



STATE OF NEW JERSEY

In the Matter of John Talton,  
Camden County, Department of  
Public Safety and Juvenile Justice

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2022-1474  
OAL DKT. NO. CSV 00499-22

ISSUED: FEBRUARY 1, 2023

The appeal of John Talton, Public Safety Telecommunicator, Camden County, Department of Public Safety and Juvenile Justice, removal, effective November 15, 2021, on charges, was heard by Administrative Law Judge Sarah H. Surgent (ALJ), who rendered her initial decision on January 5, 2023. 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 February 1, 2023, 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 John Talton.

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 1<sup>ST</sup> DAY OF FEBRUARY, 2023

Allison Chris Myers  
Acting Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
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Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 00499-22

AGENCY DKT. NO. 2022-1474

**IN THE MATTER OF JOHN TALTON,  
CAMDEN COUNTY, PUBLIC SAFETY  
AND JUVENILE JUSTICE.**

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**John Talton**, appellant, pro se

**Krista A. Schmid**, Assistant County Counsel, for respondent, Camden County,  
Public Safety and Juvenile Justice (Emeshe Arzon, Camden County  
Counsel, attorney)

BEFORE **SARAH H. SURGENT**, ALJ:

Record Closed: August 22, 2022

Decided: January 5, 2023

**STATEMENT OF THE CASE**

Appellant John Talton (Talton) appeals from respondent Camden County, Public Safety and Juvenile Justice's (County) disciplinary action terminating his employment as a Camden County Public Safety Telecommunicator (PST) in the Camden County Communications Center (Communications Center) for alleged violations of County and

Department of Public Safety (Department) policies in three separate incidents. Talton seeks reinstatement and back pay from November 15, 2021, to present. The County maintains that Talton's termination was warranted due to his failure to perform duties, conduct unbecoming a public employee, neglect of duty, other sufficient cause, and a violation of Camden County Policy 35 (Policy 35), concerning outside employment, all of which Talton disputes or attempts to mitigate.

### **PROCEDURAL HISTORY**

On August 13, 2020, the County served Talton with a Preliminary Notice of Disciplinary Action (PNDA), charging him with: (1) N.J.A.C. 4A:2-2.3(a)1, failure to perform his duties; (2) N.J.A.C. 4A:2-2.3(a)6, conduct unbecoming a public employee; (3) N.J.A.C. 4A:2-2.3(a)7, neglect of duty; (4) N.J.A.C. 4A:2-2.3(a)12, other sufficient cause; and (5) violating Camden County Standard Operating Procedure (SOP) 237, working assignments, by refusing an order to report to an assigned work station and leaving the Communications Center during his shift on August 4, 2020. (R-2). The PNDA proposed a thirty working-day suspension. Ibid.

On November 30, 2020, that PNDA, with the same charges, was amended to include Talton's rescission of an October 29, 2020, advanced overtime shift he had accepted, failing to find a replacement for that shift, and failing to provide a doctor's note for the overtime he rescinded. (R-3). The PNDA proposed a forty-five working-day suspension. Ibid.

On August 26, 2021, that PNDA was amended to include a new charge of violating Policy 35, by working for ride-sharing services and a real estate agency and playing golf while Talton was out on medical leave. (R-4). However, the amended PNDA did not include the original PNDAs' charge of violating SOP 237, working assignments. Ibid. The PNDA proposed immediate removal. Ibid.

On October 26, 2021, a Departmental hearing was held. (R-28). On November 15, 2021, Talton was served with a Final Notice of Disciplinary Action (FNDA), terminating his employment effective November 15, 2021, based upon the charges listed in the August 26, 2021, PNDA. (R-4; R-28). On December 2, 2021, Talton filed an appeal with the Civil Service Commission (CSC), which was transmitted to the Office of Administrative Law (OAL), where it was filed on January 21, 2022, to be heard as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. (R-6).

The matter was heard remotely via videoconference on April 18, April 19, and May 10, 2022, due to the ongoing COVID-19 pandemic (pandemic). The record was held open to allow the parties to order the transcripts of the hearing and submit post-hearing briefs. The record closed on August 22, 2022. By orders of extension dated October 6, 2022, and November 16, 2022, the original Initial Decision due date of October 6, 2022, was extended to January 5, 2023, due to my voluminous caseload.

### **FACTUAL DISCUSSION AND FINDINGS OF FACT**

These salient points are not in dispute. I therefore **FIND** the following as **FACT**.

At the time of his termination, Talton had been a PST for the County for approximately nine years, until his removal on November 15, 2021. (R-28). As a PST, Talton was required to “receive[] and respond[] to telephone or other electronic requests for emergency assistance including law enforcement, fire, medical, or other emergency services and/or dispatch[] appropriate units to response sites. (R-1). On or about January 29, 2020, Talton applied for intermittent Family and Medical Leave Act (FMLA)<sup>1</sup> time from February 1, 2020, to February 1, 2021, for alleged pain due to a hernia surgery that was

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<sup>1</sup> The FMLA is a federal law which provides job-protected unpaid leave from work for up to twelve weeks per year for certain family and serious medical reasons. During FMLA time, employers must maintain workers' group health insurance under the same terms and conditions as if an employee had not taken leave, and employers are required to give employees their jobs back when they return from leave. 29 U.S.C. 2612.

performed in 2016. (R-11; 3T207). That intermittent leave was granted for a total of 121.2 hours. (R-43).

During the pandemic, the Department implemented numerous sanitization, social distancing, and masking protocols to protect the health and safety of its employees. (R-10). On August 3, 2020, Governor Murphy issued Executive Order 174 declaring a State of Emergency across all twenty-one counties in New Jersey, commencing at 5:00 a.m. on August 4, 2020, in preparation for Hurricane/Tropical Storm Isaias (Isaias). Exec. Order No. 174 (Aug. 3, 2020) <https://nj.gov/infobank/eo/056murphy/pdf/EO-174.pdf> (last visited Nov. 21, 2022).

As a result of Isaias, the 911 Call Center was inundated with storm-related calls. (R-9). PST Robey (Robey) was brought down from the administrative section on the second floor to the main operations floor to assist with call taking. (R-9). Acting Watch Commander Lieutenant Joseph Cipriano (Cipriano) intended to put Robey in the Metro Room, and “to move a call-taking certified dispatcher from the Metro Room to assist in call taking . . . . as the calls coming into Metro were not that ‘heavy.’” Ibid. At approximately 10:20 a.m., Lieutenant Moore (Moore) approached Talton in the Metro Room and directed him to go to the main 911 Call-Taking room to assist with calls during the storm. (R-8). Talton refused to go, stating that “he did not want to be put in the middle of the COVID-19 exposure.” Ibid.

Moore advised Talton that he would be charged with insubordination for refusing to move. Ibid. Talton advised Moore that he understood, and stated that he wanted to go home sick for the remainder of the day, ibid., because his “blood pressure [was] rising over the threat of being written up for insubordination for protecting [his] life,” (R-7). Before he left the Communications Center, Talton sent an Incident Report to Moore, dated August 4, 2020, regarding his refusal to move, which states the following:

On the above date and at approximately 1020 hours, I was approached by Lt. Moore and advised that I was being moved out to call taking. I asked why I was being moved to call taking

when Pst Robey from administration was being placed in Metro when he could have gone right to call taking? This writer then informed Lt. Moore that I don't feel safe going to call taking due to the fact that there was a direct exposure to someone confirmed with covid and I was never formally advised and there are more cases coming in. My reluctance to move to the other room is strictly motivated by the uncertainty of proper notification from the administration as well as the health department. There are Psts who had direct exposure and weren't put on quarantine and for me to go work in that environment is unsafe and not fair. I am going home sick FMLA due to my blood pressure rising over the threat of being written up for insubordination for protecting my life.

[(R-7) (sic passim).]

Talton did not mention anything about pain. Talton's request for FMLA time was denied because, according to Cipriano's Incident Report, Talton was "going home due to insubordination." (R-9). After authoring his report of the incident to Moore, (R-7), Talton left work at 11:15 a.m., and was not paid for the remainder of the day, (R-9). Moore authored a report about the incident to Cipriano, (R-8), and Cipriano authored a report about the incident to Chief James Jankowski (Jankowski), (R-9).

Later that same day, at 5:00 p.m., Talton sent an email to Cipriano stating "I'm driving my mother in law and father in law Down to Richmond, Va for a funeral. Will I have to quarantine for fourteen days when I get back?" (R-13) (sic passim). At 6:24 p.m., Cipriano replied, "[a]s per our conversation on Monday, if you are traveling to Virginia upon your return to New Jersey you will be required to self quarantine per the Camden County Administrators directive using your accrued time. If this takes place please notify the on duty watch commander as soon as possible." Ibid. (sic passim). At 7:59 p.m., Talton replied, "I'm so glad I asked again because per our conversation yesterday, you told me that if I drove down and returned the same day that I would not have to quarantine. I'm glad that matter was clarified." (R-13).

Later that evening, at 10:43 p.m., Captain Scott Draham (Draham) sent an email to Talton stating that pursuant to an earlier telephone conversation about Talton's

proposed travel to Virginia the following day, August 5, 2020, returning August 6, 2020, as an essential employee, Talton would be required to use his accrued leave time to self-quarantine for fourteen calendar days, "potentially with the option of electing to get a COVID-19 test on day five of this travel quarantine, and return to work with proof of a negative test." (R-15; R-16). Draham advised that if Talton chose the fourteen-day self-quarantine option, he would be due to return to work on August 21, 2020. (R-16).

According to an October 27, 2020 Incident Report from Cipriano to Draham, on October 26, 2020, Talton was sent home from work after advising Cipriano that "he felt he needed a COVID test due to losing his sense of taste." (R-17). Talton was tested that day and received a negative result the following day. (R-18). On October 27, 2020, with Talton still out, Draham advised Talton via email that, pursuant to the County's policy, he would not be paid for being out on October 26, 2020, and October 27, 2020, for the COVID-19 quarantine/testing. (R-17). At 4:40 p.m. on October 27, 2020, Talton called Cipriano and stated that if he was not being paid for his October 26, 2020 and October 27, 2020 absences, he wanted to "give back" the October 29, 2020 advanced overtime shift he had signed up for. Ibid. He was advised by Cipriano that he would have to find his own replacement, which Talton disagreed with, and then stated, "if I find it I find it, if not I guess it will be whatever it'll be." Ibid.

On or about March 26, 2021, Talton requested intermittent FMLA time from March 12, 2021, when he was involved in a motor vehicle accident, through March 12, 2022. (R-20). His request was approved on March 29, 2021, with 320.8 hours of intermittent leave commencing on March 26, 2021, and ending on March 12, 2022. Ibid. The physician's initial certification and follow-up certifications indicate that Talton's condition commenced on approximately March 12, 2021, and listed Talton's diagnoses as cervical neuralgia (neck pain), cervical radiculopathy (irritation of nerves in the cervical spine), and lumbar neuralgia (lower back pain). (R-20). The recommended treatments included chiropractic manipulation and adjunctive therapies, pain management, and a neurological consult. Ibid.



While Talton was out on medical leave, the County had him placed under surveillance by DigiStream Mid-Atlantic, Inc. (DigiStream), after the County received notice that Talton was working as a realtor. Talton was surveilled for nine days in July 2021, and DigiStream created an investigation report, which states, in summary, that on July 9, 2021, Talton was observed and videotaped getting into and out of his car, driving, picking up and dropping off unidentified individuals, presumably for the Lyft ride-sharing service, walking, and carrying various items. (R-21 at 2). On July 11, 2021, Talton was observed and videotaped entering and exiting a residence, entering and exiting a vehicle, walking, driving, carrying a golf bag at a country club, swinging a golf club, and bending at the waist and knees. Ibid. On July 13, 2021, Talton was observed and videotaped entering and exiting a vehicle, and driving for a rideshare service. Ibid. On July 14, 2021, Talton was observed and videotaped entering and exiting a vehicle, driving, running numerous errands, walking for an extended period of time, golfing, extending his arms, and bending at the waist several times. Ibid. On July 18, 2021, Talton was observed and videotaped walking, driving, and bending at the waist. Ibid. More specific details are contained in DigiStream's full report. Id. at 3-10. Talton was never observed visiting a chiropractor's or doctor's office. Ibid.

The November 15, 2021 FNDA states that the incidents giving rise to the charges and the dates on which they occurred were as follows:

On or about August 4, 2020, you were ordered by the Watch Commander to work at a different work station during the height of the storm that day. You refused to go to the assigned work station and was informed that if you did not you would be charged with insubordination and you still left. Additionally you accepted advanced [overtime to work October 27 [sic 29], 2020. On October 27, 2020, you subsequently informed Lt. you wanted to give back the advanced overtime you initially accepted. You were advised that it was your responsibility to find coverage and you told the LT. "uh no, I don't . . . . I am not taking the overtime so if I find it, I find it, if not I guess it will be whatever it'll be." As a result you were also required to provide a doctor's note for the overtime you rescinded and did not.

Additionally, you were under surveillance for a period of time and recorded on July 9, 2021, working for ride share services and working at Weichert Realty where you are listed as a real estate agent. On July 11, 2021 you were recorded playing golf from approx. 10:31am - 3:00pm. On July 14, 2021 you were again recorded playing golf from approx. 10:50am - 3:30pm. As such, this is theft of time as you were engaged in secondary/gainful employment, when incapacitated as outlined in your medical documentation you supplied for your need for leave of absence, during your normal work schedule for the County.

[(R-28) (sic passim).]

With respect to the August 4, 2020, incident when Talton refused an order and then left the building during Isaias, the Department's SOP 237 provides, in relevant part, "[p]ersonnel assigned to a position must remain at their position," and "[i]f an employee must leave the complex, the employee must get prior approval from the Shift Supervisor." (R-12).

With respect to advanced overtime shifts, the Department's SOP 262 provides, in relevant part, "[w]hen an employee accepts advanced overtime and chooses to not work, it will be the employee's responsibility to find coverage for that overtime shift. If rescinding overtime you must provide a physician's note if you cannot find coverage. In these cases the overtime shift will be hired as if it was a callout." (R-19 at 2).

Policy 35 provides, in relevant part:

#### **POLICY**

- A. All full time employees of Camden County shall consider the County of Camden as their primary employer. As such, they must be available and able to perform all the duties of their position as required by the County of Camden.

.....

## PROCEDURE

- A. Immediately upon accepting outside employment, all employees shall be required to advise their Department Heads and Human Resources in writing of the place of their outside employment, type of work performed and their hours of work, and certify that their work does not constitute a conflict of interest.

....

- C. Employees are prohibited from engaging in secondary employment or other gainful activity when they are incapacitated from working during their normal work schedule for the county due to their own serious health condition or that of a family member or work related injury or any other approved medical leave.

[(R-25) (emphasis added).]

## SUMMARY OF RELEVANT TESTIMONY<sup>2</sup>

Donette Brown (Brown), Cipriano, Draham, Robin Blaker (Blaker), John Tranculov (Tranculov), and James Gamble (Gamble) testified on behalf of the County. Jankowski and Talton testified on Talton's behalf.

### For Respondent

**Brown** testified as follows. As of August 2022, she had worked for the County for twenty-five years in administration, primarily in Human Resources (HR). (1T35). She deals with, among other things, training, discipline, labor relations, and family leave. Ibid. She was involved in preparing the PNDAs and the FNDA at issue. (R-35-R36; R-2; R-3; R-4; R-28).

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<sup>2</sup> Transcripts Legend

1T: Revised Transcript dated April 18, 2022

2T: Transcript dated April 19, 2022

3T: Transcript dated May 10, 2022

As to the third PNDA, (R-4), Brown's office received information from the County and various employees that Talton had been working as a realtor while he was out on medical leave (1T36; 1T57). Talton had not reported to HR or the Department that he had outside employment. (1T36-1T37). The County hired a private investigator to surveil Talton's activities while he was out on medical leave. (1T37). While Talton was on medical leave, he performed no work for the County. (1T37-1T38). Talton had been approved for medical leave beginning on March 12, 2021, after he submitted a doctor's certification stating that he should refrain from any work-related activity after he sustained injuries in the March 12, 2021 automobile accident. (1T38; 1T44; 1T61; R-20). His medical leave was subsequently extended on numerous occasions to September 30, 2021, after he submitted more physician certifications that he should refrain from any work-related activities. (1T38-1T47; R-20).

While Talton was out on medical leave, the private investigator took surveillance videos which showed Talton engaging in outside work activities and playing golf. (1T47). Talton was prohibited by Policy 35 from engaging in outside work activities while on medical leave, which he should have known, because it is in the County's training portal, which every County employee must access electronically, read the policies, and acknowledge that they have done so. (1T48). On January 13, 2021, Talton confirmed that he knew how to access the County's policies and procedures, and he acknowledged that he had reviewed those policies and procedures. (1T49-1T50; R-36). Talton acknowledged the same on an annual basis, dating back to 2013. (1T50; R-36). The County's policies are also readily available on Share Point, which is every employee's default web browser. (1T54).

Policy 35 requires that if an employee has outside employment, they must inform their employer to ensure that the County is their primary employer, and that the outside employment does not conflict with the employee's primary job by working during County hours. (1T51; 1T53-1T54; 1T69; R-25). Typically, employees must notify their supervisor, and they can also email HR, which Talton did on October 27, 2021, immediately after the October 26, 2021 Departmental hearing. (1T52; R-23). Although

Talton indicated that he was an independent contract worker in his outside employment, Brown stated that was irrelevant because if Talton was making money from his outside activities, that would still be considered to be employment under Policy 35, whether he received W-2 forms or 1099 forms reporting his income. (1T53).

**Cipriano** testified as follows. He is a Lieutenant with the County and a senior PST, and he normally supervises other PSTs in the Metro Room. (1T76). The County's Communications Center first floor plan is depicted in R-32. (1T113). The arrows on the floor plan indicate the path of entry. Upon entering the main operations door to the building, one enters into the main operations floor. Directly in front is the 911 call taking area. To the left is the fire and ambulance dispatch area (Alarm Room or Fire/EMS Room), and to the right there are more call taking consoles and then police operations dispatch consoles. All of those areas are contained in one large room. After passing through the 911 call taking area and the police operations area, the Metro Room is a smaller separate room with a wall and a door. (1T115-1T116; R-32). In order to enter and leave the Metro Room, one must walk through the main operations floor, but not through the fire and ambulance dispatch area. (1T126; 1T128; R-32; see also 2T69-2T70).

On August 4, 2020, Cipriano was reassigned from the Metro Room to the main operations floor to assume duty as the Acting Watch Commander because the Watch Commander (Captain) was out. (1T76-1T77; 1T128; 1T135-1T136). In that role, he assumed the Captain's position for the day and supervised the entire operations for a twelve-hour period. (1T77). Talton was on duty that day and was assigned to the Metro Room. (1T77-1T78; R-32). Talton's responsibilities in the Metro Room were "to answer 911 calls and/or dispatch police via radio." (1T78). He was subsequently reassigned to the main room, the "911 Comm. Center," where his responsibilities only included taking 911 calls from throughout the County, as opposed to the Metro Room, which only handled calls dealing with the City of Camden. (1T78-1T80; R-32). The 911 Communications Center (911 Center) receives all 911 calls, and then transfers calls to the Metro Room if

the call is about the City of Camden, because the Metro Room has a different Computer Aided Dispatch (CAD) system than the 911 Center. (1T80).

Talton had experience in both the Metro Room and in the 911 Center as a PST beginning in approximately 2012 to 2013. (1T81). Initially, Talton's primary room was the 911 Call Center until the Communications Center got the Metro Room, and Talton was trained and reassigned to the Metro Room approximately five years prior to the hearing. (1T81-1T82). On August 4, 2020, Talton was reassigned to the 911 Call Center because it was receiving a "severe influx" of weather-related calls due to Isaiah. (1T82-1T83; 1T106). Cipriano had called upstairs to administration asking for extra assistance and PST Robey, who worked in administration, went to the 911 Call Center and asked where he was needed. (1T82; 1T106). Cipriano asked him where he felt the most comfortable and Robey replied the Metro Room, because that was where he had been assigned before he moved to administration approximately one to one and one-half years prior. (1T82; 1T124).

Cipriano agreed, as an operational decision to minimize mistakes, and told Robey to go relieve Talton, which was the first name that came to Cipriano's mind, because of Talton's prior experience in the 911 Call Center. (1T83; 1T110). Cipriano agreed that Robey was qualified to work in the 911 Call Center, that he had a title of certified training officer for 911, Metro, and Central, that there was an immediate need for 911 call taking, and that Robey was sent from the administrative office to help with the immediate need. (1T107; 1T109). Cipriano also agreed that Talton was not asked where he felt most comfortable working, (1T113), and Cipriano did not believe that PSTs who were afraid of COVID risks were permitted to dictate where they were assigned, (1T125).

Cipriano felt that Robey would be better suited to handle Metro calls because of the influx of 911 calls that day. (1T83-1T84). In his role as Watch Commander, it was Cipriano's duty to ensure that all rooms at the Communications Center were adequately and appropriately staffed, which is a decision not delegated to PSTs. (1T84). He has

reassigned PSTs to various rooms numerous times, depending on the Communication Center's needs on any given day. (1T85).

On the date of the incident, Moore was Talton's direct supervisor. Moore advised Cipriano that Talton was refusing to move to the 911 Call Center, and she prepared an Incident Report to that effect. (1T85; R-8). Moore reported that Talton stated that he did not want to go out to the "COVID room." (1T85; R-8). Cipriano assumed that Talton meant the 911 Call Center or the Fire and Ambulance Center (Alarm Room). (1T85; R-8). Cipriano agreed that two days prior to the incident in question, approximately nine PSTs in the Alarm Room tested positive for COVID. (1T118). Cipriano was unaware of whether any PSTs in the 911 Call Center had tested positive for COVID. (1T119).

Talton was advised by Moore that he would be charged with insubordination for refusing to go to the 911 Call Center, and Cipriano agreed with that charge because Talton refused a direct order from a supervisor. (1T87; R-8). Talton did not report to the 911 Call Center at any point that day. (1T87). Cipriano prepared an Incident Report addressed to Chief Jankowski. (1T87-1T88; R-9). At no point did Talton indicate to Cipriano that he had any special health or immunity issues. (1T127).

On October 27, 2020, Cipriano prepared another Incident Report addressed to Draham. (1T88; R-17). During that incident, on October 27, 2020, Talton had signed up via a text message for an advanced overtime shift on October 29, 2020, but later called Cipriano and rescinded the shift. (1T89-1T91; 1T97). Talton was not at work on October 27, 2020 and October 28, 2020, due to COVID-related issues. (1T97-1T98).

Advanced overtime is a shift that occurs forty-eight or more hours after a regularly scheduled shift. (1T89). Overtime shifts pay time and one-half of regular pay. (1T90). Employees must have completed a certain number of hours in a work week to be eligible for overtime pay, and Talton did not qualify for overtime pay because he had been out for two days before the overtime shift and therefore did not have the requisite forty hours of work that week to qualify for overtime pay. (1T90-1T91). Cipriano advised Talton that he

would have to find a replacement per the Department's policy. (1T92). That telephone call was recorded and transcribed. (1T92; R-40).

Cipriano: Communications. Lieutenant Cipriano.

Talton: Yo, Cip.

Cipriano: Yeah.

Talton: Hey, I just got the . . . I got the email back from Draham so I guess I'm getting no pay for those days. I want to give back my overtime.

Cipriano: All right, well you're going to have to find your own coverage.

Talton: I don't have to.

Cipriano: Yes, you do. It's in the SOP.

Talton: Uh, not when it's prescheduled.

Cipriano: It's in the SOP for overtime.

Talton: Are you sure about that?

Cipriano: Yeah. Yeah, because I went through the same thing.

Talton: All right, well for the record, I'm not taking the overtime so I'll . . . if I find it, I find it; if not, then I guess it will be whatever it will be.

Cipriano: Okay.

Talton: All right, bye.

[(R-40) (as supplemented by my review of the audio recording which was played on the record).]

Talton disagreed with Cipriano that SOP 262 required him to find his own coverage for an advanced overtime shift. (1T94). Overtime policy 262 provides, in relevant part, "When an employee accepts advanced overtime and chooses to not work, it will be the



employee's responsibility to find coverage for that overtime shift. If rescinding overtime you must provide a physician's note if you cannot find coverage. In these cases the overtime shift will be hired as if it was a call out." (1T95; R-19). Talton did not find coverage for the advanced overtime shift, and thus disobeyed a direct order. (1T95-1T96; R-19). Ultimately, coverage was found for the advanced overtime shift when someone volunteered for that shift. (1T104).

**Draham** testified as follows. He has been employed by the County for nineteen years. (2T9). He started as a call taker, was promoted to Lieutenant after seven years, and was promoted to Captain in 2015. (2T9). He was not on duty on August 4, 2020, when Talton refused to go to the 911 Center. (2T9). Draham did not recall having a conversation with Talton on that day, and was provided with a copy of R-16, his email to Talton, to refresh his recollection. (2T10-2T11). Draham then recalled that he and Talton had an August 4, 2020 telephone conversation which he memorialized in the email later that day. (2T11; R-16). Talton was planning to travel to Virginia, a state on the New Jersey Travel Restriction List, (R-14), the following day, and according to Draham, would be required to quarantine upon his return, (2T11; R-16).

When Draham spoke with Talton on the phone, he advised Talton that he had the option of either staying out of work for five days and then returning with a negative test, or staying out of work for fourteen days. (2T12). Draham was pushing for the five-day option because the Communications Center was so "short staffed." (2T12). Talton opted for the fourteen-day quarantine, which created a hardship at the Communications Center because coverage had to be found for Talton's shifts when the Center was already short staffed due to COVID, and other staff members were forced to work overtime and on their days off. (2T12-2T13).

On October 27, 2020, Draham was the Watch Commander. (2T13). He was made aware by Cipriano of Talton's "giv[ing] back" his October 29, 2020 advanced overtime shift because Talton had learned that he was not going to receive overtime pay. (2T13; 2T17). Cipriano prepared an Incident Report on that date and gave it to Draham. (2T13-

2T14; R-17). Due to Talton's recission, Draham "had to stop what [he] was doing right away," and take time out of his duties to find coverage to fill the minimum staffing requirements. (2T14). That had to be done in a timely fashion, because if no replacement was found, a decision would have to be made about who would have to be forced to cover Talton's advanced overtime shift before they left for the day. (2T14; 2T34-2T35).

When no volunteers were found, PST Megan Maldonado (Maldonado) was forced to take Talton's advanced overtime shift. (2T15; R-35). However, ultimately, she did not have to work that shift because a supervisor volunteered to take the shift. (2T15; 2T33; R-35). Talton did not find coverage for the overtime shift and did not produce a doctor's note in violation of the requirements of SOP 262. (2T15-2T16; 2T42-2T43; R-19). Talton presented no medical reason for giving back his advanced overtime shift. (2T17). Draham never advised Talton that he would not be disciplined for giving back the shift, and he had sent an email up the chain of command in reference to discipline for that incident and the 911 Call Center incident on August 4, 2020. (2T17-2T19; R-35).

Draham agreed that SOP 262 does not specifically address disciplinary action for giving back pre-scheduled overtime, and he did not recall a purported meeting in Draham's office with Talton, Draham, Cipriano, and union representative Chris Mote (Mote) about the overtime incident. (2T20-2T23). Draham explained that if an employee violated any SOP, they may be subject to discipline, even if the SOP does not explicitly state that warning. (2T42-2T43). Draham explained that if an employee was going to be "written up" for discipline, they were notified when they were served with a disciplinary form, and that he himself did not present a disciplinary form to Talton, because Draham "sent it up the chain of command." (2T23). Captains do not serve notices of major and minor disciplinary actions — "That's handled by the office of the chief and counsel from up town." (2T24).

Draham was unsure of whether any other employee had ever been "written up" for giving back advanced overtime, and whether anyone had ever given back advanced overtime, but recalled that other employees had found volunteers to fill their shifts. (2T26-

2T29; 2T38). Talton was not at work on October 26, 2020 and October 27, 2020, due to a suspected COVID infection, which he tested negative for. (2T35; 2T37). Talton spoke with Draham on October 27, 2020, and learned that he would not be paid for the two days that he was out. (2T37). Cipriano advised Talton that he would not be paid time and one-half for his advanced overtime shift because he had not worked forty hours that week due to his two-day absence. (2T37-2T38).

**Blaker** has worked for the County since 2010. (2T55). Initially, he was the Director of the Regional Emergency Training Center. (2T55). In September 2010, he became the Acting Director of Public Safety, and in January 2011, he became the permanent Director. (2T55). Before he joined the County, Blaker was a New Jersey State Trooper for twenty-five and one-half years, and for eighteen months in 1997 and 1998, he supervised dispatchers in the call center for the New Jersey Turnpike. (2T55).

As the Director of Public Safety, Blaker's responsibilities include supervising the Department's three divisions, consisting of approximately 170 employees. (2T55-2T56). Those divisions include the Office of Emergency Management, the Office of the Fire Marshall, and the County's Security Force. (2T56). He typically meets with PSTs during their first week of employment, reminds them of the import of their jobs, and that they are considered to be first responders, and are responsible for gathering correct information from callers. (2T57). He explained that the Communications Center is run in a paramilitary formation with a strict chain of command, with Lieutenants, Captains, Administrative Captains, and the Chief. (2T57-2T58). There are a series of SOPs that dictate how PSTs must work and respond to callers. (2T58).

As the Director, he informs new PSTs that his major expectations are: (1) that they come to work; (2) that they do their jobs; and (3) that they follow the rules. (2T60). He had that conversation with Talton. (2T61). As to Talton, Blaker stated that he is a very good dispatcher and call taker, but not very good at coming to work and following the rules. (2T61). Blaker is involved in the disciplinary process. (2T61). A disciplinary action typically starts in the operations room, then is sent through a Lieutenant, to the Watch

Commander, to the Chief. When an incident occurs, the officers meet with the Director, review the Incident Reports, audio recordings, if any, and prior disciplinary actions, and then determine the appropriate discipline to be imposed. (2T62). A recommendation is then made to HR, which reviews the proposed disciplinary action with an eye toward uniformity in the County. (2T63). Those procedures were followed for the August 2020 and October 2020 incidents, but HR “pretty much dealt with the third discipline,” which recommended removal, and Blaker concurred. (2T63-2T64).

With respect to the August 4, 2020 incident, Blaker believed that Talton refused a direct order to go to the 911 Center because Talton felt that he could be potentially exposed to COVID. (2T64-2T65; 2T118). Blaker agreed that on August 4, 2020, the 911 Call Center had an immediate need for assistance due to Isaias, but disagreed that Robey was supposed to go to that immediate need. (2T112-2T113). Blaker explained that one week prior, nine PSTs had tested positive for COVID. (2T65; 2T117-2T118). Eight employees were in the Alarm “room,” and one was in the 911 Call Center after that PST had been fraternizing with other PSTs in the Alarm room. (2T66; 2T117-2T118; R-32). There were no cases in the Metro Room. (2T67).

Cooper University Hospital then partnered with the Department and brought in nurses who tested every employee within days of that outbreak, and no other employees tested positive to the best of Blaker’s knowledge. (2T67). However, even prior to that, the Department started no less than twelve to thirteen mitigation efforts on March 18, 2020, to protect its employees, because the call center could never be shut down, and 911 calls for service increased “tremendously,” due to callers’ COVID symptoms. (2T67-2T68). Under the Department’s policies, employees have no option during emergencies such as the pandemic or a hurricane to refuse or disobey direct orders. (2T68-2T69; 2T92-2T93). In addition, the Department took extraordinary health precautions to protect its employees, at a cost of hundreds of thousands of dollars, turning their cleaning staff into “24/7” employees every six hours to completely disinfect every hard surface in the building, and providing every call taker with disinfectant cleaning wipes. (2T69).

The Department also replaced all of their HVAC air filters with HEPA air filters on April 14, 2020, in consultation with the County Health Officer, and built “scrub stations” where every employee had to scrub before entering the building and also have a temperature scan. (2T70-2T71; R-10). On July 26 through 27, 2020, there was a “deep clean” of the entire building, before Talton abandoned his post on August 4, 2020. (2T73). On July 30, 2020, all call takers were required to wear masks when they were not on a phone or radio, and they were required to sanitize their work stations both before and after use. (2T74-2T75). PSTs are considered to be “essential employees,” and it was simply not feasible to accommodate their workroom preferences due to their fear of COVID. (2T75-2T76; 2T155-2T156; 2T160). Blaker opined that Talton would have been in no danger of contracting COVID if he had gone to the 911 Call Center as ordered, due to the extraordinary lengths the Department had gone through to prevent the transmission of COVID. (2T123).

As to Talton's refusal to work his October 29, 2020 advanced overtime shift, Blaker agreed that it was a violation of SOP 262 because Talton did not find a replacement or produce a doctor's note to excuse his absence. (2T78). On occasion, supervising officers work with PSTs who are unable to complete an advanced overtime shift, but on that occasion, Talton refused to work the shift simply because he discovered that he would not be paid time and one-half, because he had not worked forty hours prior to the shift, due to missing two days of work that week. (2T78-2T29). To Blaker's knowledge, Talton made no effort to find a replacement, and Talton gave no explanation to his supervisors as to why not. (2T79). Blaker conceded that a physician's note would not always be required for emergencies, such as childcare issues or car mechanical issues, (2T95; 2T97-2T101), but found that it was inappropriate for Talton to make his watch commander find coverage for the advanced overtime shift, which Blaker considered to be insubordination, (2T81-2T82), even though ultimately someone volunteered to take the shift, (2T101-2T105). Although Talton insisted that he had attempted to fill the shift and told Cipriano in person in his office that he was not successful with his colleagues in Metro, Blaker had no Incident Report reflecting that. (2T105-2T106; 2T111-2T112).

As to Talton's medical leave after the March 2021 car accident, it was Blaker's understanding that Talton's injuries prevented him from being able to work, according to Talton's doctor. (2T82-2T84). Talton's colleagues reported that while he was on medical leave, they discovered through social media that Talton was engaged in outside work activities, including real estate sales and ridesharing, which was creating operational and morale issues, and resentment, frustration, and anger among the colleagues who had to cover Talton's shifts. (2T84-2T85; 2T126-2T127; 2T162-2T164). The matter was referred to HR, who then hired a private investigator to surveil Talton. (2T85). Blaker was unsure whether Talton's outside activities while on medical leave were a violation of any SOP. (2T86-2T87).

**Tranculov** testified as a representative of DigiStream Mid-Atlantic, Inc. (DigiStream), which was retained by the County to conduct video surveillance of Talton. (2T176). Tranculov participated in the surveillance, as did other investigators, for a total of twelve (sic 9) days, on July 9, 10, 11, 13, 14, 18, 21, 23, and 24, 2021. (2T176-2T177; R-21). Exhibit R-21 is a summary of the investigation findings. (2T179; R-21). Five days of video footage were obtained (2T181), and Talton stipulated that the videos depicted himself and his vehicle (2T192; 2T195), and stipulated to the dates and observations made by the investigators, (2T201; 2T203; 2T213-2T214; R-21), but did not stipulate that all of his driving was for Lyft, and explained that some of it was for family members, (2T204). However, he later rescinded his stipulations, as to R-21, due to a discrepancy in the date on the first page of R-21, a cover page, which was attributed to July 12, 2021, rather than July 24, 2021. I overruled Talton's objection as a technical typographical error under N.J.R.E. 901, after Brown confirmed that the report and cover letter were actually received by the County on September 1, 2021, at 9:38 a.m., even though it was still misdated July 12, 2021 by DigiStream, clearly indicating that there was a typographical error by DigiStream. (2T210 -2T260).

In light of my evidentiary ruling, **Gamble**, the General Manager of DigiStream, whose digital signature appears on Exhibit R-21 at 1, testified convincingly that the

misdated cover page was a clerical error, and that the surveillance reports themselves would accurately reflect the dates of surveillance. (2T224-2T234; R-1 at 1).

**Tranculov** continued his testimony as follows. On Friday July 9, 2021, 115 minutes of surveillance video were obtained between 7:45 a.m. and 12:39 p.m. (2T183-2T184; 2T188; R-21 at 2). At 7:56 a.m., a Lyft ridesharing window sticker was observed on Talton's car. (2T185). At 8:01 a.m. and 8:02 a.m., Talton stopped to pick up a female who entered the back seat as a passenger. (2T187; R-21 at 2). At 8:19 a.m. and 8:20 a.m., Talton dropped off that passenger, and at approximately 8:25 a.m., Talton picked up a male passenger, and dropped him off at 8:32 a.m. (2T188). At approximately 9:48 a.m., Talton arrived at Weichert Realtors, entered the building at 9:58 a.m., where he remained until 12:14 p.m. (2T189).

On July 14, 2021, between 10:31 a.m. and 3:40 p.m., Talton was observed and videotaped as he arrived at a golf club in Blackwood, New Jersey. (3T11; R-21 at 6). He was observed socializing with several unidentified males in the parking lot. (3T14; R-21 at 6). He then returned to his vehicle and retrieved his golf clubs from the trunk of the car. Then he walked to the clubhouse where he came into view operating a golf cart. Then he presumably played eighteen holes of golf, but not always in view of the camera. Throughout the course and at the conclusion of the golf course, Talton was observed placing his golf bag and clubs back into the trunk of his vehicle. (3T14; R-21 at 6). Talton then drove the golf cart back to the clubhouse and entered the clubhouse out of view. (3T15; R-21 at 6). At approximately 10:42 a.m. that day, Talton was observed carrying his golf bag and clubs. (3T17). At approximately 1:05 p.m., Talton was observed swinging a club at a golf ball, as he did throughout the course while he was in view of the camera. (3T17-3T18). At approximately 3:39 p.m., Talton was observed putting his bag of golf clubs back into the trunk of his vehicle. (3T19).

Tranculov conceded that he did not know exactly how many holes of golf Talton played, because Talton was not always in view. (3T21-3T22). He conceded that he did not know how many golf clubs were in the bag, and whether Talton was taking full swings

or half swings. (3T22-3T25). He also conceded that when Talton went into Weichert Realtors, he did not see Talton punch a time clock, he did not see Talton in uniform, he did not see Talton sitting at a desk, and he did not know if Talton was working there to list a house. (3T23-3T24). However, it is undisputed that Tranculov never entered the building. (R-21 at 4). Tranculov also conceded that he did not know any of the people picked up by Talton in his vehicle, that Talton was not wearing a uniform, and that he did not see any exchange of money. (3T24).

### **For Appellant**

**Jankowski**, as Chief of the Department, testified as follows. He has been with the Camden County Department of Public Safety for thirty-two years and nine months. (3T83). Since 2012, he has been a Division Head under Blaker and runs the Division of Communications as its Chief. (3T84). In that capacity, his role encompasses supervising many things including budgeting, capital planning, operations, projects, conducting training, and interacting with police, fire, and EMS chiefs regarding communications and established policies. (3T85).

He never “reached out” to Talton while Talton was on medical leave. (3T28). He did not “reach out” to Talton when he heard that Talton had a realtor’s license. (3T29). He is aware that some PSTs have secondary employment, but could not recall their names “off the top of his head.” (3T29). He was aware that some of the PSTs in the Alarm Room are firefighters and EMTs. (3T29). He had no knowledge of whether those with secondary employment sent in paperwork to that effect, but believed that the reporting requirement was for HR, and not for himself. (3T30). He is familiar with County Policy 35, and believes that every County employee knows and needs to know that policy. (3T30). He conceded that Policy 35 is not on Power DMS, but that is just “a” source of information. (3T30-3T31). Jankowski explained that Power DMS is a software program that contains documents, training, and various items for employees’ reference. (3T32). The County policies are referenced through the E-Safety Training Program that the County operates. (3T32; 3T98; R-36). Power DMS is local to the County



Communications Department, whereas the E-Safety Training Program is County-wide for all County employees, and that is where access to the County Policies is available. (3T32-3T33; 3T98; 3T103-3T106). Talton's E-Safety Training Activity Report reflects all of his training activities from January 7, 2013 through January 18, 2021. (3T97-3T98; R-36).

Jankowski agreed that the Department's administration sent Robey to assist with 911 calls during Isaias. (3T55-3T66). However, he refused to agree with the notion that Robey should have been placed in the 911 Call Center, because Jankowski was not present when the decision was made to send Robey to the Metro Room — that was the Watch Commander, Cipriano's, decision. (3T56-3T59).

As to Talton's "giving back" the advanced overtime shift, Jankowski had no knowledge as to whether any other Communications Center employee had done that, because the hiring and disposition of overtime is "handled on the [communications] floor." (3T65). However, Jankowski was unaware of anyone else being disciplined for giving back advanced overtime. (3T66). He was aware that employees sometimes swapped shifts to cover each other, which is referred to as "MXT," meaning a mutual exchange of time. (3T66-3T67). He agreed that no one was forced to cover Talton's shift after the give back, because "the force was saved by another dispatcher" who volunteered. (3T67-3T68).

With respect to his email exchange with Draham, Jankowski explained that he wrote, "OK this is going uptown. I need to know how and who filled the overtime and Cip[riano] needs to put his name on the memo so I can send this up to HR," in response to Draham's statement that "We are now scrambling to hire this overtime prior to shift change because the force will have to come from this shift today before they leave at 1900. I was just about to start on a discipline but not knowing where he is with his other pending insubordination slash/SOP violations, I realized that I better wait to speak with you." (3T70; R-35). Jankowski further explained that because Talton already had a prior major disciplinary action pending from the August 4, 2020 incident, and in light of Talton's

negative test for COVID, Jankowski needed all of the information to send up to HR with regard to potential progressive discipline. (3T71-3T82).

Jankowski was aware that Talton's refusal to go to the 911 Call Center on August 4, 2020 was due to Talton's fear of being exposed to COVID. (3T86-3T87). The day before, on August 3, 2020, Jankowski had issued an order concerning COVID entitled "Movement on the Operations Floor," which was intended "to ensure that personnel in the operations floor weren't spending time at other consoles in the attempt to keep the six foot or the close to six foot separation for the – the COVID spread." (3T87-3T88; R-26) (*sic passim*). Cipriano later sent an Incident Report to Jankowski about a conversation he had with Talton and other dispatchers in the Metro Room when the order was issued, indicating that Talton objected to the order. (3T88-3T89). The Incident Report states, in relevant part, that

during this conversation, PST Talton was vocally expressing his concerns over the order. Also asked about working in other rooms and if this order applied. I advised PST Talton that operations dictate where you are assigned to during your shift so no, the order does not apply to working in a different room during your shift. His reply was "that don't make sense, and I wish they'd try that with me." I asked him why he said that and his reply was "I've been quiet to[o] long. Time to stir some shit."

[(3T89; R-29).]

It was Jankowski's understanding that Talton had a problem with the order restricting movement on the operations floor to prevent PSTs from engaging in conversation with one another. (3T90). On August 4, 2020, Jankowski was made aware the Talton had decided to leave work for the day. (3T90-3T91). Jankowski had not given Talton permission to leave work because the Communications Center had an extremely emergent situation with Isaias, which was striking the coast at that point, and Jankowski needed Talton to be there to do his job. (3T91). Talton requested that he be permitted to use FMLA time that day, and Jankowski denied it. (3T99-3T102).

As to Talton giving back his advanced overtime, Jankowski testified about Talton's Employee Ledger for the year January 1, 2020 to December 31, 2020. (3T91-3T92; R-39). According to the Ledger, Talton was scheduled to work on October 26, 2020, and he only worked for two hours. That was the day he reported a loss of taste, and went home on suspicion of COVID. Talton was scheduled to work on October 27, 2020, and he did not work that day. He had taken a COVID test, which came back negative. Talton was not scheduled to work on October 28, 2020, and he did not work on that date. On October 29, 2020, the day of the advanced overtime shift at issue, Talton did not work. On October 30, 2020, Talton was scheduled to work, and he did. Jankowski was unaware of Talton having made any attempt to find coverage for his advanced overtime shift. (3T92-3T94; R-39).

As to Talton's medical leave, Jankowski testified about Talton's Employee Ledger for July 1, 2021 through August 31, 2021. The Employee Ledger reflects an employee's schedule for an entire year, and is drawn up at the beginning of each year. Talton was scheduled to work on July 9, July 11, and July 14, 2021. He did not work on any of those days, with the reason stated as time off, medical leave of absence, no pay. Of the days that Talton was scheduled to work and did not, someone else had to cover those shifts. (3T94-3T97; R-38).

**Talton** testified as follows. On August 4, 2020, he was told by Moore to go from the Metro Room to the 911 Call Center. He was told that Robey would be taking his place in the Metro Room. Talton replied that he did not want to go to "the covid room," because a few days prior to that, the Alarm Room had a COVID outbreak where nine people on the same rotation all came down with COVID because one person came in sick. That person also infected "a couple of people" in the 911 Call Center. Talton testified that he was fifty-one years old at the time, had high blood pressure, and was borderline diabetic, which made him part of a vulnerable group. (3T108-3T110). He offered no documentary proof of his alleged medical conditions. He could not recall whether everyone was wearing masks on August 4, 2020, when they were not talking on a phone or radio

(3T182-3T183), notwithstanding Blaker's testimony that as of July 30, 2020, all call takers were required to wear masks when they were not on a phone or radio, (2T74-2T75).

Talton claimed that there were three full stations of 911 Call Center units, but that two of those stations had been shut down for repairs, which meant that all of the call takers had to be stationed in one circular area. Although there were "visors" separating the call takers from one another, there was nothing to prevent someone from stepping away from their dispatch unit, coughing, and infecting the air. When Talton refused to move, Cipriano replied, "well, I'm giving you a direct order to." Talton replied that the situation was causing his blood pressure to rise, and mentioned his FMLA. (3T110-3T111).

Talton explained that his FMLA time was for pain that he suffered after he had a surgery a few years earlier. He stated that certain circumstances brought on the pain, and that the pain is "traumatic" or "significant" when his blood pressure rises, and can also be caused by certain motions. The minute he was told that he was going to be "written up" for refusing the order to move to the 911 Call Center, his blood "pressure shot through the roof." He felt it. His hands started swelling and he said that he needed to go home and use FMLA time. Cipriano told him that Jankowski said that Talton was not allowed to use FMLA time. Talton explained and understood that Jankowski made that decision because HR had not updated Talton's paperwork in a timely fashion to reflect that Talton did have unused FMLA time left. "With that being said, nonetheless [Talton] wasn't going to sit there and have a stroke or have a heart attack. So [he] left." (3T111-3T112). However, Talton later stated that his FMLA time was made effective on August 5, 2020, rather than August 4, 2020, due the County's nefarious motives. (3T181-3T182).

With respect to giving back the advanced overtime shift, Talton stated that he was one of the highest overtime workers in the Communications Center, averaging from 400 to 700 hours of overtime per year. When he found out that he would not be paid time and one-half because he had tested negative for COVID and therefore had to use his accrued time as opposed to sick time for the two days that he was out, he gave the overtime shift

back. He was unaware that he had to find his own coverage for the overtime shift until Cipriano told him so, and out of frustration, Talton responded "okay, if I find it, I find it. If not, then it is whatever." Talton believed that he did not violate the overtime policy, because he tried to find a replacement, and could not. He stated that he was not asked for a doctor's note, but even if he were, he would not do something fraudulent and get a doctor's note if he was not sick. (3T112-3T113).

With respect to working while on medical leave, Talton stated that he was unaware of Policy 35 until he was "written up." He stated that every important memo was posted on Power DMS, and that Policy 35 was not posted there. Once he received the policy from County Counsel, he stated that HR should have immediately notified him that there could be disciplinary action. He also claimed that he did not have secondary employment because he has two businesses and he does not answer to anybody, does not punch a time clock, does not get a weekly or monthly paycheck, does not have any benefits, and does not wear a uniform. As to "gainful activity," Talton stated, "[t]hat could be anything, such as professional gambling or trading stocks online. He maintained that working as a realtor and Lyft driver while he was out on medical leave was not "gainful activity" because he was not reporting to anyone and was not sitting behind a desk for twelve hours or driving more than one or two hours per day for Lyft. If he was in pain, he could go home at any time, lie down, and take medication to ease the pain. He could not sit or stand for twelve hours while working for the County and he could not take medications because that could have impaired his judgment and caused him to make mistakes that might cause other people harm. (3T113-3T117; 3T119). He did not make any money as a realtor in 2020, and only made enough money as a Lyft driver to pay for his children's lunches and "little school events." (3T119).

With respect to golfing while on medical leave, he had already been under treatment for four months, and "when you're sitting at home for four months not able to do things, [a] little bit of depression sets in." His treating doctor noticed that Talton was not his "happy go-lucky self," and recommended that Talton get out and socialize and go golfing, because that was what Talton enjoyed. Talton stated that he did not play eighteen

holes of golf, and that if he was in pain, he would skip a hole, or just putt, (3T117-3T119), notwithstanding DigiStream's hours of videotape of Talton playing golf on July 11, 2021 and July 14, 2021, (R-21 at 5-8), which I note show Talton leaning into his car, easily getting into and out of his car, lifting and carrying a full golf club bag, easily getting into and out of golf carts, fully and easily bending at the waist to place or pick up golf balls, and taking full, torso and neck twisting swings at golf balls and as warm up or practice shots, (R-41 at 202109011257038928TaltonJohn71121, 202109011251373434TaltonJohn71421). He did not appear to be in any discomfort whatsoever, at any time. Ibid.

Talton did not believe that he violated Policy 35 because he was unaware of it, notwithstanding Brown's testimony and Talton's User Activity Report indicating that he had reviewed the County's Policies and Procedures since January 2013. (3T120; R-24). Talton complained that he was not informed of Policy 35 by HR, and he did not believe that he should have been terminated. He believed that the true reason he was terminated was because he only had one year of service left before he would vest in the pension plan. (3T120).

On cross-examination, Talton denied having the alleged conversation with Cipriano about Jankowski's August 3, 2020 memo regarding movement and conversations on the operations floor to prevent the spread of COVID. (3T121-3T122; R-29). He agreed that there were plexiglass barriers partially separating the areas in the main call center room (R-32), but they were not walls and were not floor to ceiling barriers. (3T122-3T124). He also agreed that the Metro Room was actually walled off, that is sealed off, from the main Call Center room, and that no one in the Metro Room had COVID until several months later. (3T124-3T125; 3T129). He stated that the "breakout" in the Alarm Room occurred one week prior to August 4, 2020, and that eight PSTs had COVID, and two people in the 911 Call Center tested positive for COVID on August 5, 2020. (3T125). He was aware that the County did a deep cleaning for three days the weekend prior to August 4, 2020, to sanitize the entire building, but did not believe that would prevent someone from spreading COVID. (3T128). He agreed that the County

could not have kept the entire facility 100% free of COVID, that that would have been impossible, and that he applauded Blaker's safety protocols. (3T129-3T130).

Talton also agreed that he submitted an FMLA application for February 1, 2020, through February 1, 2021, and that it stated if Talton was having ongoing issues with pain, he should be excused from all duties, due to a surgery that was performed in 2016. He agreed that the FMLA application did not mention blood pressure, and that any number of EMTs in the Communications Center could have checked his blood pressure if he were having a true medical emergency, but that he chose to drive home instead and have his wife check it, because she is a nurse. (3T131-3T133; R-11 at 3). He stated that he did not know whether he had permission to leave his shift on August 4, 2020, and that he believed he was having a medical emergency, was entitled to use FMLA, and therefore did not need permission. (3T134-3T137). However, he offered no testimony about what his blood pressure was, and merely stated that he took his blood pressure medication and laid down. (3T183). He did not mention taking any pain medication.

Talton agreed that the Call Center was under an extraordinary hardship on that date due to Isaias, that it was inundated with 911 calls, and that the Governor had declared a State of Emergency. (3T137). He called HR on his drive home to inquire about his FMLA time, and was informed by "Sharay" that he did have FMLA time which had been "revamped." (3T139-3T141).

Contrary to Draham's email to Talton about his proposed travel to Virginia on August 5, 2020, Talton denied telling Draham that he would be returning to New Jersey on August 6, 2020. (3T142-3T143; R-16). Talton insisted that he told Draham that he would be returning on the same day, August 5, 2020. (3T143).

Although Talton had previously insisted that he was called into Draham's office to meet with Draham and Cipriano about whether he was going to find coverage for the advanced overtime shift, that Draham told Talton that he would not be "written up" for giving the shift back so long as he made an effort to find a replacement, and that Talton

went back into the Metro Room and asked everyone in the room if they would take his shift, which they all declined, which he then informed Cipriano of, Talton's Employee Ledger shows that he volunteered for the advanced overtime on October 26, 2020, then went home after two hours due to suspected COVID, and did not return to work until October 30, 2020, one day after the scheduled advanced overtime shift. Thus, the purported meeting and Talton's claim that he had tried in person to find coverage for the overtime shift could not have occurred, because "[Talton] wasn't there for it to happen." (3T145-3T156; R-39). Talton then changed his claim of attempting to fill the overtime shift in person by stating then he sent a "blast text" to everyone in the Metro Room, but he could not produce any evidence of that text message. (3T156-3T158).

As to Talton's FMLA medical leave after his March 12, 2021 motor vehicle accident, Talton agreed that his treating doctor's certifications for that leave state that "it is recommended that he refrain from any work-related activities," and he agreed that they do not say that he was able to do certain work with restrictions. (3T159-3T161; R-20). Talton agreed that as a PST, he was not required to sit at his work station for twelve hours, because the station could be raised or lowered to accommodate both sitting and standing. (3T161). He disagreed with the proposition that he was given any breaks, but stated that he was permitted to walk around (3T161-3T162), notwithstanding that break rooms are clearly indicated on the Communications Center floorplan, (R-32), and Jankowski's August 3, 2020, memorandum governing the occupancy of breakrooms and movement on the operations floor for all personnel (R-26).

As to the motor vehicle accident, Talton stated that he was driving a Lyft passenger in Philadelphia on his day off. (3T162). He agreed that he never informed the County that he was driving for Lyft in 2019, 2020, and 2021, but claimed that he "had a business," insisted that he did not work for Lyft, and that he did not know that he was required to report it. (3T162-3T163). He admitted that he provided IRS 1099 forms from Lyft to the County for those years, and that they state that he drove 671 rides for Lyft in 2019, totaling 9,032 miles in 2019, 540 rides for Lyft totaling 6,900 miles in 2020, and 2,106 rides for Lyft, totaling 23,814 miles in 2021. (3T163; R-34). I note that his gross earnings from



Lyft were \$10,674.87 for ride payments and \$174.27 for non-ride earnings in 2019, \$9,207.26 for ride payments and \$262.66 for non-ride earnings in 2020, and \$47,424.15 for ride payments and \$3,477.86 for non-ride earnings for 2021, and Talton agreed that he received his outside income directly from Weichert and Lyft. (3T184-3T186; R-34).

As for Weichert Realtors, Talton denied that he was selling homes for them in 2021, and insisted that he was an independent contractor, selling for himself, and that he “just go[es] under their brokerage so that [he] can be covered.” (3T163). Talton agreed that his “Independent Contractor Agreement Between Broker and Salesperson” started on July 1 (sic 7), 2021, and that he was listed on Weichert’s website as a Sales Associate. (3T164-3T165; R-37 at 17; R-22 at 2). He agreed that he was showing houses for Weichert while he was out on medical leave. (3T165). I note that Weichert’s “Associate Hiring Packet” is dated June 21, 2021, and that Talton’s sales commissions as of February 22, 2022 totaled \$49,115.50. (R-37at 2, 27).

As to golfing, Talton agreed that he was observed and recorded playing golf and giving Lyft rides on his scheduled work days of July 9, 11, and 14, 2021, but then stated that he did not know when he was scheduled to work because he was out on medical leave, (3T165), notwithstanding Jankowski’s testimony that the entire work schedule for the year was generated at the beginning of each year, (3T94-3T97; R-38). Talton stated that he returned to work on October 10, 2021, and agreed that on October 27, 2021, he sent HR an email stating, “To Whom This May Concern: In lieu of the recent developments, I am giving Camden County Human Resource Department notification that I have a business. The name of my business is JXCZ RealDeal LLC. This business encompasses different contracts from real estate to Rideshare to lawn services and more.” (3T166-3T167; 3T184; R-23) (sic passim). Talton stated that he sent that email after he returned to work and was made aware of the policy, (3T166), notwithstanding the fact that he was apprised of the policy through his County training modules, the August 26, 2021 PNDA, and the October 26, 2021 Departmental hearing. He claimed that he had not performed any lawn services since the motor vehicle accident and that aside from

real estate sales and driving for Lyft, the only other outside income he had in 2021 was from his gambling "business." (3T167-3T168).

Talton stated that he was engaged in outside work activities while he was out on medical leave because his short-term disability checks were often late due to delayed paperwork from his doctor, so he "did what [he] had to do," because he "needed money." (3T171-3T172). Talton agreed that when he completed his New Jersey Temporary Disability Benefits Application, he certified "I certify I was unable to work during the period for which I am claiming benefits." (3T173; [myleavebenefits.nj.gov](http://myleavebenefits.nj.gov)). Over Talton's objection, I took judicial notice of that form. (3T176). Talton stated that he completed that certification because he "was unable to do the work that [his] job was." (3T175).

**For Respondent (Rebuttal)**

The County recalled Brown as a rebuttal witness to testify about Talton's FMLA time. (3T187). She testified as follows. Employees' FMLA time is calculated by hours, and Talton had exhausted all of his intermittent FMLA hours by May 29, 2020. (3T189-3T190; 3T200). It is incumbent upon employees to request a recalculation of accrued FMLA hours after they have exhausted their previously approved FMLA hours and before they attempt to use the new accrued hours. (3T191-3T192; 3T201; 3T212). Talton did not do so until August 4, 2020, after he left work and spoke with "Sharay," and he therefore did not have FMLA time available at the time he left his post because it was not recalculated and disseminated to the appropriate parties until August 13, 2020. (3T191-3T193; 3T199; 3T217). Talton's Employee Ledger therefore indicates that August 4, 2020 entry was recorded as "Time-off - No Pay." (3T219; R-39).

**CREDIBILITY DETERMINATIONS AND FURTHER FINDINGS OF FACT**

**I.**

I must weigh the credibility of the witnesses to determine the ultimate issues. Credibility is the value that a factfinder gives to a witness's testimony. An ALJ's findings of fact as to issues of credibility of a witness's testimony may not be rejected or modified unless the record demonstrates that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, credible evidence in the record. N.J.S.A. 52:14B-10(c).

"Credibility involves more than demeanor. It [contemplates] 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). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)).

A fact finder is expected to base credibility decisions on their common sense and life experiences. State v. Daniels, 182 N.J. 80, 99 (2004). Credibility is not dependent on the number of witnesses who appeared, State v. Thompson, 59 N.J. 396, 411 (1971), and a fact finder "is not bound to believe the testimony of any witness, in whole or in part," State v. Muhammad, 182 N.J. 551, 577 (2005) (internal quotation marks omitted). Rather, they "may reject what in their conscientious judgment ought to be rejected and accept that which they believe to be credible." Ibid. Testimony may be disbelieved but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511, 523 (App. Div. 1962). "The interest, motive, bias, or prejudice of a witness may affect [their] credibility and justify the [trier of fact] . . . in disbelieving [their]

testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952) (internal quotation marks omitted).

In this case, I **FIND** that the testimony of Brown, Cipriano, Draham, Blaker, Trunculov, and Gamble was highly credible. Each witness testified spontaneously, candidly, and consistently with each other’s testimony and the competent credible evidence of record.

Conversely, I **FIND** that Talton’s testimony was cunning, self-serving, and far less than credible. His testimony was internally inconsistent and inconsistent with the other witnesses’ consistent testimony and the overwhelming documentary evidence of record. It was rife with unbelievable excuses and untruths. Just as a few examples, he testified that he was having a medical emergency on August 4, 2020, believing that he might have a stroke or heart attack, but that he chose to drive home, calling “Sharay” and inquiring about FMLA time along the way, rather than going to the hospital. Indeed, he emailed Cipriano and spoke on the telephone with Draham later that day about his proposed trip to Virginia the following day. He testified that he met with Draham and Cipriano and tried to find an advanced overtime replacement in person, when that was an impossibility, because he was not at work that day. He testified that he did not know when he was scheduled to work because he was out on medical leave, notwithstanding Jankowski’s testimony that each year’s schedule is drawn up at the beginning of the year, for the entire year. Other examples are included in my summary of Talton’s testimony, above. In sum, I discount Talton’s testimony, as it is belied by the competent credible evidence of record, and in no way mitigates his conduct.

## II.

Based upon the foregoing credibility determinations and the competent, credible evidence of record, I **FURTHER FIND** the following **FACTS**. On August 4, 2020, during Isaias, Talton refused a direct order to move from the Metro Room to the 911 Call Center and then he left work without his supervisor’s permission. He was not having a true

medical emergency and he was not entitled to FMLA time on August 4, 2020. On October 27, 2020, Talton rescinded an advanced overtime shift, and failed to find a replacement or to provide a doctor's note. While Talton was out on medical leave for alleged serious neck and back injuries, he engaged in prohibited "other gainful activity" by working for Weichert and Lyft, which each directly paid him for his services. Talton also did not report those gainful activities to his Department Head and HR. While Talton was out on medical leave for those alleged conditions, he played golf and gave Lyft rides on days when he was scheduled to work for the County. Talton's actions and activities put a strain on the Communications Center and its staff and management, created operational and morale issues, and caused resentment, frustration, and anger among the PSTs who had to cover Talton's shifts.

## **LEGAL ANALYSIS AND CONCLUSIONS**

### **I.**

A civil service employee's 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 to 4A:10-3.2. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583, 586 (App. Div. 1972). However, "[t]here is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

Indeed, a civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2c; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2(a). Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or engages in misconduct related to their

duties. N.J.S.A. 11A:1-2c. Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2c; N.J.A.C. 4A:2-2.2(a).

In appeals concerning major disciplinary action such as termination, the appointing authority bears the burden to prove the FNDA charges by a preponderance of the competent credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate “if it establishes the reasonable probability of the fact.” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (internal quotation marks omitted). The evidence must “be such as to lead a reasonably cautious mind to a given conclusion.” Bornstein v. Metro Bottling Co., 26 N.J. 263, 275 (1958). OAL hearings on civil service removal appeals are de novo, both as to guilt and the penalty to be imposed. Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); W. New York v. Bock, 38 N.J. 500, 522, n.1, n.3 (1962).

## II.

Although the Administrative Code does not specifically define the general causes for major discipline delineated in N.J.A.C. 4A:2-2.3(a), those general causes have been defined by well-established case law.

Talton is charged with N.J.A.C. 4A:2-2.3(a)1, failure to perform duties, 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, N.J.A.C. 4A:2-2.3(a)12, other sufficient cause. (R-28). He is also charged with violating Policy 35, concerning outside employment or other gainful activities. Ibid.

Failure to perform duties has been defined as “failure to take an action reasonably anticipated from the duties of the position as set forth in the civil service regulations and job description.” In re Fernandez, Camden County Bd. of Soc. Servs., 2014 N.J. AGEN LEXIS 229, \*34, adopted, Comm'r (June 18, 2014), [https://njlaw.rutgers.edu/collections/oal/final/csv00652-12\\_1.html](https://njlaw.rutgers.edu/collections/oal/final/csv00652-12_1.html). Failure to perform

duties exists where an employee's conduct demonstrates an unwillingness or inability to meet, obtain, or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980).

Conduct unbecoming a public employee is an elastic phrase which encompasses "any conduct which adversely affects the morale or efficiency of [a governmental unit] . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998) (quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). "[I]t is sufficient that the conduct complained of and its attending circumstances "be such as to offend publicly accepted standards of decency." Id. at 555 (quoting In re Zeber, 150 A.2d 821, 825 (1959)). Such misconduct need not "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." 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)). "It is well settled that public employees are expected to exhibit appropriate behavior, both on and off the job, in order to project a positive image to the public that they serve and the taxpayers who fund their positions. Any conduct that serves to diminish the public's trust in the integrity of its employees is intolerable." In re Green, Dep't of Human Servs., 2006 N.J. AGEN LEXIS 632, \*5 (June 7, 2006).

Neglect of duty has been interpreted to mean "any conduct where an employee neglects to perform an act required by his or her job title or was negligent in its discharge." In re Middleton, 2008 N.J. AGEN LEXIS 62, \*6 (Jan 17, 2008). "Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term 'neglect' connotes a deviation from normal standards of conduct." In re Holder, 2021 N.J. AGEN LEXIS 217, \*69 (July 2, 2021) (citing In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977)). Neglect of duty implies nonperformance of some official duty imposed upon a public employee,

not merely the commission of an imprudent act. Rushin v. Bd. Of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961).

Other sufficient cause has been described as other conduct not specifically delineated in N.J.A.C. 4A:2-2.3(a) which would violate “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.” In re Boyd, Cumberland County Dep't of Corrs., 2019 N.J. CSC LEXIS 621, \*115 (July 3, 2019), adopted Comm'r, id. at 1-2 (Aug. 14, 2019). N.J.A.C. 4A:2-2.3(a)12 is essentially a catchall provision for why an employee may be subject to major discipline. “An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority.” In re Mumford, 2014 N.J. CSC LEXIS 478, \*33, final decision, (June 5, 2014).

Policy 35 requires that any County employee engaged in outside employment or other gainful activity report that in writing to their Department Head and HR immediately. (R-25). It also prohibits any County employee from engaging in secondary employment or other gainful activity when they are incapacitated from working during their normal work schedule for the County due to their own serious health condition. Ibid.

### III.

As a PST, Talton was required to “receive[] and respond[] to telephone or other electronic requests for emergency assistance including law enforcement, fire, medical, or other emergency services and/or dispatch[] appropriate units to response sites. (R-1). When Talton refused a direct order to move from the Metro Room to the 911 Call Center and then left the building without permission during Isaias, he was required to go to the 911 Call Center and remain at that position, and get prior approval from his shift supervisor if he intended to leave the complex. (R-12). Talton did neither. Talton’s conduct on August 4, 2020, during Isaias, was frankly, inexcusable.



Talton also failed to report for scheduled work days while he was out on intermittent medical leave, and he instead chose to give Lyft rides, work at Weichert Realtors, and play golf, when he had a duty to report to work if he was able. Clearly, he was able. He also failed to immediately report, in any fashion, his gainful activities to his Department Head and HR, and he engaged in those prohibited activities while he was out on medical leave.

Talton also rescinded his advanced overtime shift, due solely to monetary issues. There is no competent credible evidence that Talton sought to find a replacement, as he was required to do, and he clearly did not produce a physician's note excusing his "give back." (R-19 at 2).

Talton's misconduct severely impacted the Department's operations and other PSTs' morale and schedules, breeding resentment and anger. As I have already found, Talton's testimony at the hearing was self-serving and less than candid and truthful. The aggregate of his conduct as a County employee violated the implicit standard of good behavior which devolved upon him while standing in the public eye as an upholder of that which is morally and legally correct.

For all of the above reasons, I **CONCLUDE** that the County has met its burden to prove by a preponderance of the competent credible evidence that all of the FNDA charges must be **SUSTAINED**.

#### IV.

Once a determination has been made that an employee violated a statute, rule, or regulation concerning their employment, the concept of progressive discipline requires consideration. In re Stallworth, 208 N.J. 182, 195-96 (2011); Bock, 38 N.J. at 523. When deciding what disciplinary action is an appropriate penalty, the fact finder shall consider the nature of the sustained charges and the employee's past record. Bock, 38 N.J. at 523-24. The employee's past record is said to encompass their reasonably recent history

of promotions or commendations on the one hand, and on the other hand, any “formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee.” Ibid. Consideration as to the timing of the most recently adjudicated disciplinary history should also be given. Id. at 524.

However, the theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). “[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.” Ibid. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all the circumstances, to shock one’s sense of fairness. Ibid. Removal has been upheld where the acts charged, with or without a prior disciplinary history, have warranted imposition of that sanction. Ibid. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Ibid.; In re Herrmann, 192 N.J. 19, 33-34 (2007). Indeed, progressive discipline “is not a necessary consideration when . . . it is unbecoming to the employee’s position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.” Herrmann, 192 N.J. at 33.

In light of my legal conclusions on the sustained charges, I **CONCLUDE** that Talton’s misconduct was so egregious as to warrant automatic removal, without regard to progressive discipline because Talton’s misconduct disrupted the operations of the Communications Center, its budget with respect to overtime, the quality of life and morale of Talton’s fellow PSTs, and it jeopardized the health and safety of the public Talton was meant to serve. He is unsuitable for continuation as a PST, which would be contrary to the public interest.

However, even if the concept of progressive discipline were applied, I **CONCLUDE** that Talton’s misconduct in this case warrants removal.

In addition to this matter, which includes three separate disciplinary incidents, Talton's prior disciplinary history is comprised of seventeen prior incidents over the course of a nine-year period, for a total average of 2.22 disciplinary incidents per year:

1. An acknowledged verbal warning for incompetence/failure to perform duties on August 3, 2013, by failing to verify the town in which a 911 incident occurred, resulting in a twenty-minute delay of services, (R-27);
2. An acknowledged written warning for incompetence/failure to perform duties on August 27, 2013, by failing to make proper notification to the Winslow Township Police Department for a medical emergency involving an unconscious male, ibid.;
3. An acknowledged written warning for incompetence/failure to perform duties and conduct unbecoming a public employee on December 17, 2013, by addressing a seventeen-year-old 911 caller about an ongoing shooting/stabbing in a sarcastic and unprofessional manner and failing to record in the comment field for the call that there were weapons in the home, that her mother was screaming that she was going to die, and the caller's statements that "he's going to kill her" and that she could hear a lot of banging, ibid.;
4. An acknowledged one-day suspension without pay effective February 25, 2014, for incompetence/failure to perform duties, neglect of duty, and other sufficient cause, by entering an incorrect address resulting in a delay of service on February 10, 2014, ibid.;
5. An acknowledged three-day suspension effective September 24, 2014, for incompetence/failure to perform duties, neglect of duty, other sufficient cause, and violating SOPs 304 and 306.1, by failing to ask for a 911 caller's location and wrongly reporting that the incident occurred in Camden rather than Collingswood, which resulted in a delay of service on September 10, 2014, ibid.;

6. A five-day suspension effective October 22, 2014, for incompetence/failure to perform duties, neglect of duty, other sufficient cause, and violating SOP 306.2 on September 20, 2014, by failing to upgrade a call for medical services for a person who became unconscious during the call, failing to notify the dispatcher of the upgrade, and failing to offer pre-arrival instructions to the caller for the unconscious person, ibid.;

7. An acknowledged one-day suspension effective December 9, 2014, for insubordination, neglect of duty, conduct unbecoming a public employee and violating SOP 205, by failing to follow an order to have a doctor's note faxed to the payroll office after Talton called out sick on October 18, 2014, ibid.;

8. An acknowledged verbal/written warning for chronic or excessive absenteeism for having exhausted his entire year's allotment of sick time as of November 20, 2014, ibid.;

9. An acknowledged three-day suspension effective March 11, 2015, for insubordination, neglect of duty, conduct unbecoming a public employee, and violating SOP 205, by failing to follow an order to have a doctor's note faxed to the payroll office after Talton called out sick on January 9, 2015, ibid.;

10. An acknowledged one-day suspension effective March 31, 2015, for neglect of duty, chronic or excessive absenteeism, conduct unbecoming a public employee, and violating Policy 13.0, by using seventy-two hours of sick time in the first four pay periods of 2015, ibid.;

11. An acknowledged two-day suspension effective September 28, 2015, for neglect of duty, chronic or excessive absenteeism, conduct unbecoming a public employee, and violating Policy 13.0, calling out sick on July 25 and 26, 2015, ibid.;

12. An acknowledged one-day suspension effective September 28, 2015, for neglect of duty, chronic or excessive absenteeism, conduct unbecoming a public employee, and violating Policy 13.0, for calling out sick on July 16, 2015, ibid.;

13. An acknowledged eight-day suspension effective July 20, 2015, pursuant to a settlement agreement, for failure to perform duties, conduct unbecoming a public employee, neglect of duty, other sufficient cause, and violating SOPs 306.1 and 405.3, by failing to obtain a caller's name, phone number, correct address, not entering any evidence of the call in the computer system, not transferring the call to the Gloucester Township police, assuring the caller that help was on the way, and then disconnecting the call on April 15, 2015, ibid.;

14. An acknowledged written warning/reprimand for chronic or excessive absenteeism and violating SOP 205 by exhausting the entire year's allotment of sick time by July 6, 2015, ibid.;

15. An FNDA imposing a twenty-day suspension for failure to perform duties, conduct unbecoming a public employee, neglect of duty, other sufficient cause, and violating SOPs 305 and 306.10, by taking a call on June 27, 2015 relating to a homicide where the caller asked to speak with someone in Spanish, failing to call the Language Line, proceeding to speak with the caller in Spanish, and transferring the call to the Camden police without informing them that the caller needed a Spanish speaking call taker, ibid.;

16. An acknowledged one-day suspension effective April 23, 2019, for insubordination, neglect of duty, conduct unbecoming a public employee, and violating SOP 205 by failing to provide a physician's certification by the required date after Talton called out sick on March 1 and 2, 2019, ibid.; and

17. An acknowledged verbal/written warning on August 31, 2019, for violating Policy 18.0 and SOP 203, by failing to swipe in or out of work on four separate occasions between July 28 and August 24, 2019. Ibid.

Under the totality of the facts and circumstances in this matter, and in light of Talton's chronic, significant prior disciplinary history, I **CONCLUDE** that termination is the only appropriate penalty, both under the egregious misconduct and progressive discipline standards. Talton appears to be incorrigible, and incapable of putting the County's and the public's safety interests above his own personal interests.

### **ORDER**

It is therefore **ORDERED** that the charges in the November 15, 2021, FNDA are hereby **SUSTAINED**; and it is further

**ORDERED** that Talton be and is hereby removed from his position as a Camden County PST, effective November 15, 2021; and it is further

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

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, 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.**

January 5, 2023 \_\_\_\_\_

DATE

*Sarah H. Sargent*

\_\_\_\_\_  
SARAH H. SURGENT, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

SHS/kl

**APPENDIX**

**WITNESSES**

**For appellant**

James Jankowski  
John Talton

**For respondent**

Donette Brown  
Joseph Cipriano  
Scott Draham  
Robin Blaker  
John Tranculov  
James Gamble

**EXHIBITS**

**For appellant**

None

**For respondent**

- R-1 CSC Public Safety Telecommunicator Job Description
- R-2 PNDA, dated August 13, 2020
- R-3 Amended PNDA, dated November 30, 2020
- R-4 Amended PNDA, dated August 26, 2021
- R-5 Not in evidence and not considered
- R-6 OAL Notice of Filing, dated January 21, 2022
- R-7 Incident Report from Talton to Moore, dated August 4, 2020
- R-8 Incident Report from Moore to Cipriano, dated August 4, 2020
- R-9 Incident Report from Cipriano to Jankowski, dated August 4, 2020



- R-10 Memoranda and emails from Jankowski and Blaker regarding COVID-19 risk mitigation efforts, with various dates
- R-11 Talton's application for intermittent FMLA commencing February 1, 2020 to February 1, 2021, for pain related to a 2016 surgery, dated January 29, 2020
- R-12 SOP 237 governing work assignments, last revised January 31, 2010
- R-13 Email exchanges between Talton, Cipriano, and Jankowski regarding Talton's proposed travel to Virginia, dated August 4, 2020
- R-14 New Jersey COVID-19 Information Hub FAQs regarding out-of-state travel restrictions and quarantine requirements, dated October 22, 2020
- R-15 Email to County Employees regarding New Jersey incoming travel quarantines, dated June 26, 2020
- R-16 Email from Draham to Talton regarding Talton's proposed travel to Virginia from August 5, 2020, to August 6, 2020, dated August 4, 2020
- R-17 Incident Report from Cipriano to Draham regarding Talton's give back of overtime, dated October 27, 2020
- R-18 Email from Talton to Cipriano enclosing negative COVID-19 test results, dated October 27, 2020
- R-19 SOP 262 governing advanced overtime shifts, last revised November 21, 2014
- R-20 Letters from HR to Talton regarding intermittent FMLA for Talton's March 12, 2021, motor vehicle accident, dated March 29, 2021, to August 24, 2021; doctors' notes and certifications with various dates recommending that Talton refrain from any work-related activities; Talton's application for intermittent FMLA commencing March 12, 2021, to March 12, 2022, dated March 24, 2021
- R-21 DigiStream cover letter to Brown erroneously dated July 12, 2021, with attached surveillance summary and complete surveillance report concerning nine dates from July 9 to July 24, 2021
- R-22 Weichert Realtors property listed by Talton with his history as a sales associate, dated September 21, 2021

- R-23 Email exchange between Talton and Brown regarding his non-County work, dated October 29, 2021
- R-24 Talton's User Activity Report for his 2021 training, acknowledgements, and tests regarding the County's policies and procedures
- R-25 Policy 35 governing outside employment and gainful activities
- R-26 Memorandum from Jankowski to all Department personnel regarding restricted access in the Operations Room, dated March 21, 2020; Memorandum from Jankowski to all communications division personnel limiting movement on the operations floor, face-to-face conversations, break rooms capacities, and mandating masks when personnel leave their work stations, dated August 3, 2020
- R-27 Talton's prior disciplinary history
- R-28 FNDA, dated November 15, 2021
- R-29 Incident Report from Cipriano to Jankowski regarding Cipriano's conversation with Talton about Jankowski's August 3, 2020, Memorandum, dated August 12, 2020
- R-30 Memorandum from Jankowski to all communications division personnel regarding COVID-19 protocols for entering the Communications Center, dated March 25, 2020
- R-31 Memorandum from Jankowski to all Department personnel regarding Temperature Checks, dated April 6, 2020
- R-32 Floorplan of Communications Center operations floor
- R-33 Independent Contractor Agreement/Contract between Weichert Realtors and Talton, dated July 7, 2021
- R-34 Talton's Lyft summaries of earnings for 2019, 2020, and 2021
- R-35 Email exchange between Draham and Jankowski regarding Talton's give back of advanced overtime, dated October 30, 2020
- R-36 Talton's User Activity Report for his 2013 through 2021 training, acknowledgements, and tests regarding the County's policies and procedures

- R-37 Weichert Realtors responsive documents to County's subpoena concerning Talton's affiliation as a sales associate
- R-38 Talton's Employee Ledger of time scheduled to work and time off from work, from July 1, 2021, through August 31, 2021
- R-39 Talton's Employee Ledger of time scheduled to work and time off from work, from January 1, 2020, through December 31, 2020
- R-40 Transcript of audio-recorded telephone call between Cipriano and Talton on October 27, 2020, concerning Talton's give back of advanced overtime
- R-41 DigiStream's surveillance videos of Talton, taken in July 2021
- R-42 Letter from HR to Talton approving Talton's request for intermittent FMLA from August 4, 2020, to February 1, 2021, granting a total of 124.2 hours, dated August 13, 2020
- R-43 Letter from HR to Talton approving Talton's request for intermittent FMLA from February 1, 2020, to February 1, 2021, granting a total of 121.2 hours, dated January 29, 2020