



STATE OF NEW JERSEY

In the Matter of Andrew Fegley,
Camden County Police Department

CSC DKT. NO. 2019-1200
OAL DKT. NO. CSR 15991-18

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: MAY 18, 2022

The appeal of Andrew Fegley, Police Sergeant, Camden County Police Department, removal, effective July 26, 2018, on charges, was heard by Administrative Law Judge Elia A. Pelios (ALJ), who rendered his initial decision on April 18, 2022. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting of May 18, 2022, accepted and adopted the Findings of Fact and Conclusion as contained in the attached ALJ's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Andrew Fegley.

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 18TH DAY OF MAY, 2022

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
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Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 15991-18

AGENCY DKT. NO. n/a

2019-1200

**IN THE MATTER OF ANDREW FEGLEY,
CAMDEN COUNTY (POLICE DEPARTMENT).**

Mark W. Catanzaro, Esq., for appellant Andrew Fegley

Michael J. DiPiero, Esq., for respondent Camden County Police Department (Brown
and Connery, LLP, attorneys)

Record Closed: October 10, 2019

Decided: April 18, 2022

BEFORE **ELIA A. PELIOS, ALJ:**

STATEMENT OF THE CASE

Appellant, Andrew Fegley (Fegley), appeals his removal from his position with the respondent, Camden County Police Department (County), for charges related to an incident involving a subordinate officer's use of excessive force on February 22, 2018, as well as for failure to follow departmental procedures and protocols both prior to and after the incident.

PROCEDURAL HISTORY

On July 26, 2018, a Preliminary Notice of Disciplinary Action was issued which set forth the charges and specifications made against appellant. On October 22, 2018, a Final Notice of Disciplinary Action (FNDA) was served, which sustained in part the charges made on the Preliminary Notice of Disciplinary Action and imposed removal, effective immediately.¹ Appellant appealed, and the appeal was filed with Office of Administrative Law (OAL) on October 25, 2018, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and 14F-1 to -13. Appellant waived the 180-day rule and return to pay status requirements on December 31, 2018. A hearing took place on July 9, 2019. The record was held open to allow the parties to submit closing briefs, and closed on October 10, 2019.

The sustained charges as listed in the FDNA are:

New Jersey Administrative Code:

N.J.A.C. 4A:2-2.3(a)(7)—Neglect of Duty
 N.J.A.C. 4A:2-2.3(a)(6)—Conduct unbecoming a public employee
 N.J.A.C. 4A:2-2.3(a)(1)—Incompetency, Inefficiency or Failure to
 Perform Duties
 N.J.A.C. 4A:2-2.3(a)(12)—Other sufficient cause

Camden County Police Department's Rules and Regulations:

CCPD 3:5.7—Truthfulness
 CCPD 3:1.6—Neglect of Duty
 CCPD 3:1.27—Withholding Information
 CCPD 3:8.3—Department Investigation: Testifying
 CCPD 2:1.4D—Supervisory
 CCPD 3:1.7—Performance of Duty
 CCPD 3:2.1K—Prohibited Activity on Duty

¹ The date of the FNDA is July 26, 2018, which appears to be in error, as that is the date of the Preliminary Notice; moreover, the date of personal service on the FNDA is October 22, 2018. In addition, Camden County Police Department's brief contains other charges aside from those in the FNDA. Charges not included in the FNDA will not be considered.

The FNDA states that the below incident(s) gave rise to the sustained charges:

Internal Affairs investigated an incident under IA case #18-056 involving Sergeant Andrew Fegley #97 that occurred on February 22, 2018. The incident involved Sergeant Fegley being dispatched to a call for a person with a firearm at Collings Road and New Hampshire Road. During the investigation that followed, Sergeant Fegley was evasive and untruthful when answering questions posed to him by Internal Affairs. In addition, said investigation revealed that Sergeant Fegley violated a multitude of the Camden County Police Department Rules & Regulations.

FACTUAL DISCUSSION

Relevant Testimony

I. Detective Crawford's Testimony

Detective Crawford (Crawford) testified on behalf of Camden County. Crawford works for the Camden County Police Department in the Internal Affairs Unit, where he has worked since January 2017. Crawford investigated the incident of February 22, 2018. E.M. came to the Police Administration Building the following day to report the incident, and Crawford took a report wherein E.M. stated that he had been punched numerous times by a police officer and complained of excessive force. (Tr. at 13–14, 71–72.)

Crawford, as part of the investigation, downloaded all of the documents, reports, and body-worn-camera videos. (Tr. at 14.) Crawford testified to Officer Surrency's body-camera footage, which demonstrates that behind Fegley, Officer Romantino was striking E.M. (Tr. at 20:15–17.) In the audio, Fegley looked back at the same point E.M. is being struck. (Tr. at 20:18–21.) However, during the Internal Affairs investigation and during the hearing, Fegley testified that he did not see the incident when he looked back. (Tr. at 21:1.)

Crawford testified that sergeants are not partnered up, unless one of them is a trainee. (Tr. at 15.) Sergeants Carr and Fegley responded to the incident while already in a vehicle

together, and it is noted that the sergeants had teamed up on several occasions.² (Tr. at 15, 21; R-7.)

In the body-worn-camera policy, officers are supposed to use the cell phone to tag body-worn-camera videos. (Tr. at 20–22.) There is an app on the cell phone, and they'll input the case number and type of incident, and it gets logged into the system. (Tr. at 22–23.) If not tagged on the cell phone, an alternative method of uploading would be done with a computer, but that may cause a delay in the body-camera unit reviewing the material, particularly if the video was not uploaded right away. (Tr. at 63–67.) If not tagged, the video would have to be searched for manually, but it would not be tagged appropriately. (Tr. at 65.) When Crawford looked at Fegley's cell-phone activity, the phone was turned off the majority of the time. (Tr. at 23.)

The CAD (Computer Aided Dispatch) system is used to track and record the activity of an officer during his tour of duty. (Tr. at 24–25.) There are two features: 1) the CAD-like tickets that demonstrate where one would be dispatched to with a case number; and 2) a status option where you can change your status but will not get a case assigned, like putting oneself on a "paperwork assignment." (Tr. at 25:5–15.) When Crawford searched Fegley's unit, he found periods where there would be no status change. (Tr. at 26.)

The Automatic Vehicle Locator reports are systems that the GPS system is linked with where you may input a date and a specific time frame and download the report to retrace where the car was and how fast it was going. (Tr. at 26:13–21.) During the period of January to May 2018, a vehicle was issued or assigned a car for each lineup; however, there were periods of time where it did not appear that Fegley was using that vehicle, and it was indicated that he was riding with Sergeant Carr. (Tr. at 27–28.)

The Vehicle Inspection Process Memoranda dated September 27, 2017, indicates a requirement to complete a vehicle inspection, which includes the mileage, condition of the vehicle, etc. (R-3; Tr. at 33–34.) However, the AVL activity report for Fegley's cell phone,

² The Investigation Memorandum indicates that thirteen occasions were discovered where the officers drove together. (R-7.)

which is tagged to the vehicle and cell phone's GPS, shows that from March to May 2018, Fegley was not using his body-worn camera to record vehicle inspections. (Tr. 34–37; R-15; R-16; R-17.)³

The Department payroll system, called Kronos, is an electronic timekeeping system that uses an ID with a barcode; the ID is swiped through the Kronos system, and it registers the time that the individual is swiping in and out of work. (Tr. at 29:12–23.) Fegley completed timesheets on his own, and many were inconsistent with the Kronos system, as he was not using the Kronos system the vast majority of the time. (Tr. at 30–31; R-19.)

Detective Crawford testified that supervisors generate lineups, which are a separate database that supervisors use to record the working hours of an officer, the vehicle they're using and what sort of equipment they're carrying, and whether it's a shield or a body-worn camera or a taser, and to show the watch commander that personnel are available. (Tr. at 31:13–25.) Sergeants Fegley and Carr generated lineups; however, a review from January to May 2018 demonstrates that lineups were not consistent with what was input in Kronos. (Tr. at 32:5–20.) The lineups can be changed and should be coherent with Kronos. Ibid. Lieutenant Martinez, Fegley's supervisor, allowed him to come in an hour early and complete such tasks. (Tr. at 33:7–15.)

Regarding the use of cell phones, the AVL activity report for Fegley's cell phone is tagged to the cell phone's GPS. (See R-15; Tr. at 35.) The cell phone is used to tag videos, and there is a body-worn-camera unit that watches this footage on an ongoing basis as the footage is uploaded. (Tr. at 36.)

Crawford testified that if there is an allegation of officer misconduct, this information should be forwarded and documented in the Internal Affairs Unit. (Tr. at 39:10–12.) Following the incident on February 22, 2018, E.M. went the hospital and requested to speak with Fegley and Carr. (Tr. at 38:11–21.) Fegley reported that E.M. skipped around subjects, but regarding the incident he said that he was punched in the head for no reason. (Tr. at 39:1–

³ The officer is supposed to make videos of the vehicle inspection, and a post-inspection should be recorded on the body-worn-camera video. See Tr. at 37:8–12.

4.) Neither Fegley nor Carr reported the incident to Internal Affairs. When questioned about this, Fegley said he “wasn’t getting the vibe” that that’s what E.M. really wanted. (Tr. at 39:22–23.)

Crawford testified that any time there is a use-of-force incident, the supervisor conducts an administrative review and completes the Administrative Review Form, wherein the supervisor could recommend training or recommend discipline, if necessary. (Tr. at 40:3–10.) Carr completed an Administrative Review Form for the incident of Romantino’s force against E.M. (R-14.) Crawford testified that based on a review of the videos, the form was incorrectly filled out, because there certainly would be a need for additional training and discipline. (Tr. at 40–41.)

Carr remarked that he initially input that Romantino needed training; however, he changed the answer after discussing it with Fegley.⁴ (Tr. at 40–42.) Fegley stated that he did not actually see the form, and that he does not remember the specifics of the conversation, and that he told Sergeant Carr that he did not really see the incident because it happened behind him and he did not really know what happened. (Tr. at 41–42.)

On cross-examination, Crawford was questioned regarding the violence in Camden City and the “tunnel vision” that can occur, which means to focus on the person you have; if someone has a gun you don’t want to get shot and do not want anybody else to get shot. (Tr. at 44–45.) Crawford agreed that Camden City has a history of violence with weaponry, and a call with a gun is a serious call. (Tr. at 45–46.)

Regarding the incident on February 22, 2018, Crawford provided a lengthy account of the events that tracks the provided footage.

Crawford was also cross-examined regarding the charge of Fegley’s alleged evasiveness in the investigation. Crawford testified that the first interview occurred on May 14, and it was brought up that perhaps it makes sense that Fegley would not recall exact events from three months prior. (Tr. at 52.)

Appellant's attorney noted that while there were entries in the Kronos system that did not match up with the timesheets, some of the entries were made by Ms. Heimlich, who would enter in the times for the Kronos system. (Tr. at 55.)

It was also brought forth on cross-examination that there is no specific cell-phone policy; the only policy referencing a cell phone is the body-camera policy. (Tr. at 57.) Although that is the policy regarding work cell phones, Crawford explained that work-related communications that cannot be done via radio should be done via a work phone. (Tr. at 57–58.)

Crawford provided detailed testimony and documentation regarding the incident and Fegley's violations of rules, policies, and procedures. It is clear that Crawford spent significant time putting together and reviewing documentation regarding Fegley's performance. I found Crawford to be credible in his testimony. Crawford did not at all times appear to be entirely confident in his wording or otherwise offer opinions, which may be due to the number of years and experience he has had in his position.

II. Captain Ibarrondo's Testimony

Captain Ibarrondo is the bureau commander of the Internal Affairs Unit. He has worked for the Camden County Police Department since its inception in 2013, and prior to that worked at the Camden City Police Department for fifteen years. Ibarrondo was a detective prior to becoming a captain. Ibarrondo oversaw the investigation and worked on the case with Crawford.

Ibarrondo testified that in terms of the excessive-force complaint, a sergeant would have the responsibility of controlling the scene and "stopping something that was possibly going wrong." (Tr. at 72–73.) This duty includes that if a supervisor observes excessive force, the officer is supposed to stop it. (Tr. at 73:17–20.) The sergeant would also have the responsibility of ensuring that the officers that are on scene are where they are needed and doing what they are supposed to be doing. (Tr. at 73.) Ibarrondo testified, having review video footage of the incident of February 22, 2018, that the incident should have been

stopped while it was occurring, and it should have been documented on the Internal Affairs Reportable Form and submitted to Internal Affairs, and that some kind of notification should have occurred that same day. (Tr. at 79:11–19.)

If a sergeant received a complaint that an officer had hit someone, the sergeant would be required to document the complaint and submit it to Internal Affairs on an Internal Affairs Reportable Form. (Tr. at 78–79.) Neither Sergeant Carr nor Sergeant Fegley reported the incident of February 22, 2018.

Captain Ibarrondo testified that he believed Fegley was not truthful in all of his responses in the Internal Affairs investigation interviews, including Fegley's statement that he did not see what was going on with E.M. (Tr. at 74–75.) In the video Ibarrondo viewed, Fegley was observed looking to his right, in the direction where E.M. was being struck by the officer during the time that the striking was taking place. (*Ibid.*) Ibarrondo opined that Fegley was untruthful when he stated during the investigation that he did not see the incident and that he somehow looked at the cars and the roadway behind the officer and E.M.

Ibarrondo was asked about Romantino's comment that he "roughed up [E.M.'s] dome" following the incident. (Tr. at 80.) Ibarrondo stated that this comment requires further inquiry, to find out what was meant by the comment. (*Ibid.*) However, during the interview, Fegley was questioned about the comment and said he did not hear it and was not actively listening at the time. (*Ibid.*)

Ibarrondo testified that, initially, Fegley was questioned about the shift that he was working, something he works every day, and his response was that he couldn't recall. Fegley was asked if he was partnered with somebody, and he stated "no." Then he was asked whether he rode with somebody anyway, and he stated "no." Shortly thereafter, he was asked whether he rode with Sergeant Carr; he stated that he couldn't recall, and that it was possible. Later on, when he was confronted with documentary evidence that he rode with someone, he stated that he did drive with Sergeant Carr. (Tr. at 75:4–19.)

Ibarrondo testified that the act of omission is not acceptable in an Internal Affairs investigation, and that even when provided with documentation that he was at the location or

area that Fegley admitted to putting into the system, he would not provide definite answers to the questions about whether he was in those locations. Fegley would consistently state, "I guess, I can't recall, possibly." (Tr. at 84.)

The lack of candor prompted further investigation, which demonstrated that Fegley did not do what he was supposed to be doing. Due to Fegley's lack of reporting in Kronos, the AVL, carrying his phone, etc., there is time that has been unaccounted for. In particular, officers are to be in a vehicle with an Automatic Vehicle Locator. The AVL is on a large screen within the RTTOIC and is a map of the city with vehicles and their corresponding numbers for the current lineup. (Tr. at 76–78.) Fegley did not always report the type of incidents he was working on pursuant to policy, which includes the requirement to report breaks, fuel stops, and administrative paperwork into the CAD system to ensure that the RTTOIC commander who oversees the city knows where the officers and sergeants are for safety reasons, and for purposes of confirming that the officers and sergeants are where they are supposed to be. (Tr. at 76–77.)

Due to the clarity of the information provided by the captain, I found Captain Ibarrondo's testimony to be credible. It is clear that Captain Ibarrondo has extensive experience with and understanding of the expectations, policies, rules, and regulations of the CCPD. Ibarrondo makes seemingly reasonable deductions as to why Fegley acted in the manner that he did, and as to why he omitted answers or answered in certain ways during the investigation; however, I note that this decision does not adopt all of those deductions verbatim.

III. Andrew Fegley's Testimony

Andrew Fegley testified that he is currently a package-delivery driver; however, prior to his removal from his position, he was a sergeant for the Camden County Police Department for about a year and a half. Prior to this, he was a patrol officer with the Camden County Police Department for about four years. Prior to that, he was a Class II police officer for Wildwood and Vineland.

In 2018, when the incident occurred, Fegley was assigned to the Neighborhood Response Team Division in the Second District, South Camden. (Tr. at 93.) Fegley testified that after he and Carr arrived at the scene of the incident, he focused in on A.B. and heard a “scuffle, something physical” behind him; however, he could not discern what words were said. (Tr. at 99:3–9.) Moreover, during the Internal Affairs investigation interview, Fegley stated that he did not hear the verbal commands given to E.M. (R-8 at 39.) At some point, he turned his head; however, he testified that he never saw Romantino strike E.M. (Tr. at 99:22–24.) Rather, Fegley maintained that he was busy with A.B., whom he had patted down, and ultimately found that A.B. did not have a gun. (Tr. at 101.) During the Internal Affairs investigation, Fegley also stated that when he turned around at the time the striking occurred, he did not see any interaction between Romantino and E.M., and that where he looked “there was the—the parked cars and the—the street area.” (R-8 at 38–39.)

After patting A.B. down, Fegley was still concerned that there was a gun out there, and so he assessed the scene for a gun following the incident. Fegley recalls that Romantino came up to him and stated, “hey, Sarge, my sixty [E.M.] is requesting to go the hospital”; however, he did not recall Romantino saying that he “roughed up [E.M.’s] dome.” (Tr. at 102.)

On cross-examination, Fegley testified that he looked over his right shoulder at some point; however, he did not see the “scuffle” of Romantino striking E.M. take place. (Tr. at 118.) Fegley stated that the incident occurred directly behind him, whereas he had looked over his shoulder. (Tr. at 119.) However, he is absolutely certain he did not see anything. (*Ibid.*) Fegley also stated that when he heard the scuffle, he was concerned about himself, and looked over his shoulder to reassure himself that “nobody else was coming up on me, nothing else was about to hurt me.” (Tr. at 119–20.) Fegley stated he was trying to get A.B. to interlock his fingers and he was not doing it, and Fegley thought at that point that A.B. had a gun. (Tr. at 120.)

When asked if he then looked back to see what the scuffle was, Fegley stated that at that point he had A.B. with his hands interlocked above his head and was mid-pat down and did not have him complete under control. (Tr. at 121–22.) Fegley did not know what scuffle had occurred. (Tr. at 124.) Moreover, he did not ask questions to find out what scuffle had

occurred. (Tr. at 126.) Fegley said it was “never really any of [his] concern.” Moreover, Fegley stated that Carr was on the scene, and Romantino was Carr’s direct subordinate, so Carr was responsible for Romantino. (Tr. at 127.) Fegley argued that he was responding simply as a police officer. (Tr. at 126:10–11.) And, his main concern was still to locate the weapon on scene. (Tr. at 127.)

After Fegley ordered that E.M. be taken to the hospital, Fegley and Carr went to the hospital, and E.M. called them into his room. (Tr. at 102–03.) Fegley testified that E.M. appeared intoxicated and spoke of different topics, and at one point E.M. stated that he was “struck in the head for no reason.” (Tr. at 104.) Fegley testified that at that point he did not think it was necessary or important to provide Internal Affairs with notice of the complaint or that E.M. had made those statements. (Tr. at 105:10–18.)

Fegley testified that he sometimes rode with Sergeant Carr at work, beginning in January, and then ceased doing so when there was an order issued for them to stop riding together. (Tr. at 108.) However, during the Internal Affairs investigation, Fegley was questioned about whether he was assigned to work with someone or was partnered with someone to conduct crime-condition checks, to which he responded “no.” (R-8 at 14.) Fegley was then asked, “did you ever ride with someone anyway?” Fegley responded, “no.” (*Ibid.*) Following this question, Fegley was then questioned about the AVL report indicating that his assigned vehicle was reported as not moving. (R-8 at 15.) Fegley was then asked how he got out to the incident, and he stated “with Sergeant Carr.” (*Ibid.*) Fegley then acknowledged that there were other occasions when the sergeants rode together.

On cross-examination, Fegley was asked why he stated in his Internal Affairs investigation interview that he did not ride with another officer, and then later admitted to riding with Sergeant Carr on several occasions. Fegley stated that he “did not understand that question at the time,” and “did not understand what he meant.” (Tr. at 116:4–5.)

Fegley testified that he did not follow the policy to use his cell phone to tag the body-worn-camera recordings. (Tr. at 110:18–24.) Instead, he took the camera, docked it at the substation, then the following day would go back and properly tag all the videos with their case number, location, and type of incident. (Tr. at 111.)

Fegley testified that he used Kronos to swipe in when he was an officer, but that when he became a sergeant he did not. (Tr. at 112.) Fegley acknowledged that he was not clocking in the way he should have been. (Tr. at 31:6–8.)

One of the reports Carr completed was an Administrative Review—Use-of-Force report. (R-14.) On the report, supervisors are required to indicate whether, among other things, an officer should be retrained and/or disciplined as a result of their use of force. (R-14 CCPD Administrative Review Form by Sgt. O. Carr.) The form Carr submitted did not recommend discipline or training for Romantino. (*Ibid.*) Carr admitted that he considered sending Romantino for training following the incident; however, he stated that he decided to change it after consulting with Fegley. (Tr. at 40–42.)

Fegley testified he did not actually see Carr's Administrative Review—Use-of-Force report, and that he did not remember the specifics of the conversation, but that he told Sergeant Carr that he did not really see the incident because it happened behind him and he did not really know what happened. (Tr. at 41–42.) Fegley testified that Carr did not speak with him about completing any forms, nor did he show him a form or ask if he should change an answer. (Tr. at 106.)

In regard to the allegation that Fegley lied during the internal investigation, Fegley responded that he did not lie to Internal Affairs or attempt to be evasive. Rather, he stated that if he is not 100 percent certain of something, he cannot say he is 100 percent certain of that answer. (Tr. at 112–13.)

Sergeant Fegley's Body Camera

Fegley and Carr pulled up to the scene, and Fegley requested another description of the “guy with the gun,” to which the person on the other end of the radio at Central Communications stated: “Hispanic male, red shirt, black jeans, red hat, passenger seat.” (19:07:42–52.) Fegley got out of the vehicle and called out “yo” toward E.M. and A.B., who were walking away from the liquor store. (19:08:49–55.) E.M. matched the description. Fegley commanded A.B.: “Police! Stop! Get your hands out your pocket . . . step over here,

put your hands at the wall, spread your feet, put your hands on the back of your head . . . interlock your fingers.” (19:09:03–27.) A.B. stated, “I can’t, my hands hurt,” to which Fegley repeated, “interlock your fingers.” (19:09:22.) Officer Romantino was heard in the background repeatedly stating, “put your hands behind your back!” (19:09:25–39.) Carr assisted Fegley in patting down and handcuffing A.B. (19:09:25.)

Romantino began punching E.M., which is audible on Fegley’s body camera footage. (19:09:30.) E.M. cried out for several minutes in response to the use of force and can be heard stating: “oh s***, oh s***,” “oh s***, bro,” “you hit me like that, bro?” “you hit me like that bro?” “Didn’t have to hit me like that, bro” “you didn’t have to hit me like that, bro” “oh my God, bro” “oh my God, bro,” “oh my God, bro” “you hit me like that, bro?” “you hit me like that, bro?” (19:09:39.)

A.B. asked, “what did I do?” to which Fegley responded that a call was received involving an individual with a gun. A.B. stated that he just came from the house. Fegley asked what he was doing with E.M. Although Fegley stated that he saw A.B. with E.M., A.B. said that he wasn’t with him, that he has nothing on him, and that he just came to the liquor store. (19:10:03.) During this time, E.M. was still crying out, and stated, “oh my God, bro” “what do you want me to do, bro?” “damn bro,” “damn bro” “you f***** me up,” “you *****.” (19:10:15.)

Fegley continued questioning A.B. with two other officers present. (19:11:02–25.) Sergeant Carr looked back toward what was happening with E.M. Sergeant Fegley began to walk toward the other cars, speaking with officers about the incident and checking vehicles and around the area with flashlights. (19:11:26.)

Romantino approached Fegley and stated, “I think my sixty⁵ is requesting to go to the hospital after I roughed his dome up a little bit.” (19:14:30.) Fegley directed Romantino to go meet Officer Sanchez at the hospital, and used his radio to direct E.M.’s transport to Virtua Hospital. (19:14:39.) Fegley then continued speaking with officers, searching in a car with a flashlight, and searching the scene. Fegley responded to a question on the radio and stated

⁵ “Sixty” refers to E.M.

that the man requesting to go to the hospital was the Hispanic male wearing the red shirt who “matched the description and failed to comply.” (19:16:13.)

FINDINGS OF FACT

Reviewing the footage from the body-worn cameras at the time of the event, including Sergeant Fegley’s video, it is clear that discrepancies exist between Fegley’s testimony and the body-camera footage. In general, much of Fegley’s testimony is contradicted by the body-worn-camera footage of the February 22, 2018, incident, the statements of other witnesses with corroborated information, and the results of the Internal Affairs investigation. Accordingly, I **FIND** that Fegley was not entirely forthright or credible in his testimony, and in particular I **FIND** that he misrepresented his knowledge of the February 22, 2018, event, given the inconsistencies between the video footage and portions of his testimony. Moreover, I **FIND** that his short and undescriptive or otherwise lacking responses throughout the CCPD Internal Affairs investigation and throughout his testimony represent an attempt to evade particular questions regarding his conduct that violated certain rules, regulations, and policies.

In addition to the previously findings of fact, based on the testimony provided, and my assessment of its credibility, together with the documents submitted and body-camera videos, and my assessment of their sufficiency, I **FIND** the following additional **FACTS**:

Incident on February 22, 2018⁶

This incident involved an anonymous call of an armed suspect with a gun loitering by a vehicle parked outside Fairview Liquors near the corner of Collings and New Hampshire Avenues in Camden. (Testimony D. Crawford, Tr. at 15–16.) The call came in the evening of February 22, 2018. The armed suspect was described as a male wearing black pants and a red hat and jacket, loitering near a blue Dodge Durango parked outside the store with

⁶ The body-worn cameras of the various officers and sergeants are not calibrated, and the times are not necessarily correct.

another male. (R-25 Body-Worn Camera of Sergeant Carr at 19:06:02.) Sergeants Andrew Fegley and Odisse Carr were on duty and responded to the scene in the same vehicle, and they spotted a vehicle matching the description from the call parked outside the store.

The officers observed two males at the scene, one matching the description of the armed man described in the call. (R-25 Body-Worn Camera of Sergeant Carr at 19:05:56.) Both officers exited the patrol vehicle and engaged the two males, who were then moving away from the arriving police officers. (Id. at 19:06:02.) Carr engaged the male matching the description from the call, E.M. (E.M.), and Fegley engaged the other male, later identified as A.B. (A.B.). (R-25 Body-Worn Camera of Sergeant Carr at 19:06:10; R-26 Body-Worn Camera of Sergeant Fegley at 19:09:04.)

Carr stopped E.M. and had his weapon drawn. (R-25 Body-Worn Camera of Sergeant Carr, 19:06:12.) Carr was giving E.M. verbal commands directing him to “stop moving” and “put [his] hands up.” (Ibid.) E.M. had his hands at chest level and stated, “my hands is up m*****.” (Id. at 19:06:20.) E.M. had a lit cigarette in his hands, but was complying with directives.⁷ (Ibid.) Within seconds, multiple other officers arrived on the scene. (R-23 Body-Worn Camera of Officer Gallagher; R-24 Body-Worn Camera of Officer Agus.)

Officer Anthony Romantino (Romantino) immediately grabbed hold of E.M. and took him to the ground. (R-25 Body-Worn Camera of Sergeant Carr at 19:06:22; R-23 Body-Worn Camera of Sergeant Gallagher at 19:16:44.) Officers Agus (Agus) and Gallagher (Gallagher) began to assist Romantino with E.M., and Carr went to assist Fegley, who handcuffed A.B. (R-25 Body-Worn Camera of Sergeant Carr at 19:06:28.) Officers yelled verbal demands to E.M. to “put your hands behind your back!” (R-26 Body-Worn Camera of Sergeant Fegley at 19:09:25.)

⁷ During the Internal Affairs Investigation, Detective Crawford interviewed Lieutenant Lutz, the Commander of the Professional Development and Training Unit of the Camden County Police Department, who stated that based upon the footage of the incident, E.M. appeared to be complying with directives, as he had his hands up as the officers were giving verbal commands. (A-7.)

While Carr and Fegley had their backs turned on E.M., Romantino punched E.M. with twelve punches to the back of the head. (R-24 Body-Worn Camera of Officer Agus at 19:08:27; R-23 Body-Worn Camera of Officer Gallagher at 09:16:50; R-22 Body-Worn Camera of Officer Surrency 19:08:05.) During this time, Fegley looked past his right shoulder as the strikes occurred. (R-22 Body-Worn Camera of Officer Surrency, 19:08:03.) E.M. cried out, making several statements, such as: "you didn't have to hit me like that, bro . . . why'd you hit me like that, bro?" (R-22 through R-26.)

Fegley and Carr left the scene and responded to the hospital where E.M. was taken after he requested to go to the hospital following the strikes. (Testimony D. Crawford, Tr. at 78:4–17.) E.M. complained to Fegley and Carr regarding the incident, and that he was struck in the head for no reason. (Tr. at 105.) Fegley testified that he did not perceive E.M.'s complaints to warrant an Internal Affairs referral. (Ibid.)

If an officer observes a situation of excessive force, the officer is supposed to stop the force from occurring.⁸ (Tr. at 73:17–20.) If someone complains of force, procedure requires that a review referral be generated regarding the officer's use of excessive force. (Testimony A. Ibarrondo, Tr. at 78:12–79:4; R-2, Section 3:1.29.⁹) Neither Fegley nor Carr documented E.M.'s complaint or submitted E.M.'s complaint to Internal Affairs. (Testimony A. Ibarrondo, Tr. at 78:10–79:19.) Carr submitted an Administrative Review Form regarding the use of force on scene. (R-14.) E.M. went to the Police Administration building shortly after being discharged from the hospital and complained of the incident, which prompted an Internal Affairs investigation. (Testimony A. Ibarrondo, Tr. at 71:15–25.)

⁸ In his interview with Internal Affairs, Lieutenant Lutz stated that pursuant to police training, if a suspect is complying with an officer's commands, the officer should exhaust all other means before using excessive force, which includes providing adequate time to comply with those commands. (A-7). Lieutenant Lutz indicated that Romantino's actions were inconsistent with his training. (A-7.)

⁹ Section 3:1.29 of CCPD Rules and Regulations requires that any employee who knows of "other employees violating laws, ordinances, or rules and regulations of the department . . . shall report same in writing to the Chief of Police through the chain of command or notify a member of Internal Affairs" (R-2.)

Fegley's Neglect of Employment Duties

During the Internal Affairs investigation, Fegley was asked about his arrival on the scene of the incident. Officers in the city are deployed as individual units, as is the case with supervising sergeants. (Testimony D. Crawford, Tr. at 15.) Each district commander is responsible to supervise approximately ten patrol officers during a given shift in their respective district (Testimony A. Fegley, Tr. at 93:22–25; Testimony A. Ibarrodo, Tr. at 76:23–78:3.) Sergeants also perform crime-condition checks to assist with the Real Time Tactical Operation Intelligence Center (RTTOIC) with information collection to adjust the deployment plan on any given day. (Testimony A. Ibarrodo, Tr. at 72:22–73:16 and 76:3–78:3.)

On February 22, 2018, Fegley was assigned another vehicle and was commanding a separate district from Carr; however, the sergeants responded to the call together. It became known that Fegley and Carr spent a number of their shifts riding in Carr's vehicle, even though Fegley was assigned his own vehicle for those shifts. (R-13.¹⁰) Fegley's unused vehicle on those occasions placed him at the Police Administration Building during the entirety of each shift he rode with Carr. (R-9a at 45.) The two would then hop between districts rather than remain in their assigned district.

The County assigns a vehicle to each officer at the commencement of each shift, and each vehicle has a GPS navigator on it. (See Crawford Testimony, Tr. at 25.) The County can generate an AVL (Automatic Vehicle Locator) report, which will show where a vehicle was at any particular time the officer was working. (Ibid.) The County demonstrated that there were thirteen occasions on which Sergeant Fegley's assigned vehicle did not move because he was riding with Sergeant Carr. (R-7.)

The Kronos payroll system requires all personnel to clock in and out for each shift. The investigation revealed that Fegley largely ignored this obligation almost entirely during the period of the investigation, beginning in 2018 through the spring. Indeed, there were discrepancies between lineups and the Kronos system. (Tr. at 29.) Fegley acknowledged that he did not clock in the majority of the time since becoming a sergeant.

¹⁰ The County documented that the sergeants had thirteen tours together.

Moreover, appellant also acknowledged that he did not record performing his vehicle inspections as he should have, and many were not recorded online or performed with a body-worn camera.¹¹

Appellant also acknowledged that he failed to follow the policy concerning the use of Department-issued cell phones. Indeed, Fegley failed to carry his Department-issued cell phone the majority of the time since becoming a sergeant.¹² The policy with regards to the cell phone has to do with the downloading of the body-worn-camera video. (Crawford Testimony, Tr. at 22; R-5.) Cell phones are also used by the Department to geo-locate officers in the field. (Crawford Testimony, Tr. at 23.)

LEGAL ANALYSIS AND CONCLUSIONS

A civil service employee who commits a wrongful act related to their employment may be subject to major discipline, which may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2. In an appeal of a disciplinary action the burden of proof is on the appointing authority to show that the action taken was justified. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). The respondent must establish by a preponderance of the competent, relevant, and credible evidence that the employee is guilty of the alleged charges. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be sufficient to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958).

An appointing authority may discipline an employee for, among other causes, incompetency, inefficiency, or failure to perform duties, neglect of duty, and conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a).

¹¹ The County documented that there were no documented vehicle inspections in at least forty-eight tours of duty. (R-7, CCPD Body-Worn Camera Special Order.)

¹² Respondent reported that Fegley failed to carry his Department-issued cell phone during at least forty-three tours of duty. (R-7.)

In this matter, eleven charges were sustained against Fegley in the Final Notice of Disciplinary Action: neglect of duty; conduct unbecoming a public employee; incompetency, inefficiency, or failure to perform duties; other sufficient cause; truthfulness; withholding information, department investigation: testifying; supervisory; performance of duty; and prohibited activity on duty.

There are two large components of the charges: (1) the incident on February 22, 2018, in which it is disputed what Fegley saw/heard as well as what he was responsible for handling; and (2) Fegley's alleged failure to follow protocols and rules in his position both prior to and following the incident. Much of the failure to follow rules is not contested, as Fegley acknowledges failure to comport with several of the departmental procedures.

As a threshold issue, appellant argues that he was not sufficiently on notice for the twenty charges listed in the PNDA, given the small paragraph provided regarding the incidents giving rise to the charges. Appellant cites to West York v. Bock, 38 N.J. 500, 522 (1962), where the Court stated, "an employee cannot legally be tried or found guilty on charges of which he has not been given plain notice by the appointing authority." Before the OAL, however, are eleven charges from the FNDA. Although the FNDA does not detail all of the factual allegations that gave rise to said charges, the description and the charges themselves sufficiently placed Fegley on notice as to Fegley's charges.

Furthermore, and as detailed below, I **CONCLUDE** that the County has proved all charges by a preponderance of the evidence.

Conduct Unbecoming a Public Employee

Conduct unbecoming a public employee is an elastic phrase, which encompasses conduct that "adversely affects the morale or efficiency of the bureau . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operations of municipal services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (internal quotations omitted); 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)). Conduct unbecoming may include behavior that is improper under the circumstances; it may be less serious than a violation of the law, but inappropriate on the part of a public employee.

Appellant’s status as a sergeant in New Jersey subjects him to a higher standard of conduct than ordinary public employees. Law-enforcement officers represent “law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments. Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

Fegley, as a supervisor, had a duty to respond to the incident in a proactive manner. The body-worn cameras demonstrate that Fegley likely had knowledge that E.M. was hit during the incident. Appellant argues that he could not have seen what occurred behind him, given that he merely looked over his right shoulder; however, even assuming that he could not possibly have seen the occurrence, it is highly unlikely that Fegley did not hear the strikes or the loud responsive statements from E.M. thereafter. However, Fegley has denied knowledge of the force used by the other officer, beyond knowing that there was a “scuffle” behind him. Here, even if Fegley did not see E.M. being hit when he looked over his shoulder—when he alleges he only saw “the cars” and “the road”—Fegley’s body-camera audio picks up noises of the incident, including strikes, as well as E.M.’s many statements, including “you hit me,” “you didn’t have to hit me like that,” and “you f***** me up.”

Even assuming that Fegley did not initially see any of the force as it happened or hear enough to know what was going on, Fegley should have determined what was going on behind him. Although Fegley said that he responded as merely a “police officer” because

Romantino was not his direct subordinate, Fegley was a supervisor on the scene. Fegley also alluded to being preoccupied trying to get the suspect he was focused on, A.B., under control. However, the camera footage depicts that for much of the time Fegley had two other officers right nearby for support, and that Fegley patted down A.B., cuffed him, and found no weapon. Although Fegley stated that A.B. initially did not interlock his fingers as directed, the video indicates that A.B. stated that his hands were hurt, but then proceeded to interlock his fingers, in compliance with Fegley's directives. Once he had his suspect under control, Fegley could have looked at or inquired into what was happening with Romantino and E.M., not only for his own safety but also for that of others on the scene.

Directly following the incident, Fegley made another mistake by failing to document or report the incident. After Fegley was engaged with A.B. and had gone toward the cars to search for the firearm, Fegley indicated over the radio that E.M. was "noncompliant," despite Fegley's assertion that he did not see what happened to E.M. behind him. Even assuming that Fegley did not know what was going on behind him beyond hearing a "scuffle," he had two opportunities to be sure about what had taken place: first, when Romantino came up to him on scene and stated that E.M. had requested to go to the hospital because Romantino had "roughed up his dome," and, second, at the hospital that evening when E.M. stated to Fegley and Carr that he was "hit for no reason." In both of those scenarios, action should have been taken as a supervisor; however, Fegley took no action in this regard. Following the statement that Romantino "roughed up [E.M.'s] dome," Fegley should have made further inquiries.

In addition, following E.M.'s statement at the hospital that he was "hit for no reason," E.M.'s complaint should have been documented and Internal Affairs should have been alerted to a report of excessive force. Despite E.M.'s possible intoxication, the complaint was clear.

Carr submitted an administrative form which did not recommend training or discipline for Romantino, and Fegley testified that he did not express an opinion to Carr as to whether he should recommend Romantino for discipline or training, and rather indicated to Carr that he did not know what occurred. Fegley's testimony has previously been found to be elusive in nature and to generally lack credibility. However, even if Fegley is speaking credibly, the

fact remains that neither sergeant either documented or reported the incident, in contravention of CCPD protocol.

Accordingly, I **CONCLUDE** that Fegley's actions violated N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming.

Neglect of Duty, Performance of Duty, and Prohibited Activity on Duty

The appointing authority has sustained charges of incompetency, inefficiency, or failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1), and neglect of duty, N.J.A.C. 4A:2-2.3(a)(7). While failure to perform duties and neglect of duty are separate bases for discipline, these terms are essentially interchangeable. To the extent that appellant is charged with violations of Departmental policies, procedures and rules of conduct which address these concepts, consideration of such violation will be addressed in concert with the current analysis.

Incompetency, inefficiency or failure to perform duties has been held to consist of the failure of an employee to adhere to proper procedures. See Okosa v. Union County Human Serv., 2000 N.J. AGEN LEXIS 483 (July 20, 2000), modified, Merit Sys. Bd.¹³ (September 15, 2000), <http://njlaw.rutgers.edu/collections/oal/>.

Neglect of duty is predicated on an employee's omission to perform, or failure to perform or discharge, a duty required by the employee's position and includes official misconduct or misdoing, along with negligence. Clyburn v. Twp. of Irvington, 2001 N.J. AGEN LEXIS 654 (September 10, 2001), adopted, Merit Sys. Bd.¹⁴ (December 27, 2001), <http://njlaw.rutgers.edu/collections/oal/>; see Steinel v. Jersey City, 193 N.J. Super. 629 (App. Div. 1984), aff'd on other grounds, 99 N.J. 1 (1985).

¹³ See footnote 2.

¹⁴ See footnote 2.

CCPD Neglect of Duty 3:1.6 states “[e]mployees shall not commit any act, nor shall they be guilty of any omission that constitutes neglect of duty as defined under these Rules and Regulations and recognized by New Jersey law.” (R-2 at 20.)

CCPD 3:1.7 requires “[a]ll employees [to] perform their duties as required or directed by law, department rule and regulation, policy or order, or by order of a supervisor. All lawful duties required by competent authority shall be performed promptly as directed, notwithstanding the general assignment of duties and responsibilities.” (R-2 at 20.)

CCPD 3:2.1K states that employees are prohibited from engaging in “[a]ny other activity [aside from those noted already noted in 3:2.1a-j] deemed inappropriate by the Chief of Police.” (R-2 at 25.)

Fegley failed to comply with several procedures required at his job, including the following (R-3):

1. Fegley failed to document vehicle inspections on at least forty-eight tours of duty;
2. Fegley did not clock in for work about 95 percent of the time, since about the time he became a sergeant;
3. Fegley did not carry his cell phone during at least forty-three tours of duty;
4. Fegley regularly rode together with Carr without authorization, and thus was outside of the district and vehicle he was assigned to; and
5. Personnel lineups indicate that Sergeant Fegley reported for work at 1600 hours, whereas weekly timesheets indicate that he came into work at 1500 hours, thus the timesheets were not updated in the correct system.

In addition to his procedural shortcomings, Fegley did not adequately address the force used by another officer on February 22, 2018. Fegley failed to inquire into or address

Officer Romantino's behavior during or following the incident. Fegley's own body-camera footage demonstrates that Officer Romantino's strikes of E.M. were audible, as were E.M.'s complaints regarding the incident, and that Fegley did look over his shoulder toward the two men.

Fegley's assertion that he did not have knowledge of the striking of E.M. while it was happening, given that his own body camera picked up the sounds, strains credulity. Fegley looked over his shoulder in the relevant time frame. Even assuming that Fegley looked behind his right shoulder and did not see the incident, the striking was audible, along with the cries such as "you hit me like that," "you f***** me up," etc., that were occurring behind Fegley.

Even assuming that Fegley failed to see, or hear, the incident as it occurred, Romantino stated that he "roughed up [E.M.'s] dome," and that E.M. requested to go to the hospital, which is another point at which Fegley should have inquired into what had occurred.

Thereafter, Fegley failed to make an Internal Affairs complaint after E.M. complained at Virtua Hospital of being hit for no reason. Fegley testified that E.M. appeared intoxicated and jumped around in terms of the topics he spoke of; however, there is no contest that the statement that he was "hit in the head for no reason" was clearly understood. Fegley should have reported the complaint of force to Internal Affairs pursuant to policy.

Regarding vehicle inspections, respondent documents that Fegley had not documented vehicle inspections on at least forty-eight tours of duty. An entry is supposed to be made for each vehicle pursuant to policy; however, Fegley was not making an entry for each vehicle inspection. Fegley also failed to activate his body-worn camera to document many inspections. Fegley conceded he was not doing the inspections as he should have been.

In addition, Fegley regularly failed to have his Department-issued cell phone on hand, and he indicated that he had no good reason for this failure. Respondent found that Fegley did not have activity on his cell phone for at least forty-three tours of duty. One purpose of the Department cell phone is to tag body-worn-camera photos. Although this is not the only way to upload body-worn-camera footage, this is the technique in the CCPD policies, and

allows the footage to be quickly input so that it can be reviewed by the body-worn-camera team. Even though Fegley did eventually upload the body-camera recordings, with their case number, location, and type of incident, the following day, this does not minimize that he did not follow procedure. Further, officers cell phones are utilized for other purposes aside from the body-camera uploads.

The majority of the time, Fegley did not swipe in or out of work. Fegley did not clock into work most of the time since he became a sergeant. Fegley indicated that he did not have a reason for failing to clock in. Moreover, Fegley admitted not keeping District reports accurate (lineups did not match the Kronos system). Fegley testified that this was an outdated system, and that personnel of the County were responsible for this. However, this is still a failure to follow reporting protocols that allow the County to know which officers are on duty.

Fegley did not live up to his duties as a supervisor. Sergeants are assigned particular districts, but Fegley spent time patrolling outside of his district riding with Carr, who was assigned his own separate district to patrol. As part of this scheme, Carr and Fegley rode together to one district, and then to another, on thirteen such occasions. Sergeants are assigned particular vehicles and are assigned to a particular district, and failing to be in the assigned vehicle in the assigned district means the sergeant cannot effectively supervise the area that the County believes the sergeant is covering. Fegley stated that he and Carr believed that they were being effective at the time; however, in hindsight he concedes that his behavior did not make him effective as a supervisor. Not only does this create issues in failing to patrol one's own district and subordinate officers, but it also creates issues for the CCPD, and particularly the RTTOIC, who can utilize the GPS of the vehicle to locate an officer for work purposes.

Taken as a whole, Fegley failed to follow various CCPD rules, regulations, and policies, some of which he states he had no excuse for. In this regard, Fegley's acts and omissions constitute a neglect of duty. Thus, I **CONCLUDE** that Fegley knowingly violated the CCPD Rules and Regulations, thereby impacting his performance of duty as a supervisor of the CCPD. I **CONCLUDE** that respondent has met its burden in demonstrating that Fegley is guilty of the following charges: neglect of duty, N.J.A.C. 4A:2-2.3(a)(7) and CCPD 3:1.6,

incompetency, inefficiency, or failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1) and CCPS 3:1.7, and prohibited activity on duty, CCPD 3:2.1K.

Other Sufficient Cause

The appellant was also charged with violating N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. This charge generally involves violations of the appointing authority's regulations, rules, general orders, or policies. There have been cases where the charge of other sufficient cause has been dismissed when the "[r]espondent has not given any substance to the allegation." Simmons v. Newark, 2006 N.J. AGEN LEXIS 68 (February 22, 2006), adopted, Comm'r (April 27, 2006), <http://njlaw.rutgers.edu/collections/oal/>.

Fegley's conduct violated CCPD regulations, rules, and policies, as described in detail below:

Supervisors

CCPD Rules and Regulations 2:1.4D states, in pertinent part:

Supervisors are members holding the rank of Sergeant. Supervisors are responsible and accountable during an assigned tour of duty for the efficient, effective and timely operation of their unit/team/function including all assigned personnel and areas of responsibility and for the coordination of support services, police crime prevention and emergency response operations. Supervisors shall:

1. Maintain a thorough situational awareness of overall community service and public safety conditions within the scope of their assigned operating environment;
2. Conduct routine inspections to verify that their unit/team/function remains at a high state of operational readiness and equipment and technology systems are functioning properly; ensure that professional standards of workmanship and performance levels are consistent with the department's goals and their unit/team functional objectives; responsible for maintaining good order and discipline among their subordinate personnel;

. . . .

7. Monitor . . . levels of criminal activity in real time;
8. Take timely and appropriate actions to align existing resources with ongoing and shifting crime trends, neighborhood quality of life problems and public safety needs, ensuring that existing resources efficiently and effectively shape public safety outcomes;
9. Coordinate and direct existing resources to handle incidents as they occur in a timely and effective manner;
10. Direct, evaluate, guide and train subordinates to increase effectiveness in their present and future work assignments;
11. Ensure all personnel comply with established laws, rules, regulations, policies and procedures. **Take and document appropriate corrective action in a timely manner regardless if the violating employee is a direct subordinate;**
12. Ensure all department facilities, equipment and supplies and materials assigned to his/her unit/team/function are correctly used, maintained and presentable;

[R-2 at 16–17, emphasis added.]

As stated above, Fegley and Carr rode together without authorization, and, as such, Fegley acknowledged that they were not being effective as supervisors. In addition, Fegley had been assigned his own vehicle, and despite that assignment, rode with Carr instead. Indeed, Fegley would not be able to supervise what was happening in his assigned district if he were merely riding from one district to another. Furthermore, Fegley would not be able to be located via AVL if he were not in his own vehicle.

Regarding the incident on February 22, 2018, Fegley neglected to inquire into the force Romantino used towards E.M., or otherwise document the force following the incident. Although Fegley stated that Romantino was not his direct subordinate, this does not minimize his responsibility to take some form of action. Fegley knew what occurred. Even if Fegley

did not see what occurred, and rather saw only the road and the cars when he looked over his shoulder during the incident, the strikes against E.M. were audible. Moreover, Fegley had assistance from two other officers for large portions of his encounter with A.B., who was mostly compliant and ultimately found to be unarmed.

Even assuming that Fegley was so engaged with his suspect that he did not know of the situation occurring behind him, Fegley had several other chances to inquire as to what had occurred: when Fegley was no longer engaged with A.B., Romantino told him that he “roughed up [E.M.’s] dome”; E.M. requested to go to the hospital; and once E.M. was at the hospital, he stated that he was hit in the head for no reason. Fegley should have documented and reported E.M.’s complaint to Internal Affairs.

Therefore, due to these failings as a supervisor, I **CONCLUDE** that respondent has met its burden in demonstrating violations of CCPD’s rules, regulations, and policies regarding supervisors.

Truthfulness, Withholding Information, and Department Investigation— Testifying

CCPD 3:5.7 states: “[e]mployees shall not knowingly lie, give misleading information, fail to disclose information or falsify any oral or written communication.” (R-2 at 35.) CCPD 3:1.27 states: “[e]mployees shall not, at any time, withhold any information concerning suspected criminal activity or other information concerning police business, which is connected to the Camden County Police Department.” (R-22 at 22.) CCPD 3:8.3 states: “[e]mployees are required to answer questions by or render material and relevant statements to a competent authority in a departmental investigation when so directed. Employees shall be advised of and permitted to invoke all applicable constitutional and statutory rights.” (R-2 at 39.)

A review of the departmental-investigation testimony indicates that Fegley was not entirely candid or forthright in answering the questions asked of him. Detective Crawford was asked whether Fegley provided responsive answers when he was confronted with Automatic Vehicle Locator records. Crawford testified that Fegley would give responses like,

“most likely, I was with Sergeant Carr” or words to that effect; however, he would not really commit to the answer. (Tr. at 28.)

Fegley admitted that he was not assigned to be partnered with another sergeant, and when asked if he rode with someone anyway, he stated “no.” He then stated that he did ride with another sergeant on “rare occasions.” As the interview continued, it became clear that Fegley had ridden with Carr on several occasions. On cross-examination at the hearing, Fegley was asked why he gave the initial response of “no,” and later conceded that he had ridden with Carr on several occasions. He stated that he “did not understand the question at the time.” In this instance, Fegley initially withheld that he rode with Carr. The questioning was clear.

Fegley also withheld information as to what he knew occurred at the scene of the incident on February 22, 2018. Fegley insisted both during the investigation interviews and during the hearing that he did not see Romantino strike E.M. or hear commands given to E.M. (R-8 at 35.) Captain Ibarondo believes Fegley was untruthful when he stated that he did not see the incident and that he somehow looked at the cars and roadways behind the incident itself. Indeed, Fegley’s own body-camera audio picks up striking that occurred, and another body camera makes clear that he looked over his shoulder.

Given the video footage and audio of his body camera, where one can hear strikes against E.M. and E.M.’s loud and numerous statements that he was hit, as well as Fegley’s position during the incident and the proximity of Fegley to the E.M. scene, Fegley’s responses regarding his knowledge of what was going on between Romantino and E.M. were inadequate and incredible.

Fegley also stated that he did not hear Romantino state to him that he “roughed up [E.M.’s] dome.” This is also highly unlikely, as his body-camera audio clearly picks up Romantino’s statement. Indeed, at this time, Fegley was not engaged with a suspect; rather, he was looking for a firearm on the scene and amongst several other officers on the scene.

Finally, Fegley did not report the use-of-force information to Internal Affairs. This situation was severe. E.M. was hit in the head, medical attention was sought, and E.M.

himself stated to Fegley that he was “hit in the head for no reason.” When questioned about why Fegley failed to take action about E.M.’s complaint, Fegley stated that he “wasn’t getting the vibe” that that’s what E.M. really wanted. Although Fegley referenced E.M.’s intoxication and that he was talking about other topics at the hospital as well, this does not take away from the fact that Fegley had multiple opportunities, including at the time of this clear complaint, to document and report the incident.

I **CONCLUDE** that the County has demonstrated by a preponderance of the evidence that Fegley failed to disclose information about his job activity and performance, and that Fegley violated rules, regulations, and policies regarding truthfulness, withholding Information, and Department Investigation—testifying

As described above, the record reflects and it has been **CONCLUDED** that Fegley’s conduct violated CCPD regulations, rules, and policies, as described in detail below. Therefore, I **CONCLUDE** that Fegley’s actions violated N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.

PENALTY

The final issue to be decided in this matter is whether the penalty imposed by the appointing authority was justified. To determine the appropriate level of discipline requires a de novo review of the disciplinary action to determine if the punishment is “so disproportionate to the offense, in light of all the circumstances, as to be shocking to one’s sense of fairness.” In re Polk, 90 N.J. 550, 578 (1982) (internal quotes omitted).

New Jersey has an established system of progressive discipline to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is related to an employee’s past record, and looks at the nature, number, and proximity of prior disciplinary infractions to determine the reasonableness of the penalty imposed. See In re Disciplinary Procedures of Phillips, 117 N.J. 567, 581 (citing West New York v. Bock, 38 N.J. 500, 523 (1962)). An employee’s past record may not be used to prove the present charges, but it is to be considered when determining the appropriate penalty for the current offense. Ibid. An

employee's past record may include reasonably recent promotions and commendations, as well as both formal and informal disciplinary actions. Bock, 38 N.J. at 524.

However, the principle of progressive discipline is not a "fixed and immutable rule to be followed without question"; rather, it is recognized that "some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." In re Carter, 191 N.J. 474, 484 (2007). Progressive discipline may be bypassed when the misconduct is severe, when it renders the employee unsuitable for continuation in the position, or when the application of progressive discipline would be contrary to the public interest—such as when the position involves public safety and the misconduct causes risk of harm to persons or property. In re Herrmann, 192 N.J. 19, 33 (2007).

Indeed, case law regarding law-enforcement officers has consistently viewed them as "special" public employees and the standards governing their behavior and informing their discipline are strictly applied. In re Harkcom, 2020 N.J. AGEN LEXIS 195 at *40 (citing Moorestown v. Armstrong, 89 N.J. Super. at 566; In re Phillips, 117 N.J. 567, 577 (1990)); see also In re Emmons, 63 N.J. Super. at 141–42 ("An officer cannot complain that he is being held up as a model of proper conduct; it is one of the obligations he undertakes upon voluntary entry into the public service. His obligations are greater if he desires to maintain his position as police officer."). In matters involving police officers, the courts have found the penalty of dismissal appropriate for "infractions that went to the heart of the officer's ability to be trusted to function appropriately in his position." In re Herrmann, 192 N.J. at 35; see Cosme v. E. Newark Twp. Comm., 304 N.J. Super. 191, 206 (App. Div. 1997), certif. denied, 156 N.J. 381 (1998). In addition, "[a]cts that subvert good order and discipline in a police department" have been deemed to constitute conduct so unbecoming a police officer as to warrant dismissal. In re Herrmann, 192 N.J. at 35 .

A finding that a police officer has been untruthful carries severe sanctions up to and including removal, although it is not a guarantee of removal. See, e.g., In re Voci, 2012 N.J. CSC LEXIS 1091 (2012) (lying on two occasions warranted a 180-day suspension); In re Truex, No. A-3720-03T1 at *4 (App. Div. June 20, 2005), certif. denied, 185 N.J. 267 (2005) (Board upheld removal of police officer who provided untruthful

statements in an investigation, as “untruthfulness undermines the public’s trust and cannot be tolerated”).

In this matter, appellant has been removed from his position, and the following charges were sustained in the Final Notice Disciplinary Action: neglect of duty; conduct unbecoming a public employee; incompetency, inefficiency or failure to perform duties; other sufficient cause; truthfulness; withholding information; department investigation—testifying; supervisory; performance of duty; and prohibited activity on duty. Additionally, the record discloses that appellant does not have an unblemished disciplinary record. Past infractions include, inter alia, failure to attend grand juries and an improper deployment of a CED (taser). Prior to this case, the below disciplinary actions were recorded (R-20):

1. In 2013, Fegley received an oral reprimand for driving his police vehicle through a large puddle of water and causing damage to the vehicle;
2. In 2013, Fegley was issued an oral reprimand for failure to appear at a grand jury;
3. In 2014, Fegley was issued a Performance Notice marked “training” for failing to properly investigate a missing persons incident;
4. In 2015, Fegley received immediate remedial training on Conductive Energy Device (CED) for the use of CED for someone who was passively resisting;
5. In 2014, Fegley was issued an oral reprimand for failure to appear at a grand jury;
6. In 2015, Fegley received a Written Reprimand for improperly towing a registered vehicle;
7. In 2015, Fegley was issued a written reprimand for failing to attend Grand Jury;

8. In 2016, Fegley was served with the Preliminary and Final Notice of Disciplinary Action and fined three days for failure to attend Grand Jury;

9. In 2018, Fegley was issued a Performance Notice for Training for failing to display good ethical conduct, respect and courtesy to his superior Officer/Commander Lt. Kersey;

10. In 2018, Fegley was issued a Performance Notice for Training for fueling his vehicle and pulling from the gas pump with the nozzle still attached to the vehicle; and

11. In 2018, Fegley was approached by a male who provided him with narcotic sales information and he failed to activate his body-worn camera.

An analysis of Fegley's disciplinary history beyond a mere description is not necessary, as removal is the proper punishment based on the charges sustained in this disciplinary action. Fegley failed in his duties as a sergeant in several regards. As described above, Fegley did not properly respond to Romantino's use of force against E.M. on February 22, 2018. This failure to respond to or document the event touches on the important task of ensuring public safety, and constitutes a disregard for the CCPD rules, regulations, and policies. Moreover, Fegley was not candid in his interviews following the event. Such a lack of truthfulness belies the trust the public should have in a police officer, and especially a supervisor.

Additionally, Fegley violated a multitude of other rules and procedures of the CCPD, including a failure to clock in, a failure to keep his departmental cell phone, a failure to update a Kronos system with timesheet information, and a failure to use his assigned vehicle or properly conduct AVL checks. Such disregard for the rules, regulations, and policies ultimately warrants his removal from the police department.

ORDER

I **ORDER** that the charges brought against appellant by the Camden County Police Department are hereby **SUSTAINED**.

I further **ORDER** that appellant's removal from his employment as a sergeant with the Camden County Police Department is **SUSTAINED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 18, 2022

DATE


ELIA A. PELIOS, ALJ

Date Received at Agency:

April 18, 2022

Date Mailed to Parties:

April 18, 2022

EAP/dw

APPENDIX

WITNESSES

For Appellant:

Andrew Fegley

For Respondent:

Daniel Crawford

Alexander Ibarondo

EXHIBITS

For Appellant:

- A-1 Audio Statement of Sergeant Odisse Carr dated May 10, 2018
- A-2 Transcript of Audio Statement of Sergeant Odisse Carr on May 10, 2018
- A-3 Audio Statement of Sergeant Odisse Carr dated May 15, 2018
- A-4 Transcript of Audio Statement of Sergeant Odisse Carr on May 15, 2018
- A-5 Audio Statement of Sergeant Odisse Carr dated May 29, 2018
- A-6 Transcript of Audio Statement of Sergeant Odisse Carr on May 29, 2018
- A-7 Video Statement of Lieutenant Kevin Lutz dated July 20, 2018

For Respondent:

- R-1 PNDA dated 7/26/18
- R-2 Camden County Police Department Rules and Regulations (revised 7/19/13)
- R-3 Memo re: Vehicle Inspection Process dated 9/27/17
- R-4 Memo re: Kronos swipe dated 2/1/16

- R-5 Camden County Police Department Body-Worn Camera Policy (revised 11/7/17)
- R-6 Camden County Police Department Use-of-Force Policy (revised 12/22/16)
- R-7 Investigative Memorandum dated 7/25/18 by Detective Daniel Crawford
- R-8 Audio of Fegley interview dated 5/14/18
- R-8a Fegley Statement Listening Aid dated 5/14/18
- R-9 Audio of Fegley interview dated 6/25/18
- R-9a Fegley Statement Listening Aid dated 6/25/18
- R-10 Audio of Fegley interview dated 6/29/18
- R-10a Fegley Statement Listening Aid dated 6/29/18
- R-11 Audio of Fegley interview dated 7/13/18
- R-11a Fegley Statement Listening Aid dated 7/13/18
- R-12 2/22/18 Lineup—NRT-D2-P8 Night 1600-0400
- R-13 Fegley's Vehicle AVL Activity Report CG1AYS dated 2/22/18
- R-14 Administrative Review Form—Use of Force—completed by Sergeant Carr on 2/22/18
- R-15 Fegley's cell-phone AVL Activity Report dated 1/1/18 to 5/15/18
- R-16 Printout of Fegley's documents vehicle inspections from 9/2017 to 6/20/18 generated by Ravinder Kamal (IT)—9 vehicle inspections
- R-17 Axon body-worn camera printout of video-recorded vehicle inspections—2 inspections
- R-18 Kronos printout from 1/1/18 to 5/15/18
- R-19 Chart of comparison of Fegley's time sheets and Kronos lineups from 1/1/18 to 5/15/18 by Detective Crawford
- R-20 Fegley Disciplinary History Report
- R-21 Fairview Liquor camera #9
- R-22 Officer Surrency body-worn camera video
- R-23 Officer Brandon Gallagher body-worn camera video
- R-24 Officer Anthony Agus body-worn camera video
- R-25 Sergeant Odise Carr body-worn camera video
- R-26 Sergeant Andrew Fegley body-worn camera video