its employees and students to ensure the university has a safe and positive environment. There are five values outlined in the Code of Conduct, with prohibited conduct specified in the policy. The first value, integrity, provides that Stockton community members are to “exemplify honesty, honor, and respect for the truth in all of their dealings.” (R-11 at Stockton 153.) Theft, which is identified in the policy as the intentional and unauthorized taking of property, including knowingly possessing, keeping, or receiving stolen

property, is behavior that would violate the value of integrity in the Code of Conduct. (R-11.) Peterson's taking of the student's bicycle, using a Stockton vehicle during company time, is considered theft.

Stockton has a policy entitled "Fixed Assets," which is policy number VI-42. (R-12.) The policy addresses what is to be done regarding any Stockton property including land, buildings, infrastructure, and equipment. Subsection 6.2 of that policy addresses the disposal of Stockton property. (R-12 at Stockton 129.) If a situation arises where there is a loss or theft of property, it must be immediately reported to the campus PD. Peterson took the bicycle which was at housing unit 1 and failed to follow the proper procedure if he believed the bicycle was abandoned. He should have notified the police. He failed to do so.

Manalang explained that during the move out time of year, students leave their housing units filled with items left behind. In the past, this situation created a "free for all" with employees and others taking the items left behind. Stockton implemented its policy regarding abandoned property to have a more cohesive manner to handle lost and abandoned property. If property is abandoned, employees are to ensure that it is properly disposed.

She explained that the policy at Stockton was if property was left behind in residential areas, the plant staff was to consider the property as trash, having been abandoned by the student. If property is found outside of the housing unit, it may appear to be something left behind, yet a student may still be on campus and the property is not abandoned.

David Peterson testified on his own behalf. He is a high school graduate and completed two and a half years of vocational training school. He was hired by Stockton as a repairer in 2003, and subsequently became a senior repairer. He has been suspended from work since this incident. He had no prior discipline. He has had numerous evaluations by his supervisors during his employment at Stockton and they were always good. He has never been disciplined for substandard performance of his job duties.

Part of his job duties over the nine years he has been employed with Stockton included going in and out of student housing units. He understood the Stockton policy regarding what he was supposed to do with found property on campus. Approximately five

or six times during his time at Stockton he found property such as keys, a wallet, a pocketbook, and a packet of important paperwork. He returned such found items to the police department or to the housing department.

He denied ever having received a copy of Stockton's policies and procedures. He does not own a computer. His knowledge of the policies has only come from whatever a supervisor has told him. He denied that he had to attend any regular shop meetings. He was not aware that there was an office on campus where you could go to get a copy of Stockton's policies.

He was working full time, five days per week at Stockton, prior to the COVID pandemic situation. It was a bustling campus of activity. As of June 2020, during the COVID pandemic, his schedule was reduced to working four days per week, which was rotated with the other repairers. The campus was different. It was desolate. The parking lots were empty.

As of June 2020, Peterson's supervisor, Hibbert, had given out lists of apartments, such as D unit, to the repairers, who were required to go into the specified units and box up any items left behind. They had to label the boxes and then put them in storage pods which were in the parking lots. He was one of the approximately ten to eleven repairers tasked with this job, which was done over an approximate two-week period. He personally was involved in going in and out of the student housing units and gathering the items and storing them. Many of the items left behind included radios, alarm clocks, dishes, utensils, and coffee pots. The large metal bike racks outside of the housing units used to be filled with students' bicycles. Rubber rafts would be outside of the housing units, which the students used on campus at Lake Fred. As of June 2020, there were no bikes in the racks. The campus was like a "ghost town." There were no students around.

He noticed one bike in housing unit 1, D court, which was there approximately one and a half to two weeks before the June clean out of the housing unit area. While he was moving out items from the housing unit, he walked over and saw that the bike had two flat tires, was starting to rust, and the chain was rusty. The bike was in disrepair and could not be ridden. It was leaning against a handrail going into an apartment in the D building. It was not locked or secured. It was not in the bike racks for the housing unit.

On June 12, 2020, he took the bicycle. It was approximately 2:00 p.m. He could not recall what he was doing immediately prior to that time. He does get breaks at various times throughout the workday, depending upon the jobs being done. He put the bike into the back of his work van, drove over to where his personal truck was parked approximately three fourths of a mile from the housing unit, and put the bike in the back of his truck. He took the bike home in his truck. He understood the bike to be abandoned as trash. He never gave it a thought that it was an issue.

Peterson knew of a young girl who needed a bike. Her mother was having financial issues. He thought he was helping her out. He pumped up the tires and fixed the brakes. The back brake had been “falling off” and he oiled the chain and fixed the alignment. He gave the bike to the young girl, approximately two to three days after he took it.

Peterson stated that had he known the bike belonged to someone, he would not have gone near it. It was laying there, and it looked like someone abandoned it. He first noticed it approximately six, seven, or eight days prior, maybe about a week before he took it. He had learned about the girl in need of the bicycle about a week and a half to two weeks prior.

He explained that he met the mother of the young girl outside of the local Wawa near his home. He was there with his truck loaded with scrap items he planned to take to Groff's.¹ The items were things like junk bikes, a metal swing set, and trashed grills. The woman saw that he had an old bicycle in the back of his truck and asked to purchase it for her daughter. He would not sell it to her because it was junk. He told her if he came across a bike, he would get it fixed and give it to her for her daughter. He acknowledged that he salvages scrap metal as a side job or hobby.

Peterson confirmed that he spoke to Haviland and Hibbert about his taking of the bicycle. He told them that he repaired it and gave it away. He denied ever saying that he

¹ Groff's is an auto and metal recycling and scrap yard business located in a neighboring municipality.

sold it. He believes someone in the shop said that about him, saying that he sells things all the time on Marketplace.² He thought Hibbert must have misunderstood what he said to her, since he is known to pick up trash and clean up items and sell them.

He was unable to get the bike back from the young girl because he could not get a hold of her mother at the phone number he had for her. He called but could not leave a message because her messages were full. She would not pick up the phone when he called. Eventually, he did get to talk to her.

When he spoke to the Stockton officer, he acknowledged that he said he had been banging on doors to see if students were present in the housing unit. He testified that occurred about one and a half weeks before he took the bike. Peterson acknowledged that he told the officer that he spoke to a female custodian, and that she told him she had just cleaned out the unit and no one was there. He testified that he spoke to the custodian about two weeks before he took the bike, and that she did not speak great English.

Peterson was aware of the memorandum from 2010 regarding property in housing units to be considered trash and to be disposed of properly. He confirmed that he signed for the memorandum on May 16, 2010. (R-8.) He acknowledged he did not follow the procedure as stated in the memorandum. He recognized that the policy indicated that individuals who do not comply with the directive would face disciplinary action, in accordance with the regulation cited, N.J.A.C. 4A:2-2.3. (R-8.) He did not follow the procedure because the property was abandoned, or the same as trash to him. Someone left it there as trash. No one was around on campus due to the COVID situation, and the bike was not in the condition where you could just jump on it and ride it away. He saw no need to notify his supervisor since the bike was abandoned to him.

He thought he was doing something good by taking the bike and giving it to a young girl in need. In the past, he observed that there was a pile of collected bicycles behind the campus PD. All those bikes he believed had been junked and he thought it was such a

² Presumably, Peterson was referring to the social media site Facebook, which has a Marketplace component where users post items for sale.

waste.

Peterson testified that he was charged with criminal conduct. He could not get the bicycle back to return it to the student, Vargas. He made restitution of \$300 to Vargas.

Credibility analysis

A fact finder is obligated to weigh the credibility of witnesses. 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 observations 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's 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).

The employees from Stockton all testified in a direct and steady manner. No bias or ill will towards Peterson was detected or displayed. Their testimony is deemed credible.

Peterson candidly admitted he took the bicycle. Such a claim would be difficult to deny given the video surveillance shows him doing so. His asserted reasoning for taking the bicycle, which he believed the bike to be abandoned, may well be truthful given the apparent appearance of the bike, how he found it not in the bike rack, and that the campus was virtually devoid of anyone but a few workers, due to the COVID pandemic. His belief that he thought he was doing something good, asserting that he took the bike to provide it to a young girl in financial need, was not delivered in a confident nor believable manner.

His discomfort was palpable as he fidgeted, swiveled in his chair, diverted his eyes, and appeared uncomfortable rather than just nervous. His immediate explanation to the officer doing the investigation that he had banged on doors and spoke to someone from housekeeping who said no one was in the housing unit, was unsupported by any other credible evidence. Such claims particularly were not supported by his statement during his

testimony that he took such action a week or two prior to taking the bike. He admittedly is a scrapper and takes trash or discarded items and sells them or scraps them. He was unable to get the bike back, a situation which lends itself more to him having sold the bike or scrapped it for cash. He asserted not knowing the Stockton policies or otherwise not having access to same. He did admit knowing that abandoned property is considered trash and that the Stockton policy does not allow for taking home any items you did not bring to work with you. This is another admission which would be difficult to deny, given he had received a memorandum outlining the policy and he signed it. His admissions are appreciated, yet the reasoning or explanation for his actions and claims of “doing something good” by giving the bike away were not compelling nor convincing.

Based upon a review of the documentary evidence, and having heard the testimony of the witnesses, and having had the opportunity to observe the appearance and demeanor of the witnesses via Zoom, I **FIND** the following as further **FACTS**:

Peterson admitted he took the bicycle on June 12, 2020, which was in the housing unit 1, D building area of the Stockton campus. He believed it was abandoned, considered it trash, and put the bicycle into the back of the Stockton van he was driving at approximately 2:00 p.m. on that day. He drove the van over to where his truck was parked on campus. He put the bicycle into his truck and took it home.

Peterson asserts he gave the bicycle to a young girl in financial need. He was unable to retrieve the bicycle to return it to the owner. He made restitution to the bicycle owner.

Peterson admitted he knew of Stockton’s policy that personal items left in the housing and residential areas were to be considered trash. He was aware that such items could not be taken for personal use or gain without advance knowledge and written consent of the Director of Plant Management. He did not have such written consent to take the bicycle. He was not given verbal or other consent by any of his supervisors. He was aware that he would face disciplinary action if he did not comply with the directive contained in the memorandum he received on May 16, 2010. (R-8.)

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee's rights and duties are governed by the Civil Service Act and regulations promulgated thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Service Association v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972), citing Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 145, 147 (1965).

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2; 11A:2-6; 11A:2-20; N.J.A.C. 4A:2-2.2. Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or if the employee engages in misconduct related to their duties. N.J.S.A. 11A:1-2(a); 11A:2-20. Thus, a public entity employer may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2.

The appointing authority employer has the burden of proof to establish the truth in a major disciplinary action brought against a civil service employee. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); and see, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consolidated 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 a given conclusion." Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958).

Here, Peterson is alleged to have violated three regulations, which Stockton contends warrants his removal from employment. Each charge is addressed below.

1. N.J.A.C. 4A:2-2.2(a) Major discipline

The New Jersey administrative code outlines the rules applicable to civil service employment. N.J.A.C. 4A, et seq. Chapter 2 of Title 4A addresses the issue of appeals, discipline, and separation of civil service employees. N.J.A.C. 4A:2, et seq. The regulation charged to Peterson, N.J.A.C. 4A:2-2.2, entitled “Major discipline” outlines types of discipline which may be imposed upon a civil service employee. Major discipline is considered removal from employment, disciplinary demotion, and imposition of a suspension or fine for more than five working days. N.J.A.C. 4A:2-2.2(a). This is the regulation which permits major discipline to be imposed. It is not a “charge” upon Peterson for which he has violated. Thus, I **CONCLUDE** that Peterson has not “violated” a “charge” under N.J.A.C. 4A:2-2.2, and such sustained finding by Stockton shall be **DISMISSED**.

2. N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee

Peterson is alleged to have violated “conduct unbecoming a public employee” as codified at N.J.A.C. 4A:2-2.3(a)(6). The term “unbecoming conduct” has been broadly defined and identified as conduct that adversely affects the morale or efficiency of the government unit or has the tendency to destroy the public’s respect for public employees and destroy the public’s confidence in the delivery of government services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

Peterson admittedly took a bicycle from the Stockton campus, using a Stockton vehicle to transport the bicycle to his personal truck. He disposed of the bike in some fashion which prohibited him from being unable to retrieve it to return it to the owner. He asserts that he believed the bicycle was abandoned and that he thought he was doing a good thing, claiming he gave the bicycle to a young girl in financial need. Peterson’s asserted frame of mind at the time of the taking of the bicycle does not relieve him of his responsibility to comply with Stockton’s policies, including not misusing a work vehicle, nor removing property believed to be abandoned trash for his own personal use or gain. Such action by Peterson has the tendency to destroy the public’s respect for public

employees, as well as to destroy the public's confidence, knowing that Peterson took property belonging to a student which is against the university's policies. Parents who send their children to Stockton, and the students themselves, have their confidence shaken as to whether Stockton is ensuring a safe environment for students. I **CONCLUDE** that Peterson's taking of the bicycle was conduct unbecoming a public employee and **AFFIRM** that the charge, under N.J.A.C. 4A:2-2.3(a)(6), shall be sustained.

3. N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause

Peterson was charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. This is the catchall provision of the regulation. Other sufficient cause has been described as any other conduct, not delineated within the regulation, which would "violate the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." In re Boyd, Cumberland County Dept of Corrections, CSC Dkt. No. 2019-1198, OAL Dkt. No. CSR 15990-18, Hon. Catherine Tuohy, ALJ; affirmed in final decision, 2019 N.J. CSC Lexis 621. "Other sufficient cause" is thus conduct otherwise not listed within the eleven causes cited in N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline.

Stockton asserts that Peterson's conduct violated its policies and rules, indicative of "other sufficient cause" to be sustained. One of the policies asserted by Stockton to encompass such behavior is the policy prohibiting immoral, indecent, or other conduct unbecoming an employee in the State service. Stockton University Policy – Employee Disciplinary Guidelines, VI-13.2, 5.00 Section III-Personal Conduct, 5.13. (R-10.) Peterson's behavior has already been found to be conduct unbecoming a public employee. Thus, to the extent Stockton relies upon a violation of this portion of its policy to demonstrate "other sufficient cause" is unnecessary, as same is redundant of the charge above.

Stockton also asserts that Peterson's conduct violated its Policy entitled "Fixed Assets." Stockton University Policy – Fixed Assets, VI-42, 6.00 Equipment Transfers & Disposals, 6.2. That policy provides that all property which has been lost or stolen must be immediately reported to the campus police. Peterson has never asserted that he

believed the property he took was lost or stolen property. I **CONCLUDE** this policy is not applicable to Peterson's circumstances and to the extent Stockton is relying upon same to demonstrate other sufficient cause, shall be **DISMISSED**.

Stockton asserts multiple other portions of its policies and rules having been violated by Peterson to sustain the other sufficient cause charge. Peterson admittedly violated the directive within the memorandum of May 12, 2010, regarding the unauthorized taking or removal of trash for personal use or gain. (R-8.) His taking of the bicycle was intentional and unauthorized, which is the prohibited conduct of theft, as per the integrity portion of Stockton's Code of Conduct. Stockton University Policy-Campus Code of Conduct, I-55, Policy Section C.1.(c). (R-11 at Stockton 153.) Theft or misappropriation is deemed inappropriate personal conduct by an employee, and subject to discipline under Stockton's disciplinary guidelines. Stockton University Policy-Employee Disciplinary Guidelines, VI-13.2, 5.00 Section III-Personal Conduct, 5.1. (R-10.) Peterson's use of the Stockton van to transport the bicycle to his personal truck was unauthorized use of a work vehicle, in violation of the Stockton policy prohibiting unauthorized use of university vehicles, equipment or facilities. Stockton University Policy-Employee Disciplinary Guidelines, VI-13.2, 4.00 Section II-Performance, 4.8. (R-10.)

I **CONCLUDE** Peterson's taking of the bicycle and using a Stockton van to transport it away from the housing unit area was conduct in violation of Stockton's disciplinary policy, Code of Conduct provisions, and the directive regarding unauthorized taking or use of trash items for personal use or gain. Such improper and unauthorized behavior demonstrates other sufficient cause for Stockton to have sustained this charge. I thus **CONCLUDE** and **AFFIRM** that the charge of other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12), has been sustained.

PENALTY

Progressive discipline is to be considered once a determination has been made that an employee has violated a statute, regulation, or rule regarding their employment. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011).

When deciding what disciplinary action is appropriate, the fact finder shall consider the nature of the charges sustained and the appellant's past record. West New York, 38 N.J. at 523-524.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Id. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of fairness. Id. Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Id. Hence, an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Id.

Stockton seeks affirmation of its removal of Peterson from employment. Removal is a form of major discipline as outlined in N.J.A.C. 4A:2-2.2. Major discipline that may be imposed ranges from a suspension or fine of more than five working days through removal from employment. Likewise, the Stockton disciplinary guidelines provide for a range of discipline for violation of its policies, which encompasses minor discipline through major discipline. Specifically, Peterson was found to have violated Stockton's campus Code of Conduct for theft. The guidelines specify such a breach of discipline "is an extremely serious matter, which warrants major disciplinary action up to and including removal." Stockton University Policy-Employee Disciplinary Guidelines, VI-13.2, 5.00 Section III-Personal Conduct, 5.1. (R-10.) Peterson has been found to have committed unauthorized use of a work vehicle, contrary to Stockton's policy. The disciplinary guidelines provide for a range of discipline to be imposed from an OR to removal, depending upon aggravating factors which may be present. Stockton University Policy-Employee Disciplinary Guidelines, VI-13.2, 4.00 Section II-Performance, 4.8. (R-10.)

Under a progressive discipline analysis, Peterson's prior disciplinary history must be considered. He has no prior disciplinary history, which is a substantial mitigating factor to consider for progressive discipline. He also asserts that he thought he was taking the bicycle for a good purpose and that he was doing a good thing because he intended to give it to a young girl in financial need.

It is noted that in this tribunal, there has not been a finding of guilt of a criminal charge of “theft.” It is a finding of a violation of the Stockton policy from its Code of Conduct regarding integrity, which defines theft as the intentional and unauthorized taking of property. Peterson is a long-time employee at Stockton and familiar with its policies, specifically that he was not authorized to take any property found on campus, even if he believed it to be abandoned or trashed. Peterson intentionally took the bicycle, allegedly to give it away, while he was unauthorized to do so. He knew he was not authorized to take the bicycle, even if it was for a purpose he believed to be a good thing. Here, it was not even abandoned property, as the student was still on campus and reported her missing bicycle as being stolen.

The asserted mitigating factors are not enough to overcome the egregiousness of his action in taking the bicycle, knowing that any such property left behind becomes property of the university and is deemed trash, to be disposed of properly. His attempts to mitigate his behavior, asserting that he gave the bicycle away, do not ring true, when he could not even retrieve the bicycle. I **CONCLUDE** that Peterson’s conduct was egregious under these circumstances, and major discipline shall be imposed. I **CONCLUDE** that Stockton’s disciplinary action of removal of Peterson from his employment does not shock the conscious and was appropriate given his egregious conduct, and thus, removal shall be the **AFFIRMED** discipline.

ORDER

It is **ORDERED** that Peterson’s appeal of his removal is **DENIED**. It is further **ORDERED** that Stockton’s imposition of the discipline of removal of Peterson from his employment, effective July 9, 2020, shall be **AFFIRMED**.

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.



June 24, 2022

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

Date Mailed to Parties:

EBF/jns

APPENDIX OF PROCEEDING

Witnesses

For appellant:

David Peterson

For respondent:

James Heitzer
Katherine Hibbert
Robert Haviland
John Fritsch
Elen Manalang

Exhibits

Joint:

J-1 Joint Stipulation of Material Facts
J-2 PNDA, dated July 6, 2020
J-3 FNDA, dated March 18, 2021

For appellant:

None

For respondent:

R-1 Dahlia Spataro email regarding crime tip, June 17, 2020
R-2 Stockton University Police Investigation Reports by Officer James Heitzer
R-3 Robert Haviland, Voluntary Statement, June 24, 2020, to Stockton University
Police Department

- R-4 Katherine Hibbert, Voluntary Statement, June 24, 2020, to Stockton University Police Department
- R-5 Pre-marked, not used
- R-6 Pre-marked, not used
- R-7 Pre-marked, not used
- R-8 Interoffice Memo to David Peterson from Donald Woolsey, Director of Plant & Housing Maintenance, May 12, 2010, subject: Directors Memo 10-05 Working in the Housing Units
- R-9 Pre-marked, not used
- R-10 Stockton University Policy – Employee Disciplinary Guidelines
- R-11 Stockton University Policy – Campus Conduct Code
- R-12 Stockton University Policy – Fixed Assets
- R-13 DVD Campus Surveillance, June 12, 2020
- R-14 Audio recordings from Peterson to Stockton PD, clip ID 358736
- R-15 DVD Body Worn Camera footage: Peterson, Hibbert, and Haviland