STATE OF NEW JERSEY

In the Matter of Michael Dalrymple, Edna Mahan Correctional Facility, Department of Corrections	DECISION OF THE CIVIL SERVICE COMMISSION
CSC Docket No. 2022-1829 OAL Docket No. CSR 01471-22	

ISSUED: NOVEMBER 2, 2022

The appeal of Michael Dalrymple, Investigator, Secured Facilities, Edna Mahan Correctional Facility, Department of Corrections, removal, effective January 19, 2022, on charges, was heard by Administrative Law Judge Sarah G. Crowley (ALJ), who rendered her initial decision on September 26, 2022. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on November 2, 2022, the Commission did not adopt the ALJ's recommendation to reverse the removal. Rather, the Commission imposed a 30 working day suspension.

The appellant was charges with conduct unbecoming a public employee and other sufficient cause, as well as violations of departmental policy. Specifically, that he made intentional misstatements of material fact and made unauthorized use of State equipment. In this regard, it was alleged that the appellant, in the course of his duties, submitted an investigation report "containing false statements" and such statements "were falsely represented" by him in the report. It was also alleged that the appellant misused State equipment by storing personal photos on a State computer in violation of policy. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law for a hearing.

In her initial decision, the ALJ recommended dismissing all of the charges and reversing the removal. Regarding the alleged investigative report deficiencies, the ALJ found that:

> The alleged misconduct by the appointing authority in this case is that the petitioner did not follow proper interviewing techniques and made an intentional misstatement of a material fact (falsification) in connection with the preparation of an SID report relating to an inmate trying to smuggle a piece of chicken out of the cafeteria. I have found as FACT that the statement of one of the witnesses was incorrectly reported in petitioner's report. However, the appointing authority did not produce any evidence that this was an intentional misrepresentation and thus, has not proven by the preponderance of the credible evidence that it was an intentional misstatement or falsification.

The ALJ also found that there were no specific other rules regarding investigative techniques presented that the appellant violated. Based on the above, the ALJ did not uphold the charges underlying this alleged misconduct.

Regarding the alleged misuse of State property, the ALJ stated "[t]he final charge related to the storage of the family photos on his work computer is from 2017 and charges were not brought in a timely matter. Moreover, the charge itself is *de minimis*." The ALJ based this conclusion on her agreement with the appellant that these charges violated the "45-day rule."[1]

In its exceptions, the appointing authority contends, *inter alia*, that it has established that the appellant's inaccurate statements were indeed, intentionally false. In the alternative, it argues that even if not intentional, providing such false information was conduct unbecoming a public employee. It also argues that the charges relating to the photos were timely as that information was only uncovered during the investigation into the other infractions. Finally, it argues that should the Commission uphold the charges, the penalty of removal is appropriate based on the egregious nature of the misconduct.

In response, the appellant argues that the appointing authority did not sustain its burden of proof and thus, the charges should be dismissed.[2]

In its *de novo* review, while the Commission agrees with the ALJ that the underlying charge of intentional misstatement of a material fact (falsification) cannot be upheld for the reasons expressed by the ALJ, it disagrees that all the charges underlying the appellant's investigation should be dismissed. While the appellant has not been found to have made any intentional misstatements, he clearly

---

[1] The ALJ does not specify the actual statutory or regulatory provisions, but it is assumed that she is referring to *N.J.S.A.* 30:4-3.11a.

[2] The reply argues that the exceptions were filed pursuant to *N.J.A.C.* 4A:2-1.6 and that the appointing authority did not meet the standards under that rule. That is incorrect. The exceptions filed were properly filed pursuant to *N.J.A.C.* 1:1-18.4. *N.J.A.C.* 4A:2-1.6 is inapplicable as that only pertains to *reconsideration of decisions rendered by the Commission.*

misreported at least one statement. Moreover, he was charged not only with falsification, but also with conduct unbecoming a public employee and the underlying specifications make no reference to the intent behind the misstatements, rather they merely indicate that the appellant submitted an investigation report "containing false statements." Based on that description, the charge of conduct unbecoming can be sustained as such a lack of accuracy could tend to destroy the public's trust in such investigations and the sufficiency or competency of such public employees engaged in such investigations within a correctional setting.[3]

Regarding the ALJ's dismissal of the charge of misuse of State property, the Commission agrees with the ALJ that, even if upheld, those charges are *de minimis* and would not be worthy of an additional penalty above that imposed for the other infraction in this matter. As such, the Commission dismisses that charge.[4]

Similar to its review of the underlying charges, 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). Even when a public safety employee does not possess a prior disciplinary record after many unblemished years of employment,

---

[3] The Commission notes that a more accurate charge may have been "Incompetency, inefficiency or failure to perform duties" or "Neglect of Duty." However, given that the type of deficiencies demonstrated by the appellant can have a negative effect on the perception of the public on public employees, the charge of conduct unbecoming a public employee is sustainable.

[4] The ALJ dismissed that charges based on the "45-day rule." Assuming that she was referring to *N.J.S.A.* 30:4-3.11a, the Commission notes that the "45-day rule" explicitly states that it can only be applied to charges lodged against "a State corrections officer." In this regard, individuals in the Investigator, Secured Facilities title are initially in the State Correctional Police Officer title series and are thereafter promoted to the Investigator series. As such, it is not clear that *N.J.S.A.* 30:4-3.11a is applicable. Further, even if applicable, there is no analysis as to when the individual responsible for bringing the charges had sufficient knowledge to do so. The record appears to indicate that the infractions were only discovered when the investigation into the appellant's misstatements were investigated. If true, the misuse charges may have been timely filed. Regardless, as the Commission finds those charges *di minimis*, and unworthy of further penalty, it declines to reverse the ALJ's dismissal of those charges.

the seriousness of an offense occurring in the environment of a correctional facility may, nevertheless warrant the penalty of removal where it compromises the safety and security of the institution, or has the potential to subvert prison order and discipline. *See Henry, supra.*

In this matter, the Commission does not find the infractions so egregious to warrant removal absent the imposition of progressive discipline. While the appellant's disciplinary record is not officially in the record, the Commission has access to all official computerized State employee personnel records. The appellant's record shows that since his employment in April 2010, he has a 30 working day suspension in December 2017.[5] The Commission has generally found that inaccuracies in reporting for correctional staff are worthy of a significant suspension, dependent on the facts of the matter. In this case, the Commission finds that, while not intentionally false, the inaccuracies were significant, especially for an Investigator whose entire job is to present as accurate information as possible, and warrant a 30 working day suspension. Accordingly, the Commission imposes a 30 working day suspension in this matter.

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 30 working days 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

---

[5] There is also reference to an indefinite suspension in October 2020. However, there is no underlying information and the Commission cannot be sure that the suspension was enacted or served. Regardless, the penalty imposed in this matter is appropriate without regard to that suspension. Moreover, even if his official records are incorrect, the penalty imposed in this matter is appropriate given the charges sustained and the nature of the incidents.

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 30 working day suspension. The Commission further orders that the appellant be granted back pay, benefits, and seniority from 30 working days 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 2ND DAY OF NOVEMBER, 2022

Deirdré L. Webster Cobb

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. CSR 01471-2022
AGENCY DKT. NO. N/A
2022-1829

IN THE MATTER OF MICHAEL DALRYMPLE,
EDNA MAHAN CORRECTIONAL FACILITY,

Matthew C. Dorsi, Esq., for appellant Michael Dalrymple (DiFrandesco, Batemen, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys)

Andrew J. Sarrol, Deputy Attorney General, for respondent Edna Mahan Correctional Facility (Matthew J. Platkin, Attorney General of New Jersey, attorney)

Record Closed: August 19, 2022 Decided: September 26, 2022

BEFORE **SARAH G. CROWLEY,** ALJ:

STATEMENT OF THE CASE

Appellant, Michael Dalrymple, appeals from the determination of the respondent, the Edna Mahan Correctional Facility for Women (EMCF), to remove him from his position as a special investigation officer due to conduct unbecoming, falsification of a report, intentional misstatement of material fact in connection with an investigation, unauthorized personal use of computers for nonwork related reasons, violation of a rule, regulation, policy, procedure, order or administrative decision. The appellant was assigned to conduct an investigation into an

inmate's allegations against a Security Corrections Officer (SCO). It is alleged that the appellant failed to follow proper protocols for interviews, and that the report the appellant prepared contained intentionally false statements. The respondent seeks the appellant's removal for the conduct related to the preparation of this report as well as the unauthorized use of his work computer.

PROCEDURAL HISTORY

A Final Notice of Disciplinary Action (FNDA) removing the appellant from his position was served on February 10, 2022. The appellant filed an appeal, and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case on February 23, 2022. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A Zoom hearing was conducted on June 27,2022, and June 28, 2022. The record was closed after post hearing submissions were filed by the parties on August 19, 2022. The appellant waived the one-hundred-eighty-day provision of the statute.

FACTUAL DISCUSSION AND FINDINGS

Testimony for Respondent

Timathy Gonzalez (Gonzalez) is a principal investigator for the Department of Corrections in the Special Investigations Unit (SID). He was a senior investigator prior to becoming a principal investigator. He discussed the training that he received and the different positions that he has held. He was familiar with the appellant as they worked at South Woods State Prison together. He was assigned to do the investigation into the appellant's conduct in connection with an investigation and a report that he prepared in June of 2020. He concluded that the report contained intentionally false statements and that appellant did not follow proper protocol in conducting his investigation. He was also asked to look into any other possible misconduct against the appellant and found that he had stored some family photographs on

his work computer in 2017, which was unauthorized use of work equipment. He prepared a report which he identified and labeled as R-3.

The witness discussed the incident that appellant was assigned to investigate. An inmate was caught smuggling a piece of chicken out of the cafeteria. It is undisputed that removal of any food from the cafeteria is prohibited and would result in a disciplinary infraction. After the incident, the inmate filed a grievance alleging the SCO Alte humiliated the inmate by giving her a choice of eating the chicken or receiving discipline. Gonzalez confirmed that taking food out would result in disciplinary action. However, the allegation by the inmate was that the officer gave her ultimatum to eat it or be disciplined and had allegedly humiliated her in front of other inmates. Such conduct would be inappropriate, and appellant was assigned to do an investigation into the inmate's claims. Officer Alte claims that she gave the inmate the choice of eating the chicken or throwing it out.

Gonzalez testified that the appellant interviewed SCO Alte and SCO Blizniak, who were present in the cafeteria at the time. He reported Alte's version of the incident which was eat it or throw it away. However, he did not report Blizniak's interview correctly. The report prepared by appellant states that Blizniak corroborated the allegations by the inmate and not Alte and that the inmates was given an ultimatum of "eat the chicken or receive a disciplinary charge." Upon review of the video interview, it is clear that that Blizniak stated that Alte gave the inmate the choice of eating it or throwing it away, and appellant's report was incorrect. Gonzalez concluded that the report contained a false statement of a material fact because it stated that Blizniak said Alte said, "eat it or be disciplined" as opposed to "eat it or throw it away."

Gonzalez testified that the other inconsistency in the appellant's report related to the other inmates in the cafeteria at the time. The officers both indicated that the others were detained because they had not been searched yet and were seated in a different part of the cafeteria. They did not have a clear view of what was going on with the other inmate, and probably could not hear what was going on. The appellant conducted interviews of the other inmates in a group settling. This was inconsistent with protocols for interviewing witnesses. Also, the appellant had a preliminary discussion with all of them together prior to turning on the

recording, which was likewise inconsistent with interviewing protocols. The appellant concluded in his report that the other inmates corroborated the other inmate's story. Gonzalez testified that the other inmates did not have a clear view of what was going on. However, an accurate picture of the cafeteria was not produced, and the other inmates did not retract what they said or advise that appellant misrepresented their story. The final issue was that his superior had asked him to interview the housing officer to whom the incident was first reported, and he failed to do this.

After concluding his investigation into the issue with the investigation and report prepared by the appellant, he was asked to look into any other possible misconduct by the appellant. A review of his work computer revealed that he had maintained pictures of his daughter on his work computer and downloaded them on to a memory card. This was improper use of a work computer. In summary, it is alleged that the statement from Blizniak was incorrectly reported, improper investigative techniques were used to interview the other inmates and that the appellant did not interview the housing officer who could corroborate what the initial allegations were by the inmate. It was unclear to the undersigned why this was so important when no one challenged what the inmate's allegations were which is what lead to the initial investigation in the first place.

Eleazar Spratley (Spratley) is the deputy chief at the SID of the NJDOC. Spratley is in charge of all the administrative and criminal investigations that come into the DOC. He is in charge of investigations and disciplines. He is also responsible for writing Preliminary and Final Notices of Disciplinary Action (PNDA). He is familiar with the policies regarding investigations that are conducted in SID. He identified the department policies with respect to SID investigations. It essentially says that investigations should be done thoroughly, completely and in an unbiased manor. They are trained in terms of technics and how to conduct an investigation. Things such as recording the interview, and techniques for questioning witnesses. All SID officers receive some training and the training manual. They also receive training in reporting. He identified a document that the appellant signed in 2015 indicating her received the policies of the department. There was a new hire orientation list with many

documents that appellant acknowledged receipt of. He did not identify and specific rules relating to interviewing and reporting procedures.

He discussed the standard practice about interviewing witnesses and indicated that witnesses should not be questioned in a group setting. It is also important to record interviews, especially if it was a serious investigation and one that could result in discipline. He was in charge of investigating the appellant after the investigation and report that he prepared were challenged. The first thing that appellant did wrong was that the actual interviews were not consistent with what the witnesses said. In addition, there was a witness that should have been interviewed and was not. In addition, interviewing the witnesses together, especially the inmates were not proper. However, he testified that the main issue was that the report indicated that Blizniak said one thing when he said the opposite, and it was a very critical fact. He concluded by identify the PNDA which listed the offenses for which the petitioner was cited for the penalty for the offenses. Some are written reprimand and others such as conduct unbecoming, which he was cited for can result in anything from a three day up to removal, depending on the nature of the offense. They believed the offense was serious and the table of offenses permits anything up to removal for conduct unbecoming. In addition, he had a prior disciplinary charge in December of 2017 where he received a thirty-day suspension.

For petitioner:

Adrian Ellison was employed at DOC for thirty-seven years. He retired in January of 2020, but he is still FOB president, which represents Parole, JJC and NJDOC. Specifically, SID at NJDOC. The petitioner is a member of the union for which he is the president. He is involved in contract negotiators and disciplinary action. He discussed the forty-five-day rule which requires the appointing authority to bring charges against someone within forty-five days from when they know or should have known about the alleged misconduct. The photos that were stored on the petitioner's computer were from August of 2017 and were not discovered until 2020 when they were investigating the Alte report. He testified that you either need to

charge or not charge with forty-five days of when you knew or should have known about something.

He then discussed the staffing issues in 2020 at Edna Mahan where the petitioner was employed as an investigator for SID. He testified that they were very understaffed and there were only three investigations and so many cases coming out of Edna Mahan. Staffing levels were so bad that he testified at a senate hearing to discuss them, and he had a meeting with the commissioner to discuss staffing levels and the issues at Edna Mahan. He discussed the different titles of the investigators who were there at the time and testified that there were no supervisors for a period of time. There was also some reluctance on the part of staff to complain about working out of title or being overworked for fear of retribution.

He discussed the process of preparing a report after an investigation is complete. The investigator completes a report, and they submit it to their supervisor through "info share" for approval. The report in question was submitted to the petitioner's supervisor for review. He testified that as an investigator there were times when he conducted interviews in a group setting. He further testified that he was never disciplined for writing a bad report or for poor investigative techniques. He discussed some different investigative techniques, and he was not aware of any policies that require you in video tape all investigation There is part of investigation that is about your own style and using what you think is best, most effect and most efficient considering the nature of the case. He also discussed the very high volume of cases that were coming out of Edna Mahon, and they did not have the manpower to investigate everything. He concluded that although the petitioner may not have conducted the investigation the way others would have, he was working above his title, and they were all overworked. There were no intentional violations of any rules, and he certainly did not think that an inefficient investigation and poor report justified termination.

FINDINGS OF FACT

The resolution of the claims in this matter requires that I make a credibility determination regarding the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story considering its rationality, internal consistency, and the way it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718,749 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone, or in connection with other circumstances in evidence, excite suspicion as to its truth. In re Perrone, 5 N.J. 514. 521–22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, I **FIND** that the witnesses were all credible and I **FIND** the follow as **FACT:**

1. On June 13, 2020, SCO Alte caught inmate Whelan trying to sneak some chicken out of the cafeteria. The inmate was detained and give the option of eating the chicken or throwing it out. It was also explained at that time that taking food out of the cafeteria is prohibited and would result in discipline.

2. The remaining inmates in the cafeteria were detained in a separate area but claimed to be able to see and hear what was going on. The inmates interviewed reported that Alte

gave the inmate the option of eating it or receiving discipline.

3. Inmate Whelan chose to eat the chicken rather than throw it out or be disciplined.

4. Inmate Whelan filed a grievance and alleged that SCO Alte threatened her with discipline if she did not eat the chicken. Whelan alleged that Alte did not give her the option of throwing the chicken away, and that he and other officers and inmates watched her eat the chicken and laughed at her.

5. She reported the incident to the housing officer and petitioner was assigned to do an investigation of the incident.

6. Petitioner interviewed SCO Blizniak, SCO Alte and the other inmates who were present during the incident.

7. The officer's interviews were recorded on video. Blizniak confirmed Alte's version of the story that the inmate was given the option to eat it or throw it out.

8. Alte and Blizniak also confirmed that the inmate was advised that leaving the cafeteria with food would result in discipline and she could not leave with any food.

9. The appellant reported that Blizniak confirmed the inmate's version that Alte gave the inmate the choice of eating the chicken or being disciplined.

10. The interviews the petitioner conducted of the other inmates were conducted in a group setting rather than individually and they taped but not videotaped.

11. The appellant did not interview the housing officer to whom the incident was first reported to.

12. Appellant prepared a report based upon his investigation and concluded in his

investigation that SCO Alte had given the inmate to eat the chicken or be disciplined.

13. When the finding in the report were challenged, a separate investigation was conducted into petitioner's investigation. It was ultimately determined that Alte gave the inmate the option of eating it or throwing it out. However, the inmate was also advised that leaving the cafeteria with food would result in a disciplinary charge.

14. The petitioner put some family photographs on his work computer sometime in 2017. There was nothing inappropriate about the photos, but it is against the rules to keep any personal information, including photographs on the work computer.

15. The petitioner does not dispute this charge, but challenges that such a charge violated the forty-five-day rule and was a de minimis infraction.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). The Act sets forth that State policy is to provide appropriate appointment, supervisory, and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). To carry out this policy, the Act authorizes the discipline (and termination) of public employees. N.J.S.A. 11A:2-6.

A civil service employee who commits a wrongful act related to her or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant, and credible

evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Polk, 90 N.J. 550, 561 (1982).

The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Delaware, Lackawanna, & W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). The appellant herein is charged with violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. He is also charged with violations of HRB 84-17, as amended, C-8 falsification: intentional misstatement of material fact in connection with work; employment application, attendance or any record, report, investigation or other proceeding; C-11 conduct unbecoming employee; D-20a unauthorized person use of computers, copies or other State equipment or more than one incidental or occasional use of State telephones for non-public work related reasons; E-1 violation of a rule regulation, policy procedure or order or administrative decision.

The factual recital in the FNDA is as follows:

> An SID investigation disclosed that, in the course of your duties as an SID investigator, you submitted an investigation report containing false statements. Statements made by a witness you interviewed on video were falsely represented by you in your investigation report and, if those false statements were believed, would have supported major discipline against the subject of the investigation. Another SID investigation disclosed that you used State-issued equipment to take photographs of family members and you maintained those photographs on State-issued equipment together with other evidence items developed in official investigations. Your actions are unbecoming, dishonest, and violated relevant rules, regulations, procedures and orders.

The alleged misconduct by the appointing authority in this case is that the petitioner did not follow proper interviewing techniques and made an intentional misstatement of a material fact (falsification) in connection with the preparation of an SID report relating to an inmate trying to

smuggle a piece of chicken out of the cafeteria. I have found as FACT that the statement of one of the witnesses was incorrectly reported in petitioner's report. However, the appointing authority did not produce any evidence that this was an intentional misrepresentation and thus, has not proven by the preponderance of the credible evidence that it was an intentional misstatement or falsification. The false statement related to whether the officer being investigated told the inmate trying to remove a piece of chicken from the cafeteria said, "eat it or be disciplined" or "eat it or throw it away." It is undisputed that the removal of the chicken by the inmate would have resulted in discipline, and this was explained to the inmate at the time. Both officers present at the time, Alte and Blizniak, discussed that the removal of food from the cafeteria would have resulted in discipline, and this was explained to the inmate. There was no intentional misrepresentation of any facts. This inmate was told that leaving the cafeteria with food would result in discipline. The inmate was then told to eat the chicken or throw it away. There was no evidence presented of an intentional misrepresentation or a falsification of the report.

The other offenses for which the petitioner is charged relate to the investigative techniques that the appellant followed. There was testimony about best practices and the training the officers go through before conducting SID investigations. However, there were no specific rules cited that were clearly violated. The respondent alleges that the interviews with the other inmates should not have been done together and it should have been on video. In addition, they claim that the appellant failed to interview a witness that his supervisor told him to interview. However, this witness was the housing officer to whom the inmate first reported the incident to. No one has challenged what the inmate alleged or that she reported the incident, and is unclear, what if anything this witness might have added to the investigation. The final charge related to the storage of the family photos on his work computer is from 2017 and charges were not brought in a timely matter. Moreover, the charge itself is de minimis.

Accordingly, I **CONCLUDE** that the respondent has not demonstrated by a preponderance of the credible evidence a violation of a rule, regulation, policy, or procedure. I further **CONCLUDE** that the respondent has not demonstrated by a preponderance of the evidence that there was any intentional misstatement of a material fact, falsification of a report or conduct unbecoming a public employee under the administrative code or the DOC rules. I further **CONCLUDE** that although

the petitioner conceded to a violation of the rule relating to use of the work computer due to having some family photographs stored on his computer, these charges were not brought in a timely manner and were de minimis.

ORDER

I **ORDER** that the charges of conduct unbecoming of an employee under N.J.A.C. 4A:2-2.3(a)(6), and (a)12, other sufficient cause and C-11 conduct unbecoming are hereby **DISMISSED.** I further **ORDER** that the charges of violation of HRB 84-17 as amended and C-8 falsification, intentional misstatements of material fact in connection with work, employment, application, attendance or in any record, report, investigation, or other proceeding are hereby **DISMISSED**. I further **ORDER** that the charge of unauthorized use of a work computer as a result of storing some family photos in 2017 on a work computer are hereby **DISMISSED** pursuant to the forty-five-day rule. Finally, I **ORDER** that the charge of violation of rule, regulation policy procedures, order of administrative decision E-1 is hereby **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. 40A:14-204.

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.

Sarah G. Crowley

September 26, 2022
DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

SGC/tat

APPENDIX

WITNESSES

For Appellant:

Adrian Ellison

For Respondent:

Timathy Gonzalez

Eleazar Spratley

EXHIBITS

R-2	Final Notice of Disciplinary Action, dated January 19, 2022
R-3	SID report from Timathy Gonzalez
R-4	SID report by Michael Dalrymple, dated July 7, 2020
R-5	Employee schedule of Jennifer Esteves
R-22	Letter from Hunterdon County Prosecutor, dated July 18, 2020
R-23	Weingarten Administrative Rights form, dated September 16, 2020
R-34	Weingarten Administrative Rights form, dated October 7, 2020
R-41	Dalrymple interview of Gavyn Alte, dated July 2, 2020
R-42	Dalrymple interview of Jennifer Whalen, dated June 17, 2020
R-43	Dalrymple interview with Rebecca Austria, dated June 17, 2020
R-44	Dalrymple interview of Sylvia Blizniak, dated June 17, 2020
R-45	PSU's interview of Michael Dalrymple, dated September 16, 2020
R-46	PSU's interview of Michael Dalrymple, dated October 7, 2020
R-47	PSU's interview of Jennifer Lowe, dated September 10, 2020
R-48	PSU's interview of Lori Nocentino, dated January 9, 2020
R-49	PSU's interview of Karen Brimage, dated October 9, 2020
R-50	PSU's interview of Jennifer Estevez, dated September 9, 2020