

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 23RD DAY OF NOVEMBER, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 03144-22

AGENCY DKT. NO. N/A

2022-2641

**IN THE MATTER OF CHRISTOPHER
OLIVER, CITY OF GLOUCESTER.**

Arthur J. Murray, Esq., for appellant (Alterman & Associates, LLC, attorneys)

William F. Cook, Esq., for respondent (Brown & Connery, LLP, attorneys)

Record closed: August 26, 2022

Decided: September 16, 2022

BEFORE **CATHERINE A. TUOHY, ALJ**:

STATEMENT OF THE CASE

Appellant, Christopher Oliver (Oliver or appellant) a Gloucester City Firefighter/Emergency Medical Technician, appeals his removal, effective December 21, 2021, arising from an incident that occurred on November 12, 2021, when he held a lit napkin to the rear-end of Firefighter Sanderson, while Sanderson was standing at the sink washing everyone's dinner dishes, thereby causing damage to Sanderson's uniform pants. Charges presented include: 1. N.J.A.C. 4A:2-2.3(a)(6) – Conduct unbecoming a public employee; 2. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (reckless conduct towards an employee); 3. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (employee intimidation); 4. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (property damage); 5. N.J.A.C. 4A:2-2.3(a)(12)-Other sufficient cause (violation of city policies) including: a. the

Gloucester City Safety Policy; b. the Gloucester City Workplace Violence Policy; c. the Gloucester City Employee Discipline Policy; d. GCFD Standard Operating Guidelines – Code of Conduct (ADM 36); e. GCFP Standard Operating Guidelines – Professional Relations (ADM 35); and f. GCFD Policy Directive 1206 – Uniforms.

Oliver does not dispute that the incident occurred and has admitted to some, but not all of the charges against him. He admits his actions warrant major discipline, however, disputes that removal is the appropriate penalty. At issue is whether Oliver is guilty of all of the specifications alleged and if so, what is the appropriate penalty.

PROCEDURAL HISTORY

On December 21, 2021, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications made against the appellant. Appellant waived a departmental hearing. On April 11, 2021, respondent issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges in the preliminary notice and removing appellant from employment, effective December 21, 2021. (R-6.) Appellant filed a direct filing removal appeal on April 12, 2022, to the Office of Administrative Law (OAL) where it was filed on April 22, 2022, as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13. The hearing was held on July 25, 2022. The record remained open to allow the parties to submit post-hearing submissions and closed on August 26, 2022, following receipt of closing briefs.

FACTUAL DISCUSSION AND FINDINGS

Testimony

Charles Sanderson IV (Sanderson) testified on behalf of the respondent. He is a firefighter/emergency medical technician and has been employed by the City of Gloucester for four years. As a firefighter, they check all equipment daily, do training and answer all calls and emergencies they receive as they are a full-service fire department and do everything for everyone. There are twenty-three employees in the fire department.

On November 12, 2021, he was involved in an incident with Oliver. They had finished eating dinner for that shift and Sanderson was doing the dishes as he usually does with his back turned to everyone, when he heard the gas burner turn on for the stove top. All of a sudden, he felt his buttocks area getting really hot and he turned around to see Mr. Oliver with a paper napkin on fire holding it to Sanderson's buttocks and laughing. Firefighter Sanderson saw there was a burn mark on his pants. At that point Firefighter Sanderson said he would have to put in a request for new uniform pants because it is unacceptable and unprofessional to wear uniform pants that look like that. Oliver responded that if you put in for new uniform pants, please do not tell the chief how this happened.

Oliver was a co-worker of Sanderson and assigned to his shift. Oliver was the most senior firefighter on the shift as he had the most time in the department. Prior to this incident, he thought they were friends. He was shocked that he did this. Sanderson had known Oliver for many years before he became a firefighter as Sanderson's father was a firefighter in Gloucester City and he knew Oliver from visiting the firehouse to see his father. He knows Oliver fairly well since he became a firefighter four years ago.

When the incident first happened, Sanderson initially was in shock and tried to laugh it off, but as he mulled it over, he realized he should not have to come to work and worry about being lit on fire on what was supposed to be a prank. This was more than a prank because Sanderson could have been seriously injured were he not wearing his Nomex uniform pants, which are made of a fire-resistant material. If he were wearing regular pants or shorts, he probably would have been burned. Pranks are one thing, but when it comes to causing bodily harm and damaging property, that is where Sanderson personally draws the line, and this is not acceptable behavior.

When Oliver told him not to tell the chief when Sanderson said he was going to have to put in for new uniform pants, Sanderson mulled it over and realized Oliver knew what he did was wrong and that he should not have done it. By telling Sanderson not to report the incident to the chief, Oliver knew what he did was wrong. Sanderson believed that hiding or bending the truth as to what had happened was equally as wrong as the

incident itself, especially in their job where they go into people's houses. They cannot lie and must tell the truth.

Prior to this incident, Sanderson and Oliver were Facebook friends and after this incident they were no longer Facebook friends because of this incident and another incident involving Sanderson's girlfriend. Oliver went on Facebook when they were at work, and he was going through Sanderson's girlfriend's Facebook page and making comments about her having a picture of some guy from years ago on her Facebook page which made Sanderson feel uncomfortable. Sanderson was totally uncomfortable with Oliver talking about this and other personal things at the table in front of the others trying to make him uncomfortable. This pushed it over the limit for Sanderson.

Sanderson put in a request for an intergovernmental transfer which he had found online as he was contemplating his future with the fire department following these incidents. He did not want to have to come to work and worry about being lit on fire because someone thought it was a joke or a prank. He did not know when he would have to work with Oliver again and being a firefighter is already a high stress job and he was coming in to work already stressed and it was not a good way to start a twenty-four-hour shift. Mr. Oliver texted Sanderson and asked him to give Oliver a call which he did. Oliver said he heard that Sanderson was leaving and had put in for a transfer. They had a discussion about how he wanted to leave, and Oliver said if he was going to leave, the administration would ask Sanderson the reasons why and he should be honest as to the reasons why he wanted to leave. Oliver said Sanderson should be honest and say what Chief Hagan the battalion chief and other members of the department had done and that they were ruining the department. Sanderson felt Oliver wanted him to do his dirty work because of how Oliver felt about other people in the department. Sanderson felt he would not want to leave on that note no matter what his reasons for leaving were, especially if he did not personally feel that way.

Sanderson did not have any say in the penalty imposed against Oliver.

There are twenty-three employees of the fire department, all firefighters of varying ranks, operating out of one fire station. Gloucester City is 2.2 square miles wide.

Firefighters work a twenty-four-hour shift and then are off for seventy-two hours and then work twenty-four hours again. The members on his shift are basically the same on each shift. The fire chief is in charge of the department. Under the chief are the four battalion chiefs and under them are four captains. Then there are the rank-and-file firefighters including Sanderson and Oliver. Oliver had the same civil service title as Sanderson and did not control Sanderson although he was a senior member of the department and usually a senior member guides them in daily tasks, although that is not in writing.

The fire station has four bay doors and houses two engine companies, a ladder truck, the battalion chief's vehicle, and a hazmat vehicle. The bay doors are normally closed. Unless the doors are open, no members of the public can gain access unless someone lets them in. On the day of this incident, there were no members of the general public in the firehouse. The chief of the department works 8:00 a.m. to 5:00 p.m. Monday through Friday and is off on Saturday and Sunday. There is one battalion chief on per shift and they work a twenty-four-hour shift with seventy-two hours off. There is also a captain on each shift who works a twenty-four-hour shift and then is off seventy-two hours. The twenty-four-hour shifts are 7:00 a.m. to 7:00 a.m. This incident occurred at 6:30 p.m. and the fire chief would have already left for the day. The battalion chief and a captain would still be working. The battalion chief on duty was Mark Campanell and he was not sure if the captain on duty was Bryan Fox. Each shift had a total of six firefighters, including four rank-and-file firefighters and two supervisors. There were people coming in and out of the area at the time this incident occurred. They were cleaning up after dinner and people were around but the only one who he knows witnessed the incident between himself and Oliver was Firefighter Greg Zuccarelli.

Sanderson knew Oliver in passing his whole life from seeing him when he visited his father who worked at the firehouse. He only became friendly with Oliver once Sanderson started working as a firefighter these past four years. They were mostly on the same shift his four years on the department. They became Facebook friends sometime after he started working for Gloucester City. He unfriended Oliver after this incident. He did not follow him on any other social media platform. Prior to this incident they were work friends and also socialized outside of work and would go on motorcycle rides together or with a group, approximately eight to ten times a year. They knew where

each other lived and visited each other's house. Oliver knew of Sanderson's girlfriend but never met his girlfriend.

Oliver took a picture of Sanderson on his motorcycle. (P-10.) There is a photograph of Oliver and Sanderson stretching their legs during one of their motorcycle runs which was taken by Oliver. (P-11.) P-12 was another photograph taken with a group of friends on a motorcycle run. Paul Royas took the photo. He is the one with the girlfriend behind him in the pink helmet. P-13 is the same group of friends stretching their legs on the run, but he does not know who took that photograph. P-14 is a photograph of Sanderson and Oliver stopped at a red light taken by Sanderson's friend. These photographs were taken on multiple motorcycle rides. P-15 is a photograph of Sanderson checking one of the chainsaws at work outside of the firehouse and he is making a funny face. Nothing was done intentionally by him regarding the positioning of the chainsaw. Some of these photos were posted on his Facebook page, but he took them down after he unfriended Oliver.

There is no city issued cell phone. Sanderson had his own personal cell phone. Sanderson provided his cell phone number to the city so they could contact him, when necessary, but personal cell phone numbers are not given out to the rest of the employees. Sanderson and Oliver exchanged cell phone numbers and texted and called each other on their cell phones. P-16 is a texting thread/chain between Sanderson and Oliver and no one else is included. This is a fair and accurate representation of the texts between the two of them. There may be other texts. There were texts between he and Oliver after this incident.

Although pranks have been played at the firehouse, in Sanderson's opinion, this one went too far. The Gloucester City Fire Department (GCFD) has rules and regulations which are contained in a binder and e-filed online. The City also has regulations that the firefighters are required to follow and represent that they have read. Sanderson was unsure if there was anything in the rules and regulations of the city or fire department setting forth what is an acceptable prank and what is not an acceptable prank. Sanderson has been the victim of a prior prank while as a firefighter before this incident with Oliver. He has also been a participant in pranking other firefighters before this incident.

The fire station has the four bay doors on the first floor. There is also a kitchen, living room area with a TV, a locker room with showers and everyone has a locker for their own things. There is a public bathroom in the front and the employee's bathroom in the back. There is also the secretary's office, the chief's office, the radio room up front, a training room in the middle of the building and a bunk room. Everything is on one floor. (P-7.) There is a mezzanine area in the bay where the gym equipment is located, but no second floor.

P-7 is a photograph of Sanderson and Greg Zuccarelli, taken by Oliver during one of their shifts at the fire department in the bunk room. There are two separate rooms inside the bunk room for the captain and more senior firefighters. Other than that, there are three other beds in the main room when you first walk in. All of the beds are twin beds. The photo depicts them saran wrapping another firefighter's bed as a prank. Sanderson was unsure if their collective bargaining agreement entitles them to breaks during their shift. This prank was done while they were on the clock since they do not clock out for any breaks. Tom Flynn, III a senior member to Sanderson, was the prank victim. They did it to see him get frustrated when he tried to go to bed and saw his bed all wrapped up and to give them and him a laugh. No one was disciplined as a result of this prank, which was done prior to his incident. P-8 is a photograph of the finished work product which shows a twin bed and nightstand on top to make the prank funnier. Oliver took this photograph. P-9 is a photograph of the same bed at a different angle, but now there are three or more objects on top of the nightstand including a chest file cabinet drawer to make the prank funnier because before the firefighter could use the bed, he would have to cut off the saran wrap and unwrap his bed and un-pile all of the objects off from on top of his bed. It was all done in good faith, in jest, to fluster him and to get a laugh. The prank depicted in P-8, P-9, and P-10 might have been a little over the top with all of the items placed on top of the bed, but they did not destroy any department property, they did not hurt anybody, and the firefighter could have just left it and used a different bed for the night. Then in the morning, he, and Greg, who did the prank, would have gotten up and undid the bed and put everything back the way it was. It was Greg's saran wrap so it did not even cost the department any money. Technically, they did use the department's time in doing the prank. Sanderson said he did not think this prank was acceptable either,

but there is a difference between a joke and harming somebody. The incident in this case could have harmed Sanderson. Sanderson had not participated in other pranks, but he was the victim of a prank. He made his bed and when he went to bed, someone put foil all throughout his bed, so it made a lot of crinkling noise when he went in. He said this was a violation of the rules technically, but no one was harmed. No one was disciplined regarding this prank. During both pranks, a battalion chief and a captain would have been on duty.

Members of the fire department have played basketball when the bay doors are opened. Sanderson did not know if this was a violation of Gloucester City or Gloucester Fire Department rules and regulations. He was aware that Oliver's shirt had been hung from the rafters as a prank, but he did not know who did it and was not involved in it. He does not know of any discipline being imposed for playing basketball in the firehouse or for Oliver's shirt being hung from the rafters. Food fights have broken out among firefighters at dinner, but he has not participated in them. No one has been disciplined for this and he does not know if the rules and regulations prohibit food fights.

The use of fire in this incident could have caused Sanderson to have been injured. He did not file a workers compensation case for this incident or seek any medical attention for any physical or emotional injuries sustained in this incident from the time it happened until today, although he said he should have.

Sanderson smokes as do other firefighters. Smoking is not allowed inside the fire station. Sometimes the bay doors are open when it is nice outside. He has not seen any firefighters smoking within the station when the bay doors are open. They smoke outside the bay doors when the bay doors are open. He has seen firefighters smoke within the fire station when the bay doors are closed although smoking is prohibited within the fire department. It would be a violation of state law. There is always a battalion chief and captain on each shift.

The on-duty uniform includes black boots, department issued t-shirt, department issued long Nomex pants, belt, and a button up uniform shirt with your name on it. When

you are sleeping you do not have to wear the uniform. But if visible to the public, you have to be in uniform.

He was wearing his uniform when this incident occurred. Nomex pants are made of a fire-retardant material. When the lit napkin was placed under his buttocks, he was wearing his Nomex pants. The paper napkin used was a c-fold napkin out of a dispenser in the building. This was the napkin that was lit with the stove burner and put under his buttocks. He checked his body after the incident and he was not injured, although he saw a burn mark on his pants by looking behind him. He does not believe a photograph of the pants was taken. The burn mark was one and a half inches by four inches long. Sanderson put in a request for new uniform pants following the incident and received new pants. He threw out the old pants by accident. After he felt the burn mark, he heard laughter from Oliver and did not know what to think or whether Oliver meant to hurt him or thought it was a joke, because Sanderson was in shock as to what happened. This happened around dinner time, and he completed his shift until 7:00 a.m. the next morning. He had a second pair of Nomex pants in his locker and changed into that. He did not show the captain or battalion chief that were working that night the burn on his pants. He did not scream when he felt the burn from his pants. Other than Zuccarelli, he does not remember if the captain or battalion chief saw what happened. He did not personally report this incident up the chain of command or file a report of this incident with the city human resource department. Eventually he was brought in for an interview and was told that someone authored an anonymous letter to the chief and reported this incident. The incident was on November 12, 2021, and he does not know when the anonymous letter was received. He does not know who authored the letter, but he did not. His interview was one and a half to two weeks after this incident. He did not work with Oliver again after November 12, 2021, because that was the last shift Oliver was working before his suspension began for a prior incident.

Sanderson played no role in the penalty sought or the specifications alleged against Oliver. Sanderson is a high school graduate and has had some college classes having attended college for one semester.

While on duty, the firefighters are required to remain at the fire station.

Sanderson does not know if there have been any other firefighters before this incident who have been disciplined for participating in a prank. He has never been disciplined and he never reported anyone who pranked him. The discussions Sanderson had with Oliver regarding not reporting the incident took place during the remainder of their shift.

Sanderson did not feel comfortable reporting this incident because Oliver always had an intimidating and bullying personality around the firehouse, not only with Sanderson who was his junior, but with everyone. He knew Oliver was going out on a suspension, but he feared when he returned, if he had reported it, he may be subject to more bullying from Oliver when he worked with him.

The most senior member of the firefighters is like a sergeant at arms and makes sure everything gets done the way it should, and it is an unwritten rule that they guide and control the less senior firefighters.

Regarding other pranks, nothing rose to the level of lighting something on fire and putting the fire near another person in this matter. Sanderson should have sought emotional treatment because he had many sleepless nights as to wondering what happened and why it happened. He thought Oliver was his friend and friends don't light their friends on fire, whether it is a joke or not. Sanderson had a couple of emotional break downs which he is not proud of when he talked about it in front of his family. He had difficulty coping with the incident because Oliver was his friend.

Since this incident, Sanderson has never been sent for a fitness for duty evaluation. There is a heat detector in the kitchen, and it did not go off when Oliver lit the napkin. Sanderson never made a complaint to anyone about Oliver having harassed him. Oliver put the lit napkin in the sink and ran it under water to extinguish the fire.

Michael Hagan testified on behalf of the respondent. He is the Chief of the Gloucester City Fire Department. He has been chief since 2016 and has been employed

as a firefighter for thirty years, twenty-four years as a firefighter and six years as chief. There are twenty-three members of the fire department including the chief, battalion chiefs and the captains. There are usually five firefighters on each shift except for one shift that has six. They have one fire station and service an area of 2.2 miles. They provide mutual aide to a number of bordering communities.

On or about November 2021, he became aware of an incident involving Oliver and Sanderson. He received an anonymous complaint stating that Oliver had lit a napkin on fire while Sanderson was doing the dishes and placed the lit napkin under Sanderson's buttocks and damaged his uniform pants. As a result of this complaint, he commenced an investigation into this incident. He contacted Sanderson when he was working and pulled him into his office and had an audio recorded conference with him, asking him if in fact an incident had occurred on that date and time between him and Oliver. Following his investigation, he concluded that disciplinary charges should be brought against Oliver. The City of Gloucester is a civil service agency and is obligated to comply with the civil service law, rules, regulations, and procedures. R-6 is the Final Notice of Disciplinary Action (31- C), which he participated in and reviewed when it was completed. He reviewed and is familiar with all of the policies referred to therein including the Gloucester City policy.

R-1 is the City of Gloucester Fire Department, Standard Operational Guidelines, Code of Conduct and is given by the department when an individual is first hired to make sure everyone is following the same rules and deals with each other with integrity and honesty and displays good conduct towards each other and members of the public. Oliver was an employee of the fire department for eighteen years and was provided with this code of conduct and was familiar with it. R-2 is the Gloucester City Fire Department, Standard Operational Guidelines for Professional Relations and sets forth how employees should exhibit courtesy and respect towards their supervisors and members of the public and that supervisors should treat their employees with courtesy and respect. Members shall treat one another with due courtesy and shall not engage in horseplay or disrespectful conduct at any/all times. (R-2, paragraph C.)

R-3 is the Uniform Policy to ensure everyone is dressed the same and specifies the uniforms to be worn and when, from the class "A" dress uniform to the standard class "B" department uniform. Members are responsible for proper maintenance and care of their uniforms and are instructed that the uniform is the property of the department and is on loan to them and anytime it is damaged it must be reported to the chief's office so it can be replaced. This policy was in effect in November 2021.

R-4 is the invoice for purchasing a new pair of Nomex pants for Sanderson to replace his damaged pants.

The charges included in the 31-C included: recklessness against an employee for putting Sanderson in harm's way by lighting a napkin and putting it up to Sanderson's buttocks which could have caused injury; intimidation because Oliver told Sanderson not to report the incident to the chief's office; property damage for the uniform pants which had to be replaced because they were damaged; conduct unbecoming because the incident put Oliver in a bad light with Sanderson and other members of the department and if this incident got out to the general public it could put the department in a negative light, having firefighters lighting other firefighters on fire – that could be problematic for the department.

This incident was different from other incidents in that fire was used and the employee was in harm's way. Sanderson testified he had some mental issues after the incident. They are a fire department and are supposed to protect people from fire. They teach kids not to play with matches, so they do not burn their houses down. They do not need to have a specific rule or regulation prohibiting members from lighting a paper napkin on fire and holding it under the buttocks of another member of the department.

The element of intimidation was that Oliver told Sanderson that he was not to report this to the chief's office. This was a cover up and there would be no discipline. The property damage was for the \$129 to replace the uniform pants.

The chief felt that the discipline penalty of termination was necessary in this case because it occurred on Oliver's last shift before serving a forty-five-day suspension for a

disciplinary matter that arose from a motor vehicle accident he was involved in while using alcohol that caused his license to be suspended. They felt he did not learn from his prior discipline and the severity of this incident is what caused them to seek Oliver's removal. The forty-five-day suspension has recently been amended to a thirty-day suspension. It was a bad incident and not reported timely and they gave him a break after having a meeting with him. Mr. Oliver knew what the expectations of him were by the city following this meeting. There was no last chance agreement executed between the parties. There was a meeting between Oliver, the chief and the City Administrator/Police Chief Brian Morrell. They explained during the meeting that they were giving him a break and not going to seek his termination, but it was expected that he would follow the rules. This meeting occurred before the November 2021 incident. Oliver had been there for eighteen years and was a decent employee, but it was a major incident that took place, and they gave him a break. The fact that this incident occurred just before he was to serve major discipline in the other matter, they felt they were fair with Oliver and gave him another opportunity, but Oliver did not take it seriously. The anonymous complaint they received was concerning, as the incident it reported could have resulted in injury. As a result of the anonymous complaint, an investigation was conducted.

The chief heard the testimony that Sanderson was thinking of leaving the department following this incident, but was not certain it was before or after the drafting of the FNDA. No complaints regarding pranks ever came to his attention while he was chief.

The population of Gloucester City is approximately 11,000. Members of the general public did not have access to the fire station unless the bay doors were open, or someone let them in. The chief has had no training in conducting investigations. He conducted his investigation based on his years of experience and that is what he did here. Prior to his receipt of the anonymous letter, he had knowledge that something happened on November 12, 2021, between Oliver and Sanderson, from a conversation he had with Sanderson's father. Sanderson's father is a battalion chief but not working on the same shift as Oliver and Sanderson. This conversation with Battalion Chief Sanderson happened a couple of days prior to the receipt of the anonymous letter. The chief did not start an investigation when Battalion Chief Sanderson made him aware of the incident

because he was going to see if Sanderson wanted to make a complaint. As chief, he had the right to start an investigation at any time he thought necessary, without waiting for Sanderson to make a complaint.

The anonymous complaint letter was dated November 27, 2021, and he is not sure when he received it, but it certainly was not prior to this date. Chief Hagan's conversation with Battalion Chief Sanderson was prior to his receipt of this letter. The letter stated:

"Dear Chief Hagan,

I am contacting you to inform you of a written complaint of an event I have recently witnessed. On Friday November 12, 2021, at approximately 1845 hours I witnessed Christopher Oliver light a paper napkin on fire via the gas burner on the stove. Then while Charles Sanderson IV was standing at the sink washing everyone's dishes from dinner, Christopher held the napkin, while on fire, in between Charles' legs and held it up to his buttocks. In doing this Christopher left a burn mark on the butt area of Charles' uniform pants. Other shift members were in the immediate area when this event took place.

Sincerely,

Anonymous"

(P-21.)

Chief Hagan had no additional information from his conversation with Battalion Chief Sanderson, other than the information contained in the letter. Chief Hagan interviewed Sanderson and other firefighters working that night including Tom Flynn and Greg Zuccarelli. The battalion chief working that night was Mark Campanell. He is not sure which captain worked that shift. He did not interview the battalion chief or the captain of the shift working that night as part of his investigation. He was concerned that he had not heard about this incident from either the captain or battalion chief prior to receiving the anonymous letter until he spoke to Sanderson. No discipline was imposed on either the battalion chief or the captain for failure to supervise or failure to report an incident. Chief Hagan never interviewed Oliver in connection with his investigation or requested an

interview of Oliver. There was never a request made of Oliver to reimburse the city for the cost to replace Sanderson's pants. (R-4.)

The FNDA is preceded by the PNDA, and Chief Hagan was involved in the preparation of both. The PNDA was served on Oliver in late December 2021. Prior to having the PNDA served on Oliver, the chief never sought Oliver's version of events. He personally served the PNDA on Oliver at his house and was accompanied by a police officer. He normally has an officer accompany him for service of all PNDA and FNDA 31s.

Jokes and pranks fall under "horseplay." Gloucester City Fire Department has a zero-tolerance policy as it relates to jokes and pranks within the department. (R-2.) He has been in the department for twenty-four years and has been a victim as well as a participant in pranks and jokes and no one was disciplined.

Chief Hagan recently saw the photographs of the bed wrapped in cellophane and previously was not aware of this incident. (P-7 through P-9.) He has not opened an investigation into this prank, but he intends to. The prank is a violation of the 'no horseplay' rule set forth in R-2. The chief was not aware that Oliver's uniform shirt was hung from the rafters as a prank. That would be a violation of R-2. No one was disciplined for that prank. He was aware of the pepper spray incident, but he believes he was a captain at the time. He is not aware of anyone being disciplined for that event. He is aware of firefighters playing basketball in the firehouse when the bay doors are open but did not consider that to be horseplay, but exercise time, which is allowed although not written anywhere. He is aware that a metal door got bent during a game and although no one was disciplined, the games were stopped as they were getting too out of hand. The metal door was just bent back, and no one had to pay for its repair. He is aware of vinegar being poured in the coffee and served to firefighters in the station. He is not aware of any investigation being done although it is a violation of R-2 and is not aware of any discipline being imposed. There is a no smoking policy in the fire station. The firefighters used to smoke in the fire station in violation of the state statute, but he put an end to that. No one was disciplined as a result of smoking in the fire station. The public perception of firefighters smoking in the fire department would not be a good look for the department.

This incident was more egregious in that fire was used and an employee was put in harm's way. People could also be put in harm's way by a delay in fire response time caused if a firefighter, as a result of a prank, could not put on his boots if his boots were filled with maple syrup. He also felt removal was appropriate due to the mental effects this incident had on Sanderson. Chief Hagan does not know if he was aware that Sanderson was having mental issues at the time, he served the PNDA on Oliver. He is responsible for the physical and mental health and well-being of all of his members as chief. He has not sent Sanderson for a mental or physical fit for duty evaluation since this incident occurred on November 12, 2021, to the present time. No supervisors, other firefighters, or members of the public have expressed concerns or requested Sanderson be sent for such an evaluation.

Chief Hagan had a meeting with Oliver regarding his previous discipline, but did not know when. He had no reason to doubt the representation made that the incident took place May 30, 2021, and the meeting took place on July 14, 2021. The previous incident took place while Oliver was off-duty and involved alcohol. Other firefighters have been involved in off-duty incidents that involved alcohol. Other firefighters have been involved in off-duty motor vehicle incidents involving alcohol and DWI. He is not aware of any firefighters who have been removed for an off-duty incident.

Chief Hagan sought removal in this case because he did not believe Oliver had learned his lesson from the previous discipline. However, the discipline was being appealed at the time the PNDA was being served in this case. He was serving a suspension imposed by the hearing officer without any input from Oliver's attorney or union representative. That matter has recently been resolved on appeal in the last fourteen days, for less than the number of suspension days sought by the city and imposed by the hearing officer.

A last chance agreement is a written agreement. There was no written last clear chance agreement entered into between the city and Oliver for the previous discipline. The meeting with Oliver and the city was tape recorded but has not been transcribed.

Chief Hagan also testified they sought removal in this case because Oliver took the November 12, 2021, incident lightly. However, he admitted that he never interviewed Oliver before issuing the FNDA and does not know if he took it lightly. The chief's statement that he took the May 30, 2021, discipline lightly was the fact that he performed the prank on November 12, 2021. The fact that Oliver engaged in horseplay on November 12, 2021, was the only evidence he had that Oliver took the previous discipline lightly.

The chief reviewed the pages of P-17. He has seen it before. It was his understanding that Oliver was agreeing to those charges not blacked out and redacted, prior to this hearing commencing. The unredacted version of the charges contained in R-6, referencing property damage refers to Sanderson's uniform pants. That was the only property that was damaged.

Chief Hagan believes Oliver has been given an acting title above a rank-and-file officer, but not by him. It would mean that a previous chief must have thought enough of him to put him in a leadership role. On November 12, 2021, Oliver was not acting in a supervisory position but was a rank-and-file firefighter. Firefighters receive initial training but there is no additional training. They can request further or additional training and if approved by the chain of command, it would be paid for by the taxpayers.

During the July meeting with Chief Morrell, Oliver and Oliver's attorney, the chief made sure Oliver knew what was expected of him going forward. The other off-duty incidents and pranks predated Chief Hagan's tenure as chief in 2016, and he would have handled them differently and imposed discipline. There have been no pranks since he has been chief remotely similar to this incident of November 12, 2021.

The prior discipline involving Oliver arose from an incident that occurred on May 30, 2021, after Oliver had been drinking and was behind the wheel and smashed into several cars totaling his car and the other cars. He was still trying to move his vehicle and had to be removed from the vehicle. He gave the police and the EMS crew a hard time and was very combative. He was taken to the hospital and had to be sedated. The chief was not made aware of this incident until several weeks later because Oliver never notified him. Oliver's driver's license was suspended as a result of this incident. Chief

Hagan, Chief Morrell, Oliver, and his attorney had a meeting to find out what happened and to resolve the issue by seeking disciplinary action.

Chief Hagan stated that the two officers on duty did not know about the incident of November 12, 2021, between Oliver and Sanderson.

When Chief Hagan became chief, he did not issue any further directives indicating that he was going to strictly enforce the zero-tolerance policy regarding horseplay reflected in R-2.

Brian Morrell testified on behalf of the respondent. He has been the chief of police for Gloucester City since 2016. He also became the city administrator for the city in 2020. Gloucester City employs roughly 100 people in all its various departments and they all report to him as the city administrator. They are a civil service agency.

He is familiar with Oliver and the disciplinary matters he has with the city. He first learned of the November 12, 2021, incident when Chief Hagan notified him of the incident. He was concerned for various reasons including safety because it involved an open fire and potential for bodily harm. Also, fire department equipment was damaged. There was also the concern about the conflict between the two employees and whether Oliver did it to harm Sanderson or was it a prank. There was also the concern that Oliver had just been the subject of disciplinary action that had come before him and now there was this one.

Chief Morrell was part of the meeting in July 2021, following Oliver's May incident to discuss the case and the discipline. They were willing to give Oliver another chance to set the tone for the rest of his career. Oliver was aware of what the city expected of him moving forward. It was made very clear to him. His behavior was unacceptable, and he was willing to change. He was given a last opportunity to be on his best behavior and anything short of his best behavior would result in termination. Following this incident of November 12, 2021, the City of Gloucester decided that termination was the only appropriate discipline. Oliver was just about to serve a long-term suspension from the previous discipline and knew he had to do better and was given the chance to rectify his

past behavior and then this incident occurs right before he begins the suspension from the prior incident. He is aware that Chief Hagan did not interview Oliver during the course of his investigation into the incident. Even if he had, and Oliver apologized for what he did and said it was stupid and a dumb joke, it would not have changed his analysis that termination was the appropriate penalty because he believed Oliver would continue on a path of destructive behavior both to fellow employees and the city.

Chief Morrell assisted in drafting the charges in R-6 and had the opportunity to review the various Gloucester City policies. He has zero confidence in the ability of the fire department to function with Oliver knowing his history. The fact that previous administrations tolerated pranks does not make them correct. This incident and the other incident with Oliver are being handled appropriately and not being brushed aside. Oliver was a city employee for many years and acknowledged receipt of the rules and regulations. He had a duty to understand the rules and if he did not, he was obligated to seek clarification from his supervisor. It never came to Chief Morrell's attention as administrator for the city that Oliver was unclear as to what was expected of him and if he did, the meeting in July made clear what was expected of him.

Chief Morrell is aware that there is a zero tolerance for horseplay as set forth in R-2. He is aware from the testimony that prior chiefs may not have enforced this regulation, but he did not issue any directives when he became city administrator that it would now be enforced. Chief Morrell had heard a story from approximately twenty years ago where a police officer put a live chicken in the bay of the Gloucester City fire department. He does not know if that police officer was terminated or who it was.

As of the July 2021 meeting that was had as a result of the May 30, 2021, off-duty incident, there had been no settlement agreement reached as to the discipline to be imposed for that incident. The parties only reached a settlement regarding that discipline within the last two weeks reducing the forty-five-day suspension to thirty days. Although there was no last chance written agreement signed by the city or Oliver following the July 2021 meeting, Oliver knew it was his last chance. The meeting was recorded by Chief Hagan although he does not have a transcript and there was no colloquy between the

city and Oliver as to his understanding of the agreement and nothing was memorialized following the meeting.

In the prior off-duty incident, the city was originally seeking a forty-five-day suspension. Chief Morrell believed removal was appropriate following the November 12, 2021, incident because Oliver would continue down a path of destruction. The 'path' of destruction was the prior off-duty incident and the November 12, 2021, incident. He does understand that in a civil service jurisdiction you could get up to a 180-day suspension before removal.

Since Chief Morrell took over as city administrator, he has not been aware of any other pranks aside from this one. He saw photographs P-7 through P-9 over the weekend and now that he is aware of this prank, he will open an investigation.

Chief Morrell was not aware that Oliver had proposed to plead guilty to some of the charges leveled against him before this hearing. (P-17.)

Joseph L. Chili testified on behalf of the appellant. He was previously employed by Gloucester City from November 1993 to December 2018 as a firefighter. He was initially employed as a firefighter/EMT and then in 2004 was promoted to the rank of lieutenant and in 2015 he was promoted to the rank of battalion chief. He served a short period of time as acting chief because they did not have a chief at the time. He knows Oliver socially and professionally and has supervised him as a firefighter. In his opinion, if someone he cared about or loved needed help, he would feel better if he knew that Oliver was on the job. He is aware that this is a disciplinary proceeding but was not familiar with the exact details. In his opinion, if Oliver ultimately was given a penalty less than removal, he believes Oliver could return as a firefighter and rise to the occasion although he admits it would be difficult as Oliver would be walking on eggshells upon a return. However, if he chose to return, he could still be a good firefighter.

During the course of his twenty-five years as both a firefighter and a supervisor with the Gloucester City fire department, he knew firefighters played pranks on each other and does not recall any firefighters receiving discipline for participating in a prank. As a

firefighter he participated in pranks and was not disciplined. He cannot say for certain if he was aware of all the pranks or whether there may have been some that involved discipline. He did indicate that normally the fire department is a notorious place for practical jokes and from his perspective he does not recall anybody being disciplined.

Christopher Oliver testified on his own behalf. He is a divorced, thirty-eight-year-old father of a five-year-old daughter. He graduated high school and has had some college courses. He took the civil service test, scored number one, and became employed by the City of Gloucester as a firefighter/EMT on May 7, 2004. He held various jobs before becoming employed with Gloucester City as set forth in his resume. (P-1.) There were two or three times where he was placed in the acting captain's position pending the promotion of permanent captains. The training set forth on his resume was paid for by Gloucester City. (P-1.)

On an average shift, they would answer anywhere from four to seven calls and on a busy shift, more than twelve calls. On a slow shift, there would be an estimate of zero to two calls. To the best of his recollection, the collective bargaining agreement does not set forth meal breaks or breaks. When not on a call, firefighters are not required to remain in the fire station. They can go out and do training, take a ride, and check on things and take the fire apparatus food shopping to buy food for the day.

On November 12, 2021, Oliver's shift was from 7:00 a.m. to 7:00 a.m. the next day. He did something on that shift at approximately 6:30-6:45 p.m. Firefighter Sanderson was doing the dishes and Oliver took a paper napkin and lit a very small flame on the end and held it to the rear of his pants for approximately two to three seconds. He did this to be funny. He and Sanderson were friends and hung out together outside of work and often joked with each other and he thought a little bit of heat on his backside would surprise him and be funny and keep things loose. He admits it was poor judgment. Playing pranks is inherent in the lifeblood of the department and embedded in station life. He did it to play a joke. It was not a planned prank and was completely spontaneous.

He had known Sanderson for many years in passing, when he would visit his father, who was a battalion chief, at the firehouse. When Sanderson became a firefighter

four years ago, they became pretty close friends. They would ride their motorcycles outside of work, talked on a personal level both on and off shift about their personal lives. Oliver agreed with Sanderson's testimony regarding the photographs in P-10 through P-15 and the testimony of Sanderson regarding the text chain contained in P-16.

Sanderson's immediate reaction to Oliver's prank was that he smiled, jumped in surprise, and started laughing a little bit and then Oliver started laughing. It seemed like they both got a laugh out of it. No other firefighters or other persons were present in the room at the time of the prank, but the fact that they were alone was not a factor in why he pulled the prank. Both he and Sanderson finished their shift following this prank. No one else on the shift indicated later in the shift that they had become aware of the prank or joke he pulled. He did not hear Sanderson tell anyone else working that night of the prank or that he was the victim of a prank. Oliver did see a burn mark on Sanderson's pants that was the size between a dime and a quarter and was more of a purplish discoloration.

Oliver participated in other pranks and was the victim of other pranks during his employment with the Gloucester City Fire Department before November 12, 2021. On one occasion syrup was placed in his boots. Another time someone sprayed pepper spray in his wet wipes. Saran wrapping the other guy's bed. Oliver said someone left a sticky note on his car's gas cap that said, "I suck dick for free gas" and he was laughed at when he pulled into the gas station. He had water dumped on him from the second-floor mezzanine. He had the water shut off while he was in the shower. Things were thrown at him while he was in the shower. These are all part of the flavor of firehouses life and were not unusual and occurred on a regular basis.

Oliver reviewed the photographs depicted in P-7, P-8 and P-9 which were of the bed wrapped in saran wrap. He disagreed with Sanderson's testimony in that he testified that the saran wrap came from Firefighter Zuccarelli's truck. The saran wrap actually came from Zuccarelli's father, who was a public works supervisor at the time he dropped off the saran wrap. He had brought the saran wrap to the firehouse for them to use so it was city property. Oliver took all three of the photographs. He also was not certain if in fact there was another bed for the firefighter to use since he spent a lot of time unwrapping his bed to get everything off it that was piled on top, once he got off the saran wrap. Oliver

participated in this prank. To his knowledge, no firefighter in the Gloucester City Fire Department in Oliver's time there has ever been disciplined for participating in a prank.

Oliver first learned there was an issue with the prank he pulled on November 12, 2021, when the chief came to his home with a police escort to advise him his employment with the Gloucester City Fire Department was being terminated and handed him the PNDA on December 21, 2021, at approximately 7:30 p.m. The police officer did not come up to his home but remained outside of his patrol car ten to fifteen feet away while the chief served him with the PNDA.

Oliver never told Sanderson not to report the incident. He spoke with Sanderson following the prank and before being served with the PNDA, but not about the prank. Sanderson did not give Oliver any indication that he was uncomfortable with what Oliver had done. It did not occur to Oliver that Sanderson's pants needed to be replaced because it was a small burn mark on the pants in the area of the buttocks and over the years, he has seen worn and damaged uniforms worn to work.

Oliver was never requested to write a report or give an oral interview as to what happened on November 12, 2021, any time after the incident of November 12, 2021, and prior to being served with the PNDA. Prior to being served with the PNDA, he had no inkling that his prank was being investigated in any way.

November 12, 2021, was the last time Oliver worked prior to serving his suspension for the off-duty incident. He did not work at all between November 12, 2021, and when the chief came to his house December 21, 2021, to serve him with the PNDA.

Oliver believes his actions on November 12, 2021, technically violated the rules of both the fire department and the city, however even though they violate the rules they occur on a regular basis not only in Gloucester City, but pranks and jokes occur in other firehouses as well as part of firehouse life. He thinks a lot of it has to do with the stressful nature of the job and that they see horrible things and it is a way to stay loose.

He admits the timing of the prank was awful, in that it occurred right before he went out on suspension. Part of the reason he played the prank then was he was going out on suspension and was not going to see Sanderson for a while and wanted to be lighthearted and funny. He had no intention of harming Sanderson because he was his friend, and nothing could be further from the truth.

Oliver believes he deserves discipline for his actions on November 12, 2021. He tried to stipulate with the city which charges he was agreeing to plead guilty to and which ones he did not believe he was guilty of. He redacted those charges he did not believe he was guilty of. (P-17.) The charges that are not blacked out he is guilty of.

Prior to the discipline in this case, and the off-duty car accident that is now settled for a thirty-day from a forty-five-day suspension, Oliver had no civil service discipline. He did have a couple of in-house write-ups for being late for work. Although he was charged with DWI for the May 30, 2021, car accident he plead guilty to reckless driving and received a fourteen-day suspension of his license. Following the off-duty incident there was a July 2021 meeting with the city, but he had not yet been served with the PNDA although his municipal court case was over at the time of the meeting. There was no written agreement between himself and the city as a result of that July 2021 meeting. Subsequent to the meeting he was served with a PNDA stemming from the off -duty car accident. Oliver requested and had a departmental hearing and was served with a FNDA after that hearing which he appealed to the OAL. This appeal was pending until the last couple of weeks.

Oliver has received commendations and recognitions during his time as a firefighter. (P-2 through P-6.) He received a certificate of appreciation dated August 2, 1999, from the county clerk for volunteering and serving the Mt. Ephraim community in the emergency management field. (P-2.) Oliver received a letter of recommendation from Michael A. Terpak, Deputy Chief of the Jersey City Fire Department recommending him for the captain's position. (P-3.) He received a letter of gratitude July 6, 2012, from Camden County Freeholder, Scot McCray for extinguishing a house fire. (P-4.) Oliver received a Unit Citation from Camden County Hero Scholarship Fund, March 6, 2015. (P-5.) This came about from a joint rescue response with the Philadelphia Fire

Department where the Philadelphia firefighters rescue vessel was taking on water and those firefighters were rescued by the Gloucester Fire Department's boat. The Brotherhood award from the NJS Firemen's Mutual Benevolent Association was awarded to Oliver and his unit for this rescue. (P-6.)

Oliver received a thank you letter, dated January 16, 2003, from the students at the Gloucester City High School for coming in to speak with them about his college experience and continuing their education. (P-18.) He also received unit citations, dated May 19, 2020, for emergency medical services rendered on March 25 and March 26, 2018, while he was a part-time EMT for Cooper Hospital in Camden. (P-19 and P-20.) One involved a burning victim and the other a drowning victim and he and his partner-initiated lifesaving treatment to the victims.

Oliver explained that he received other commendations but could not locate them. One was for him and his unit rescuing a woman who set her trailer on fire, and they had to pull her out the front window to save her from the fire.

Oliver believes he deserves discipline for what happened on November 12, 2021. He understands major discipline to be a suspension of six or more days and admits he deserves major discipline, but not removal from his position. He did not harm Sanderson and it was meant as a joke and to be funny. He has had a long career, eighteen years with the department and has received many awards. He loves what he does, and he was good at it and would like to go back.

Oliver admits that on November 12, 2021, at approximately 6:45 p.m. he lit a paper napkin on fire, using a gas burner of the fire department stove. He took the lit napkin and held it between the legs of Charles Sanderson IV and up to his buttocks. He had not done something like that before, but he stated that someone did that to him before in 2006 or 2007 and it slipped his mind which is why he did not mention it before. He thought to do it because somebody had done it to him. He did not think that it was okay to do this to Sanderson, his intention was to be funny and humorous and not malicious. Sanderson was standing at the sink washing everyone's dishes from dinner when Oliver went up to him and did it. Sanderson did not know Oliver was going to do this. The thought process

to do this to Sanderson was about thirty seconds before he did it. When he did it, he surprised Sanderson. It caused a discoloration to Sanderson's fire-resistant pants. Oliver denies that he told Sanderson not to report the incident. He absolutely denies that he told Sanderson not to report the incident or to not tell anybody. Oliver said he told Sanderson he's sorry he did not mean to discolor his pants, which Sanderson brushed off saying he had to put in for new ones anyway, so don't worry about it. Oliver did not report the incident to anybody in his chain of command.

Comparing the specifications set forth in R-6 and the redacted version contained in P-17, Oliver redacted the phrase "Placed a fellow employee in danger of serious injury." This was redacted because Oliver does not believe that his actions placed Sanderson in danger of serious injury. He agreed with and did not redact the statement that "Such conduct is especially inappropriate in a fire department where fire safety is paramount." Fire safety is paramount especially in a fire department which serves as the agency for the community to protect against fires.

The specifications in R-6 continue "These actions are especially egregious considering that they occurred as you were about to start a disciplinary suspension for a very serious incident occurring in May 2021, in which you had to be taken to the hospital after getting into an accident after drinking in a bar. That prior incident led to a license suspension and separate discipline. You were clearly on notice at the time of the November 12, 2021, napkin incident that your conduct must improve immediately. Despite this, you engaged in this apparent "joke" which was totally unbecoming of your position and incredibly reckless. You further instructed Sanderson not to report the matter, thus evidencing full recognition that these actions were wrong and further demonstrating a bold attempt to cover up the incident and engage in intimidation. These actions further resulted in property damage." Oliver rejected this entire paragraph as evidenced by the redaction in P-17.

Oliver admitted that the prior incident led to a license suspension and served as a separate discipline which was ultimately resolved for a thirty-day suspension.

When the November 12, 2021, incident happened, Oliver had already been served with the FNDA seeking a forty-five-day suspension. He had already had a meeting with the city regarding his employment and despite that, on November 12, 2021, he engaged in this conduct towards Sanderson. Oliver had no knowledge whether anyone involved in any prior pranks was facing discipline when they engaged in the pranks. He had been the president of the union for four years and did not have any such knowledge.

Oliver agreed that his conduct of November 12, 2021, violated the Gloucester City safety policy. He disagrees that his actions violated the Gloucester City workplace violence policy. The items crossed out on P-17 are the policies Oliver disagrees he violated.

On May 30, 2021, at approximately 3:03 a.m. Oliver was involved in a serious motor vehicle accident in Mount Ephraim in which his vehicle caused damage to three parked cars as well as his own vehicle. He needed to be taken by ambulance to the hospital due to injuries he sustained. He was drinking prior to driving his vehicle that evening. He was uncooperative with hospital staff. He admits that thirty days discipline was warranted for this prior incident. As a result of the May 30, 2021, incident, he voluntarily resigned his position with Cooper Hospital. Oliver admitted that he failed to notify Chief Hagan of this incident for several weeks after the accident and not until July 14, 2021, when he sent the chief an email notifying him that he had been involved in a motor vehicle accident. Oliver's license had already been suspended and he is required to have a driver's license to serve as a firefighter with Gloucester City. At the time of the May 30, 2021, accident, Oliver had been out of work for personal, mental health reasons. Oliver does recall admitting to city personnel in their July 2021 meeting that his conduct was very irresponsible and that he had to make serious changes. This meeting took place before any discipline was issued and as an attempt to address everything that was going on with Oliver's circumstances and employment. Oliver said the July 2021 meeting was more of a fact-finding meeting to find out what was going on. He does recall Chief Morrell saying that Oliver needed to start off on a clean slate and put aside his past bitterness of not getting a promotion. He does not recall anyone saying that this was his last chance or that he is done. The meeting was recorded, and he was represented by counsel.

Oliver is more than fifteen years older than Sanderson.

There were text messages between Sanderson and Oliver commencing mid-December 2021 regarding Sanderson's intentions of leaving the department. (P-16.) Oliver initiated the discussion because he had heard a rumor that Sanderson was putting in for an intergovernmental transfer and that concerned him because they were friends and he wanted to talk to him about it. Oliver only learned from Sanderson's testimony at this hearing that the reason Sanderson was considering a transfer was due to what Oliver did to him, Oliver did not know that the prank had offended Sanderson and had he known, he would have apologized to him.

Oliver admitted that the fact that he used fire in his prank made this prank more serious than a normal prank.

Oliver thought by holding the lit napkin to Sanderson's buttocks, it would surprise him, and he would feel a little heat and hopefully find it funny. It was not Oliver's intent to burn Sanderson's pants. Sanderson jumped and said wow and then started laughing a bit. Oliver thought he jumped because he was surprised to feel the heat. Sanderson moved really quick and turned around. Sanderson was surprised since he did not expect somebody to come up behind him with a lit flame.

Discussion

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Conleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App Div. 1958).

Oliver and Sanderson were firefighters assigned to the same shift. Oliver was thirty-eight-years-old, and Sanderson was twenty-four-years-old. Oliver was the most senior firefighter on the shift as he had the most time in the department. Prior to this

incident Sanderson thought they were friends and was shocked that Oliver did this to him. Sanderson described another incident involving Sanderson's girlfriend. Oliver went on Facebook when they were at work, and Oliver was going through Sanderson's girlfriend's Facebook page and making comments about her having a picture of some guy from years ago on her Facebook page which made Sanderson feel uncomfortable. Sanderson was totally uncomfortable with Oliver talking about this and other personal things at the table in front of the others trying to make him uncomfortable. Sanderson testified that this, as well as the November 12, 2021, incident, caused Sanderson to unfriend Oliver.

Oliver's testimony that the November 12, 2021, incident was just a joke to get a laugh is not credible. It was not funny to Sanderson who was shocked and offended by the incident. Lighting a paper napkin on fire and then coming up from behind Sanderson and holding the lit napkin up to his buttocks until he felt the burning sensation and jumped is not a joke. Not only did it have the potential to cause personal injury to Sanderson, it was demeaning and an act of harassment. It is incredible that a trained professional firefighter would engage in such conduct and attempt to defend his conduct by calling it a joke or a prank. Oliver's testimony that someone did this to him and that was where he got the idea to do it to Sanderson was also not credible, as there was lots of testimony regarding various pranks elicited by Oliver's attorney, presumably based on what Oliver told him, and not once was it raised until Oliver testified on cross-examination that someone did the same prank to him years ago. Oliver said it slipped his mind which is why he did not mention it before being cross-examined. This testimony was not credible and a lame attempt by Oliver to justify his conduct, when in fact, it is clear and even Oliver testified that the fact that he used fire in this incident set it aside from a normal prank.

There was testimony from all of the witnesses that pranks occurred in the firehouse, and no one was aware of any discipline having been imposed previously. Oliver attempts to characterize this incident as a prank, however, lighting a napkin on fire and then holding an open flame close to another person is no joke and is reckless behavior, especially egregious when done by a firefighter whose job is to protect people from fire. Oliver admitted that the fact that he used fire in his prank made this prank more serious than a normal prank.

Sanderson testified that this was more than a prank because Sanderson could have been seriously injured were he not wearing his "Nomex" uniform pants, which are made of a fire-resistant material. If he were wearing regular pants or shorts, he probably would have been burned. Pranks are one thing, but when it comes to causing bodily harm and damaging property, that is where Sanderson personally draws the line, and this is not acceptable behavior.

Sanderson testified credibly that he did not feel comfortable reporting this incident because Oliver always had an intimidating and bullying personality around the firehouse not only with Sanderson who was his junior, but with everyone. He knew Oliver was going out on a suspension, but he feared when he returned, if he had reported it, he may be subject to more bullying from Oliver when he worked with him again. Sanderson's testimony was also credible that following the incident, Oliver stated that if you put in for new uniform pants, do not tell the chief what happened because Oliver knew what he did was wrong, and he should not have done it. Sanderson testified credibly that he was upset, and this incident caused him emotional distress and that he broke down talking to his family about it. It was interesting to learn from Chief Hagan's testimony that he first learned of this incident from Sanderson's father, Battalion Chief Sanderson, yet the chief did not commence an investigation into this incident following this conversation. It was not until he received the anonymous letter that he started an investigation. It is questionable whether the Chief initially believed Oliver's conduct was so outrageous that it warranted an immediate investigation, given his delay in undertaking one.

It is clear that Oliver received relatively light discipline for the May 30, 2022, incident. The testimony was credible that Oliver had eighteen years on the job and was a decent employee and they wanted to give him a break. Both chiefs testified that Oliver knew what was expected of him following the July 2021 meeting and that his conduct had to improve. Although the meeting was taped, it was not produced at this hearing. There was no last chance agreement entered into between the city and Oliver should he have subsequent discipline. The fact that he did engage in this conduct on November 12, 2021, on his last shift prior to serving his suspension from the previous discipline was problematic and major discipline is appropriate. However, there is no evidence that Oliver was advised he would be terminated for any subsequent discipline and if the taped July

2021 meeting supported this statement, the respondent certainly would have offered it into evidence.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

Oliver has been employed as a Gloucester City firefighter for eighteen years.

Oliver is familiar with the policies and procedures of the City of Gloucester and the Gloucester City Fire Department.

On May 30, 2021, Oliver was involved in a serious off-duty incident in which he had to be taken to the hospital following an automobile accident that occurred after he had been drinking at a bar. This incident led to Oliver's license suspension and a separate disciplinary proceeding. (R-5.)

On July 14, 2021, Oliver, together with his attorney and union representative, had a meeting with Chief Hagan and Chief Morrell to discuss the facts surrounding the May 30, 2021, incident. It was a bad incident and was not reported timely to the chief. A discussion was had that Oliver's conduct was unacceptable and needed to improve. It was discussed that Oliver had been a firefighter and a decent employee for eighteen years and the city was giving him a break in not seeking his termination, but it was expected that he follows the rules. Although the meeting was recorded, it was not transcribed, and the recording was not introduced into evidence.

On July 22, 2021, the PNDA for the May 30, 2021, incident was served on Oliver and the FNDA was issued October 15, 2021. The discipline sought was a suspension for forty-five working days beginning November 16, 2021, and ending January 11, 2022. (R-5.)

Oliver appealed this discipline.

On November 12, 2021, Oliver and Sanderson, friends at the time, were firefighters assigned to the same shift. Oliver was thirty-eight-years-old and Sanderson twenty-four years old. Oliver was the most senior firefighter on the shift as he had the most time served in the department. Oliver had been a firefighter for eighteen years and Sanderson had been a firefighter for four years. They both held the same civil service title.

While on duty on November 12, 2021, at approximately 6:45 p.m. Oliver lit a paper napkin on fire using the gas burner on a stove in the fire department. He then took the lit napkin and held it between the legs of Firefighter Sanderson and up to the buttocks of Sanderson, while Sanderson was standing at the sink washing everyone's dishes from dinner. This action left a burn mark in the butt area of Sanderson's uniform pants, requiring replacement of the pants.

Sanderson did not see Oliver come from behind him with the napkin on fire and was surprised and jumped when he felt the heat to his buttocks from the fire. The fire caused a burn mark one and a half by four inches long to his Nomex uniform pants. Sanderson said to Oliver that he would have to put in a request to the chief for new uniform pants. Oliver said to Sanderson if he did put in for new uniform pants, please do not tell the chief how it happened.

The City incurred a bill from Action Uniform Company in the amount of \$129 for new Nomex replacement pants for Sanderson. (R-4.)

The uniforms worn by the firefighters are city property on loan to the firefighters for use during their employment. (R-3.)

Sanderson did not feel comfortable reporting this incident because Oliver always had an intimidating and bullying personality around the firehouse not only with Sanderson who was his junior, but with everyone. He knew Oliver was going out on a suspension, but he feared when he returned, if he had reported it, he may be subject to more bullying from Oliver when he worked with him.

Sanderson was caused emotional distress and broke down talking to his family about what happened to him. Sanderson considered transferring out of the fire department as a result of this incident.

Various pranks and jokes have been played by and on fire department members throughout the years. Jokes and pranks fall under "horseplay." GCFD has a zero-tolerance policy as it relates to jokes and pranks within the department. (R-2.) There has been no testimony that any firefighter has previously been disciplined for engaging in any pranks or jokes.

This incident first came to the attention of the chief when Sanderson's father, a battalion chief within the department brought it to the chief's attention a few days before the chief received an anonymous letter, dated November 27, 2021, reporting the incident. The letter stated:

"Dear Chief Hagan,

I am contacting you to inform you of a written complaint of an event I have recently witnessed. On Friday November 12, 2021, at approximately 1845 hours I witnessed Christopher Oliver light a paper napkin on fire via the gas burner on the stove. Then while Charles Sanderson IV was standing at the sink washing everyone's dishes from dinner, Christopher held the napkin, while on fire, in between Charles' legs and held it up to his buttocks. In doing this Christopher left a burn mark on the butt area of Charles' uniform pants. Other shift members were in the immediate area when this event took place.

Sincerely,

Anonymous"

(P-21.)

The chief did not start an investigation when he first learned of the incident from Battalion Chief Sanderson.

Following receipt of the anonymous letter, the chief started an investigation. He interviewed Sanderson and two other firefighters on the shift, Tom Flynn, and Greg Zuccarelli. He did not interview Oliver. The Chief did not interview the battalion chief or the captain on that shift, the two supervising officers on that shift.

The incident of November 12, 2021, occurred during the last shift Oliver was scheduled to work prior to serving his suspension for the May 30, 2021, discipline.

Oliver has admitted that his conduct on November 12, 2021, constituted "Conduct Unbecoming a Public Employee" pursuant to N.J.A.C. 4A:2-2.3(a)(6). (P-17.)

Oliver has admitted that his conduct on November 12, 2021, constituted a violation of "Other sufficient cause" for personal property damage pursuant to N.J.A.C. 4A:2-2.3(a)(12). (P-17.)

Oliver has admitted that his conduct on November 12, 2021, constituted a violation of N.J.A.C. 4A:2-2.3(a)(12) "Other sufficient cause" for Violation of the a. Gloucester City Safety Policy which states that "1. Employees are responsible for observing safety rules and using available safety devices including personal protective equipment. Failure to do so constitutes grounds for disciplinary action." (P-17.)

Oliver has admitted that his conduct on November 12, 2021, also constituted a violation of N.J.A.C. 4A:2-2.3(a)(12) "Other sufficient cause" for violation of the c. Gloucester City Employee Discipline Policy as follows:

- "2. Careless waste of materials or abuse of tools, equipment or supplies;
4. Violation of established safety and fire regulations;
5. Horseplay on City premises;
6. Violating any City rules. Procedures, regulations, or policies;
7. Other sufficient cause."

Oliver has admitted that his conduct on November 12, 2021, also constituted a violation of N.J.A.C. 4A:2-2.3(a)(12) "Other sufficient cause" for violation of the d. GCFD Standard Operating Guidelines – Code of Conduct (ADM36) (R-1) which states:

"As a basic condition of employment/membership, all members have an obligation to conduct their duties in a manner that serves the public interest, upholds the public trust, and protects the department's resources. To this end, all members have responsibility to:

...

(e) Conduct all dealings with the public, members, employees, and other organizations in a manner that presents a courteous, professional, and service-oriented image of the department.

...

(g) Avoid any behavior that could fall under the definition of misconduct or conduct unbecoming.

...

(i) Officers and supervisors shall set an example for other members and have a responsibility to ensure that their activities and decisions pertaining to community services, personnel actions, and the management of the department are consistent with the department's mission and guidelines."

(P-17, R-1.)

Oliver has admitted that his conduct on November 12, 2021, also constituted a violation of N.J.A.C. 4A:2-2.3(a)(12) "Other sufficient cause" for violation of the e. GCFD Standard Operating Guidelines – Professional Relations (ADM35) (R-2) which state:

"(a) Department members shall exhibit courtesy and respect to all officers, supervisors, and acting officers.

...

(c) Members shall treat one another with due courtesy and shall not engage in horseplay or disrespectful conduct at any/all times.

...

(f) Members shall exhibit courtesy and respect to departmental members, members of the public, other municipal, county, state, and federal employees.”

Oliver has admitted that his conduct on November 12, 2021, also constituted a violation of N.J.A.C. 4A:2-2.3(a)(12) “Other sufficient cause” for violation of the f. GCFD Policy Directive 1206 – Uniforms (R-3) which provides:

H. Responsibilities – Firefighters

(2) Shall exercise the utmost care regarding departmental uniforms and equipment either issued or provided for their use.

(5) Shall be responsible for all issued uniforms and equipment and immediately report any lost, stolen, or damaged equipment to their supervising officer.

(6) Shall not change or alter the style of uniform garment or associated equipment in any manner.

(8) Shall conduct themselves at all times while in uniform with the dignity and decorum the public expects of public safety professionals.”

(P-17 and R-3.)

LEGAL ANALYSIS AND CONCLUSIONS

Appellant’s rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The Appointing Authority bears the burden of establishing the truth of the allegations by a preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate “if it establishes the reasonable probability of the fact.” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct 1940) (citation omitted). Stated differently, the evidence must “be such as to lead a reasonably cautious mind to a given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J Super. 93,104 (App. Div. 1959).

Appellant was charged with “Conduct unbecoming a public employee,” N.J.A.C. 4A:2-2.3(a)(6). “Conduct unbecoming a public employee” is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t. of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)).

As set forth in the findings of facts, Oliver admits that his conduct of November 12, 2021, constituted conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6). Also as set forth at length in the findings of facts, Oliver has conceded that he is guilty of many of the charges set forth in R-6 as set forth in the redacted charges contained in P-17, including Other sufficient cause for personal property damage and violation of city policies including the Gloucester City Safety Policy, certain provisions of the Gloucester City Employee Discipline Policy; certain provisions of the Gloucester City Fire Department Standard Operating Guideline – Code of Conduct (ADM36); certain provisions of the Gloucester City Fire Department Standard Operating Guidelines –

Professional Relations (ADM35); and certain provisions of the GCFD Policy Directive 1206 – Uniforms. (P-17.)

However, Oliver disputes that he is guilty of the following charges: Other sufficient cause for Reckless Conduct Towards Employee; Other sufficient cause for Employee Intimidation; the Gloucester City Workplace Violence Policy; the Gloucester City Employee Discipline Policy, paragraphs one, three, and part of five; Code of Conduct (ADM36) paragraph (d); Professional Relations (ADM35) part of paragraph (a), (b); and GCFD Policy Directive 1206 – Uniforms.

Appellant has also been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. The specified 'Other sufficient cause' allegations against appellant are for reckless conduct towards an employee; employee intimidation; property damage; and violation of city policies.

Oliver was charged with other sufficient cause for recklessness against an employee. Oliver put Sanderson in harm's way by lighting a napkin and holding the open flame up to Sanderson's buttocks, close enough to burn his Nomex, fire-resistant pants. Oliver's actions could have caused injury to Sanderson. According to Black's Law Dictionary, Fifth Edition, for conduct to be "reckless" it must be such as to evince disregard of, or indifference to, consequences, under circumstances involving life or safety to others, although no harm was intended. Although Oliver testified, he did not intend to hurt his friend Sanderson, Oliver engaged in reckless conduct against fellow employee Sanderson.

As set forth in the findings of facts and as discussed above, appellant's conduct in this case violates the implicit standard of good behavior one would expect from a public employee. Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause for reckless conduct against an employee by a preponderance of the credible evidence.

Oliver was charged with other sufficient cause for intimidation. Following the November 12, 2021, incident and Sanderson advising him that he had to put in a request for a new pair of uniform pants because Oliver burned them, Oliver told Sanderson not to report the incident to the chief's office. Although Oliver was not Sanderson's supervisor, he was a senior firefighter on the shift and previously engaged in bullying behavior as testified to by Sanderson. Sanderson testified that he feared if he reported the incident, he would be subject to more bullying by Oliver.

As set forth in the findings of facts and as discussed above, appellant's conduct in this case violates the implicit standard of good behavior one would expect from a public employee. Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause for intimidation by a preponderance of the credible evidence.

Oliver was charged with other sufficient cause for property damage. Oliver's actions caused a burn mark one and a half by four inches long to Sanderson's Nomex uniform pants which had to be replaced. Although Oliver has admitted that he caused damage to personal property, that is, Sanderson's pants, respondent alleges that the uniform pants were Gloucester City property on loan to the employee during the course of their employment, and therefore public property. GCFD Policy Directive 1206, regarding Uniforms, paragraph W. Return of Fire Department Prop (1) states that "Equipment issued to employees and members of the Gloucester City Fire Department shall be considered on loan for utilization during the performance of your duties as an employee or volunteer member of Gloucester City Fire Department." (2) states that "All issued uniforms and equipment shall be returned upon termination, retirement, or removal from active volunteer status." (R-3, page 7.) The city incurred a bill from Action Uniform Company in the amount of \$129 for new Nomex replacement pants for Sanderson. (R-4.)

As set forth in the findings of facts and as discussed above, appellant's conduct in this case violates the implicit standard of good behavior one would expect from a public employee. Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause for public property damage and violation

of the GCFD Policy Directive 1206 – Uniforms, by a preponderance of the credible evidence.

Oliver was also charged with other sufficient cause for violating the Gloucester City Workplace Violence Policy which states:

a. Gloucester City Workplace Violence Policy:

1. “The City of Gloucester will not tolerate workplace violence. Violent acts or threats made by an employee against another person or property are cause for immediate dismissal and will be fully prosecuted. This includes any violence or threats made on City property, at City events or under other circumstances that may negatively affect the City’s ability to conduct business.

Prohibited conduct includes:

- Causing physical injury to another person;*

[. . .]

- Aggressive, hostile, or bullying behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress;*
- Intentionally damaging employer property or property of another employee[.]”*

The evidence clearly establishes a violation of the Workplace Violence Policy. Putting a lit flame on a napkin under someone’s buttocks is “[a]ggressive, hostile, or bullying behavior that creates a reasonable fear of injury.” Oliver intentionally placed the flame under Sanderson’s buttocks without Sanderson knowing it was there. Oliver further conceded that it was his intent that Sanderson feel some heat. Sanderson jumped away when Oliver was holding the lit napkin under his buttocks. Sanderson testified that this event caused him emotional distress. Oliver intentionally lit the napkin on fire, intentionally held it under Sanderson’s buttocks close enough for him to feel the heat and to cause Sandersons fire-resistant Nomex pants to be burned and damaged requiring replacement by the city.

As set forth in the findings of facts and as discussed above, appellant's conduct in this case violates the implicit standard of good behavior one would expect from a public employee. Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause for violation of the Gloucester City Workplace Violence Policy by a preponderance of the credible evidence.

Oliver was also charged with other sufficient cause for violating the Gloucester City Employee Discipline Policy. Although as set forth in the findings of fact and in P-17, Oliver admitted to violating some of the provisions of the policy, he disputed he violated paragraphs 1. *Harassment of co-workers and/or volunteers and visitors*; 3. *Deliberate destruction or damage to City or suppliers' property*; and part of 5. *disorderly conduct and use of abusive and/or obscene language on City premises*. (R-6.)

Oliver's conduct in lighting a paper napkin on fire and then coming up from behind Sanderson and holding the lit napkin up to Sanderson's buttocks until he felt the burning sensation and jumped, is certainly not appropriate conduct from a firefighter, whose duty it is to protect people from fire. Not only did it have the potential to cause personal injury to Sanderson, it was demeaning and an act of harassment. Sanderson was shocked and offended and suffered emotional distress as a result of Oliver's conduct. For Oliver to intentionally hold a lit flame long enough and close enough to Sanderson's buttocks to cause damage to his Nomex fire-resistant pants is outrageous and evidences a deliberate intention to harass Sanderson and damage city property. Oliver's telling Sanderson not to report the incident is further evidence of intimidation and harassment. Oliver is guilty of disorderly conduct, harassment of his co-worker Sanderson and deliberate destruction of city property in violation of the City of Gloucester's Employee Discipline Policy. Although I **CONCLUDE** that Oliver has violated the disorderly conduct section in paragraph five, there has been no evidence introduced that Oliver used abusive or obscene language on city premises, so this part of the policy is not applicable and is not sustained.

As set forth in the findings of facts and as discussed above, appellant's conduct in this case violates the implicit standard of good behavior one would expect from a public employee. Therefore, I **CONCLUDE** that the respondent has met its burden of proof in

establishing a violation of other sufficient cause for violation of the Gloucester City Employee Discipline Policy paragraphs one, three, and five by a preponderance of the credible evidence.

Although Oliver has admitted to violating portions of the GCFD Standard Operating Guideline – Code of Conduct (ADM36,) as set forth in the findings of facts and P-17, he disputes he is guilty of violating paragraph (d), which states that members have the responsibility to:

(d) Ensure that all departmental resources, including funds, equipment, vehicles, and other property, are used in strict compliance with department policies and solely for the benefit of the department.

While on duty, Oliver took a c-fold napkin from the firehouse kitchen, used the firehouse stove to light the napkin and proceeded to go up behind Sanderson while he was doing the dinner dishes and held the lit napkin so close to Sanderson's buttocks and caused damage to Sanderson's pants, thus requiring them to be replaced. This was a waste of departmental resources and violated GCFD's Standard Operating Guideline – Code of Conduct (ADM36), paragraph (d) as well as GCFD Policy Directive 1206 – Uniforms, previously discussed above.

As set forth in the findings of facts and as discussed above, appellant's conduct in this case violates the implicit standard of good behavior one would expect from a public employee. Therefore, I **CONCLUDE** that the respondent has met its burden of proof in establishing a violation of other sufficient cause for violation of the GCFD's Standard Operating Guideline – Code of Conduct (ADM36), paragraph (d) as well as GCFD Policy Directive 1206 – Uniforms, previously discussed above.

Although Oliver has admitted he is guilty of violating numerous sections of the GCFP Standard Operating Guideline – Professional Relations (ADM35) as set forth in the findings of fact and P-17, he disputes he is guilty of the last sentence in paragraph (a) that "While on duty, all officers shall be referred to by their appropriate rank." and

paragraph (b) "Supervisors shall exhibit courtesy and respect to their subordinates and shall treat all members in a fair and impartial manner."

The city, in its closing brief indicated that it has agreed to withdraw these two charges and therefore they are not sustained.

Penalty

The remaining issue is penalty. The Civil Service Commission's review of a penalty is de novo. N.J.S.A. 11A:2-19 and N.J.A.C. 4A:2-2.9(d) specifically grant the Commission authority to increase or decrease the penalty imposed by the appointing authority. General principles of progressive discipline involving penalties of increasing severity are used where appropriate. Town of W. New York v. Bock, 38 N.J. 500, 523 (1962). Typically, the Board considers numerous factors, including the nature of the offense, the concept of progressive discipline and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463.

"Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Brock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense." In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, "it is the appraisal of the seriousness of the offense which lies at the heart of the matter." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

Some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007), citing Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense); see also in re Herrmann, 192 N.J. 19, 33 (2007) (DYFS worker who snapped lighter in front of five-year-old):

. . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

Appellant has been found to have violated: 1. N.J.A.C. 4A:2-2.3(a)(6) – Conduct unbecoming a public employee; 2. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (reckless conduct towards an employee); 3. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (employee intimidation); 4. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (property damage); 5. N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (violation of city policies) including: a. the Gloucester City Safety Policy; b. the Gloucester City Workplace Violence Policy; c. the Gloucester City Employee Discipline Policy; d. GCFD Standard Operating Guidelines – Code of Conduct (ADM 36); e. GCFP Standard Operating Guidelines – Professional Relations (ADM 35); and f. GCFD Policy Directive 1206 – Uniforms.

Respondent seeks appellant's removal from his position as a Firefighter/EMT. Respondent argues that based on the severity of this incident, the potential for personal injury, the damage to property, and Oliver's disciplinary history, termination is the most appropriate penalty. Respondent further argues removal is warranted since this incident occurred on Oliver's last shift prior to serving a suspension for the prior discipline. Respondent argues that it cut Oliver a break in not seeking his removal for the previous incident of May 30, 2021, and his failure to conform to the rules on November 12, 2021, demonstrates the likelihood that he will continue to disregard departmental rules in the future. Respondent further argues that Oliver's use of fire in this incident is particularly egregious given his position as a firefighter charged with public safety.

Oliver admits his conduct was unacceptable and admits he is deserving of major discipline, but not removal. He and Sanderson were friends, and he did not intend to hurt Sanderson. His position is that the incident of November 12, 2021, was a prank, a bad one, but nevertheless, still a prank done to get a laugh. He admits it was more serious than other firehouse pranks since it involved the use of fire. Oliver admits his timing in conducting this "prank" was awful, given he was about to begin a suspension for major discipline. Oliver has agreed to reimburse the city for the \$129 invoice incurred for replacing Sanderson's Nomex pants. Oliver points out that prior to the discipline arising from the May 30, 2021, off-duty incident, he had no major discipline and only a few write-ups. Oliver also argues that although respondent's regulations prohibit horseplay, horseplay is a regular part of firehouse life and prior to Oliver, no one has been subject to discipline for a violation of this rule. Oliver points to his eighteen years of service as a Gloucester City firefighter and his commendations and recommendations, in support of lesser discipline.

Although I have sustained all of the main charges against Oliver and have concluded that his conduct on November 12, 2021, constitutes conduct unbecoming a public employee and violates the implicit standard of good behavior one would expect from a public employee, I am inclined to follow the theory of progressive discipline in this case and impose a lesser penalty than removal for various reasons. Whatever the firehouse 'culture' was in regards to horseplay and pranking, it needs to be improved and the policy enforced. Chief Hagan testified that he cannot answer for previous administrations' handling of horseplay incidents, but he intends to enforce the no horseplay rule. However, the chief did not conduct an immediate investigation of this incident when he first learned of its occurrence from his conversation with Battalion Chief Sanderson. It was not until the chief received the anonymous letter, dated November 27, 2021, describing the incident, that he began an investigation. Based on this, it is uncertain whether the Chief initially considered this matter serious. Although the chief did not interview Oliver as part of his investigation, more troubling is the fact that the battalion chief and captain on the shift November 12, 2021, when this incident occurred were not interviewed. They were in charge and responsible for that shift. If a thorough investigation was to take place following the reporting of this serious incident, one would expect that the superior officers on the shift would have been interviewed.

Oliver was a decent employee of the respondent for eighteen years, according to Chiefs Hagan and Morrell. Because of this, they wanted to cut him a break when he was involved in the May 30, 2022, off-duty incident. They could have sought termination for that very serious incident, but they did not. They sought a forty-five-day suspension that was recently settled for a thirty-day suspension. The city argues that removal is appropriate because they gave him a break previously. I would agree that Oliver received relatively light discipline for the May 30, 2022, incident. Both chiefs testified that Oliver knew what was expected of him following the July 2021 meeting and that his conduct had to improve. Although the meeting was taped, it was not produced at this hearing. There was no written last chance agreement entered into between the city and Oliver should he have subsequent discipline. The fact remains that Oliver only had one prior major discipline of thirty days before this incident, in a career of eighteen years.

The fact that Oliver did engage in this conduct on November 12, 2021, on his last shift prior to serving his suspension from the previous discipline was problematic and major discipline is appropriate. However, given the lack of enforcement of the policies involving no horseplay, the failure to immediately and fully investigate the incident of November 12, 2021, when Battalion Chief Sanderson made Chief Hagan aware of it, Oliver's eighteen years on the job, and the previous discipline of forty-five days reduced to thirty days for the prior serious incident of May 30, 2021, all weigh in favor of a discipline short of removal.

I **CONCLUDE** that Oliver's misconduct does not warrant removal. Considering principles of progressive discipline, I **CONCLUDE** that the imposition of discipline of a 180-day suspension without pay, the maximum amount permitted to be imposed as a suspension pursuant to N.J.A.C. 11A:2-20 is appropriate for the sustained charges of N.J.A.C. 4A:2-2.3(a)(6) – Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (reckless conduct towards an employee); N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (employee intimidation); N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (property damage); N.J.A.C. 4A:2-2.3(a)(12) – Other sufficient cause (violation of city policies) including: a. the Gloucester City Safety Policy; b. the Gloucester City Workplace Violence Policy; c. the Gloucester City Employee Discipline Policy (except

part of paragraph 5 regarding use of abusive and/or obscene language); d. GCFD Standard Operating Guidelines – Code of Conduct (ADM 36); e. GCFP Standard Operating Guidelines – Professional Relations (ADM 35) (except the second sentence in paragraph (a) regarding rank and paragraph (b) regarding supervisors); and f. GCFD Policy Directive 1206 – Uniforms.

Therefore, I **CONCLUDE** that the original penalty of removal be **MODIFIED** to a 180-day suspension without pay.

ORDER

It is **ORDERED** that the charges and specifications made against the appellant set forth in the Final Notice of Disciplinary Action dated, April 11, 2022, as modified as discussed above, are **SUSTAINED**.

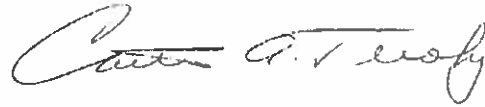
It is also **ORDERED** that the penalty of removal against appellant be **MODIFIED** to a 180-day suspension without pay.

It is further **ORDERED** that appellant reimburse respondent the amount of \$129 for the cost of the Nomex uniform pants.

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.



September 16, 2022

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

Date Mailed to Parties:

CAT/gd

APPENDIX

WITNESSES

For appellant

Christopher Oliver
Joseph Schili

For respondent

Charles Sanderson IV
Michael Hagen
Brian Morrell

EXHIBITS

For appellant

- P-1 Oliver's resume
- P-2 Certificate of appreciation from Camden County Clerk, August 2, 1999
- P-3 Terpak letter of recommendation
- P-4 Letter of gratitude, July 6, 2012
- P-5 Unit citation for July 9, 2014
- P-6 Brotherhood Award for July 9, 2014, dated February 19, 2015
- P-7 – P-9 Photographs of prior prank
- P-10 – P-15 Photographs of prior Oliver/Sanderson relationship
- P-16 Text chain between Oliver/Sanderson
- P-17 Proposed stipulated charges and specifications
- P-18 Letter of appreciation from Gloucester High School students, January 16, 2003
- P-19 Unit citation for March 25, 2018, dated May 19, 2020

- P-20 Unit citation for March 26, 2019, dated May 19, 2020
- P-21 Anonymous letter to Chief Hagan, November 27, 2021

For respondent

- R-1 GCFD SOG – Code of Conduct
- R-2 GCFD SOG – Professional Relations
- R-3 GCFD Policy Directive 1206 – Uniforms
- R-4 Invoice from Action Uniform Company, December 14, 2021
- R-5 FNDA (31-B) dated October 15, 2021
- R-6 FNDA (31-C) dated April 11, 2022

**SETTLEMENT AGREEMENT & GENERAL RELEASE CONCERNING
SEPARATION OF EMPLOYMENT OF CHRISTOPHER OLIVER**

THIS SETTLEMENT AGREEMENT (hereinafter sometimes referred to as the "Agreement") is entered into by and between CHRISTOPHER OLIVER, (hereinafter "OLIVER") and the CITY OF GLOUCESTER (hereinafter "GLOUCESTER"); and

WHEREAS GLOUCESTER served a Final Notice of Disciplinary Action ("FNDA") on OLIVER dated April 11, 2022 (the "April 11, 2022 FNDA"); and

WHEREAS OLIVER, through counsel, filed an appeal of said FNDA to the Civil Service Commission ("CSC") which, in turn, transferred the matter as a contested case to the Office of Administrative Law ("OAL") as OAL Docket No. CSR 3144-22; and

WHEREAS, the matter was tried before the Honorable Catherine A. Tuohy, A.L.J., after which Judge Tuohy issued an Initial Decision dated September 16, 2022 (the "Initial Decision"); and

WHEREAS OLIVER and GLOUCESTER entered global settlement negotiations; and

WHEREAS OLIVER and GLOUCESTER desire to resolve all outstanding issues relating to the April 11, 2022 FNDA and the Initial Decision without the necessity of appeals from same being taken under New Jersey Statutes or any Collective Bargaining Agreement in place or any other applicable laws, rules or regulations; and

WHEREAS the parties further wish to address Oliver's separation from the City of Gloucester; and

WHEREAS OLIVER and GLOUCESTER have now settled all controversies (itemized in the preceding paragraphs) between them; and

WHEREAS all parties acknowledge that the merits of the controversies were in dispute and were never fully adjudicated, but all have reasons to desire amicable resolution of the collective matters; and

NOW, for and in consideration of the agreements, covenants and conditions herein contained, the adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, the parties agree as follows:

1. The Terms of Settlement:

- a. In lieu of further appeals, and in consideration for the CITY'S stipulations in this Agreement, OLIVER will accept the findings and conclusions as set forth in the Initial Decision, as well as the recommended penalty of 180 days. This stipulation will stand irrespective of any further decisions

or orders which may be issued by the CSC or any other agency or tribunal as to the Initial Decision. OLIVER agrees not to file any exceptions or appeals concerning the Initial Decision (or any other decisions or orders relating thereto). Similarly, GLOUCESTER shall file no exceptions or appeals concerning the Initial Decision (or any other decisions or orders relating thereto).

- b. OLIVER will be deemed reinstated to active payroll upon expiration of a 180 day suspension for the matter referenced in the April 11, 2022 FNDA (as amended). The effective reinstatement date (following the 180 day suspension) is August 23, 2022. This is calculated from the expiration of the 30-day working day suspension for OLIVER's separate incident (referenced in the Amended October 15, 2021 FNDA). The 30-day working day suspension for the Amended October 15, 2021 FNDA covers the shifts of 11/16/21, 11/20/21, 11/24/21, 11/28/21, 12/02/21, 12/06/21, 12/10/21, 12/14/21, 12/18/21, 12/22/21. The 180-day working day suspension relating to the Amended April 11, 2022 FNDA is deemed to cover the shifts of 12/26/21, 12/30/21, 1/3/22, 1/7/22, 1/11/22, 1/15/22, 1/19/22, 1/23/22, 1/27/22, 1/31/22, 2/4/22, 2/8/22, 2/12/22, 2/16/22, 2/20/22, 2/24/22, 2/28/22, 3/4/22, 3/8/22, 3/12/22, 3/16/22, 3/20/22, 3/24/22, 03/28/22, 04/01/22, 04/5/22, 4/9/22, 4/13/22, 4/17/22, 4/21/22, 4/25/22, 4/29/22, 5/3/22, 5/7/22, 5/11/22, 5/15/22, 5/19/22, 5/23/22, 5/27/22, 5/31/22, 6/4/22, 6/8/22, 6/12/22, 6/16/22, 6/20/22, 6/24/22, 6/28/22, 7/2/22, 7/6/22, 7/10/22, 7/14/22, 7/18/22, 7/22/22, 7/26/22, 7/30/22, 8/3/22, 8/7/22, 8/11/22, 8/15/22, and 8/19/22.
- c. OLIVER shall be paid regular pay lumpsum backpay from 8/23/22 to 9/16/22. The period of 9/23/22 to 10/21/22 will be paid through remaining accrued time (dollar for dollar), less any required deductions. OLIVER has eleven (11) hours of accrued time remaining after 10/21/22 (not enough for a full shift) which the CITY will pay by separate check. Deductions from said backpay shall not include union contributions. Attached as Schedule A is the calculation of the final payout. The final payout shall be made within twenty (20) days of execution of this Agreement.
- d. OLIVER agrees that he will voluntarily resign from the City effective October 21, 2022, which is the date upon which his accrued time shall lapse as set forth in Paragraph 1(c). OLIVER will not be subject to (or eligible for) re-hire by GLOUCESTER. OLIVER shall prepare and sign an irrevocable letter of resignation stating: "I, Christopher Oliver, hereby resign from the City of Gloucester effective October 21, 2022. This resignation is irrevocable. I am not subject to (or eligible for) re-hire by the City of Gloucester. I have consulted with my attorney and I understand the above." Oliver shall immediately provide the aforementioned irrevocable letter of resignation to his attorney, Arthur J.

Murray, Esquire, who, in turn, shall supply it to William F. Cook Esquire once OLIVER has confirmation that his final creditable time at separation is properly reflected in the MBOS system stemming from all payments made pursuant to this Agreement. Oliver shall be deemed to have left the City in good standing.

- e. To the extent OLIVER collected unemployment for the time frame of 8/23/22 through 9/16/22 (or any portion thereof), GLOUCESTER shall be entitled to a set-off from the final payment of accrued time for Oliver's receipt of such unemployment benefits.
- f. GLOUCESTER shall also deduct the expense of the damaged pants from the November 12, 2021 incident from one of OLIVER's checks referenced in this Agreement.
- g. OLIVER stipulates GLOUCESTER had probable cause to issue the April 11, 2022 FNDA (and any amended version thereof), serve same on him, and prosecute same against him.
- h. In lieu of further appeals, and in consideration of OLIVER's stipulations and releases contained in this Agreement, GLOUCESTER will accept the findings and conclusions as set forth in the Initial Decision, as well as the recommended penalty of 180 days. This stipulation will stand irrespective of any further decisions or orders which may be issued by the CSC or any other agency or tribunal as to the Initial Decision. GLOUCESTER agrees not to file any exceptions or appeals concerning the Initial Decision (or any other decisions or orders relating thereto).
- i. GLOUCESTER will cause to be filed an Amended FNDA which represents the final FNDA relating to matters underlying the April 11, 2022 FNDA consistent with the stipulations above.

2. Mutual Releases and Non-Disparagement.

- a. For the consideration provided in this Agreement, OLIVER, for himself, his heirs, executors, administrators, successors, and assigns, hereby releases and forever discharges GLOUCESTER and its departments, political subdivisions, successors, and assigns, and their respective past, present and future representatives, council members, commissioners, officers, agents, employees, citizens, insurance carriers, successors, and assigns, and the estate(s) of theirs from any and all actions, causes of action, lawsuits, claims, charges, debts, sums of money, accounts, covenants, contracts, controversies, agreements, promises, trespasses, damages, liabilities, judgments, executions, and/or demands of any nature whatsoever, whether in law or in equity, or with any individual, agency, organization, or governmental body,

whether known or unknown, which OLIVER ever had, now has, or can, shall, or may have related in any way to his employment with GLOUCESTER under any contract, tort or common law theory, and/or under any Federal, State, local statute, including but not limited to: the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq., as amended by the Older Worker's Benefit Protection Act, specifically §626; Title VII of the Civil Rights Act of 1964 and 1991, as amended, 42 U.S.C. § 2000e, et seq. and laws amended thereby; the Civil Rights Act of 1966, 42 U.S.C. §1981, et seq.; the Civil Rights Statutes contained in 42 U.S.C. §1983, 1985 and 1986 and any related laws; the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 et seq.; the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, et seq.; the Federal Family and Medical Leave Act, 29 U.S.C. §2601, et seq.; the Employee Retirement Income Security Act, 29 U.S.C. §1001, et seq.; the Rehabilitation Act of 1973, 29 U.S.C. § 791, et seq.; the Equal Pay Act, 29 U.S.C. §206(d); the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq.; the New Jersey Family Leave Act, N.J.S.A. 34:11b-1, et seq.; the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a, et seq.; the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1, et seq.; the New Jersey Law Against Discrimination N.J.S.A. 10:5-1; and any other Federal, State or local equal employment opportunity laws, regulations, or ordinances; or under a theory of negligence; interference with contract/business advantage, fraud; intentional infliction of emotional distress; and/or any other duty or obligation of any kind or description. This release shall apply to all known, unknown, unsuspected, and anticipated claims, liens, injuries, and damages up to and including the day of the date of this Agreement.

- b. OLIVER represents that, he has not filed any complaint, claim or charge against any other party with any local, state, or federal agency or court and will not do so at any time hereafter related to his employment with GLOUCESTER, and that if any agency or court assumes jurisdiction of any such complaint, claim or charge against GLOUCESTER, OLIVER will request such agency or court to withdraw from the matter.
- c. For the consideration provided in this Agreement, GLOUCESTER (for itself and its departments, political subdivisions, successors, and assigns, and their respective past, present and future representatives, council members, commissioners, officers, agents, employees, citizens, insurance carriers, successors, and assigns, and the estate(s) of theirs), hereby releases and forever discharges OLIVER (as well as his heirs, executors, administrators, successors, assigns, and estate(s)), from any and all actions, causes of action, lawsuits, claims, charges, debts, sums of money, accounts, covenants, contracts, controversies, agreements, promises, trespasses, damages, liabilities, judgments, executions, and/or demands of any nature whatsoever, whether in law or in equity,

or with any individual, agency, organization, or governmental body, whether known or unknown, which GLOUCESTER ever had, now has, or can, shall, or may have related in any way to OLIVER'S employment with GLOUCESTER under any contract, tort or common law theory, and/or under any Federal, State, local statute, including but not limited to: the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq., as amended by the Older Worker's Benefit Protection Act, specifically §626; Title VII of the Civil Rights Act of 1964 and 1991, as amended, 42 U.S.C. § 2000e, et seq. and laws amended thereby; the Civil Rights Act of 1966, 42 U.S.C. §1981, et seq.; the Civil Rights Statutes contained in 42 U.S.C. §1983, 1985 and 1986 and any related laws; the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 et seq.; the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, et seq.; the Federal Family and Medical Leave Act, 29 U.S.C. §2601, et seq.; the Employee Retirement Income Security Act, 29 U.S.C. §1001, et seq.; the Rehabilitation Act of 1973, 29 U.S.C. § 791, et seq.; the Equal Pay Act, 29 U.S.C. §206(d); the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq.; the New Jersey Family Leave Act, N.J.S.A. 34:11b-1, et seq.; the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a, et seq.; the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1, et seq.; the New Jersey Law Against Discrimination N.J.S.A. 10:5-1; and any other Federal, State or local equal employment opportunity laws, regulations, or ordinances; or under a theory of negligence; interference with contract/business advantage, fraud; intentional infliction of emotional distress; and/or any other duty or obligation of any kind or description. This release shall apply to all known, unknown, unsuspected, and anticipated claims, liens, injuries, and damages up to and including the day of the date of this Agreement.

- d. GLOUCESTER represents that, it has not filed any complaint, claim or charge against any other party with any local, state, or federal agency or court and will not do so at any time hereafter related to OLIVER'S employment with GLOUCESTER, and that if any agency or court assumes jurisdiction of any such complaint, claim or charge against OLIVER, GLOUCESTER will request such agency or court to withdraw from the matter.
- e. OLIVER and GLOUCESTER mutually agree that each will not engage in conduct which disparages the other. Since damages from disparagement are often difficult to itemize OLIVER and GLOUCESTER agree that each and every instance of disparagement shall be worth \$500.00 (Five Hundred Dollars) in liquidated damage assuming either side is successful in a Motion to Enforce Litigant's rights.

f. Oliver will receive a neutral job reference if any inquiries are made to GLOUCESTER. His disciplinary file will not be turned over to prospective employers unless he signs a release authorizing it.

3. **Attorneys' Fees and Costs:** OLIVER agrees that OLIVER will bear his own costs and attorneys' fees.

4. **Entire Agreement:** This Agreement contains the sole and entire agreement between the parties hereto and is intended to memorialize the settlement of proposed discipline against OLIVER under the April 11, 2022 FNDA and any amended version thereof, any related appeals, and OLIVER's separation from GLOUCESTER. No other promises or agreements shall be binding unless in writing, signed by the parties hereto, and expressly stated to represent an amendment to this Agreement.

5. **Severability:** The parties agree that if any court declares any portion of this Agreement unenforceable, the remaining portions shall be fully enforceable.

6. **Applicable Law:** This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey. The parties agree that any action to enforce or interpret their Agreement shall only be brought in a court of competent jurisdiction in the State of New Jersey, which the parties hereby acknowledge and agree to be the Superior Court of New Jersey in the County of Camden.

7. **Effective Date:** This Agreement will become effective on the date on which all parties to the Agreement have executed it.

8. **Non-Use:** This Settlement Agreement is not intended to be used and shall not be used as evidence or for any other purpose in any other action or proceeding, other than evidence of the parties' compromise as set forth herein or to enforce its terms.

9. BY SIGNING THIS SETTLEMENT AGREEMENT, OLIVER ACKNOWLEDGES:

- A. HE HAS READ IT.
- B. HE UNDERSTANDS IT AND KNOWS HE IS GIVING UP IMPORTANT RIGHTS.
- C. HE AGREES WITH EVERYTHING IN IT.
- D. HIS ATTORNEY NEGOTIATED THIS SETTLEMENT AGREEMENT WITH HIS KNOWLEDGE AND CONSENT.
- E. HE HAS BEEN ADVISED TO CONSULT WITH HIS ATTORNEY TO EXECUTING THIS SETTLEMENT AGREEMENT, AND HAS IN FACT DONE SO; AND

F. HE HAS SIGNED THIS SETTLEMENT AGREEMENT KNOWINGLY AND VOLUNTARILY.

IN WITNESS WHEREOF, the parties have hereunto set their hands.


We agree to the form and content of this Settlement Agreement.

Dated: 11/10/2022


CHRISTOPHER OLIVER


Attorney for CHRISTOPHER OLIVER

Dated: 11/11/2022


Arthur J. Murray, Esquire

CITY OF GLOUCESTER

Dated: 11/11/22


Brian Motrell, City Administrator

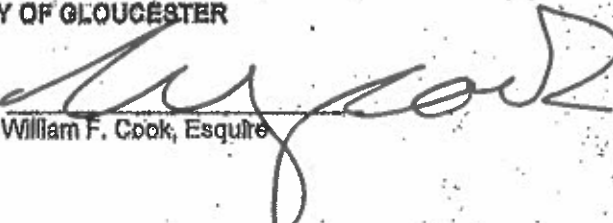
CITY OF GLOUCESTER FIRE CHIEF

Dated: 11/14/22


Chief Michael Hagan

OUTSIDE LABOR COUNSEL FOR CITY OF GLOUCESTER

Dated: 11/14/22


William F. Cook, Esquire

SCHEDULE A

City's payout would total \$22,297.10. Explanation is below:

Regular pay of 2 months which in that 2 months he is using his accrued sick time of 179.04 hours

40.3552 rate * (168 hours regular pay for 4 weeks at 42 hours + 179.04 sick hours used for 4 weeks) 347.04 hours = \$14,000.87

Regular pay for 2-month Deductions of 2 months of PFRS 92.08 per week * 8 weeks = \$1,355.92

Medical insurance owed for 7 weeks during suspension + 21-week Jan to May 2022 = 28 weeks * 92.08 medical for 1 week = \$2,578.24

Vacation pay of 205.58 hours * 40.3552 rate = \$8,296.23

Total regular/ sick used \$14000.87 + 8296.23 = \$22,297.10

Please note: 2021 and 2022 is prorated for sick and vacation hours due to the suspension.

Even though Oliver went up to 278 hours vacation for 2022, it only gets him 46.33 prorated hours for the year for 2 months of time.

Oliver did use 360 hours sick time in 2021 so that comes off of his total time for 2021.

While Oliver may have started with 539.66 hours, he used 360 = 179.66 hours sick

Applicable retroactive increases from union contract covering 2022 hours will be made by separate check.

To the extent OLIVER collected unemployment for the time frame of 8/23/22 through 9/16/22 (or any portion thereof), GLOUCESTER shall be entitled to a set-off from the final payment of accrued time for Oliver's receipt of such unemployment benefits.

GLOUCESTER shall also deduct the expense of the damaged pants from the November 12, 2021 incident from one of OLIVER's checks referenced in this Agreement.