



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

 In the Matter of Claudia Martinez,
Newark, Department of Public Safety

 CSC Docket No. 2022-2510
OAL Docket Nos. CSV 02692-22

ISSUED: JUNE 28, 2023

The appeal of Claudia Martinez, Police Officer, Newark, Department of Public Safety, six working day suspension, on charges, was heard by Administrative Law Judge Joann LaSala Candido (ALJ), who rendered her initial decision on May 11, 2023. Exceptions were filed on behalf of the appointing authority and a reply was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on June 28, 2023, adopted the ALJ's Findings of Fact and Conclusions and her recommendation to reverse the six working day suspension.

As indicated above, the Commission thoroughly reviewed the exceptions filed in this matter. Upon that review, it does not find anything persuasive to overturn the ALJ's recommendations regarding the reversal of the six working day suspension. The ALJ's initial decision was well-reasoned and his findings and conclusions were based mainly on her assessment of the credibility of the witnesses. In this regard, upon its *de novo* review of the record, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The

Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the ALJ found that the appellant testified credibly about the incident. The ALJ further found that the appellant's failure to engage at length with the officers at the scene did not rise to the level of unbecoming conduct. In its review of the exceptions filed by the appointing authority, the Commission is not persuaded that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations or the findings and conclusions made therefrom.

Moreover, while the exceptions allege that the appellant was attempting to illegally evict a tenant, there is no indication that she was ever charged with any criminal violation for such alleged illegal activities, nor was it established that her actions were illegal. In this matter, as found by the ALJ based on the credible evidence in the record, the appellant's actions in this matter were not in violation of what was outlined as the alleged misconduct in the specifications section of the Final Notice of Disciplinary Action.

Since the six working day suspension has been reversed, the appellant is entitled to six working days of back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10*. She is also entitled to reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning counsel fees are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant was not justified and reverses that action. The Commission further orders that the appellant be granted six working days of back pay, benefits, and seniority. The amount of back pay awarded is to be reduced as provided for in *N.J.A.C. 4A:2-2.10(d)3*. The Commission also orders reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12(a)*. Proof of income earned, and an affidavit in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C. 4A:2-2.12(b)*, the parties shall make a good faith effort to

resolve any dispute as to the amount of counsel fees.

The parties must inform the Commission, in writing, if there is any dispute as to counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 28TH DAY OF JUNE, 2023



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 02692-22
AGENCY DKT. NO. NO.2022-
2510

**IN THE MATTER OF CLAUDIA
MARTINEZ, CITY OF NEWARK,
DEPARTMENT OF PUBLIC
SAFETY,**

Giovanna R. Giampa, Esq., appearing for petitioner (Jae Lee Law PC, attorneys)

Chané M. Jones, Esq., Assistant Corporation Counsel, appearing for respondent
(Kenyatta Stewart, Corporation Counsel, Attorney)

Record Closed: April 24, 2023

Decided: May 11, 2023

BEFORE JOANN LASALA CANDIDO, ALJ:

STATEMENT OF THE CASE

Police officer Claudia Martinez (petitioner) appeals the discipline imposed on her by the City of Newark (respondent)—a six-day suspension without pay—for alleged violations of Newark Police Department Rules and Regulations. Petitioner was sanctioned for her conduct in connection with a dispute with an uncle/tenant at a property

owned by her, where officers were called on December 6, 2019, to assist this gentleman who had been locked out of the home.

PROCEDURAL HISTORY

On December 6, 2019, Sergeant Lucy DaSilva of the Newark Police Department (Department) filed a departmental complaint against petitioner. The Department initiated an investigation into the complaint on December 9, 2019. On January 10, 2020, the Department issued a Preliminary Notice of Disciplinary Action charging petitioner with: (1) Violation of Department Rules and Regulations, Chapter-3:1.1 – CONDUCT PUBLIC AND PRIVATE (Charge I); Violation of Civil Service Rule, Conduct Unbecoming a Public Employee (Charge IB); (2) Violation of Department Rules and Regulations, Chapter-5:1.5 – POLICE IMAGE (Charge II); and (3) Violation of Department Rules and Regulations, Chapter-5:3.5 – BOUND BY DUTY (Charge III). On March 15, 2022, the matter was waived to the Office of Administrative Law (OAL), and a Final Notice of Disciplinary Action was issued against petitioner for the charges provided in the preliminary notice. On March 29, 2022, the petitioner formally filed an appeal with the OAL.

Following a prehearing conference and order related to the exchange of discovery, petitioner filed a motion for summary decision based on respondent's alleged failure to provide discovery. That motion was denied, as was petitioner's separate motion to dismiss. The matter then proceeded to a hearing, which was held on February 16, 2023. The record closed on April 24, 2023, upon receipt of post-hearing submissions.

TESTIMONY

Vincent Deleva

Police Officer Vincent Deleva testified on behalf of the City. He was assigned to the 2nd Precinct at the time of the incident on December 6, 2019. Deleva was working the overnight shift on that evening, and he was ordered to investigate a call sometime after roll call around 11:30 p.m. He observed Martinez in an open window at the home

next door. He had worked with her prior. She told Deleva she was the owner of the home next door and evicted the gentleman for not paying rent. Martinez said he would need to go to court and, according to Deleva, she "slammed the window on us." The gentleman's belongings were outside on the side of the house in the alleyway between 188 and 190 Lincoln Ave. The tenant said he did not know why his belongings were outside. Deleva had never witnessed an eviction like this. Usually there are court documents.

Deleva's field supervisor came to the scene upon his request. No one answered the door, so after about an hour they transported the gentleman to Penn Station to meet someone who was picking him up. The supervisor did not have contact with Martinez that evening.

Sergeant Lucia Dasilva-Ocasio

Sergeant Dasilva-Ocasio testified on behalf of the City. She was assigned to the 2nd Precinct. She was contacted by Communications and dispatched to Martinez's address because the officers at the call requested a supervisor. The officers told Dasilva-Ocasio that the tenant was locked out and his belongings were outside covered by a tarp. Deleva told her that Martinez was out the window earlier telling the officers the tenant was evicted. Dasilva-Ocasio went to the home where Martinez was out the window on the left and tried to get Martinez outside, but she did not answer the door or the window. She banged on the door with her flashlight and the window, but Martinez did not acknowledge the sergeant.

Dasilva-Ocasio was attempting to see a landlord-tenant document that would show the gentleman was evicted as per procedure. When there was no response, the gentleman was taken to headquarters and then transported to Penn Station. Dasilva-Ocasio issued a Complaint against Martinez for not responding to her.

Police Officer Joshua Paul

Police Officer Joshua Paul testified on behalf of the City. He was assigned to the 2nd Precinct at the time of the incident. The tenant came into the precinct saying he was evicted illegally. Paul and Deleva went to the residence. A woman from the house next door opened a window and Deleva recognized her as Martinez. She told the officers she owned the property, and that the gentleman did not live there and to kick him out that he was trespassing. He requested an eviction notice as a procedure but could not obtain one. He went inside the vehicle, since it was cold out, to ask for a supervisor's assistant. Paul had a view of the front of the house from where the patrol car was parked. Sergeant Dasilva-Ocasio tried to contact Martinez by banging on the window. When unsuccessful, they took the tenant back to the precinct before taking him to Penn Station.

Claudia Martinez

Claudia Martinez credibly testified on her own behalf. On December 6, 2019, officers came to the scene, and she was at her brother's residence next door to hers to pick up her son. Her mother resides in her brother's home. She spoke to the officers from a window while they were in the alleyway between both homes. The officers walked off and she closed the window. She did not hear anyone knocking on the door or window or ringing the doorbell after the officers walked off. The tenant was her uncle, but she did not tell Internal Affairs he was a relative. It was an informal arrangement between her mother and uncle and there was no lease. Martinez agreed to let her uncle stay at her home to help him out.

Martinez mother changed the locks at Martinez home and permitted the uncle to leave his belongings outside between the two homes until he secured a truck to move his belongings to Elizabeth. She stated that her uncle vacated on December 1, 2019. He was permitted to keep a key to the gate so that he would have access to his belongings.

FINDINGS OF FACT

1. On the evening of December 6, 2019, officers were called to a home to address an eviction. The gentleman (tenant) whose belongings were outside the house at 188 Lincoln Ave and who summoned the officers to the address was a member of Martinez's family.
2. When Officers Paul and Deleva first knocked on the door to 188 Lincoln Ave, Martinez appeared at the window of the adjacent residence, at 190 Lincoln Ave, which her brother owns.
3. Martinez advised the officers that she resides next door, that the tenant (who was her uncle) had been kicked out by her mother, and that the officers should tell him to leave, or he would be charged with trespassing.
4. Martinez did not disclose to the officers at that time that the tenant was a family member.
5. Martinez did not come to the door or window when Sergeant Dasilva-Ocasio knocked a few minutes later.
6. Martinez, her mother, and uncle had an informal living arrangement. There was no lease to violate a tenant's legal rights.
7. On or about December 1, 2019, the uncle was removed from the premises and the mother had the locks changed at Martinez home next door to where her mother resides with her brother. The uncle was permitted to leave his belongings in the alleyway until he could retrieve them, and he kept the key to the gate.
8. Martinez's dispute with the tenant was unrelated to her duties as a police officer.

LEGAL DISCUSSION AND CONCLUSIONS

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of competent, relevant, and credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550

(1982). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

Martinez is charged with Chapter 3:1.1 of the Newark Police Department Rules and Regulations, "Conduct in Public and Private," provides that "[p]olice officers in both private and public lives shall conduct themselves so as to avoid impugning the reputation of the Department. They shall maintain the dignity and integrity of their office through . . . the maintenance of respect for the welfare and the rights of all citizens..." Chapter 5:1-5 of the Department Rules and Regulations, "Police Image," provides that "[p]olice officers shall bear in mind that they symbolize the dignity and the authority of the City of Newark and the State of New Jersey, and that they are the representatives of the law to whose lawful demands all must submit ..." Chapter 5:3-5, "Bound by Duty," provides that "[p]olice officers shall always bear in mind that regardless of rank or of assignment that they are police officers and that they are required to act accordingly."

The City has failed to carry its burden by a preponderance of evidence. The City did not prove that Martinez violated the tenant's legal rights or engaged in misconduct. And while police officers are expected to conduct themselves appropriately in both public and private, Martinez's dispute with the tenant/uncle while off-duty has no bearing on her responsibilities as a police officer or the integrity of the Department. Her failure to engage

at length with the officers who were called to her house is not cause for professional discipline.

ORDER

Based upon the foregoing, it is **ORDERED** that the charges by the Police Department of the City of Newark and the six-day suspension of Claudia Martinez be **REVERSED**.

It is further **ORDERED** that Claudia Martinez be awarded back pay in accordance with the guidelines set forth in N.J.A.C. 4A:2-2.10.

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.

May 11, 2023



DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

May 11, 2023

Date Mailed to Parties:

May 11, 2023

ljb

APPENDIX

Witnesses

For Petitioner:

Claudia Martinez

For Respondent:

Officer Vincent Deleva

Sergeant Lucia Dasilva-Ocasio

Officer Joshua Paul

Exhibits

For Petitioner:

None

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action, issued on January 10, 2020
- R-2 Final Notice of Disciplinary Action Issued on March 15, 2022
- R-3 Concise Officer History for Officer Claudia Martinez
- R-4 Administrative Submission – Investigation of Personnel #2019-677
- R-5 Video of Vincent Delvea
- R-6 Video of Claudia Martinez
- R-7 Video of Sgt. Portia Allen
- R-8 Audio Statement of Officer Joshua Paul
- R-9 Audio Statement of Sergeant Lucy DaSilva