

considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See *Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See *Carter v. Bordentown*, 191 N.J. 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, the Commission emphasizes that a law enforcement officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). See also, *In re Phillips*, 117 N.J. 567 (1990). This is especially true for supervisory law enforcement personnel.

In his initial decision, the ALJ stated:

Today, there is an unfortunate societal view of police and policing in general. Also unfortunate is that Bagby had no concern for that, nor his fellow officers and the citizens of Camden who deserve better. The public image of a police sergeant that abuses the system and then lies about it would significantly diminish any modicum of honor and integrity within the Camden County Police Department in their eyes. We cannot have that. Based on his testimony, it's clear that Bagby fails to grasp the gravity of his actions and the potential effect that it could have had. Rightfully, the respondent seeks to terminate the appellant. It is unconscionable to think how the public would react to a supervising officer continually passing a mistruth so that he did not get "jammed up" on an issue of time off. What would Bagby do in a situation that is more severe? There has to be a consequence to individuals' actions in this world so that it doesn't happen again and more importantly, does not send a message to other officers that this behavior is tolerated.

Notwithstanding the above, the ALJ found mitigating factors to support a reduction in penalty, stating:

However, the balance is that considering the record in this case including the appellant's lack of disciplinary record, the nature of the job duties and the nature of the charges, I CONCLUDE that a modification of the requested penalty is warranted. The respondent's action terminating appellant is hereby DENIED and he is SUSPENDED

for thirty days with a demotion from the rank of sergeant to patrol officer.

The Commission disagrees with the ALJ's findings that the appellant's prior history mitigates against his removal. While the appellant had been employed by the appointing authority as a County Police Officer and Sergeant for nearly eight years, that cannot overcome the serious nature of his misconduct. Indeed, the ALJ himself acknowledged that fact. The appellant's misconduct in this case is egregious, especially for a supervisory-level employee, and his continued employment would more than likely undermine the public trust in the Camden County Police Department and law enforcement in general. A suspension and demotion to a lower rank in this matter is insufficient where, as stated by the ALJ, the appellant's egregious misconduct "risked the lives of fellow officers and citizens." Accordingly, the Commission upholds the removal. That penalty is neither disproportionate to the offenses nor shocking to the conscious.

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 Tyrell Bagby.

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 15TH DAY OF MARCH, 2023



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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 07314-21

AGENCY DKT. NO. N/A

2022-207

**IN THE MATTER OF TYRELL BAGBY,
CAMDEN COUNTY POLICE DEPARTMENT.**

Peter H. Demkovitz, Esq., for appellant, Tyrell Bagby (Markowitz and Richman, attorneys)

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

Record Closed: January 10, 2023

Decided: January 30, 2023

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

Appellant, Tyrell Bagby (Bagby), an employee of respondent, Camden County Police Department (CCPD), appeals from the determination of respondent that he be terminated for incidents that occurred on December 23, 2020, and December 24, 2020. Respondent argues that he violated: N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(3) Inability to Perform Duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; 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; Camden County Police Department Rules and

Regulations: 3:5.7 Truthfulness and 3:1.6 Neglect of Duty. The appellant denies the allegations and contends that he acted appropriately.

PROCEDURAL HISTORY

On January 28, 2021, the CCPD issued a Preliminary Notice of Disciplinary Action removing him from his post immediately. On July 19, 2021, the CCPD issued a Final Notice of Disciplinary Action sustaining the charges and terminating him from employment immediately. Appellant filed a timely notice of appeal.

This matter was appealed to the Office of Administrative Law on August 24, 2021. N.J.S.A. 40A:14-202(d). The hearing was held on June 8, 2022. The parties requested that the record remain open for the parties to submit closing summations. On several occasions the parties requested extensions for submission of closing arguments. The record closed on January 10, 2023.

FACTUAL DISCUSSION

Testimony

Respondent

Sergeant May testified that he has been with the Camden County police and internal affairs division since 2013. From 2007 through 2013 he was with the Burlington County Prosecutor's Office.

Sergeant May recalled receiving a complaint from Lieutenant Shomo regarding Bagby. The complaint was that Bagby didn't report to work and there was no supervisor on duty for a period of time during that shift. This was because the other Sergeant on duty at that time had already scheduled a day off. Sergeant May indicated that Bagby would have had no problem taking off bereavement for this incident. It would have been a 7-day bereavement time off.

During his investigation of Bagby, it was revealed that Bagby took bereavement on December 23, but it wasn't scheduled. Lieutenant Martin scheduled a Zoom meeting at 12:00 p.m. and Bagby said that he left a message requesting six hours of bereavement on December 23, and six hours on December 24 via text message. Clearly, Lieutenant Martin was upset because Bagby made a bad situation worse.

On December 23, 2020, Bagby was working his shift, but decided to leave early. Procedure called for the sergeant to communicate with his supervisor, Lieutenant Martin, with his request for an early out. Bagby told Lieutenant Martin that he was planning on leaving early with a voicemail, he failed to remain at work until he obtained approval on the request. Lieutenant Martin coincidentally discovered that Bagby had left work early.

Bagby then advised his supervisor that he planned on taking a half day the next day, Christmas Eve. Lieutenant Martin approved this request and expected Bagby to report to work the next morning to cover the first half of the shift. On December 23, 2020, Bagby emailed himself a lineup form before leaving work. At 5:00 a.m., Bagby emailed Officer Shaw the lineup and told him to send it to Lieutenant Martin and Lieutenant Cox, who was the Real-Time Operations Center (RTOC) commander. Though it was only after the Internal Affairs investigators did a forensic review of Bagby's work email account that he admitted the lineup was sent to Officer Shaw at 5:00 a.m. instead of 2:00 a.m.–3:00 a.m.

Bagby told Officer Shaw that he needed him to email the lineup because Bagby did not have the email addresses for the commanders. Around this time, Bagby spoke with Sergeant Sanchez, who was the night shift supervisor, to discuss the shift hand off. Bagby did not inform Sergeant Sanchez that he had decided to not report in for his scheduled shift. Sanchez would have been the sergeant tasked (and ultimately was tasked) with covering the day shift as the supervisor. However, Bagby then conducted roll call for the shift. Roll call was conducted over a phone conference during this time to protect against COVID. That was the reason that Lieutenant Cox thought that Bagby had reported to work. The command staff did not realize the day shift was without a supervisor until 5:48 a.m., when Lieutenant Cox received a text message from Bagby.

When Lieutenant Cox received Bagby's text, he immediately responded by asking Bagby if Lieutenant Martin was aware.

Here, it was the responsibility of Lieutenant Martin to approve Bagby's leave in advance so that a replacement supervisor could be assigned to that since that shift sergeant was on leave. Bagby responded to Lieutenant Cox by stating that Lieutenant Martin was "aware." Bagby knew he was not able to take leave unless approved by Lieutenant Martin, but he left early on December 23, 2020, and did not wait to get approval before leaving early.

During Bagby's first interview, Bagby recalled that he sent the text but didn't get confirmation of approval to use bereavement time. Also, he did not fill out the proper leave form. Bagby allegedly made a telephone call to the watch commander on December 24. Bagby attended roll call on Zoom with the squad but never informed anybody that he wasn't on duty or coming into the station to act as supervisor for the shift. Therefore, there was no sergeant on the shift.

During the same interview, Bagby claimed that he decided to go out on leave after an argument with his wife at about 2:00 a.m. or 3:00 a.m. and told Officer Shaw to send out roll call to Lieutenant Cox and Lieutenant Martin. Bagby told Sergeant May that he sent it out from his personal email and cell phone to a work email. However, this was not true. Bagby admitted to Sergeant May that he "didn't handle that properly."

During the second interview with Bagby, it was discovered that Bagby was not telling the truth. Sergeant May stated that this is the most serious offense. Being truthful is a critical part of policing. This case is particularly difficult because Bagby is a "legacy." His father was a lieutenant in Camden police and other family members are also part of the force. Sergeant May exclaimed that there is "no joy in any of this." "He didn't tell us all the facts" and "his story changed."

On cross-examination, Sergeant May revealed that the roll call appearance by Bagby via Zoom appeared to show that he was at work when he was really at home. "I've been an officer a long time, we are not the brightest bunch." Nevertheless, it

wasn't until the third interview with Bagby that he gave up the true timeline that made sense and was truthful. Frankly, "if this was done in the first interview it would have been over."

It was also discovered that on December 24, Sergeant Sanchez assumed Bagby was on duty despite the bereavement because he participated in roll call. It was at that time on December 24 that "we would have no supervisor on the street" in the city of Camden.

Appellant

Tyrell Bagby (Bagby) testified that he had a date of hire of April 2013. On June 1, 2019, he was promoted to sergeant with supervisory duties. Interestingly, Bagby's wife, father and aunt also work with the Camden County Police Department. There is no prior discipline for truthfulness or absenteeism.

On December 22, 2020, Bagby's wife's stepfather passed away. Bagby did not work a full shift on December 23, 2020, and texted Lieutenant Martin about a bereavement request of six hours for December 23 and six hours bereavement for December 24. On December 23 Bagby worked from 5:00 a.m. to 11:30 a.m. Lieutenant Cox was contacted by Bagby on his personal cellular telephone, and he told Bagby that he could use bereavement time, so Bagby left.

Bagby did not go to work on December 24 because he had a discussion with his wife at approximately 1:00 a.m. and decided that his family needed him. So, between 3:00 a.m. and 4:00 a.m. he made the choice to use bereavement time. Bagby then chose to participate in the Zoom lineup to make it easier for the next sergeant to take over. In the past, Camden County Police performed lineups via Zoom and Bagby was under the understanding that another sergeant would simply take over. Bagby sent the lineup information to Officer Shaw for him to send it out to the supervisor's emails. This was because Bagby never maintained any of the supervisor's information on his work phone. It was at this point that Lieutenant Cox reached out to Bagby and asked if Lieutenant Martin was aware of his situation and Bagby responded that he was not.

Lieutenant Martin sent a text to all the sergeants and inquired if anyone would cover for Bagby. Fortunately, someone did.

When Bagby was confronted with the discrepancies in the interviews with Sergeant May, Bagby indicated that he had a "better understanding" of what his answers should be in the later interviews. Interestingly, Bagby indicated that after the first interview with Sergeant May, the recorder and video were turned off by Sergeant May and he allegedly said that he "shouldn't be making mistakes like this." Sergeant May told him his wife and he needed to "grow up." Nevertheless, Bagby agreed that his request for bereavement should have been done with paperwork, but he never had any intent to mislead, nor an intent to mislead internal affairs.

On cross-examination, Bagby disturbingly admitted to not having access to supervisor's information's on his work phone, so he simply used his personal phone. He maintains he had no information on his work phone. All of the supervisor's telephone numbers were on his personal phone. Also, Bagby maintains he had no email addresses for any of his supervisors on any device. Bagby believes that the conversation off the record with Sergeant May was "unprofessional." Nevertheless, Bagby expressed that he should have handled things differently, but he failed to tell the truth to internal affairs because he "didn't want to get jammed up."

FINDINGS OF FACT

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v.

Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The testimony of the respondent witnesses was especially credible and persuasive. Their testimony was clear and concise. It was obvious that they all had concerns about these incidents and the safety of their fellow officers and the citizens of Camden. Also, they had concerns for the lack of respect that Bagby had for his supervisory position, his superiors nor the citizens of Camden.

Conversely, Bagby's testimony was not credible at all. Bagby's own testimony assisted the respondent in proving the facts of the case by a preponderance of the evidence. Bagby's testimony about when he attended roll call on December 24, 2020, and then had a subordinate officer email the information to the supervisors was nonsensical unless he was being subversive. The fact that he failed to tell the truth to the Internal Affairs officer because he didn't want to get "jammed up" was also disturbing. I found the testimony that his work cell phone had none of the officers' contact information to be equally as disturbing. It is thoroughly incompetent that he fails to maintain any of the other officer's emails or any other information on his "work cell phone." Though the record is replete with the fact that he should have handled it differently. It is equally devoid of him expressing any remorse for his actions. That allows me to believe that he fails to understand the gravity of his action, or more appropriate, inaction for not telling the truth. When questioned by the undersigned regarding the "why" of the situation, Bagby avoided directly answering the question and appeared to search for answers when stumped. Bagby's testimony about the "unprofessional" comments that Sergeant May purportedly stated after the interview camera and audio were turned off, had the opposite of the Bagby's intended effect to discredit Sergeant May. They further detracted from any degree of credibility that Bagby may have had. In fact, his attempt to deflect further shows that he fails to grasp

the gravity of his actions.

After hearing the testimony and reviewing the evidence, **I FIND**, by a preponderance of credible evidence, that on December 23, 2020, and December 24, 2020, Bagby left his post without proper notification. **I FURTHER FIND**, on December 23, 2020, and December 24, 2020, he was not truthful while dealing with superior officers. **I FURTHER FIND**, when confronted about the facts in Internal Affairs' interviews, Bagby falsified facts about the December 23, 2020, and December 24, 2020, events so he would not get "jammed up."

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil-service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2- 2.3(a).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant. An appeal to the Merit System Board requires the OAL to conduct a hearing de novo to determine the appellant's guilt or innocence as well as the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and

generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

The respondent sustained charges of violations of: December 23, 2020, and December 24, 2020. Respondent argues that he violated: N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(3) Inability to Perform Duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; 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; Camden County Police Department Rules and Regulations: 3:5.7 Truthfulness and 3:1.6 Neglect of Duty.

Here, Bagby has been charged with a violation of N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties. It is uncontested that Bagby failed to follow protocol about filing leave for bereavement. He notified a supervisor but failed to get confirmation of the leave request before leaving his post without proper notification and confirmation of time off. In doing so he risked the lives of fellow officers and citizens. The incompetency abounds when he failed to maintain any of the other officer's emails or any other information on his "work cell phone." Incompetency for a supervisory sergeant at this level is inexcusable. Accordingly, **I CONCLUDE** that the appointing authority has met its burden in demonstrating support to sustain a charge of Incompetency, Inefficiency, Failure to Perform Duties. Charges of violation of N.J.A.C. 4A:2-2.3(a)(1) are hereby **SUSTAINED**.

The charge of Inability to Perform Duties in violation of N.J.A.C. 4A:2-2.3(a)(3) usually entails some type of impairment, either physical or psychological, that prevents an individual from performing their job. The charge has been upheld where the employee is incompetent to execute his or her job responsibility. Klusaritz v. Cape May Cnty., 387 N.J. Super. (App. Div. 2006) (removal of accountant who was incapable of preparing a bank reconciliation and was of no value to the county). This can also be a non-disciplinary type of charge, where the employer seeks to prove that an employee should be demoted or removed due to his physical, intellectual, or psychological inability to perform his duties. Rivera v. Hudson County Department of Corrections, CSR

06456-16, Initial Decision (October 24, 2016). Here, we have nothing of the sort, and I question the charging authority on its misapplication.

Nevertheless, Police officers are expected to be involved with a high degree of dangerous activities such as restraining and detaining suspects as well as supervising and assisting fellow officers in times of crisis. In this case, Bagby had supervisory experience but there was no evidence before me that Bagby lacked the temperament, or the psychological, intellectual, or physical ability to perform his duties. Normally, in support of this charge, expert medical or professional proofs are proffered to support the charge that an individual is not able to perform their job. None of that has been proffered here and I question its presentation under these facts. **I CONCLUDE** that the preponderance of the credible evidence does not support the charge that Bagby was unable to perform his duties under N.J.A.C. 4A:2-2.3(a)(3). Accordingly, **I CONCLUDE** that the appointing authority has not met its burden in demonstrating support to sustain a charge of Inability to Perform Duties in violation of N.J.A.C. 4A:2-2.3(a)(3) and therefore the charge is hereby **DISMISSED**.

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

It is difficult to contemplate a more basic example of conduct which could destroy public respect in the delivery of governmental services than the image of a supervising Police Officer failing to properly notify of a leave request, then leaving his post without confirmation and then lying about it on several occasions. **I FIND** Bagby's behavior to be intolerable as it risked the lives of his fellow officers and the citizens of Camden. **I CONCLUDE** that appellant's actions constitute unbecoming conduct. The charge of violating N.J.A.C. 4A:2-2.3(a)(6) is hereby **SUSTAINED**.

The respondent also sustained charges for a violation of N.J.A.C. 4A:2-2.3(a)(7) (Neglect of Duty). Neglect of Duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R. 2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R. 2d (CSV) 214.

Again, it is difficult to contemplate a more basic example of Neglect of Duty than the image of a police officer doing as he so chooses by coming and going on his own fruition and then lying about it. **I CONCLUDE** that appellant's actions constitute Neglect of Duty. The charges of violating N.J.A.C. 4A:2-2.3(a)(7) and Camden County Police Department Rules and Regulations: 3:1.6 Neglect of Duty are hereby **SUSTAINED**.

Appellant has also been charged with a violation of N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause). Specifically, appellant is charged with violations of the Camden County Police Department Rules and Regulations (C.C.P.D.): 3:5.7 Truthfulness and 3:1.6 Neglect of Duty. It is noted that the Final Notices of Disciplinary

Action indicate the sustained charges. **I CONCLUDE** that consideration of the charge constituting a violation of N.J.A.C. 4A:2-2.3(a)(12) (Other Sufficient Cause) will be limited to the regulations, rules and general orders specifically enumerated in the Final Notice of Disciplinary Action. Violation of Camden County Police Department Rules and Regulations: 3:1.6 Neglect of Duty has been addressed within the discussion of the violation of N.J.A.C. 4A:2-2.3(a)(7).

As such, appellant is also charged with violating Camden County Police Department Rules and Regulations: 3:5.7 Truthfulness, which provides that:

Here, Bagby admitted to not being truthful about the incident to Internal Affairs. **I CONCLUDE** that appellant's actions constitute lack of truthfulness in contraventions to Camden County Police Department Rules and Regulations: 3:5.7 Truthfulness. The charge of violating Camden County Police Department Rules and Regulations: 3:5.7 Truthfulness is hereby **SUSTAINED**.

Accordingly, **I CONCLUDE** that the appointing authority has met its burden in demonstrating a violation of Camden County Police Department Rules and Regulations: 3:5.7 Truthfulness and the charge is hereby **SUSTAINED**.

PENALTY

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. West New York v. Bock, *supra*, 38 N.J. 523-24. Factors determining the degree of discipline include the employee's prior disciplinary record and the gravity of the instant misconduct.

However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See Henry v. Rahway State Prison, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a fixed and immutable rule to be followed without question. Rather, it is recognized that some

disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See Carter v. Bordentown, 191 N.J. 474 (2007).

Here, the disciplinary record is unremarkable. It is noted that a single charge of Incompetency, Inefficiency or Failure to Perform Duties by itself, can be sufficient grounds for termination in the absence of any other disciplinary history. Absence of judgment alone can be sufficient to warrant termination if the employee is in a sensitive position that requires public trust in the agency's judgment. See In re Herrmann, 192 N.J. 19, 32 (2007) (DYFS worker who waved a lit cigarette lighter in a five-year-old's face was terminated, despite lack of any prior discipline).

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). (NOTE: Gaines had a substantial prior disciplinary history, but the case is frequently quoted as a threshold statement of civil service law.)

"In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change." Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a county treasurer who couldn't balance the books, after the auditors tried three times to show him how).

In reversing the MSB's insistence on progressive discipline, contrary to the wishes of the appointing authority, the Klusaritz panel stated that "[t]he [MSB's] application of progressive discipline in this context is misplaced and contrary to the public interest." The court determined that Klusaritz's prior record is "of no moment" because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[In re Herrmann, 192 N.J. 19, 35-36 (2007) (citations omitted).]

Respondent argues that the seriousness and volume of infractions in this case warrant the termination of Bagby, as the confidence and trust the Department had in

him has been irreparably harmed by his misconduct. A police officer “represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Moorestown Twp. v. Armstrong, 89 N.J. Super. 560, 566, 215 A.2d 775, 778 (App. Div. 1965). The Department has shown Bagby to be lacking honesty, accountability and integrity. His actions have made his continued employment untenable whether you measure it with or without his disciplinary history. “[D]isrespect for superiors, disregard of established performance standards, and perverse use of regular procedures subverts the good order and discipline that is essential to a properly run police department. Such acts constitute conduct so unbecoming a police officer as to warrant dismissal.” Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 205–06, 698 A.2d 1287, 1295 (App. Div. 1997) (citing City of Newark v. Massey, 93 N.J. Super. 317, 322–23, 225A.2d 723 (App.Div.1967)). To that end they are correct. These are not the actions of a leader. Respondent was absolutely correct in their summation when they stated that “Bagby was less than cooperative during the process by being evasive and providing non-committal answers to the investigators. His level of cooperation was so poor that investigators were forced to interview him on three different occasions recreate the events of December 23 and 24, 2021. Even when confronted with questions about his daily routines, Bagby feigned recall difficulties and sought repeated clarifications in order to provide minimal acknowledgements in response.”

The Department insists that the penalty in this matter must be removal. However, they argue that in the event this Court is not inclined to terminate this officer that it at least strip him of his rank as a sergeant. They further argue that the Department cannot afford to have this officer being a leader of other officers. If the Department is to be forced to reinstate Bagby, then let it be in the role of patrol officer where he can be retrained and possibly rehabilitated. I agree.

Today, there is an unfortunate societal view of police and policing in general. Also unfortunate is that Bagby had no concern for that, nor his fellow officers and the citizens of Camden who deserve better. The public image of a police sergeant that abuses the system and then lies about it would significantly diminish any modicum of honor and integrity within the Camden County Police Department in their eyes. We

cannot have that. Based on his testimony, it's clear that Bagby fails to grasp the gravity of his actions and the potential effect that it could have had. Rightfully, the respondent seeks to terminate the appellant. It is unconscionable to think how the public would react to a supervising officer continually passing a mistruth so that he did not get "jammed up" on an issue of time off. What would Bagby do in a situation that is more severe? There has to be a consequence to individuals' actions in this world so that it doesn't happen again and more importantly, does not send a message to other officers that this behavior is tolerated. However, the balance is that considering the record in this case including the appellant's lack of disciplinary record, the nature of the job duties and the nature of the charges, **I CONCLUDE** that a modification of the requested penalty is warranted. The respondent's action terminating appellant is hereby **DENIED** and he is **SUSPENDED** for thirty days with a demotion from the rank of sergeant to patrol officer.

DECISION AND ORDER

I ORDER that the charges of N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; 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 be **SUSTAINED**. **I FURTHER ORDER** that the charges of violating Camden County Police Department Rules and Regulations: 3:5.7 Truthfulness and 3:1.6 Neglect of Duty also be **SUSTAINED**. **I FURTHER ORDER** that the charge of Inability to Perform Duties in violation of N.J.A.C. 4A:2-2.3(a)(3) be **DISMISSED**. **I FURTHER ORDER** respondent's action terminating appellant is hereby **MODIFIED** and **IT IS ORDERED** that he be suspended for thirty days with a demotion from the rank of sergeant to patrol officer.

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

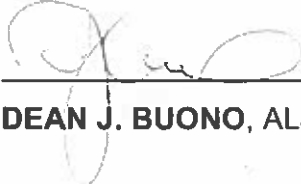
This recommended decision may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify, or reject this decision

within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

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

January 30, 2023

DATE



DEAN J. BUONO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

DJB/cb

APPENDIX

WITNESSES

For appellant

Tyrell Bagby

For respondent

Sergeant May

EXHIBITS

For appellant

None

For respondent

- R-1 Preliminary Notice of Disciplinary Action 31-A
- R-2 Memorandum From Lt. Shomo
- R-3 Weekly Timesheet of Bagby
- R-4 Article XII of F.O.P. CBA – Funeral Leave
- R-5 Principal Interview No. 1
- R-6 Email Account Reviews
- R-7 Email Account Reviews
- R-8 Witness Interview Lt. Martin
- R-9 Text from Sgt. Bagby to Lt. Martin
- R-10 Witness Interview Lt. Cox
- R-11 Witness Interview Officer Shaw
- R-12 Text from Sgt. Bagby to Officer Shaw
- R-13 Officer Shaw email with 12/24 lineup
- R-14 Text from Sgt. Bagby to Lt. Cox
- R-15 Principal Interview No. 2
- R-16 Principal Interview No. 3