

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF OCTOBER, 2022

Deirdre' L. Webster Cobb

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Chairperson
Civil Service Commission

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 04825-21

AGENCY DKT. NO. 2021-1628

**IN THE MATTER OF LANCE BENNETTE,
DEPARTMENT OF TRANSPORTATION.**

Raymond C. Staub, Esq., for appellant (Destribats, Campbell, Staub & Schroth, LLC, attorneys)

Dennis J. Mikolay, II, Deputy Attorney General, for respondent (Matthew J. Platkin, Acting Attorney General, attorney)

Nonee Lee Wagner, Deputy Attorney General, for respondent (Matthew J. Platkin, Acting Attorney General, attorney)

Record Closed: July 29, 2022

Decided: September 12, 2022

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

The New Jersey Department of Transportation (respondent or NJDOT) brings a major disciplinary action against Lance Bennette, (Bennette or appellant). Respondent alleges that appellant violated N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, defined

as NJDOT Guidelines for Employee Conduct and Discipline, Section 2, G.1, Failure to report suspension of driver's license/driving privilege; N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, defined as NJDOT Guidelines for Employee Conduct and Discipline, Section 3, E.1. Falsification; and N.J.A.C. 4A:2-2.3(a)6, Conduct unbecoming a Public Employee, and NJDOT Guidelines for Employee Conduct and Discipline, Section 3, H.

Appellant appeals the decision of the respondent and challenges the six-working day suspension. Appellant argues that the charges should be amended to a written warning and the six-working day suspension be removed from his file. Appellant further argues that the restitution he has made to the respondent should be reimbursed.

PROCEDURAL HISTORY

On March 23, 2021, respondent served appellant with a Preliminary Notice of Disciplinary Action (PNDA) that informed him that he was to be suspended for six working days based on charges of conduct unbecoming a public employee; failure to report a suspension of driver's license/driving privilege and other sufficient cause. Appellant did not request an internal disciplinary hearing. A Final Notice of Disciplinary Action (FNDA) dated April 15, 2021, was personally served on appellant. The FNDA sustained the charges of conduct unbecoming a public employee; failure to report a suspension of driver's license/driving privilege and other sufficient cause, as set forth in the PNDA and upheld the six-working day suspension. The period of suspension was set to begin on May 14, 2021, ending on May 21, 2021. Appellant requested an appeal of the Major Disciplinary Action on April 17, 2021.

On June 2, 2021, the Civil Service Commission, Division of Appeals and Regulatory Affairs, transmitted this matter to the Office of Administrative Law (OAL), for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing was held on May 2, 2022, and June 30, 2022, in this matter via remote video platform Zoom because of the COVID-19 emergency. The matter was held open for the parties to submit summary briefs. All briefs were received and on July 29, 2022, the record closed.

FACTUAL FINDINGS

The following facts are not in dispute in this matter and as such I **FIND** them as **FACTS**:

1. The appellant is employed as a Construction and Maintenance Technician 5, with the NJDOT since January 2020.
2. On November 20, 2019, the New Jersey Motor Vehicle Commission (NJMVC or DMV) sent a "Scheduled Suspension Notice" to the appellant, informing him that his license would be suspended on December 14, 2019, indefinitely. (A-1.)
3. A new driver's license was issued to the appellant on December 17, 2019. (A-2.)
4. The appellant received a Notice of Scheduled Suspension dated February 7, 2020. (R-25.)
5. The appellant's attorney at the time, Nicholas A. Moschella, Jr. (Mr. Moschella), sent a letter of representation to the NJMVC on or about February 24, 2020, and requested a hearing and a stay of the suspension. (A-4.)
6. On or about February 27, 2020, Mr. Moschella sent a letter to the MVC requesting a hearing for Mr. Bennette's ID Suspension. Mr. Moschella further requested that the "passenger endorsement" hearing that was already scheduled for April 14, 2020, should also include the "ID suspension" matter (A-5.)
7. On March 2, 2020, the NJMVC sent a "Notice to Attend" a hearing scheduled for April 14, 2020. (A-6.)

8. On March 13, 2020, NJMVC sent the petitioner an Order of Suspension, stating the following:

Your New Jersey driving and registration privileges are suspended as of 3/2/20 indefinitely . . .

You may not operate or register any vehicle until you receive written notice of restoration from the Chief Administrator. If you continue to drive while suspended, you could face up to five years in jail.

[R-14.]

9. The appellant's driving and registration privileges were suspended between March 2, 2020, and July 12, 2020. (R-1.)
10. On June 22, 2020, the appellant emailed the NJMVC regarding "Suspension/Restoration issues." (J-1.)
11. On July 8, 2020, the appellant appeared at the MVC, but because the "system" was down, they were unable to address the issue of the appellant's suspended driver's license. (A-8.)
12. On July 13, 2020, after being satisfied with the verification provided by the appellant with the appropriate identification confirming his age and other identifiers, the MVC issued a new driver's license. (A-10.)
13. On March 31, 2020, April 30, 2020, May 29, 2020, June 30, 2020, and July 31, 2020, Bennette certified that he had a valid driver's license, by submitting "Travel Expense Invoices" requesting mileage reimbursement. (R-9, R-10, R-11, R-12, and R-13.)
14. After an internal investigation, a PNDA was issued on March 10, 2021. (R-1.)

15. On May 5, 2021, a FNDA was issued. (R-2.) Bennette was charged with failure to report suspension of driver's license/driving privilege, falsification and conduct unbecoming a public employee. Id.

16. Bennette made restitution in the amount of \$1,307.95. (R-3, A-11.)

TESTIMONY

Brian Beke (Beke) is a Supervising Driving Improvement Analyst in the Agency's Central Operation's Unit for the past three months. In this position he conducts hearings, updates records, and ensures that all records are correct. Prior to this position, Beke was a Supervisor 2 for seven years, and prior to that he was a Driver Improvement Analysis Two. Overall, Beke has worked at the MVC for over thirty-seven years and is fully familiar with the "Comp system". The Comp System is where all drivers' records are stored at the MVC.

In reviewing the documents, Beke testified that the appellant driver's history abstract (driver's abstract) which is seen on the Comp system, shows violations and notices that were sent out to the appellant. (R-23.) Beke testified that under "Event Type" listed on the Abstract of Driver History, the letter 'S' means "scheduled suspension" and the letter O means "order of suspension". Id. In looking at Bennette's driver's abstract, it showed that on December 18, 2019, there was a scheduled suspension regarding his disqualifying record for passenger endorsement, which went into effect October 19, 2019. Id. Beke testified that the disqualifying record for passenger endorsement would be held as a unique hearing. Beke testified that prior to any suspension, the driver would be notified. Beke testified to the scheduled suspension notice dated February 7, 2020, which was mailed to the appellant's known address on record. (R-25.)

The MVC usually gives the driver approximately thirty days between the notice and the order. This is done, as per Beke, to give the driver ample time to present requested documents, as well as allow for any mailing issues. A driver is usually given a twenty-five day window as to when the suspension of license would become effective. Here, the

notice of suspension was sent out on February 7, 2020, indicating the effective date would start on March 2, 2020. (R-25.) When no response is received after Notice of Suspension is sent, an 'Order of Suspension' is mailed. On March 12, 2020, an "Order of Suspension" was mailed to the appellant's home. (R-14.) The order was prepared on March 12, 2020, effective March 2, 2020. Id.

Beke testified that the header screen to the Comp system on a driver's record shows the appellant's vital statistics such as his age, date of birth, eye color, when his license expires, any endorsements, suspensions, limitations and allowances. (R-15.) Beke identified that the screen was printed on July 13, 2020. As per Beke, in reviewing the appellant's driving record, it showed that the appellant's basic driving privileges along with his commercial driving privilege and registration privileges were all suspended until December 31, 9999. Id. Beke testified that the December 31, 9999 date meant that appellant's license, registration and commercial privileges were suspended indefinitely. This was not a term suspension which usually informs the driver the date that the suspension would be lifted. Here, Bennette's license would never be restored until he provided the requested information. Beke testified that appellant's "five year driver's abstract", reflects that the appellant's driving privilege was restored on July 13, 2020. (R-18.) Appellant's basic driving privileges were suspended between March 2, 2020, and July 13, 2020. Id.

On cross examination Beke admitted that if the appellant's attorney's request for suspension of the "suspension of passenger's endorsement" was received, it should not have resulted in a suspension of the driver's license until after a hearing was granted. (A-4.) A "Notice to Attend a Hearing" was mailed to the appellant's attorney for a hearing to be held on April 14, 2020. If both attorney letters of February 14, 2020, and February 27, 2020 (A-4, A-5) were received, there should not have been a suspension of the petitioner's license. However, Beke testified that the MVC record is not showing a receipt of a request for a hearing on the basic license suspension. The hearing on the April 14, 2020, was based on suspension of the passenger endorsement. As per Beke, if the request was received by the MVC for a hearing on both matters on April 14, 2020, that could have been granted. However, he reiterated, that the abstract is not showing any

evidence that the request (letter from the petitioner's attorney) regarding ID was received. (R-18.)

Beke testified that all the records are reviewed and if there are any discrepancies found, they would require the client to "come back in". He surmises that is what happened in this matter. In December 2019, the documents requested, for example: birth certificate, social security number and proof of address, were the same documents requested in March 2020. It appears on December 17, 2019, appellant produced these documents and in a letter dated February 7, 2020, a request for the same were made. (A-3.)

Beke identified the address that the appellant resided at from an unredacted copy of the R-14 exhibit that is entered into evidence. When asked why in December the MVC requested that the appellant present his New Jersey birth certificate, social security and proof of address, and a few months later, as in this case, February 2020, the MVC requested the same information from the appellant. Beke testified this happens occasionally. Usually when the documents are presented there is a review of them and if a discrepancy occurred the driver would be required to submit the same documents. Here, Beke was not able to determine if a discrepancy occurred or whether the MVC made a mistake. Beke reiterated that the notice that was sent for a scheduled hearing on April 14, 2020, was for disqualifying passenger privilege and was not for his basic driving privileges.

Sara Brecke (Brecke) currently works for the NJDOT as an Administrative Analyst 3. She has held this position for two months. Prior to this position she worked as a Senior Management Assistant with the NJDOT. As a Senior Management Assistant, she worked with the internal investigation unit of the Office of Inspector General. In that position, twice a year she would receive a list from the MVC with all of the employees of the NJDOT, whose licenses are suspended or expired. This list was received in July and December of each year. In July 2020, the appellant's name was listed on the suspension list. Brecke then accessed the MVC data base and printed a driver's history and driver's abstract for everyone on the list with an expired or suspended license. Once this was

done, Brecke contacted the Employee Relation's unit who advised her that the appellant's position required him to have a valid driver's license. As per Brecke, any suspension notice would be sent to the appellant's home. Brecke then obtained a copy of the Order of Suspension and forwarded it to Employee Relations. Based on the Order of Suspension, the appellant's license was suspended as of March 2, 2020, indefinitely. (R-14.)

Richard A. Sindora (Sindora) is a Construction and Maintenance Technician, S-4 level at the NJDOT. He supervises between eleven and thirteen individuals. He is currently the appellant's supervisor. Sindora testified that he was only aware that the appellant's license was suspended after July 13, 2020. The appellant uses his personal car to conduct the State's business. Having a driver's license for the position is necessary. He was not sure if another position that did not require a driver's license would or was available to the appellant at that time. As the supervisor, he signed off on the appellant's travel invoices for March, April, May, June, and July 2020. (R-9 thru R-14.) Appellant certified on each of these invoices that he "possessed a valid driver's license." Id.

Sindora testified that under the Policy and Procedure of NJDOT, as his supervisor, the appellant must report any loss of license to him. Sindora testified that had he known that Bennette did not have a valid driver's license, he would not have signed off on his reimbursement vouchers. He started to supervise Bennette in March 2020 as a new employee. He considers Bennette to be a valuable employee; he performs all his tasks. Sindora testified that when an employee uses his personal vehicle for State business, they are reimbursed for the mileage or the gas that is used. In order to obtain the reimbursement, the employee must complete a mileage voucher. On May 29, 2020, the appellant submitted a mileage voucher¹. (R-11.) On the mileage voucher, there is an employee certification box (Box). This Box is where the appellant certifies that all the information on the form is accurate and that the work was performed according to the document. In addition, the appellant also certifies to having a valid driver's license and

¹ Mileage voucher is used interchangeably with travel expense invoice.

is covered by liability insurance. Sindora signed off on this form as the appellant's supervisor. Sindora reiterated, that had he known that the appellant's license was suspended, he would not have signed the voucher.

Sindora testified that he signed off on the vouchers that the appellant submitted to him on March 31, 2020, April 31, 2020², June 30, 2020, and July 31, 2020. (R-9, R-10, R-11, R-12, and R-13.) Appellant performed all the work he was required to do, but never informed Sindora that his license was suspended. Sindora was informed by the investigator sometime in October 2020 that the appellant's license was suspended. Sindora testified that he was made to believe by the appellant that the issue was specifically for a CDL and not a standard driver's license, and there was a discrepancy with his passenger endorsement. Bennette took time off to go to the NJMVC in July 2020 to sort it out.

Brian Harshman (Harshman) is an investigator with the NJDOT Internal Investigation unit. Prior to this he worked at the NJ Division of Criminal Justice for twenty-five years and retired as a Lieutenant. His job is to investigate any alleged violation of NJDOT policies, and investigate waste, fraud, or abuse. In October 2020 he opened the investigation into this matter based on a complaint from Human Resources. The manager from Employee Relations forwarded information that the appellant was performing his job duties without a valid driver's license, and that he had also submitted vouchers for reimbursement for mileage.

Harshman in conducting his investigation, reviewed the suspension notification, driver's abstract and the reimbursement vouchers that were submitted by the appellant. Harshman also conducted interviews with the appellant's supervisor, Sindora, his Section Chief Maloney and also with the appellant. Both his supervisor and the Section Chief were never aware that Bennette's license was suspended until after the fact. Harshman testified that the appellant knew his license was suspended, and that he submitted the invoices for reimbursement of mileage knowing he was suspended. After he completed

² The tribunal note that there is not thirty-one days in the month of April.

his investigation, he forwarded it to the Inspector General who then forward it to the Employee Relations.

Based on DOT Policy 528, the appellant had a duty to notify his chain of command about the suspension. (R-22.) However, Harshman testified that he was more concerned in his investigation that there was a falsification and that there was a theft. This was based on the appellant's certification on all the invoices for travel reimbursement, that he had a valid driver's license. (R-11.) Harshman testified that there were similar documents for March, April, May, June and July 2020. Harshman testified that the appellant admitted to signing all five documents. Harshman testified that based on his investigation, he determined that the documents were falsified.

On cross examination, Harshman said he specifically asked the appellant if he recalled receiving the Order of Suspension document from MVC. The appellant was not sure whether he had received the Order of Suspension at his home, or whether it was sent to his attorney or he gave it to the attorney. Harshman testified that the appellant told him that he spoke with his attorney sometime in March 2020 about the suspension of his license. Harshman testified that the appellant knew that when he submitted the invoices for reimbursement that he did not have a valid license because his license was suspended. Appellant did not notify his chain of command that his license was suspended. On December 14, 2020, Harshman conducted an interview of Bennette in the presence of his union representative, Robert Clugsten and Investigator Richard Frascella, via telephone. (R-29.) At this point there was a break in the hearing.³

On June 30, 2022, Harshman's testimony continued. Harshman works in the Internal Investigative Unit at the DOT. As part of his duty, Harshman investigates alleged misconduct, workplace violence, review documents, and interviews witnesses. Every six months a member from his unit at the DOT reviews the driving abstract of DOT

³ The appellant's attorney requested a side bar with the respondent. After the sidebar a request for a continuance of the hearing was made to retain three memorandums that were prepared by Harshman but were not provided to the appellant.

employees. If there is a suspension noted, as in this matter, it is sent to Employee Relations who determines if an investigation is warranted.

In this matter, Harshman reviewed the appellant's MVC abstract and a copy of the Order of Suspension. These documents for his review came after the appellant's driving privilege was restored. Appellant's license was restored on July 13, 2020, and Harshman received the case to investigate in October 2020. Harshman began his investigation by interviewing the appellant's direct supervisor, Richard Sindora. He then interviewed Sindora's supervisor, Mr. Maloney. After his interview with both supervisors, Harshman interviewed the appellant. Because of COVID he conducted a telephonic investigation of the appellant in the presence of his union representative Robert Clugsten, and his direct Supervisor. The appellant's supervisor informed Harshman that the appellant only told him of an issue with his CDL and passenger endorsement but was never told that his license was suspended.

Harshman asked the appellant about the Order of Suspension that was sent and whether the address on the order was correct. (R-14.) Appellant said he was not sure if he had received it and took it to his attorney, or his attorney had received it. Harshman testified that the appellant said he was aware of it and did discuss it with his attorney. Harshman testified that the appellant submitted five vouchers. He signed off on the certification on the vouchers – saying he had a valid driver's license, knowing that there was an Order of Suspension in place. Harshman testified that the appellant said he “should have taken another approach”. Harshman said the appellant knew what he did was improper. Harshman said he asked how it was resolved, and the appellant said that he had made several attempts to contact the MVC, but the State had closed the offices because of the COVID-19 emergency. On June 22, 2020, he sent an email to the MVC regarding how to resolve his suspension. (R-20.) Harshman reiterated that the appellant knew that his license was suspended. On July 7, 2020, when the MVC was open, he waited all day and was not seen. On July 8, 2020, he returned and provided documents, and his license was restored on July 13, 2020. Harshman testified that the appellant was credible, polite and contrite. At the end of the investigation, he wrote a report recommending that the appellant be charged with falsification of documents and theft.

On cross examination Harshman testified that he has never heard of an American citizen having to prove citizenship, with a Notice of suspension from the MVC. (A-1.) Harshman testified that he read the Order of Suspension to the appellant when he interviewed him which was different from the Notice to Appear. Harshman admitted that with both letters it could be confusing, however, in the email that the appellant sent to the MVC on June 22, 2020, he said "I am trying to understand how to overturn a license suspension." (R-20.) This also informed Harshman that the appellant knew that his license was suspended.

Harshman admitted that there were two issues presented, CDL and passenger endorsement. (R-18.) However Harshman said he was not aware of the CDL issue when conducting his investigation. In addition, driving privileges is a separate issue from CDL.

Lance Bennette (Bennette or appellant) testified that he is twenty-five years old and at the time of this occurrence he was approximately, twenty-two years old. Appellant started to work with the NJDOT in January 2020 and previously he worked for Monmouth County Government. He was in the military on active duty and was honorably discharged.

Bennette testified that he received a Scheduled Notice of Suspension, which requested proof of his date of birth, valid address, and other information. (A-1.) Bennette said he went to the MVC and took care of the issue and was given a license. (A-2.) In February 2020, he was sent a proposed Notice of Suspension.⁴ This proposed Notice of Suspension was requesting the same documents that he had provided in 2019 (similar to the request in A-1.) Because he thought it was taken care of earlier, Bennette testified that he became confused by the new Notice and hired an attorney, with experience to handle the matter. The attorney sent two letters to the MVC. (A-4, A-5.) In March 2020, he received a Notice to Attend letter. (A-6.) Appellant said that he did not know that his license was suspended in March, April, or May 2020, and did not receive the Order of Suspension.

⁴ No copy of this Notice of Suspension was produced by the appellant.

In June he sent the email to the MVC because neither he nor his attorney had heard back from the MVC. However up to that point, he was under the impression that there was an error. Appellant testified that when he went down to the MVC, they only took his money and he was not required to show any paperwork, and his license was restored. (A-8, A-9.) Appellant testified that he did not do anything wrong, he worked throughout the pandemic, and when he signed the vouchers, he did not know his license was suspended.

On cross examination, the appellant was asked if when he sent the email, wherein it states, "how do you overturn a suspension" if he knew at that time his license was suspended? (R-12, R-20.) Appellant responded that he was under the impression that his license was suspended in error. Appellant admitted to submitting a voucher after June 30, 2022, even when he knew that his license was suspended. Appellant testified that he was under the impression that his license was suspended in error. Bennette submitted a voucher for mileage reimbursement on July 31, 2020. (R-13.) On this voucher, Bennette certified that his license was in good standing, on July 1, July 2, July 6, and July 9, 2020, all dates prior to his license restoration. (R-13.) Appellant testified that he did not know his license was suspended prior to June 22, 2020. However, when shown his driver's abstract, wherein it showed on June 16, 2020, appellant paid a license restoration fee, he admitted to knowing before the June 22, 2020, date of his email to the MVC. (R-18.) Appellant admitted that he had received an email to pay \$200 for a restoration fee and he did so. (The email was not produced.) He therefore was aware at some point before June 16, 2020. Bennette admitted that nowhere in any of the letters received from the MVC is there a statement saying his license was suspended in error. (R-14.) Appellant admitted that at no time did he notify his supervisor that his license was suspended, or there was an issue with his driver's license.

The appellant argued in his post-hearing brief that based on a "unique set of facts happening during a previously unheard-of global shut down" his actions are "reasonable and understandable." (See appellant's July 14, 2022, Brief.) The appellant acknowledged that he made a mistake and did everything in his power to correct it. The

appellant argues that the six-day suspension is therefore not warranted in this matter. Appellant still works for the State; he is an honest person, and it was an error that can be explained based on COVID and the closure of the MVC. (See appellant's July 14, 2022, Brief.)

Respondent argued several inconsistencies with the appellant's account in this matter. Appellant said he did not know his license was suspended but on June 22, 2020, he "contacted the NJMVC to ask how to overturn a license suspension that went out on Jan 2020 for an age verification." (See respondent's July 29, 2022, Brief at 13.) Appellant further alleged that the suspension was the result of a NJMVC error; he believed his license privileges and registration were in good standing when he certified the travel expense vouchers; later admitting to signing two of the vouchers after June 26, 2020, when he knew his driver's license was suspended. (Id. at 14.) Respondent argued that "Bennette while his driver's license was suspended, falsified multiple travel documents and violated NJDOT's Guidelines for Employee Conduct." Id.

Additional Factual Findings

Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and 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' 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).

Having had an opportunity to carefully observe the demeanor of the appellant, it is my view that he was not credible in his testimony about not knowing that his license was suspended in March 2020. His version of the facts was very inconsistent, and completely

lacking in any credibility. I **FIND** that the testimony of Brian Beke, Sara Brecke, Richard Sindora and Brian Harshman credible. I **FIND** that Harshman was very credible about the interview he had with Bennette, and I **FIND** as **FACT** that the appellant did tell Harshman that he was aware of the Order of Suspension and discussed it with his attorney at the time. I further **FIND** as **FACT** that the appellant was aware that his license was suspended when he submitted Travel Expense Invoices to the NJDOT in March, April, May, June, and July 2020. I also **FIND** as **FACT** that the appellant failed to report that his license was suspended to his supervisor as required pursuant to NJDOT's Policy and Procedure, Policy No. 528. (R-22.)

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The first issue is whether the respondent has proven the charges by a preponderance of the credible evidence. The second issue is whether the penalty of a six-working-day suspension was justified and reasonable if a charge or charges are sustained.

The purpose of the Civil Service Act is to remove public employment from political control, partisanship, and personal favoritism, as well as to maintain stability and continuity. Connors v. Bayonne, 36 N.J. Super. 390 (App. Div.), certif. denied, 19 N.J. 362 (1955). Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 4A:2-6.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(11). If sufficient cause is established, then a determination must be made on what is a reasonable penalty.

In disciplinary cases the appointing authority has both the burden of persuasion and production and must demonstrate by a preponderance of the competent, relevant and credible evidence that it had just cause to discipline the officer and lodge the charges.

See Coleman v. E. Jersey State Prison, CSV 1571-03, Initial Decision (February 25, 2004), <http://njlaw.rutgers.edu/collections/oal/> (citations omitted); see also N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550, 560 (1982); In re Darcy, 114 N.J. Super. 454, 458 (App. Div. 1971); N.J.S.A. 11A:2-6(a)(2), -21; N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. A preponderance of evidence has been defined as that which "generates belief that the tendered hypothesis is in all human likelihood the fact." Martinez v. Jersey City Police Dep't, CSV 7553-02, Initial Decision (October 27, 2003), <http://njlaw.rutgers.edu/collections/oal/> (quoting Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959)).

The appellant has been charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause—specifically, violation of two types of offenses of NJDOT Guidelines for Employee Conduct and Discipline. They are as follows:

1. Section 2, G.1, Failure to report suspension of driver's license/driving privilege.
2. Section 3, E.1, Falsification.

The record shows that the NJMVC sent an Order of Suspension to the appellant, dated March 1, 2020. (R-14.) Appellant testified that he was not aware that his license was suspended because he never received this document. However in an interview with Investigator Harshman, he admitted to either receiving the document and sent it to his then attorney or the attorney received it. Either way, he discussed it with his attorney. He testified that he first found out about the suspension on June 22, 2020, when he sent an email to the MVC. However, after appellant was shown his driver's abstract, wherein a restoration fee was shown to be paid on June 16, 2020, appellant admitted to paying the restoration. (R-18.) He further admitted that he had received an email link that informed him to pay the restoration fee. Appellant's license was restored on July 13, 2020. (R-18.) Appellant failed to notify his supervisor in March 2020, when he received the Order of Suspension. He failed to inform his supervisor in June 2020, when he paid the restoration fee. In addition, when he did notify his supervisor, Mr. Sindora, he told

him that there was an issue with his CDL's license and not with his standard driver's license.

The NJDOT Employee Conduct and Discipline, Section 2, G.1, failure to report suspension of driver's license states:

Employees who are required to maintain a valid driver's license and/or endorsements and who fail to report a suspension of driving privileges and/or endorsements to their supervisor as soon as they are aware of the suspension, are subject to discipline.⁵

Appellant is required to maintain a valid driver's license. Appellant did not report that his license was suspended between March 2, 2020, and July 12, 2020. I therefore **CONCLUDE** that the respondent has met its burden of proof and this charge must be **SUSTAINED**.

Under the NJDOT Guidelines, "falsification is an intentional misstatement or omission of a material fact in connection with employment, attendance, or in any record, report, investigation or other proceeding of the Department."⁶ Appellant submitted invoices on March 31, 2020; April 30, 2020; May 31, 2020; June 30, 2020; and July 31, 2020. In all five invoices submitted, appellant certified that he had a valid driver's license. Appellant admitted to Investigator Harshman that he knew his license was suspended when he submitted the invoices. Appellant further suggested to Harshman that "I should have taken another approach". In the within matter, respondent asserts, and I agree, that appellant falsified the Form AR-54-2, "Travel Expense Invoice" by submitting and certifying that he had a valid driver's license. (R-9, R-10, R-11, and R-12.) I therefore **CONCLUDE** that the respondent has met its burden of proof and this charge must be **SUSTAINED**.

⁵ Microsoft Word - P&P 532 Discipline 10-3-16 - Final Version (nj.gov).

⁶ Microsoft Word - P&P 532 Discipline 10-3-16 - Final Version (nj.gov).

Conduct Unbecoming a Public Employee

"Conduct unbecoming" a public employee is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (Pa. 1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

Respondent has charged Bennette with the willful violation of NJDOT Guidelines for Employee Conduct and Discipline by falsifying the travel expense invoice for mileage reimbursement compensation when he submitted and certified that he had a valid driver's license and was therefore entitled to a reimbursement of \$1,307.95, when in actuality his license was suspended. Based upon the evidence presented, I **CONCLUDE** that appellant engaged in conduct unbecoming a public employee and has given other sufficient cause for disciplinary action by violating the NJDOT Guidelines for Employee Conduct and Discipline.

PENALTY

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 4A:2-6.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may

discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(11). If sufficient cause is established, then a determination must be made on what is a reasonable penalty.

In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. The concept of progressive disciplinary action is described in West New York v. Bock, 38 N.J. 500, 519 (1962). In Bock, the officer had received a thirty-day suspension and seventeen minor-disciplinary actions during eight years of service. The prior disciplinary actions and the suspension of thirty days were strongly considered in determining if the thirty-day suspension was warranted. 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). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, 38 N.J. at 522-24.

In disciplinary cases the appointing authority has both the burden of persuasion and production and must demonstrate by a preponderance of the competent, relevant and credible evidence that it had just cause to discipline the officer and lodge the charges. See Coleman v. E. Jersey State Prison, CSV 1571-03, Initial Decision (February 25, 2004), <http://njlaw.rutgers.edu/collections/oal/> (citations omitted); see also N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550, 560 (1982); In re Darcy, 114 N.J. Super. 454, 458 (App. Div. 1971); N.J.S.A. 11A:2-6(a)(2), -21; N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. A preponderance of evidence has been defined as that which "generates belief that the tendered hypothesis is in all human likelihood the fact." Martinez v. Jersey City Police Dep't, CSV 7553-02, Initial Decision (October 27, 2003), <http://njlaw.rutgers.edu/collections/oal/> (quoting Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959)).

The appellant seeks to reverse the six-working day penalty imposed under the FNDA on April 15, 2021, and argues that because of the "unique set of facts happening

during a previously unheard-of global world shut down, his “actions are reasonable and understandable”. (See appellant’s July 14, 2022, Brief.) The Appellant requests that the penalty be amended to a written warning and he should be reimbursed for all the money he paid to the State. Id.

The crucial aggravating factor present in this case is the fact that the appellant’s license left him without a valid standard driver’s license for over a four-month period while he continued to drive his car in conducting State’s business. The Appellant’s job with the NJDOT required him to possess a valid New Jersey driver’s license--rendering him unable to comply with this requirement of his job during this period of license suspension. If one was to believe that the appellant did not know as he purported that his license was suspended in March, April, and May 2020, and did not report it to his supervisor, then why not when he said he found out in June 2020 that his license was suspended did he not report it to his supervisor. I can understand the fear someone feels knowing that their license is suspended, which is a requirement for the job. Loss of one’s driving privileges in this matter may have resulted in the loss of a job and income. However, the appellant should have been honest with his supervisor and inform him of the issue. Honesty is always the best policy and it is good to err on the side of caution.

The record is clear, at no time did the appellant inform his supervisor as required under the NJDOT Employee Guidelines, of the suspension of his license. In March 2020, he knew that his license was suspended. On June 16, 2020, he paid a license restoration fee. On June 22, 2020, the evidence shows that appellant sent an email to the NJMVC querying about how to restore a license that has been suspended in “Jan 2020”. (R-20.) He continued with his farce of concealment from his supervisor when he filled out the June 2020 and July 2020 invoices even though the record and evidence corroborated that he knew that his license was suspended. Furthermore he continued with the farce or concealment when in July 2020, he told his supervisor he had some issues with his “CDL license and passenger endorsement” and failed to mention anything about his standard driving license. His supervisor testified that he only found out about the appellant’s loss of his driving privilege in October 2020 when the “investigator called him”. This is an egregious aggravating factor that was seemingly not recognized by the

appellant. The appellant suggested that he believed that the NJMVC had made an error with the suspension of his license. However, the appellant admitted that there was no record or any document that suggested that there was an "error" by the NJMVC.

Based on the foregoing, the NJDOT has satisfied its burden as to the charges of N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, defined as NJDOT Guidelines for Employee Conduct and Discipline, Section 2, G.1, Failure to report suspension of driver's license/driving privilege; N.J.A.C. 4A:2-2.3(a)(12), Other Sufficient Cause, defined as NJDOT Guidelines for Employee Conduct and Discipline, Section 3, E.1, Falsification; and N.J.A.C. 4A:2-2.3(a)6, Conduct unbecoming a Public Employee, and NJDOT Guidelines for Employee Conduct and Discipline, Section 3, H. I therefore **CONCLUDE** that a suspension of six-working days is appropriate.

ORDER

It is **ORDERED** that the action of the respondent in suspending the appellant for six-working days was justified and warranted. It is **ORDERED** that the charges of conduct unbecoming a public employee, and other sufficient cause are **AFFIRMED**. The charges of violation of NJDOT Guidelines for Employees Conduct and Discipline, Section 2, G.1, Failure to report suspension of driver's license/driving privilege; Section 3, E.1, Falsification; and Section 3, H, Conduct Unbecoming a public employee are **AFFIRMED**. The 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.

A handwritten signature in black ink, appearing to read "Joan M. Burke", written over a horizontal line. The signature is cursive and includes a long horizontal stroke extending to the right.

September 12, 2022
DATE

JOAN M. BURKE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JMB/as

APPENDIX

WITNESSES

For appellant

Lance Bennett

For respondent

Brian Beke, Supervising Data Input Analyst, NJMVC

Brian Harshman, Investigator, NJDOT

Richard Sindora, Supervisor Construction and Maintenance, NJDOT

Sara Breke, Senior Management Assistant, NJDOT

EXHIBITS

Joint

J-1 E-Mail Chain Lance Bennett, and New Jersey Motor Vehicle Commission
(originally submitted as R-1.)

For appellant

A-1 Scheduled Suspension Notice- New Jersey DMV, November 20, 2019

A-2 NJ Driver's License, December 17, 2019

A-3 New Jersey DMV Fee Payment Authorization Form, December 17, 2019

A-4 Initial Attorney Letter of Representation, February 24, 2020

A-5 Letter from Attorney to DMV, February 27, 2020

A-6 Letter from DMV to Attorney, March 2, 2020

A-7 Emails Regarding Driver's License Suspension

A-8 DMV Commission Fee Payment Authorization, July 8, 2020

A-9 DMV Commission Fee Payment Authorization, July 13, 2020

A-10 NJ Driver's License, July 13, 2020

A-11 Letter from Department of Transportation, April 28, 2021

For respondent

R-1 - R-8 NOT IN EVIDENCE

R-9 Travel Expense Invoice, March 31, 2020

R-10 Travel Expense Invoice, April 31, 2020

R-11 Travel Expense Invoice, May 29, 2020

R-12 Travel Expense Invoice, June 30, 2020

R-13 Travel Expense Invoice, July 31, 2020

R-14 New Jersey Motor Vehicle Commission Order of Suspension, March 12, 2020

R-15 New Jersey Motor Vehicle Commission, Driver History Inquiry, July 13, 2020

R-16 New Jersey Motor Vehicle Commission Driver History Inquiry, July 13, 2020

R-17 New Jersey Motor Vehicle Commission Driver History Inquiry, July 13, 2020

R-18 New Jersey Motor Vehicle Commission Driver History Abstract, August 12, 2020

R-19 NOT IN EVIDENCE

R-20 E-Mail Chain Lance Bennett, and New Jersey Motor Vehicle Commission

R-21 Reimbursable Vehicular Mileage Authorization, August 2020

R-22 New Jersey Department of Transportation Policy & Procedure, Policy No.528

R-23 Certified Driver's Abstract

R-24 NOT IN EVIDENCE

R-25 Notice of Scheduled Suspension, February 7, 2020

R-26 NOT IN EVIDENCE