



STATE OF NEW JERSEY

In the Matter of Edwin Vasquez,
Jersey City, Police Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NOS. 2022-123 and 2022-
233

OAL DKT. NOS. CSV 06600-21 and
CSR 07723-21

(Consolidated)

ISSUED: NOVEMBER 2, 2022

The appeals of Edwin Vasquez, Police Officer, Jersey City, Police Department 120 working day suspension and removal, effective July 15, 2021, on charges, were heard by Administrative Law Judge Ernest M. Bongiovanni (ALJ), who rendered his initial decision on September 15, 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, at its meeting of November 2, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

ORDER

The Civil Service Commission finds that the actions of the appointing authority in suspending and removing the appellant were justified. The Commission therefore affirms those actions and dismisses the appeals of Edwin Vasquez.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF NOVEMBER, 2022

Deirdre' 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

(CONSOLIDATED CASES)

OAL DKT. NO. CSV 06600-21

AGENCY DKT. NO. 2022-123

**IN THE MATTER OF EDWIN VASQUEZ
CITY OF JERSEY CITY, DEPARTMENT
OF PUBLIC SAFETY.**

**IN THE MATTER OF EDWIN VASQUEZ
CITY OF JERSEY CITY,
(POLICE DEPARTMENT).**

OAL DKT. NO. CSR 07223-21

AGENCY DKT. NO. N/A

2022-233

Michael P. Rubas, Esq., (Rubas Law Offices) for appellant

James LaBianca, Esq., (City of Jersey City Law Department) for respondent

Record Closed: July 19, 2022

Decided: September 15, 2022

BEFORE ERNEST M. BONGIOVANNI, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Edwin Vasquez (Vasquez/appellant) appeals his suspension and demotion from Detective to Police Officer, DKT. No. CSV 06600-21, and termination as a police officer, CSR 07223-21, by the respondent, the City of Jersey City Department of Public Safety, later named as Jersey City Police Department (Department/JCPD). In DKT. No. CSV 06600-21, Vasquez appeals the determinations of several Disciplinary

actions for conduct allegedly committed by Vasquez on various dates between October 27, 2018, and June 6, 2020, which sustained nearly all the charges, resulting in the imposition of 120 days suspension and a demotion from Detective to Police Officer. In DKT. No. CSR 07223-21, Vasquez appeals the determinations of various charges all stemming from his alleged conduct on October 29, 2020, which resulted in the Department terminating him.

Vasquez filed an appeal with the Civil Service Commission (CSC) on the suspension and demotion case, which was transmitted to the Office of Administrative Law (OAL) and docketed on August 4, 2021, and on the termination matter which was transmitted to the OAL and docketed August 23, 2021. The matters were consolidated. A motion filed by Vasquez for summary dismissal was denied by Order dated February 18, 2022.

Hearings were held via ZOOM on March 4, 2022, March 28, 2022, and April 6, 2022. The record was left open for receipt of transcripts and for submission of post hearing briefs. The last submission was filed with the OAL on July 19, 2022, at which time the record closed.

FACTUAL DISCUSSION AND FINDINGS

Facts relevant to DKT. No.CSV 06600-21

Vasquez, a Jersey City police officer since 2014 and Detective since 2018, received a 120-day suspension and demotion from Detective to police officer for 1) failing to maintain a valid driver's license, owing to numerous suspensions, and failing to notify his commanding officer of the suspensions 2) Reporting off sick by a. Excessive sick leave, and b. not being home during a sick leave check and failing to notify his command upon leaving his home. (R-1)

The motor vehicle violations:

In July 2019, Sergeant Stephen Palomba, of the Department's Internal Affairs (IA) unit, was assigned to investigate the "validity" of Detective Vasquez's motor vehicle license (driver's license/DL).

Although the Department's police officers are required to maintain a valid driver's license at all times, Sergeant Palumbo testified that his investigation and motor vehicle records, revealed that Vasquez's DL was suspended during the following periods: October 5, 2016 to December 12, 2016; July 8, 2017 to November 21, 2017; November 29, 2017 to April 6, 2018;¹ October 27, 2018 to December 7, 2018; March 24, 2019 to April 9, 2019; July 7, 2019 through August 1 2019; November 3, 2019 to November 18, 2019; March 8, 2020 to August 10, 2020. (R-3, R-6 and R-8). He stated that as of July 7, 2019, Vasquez' DL was suspended was a total of 418 days². Further, on June 6, 2020, Vasquez was involved in a motor vehicle accident while driving his personal automobile, while his driver's license was suspended, and his vehicle had no insurance (R-8). Moreover, Vasquez admitted in an IA interview and again during his testimony, that it was his obligation to check his license status and maintain it in good standing.

Vasquez testified he was a patrol officer with the Department for 4½ years beginning in January 2014. He testified that one of the motor vehicle suspensions was for being involved in a motor vehicle accident with a suspended DL and while having no insurance. Other suspensions were caused by surcharges because his wife at the time (ex-wife) used his car and got parking tickets, which remained unpaid. It was unclear how and exactly when Vasquez became aware of the surcharges and unpaid tickets. He blamed his ex-wife for hiding mail about the subject from him.

However, on at least three occasions December 13, 2018, April 9, 2019, and July 13, 2019, Vasquez paid restoration fees to restore his driving privileges. Furthermore, while he was unclear as how and when precisely he finally realized his license was suspended and he had to pay surcharges to restore it, Vasquez admitted at some point

¹ These first three suspensions were the subject matter of an April 2018 sustained departmental disciplinary action against Vasquez for failing to maintain a valid NJ driver's license, which resulted in a five-day suspension (R-3). Additionally, on July 19, 2017, during the July 8, 2017-November 21, 2017, suspension, Vasquez was involved in a car accident while using his police vehicle (R-5).

he simply didn't pay the surcharges because he couldn't afford to.³ He also stated "My license got suspended and I was involved in an accident. At that time, I had no recollection that my license was even suspended." 3T:104-4 to 7⁴ It is also unclear from Vasquez's testimony if he was referring to the June 6, 2020 accident when he was responsible for damage to another vehicle and he paid the damages from his own pocket or if he referred to an accident in July 2017 when he was driving his police car and his vehicle collided with a civilian's vehicle (the civilian was apparently at fault).. However, during an in-person interview with the IA unit for the Department, regarding his causing the second motor vehicle accident, this time with his personal car, when he was driving with a suspended license and with no insurance Vasquez admitted that before the he knew he was driving while his license was suspended.

Q Why were you driving while suspended?

A I was not in the right state of mind. That was right before I went into rehab.

Q Did you know your license was suspended at that time?

A Yes.

(R-8 at 4). 1T 55:5-8.

However, no Title 39 charges were brought against Vasquez. 1T 58:8-16. 1T59:23-25-60:1-2.

Prior to the June 6, 2020, accident, Vasquez never reported to his commander that his license was suspended. Sergeant Palumbo's IA report found Vasquez's conduct in this regard was "conduct unbecoming," a violation of NJAC 4A2-2.3(a) 3, and other violations of the Code as well as violations of Jersey City Police Department Rules and recommended Disciplinary action. All the charges regarding his motor vehicle conduct and status except the charge of Insubordination were sustained.

² However, for the period of October 5, 2016, to August 10, 2020, the total days suspended by my calculation was 586 days. Over a nearly 4-year period, Vasquez's license was suspended approximately 42% of the time.

³ To be more precise, Vasquez blamed the "corruption" that caused the Department to ban "off-duty" jobs, from which most officers at the time made most of their money.

⁴ Transcript references are to the three days of hearings 1T being March 4, 2022, 2T being March 28, 2022, 3T being April 6, 2022. Thus "3T:104-4-7" refers to the transcript for the April 6, 2022 hearing, page 104, lines 4 to 7.

I **FIND** as unrefuted **FACTS** that Vasquez failed to maintain his NJ DL during the time periods aforesaid, that further Vasquez had a prior sustained disciplinary charge for failing to maintain his DL, further that during one of the suspension periods in 2017, Vasquez was driving a police car when he was involved in a motor vehicle accident, and that subsequently on June 6, 2020 he was involved in another motor vehicle accident, while driving his personal vehicle while suspended, when he was driving with a suspended DL, and while his vehicle was uninsured.

The Department only learned, finally, of Vasquez's suspended status after receiving an anonymous tip to their IA unit that Vasquez was involved in another motor vehicle accident with his own vehicle on June 6, 2020. Acting on the tip, in July 2020, two officers took photos of the other vehicle involved in the accident and traced the owner from those photos. They took statements of the owner on September 24, and again on September 29, 2020. The owner told IA investigators that Vasquez had advised him vehicle that a police report was unnecessary and that he, Vasquez, would pay the damages. The owner also characterized the property damage as minor rear damage. IA investigators confronted Vasquez with these facts on September 30, 2020, and only then did Vasquez finally admit the truth.

I find as a further **FACT** that on the date of the accident June 6, 2020, Vasquez knew his license was suspended but nevertheless drove his vehicle. I note that I deem Vasquez's testimony that for an unspecified time he was unaware his license was suspended because his wife at the time was hiding the mail as not credible and misleading, because he, on three occasions in 2018 and 2019, he paid a DL restoration fee and clearly knew he was repeatedly suspended. I **FIND** as further **FACTS** that Vasquez never informed his commanding officer or anyone else in the chain of command that he was driving while suspended until he was finally "caught" by an IA investigation years after knowing he was driving his own car and his police car while suspended, and also months after being involved in at fault accident when he knew he was driving while suspended and without car insurance.

Reporting off sick, excessive sick leave and not being home during a sick leave check:

The Final Notice of Disciplinary Action (FNDA) found that Vasquez violated the Department's General Order (G.O.) #215 in four different respects:

1. As of February 6, 2020, he was out sick for five or more illnesses/injuries within a 12-month period, which constituted Excessive Sick Leave.
2. On March 14, 2020, he failed to make himself available for a sick visit conducted by the IA unit.
3. On April 10, 2020, he was not home during a sick check and failed to notify command he was leaving his home on a sick day. This was his 6th violation of G.O. # 215
4. As of May 14, 2020, he was out sick for 120 days within a 12-month period, which constituted Excessive Sick Leave. This was his 8th violation of G.O. #15

Preliminarily, during the hearing and in Vasquez's post hearing written argument, it was not disputed that Vasquez was out sick for five or more illnesses/injuries during a 12-month period. Nor was the allegation that Vasquez was out sick for 120 days over a 12-month period. Accordingly, I **FIND**, as additional unrefuted **FACTS** that, beginning February 6, 2020, Vasquez was out sick 145 days during 223 calendar days, for an injured wrist, migraines and rehab for a non-duty related injury, (R-11). Further within a period of less than eight months, March 24, 2019, to November 1, 2019, Vasquez was out sick for five or more illnesses, specifically on (1). March 24, 2019-March 26, 2019 (2). May 2, 2019, to May 21, 2019 (3). August 5, 2019-October 2, 2019 (4). October 2-October 17, 2019 (5). October 25-November 1, 2019.

The facts also established that as of May 14, 2020, Vasquez was out sick for 120 days within a 12-month period. (R-11). I **FIND** this also to be an unrefuted **FACT** because Vasquez does not refute it.

Therefore, I **FIND** as unrefuted and uncontested **FACTS** that, as of February 6, 2020, Vasquez was out sick for five or more illnesses during a 12-month period, and that as of April 10, 2020, Vasquez was out sick for 120 days within a 12-month period.

Whether those facts support a finding of guilt under the FNDA is discussed separately.

According to the testimony and report of retired Captain Frank Williams, under Jersey City General Order (G.O.) # 215, Vasquez and all officers reporting sick are subject to illness checks and welfare checks. These checks are done to ensure that the officer is convalescing so that he can return to work and to give the Department information of when the officer might be expected to return to work. They are also done to make sure that the officers do not abuse the sick leave policy which Williams referred to as "generous." The purposes of these welfare and sick checks in general were not refuted.

Captain Williams stated he personally performed a welfare check on September 27, 2019, to determine if Vasquez was home that day and the result of the welfare check was that Vasquez was not home. 2T 27:21-25, 28: 1.

Further Williams testified that, as noted in his report (R-10), September 27, 2019, was the tenth time, between August 7, 2019, and September 27, 2019, that Vasquez was found not to be home when contacted.

Vasquez did not refute in his testimony or through other evidence that Williams report or testimony on this point was untrue. Rather, he maintained that regardless of his not being available for the contact at home, his regular practice was to return messages left on his phone voicemail within one to six hours of receiving them. 3T 137:14-25, 138:1-20.

Therefore, I **FIND** as unrefuted **FACTS**, that Vasquez was not home during the ten welfare/sick checks conducted between August 7, 2019, and September 27, 2019. Further I disagree with Vasquez's argument that there was no competent evidence on this point because Captain Williams could not recall the specific days, he personally made the calls as opposed to the times when his assistant Lorraine Keys made them. Having an imperfect memory does not make the evidence from that memory incompetent. Further, there was no evidence that Cpt Williams failed to correctly note in his report when Vasquez was not available during a sick call. The report was admitted

without objection and is admissible hearsay. Further, I found Detective Vasquez's statement that he routinely returned calls within 1 to 6 hours no less competent as evidence simply because he didn't know precisely which days and within how many hours, he returned the calls. Thus, I disagree with this attack on the validity and admission of this evidence. I do note, however, that Vasquez was less than credible in failing to give any explanation of why he had no proof of these text message replies to the phone messages left on his phone, or for that matter why he didn't reply to calls made to him regarding the sick/welfare checks by phone. Whether the aforesaid findings of facts support a determination of guilt under the FNDA, and the appropriateness of the penalty, is discussed separately.

Two FNDAs determined that on March 14, 2020, and again on April 10, 2020, Vasquez failed to make himself available for sick visits. Sergeant Michael San Martino testified that he performed sick checks/welfare checks as part of his duties while working for the IA department. On March 14, 2020, he went to Vasquez's residence, located in a three story, multi family home. to perform an in person sick /welfare check. On his arrival he went to the front door, knocked on the exterior door and rang all the doorbells that were accessible. There was no response, so he called Vasquez who did not answer. Sergeant San Martino left a voicemail message. He called a second time and sent a text message to Vasquez; again, there was no response. He also checked the command desk and found that Vasquez had not informed them that he was leaving his home for any reason on his sick day. Two hours later, at approximately 12:30 p.m., Vasquez returned the Sergeant's call. Vasquez said he had been sleeping, and didn't answer. He also said he was residing with his newborn baby. Vasquez testified he knew he was home when Sergeant San Martino tried to contact him because, as shown in photographs taken during the sick check visit, Vasquez's vehicle was parked outside his home at the time. He explained he had been sleeping as he had his child born four weeks earlier with him, and that he was also unwell.

On April 10, 2020, Sergeant Jocelyn Roldan conducted a sick check of Vasquez. Upon reaching his building she entered the building and was then stopped by a locked door in a vestibule. She knocked on the door and rang a doorbell that had Vasquez's name. There was no response. She called Vasquez again and this time he answered

his phone. He said he was not at home and admitted he did not call Command to advise that he would be leaving his residence during his sick day. Vasquez verified these facts in his testimony.

I **FIND** as **FACTS** that Vasquez was home during the sick visit on March 14, 2020, but did not respond to knocking on his door, to his doorbell ringing, nor to phone calls and texts sent to him, until two hours later. I also **FIND** that Vasquez was not home on April 10, 2020, during the sick visit and admitted he failed to advise command that he would be leaving his residence during his sick day.

Leaving his job assignment without permission, working a secondary job while on duty and drinking an alcoholic beverage while on duty.

A FNDA determined that Vasquez should be removed because on October 29, 2020, although scheduled to work from 8:00 a.m. to 4:30 p.m., he left his assignment without permission at approximately 2:20 p.m. and went to work at a secondary job at a barbershop, during which time, he was also drinking an alcoholic beverage. As noted in the PNDA (R-16), and as unrefuted, the Department's General Order 4-19 requires that all secondary employment be submitted to the Chief of Police in writing. Vasquez was charged with failing to notify the Chief of Police of his secondary employment as a barber at a local Jersey City Barbershop.

Sergeant Roldan testified about these alleged violations. After the department received information from an anonymous police officer that Vasquez was leaving his tours of duty at the Department early to go work as a barber, Sergeant Roldan was assigned to investigate whether Vasquez was violating the Department's secondary employment policy. On the same day the Department received this information, October 21, 2020, Sergeant Roldan went to the barbershop and observed Vasquez's vehicle just outside the barbershop. She then observed Vasquez in the barbershop, dressed in civilian clothes trimming his own beard. It was 2:45 p.m. Vasquez was supposed to be working his usual 8:00 a.m. to 4:30 p.m. shift that day. Two days later, she observed Vasquez entering the barbershop by opening a locked door with a key. She observed him trimming his hair and beard and cleaning up his station. However,

this was on his day off from work. On October 24, 2020, another day off for Vasquez, she again observed him at the barbershop, this time while he was wearing a barber's smock and cutting someone's hair.

On October 29, 2020, accompanied by Sergeant Jill Jaeger, Sergeant Roldan continued with her surveillance of the barbershop. That day, Vasquez was scheduled for duty at the Department from 8:00 a.m. to 4:30 p.m. Beginning around 2:25 p.m., she observed Vasquez again at the barbershop in barber's attire conducting barber's duties. She observed Vasquez open the door for a gentleman, put a smock around him and as shown in the video, cutting the man's hair. At some point, Vasquez began drinking from a can, later identified with photographs as "TRULY hard seltzer."

Soon thereafter, she contacted her commander Captain George Rotondo and reported her observations. Captain Rotondo in turn reported them to the Police Chief Michael Kelly. She was then instructed by Captain. Rotondo to wait for two additional IA members to arrive and then enter the barbershop to bring Vasquez to the IA Unit. Once inside the barbershop, she observed the can Vasquez was drinking from and saw it labeled "TRULY Hard Seltzer," containing 5% alcohol. 2T 157:15-161:12.

Sergeant Roldan also testified concerning her understanding that the Jersey City Police Department's (JCPD) Rules and Regulations 3.103 prohibits officers from drinking on duty, and does not require any specific amount or inebriation on the part of the officer to constitute a violation. Therefore, officer Vasquez was not examined for proof of inebriation. She also testified concerning JCPD 3.124, which prohibits an officer from leaving an assignment, in the absence of an emergency, unless he first receives direction or permission of a supervisor. Finally, she testified to her understanding that Vasquez violated General Order 4:19 (R-23) by not notifying his commander of his secondary employment. In cross examination, Sgt Roldan explained that another Jersey City police officer was also found to be working at the same barbershop on the same day as Vasquez. Prior to that time, the Department was unaware of that officer's activities. Despite this obviously similar violation to Vasquez's this officer was disciplined but was not discharged. Sgt. Jill Jaeger corroborated almost

entirely Sergeant Roldan's testimony through her testimony and in a report to Captain Rotondo (R-21)

In her report, Sergeant Roldan (R-20) noted a review of Closed-Circuit monitoring at the Department during the period of surveillance. Among other details, the monitoring showed that Vasquez left his post on October 29, 2020, at 1:37 p.m. Sergeant Roldan also testified that at the direction of the Hudson County Prosecutor's Office, Captain Ian Gallagher answered Interrogatories made by IA. Captain Gallagher's answers (R-17) stated that Vasquez did not ask for permission to leave his post early on October 29, 2020. He was certain of that because Police Chief Kelly contacted him at 3:00 p.m. that day inquiring if he (Gallagher) was on duty at that time. Further later that day, IA advised Captain Gallagher of their discovery that Vasquez was working at a barbershop while on duty and he "would have recalled if I had just let him go home that day because of these phone calls I got that day." Gallagher verified his answers by testifying that in fact Vasquez received no permission to leave work early on October 29, 2020, and further Vasquez had never documented an emergency or medical reason for leaving early. 3T 45:1-11.

Vasquez testified as to his version of what occurred on October 29, 2020, and the circumstances surrounding it. Vasquez had recently been in a rehab facility for substance abuse treatment, and testified that as a result he was on modified duty. He was working without a gun and mostly doing paperwork. During this period, he said, Captain Gallagher had begun to allow Vasquez to leave early. The captain would often leave work by 2:00 p.m. and advise Vasquez that he also only had to work until 2. Vasquez said it was also very common for an officer to leave early under "something called early blow" where one officer might arrive two hours early off patrol and relieve an officer such as himself from desk duty. However, on cross examination, Vasquez admitted that although he was "pretty sure," because of the frequency that he was allowed to leave early, he couldn't say for sure and could not recollect that he had permission to leave early on October 29, 2020. Further, because Captain Gallagher left earlier than he did, he wouldn't have asked for permission and would not have stated a specific reason for leaving early. Further he acknowledged he provided no medical information or emergency information for leaving early. Finally, he acknowledged he

was unaware of the procedure such as submitting a secondary employment form prior to beginning such employment. Further, he thought he was not employed as a barber because he was not yet being paid. However, Vasquez would appear to have had every reason for having a heightened awareness of the requirements to notify the department of secondary employment because of his financial frustrations caused by the Department in 2016-2017 banned officers from secondary jobs involving private policing activities such as guarding parking lots and directing traffic at events.

Vasquez said the barbershop where he was observed during surveillance was frequented often by other officers who were customers such as Chief Kelly and Officer Rotondo. He said that on October 29, 2020, he was still "apprenticing, learning to cut hair." As a reason for taking this position, Vasquez said:

I was recently informed that Internal Affairs was taking—suspending me for, well attempting to suspend me for 180 days, plus the motion for the sick violations. So, I have kids. I had to do something.

Regarding drinking the hard seltzer while at the barbershop, Vasquez said he was grieving the loss of his uncle, a 25-year veteran Jersey City police officer who had died a month earlier. He simply "broke his sobriety" that day. In fact, shortly after being suspended concerning the barbershop incident, he re-enrolled in rehab. He stayed at a detox center in Florida from November 16, 2020, through November 26, 2020. He then stayed at another rehab center for the next 31 days.

Concerning this disciplinary action that gave rise to Vasquez being removed as a police officer, having reviewed documents, photographs, reports and video and especially examining the thoroughness and credibility of the witnesses and the testimony of the appellant I **FIND** the following additional **FACTS**:

1. Vasquez never notified his commander of his obtaining the position of barber or barber's apprentice.
2. His working shift at the department during all times relevant was 8:00 a.m. to 4:30 p.m.

3. Vasquez left his post at the department early over at least a one-week period to go to work at a local barbershop, which culminated on October 29, 2020, when he was filmed there cutting hair and drinking an alcoholic beverage during his department working hours.
4. His supervisor, Captain Gallagher, did not give permission for Vasquez to leave early during any of the relevant time frames.
5. Vasquez's story that Captain Gallagher regularly let him leave his post early during a period he was modified duty was unsupported and strains credibility.
6. Vasquez admits drinking alcohol during his regular Department working hours on October 29, 2020.

LEGAL ANALYSIS AND CONCLUSIONS

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6 governs a civil service employee's rights and duties. The act is an important inducement to attract qualified personnel to public service. It is to be liberally constructed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1 N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super 583 (App. Div. 1972) Mastrobattista v. Essex County Park Comm'n., 46 N.J. 138, 147 (1965).

Governmental employers also have delineated rights and obligations. The Act sets forth that it is State policy 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). The Act also recognizes that the public policy of New Jersey is to provide appropriate appointment, supervisory and other personnel authority to public officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2 (b). To carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A

civil service employee who commits a wrongful act related to his 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; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against him and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, the Borough of Elmwood Park bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

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, I 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. Del., Lackawanna and W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to “generate belief that the tendered hypothesis is in all human likelihood the fact.” Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959) (citation omitted). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Respondent asserts that among other offenses, Vasquez committed “conduct unbecoming a police officer” which conduct is violative of N.J.A.C. 4A:2-2.3 (a) 6, that he is also guilty of “neglect of duty,” a violation of N.J.A.C. 4A:2-2.3(a) 7, and of incompetency, inefficiency, or failure to perform duties, N.J.A.C. 4A:2-2.3 (a) 1.

There is no precise definition for conduct unbecoming a public employee, and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), adopted, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>.

In Jones v. Essex County, CSV 3552-98, Initial Decision (May 16, 2001), adopted, Merit System Board (June 26, 2001), <http://njlaw.rutgers.edu/collections/oal/>, it

was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or tends to destroy public respect for governmental employees and confidence in the operation of public services. Unbecoming conduct is not precisely defined in N.J.S.A. 11A or N.J.A.C. 4A; see, e.g., In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). In Karins v. City of Atlantic City, 152 N.J. 532 (1998), an off-duty firefighter directed a racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase “unbecoming conduct” is an “elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for municipal employees and confidence in the operation of municipal services.” Id. at 554.

This charge encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that tends to destroy public respect in the delivery of governmental services. In this case, petitioner was a police officer, and it is sufficient that his complained of conduct is such to offend accepted standards of decency and behavior.

“Neglect of duty” has been interpreted to mean that an employee “neglected to perform an act required by his or her job title or was negligent in its discharge.” In re Glenn, CSV 5072-07, Initial Decision (February 5, 2009), adopted, Civil Service Commission (March 27, 2009), njlaw.rutgers.edu/collections/oal/. The term “neglect” means a deviation from the normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). “Duty” means conformance to “the legal standard of reasonable conduct in the light of the apparent risk.” Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (citation omitted). Neglect of duty can arise from omitting to perform a required duty as well as from misconduct or misdoing. State v. Dunphy, 19 N.J. 531, 534 (1955). Neglect of duty does not require an intentional or willful act; however, there must be some evidence that the employee somehow breached a duty owed to the performance of the job.

In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), that court stated that a finding of misconduct need not “be predicated upon the violation of any particular rule or regulation but may be based merely upon the

violation of the implicit standard of good behavior, which devolves upon one who stands in the public eye as an upholder of that, which is morally and legally correct."

As to the charge of incompetency, inefficiency, or failure to perform duties, incompetency has been defined as a "lack of the ability or qualifications necessary to perform the duties required of an individual. . . . [and a] consistent failure by an individual to perform his/her prescribed duties in a manner that is minimally acceptable for his/her position." Sotomaver v. Plainfield Police Dep't, OAL Dkt. No. CSV 09921-98, Initial Decision (December 1999), https://njlaw.rutgers.edu/collections/oal/html/initial/csv9921-98_1.html, (internal citation omitted), adopted, Merit Sys. Bd. (January 24, 2000), <https://njlaw.rutgers.edu/collections/oal/final/csv09921-98.pdf>. Inefficiency has been defined as the "quality of being incapable or indisposed to do the things required" of an employee in a timely and satisfactory manner. Glenn v. Twp. of Irvington, 2005 N.J. AGEN LEXIS 35, *2, Initial Decision (February 25, 2005), adopted, Merit Sys. Bd. (May 23, 2005), <https://njlaw.rutgers.edu/collections/oal/final/csv5051-03.pdf>. Failure to perform duties has been defined as "failure to take an action reasonably anticipated from the duties of the position as set forth in the civil service regulations and job description." In re Fernandez, Camden County Bd. of Soc. Servs., 2014 N.J. AGEN LEXIS 229, *34 LEXIS 229, *34, adopted, Comm'r (June 18, 2014), <https://njlaw.rutgers.edu/collections/oal/final/csv00652-12.html>. 2021 N.J. CSC LEXIS 518, *30-31.

Re: DKT. No. CSV 06600-21 Suspension and Demotion

Licenses suspension violations

Vasquez was suspended for 120 days and demoted from Detective to Police Officer for failure to maintain his driver's license over the course of three years, and nine different suspension periods, and for repeated violations of the sick policy. As to the licenses suspension findings they are were essentially unrefuted during the hearings. In fact, Vasquez admits these violations (Post hearing brief page 7, and Vasquez's testimony) and only argues mitigating factors as to sentencing.

Accordingly, I have no choice but to sustain the charges relating to the serious and persistent failure by Vasquez to maintain his driver's license as a required, and essential condition of employment as a police officer or Detective. A police officer or detective employed by Jersey has to have a valid driver's license in order to perform his duties. Thus, Vasquez's failure to maintain his license for hundreds of days over a less than four-year period, put the Department at considerable and unnecessary risk, and constituted General Causes: Inability to perform duties in violation of N.J.A.C. 4A:2-2.3 (a). During that four-year period Vasquez was involved in two car accidents, when his license was suspended, one of those times with his own vehicle which he knew was uninsured. As noted in the discussion of the facts, even if Vasquez's problems began with his ex-wife's using his vehicle and collecting unpaid for parking tickets, it is certain that Vasquez knew of his car suspensions by 2018, because he paid restoration fees three times in 2018 and 2019.

Even before then, I find it incredible to believe that, in 2017, immediately after being in a car accident while driving his police car, there was no rudimentary check up on Vasquez's motor vehicle license status. The accident report (R-5) notes that a fellow Sergeant Friend of the Department investigated and signed the accident report. To that I add that I do not believe Vasquez's story that he didn't learn of his suspension status because his ex-wife kept intercepting his mail. This is a self-serving and unsupported excuse from an officer who does not seem to own up to the truth until he has to. Finally, Vasquez admitted he only failed to pay the fines and restoration fees which would have more timely restored his license out of financial considerations. Every New Jersey driver could say the same thing, and they all would be convicted of and face further penalties including possibly a jail sentence, for Title 39 multiple violations for driving while suspended or causing an accident while suspended and uninsured, a fate which Vasquez avoided by being lucky and not telling his superior officers until he was finally "caught." I find none of the circumstances explained by Vasquez, including his stint in rehab and his financial concerns to be mitigating factors whatsoever.

I find it particularly egregious that Vasquez failed to inform his superiors over a lengthy period of time of his motor vehicle status. It is clear he only hid the truth from them from fear of disciplinary action, rather than owning up to it and fixing the problem

as he could have before being forced to admit the truth (or some of it) to IA.

I **CONCLUDE** that all of Vasquez's misconduct constituted Conduct Unbecoming of a Public Employee, a violation of NJAC 4A:2-2.3(a)6. Further, by allowing his license to be suspended, and to remain suspended for extensive periods of time, Vasquez failed to perform his duties, was incompetent and inefficient as maintaining the license at all times is an essential and necessary component of being an Officer or Detective in the Department. Thus, the clear preponderance of the credible, relevant and competent evidence also establishes that Appellant is guilty of the charges of, conduct unbecoming a police officer, N.J.A.C. 4A:2-2.3 (a) 6, and General Cause, Inability to perform duties N.J.A.C. 4A:2-2.3(a)3. It is almost axiomatic that for on the same facts, for the reasons aforesaid, Vasquez was also guilty of JCPD Rule 3.123, by his failure in his duty to obey laws, regulations and Orders, and of JCPD Rule 3:49 for not maintaining his driver's license. Further, Vasquez violated JCPD Rule 3:108 Conduct. I note this rule requires the officer to conduct both their private and professional lives in such a manner as to be a credit to the department. Vasquez was responsible for crashing his personal auto into a civilian's car and he then persuaded the civilian not to involve the police. It is obvious he did that to avoid scrutiny into the status of his license. His conduct was clearly a discredit to the Department and potentially tarnished its image.

Violations of the Sick Policy

A. Excessive sick leave.

As detailed above, Vasquez's continued unrefuted use of sick time violated the policy that sick time does not exceed 120 days within a 12-month period, and to not have five or more sick leaves within a 12-month period. Thus, under the policy Vasquez unquestionably violated the sick policy, by the use of "Excessive Sick Leave." G.O. #215, 7.a. and 7b. (R-15). However, Vasquez argues that according to the Department's Collective Bargaining Agreement (CBA) in effect during the effective dates of the alleged violations, all officers were entitled to "unlimited sick leave." Therefore, he argues the violations of "Excessive sick leave," are at least in this case unenforceable, as its enforcement would violate the CBA between the Department and

its Officers.

Whatever validity the CBA may have in determining the rights of officers and obligations of the Department, I have no authority to attempt to enforce those rights and obligations. The OAL does not resolve labor disputes concerning interpretation and enforcement of collective bargaining agreements. Vasquez may have and perhaps should have filed a grievance seeking to enforce the CBA. In fact, if the OAL had any jurisdiction to enforce the CBA, and if Vasquez sought, he brings this issue to the OAL, he was probably required to first do so, and exhaust administrative remedies before filing this appeal.

However, as the CBA is the only defense posed by Vasquez, I must sustain the determination that Vasquez violated the sick policy in have five or more sick leaves in a 12-month period and by having 120 or more sick days within a 12-month period. This conduct also violates NJAC 4A:2-2.3 (a) 4, chronic or excessive absenteeism or lateness.

B. Sick/welfare checks.

Vasquez argues that Captain Williams testimony regarding sick checks, to wit "as soon as you don't answer your phone [or] answer your door, if we're there, ring the bell, you're in violation" is an incorrect reading of G.O. #215 because no such policy is contained in the General Order. This incorrect reading, he argues "raises serious questions as to how the alleged violation of the sick leave policy were (sic) investigated or administered."

I have no authority to generally manage how the Department investigates or administers its policies. However, the overwhelming evidence is that it was administered fairly to Vasquez. I note G.O. # 215 provides highly detailed procedures and requirements for the officers while exercising sick leave. Among those most germane to Vasquez's case are as follows:

First, officers who are sick or injured but not hospitalized "MUST REMAIN AT

THEIR PLACE OF CONVALESCENCE.” Section 5, page 7. (Emphasis in the original) Aside from other notification requirements expected of the officer, the officer “[M]ust have permission of their Unit Commander to stay at any location other than their primary residence. The Medical Unit must be apprised of any change in the place of convalescence.” This “confinement” at the place of convalescence during sick leave, is not intended to punish or unfairly restrict an employee; however, an employee who is unable to work in a sedentary assignment, will be expected, at a minimum, will be expected to remain at his/her home.” Section 5.4, page 7.

Second, the employee reporting sick is expected to be available for checks by the Department “to ensure that the employee is abiding by the restrictions on of the sick leave,” per the policy, as well as checks for “restrictions placed on the officer by their treating physician.” Sick checks are to be performed at hours “without regard to the officer’s normal working hours but at reasonable hours of the day or evening so as not to unnecessarily inconvenience the member’s family.” To further ensure compliance, a joint effort in sick leave checks involves the Medical Unit, Internal Affairs and other Departmental supervision, which can include “using all means of observation and recorded surveillance.” Section 5.5, pp.7-8.

Third, and most significantly for Vasquez, sick employees are expected to be accessible for personal or phone communication. The employee must notify the Medical Unit of any changes in his address and phone number, **“and to remain capable of being contacted daily.”** Regarding telephone contacts to the employee by the Department, **“Employees will promptly return messages left by the Medical Unit for status updates or other inquiries.”** Regarding personal contacts, **“If a supervisor responds to an officer’s home and is not able to reach an officer after ringing the doorbell, knocking and calling all available phone number, the assumption will be that the officer is not home.** Section 5.7, p. 8 (Emphasis supplied)

It is obvious that Captain Williams testimony, accurately described the procedure and process of enforcement of G.O. #215. Appellant’s observation that “there is no such requirement” (i.e., a violation occurs as soon as you don’t answer your door) in the policy is incorrect. With personal checks, If the door is unanswered, the employee is

assumed to be not at home convalescing. While it appears clear that an officer would in a given case, be permitted to give a valid reason why he didn't answer the door for a sick check and thus avoid the harshness of a violation, it appears accurate to say the violation occurs when the officer doesn't answer.⁵

Similarly, regarding phone checks, and notwithstanding the captain's imperfect description of G.O. #215 on this point, the import of the Order is that the employee must "promptly return all messages left." Regarding the ten times during the period of August 7, 2019, and Sept 27, 2019, it is unrefuted that the Department has no record whatsoever that Vasquez was home during those checks. Captain Williams testified he was aware that on some other occasions, after a phone check Vasquez had indeed timely texted him. If Vasquez had done so during any of the ten occasions at issue, Captain Williams would have noted it and those occasions would not have been used as potential violations. However, his records showed Vasquez did not reply on any of those ten occasions. Further, Vasquez testimony did not directly refute Williams record which showed no reply by Vasquez. Instead, Vasquez said it was his habit to reply within one to six hours of receiving messages on sick call checks. What an officer's alleged habits are was not the issue, but rather what he actually did while the Department was attempting to do sick checks. Finally, and most importantly, if one were to take Vasquez's unsupported and less than credible word for it, I cannot agree with his claim that replying to a sick call within "one to six hours" constitutes compliance with the strict command that the officer "promptly" return calls left by the Medical Unit. I also note it is not credible to believe that Vasquez didn't keep any texts by him to Williams or to anyone else regarding his so-called prompt replies (which he said was usually by text) to these sick checks in 2019. Prior to that time, Vasquez had received written warnings and finally had lost three days of paid sick leave for his third minor discipline for violating the sick policy. He knew his absences were under scrutiny and would have kept proof of his compliance with the sick policy.

Accordingly, I **CONCLUDE** that Vasquez violated the sick policy by failing to

⁵ As brought out in the unrefuted testimony on this point, and as included G.O. #215, there are several reasons why an officer may not have to be home while convalescing, but except for emergencies he must notify the Department why he will not be at home, where he will be and his expected return to his residence.

make himself available for sick checks on March 14, 2020, and April 10, 2020. Prior to those occasions, Vasquez failed to be available or to promptly reply to phone checks at least ten times during a 73-day period. Further, Vasquez had received minor disciplinary action for three prior violations of the sick policy. (R-10). This conduct constitutes Incompetency, inefficiency and/or a failure to perform his duties. N.J.A.C. 4A:2-2.3(a)1, Neglect of Duty, N.J.S.A. 4A:2-2.3(a) 1, and also violated JCPD Rule 3:123 Obedience to Laws, and JCPD Rule 3:108 Conduct. However, I do not find that his conduct in this regard only amounted Conduct Unbecoming under JCPD 3:155. I note that regarding this conduct, he was not charged for these offenses with Conduct Unbecoming N.J.A.C. 4A:2-2.3(a) 6.

CSR 07223-21 Removal

Respondent amply met its burden in proving the allegations that Vasquez left his post without permission and engaged in secondary employment while on duty. Captain Gallagher was unequivocal and clear that had he ever gave Vasquez permission he would recall it and further that his recollection was intensified by the fact that Vasquez was caught red handed, and that he received many calls that day about the subject. Further, he only recalled giving Vasquez permission to leave early on another occasion for a COVID check-up. Gallagher's testimony contradicts Vasquez's contention he frequently gave him permission to leave by 2:00 p.m. while Vazquez was on restricted duty. It's also highly unlikely that an officer who by has own admission was already under fire and intense scrutiny because of his alleged sick policy abuses and motor vehicle violations (Vasquez claims he knew before he took the secondary employment that he was facing a 180-day suspension) would be given such latitude by his commander. Vasquez said he was on good terms with Gallagher, and he never inferred Gallagher was lying about him. Vasquez however had a great incentive to lie. Further his general lack of credibility and his blithe attitude towards his obligations to abide by Departmental policy appears to have been well established before he began this secondary employment. It was also unrefuted that he failed to give any notice, including the required written notice, of the secondary employment to his commanding officer. Vasquez again lacks credibility when he "explained" he was unaware of any forms to fill out give the appropriate notice. This is a particularly obnoxious defense considering his

own complaints during the hearing that the Department had to restrict policing type secondary employment owing to corruption. He was surely aware of his duties in this regard especially because of his heightened interest based and his perceived great financial need for secondary employment

Regarding the particular employment, Vasquez argues he was merely apprenticing and not truly employed as he was not yet earning money. Therefore, he wasn't required to report it. Agreeing with Vasquez's contention is untenable. For example, if he was engaged in a sales business working strictly on commission, he would certainly be employed notwithstanding that he hadn't received any money yet. Further, although he claimed many others of the Department used that particular barbershop where he was employed, including his chief, Vasquez never told any fellow officer that he was working there. If he had done so, he certainly would have testified to that effect. Also, this appears to be another incident where Vasquez only stopped doing the wrong thing when he was caught, this time, red handed.

Regarding drinking while at the barbershop, although Vasquez was not in police attire, not carrying his gun nor using a police car to get there, he was still on duty, notwithstanding walking off his post without permission in order to engage in secondary employment. Given the number and egregiousness of his other violations, his sipping on a "hard seltzer" can during work hours is probably the least serious of his offenses.

I **CONCLUDE** by the preponderance of the credible evidence that the appellant was guilty of walking off of his post while on duty without permission, engaging in secondary employment during department work hours, failing to give notice of secondary employment to the department, and drinking alcohol while on duty. His conduct violated the administrative charges of N.J.A.C. 4A:2-2.3 (A) 1, Incompetency, Inefficiency or Failure to perform duties, N.J.A.C. 4A:2-2.1(a)6 Conduct Unbecoming a public employee and N.J.A.C. 4A:2-2.3 (a) 7, Neglect of Duty His conduct also violated JCPD 3:103, Alcoholic Beverages while on duty, JCPD 3:1:24 Leaving assignment, 3:123, Obedience to Laws, and JCPD3:126 Neglect of Duty.

PENALTY

On appeals, the Civil Service Commission may increase or decrease the penalty, N.J.S.A. 11A:2-19, and the concept of progressive discipline guides that determination, In re Carter, 191 N.J. 474, 483–86 (2007). Thus, an employee's prior disciplinary record is inherently relevant to determining an appropriate penalty for a subsequent offense, Id. at 483, and the question upon appellate review is whether such punishment is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness," Id. at 484 (quoting In re Polk, 90 N.J. 550, 578 (1982) (internal quotes omitted)).

A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is considered to be an appropriate analysis for determining the reasonableness of the penalty. See Bock, 38 N.J. at 523-24. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of the concept of progressive discipline is the nature, number and proximity of prior disciplinary infractions should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential. In addition to considering an employee's prior disciplinary history when imposing a penalty under the Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Id. at 522-24. Major discipline may include removal, disciplinary demotion, a fine or suspension no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

Among other harm caused by Vasquez to the Department and to the public, his conduct endangered the continued success of a very generous sick policy. The department must monitor sick time to ensure it is not abused. Vasquez's conduct made it impossible for the Department to monitor this by simply trusting the officer. The

Department had to use its investigative powers to finally determine the extent of Vasquez's abuse of the policy. Similarly, Vasquez's own conduct of being responsible for a 2019 car crash while driving with a suspended DL and in his uninsured motor vehicle after a period of years where his license was suspended nearly half the time for surcharge violations led to the Department's discovery of his continuous violations in failing to maintain his DL. Further, Vasquez aggravated the violations by having the opportunity many times to correct the license problem and never doing it. Only when it was uncovered by IA after he committed conduct that the average citizen might face an extensive license suspension and possibly even a jail sentence for did he finally take corrective action. Further, he hid his license status from his superiors even after the 2019 car accident. Two years earlier, he failed to advise the Department when he was involved in a crash with a police car while his license was suspended.

Similarly, Vasquez only stopped violating the sick policy after getting caught. These violations spawned further investigations into his other activities. Despite his attempt to blame others, such as faulting his ex-wife for getting the traffic tickets, and hiding his mail from him, and blaming his lack of financial ability to pay his fines and correct his driver's license because of "corruption" in the police department that led to a ban on valuable outside employment, in reality Vasquez is entirely to blame for his own predicament.

Having been caught red handed through surveillance that was probably only initiated because of Vasquez's other conduct, Vasquez, despite having months to reflect on his conduct, rather than expressing remorse at the hearing for walking off his post without permission to engage in secondary employment, which employment he failed to notify the Department about and drinking alcohol while doing so, Vasquez actually tried to justify this conduct citing his financial obligations and his knowledge that the Department planned to suspend him for 180 days. By his own words, Vasquez seemed to be daring the Department to remove him if they found him out, because in his own mind he was already imminently facing the highest penalty short of removal.

Vasquez's penultimate act of conduct unbecoming was walking off his job to engage in secondary employment and drinking while doing so, with the background of

failing to even notify the Department of the second employment. He argues that he would not have taken employment at a place so exposed to the public (a barbershop frequented by many fellow officers) if he thought he was committing an offense. However, I believe the contrary, that in fact Vasquez was showing contempt to his employer and the public in openly selfishly pursuing another career and drinking on duty while he was supposed to be engaged in his paid position of protecting the health, property, and safety of the public.

In sum, Vasquez had a pattern over a period of years of neglecting his duties, by among other things having his DL regularly suspended, by failing to respond timely to departmental sick checks, by leaving his post and by engaging in secondary employment while being employed and being paid as a police officer. Worse perhaps, I agree with respondent's well-chosen words that Vasquez's "type of behavior has a substantial impact upon the public's faith in municipal service" which "impugns the integrity of the entire law enforcement profession in the eyes of the public." Further, his conduct which culminated in the appearance of a raid by numerous IA members of a public establishment, and ending their surveillance by bringing Vasquez in for questioning, was the essence of conduct unbecoming a public employee and which causes the public to lose confidence in police service, thereby weakening this essential institution of society and thus making the public less secure.

Vasquez had two prior minor disciplinary actions, resulting in a loss of eight vacation days. It may be unfortunate for him that he escaped more serious penalties in the past. If, for example the Department had uncovered sooner Vasquez blithely driving police cars, and his own car with a suspended license for large periods of time over years, and had he been appropriately disciplined, he might have learned from a long period of suspension. But there is no requirement that Department uncover all offenses and proceed with all penalties for all offenses incrementally, especially where the conduct is so egregious. As often cited, police officers are held to a higher standard of conduct than other public employees. They must uphold the law and "present an image of personal integrity and dependability in order to have the respect of the public." In Re Carter, 191 N.J. 474, 486 (2007),

It is unclear if respondent still seeks to affirm the 120 days suspension and demotion for the motor vehicle license and sick policy infractions. I would and do sustain those penalties if they are considered separately from the later offenses concerning the secondary employment. Regardless, I **CONCLUDE** that the penalty of removal for the egregious conduct considered herein constituting neglect of duty, conduct unbecoming a police officer, and the other cited violations is an appropriate penalty.

ORDER

It is therefore **ORDERED** that the charges as hereinabove described in the six (6) FNDA, each dated May 18, 2021, and the FNDA dated July 15, 2021, and penalties issued are hereby **SUSTAINED**; and it is further

ORDERED that Vasquez be and is hereby removed from his position as a police officer in the JCPD, effective July 15, 2021; and it is further

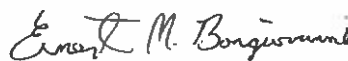
ORDERED that Vasquez's petition of appeal is hereby **DISMISSED**.

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**, who 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, P.O. 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.

September 15, 2022



DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

9/19/22

Date Mailed to Parties:
id

9/19/22

APPENDIX

LIST OF WITNESSES

For Appellant

Edwin Vasquez

For Respondent

Sergeant Stephen Palumbo
Captain Frank Williams
Sergeant Michael San Martino
Sergeant Jocelyn Roldan
Captain Ian Gallagher
Sergeant Jill Jaeger
Sergeant John Barone

LIST OF EXHIBITS IN EVIDENCE

For Appellant

A-1 to A-4 Not in Evidence
A-5 Internal Affairs Policy and Procedure, dated August 2020
A-6 Attorney General Law Enforcement Directive, Np 2019-1
A-7 Letter from Intrepid Detox, dated November 26, 2020
A-8 Letter from Ambrosia Treatment Center, dated December 16, 2020
A-9 to A-11 Not in Evidence

For Respondent

R-1 Final Notice of Disciplinary Action, (FNDA) dated 5/18/21
R-2 Preliminary Notice of Disciplinary Action, (PNDA) dated 5/28/20
R-3 Internal Affairs (IA) Report-Palomba, dated 5/5/20
R-4 Civil Service Commission (CSC) Job Specifications-Police Officer

- R-5 Motor Vehicle Accident Report, dated 5/5/20
- R-6 Memo Palumbo to Vasquez, dated 5/19/20
- R-7 PNDA, dated 10/30/20
- R-8 IA Report-Palomba, dated 10/19/20
- R-9 PNDA (4) dated 5/28/20
- R-10 Memo, Rotondo, dated 1/2/19
- R-11 Sick Time report
- R-12 Memo, Rotondo, dated 3/14/20
- R-13 Memo, Rotondo, dated 4/10/20
- R-14 Memo, Williams to Vasquez, dated 10/8/19
- R-15- A. General Order, Reporting Sick, issued 4/14/12
 - B. General Order, IA Policy & Procedures, issued 2/14/12
- R-16 PNDA, dated 10/20/20
- R-17 Memo, Gallagher, dated 2/16/21
- R-18 Report, with photos, Roldan, dated 11/2/20
- R-19 Memo Rotondo to Roldan, dated 11/2/20
- R-20 Roldan Closeout Report, dated 4/23/21
- R-21 Jaeger Report, dated 11/2/20
- R-22 Barone Report, dated 10/29/20
- R-23 General Order, Secondary Employment, issued 2/11/19
- R-24 Disciplinary Record
- R-25 DVD -surveillance