

Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appellant are not persuasive in demonstrating that the ALJ's credibility determinations, or his findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations or the findings and conclusions made therefrom.

Further, the Commission notes that given the sustained infraction, as well as the appellant's recent 97 working day suspension in 2018 and 99 working day suspension in 2019, removal from employment is clearly warranted under the tenets of progressive discipline. This penalty neither shocks the conscious nor is disproportionate to the offense in light of the appellant's prior history.

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 Jillian Baron.

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 JANUARY, 2023

Allison Chris Myers

Allison Chris Myers
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 04156-22

AGENCY DKT. NO. ~~10211092~~

2022-2919

**IN THE MATTER OF JILLIAN BARON,
HUDSON COUNTY DEPARTMENT OF
CORRECTIONS**

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

Daniel W. Sexton, Esq., Assistant County Counsel for respondent (Donato
Battista, County Counsel)

Record Closed: November 29, 2022

Decided: December 7, 2022

BEFORE MATTHEW G. MILLER, ALJ:

STATEMENT OF THE CASE

Petitioner, Jillian Baron, a Senior Correctional Police Officer (SCPO) employed at the Hudson County Jail (HCJ), appeals the termination of her employment by respondent, Hudson County Department of Corrections (HCDOC) arising out of an incident that occurred on May 9, 2021. Respondent generally alleges that Officer Baron's actions while at the home of the parents of her children's father were sufficiently egregious to justify the termination in light of her disciplinary history. Officer Baron argues that the discipline imposed by respondent was both unwarranted and excessive.

PROCEDURAL HISTORY

The record shows that on May 9, 2021, Officer Baron was involved in an off-duty incident at the home of the mother of her former boyfriend which led to the issuance of multiple citizen's complaints that were returnable in the Bogota (New Jersey) Municipal Court. On or about May 17, 2021, respondent served Officer Baron with a Preliminary Notice of Disciplinary Action (PNDA) charging her with insubordination, conduct unbecoming a public employee, neglect of duty and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(2), (6), (7) and (12). She was also charged with violating multiple Hudson County Department of Corrections & Rehabilitation (HCDOC) rules and regulations concerning professional conduct, performance of duties, disciplinary action, standards of conduct¹ as well as Section III, Paragraph F of the HCDOC Ethics Policy (August 19, 2019) and Sections 1, 3, 7, 8 and 20 of the Discipline Section of the Hudson County Employee Handbook

A departmental hearing was held on February 16, March 4 and April 22, 2022 and on or about May 12, 2022, respondent served Officer Baron with a Final Notice of Disciplinary Action (FNDA), in which she was notified that the insubordination, conduct unbecoming a public employee, neglect of duty and other sufficient cause charges against her had been sustained and that she was being terminated from her employment effective May 10, 2022.

The petitioner timely requested a fair hearing, and the matter was transmitted to the Office of Administrative Law on May 22, 2022 for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to-15; N.J.S.A.52:14F-1 to -13. An initial conference scheduled for June 2, 2022 was adjourned and the initial conference was ultimately held on June 13, 2022. The hearing was due to commence on August 3, 2022, but that session was cancelled due to the unavailability of respondent's witnesses. The hearing then

¹ Custody Staff Rules and Regulations (2017): Chapter 2, Section 2:1.1, Chapter 3, Sections 3:1.1., 3:1.6(a), 3:2.1(a), Chapter 5, Sections 5:1.1(a)(b)(l) and 5:2.1(c).

opened on August 9, 2022² and continued on October 4, 2022. Following post-hearing conferences on October 20, 2022 and November 1, 2022, the record remained open until November 29, 2022 for the submission of post-hearing arguments and closed that day.

FACTUAL DISCUSSION AND FINDINGS

Key Personnel

Officer. Jillian Baron - Respondent and the mother of Sgt. Alfredo Castro's two younger children.

Sergeant. Alfredo Castro³ – Father of Officer Jillian Baron's two children and Heidi Castro's two children.

Heidi Castro – Wife of Sgt. Alfredo Castro and mother of his two older children.

Elizabeth Castro – Mother of Sgt. Alfredo Castro and mother-in-law to Heidi Castro. Grandmother to all four of Sgt. Castro's children.

TESTIMONY

For Respondent

Sergeant Alfredo Castro, Hudson County Department of Corrections (HCDOC). Sgt. Castro has been employed with the HCDOC for approximately thirteen years and has been a sergeant for almost two years. He is 46 years-old and has been married to Heidi for twenty-two years. He has never been divorced or legally separated, although they did live apart from approximately February, 2020 through February, 2022. Heidi is the birth mother to his two older sons who were 16 and 12 years-old when the

² The transcript lists August 8, 2022 as the opening day of the hearing. The hearing definitively opened on Tuesday, August 9, 2022.

³ With multiple persons surnamed Castro, I will refer to persons other than Sgt. Castro by their given names.

incident occurred. His twins were born to Officer. Baron and were almost three years old at the time.

Previously, Sgt. Castro had worked as a corrections officer in Orange County, Florida for about three years and had served two approximately eleven-month deployments with the military reserves. He has been in the reserves for twenty-two years and is still active.

The date of the incident was May 9, 2021 and it was Mother's Day. He travelled alone to his mother's house in Bogota, New Jersey at about 11:00 a.m. – 11:30 a.m. His mother, Elizabeth, was having his brother and his three children over along with his wife and their two boys A.C. (16) and S.C. (12). There were no set plans for the day, but his mother was making lunch.

Sgt. Castro saw Officer Baron arrive with the twins (R.C. and H.C.) in the driveway. He did not see her enter the house, but she sat down on the couch and his younger children began mingling with their siblings and cousins. After about 10-15 minutes, Sgt. Castro felt tensions beginning to escalate and ultimately Officer Baron was asked to leave by Elizabeth. Officer Baron and Elizabeth are not on good terms and were making remarks to each other. Heidi also told her to leave and in reviewing the incident report which he completed for HCDOC, he noted that Officer Baron had made a statement to his older children that "I still f*** your father."

Sgt. Castro tried to escort Officer Baron out of the house, but she was still interacting with Elizabeth, and he told the older kids to take the younger ones outside. They were on their way out when he heard a scuffle and turned around. He saw that Heidi and Officer Baron had a hold of each other's hair and clothing. They were eventually separated, and his father and brother took Officer Baron out of the house.

Sgt. Castro believed that Elizabeth called the police, but Officer Baron could have as well, and they were there in less than ten minutes. Sgt. Castro was inside the house when they arrived, and his father and brother were outside with Officer Baron. The police took statements and left the scene.

Sgt. Castro heard later in the afternoon that a Bogota detective tried to dissuade them from reporting the incident. Heidi said that she wanted a restraining order but was told that she was not able to obtain one. Sgt. Castro also testified that the police had been called "several times" about Heidi and Officer Baron. After referencing various reports, he recalled that on June 22, 2018, they had gotten into a verbal altercation that became physical when Officer Baron tried to grab a watch from his wrist. The Lodi police came to the scene, statements were taken, and Officer Baron was taken to the police station.

He was unable to recall an issue that may have occurred on August 31, 2017, nor did he recall an incident that may have occurred on July 3, 2018. He also professed no first-hand knowledge of a 2020 incident at his son's baseball game since it did not involve him directly. Sgt. Castro and Officer Baron had first met in 2015 or 2016 and he did not recall their first physical and/or verbal altercations. After first professing no memory of same, once being supplied with a police report, he then recalled a March 24, 2019 altercation over a set of keys. There was some pulling or pushing, and he was struck in the eyes. The police arrived and took statements, but he did not recall any court action.

On cross-examination, Sgt. Castro stated that both he and Officer Baron are corrections officers and there are no rules that would prohibit their relationship and they were no longer in a relationship when he became a sergeant.

During the May 9, 2021 incident, both he and Officer Baron were off-duty and in civilian clothes and Officer Baron thought that he would not be there, but rather at his aunt's house. He arrived separately from his wife but knew that she would be there. Officer Baron knew that he and Elizabeth were separated, but she never lived with him.

He testified that he did not see the beginning of the altercation. He acknowledged that the Bogota Police Department is a separate entity from the HCDOC and while he knew that the police learned that they were both officers, he was not sure how that had happened.

Sgt. Castro testified that temporary restraining orders (TROs) had been entered previously against both him and Officer Baron, but no final restraining orders (FROs) ever had been, and he was unaware of any convictions in any court for either of them. When the TRO was placed on him, he was required to undergo a fitness-for-duty evaluation, but he was never disciplined by the HCDOC, although he did receive a "target letter".

Sgt. Castro acknowledged that he and Officer Baron had an affair and that she knew that he was married. His parents are "their" kids' grandparents and there are no restrictions on their visiting Elizabeth and his father (Anibal). Since Day 1, Heidi and Officer Baron have not been on good terms. Heidi (who does not work for Hudson County) found out about the relationship in 2017 when Officer Baron became pregnant.

On the day in question, Sgt. Castro's total time in the house was about thirty minutes. The first 10-15 minutes were tension filled, but there were no overt issues. At that point, the pot started to boil over. This was the first time that Heidi and Officer Baron had been in close proximity, although Officer Baron had been to Elizabeth and Anibal's home before. His romantic relationship with Officer Baron was over at this point.

Sgt. Castro acknowledged the HCDOC regulation that he was always considered to be on duty.

Finally, a recording was played which Sgt. Castro had taken where Officer Baron stated that "I should have knocked the (expletive) out of your mother." He acknowledged that the recording was made more than a month after the incident and that he made it without Ofc, Baron's knowledge to protect himself. There are no recordings from (audio or video) from the May 9, 2021 incident.

Heidi Castro, wife of Sgt. Alfredo Castro. Ms. Castro acknowledged that she was appearing pursuant to a subpoena. She is married to Sgt. Castro and is the mother of his two older children.

On May 9, 2021, she had been invited to her mother-in-law's house for a Mother's Day brunch. The family always did something together on Mother's Day and she was

part of a group text of those who were invited, which included her brother-in-law, his two children, Sgt. Castro, herself and their two boys. She arrived with her two children between 11:30 a.m. – 12:00 p.m. Sgt. Castro arrived shortly thereafter, and they started playing games. Officer Baron then pulled into the driveway, got her two children out of the car and was let into the front door by Elizabeth, who said "Hi, babies", while the children screamed out "Daddy's a liar!".

Officer Baron started questioning where Sgt. Castro was and she was not invited in. After she saw him, she then started to question him about why he wasn't at his aunt's house. She then turned to Heidi on the couch and said "Hello, Heidi." She responded by telling Officer Baron not to address her. Sgt. Castro sent the twins with his other kids to remove them from the situation and Elizabeth told her that she had to leave. Officer Baron replied with "Why can't Heidi leave?" and that she would leave "when I'm ready". Heidi then said, "You need to get her out of here."

Officer Baron then told the older son, "Your father's a liar, he f**** me." Heidi then started screaming at her and telling her to leave and they went back and forth calling each other names. The kids started crying and Sgt. Castro told Officer Baron that she had to go. The kids then went outside. Elizabeth was trying to escort Officer Baron out, but she got in Elizabeth's face (there was a substantial size differential with Officer Baron being a much bigger person). Heidi then approached them, and Officer Baron got her face scratched. Anibal and Sgt. Castro finally got her out of the house and Elizabeth called the police "after she entered uninvited and caused chaos". The Bogota police arrived within two-three minutes and took pictures before Officer Baron and Elizabeth went to the station Officer to give statements.

Heidi then reviewed some pictures (one of which showed the scratches on her face, one which showed one on Elizabeth's face and one which depicted Officer Baron's arm), as well as her handwritten statement and an email that she wrote to the HCDOC's Internal Affairs Department (IAD). This was not the first time that she had done this, since she had been harassed by Officer Baron previously with multiple phone calls and showing up outside her house and screaming Sgt. Castro's and the children's names at 3:00 a.m.

She had also showed up to two of the older son's baseball games and made scenes there.

The result of the summons issued to Officer Baron was that after a mediation session in the Bogota Municipal Court, both she and Officer Baron agreed to mutual no-contact orders. Heidi was unable to obtain a restraining order since she and Officer Baron did not have a relationship that would be covered by one.

An investigator at the HCDOC Internal Affairs Department (IAD) told Heidi that he would call Officer Baron at work and tell her not to contact her. There was also a police report filed in Vernon from 2018 for terroristic threats made telephonically. Officer Baron had been upset with Sgt. Castro that he had returned to Heidi and the call was on speaker. She denied threatening or attacking Officer Baron.

On cross-examination, Ms. Castro testified that she and Sgt. Castro had lived apart for about two years, but she wasn't sure when; he had lived in Kearny with a friend during that time. She also clarified that he was not on the group text, but she knew that he was going to be there about ten days earlier.

There is no formal custody order pertaining to their children.

As for Sgt. Castro's relationship with Officer Baron, she had had some suspicions, but she first definitively knew of her when she was two-three months pregnant. Before this incident, they had never actually been in the same room together, although they had been at the same location. She did have her contact information and she knew that Officer Baron had brought the kids to her in-laws' house previously and nothing prevented her from doing so. However, nobody knew that Officer Baron was coming that day and the hostility started immediately when the children got out of the car.

Everyone was in civilian clothes and Officer Baron did not influence the police. As far as she knew, no FROs have ever been entered nor have there been any criminal convictions. She never heard from the IAD about the no-contact order, and she was never interviewed by the HCDOC concerning potential discipline of Sgt. Castro.

Ms. Castro also denied threatening to shoot Officer Baron in the stomach when she was pregnant and in fact despite claims that this threat had been recorded, neither she nor Sgt. Castro have ever heard that part of the taped phone call from which it allegedly originated.

Elizabeth Castro – Mother of Sergeant. Alfredo Castro.⁴ Ms. Castro was hosting Mother's Day (May 9, 2021) at her home in Bogota. Only her sons Alfredo and Anibal and their immediate families were invited, including Alfredo's sons A.C. and S.C., as well as Anibal's sons (although the oldest was away at college). Officer Baron was not invited, although she had been to the house previously to bring the children and maybe to have dinner when she picked them up. The twins would come over several times a month at that time and they actually come over more now.

Brunch was scheduled for 11:00 a.m. They were going to eat and then go to one of the grandson's soccer games at Overpeck Park at 1:00 p.m. Anibal arrived first with his sons at about 11:00 a.m. then Sgt. Castro came, followed by Heidi and their two boys. Everyone was there by 11:15 a.m. – 11:20 a.m. and they began serving food almost immediately.

Officer Baron arrived at approximately 12:00 p.m. She pulled into the driveway and Elizabeth went to the door because she was excited to see the children. They exited the car chanting "Daddy's a liar." Elizabeth learned that Officer Baron thought that Alfredo was going to his aunt's home in New York and would not be at his mother's house. She came in and almost immediately began to antagonize Heidi and was cursing at the boys, telling them that she was still having sex with their father and that he "f***s inmates".

Elizabeth asked her to leave and Officer Baron refused. She asked her again and Officer Baron shoved her. Heidi then entered the fracas and got scratched and a scuffle began. Elizabeth began pulling Officer Baron's pants to try and drag her out the front

⁴ For reasons related to her health, by consent of the parties and at her request, Ms. Castro testified via ZOOM.

door. The younger children then began to cry and the older grandsons took them into the backyard.

Officer Baron then began to walk towards her car and was making a phone call while Elizabeth called the police herself through their direct number (not 911). She told them that there was a lady who had disrupted their event and that she wanted her to leave. The Bogota Police Department arrived and asked if she wanted to press charges, which she did. She drove to the police department with Heidi and pictures were taken. Officer Baron also went to the police department (with the twins) and they arrived at the same time. The male members of the family went to the soccer game. She reviewed her hand-written statement and attested that it was accurate.

Elizabeth is 68 years-old and estimated that she is 5'3", 130 pounds and that Officer Baron is about 6'0". It was not easy pulling on Officer Baron.

On cross-examination, Elizabeth testified that she had known Officer Baron since she was about three months pregnant. She remains involved in the twins' lives and has been since their birth. Previously, Officer Baron would always call before coming to the house. They did not have the type of relationship where she would just "drop in".

As for this event, she didn't tell her that she couldn't come, but simply never invited her. When Officer Baron arrived, she didn't refuse her entry, but simply asked her what she was doing there. She admitted that she did not know about any communication between Officer Baron and Sgt. Castro leading up to Mother's Day.

All criminal charges were dismissed after mediation in the Bogota Municipal Court.

For Petitioner

Officer Jillian Baron, Hudson County Department of Corrections (HCDOC). Officer Baron is 31 years-old and lives in Bergen County (not in Bogota)⁵. She received

⁵ Officer Baron testified to her residence at the time of the hearing.

an associate degree from Hudson County College in 2011 and worked a variety of jobs prior to taking the civil service exam and becoming a corrections officer in 2015.⁶ She had to take a Psychological exam prior to joining the HCDOC and had never sought mental health treatment prior to doing so.

She has twins (DOB: 12/21/17) with Sgt. Castro; H.C. & R.C. As she reviewed the FNDA, she testified that she did not know that there would be a Mother's Day event at Elizabeth's house. She had simply stopped by to wish her a Happy Mother's Day and offer her a gift of lunch/breakfast at IHOP or Olive Garden, since she knew that those were her favorite restaurants and because the store where she normally shopped was out of flowers and cards.

She had texted with Sgt. Castro earlier and he had told her that he would be in New York at his aunt's house, which is why she decided to go to Elizabeth's house.

Officer Baron and Sgt. Castro began their relationship in 2016 and it continued through early 2021, at which time it became "on-and-off". They met on the job when he was a corrections officer and at times, he was her direct supervisor. He told her that he was separated and was getting a divorce, but she knew that he was back and forth between her and Heidi. She claimed to have met Heidi face-to-face five - seven times before this encounter. She was unaware of any Hudson County rules prohibiting these types of relationships.

Over the years, the police had to respond to domestic issues four or five times and simultaneous temporary restraining orders (TROs) were issued on one occasion. No final restraining orders (FROs) or criminal charges were ever brought. Heidi was never present and she and Sgt. Castro never underwent any couples counselling, although she attends domestic violence survivor's therapy and attends a number of other therapy groups. She claimed that Sgt. Castro, even after this incident, continued to try and sleep with her.

⁶ In 2020, the formal title of Officer Baron's position was changed to "Senior Correctional Police Officer".

Later, however, Officer Baron admitted that two municipal court complaints had been filed against her before the May 9, 2021 incident but noted that both had been dismissed.

Officer Baron only learned that Elizabeth was hosting an event when she arrived and after five to seven minutes, an argument ensued. Sgt. Castro had walked into a spare room, and she walked in as well and got into an argument with him. She then told one of the boys to get the twins and she intended to leave. She claimed that Heidi got aggressive while she was sitting on the couch and she told her that she was not going to leave until Elizabeth told her that she had to. When that happened, she left, but was pushed by Sgt. Castro and hit her head on the doorknob, had her hair pulled and had her glasses knocked off her head. Heidi then punched her, and Elizabeth grabbed and pulled at her sweatpants.

Officer Baron testified that she never would have gone to the house if she knew Sgt. Castro was going to be there and his vehicle was not in sight when she pulled into the driveway. She denied pushing Elizabeth, denied that the twins ever yelled out "Daddy is a liar" or telling Sgt. Castro's older sons that "I'm still f*****g your father".

She estimated that she is 6'0", 220 lbs. and that Elizabeth had accurately stated her own physical dimensions. She estimated that Heidi was 5'10", 200-210 lbs. In continuing to review the FNDA, she claimed that Sgt. Castro was more involved in the incident and that only two minutes lapsed from the time the argument started until she left with the twins. She was the one who told Elizabeth to call the police. Officer Baron testified that Sgt. Castro grabbed her cell phone and tried to break it before throwing it against her car, leaving a mark. She told the police when they arrived that they should obtain the RING security camera footage from the Castro house.

Officer Baron was unclear as to whether the police filed the charges against Heidi and Sgt. Castro, but she did remember completing probable cause forms. There were no convictions of any sort arising out of this incident and Sgt. Castro was not disciplined by Hudson County.

Her relationship with Sgt. Castro was truly over by mid-late June, 2021, although they still co-parent the twins and she confirmed that there is a formal custody agreement in place.

Officer Baron then testified concerning a text exchange purportedly between Heidi Castro and Sgt. Castro in which Heidi allegedly admitted to threatening to shoot her in the leg.

In hindsight, she testified that she should have left the scene when she saw Sgt. Castro and Heidi, noting that "this is unnecessary." She conceded that some form of discipline was appropriate, but that she should not lose her job since she was not the aggressor and was the victim. Officer Baron argued that she has a great deal of integrity and that she is proud of the uniform and her job and she has "healed from domestic violence".

On cross-examination, Officer Baron acknowledged being on the job since 2015 and knowing how progressive discipline works. In 2017, she received a five-day suspension for an incident in Lodi with Sgt. Castro but thought that was excessive and that she wasn't properly represented. She then received a 97-day suspension in 2018, but argued that she was effectively forced into admitting guilt in that case, as she was unrepresented by counsel and signed the forms in her car with only her union representative accompanying her. Although she admitted guilt in that case, she did not feel that she was guilty.

Finally, she admitted to a 99-day suspension in 2019, which was negotiated by counsel and which she signed. Still, here, she does not think that the department is "going after" her.

Referring back to this incident, she did not notice Sgt. Castro's car when she drove past the house, but she was a little unclear if she had decided to go to Elizabeth's house or was coincidentally driving by on her way to IHOP. Concerning her relationship with Elizabeth, she felt that Elizabeth lied about the extent of same and that the door had been opened for her. Elizabeth did not ask "Jillian, what are you doing here?" and the first

hostile event was Heidi accosting her. When she saw Heidi, she didn't feel the need to leave, because they had co-existed in the same place before without incident. She claimed that this was her first altercation with Heidi.

However, Officer Baron later admitted to the June 29, 2020 incident at one of the boys' baseball games and the existence of a July 3, 2020 cease and desist order from the HCDOC issued to her concerning Heidi, although she claimed that Heidi had violated that order.

To become a corrections officer, Officer Baron recounted that she had to take Civil Service exam, as well as various medical and psychiatric exams and attend a training academy. There was then a discussion concerning her ability to utilize her service weapon and she eventually admitted that it had been taken away following a 2017 incident in Lodi when her aunt called police, concerned that she was suicidal. The holstered weapon was found under the seat of her car, and she was voluntarily admitted to a psychiatric hospital that day and the weapon has never been returned to her.

Officer Baron claimed that having a weapon is not a job requirement for an SCPO, but that both she and Sgt. Castro have been getting the runaround while attempting to have their weapons returned.

The 2018 discipline arose out of an incident where Sgt. Castro alleges that she hit him with a closed fist and she was charged with simple assault. An Internal Affairs investigation found that she had tried to stage an assault by falling to the ground, but that her story was contradicted by an independent witness. This occurred at a planned custody exchange.

The 2019 discipline arose out of an incident that occurred at her home, and she was again charged with assaulting Sgt. Castro.

She acknowledged that Sgt. Castro has also made abuse complaints to the New Jersey Department of Child and Family Services but testified that all of those have been unfounded and that a judge rebuked Sgt. Castro for having filed them.

Officer Baron denied having been ordered to undergo any therapy or counselling, but then admitted that part of the 2018 and 2019 discipline settlements included such therapy. However, she claimed that she voluntarily had that condition included so she could demonstrate that she was not the problem, but that Sgt. Castro was.

Finally, Officer Baron admitted to making negative Facebook posts about Sgt. Castro in April and May, 2021.

CHARGES AND SPECIFICATIONS

Following the departmental hearing, respondent sustained the following charges listed in the PNDA (Exhibit J-A) and in the FNDA (Exhibit J-B); violations of N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. While Officer Baron's actions were also noted to be "in direct conflict with her responsibilities" as an SCPO, "N.J.A.C. Title 4A, H.C.D.O.C.&R. Department Policies and Procedures and H.C.D.O.C.&R. Custody Rules and Regulations", no specific rules or regulations were cited in the FNDA.

The incident was described thusly;

On Sunday, May 9, 2021, Bogota Police responded to (street address redacted) for a reported dispute. Per police reports and witness interview, on May 9, 2021, Officer Baron showed up, uninvited, at her children's grandmother's house, for a Mother's Day celebration. Officer Baron has children with Sergeant Alfredo Castro, who is also employed with HCDOC&R. The event was at Sergeant Castro's mother's home. Although uninvited, Elizabeth Castro, the homeowner/grandmother, allowed Officer Baron to enter her home. Once inside, all parties started making insults and a verbal argument ensued. Elizabeth Castro asked Officer Baron to leave the residence. Officer Baron refused to leave and pushed Elizabeth Castro.

Officer Baron also got into a physical altercation with Heidi Castro, Sergeant Alfredo Castro's wife, when she stood up in defense of Elizabeth Castro. At some point during the

altercation, Sergeant Castro attempted to get in between Heidi Castro, his wife and Officer Baron, the mother of his twins, to separate the two as they were entangled and hard to separate.

Affidavits and citizens summon complaints were generated against Officer Baron by both Heidi Castro and Elizabeth Castro. Officer Baron also signed a citizen summons complaint against Heidi Castro. Officer Baron is scheduled to appear in Bogota Municipal Court on May 24, 2021 at 4:00 p.m.

Officer Baron has progressive disciplinary actions of major and minor consequences. Listed below and detailed in attached documents:

- June 19, 2015 A.N.P.⁷ (1-day fine); November 13, 2015 A.N.P. (3-day fine); March 6, 2016 D.N.R.⁸ (5-day fine)
- December 4, 2017 – December 10, 2017 – Minor disciplinary action of five-day suspension for neglect of duty and other sufficient cause.
- June 28, 2018 – Served with notice of immediate suspension because was charged with simple assault and was served with a restraining order.
- July 2, 2018 – Indefinite suspension pending outcome of disciplinary hearing, stemming from being charged with violation N.J.S.A. 2C:12-1A (1). On June 22, 2018, Officer Baron cause bodily injury to Officer Alfredo Castro, during a domestic violence dispute by jumping on his back, placing him in a headlock and punching him in the face several times.
- December 13, 2018 – Officer Baron signed settlement agreement for a ninety-seven (97) working day unpaid suspension from July 2, 2018 – November 19, 2018. Officer Baron pled guilty to insubordination and other sufficient cause stemming from events that occurred on June 22, 2018 in which Officer Baron cause bodily injury to Officer Alfredo Castro during a domestic violence dispute.
- April 2, 2019 – Suspended without pay pending outcome of hearing stemming from incident that happened on March 25, 2019 in which HCDOC was informed by the Ridgefield Park Police Department that Officer Baron was involved in a domestic violence in

⁷ Absent no pay

⁸ Did not report

with Sgt. Alfredo Castro (the victim) and was charged with simple assault. PNDA served on April 4, 2019.

- August 20, 2019 – Officer Baron signed settlement agreement for a ninety-nine (99) working day suspension, time served and agreed to take anger management/domestic violence training/therapy. Officer Baron pled guilty to the charge of Other Sufficient Cause detailed in the April 4, 2019 PNDA.

Officer Jillian Baron's conduct is in direct conflict with her responsibilities as a Hudson County Department of Corrections and Rehabilitation Officer, N.J.A.C. Title 4A, H.C.D.O.C.&R. Department Policies and Procedures and H.C.D.O.C.&R. Custody Rules and Regulations.

APPLICABLE LAW

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his duties. N.J.S.A. 11A:1-2(a).

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). 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 (1958). Therefore, the tribunal must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del.,

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

In appeals concerning major disciplinary actions brought against classified employees, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is a preponderance of the credible evidence. In re Polk License Revocation, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). The preponderance may also be described as the greater weight of credible evidence in a case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is defined as: “The quality that makes something (as a witness or some evidence) worthy of belief.” Credibility, Black’s Law Dictionary (10th ed. 2014).

Credibility is the value that a finder of the facts gives to a witness' testimony. It requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it “hangs together” with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

Accordingly, credibility does not mean determining who is telling the truth, but rather requires a determination of whose testimony is “worthy of belief” based upon numerous factors. Credibility is not based on who presented the most witnesses. Instead, it is “the interest, motive, bias, or prejudice of a witness [that] may affect his credibility and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952), certif. denied, 10 N.J. 316 (1952) (citation omitted). The

process entails observing the witnesses' demeanor, evaluating their ability to recall specific details, evaluating the consistency of their testimony under direct and cross-examination, determining the significance of any inconsistent statements and otherwise gathering a sense of their candor with the court. Thus, "[c]redibility involves more than demeanor. It apprehends the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

When determining the appropriate penalty to be imposed, the Board must consider an employee's past record, including reasonably recent commendations and prior disciplinary actions. Bock, 38 N.J. 500 (1962). Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. *Id.* at 522-24. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.4.

A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential. See, generally, In re Stallworth, 208 N.J. 182 (2011).

The concepts of progressive and major discipline have no fixed definitions and are case specific, but in Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966), the court declared that;

It must be recognized that a police officer is a special kind of public employee. His primary duty is to enforce and uphold the law...He represents 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...

Id. at 566.

These issues were also addressed in In re Carter, 191 N.J. 474 (2007);

Even so, we have not regarded the theory of progressive discipline as a fixed and immutable rule to be followed without question. Instead, we have recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98, 627 A.2d 602 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense). In doing so, we have referred to analogous decisions to discern the test to be applied. See id. at 197, 627 A.2d 602. Thus, we have noted that the question for the courts is "whether such punishment is 'so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" In re Polk License Revocation, 90 N.J. 550, 578, 449 A.2d 7 (1982) (considering punishment in license revocation proceeding) (quoting Pell v. Bd. of Educ., 34 N.Y.2d 222, 313 N.E.2d 321, 327, 356 N.Y.S.2d 833 (1974)).

Id. at 484-85.

Further, in matters involving the discipline of police and corrections officers, issues of public safety should be considered. Id. at 485. Officers are also held to higher duty than a "normal" public employee given their duty to uphold and enforce the law. In re Disciplinary Procedures of Phillips, 117 N.J. 567, 576-77. See also, In re Emmons, 63 N.J. Super. at 142.

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).

Respondent's Position

Respondent argues that the evidence is overwhelming that Officer Baron is guilty of all of the charges brought against her. It was argued that her testimony lacked even a

modicum of credibility and both the quantity and quality of the witnesses who testified for the County were far more persuasive;

However, there are three witnesses here against one in support of the allegations that the violent melee was completely the result of physical aggression of Jillian Baron. Alfredo Castro, clearly a reluctant witness, testified in a manner that substantially supports the charges against the petitioner. Heidi Castro, the wronged wife, nonetheless provided a coherent and clear account which supported in all respects the charges that had been brought. Elizabeth Castro, stuck in the middle of this circus and committed to the welfare of her grandchildren, also testified in a very coherent manner which also supported the charges brought by the Appointing Authority.

Respondent Brief at 10.

As for the penalty of removal, it was argued that given Officer Baron's conduct was "so outrageous", that when combined with her incredible testimony, undisciplined behavior and substantial disciplinary history, "anything less than termination would merely prolong this as Ms. Baron has shown herself impervious to learning from any discipline." Respondent Brief at 11.

Petitioner's Position

Initially, petitioner argues that respondent has failed to carry its burden of proof concerning the charges of insubordination and neglect of duty, noting that nothing about her actions on the day in question evidenced that she committed any acts of affirmative disobedience (insubordination) or that she failed to perform an official duty (neglect of duty).

Rather, she was involved in an off-duty altercation that and, at most "acted imprudently while off-duty". Petitioner Brief at 12. Even assuming the applicability of the "no contact" order issued by HCDOC's IAD, it is argued that "the record is devoid of Baron doing anything affirmatively to violate that Order", as she had no advance knowledge that Heidi would be present at the house and testified that she would not have gone there if she had known that Sgt. Castro was going to be present. Petitioner's Brief at 11.

As for the charges of "other sufficient cause", petitioner points out that no findings of violations of any departmental rules or regulations were upheld following the departmental hearing and none appear in the FNDA. In the absence of same, there is no basis for this finding, and it should be dismissed.

Officer Baron, while conceding that her actions violated the charge of "conduct unbecoming an employee" and are "deserving of a major suspension" under the civil service rules, argues that the penalty of termination is too severe given the surrounding facts and circumstances as demonstrated during the hearing.

FINDINGS OF FACT

There is no question that the credibility of the witnesses in this case plays a major part in the overall assessment of the case. Here, it is a particularly complicated issue since there is clearly animosity between them. While all parties acted with appropriate decorum during their attendance at the hearing, there was a palpable (and understandable) tension during the proceedings. It was also apparent that this animosity had the potential to shade both the presentation and substance of the testimony.

To varying degrees, each of the witnesses ran into similar problems, with perhaps the most credible of them being Elizabeth Castro, who, while clearly having no love lost for Officer Baron, seemed to be the least effected by those emotions; her testimony was straightforward and believable. When she testified as to her excitement in seeing her "grandbabies" and readily opening the door to them while practically simultaneously questioning why Officer Baron was there, this was perhaps the most genuine aspect of the hearing.

Sgt. Castro's demeanor and reluctance to answer questions (or expound on multiple curt/single-word answers) demonstrated an apparent desire to be anywhere other than the hearing room. His testimony seemed directed at deliberately downplaying his history of conflicts with Officer Baron, although they notably did not make eye contact during the entirety of same.

Heidi Castro's testimony, understandably, did not present Officer Baron in a positive light and she was obviously unhappy to even be in the same room with her. However, overall, despite the uncomfortable nature of the "relationship", she was generally effective as a witness. While her credibility was compromised by her version of the "threat" audio incident, in general, her version of the events of the day essentially corresponded with the other versions presented during the hearing.

Officer Baron's testimony was the most compelling of the hearing and while there were aspects of same that were credible (and this analysis is independent of her claim to be a victim of domestic violence) her self-portrayal as an innocent victim of circumstance during the May 9, 2021 event, the downplaying of her substantial disciplinary history and the further downplaying of her highly negative previous interactions with Heidi Castro was problematic.

Before delving into the most likely version of events that day, the entire scope of the relationship between not only Officer Baron and Sgt. Castro, but amongst all the parties, must be reviewed. While Officer Baron claimed throughout her testimony to be a victim of domestic violence, there is independent confirmation of this. There is no evidence that Sgt. Castro was ever convicted of any domestic violence related offense or disciplined in the manner Officer Baron was by the HCDOC.

While I appreciate her testimony, the only independent verifiable evidence of an assault between the parties are the two instances where she assaulted him (and also, tellingly, lied about an assault by him) that are documented in her disciplinary record. Her recent attendance at a domestic violence alternatives program is simply proof that she attended same and while all allegations of domestic violence should be taken with the utmost seriousness, as noted above, there was no corroborating evidence to support her claims, even given the residuum rule that applies in administrative hearings.

In fact, per the terms of the December, 2018 settlement agreement, Officer Baron was required to complete anger management classes and per the August, 2019 settlement agreement, she was also required to take "Anger Management/Domestic

Violence training therapy".⁹ Given that the allegations in both of these instances was that she assaulted Sgt. Castro and that as a condition of the settlements she pled guilty to those offenses, there is clear and convincing evidence that Officer Baron was the perpetrator of the violence and precious little evidence that she was the victim of same.

That being said, the evidence presented at the hearing supports no other conclusion that the relationship between Officer Baron and Sgt. Castro was a volatile one and that neither of them have emerged from same unscathed. When the twins, Sgt. Castro's other children and his wife are added to the mixture, an event like the one that happened on May 9, 2021 was almost destined to occur.

So, what happened at Elizabeth Castro's house on Mother's Day, 2021? The evidence best supports the following narrative;

A Mother's Day brunch was planned for close family members to take place at Elizabeth's house in Bogota. They were going to eat brunch and go to one of the boys' soccer games in Teaneck. The attendees were going to be Elizabeth, her husband Anibal, her sons Anibal, Jr. and Alfredo, two of Anibal, Jr.'s sons, Alfredo's wife Heidi and their two children. No one else was "invited" or expected to be at the event.

Leading up to Mother's Day, Officer Baron and Sgt. Castro communicated and he led her to believe that he would be spending the day at his aunt's house in New York and not at his mother's house. For reasons that are not entirely clear, Officer Baron decided to drive past Elizabeth's house that morning and then stop there. Before exiting the car, she first became aware of the fact that Sgt. Castro was there and that he had lied to her about his planned whereabouts.

I further **FIND** that the evidence supports a conclusion that Elizabeth willingly opened the door to Officer Baron and the children and that very shortly thereafter chaos ensued, with Officer Baron being the instigator by telling the twins to say that "Daddy's a liar" and by both insulting Heidi Castro and making clearly inappropriate statements about Sgt. Castro (be they true or not) to his boys. When Heidi Castro reacted and Officer Baron resisted leaving immediately, the situation, which had been volatile, became physical, leading to a

⁹ Her testimony that these terms were included at her insistence strained credulity.

confrontation primarily between Officer Baron and Heidi, but which ultimately included Elizabeth and Sgt. Castro.

No matter the history between Officer Baron and Sgt. Castro and the allegations of abuse made by Officer Baron, it is not Sgt. Castro who is the subject of this disciplinary hearing. Whether charges should have been brought against him by the HCDOC is not for me to say and is, frankly, irrelevant to the charges brought against Officer Baron. This is particularly true given Officer Baron's concession that she does not feel that the HCDOC is "out to get her" and that at least some discipline is warranted over her conduct at the house.

Ultimately, I **FIND** that the evidence supports a conclusion that Officer Baron was not only the instigator of the events of May 9, 2021 but also the primary "bad actor" during same.

Charges

As detailed above, Officer Baron was found to have committed four separate violations; insubordination; conduct unbecoming a public employee; neglect of duty; and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(2), (6), (7) and (12).

Insubordination

Insubordination encompasses an employee's failure or refusal to follow a directive, order or instruction of a supervisor. Eaddy v. Dep't of Transp., 208 N.J. Super. 156, 158–59 (App. Div.), certif. granted, 104 N.J. 392, order vacated, appeal dismissed, 105 N.J. 569 (1986); City of Newark v. Massey, 93 N.J. Super. 317, 322 (App. Div. 1967).

This definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the

morale and efficiency of the department.” Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

Conduct Unbecoming a Public Employee

Under N.J.A.C. 4A:2-2.3(a)(6), an employee may be subject to major discipline for conduct unbecoming a public employee. Although not strictly defined by the Administrative Code, “conduct unbecoming” has been described as an “elastic” phrase that defines conduct “which adversely affects the morale or efficiency” of the public entity or tends “to destroy public respect for . . . [public] employees and confidence in the operation of . . . [public] services.” Karins v. City of Atlantic City, 152 N.J. 532 at 554, quot. Emmons, 63 N.J. Super. 136 at 140 See also, In re Teel, 2012 N.J. Super. Unpub. LEXIS 667.

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 Zeber Appeal, 156 A.2d 821, 825 (1959)].

Neglect of Duty

Neglect of duty is one of the grounds for disciplinary action in a civil service matter under N.J.A.C. 4A:2-2.3(7). Although not defined by the regulation, it generally means that a person is not performing their job. The person may have failed to perform an act that the job requires or may have been negligent in the discharge of a duty. The duty may arise by specific statute, post orders, policies or from the very nature of the job itself. See generally, In re Calio, 2018 N.J. Super. Unpub. LEXIS 2706; West New York v. Bock, 38 N.J. 500 (1962).

Other sufficient cause

N.J.A.C. 4A:2-2.3(a)(12) does not define "other sufficient cause", but this phrase is generally interpreted to mean violations of rules, regulations, policies and procedures such as post orders. In re Calio, 2018 N.J. Super. Unpub. LEXIS 2706.

FINDINGS

In reviewing the evidence, I **FIND** that respondent has proven by a preponderance of the credible evidence (and petitioner has conceded) that Officer Baron acted in a manner unbecoming of a public employee on May 9, 2021.

As noted above, I **FIND** that Officer Baron was the instigator of the events that occurred on Mother's Day, 2021. The manner in which she acted that day, not only towards the father of her children and his wife, but also in front of her own children and towards Sgt. Castro's children and mother clearly would "adversely affects the morale or efficiency" of the public entity or tend "to destroy public respect for . . . [public] employees and confidence in the operation of . . . [public] services." Karins, 152 N.J. at 555.

I **FIND** that once Officer Baron knew that Sgt. Castro was in the house, she was fully aware that the situation had the potential to become volatile (as it had on multiple occasions in the past). Rather than defusing the situation, she did the opposite and I **FIND** that her actions (both direct and indirect) were the proximate cause of the "chaos" that ensued. I **FIND** that rather acting in a manner becoming an SCPO, she allowed her emotions and anger towards Sgt. Castro get the best of her and led her to act in a way that ultimately resulted in the police being called to what was supposed to be an informal family brunch.

While I **FIND** that the initial intent in coming to the house was innocent, once she became aware of the situation, she had a conscious choice as to how to handle herself and she made an extremely poor one.

That is not to say that Sgt. Castro should be lauded for his part in this unfortunate incident. It was his lie that led Officer Baron to come to the house that day. But he neither controlled how she acted that day, nor is he the one facing disciplinary charges.

Based on the above, I therefore **CONCLUDE** that Officer Baron acted in a manner unbecoming a public employee on May 9, 2021.

As for the charges of neglect of duty and insubordination, however, I **FIND** that respondent has failed to prove Officer Baron guilty of same by a preponderance of the credible evidence.

While neglect of duty is not defined by the regulation, in general it means that an employee either failed to perform and act or was negligent in doing so. While there is no dispute that an SCPO is technically always "on duty", the disciplinary charges here arose out of an entirely off-duty, non-work-related incident that occurred at a private residence. While one could shoehorn Officer Baron's actions under any of the four charges propounded by respondent, the reality is that while her actions were clearly unbecoming of a public employee, they had, at best, a tangential relationship to her on-duty job responsibilities. I therefore **CONCLUDE** that Officer Baron did not neglect her duties as an SCPO.

Similarly, as to the charge of insubordination, the key here is that the incident which led to Officer Baron's discipline was effectively unrelated to her job. There is no evidence that she disobeyed or ignored a specific order or directive or that her actions had any immediate impact on safety and/or security at the Hudson County Jail. I am unconvinced that her actions violated the "no contact" order, the details of which were not presented during the hearing. To reiterate my conclusions as to neglect of duty, while her actions were unbecoming of a public employee, I **CONCLUDE** that Officer Baron was not guilty of the charge of insubordination.

Finally, as to the charge of "other sufficient cause", I **FIND** that same has not been proven by a preponderance of the credible evidence. At its core, I agree with petitioner's argument that with no violations of HCDOC rules and regulations having been presented

in the FNDA (particularly after having been found in the PNDA), there is no basis for a finding of guilt here.

PENALTY

Prior disciplinary history

While Officer Baron contests some of the circumstances surrounding her more significant discipline, the extent of her disciplinary history is uncontested. Per N.J.A.C. 4A:2-3.1(a), "minor discipline is formal written reprimand or a suspension or fine of five working days or less". Discipline greater than minor discipline is deemed to be "major discipline" and can include removal, demotion, suspensions and fines of up to six months or termination. See generally, N.J.A.C. 4A:2-2; N.J.A.C. 4A:2-2.4(a).¹⁰

Minor discipline

- June 19, 2015 A.N.P. (1dDay fine)
- November 13, 2015 A.N.P. (3-day fine)
- March 6, 2016 D.N.R. (5-day fine)
- December 4, 2017 – December 10, 2017 – Minor disciplinary action of five-day suspension for neglect of duty and other sufficient cause

Major discipline

December 13, 2018 – Officer Baron signed settlement agreement for a ninety-seven (97) working day unpaid suspension from July 2, 2018 – November 19, 2018. Officer Baron pled guilty to insubordination and other sufficient cause stemming from events that occurred on June 22, 2018 in which Officer Baron cause bodily injury to Officer Alfredo Castro during a domestic violence dispute.

¹⁰ There was a discussion during the hearing concerning the meaning of "days" during a period of suspension. Per N.J.A.C. 4A:2-2.2; "The length of a suspension in a Final Notice of Disciplinary Action, a Commission decision, or a settlement, when expressed in 'days', shall mean working days, unless otherwise stated."

August 20, 2019 – Officer Baron signed settlement agreement for a ninety-nine (99) working day suspension, time served and agreed to take anger management/domestic violence training/therapy. Officer Baron pled guilty to the charge of Other Sufficient Cause detailed in the April 4, 2019 PNDA.

Both the concept and application of progressive discipline were explored in great detail in In re Stallworth, 208 N.J. 182 (2011). There, the court noted that a worker's disciplinary history can be used to both "ratchet-up" or "support" the imposition of a more severe penalty or to mitigate that penalty. Id. at 196, cit. In re Hermann, 192 N.J. 19, 30-33. While there are "major" cases where the conduct is so egregious that the progressive disciplinary system may be bypassed, when it does not reach that level of severity, the system must be applied. In re Stallworth, 208 N.J. at 196-97, cit. Bock, 38 N.J. at 522-23. See also, In re Carter, 191 N.J. 474, 483-84 (2007).

Vitaly;

Under the concept of *progressive discipline*, one act of misconduct may result in "minor discipline" merely because it was a first offense, whereas the same misconduct, if repeated, could justify the imposition of "*major discipline*," including, termination. In other words, different penalties can be imposed for the same misconduct depending on the employee's record. Thus, the contextual nature of the prior offenses is a relevant consideration when analyzing an employee's disciplinary record and renders incomplete and inadequate the Commission's imposition of discipline based on a summary conclusion that the employee's prior disciplinary record contains "only" one incidence of "major" disciplinary action.

Stallworth, 208 N.J. at 198-99.

I **FIND** that the best way to categorize Officer Baron's prior disciplinary record is, simply, poor. While the imposition of the one day fine on June 19, 2015 went unexplained (given her September 10, 2015 hire date) and even ignoring the two other incidents that led to a total of eight days of fines, her history is troublesome. In addition to the five-day suspension in late 2017 for neglect of duty and other sufficient cause, she later received

two very significant suspensions for incidents involving Sgt. Castro that took place only nine months apart, with the second incident occurring just 4½ months after settling the disciplinary matter that arose from the first one.

Then, well less than two years after the second matter settled, she was involved in this third incident, which again involved Sgt. Castro. While there were obviously some differences in the exact nature of the incidents, in a macro sense, they were largely the same; Officer Baron assaulting Sgt. Castro or his family member.

In isolation, this third incident, like the other two, likely would not have led me to uphold a decision to terminate Officer Baron's employment. However, when the second incident was added to the first one, it is my impression that it was only the work of Officer Baron's attorney that kept the penalty to the ninety-nine days, rather than a longer suspension or termination.

However, when the third incident is added to the other two, I **CONCLUDE** that there is really very little alternative but to uphold that the imposition of major discipline in the form of the termination of Officer Baron's employment as an SCPO was warranted and that the use of progressive discipline in this circumstance was appropriate.

I **FIND** that this decision takes into consideration both the relative severity of the offense, but also her checkered disciplinary history and the short duration of Officer Baron's employment. While I appreciate Officer Baron's desire to remain on the job and of how proud she is to work for the HCDOC, I **FIND** that her inability to act in a professional manner, both on and off the job, is disqualifying.

I am unpersuaded by her testimony concerning the circumstances of the initial suspension and any real concerns that may have arisen concerning that suspension were assuaged given her admission to substantially similar conduct shortly thereafter.

While I have reversed the findings of guilt to the insubordination, neglect of duty and other sufficient cause charges, her guilt of the conduct unbecoming charge is more than enough, particularly given the circumstances of the May 9, 2021 incident, for me to

CONCLUDE that termination is the appropriate punishment, and I **FIND** that same has been proven by a preponderance of the credible evidence.

ORDER

Based on the foregoing, I hereby **ORDER** that petitioner, Jillian Baron, be hereby terminated from her employment as an SCPO at the HCDOC effective May 10, 2022.

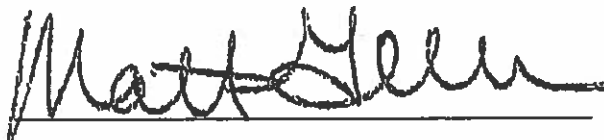
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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.

December 7, 2022

DATE



MATTHEW G. MILLER, ALJ

Date Received at Agency:

December 7, 2022

Date Mailed to Parties:

December 7, 2022

MGM/sej

APPENDIX

WITNESSES

For Petitioner:

Officer Jillian Baron

For Respondent:

Sgt. Alfredo Castro

Heidi Castro

Elizabeth Castro

EXHIBITS

For Petitioner:

- P-1 Post-incident photograph of petitioner's left shoulder
- P-2 Post-incident photograph of petitioner's right elbow
- P-3 Post-incident photograph of petitioner's hands
- P-4 Post-incident photograph of petitioner's car
- P-5 Post-incident photograph of petitioner's car
- P-6 Post-incident photograph of petitioner's left forearm
- P-7 through P-22 were not offered into evidence
- P-23 May 9, 2021 handwritten affidavit of Ofc Baron to the Bogota Police Department
- P-24 May 9, 2021 HCDOC incident report completed by Officer Baron
- P-25 December 23, 2021 Little Ferry/Bogota Municipal Court Notice of Disposition of the May 9, 2021 charges against Officer Baron
- P-26 Screenshot of text exchange between Heidi Castro and Alfredo Castro

- P-27 February 28, 2022 Certificate of Completion of a 4 Hour Behavior Modification Class by Officer Baron offered by the North American Learning Institute
- P-28 March 4, 2022 Certificate of Completion of a 4 Hour Anger Management Class by Officer Baron offered by the North American Learning Institute
- P-29 August 8, 2022 letter from the Victim Advocate Coordinator of the Bergen County Department of Human Services Division of Alternatives to Domestic Violence to Officer Baron's attorney

For Respondent:

- R-A May 10, 2021 HCDOC incident report completed by Sgt. Castro
- R-B May 9, 2021 HCDOC incident report completed by Officer Baron
- R-C May 9, 2021 Complaint-Summons issued against Officer Baron by Heidi Castro with affidavit of probable cause and May 9, 2021 complaint e-mail from Heidi Castro to Keith M. McMillan of the HCDOC
- R-D Various post-incident photographs
- R-E May 9, 2021 Complaint-Summons issued by Officer Baron against Heidi Castro with affidavit of probable cause and May 9, 2021 complaint e-mail from Heidi Castro to Keith M. McMillan of the HCDOC
- R-F May 9, 2021 Complaint-Summons issued against Officer Baron by Elizabeth Castro with affidavit of probable cause and May 9, 2021 complaint e-mail from Heidi Castro to Keith M. McMillan of the HCDOC
- R-G HCDOC Custody Staff Rules and Regulations Manual (September, 2017)
- R-H County of Hudson employee profile for Officer Baron
- R-I December, 2018 and August, 2019 settlement agreements between Officer Baron and Hudson County.

Joint:

J-A May 17, 2021 Preliminary Notice of Disciplinary Action

J-B May 12, 2022 Final Notice of Disciplinary Action